

# HOUSE BILL No. 4867

April 29, 2009, Introduced by Reps. Mayes and Marleau and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 400, 403, and 413 (MCL 208.1400, 208.1403, and 208.1413), section 403 as amended by 2008 PA 434 and section 413 as amended by 2007 PA 145.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 400. (1) For purposes of this chapter, taxpayer does not  
2 include a person subject to the tax imposed under chapter 2A or 2B  
3 unless specifically included in the section.

4           (2) FOR PURPOSES OF THIS CHAPTER, NOTWITHSTANDING ANYTHING TO  
5 THE CONTRARY IN THIS ACT OR ANY OTHER PROVISION OF LAW, A LESSEE  
6 THAT LEASES PROPERTY FROM A PERSON SUBJECT TO THE TAX IMPOSED UNDER  
7 CHAPTER 2A OR 2B IS CONSIDERED THE OWNER OF THAT LEASED PROPERTY

1 AND IS ENTITLED TO CLAIM ANY CREDITS UNDER THIS CHAPTER AVAILABLE  
2 TO AN OWNER OF SUCH PROPERTY.

3 Sec. 403. (1) Notwithstanding any other provision in this act,  
4 the credits provided in this section shall be taken before any  
5 other credit under this act. Except as otherwise provided in  
6 subsection (6), for the 2008 tax year, the total combined credit  
7 allowed under this section shall not exceed 50% of the tax  
8 liability imposed under this act before the imposition and levy of  
9 the surcharge under section 281. For the 2009 tax year and each tax  
10 year after 2009, the total combined credit allowed under this  
11 section shall not exceed 52% of the tax liability imposed under  
12 this act before the imposition and levy of the surcharge under  
13 section 281.

14 (2) Subject to the limitation in subsection (1), for the 2008  
15 tax year a taxpayer may claim a credit against the tax imposed by  
16 this act equal to 0.296% of the taxpayer's compensation in this  
17 state. For the 2009 tax year and each tax year after 2009, subject  
18 to the limitation in subsection (1), a taxpayer may claim a credit  
19 against the tax imposed by this act equal to 0.370% of the  
20 taxpayer's compensation in this state. For purposes of this  
21 subsection, a taxpayer includes a person subject to the tax imposed  
22 under chapter 2A and a person subject to the tax imposed under  
23 chapter 2B. A professional employer organization shall not include  
24 payments by the professional employer organization to the officers  
25 and employees of a client of the professional employer organization  
26 whose employment operations are managed by the professional  
27 employer organization. A client may include payments by the

1 professional employer organization to the officers and employees of  
2 the client whose employment operations are managed by the  
3 professional employer organization.

4 (3) Subject to the limitation in subsection (1), for the 2008  
5 tax year a taxpayer may claim a credit against the tax imposed by  
6 this act equal to 2.32% multiplied by the result of subtracting the  
7 sum of the amounts calculated under subdivisions (d), (e), and (f)  
8 from the sum of the amounts calculated under subdivisions (a), (b),  
9 and (c). Subject to the limitation in subsection (1), for the 2009  
10 tax year and each tax year after 2009, a taxpayer may claim a  
11 credit against the tax imposed by this act equal to 2.9% multiplied  
12 by the result of subtracting the sum of the amounts calculated  
13 under subdivisions (d), (e), and (f) from the sum of the amounts  
14 calculated under subdivisions (a), (b), and (c):

15 (a) Calculate the cost, including fabrication and  
16 installation, paid or accrued in the taxable year of tangible  
17 assets of a type that are, or under the internal revenue code will  
18 become, eligible for depreciation, amortization, or accelerated  
19 capital cost recovery for federal income tax purposes, provided  
20 that the assets are physically located in this state for use in a  
21 business activity in this state and are not mobile tangible assets.

22 (b) Calculate the cost, including fabrication and  
23 installation, paid or accrued in the taxable year of mobile  
24 tangible assets of a type that are, or under the internal revenue  
25 code will become, eligible for depreciation, amortization, or  
26 accelerated capital cost recovery for federal income tax purposes.  
27 This amount shall be multiplied by the apportionment factor for the

1 tax year as prescribed in chapter 3.

2 (c) For tangible assets, other than mobile tangible assets,  
3 purchased or acquired for use outside of this state in a tax year  
4 beginning after December 31, 2007 and subsequently transferred into  
5 this state and purchased or acquired for use in a business  
6 activity, calculate the federal basis used for determining gain or  
7 loss as of the date the tangible assets were physically located in  
8 this state for use in a business activity plus the cost of  
9 fabrication and installation of the tangible assets in this state.

10 (d) If the cost of tangible assets described in subdivision  
11 (a) was paid or accrued in a tax year beginning after December 31,  
12 2007, or before December 31, 2007 to the extent the credit is used  
13 and at the rate at which the credit was used under former 1975 PA  
14 228 or this act, calculate the gross proceeds or benefit derived  
15 from the sale or other disposition of the tangible assets minus the  
16 gain, multiplied by the apportionment factor for the taxable year  
17 as prescribed in chapter 3, and plus the loss, multiplied by the  
18 apportionment factor for the taxable year as prescribed in chapter  
19 3 from the sale or other disposition reflected in federal taxable  
20 income and minus the gain from the sale or other disposition added  
21 to the business income tax base in section 201.

22 (e) If the cost of tangible assets described in subdivision  
23 (b) was paid or accrued in a tax year beginning after December 31,  
24 2007, or before December 31, 2007 to the extent the credit is used  
25 and at the rate at which the credit was used under former 1975 PA  
26 228 or this act, calculate the gross proceeds or benefit derived  
27 from the sale or other disposition of the tangible assets minus the

1 gain and plus the loss from the sale or other disposition reflected  
2 in federal taxable income and minus the gain from the sale or other  
3 disposition added to the business income tax base in section 201.  
4 This amount shall be multiplied by the apportionment factor for the  
5 tax year as prescribed in chapter 3.

6 (f) For assets purchased or acquired in a tax year beginning  
7 after December 31, 2007, or before December 31, 2007 to the extent  
8 the credit is used and at the rate at which the credit was used  
9 under former 1975 PA 228 or this act, that were eligible for a  
10 credit under subdivision (a) or (c) and that were transferred out  
11 of this state, calculate the federal basis used for determining  
12 gain or loss as of the date of the transfer.

13 (4) For a tax year in which the amount of the credit  
14 calculated under subsection (3) is negative, the absolute value of  
15 that amount is added to the taxpayer's tax liability for the tax  
16 year.

17 (5) A taxpayer that claims a credit under this section is not  
18 prohibited from claiming a credit under section 405. However, the  
19 taxpayer shall not claim a credit under this section and section  
20 405 based on the same costs and expenses.

21 (6) For a taxpayer primarily engaged in furnishing electric  
22 and gas utility service that makes capital investments in electric  
23 and gas distribution assets for which a portion of the credit  
24 provided under subsection (3) would be denied for the 2008 tax year  
25 by reason of the 50% limitation of subsection (1), the 50%  
26 limitation on the total combined credit for the 2008 tax year  
27 provided in subsection (1) shall be increased by an amount not to

1 exceed the lesser of the amount of the denied credit or 50% of the  
2 tax increase under this act accrued for financial reporting  
3 purposes due to the elimination of the deduction under section  
4 168(k) of the internal revenue code by the amendatory act that  
5 added this subsection. Provided, however, that the total combined  
6 credit allowed under this section for the 2008 tax year shall not  
7 exceed 80% of the tax liability imposed under this act after the  
8 imposition and levy of the surcharge under section 281.

9       **(7) A TAXPAYER THAT IS A LESSOR OF TANGIBLE ASSETS DESCRIBED**  
10 **UNDER SUBSECTION (3) MAY ELECT TO TRANSFER THE CREDIT AVAILABLE**  
11 **UNDER SUBSECTION (3) TO THE LESSEE OF THOSE TANGIBLE ASSETS. IF THE**  
12 **TAXPAYER ELECTS TO TRANSFER THE CREDIT TO THE LESSEE, THE LESSEE IS**  
13 **SUBJECT TO ALL APPLICABLE PROVISIONS AND REQUIREMENTS OF THIS**  
14 **SECTION.**

15       Sec. 413. (1) Subject to subsection (2), a taxpayer may claim  
16 a credit against the tax imposed by this act equal to the  
17 following:

18       (a) For property taxes levied after December 31, 2007, 35% of  
19 the amount paid for property taxes on eligible personal property in  
20 the tax year.

21       (b) Twenty-three percent of the amount paid for property taxes  
22 levied on eligible telephone personal property in the 2008 tax year  
23 and 13.5% of the amount paid for property taxes levied on eligible  
24 telephone personal property in subsequent tax years.

25       (c) For property taxes levied after December 31, 2007, 10% of  
26 the amount paid for property taxes on eligible natural gas pipeline  
27 property in the tax year.

1           (2) To qualify for the credit under subsection (1), the  
2 taxpayer shall file, if applicable, within the time prescribed each  
3 of the following:

4           (a) The statement of assessable personal property prepared  
5 pursuant to section 19 of the general property tax act, 1893 PA  
6 206, MCL 211.19, identifying the eligible personal property or  
7 eligible natural gas pipeline property, or both, for which the  
8 credit under subsection (1) is claimed.

9           (b) The annual report filed under section 6 of 1905 PA 282,  
10 MCL 207.6, identifying the eligible telephone personal property for  
11 which the credit under subsection (1) is claimed.

12           (c) The assessment or bill issued to and paid by the taxpayer  
13 for the eligible personal property, eligible natural gas pipeline  
14 property, or eligible telephone property for which the credit under  
15 subsection (1) is claimed.

16           (3) If the amount of the credit allowed under this section  
17 exceeds the tax liability of the taxpayer for the tax year, that  
18 excess shall be refunded.

19           **(4) A TAXPAYER THAT IS A LESSOR OF ELIGIBLE PERSONAL PROPERTY**  
20 **MAY ELECT TO TRANSFER THE CREDIT AVAILABLE UNDER THIS SECTION TO**  
21 **THE LESSEE OF THAT ELIGIBLE PERSONAL PROPERTY. IF THE TAXPAYER**  
22 **ELECTS TO TRANSFER THE CREDIT TO THE LESSEE, THE LESSEE IS SUBJECT**  
23 **TO ALL APPLICABLE PROVISIONS AND REQUIREMENTS OF THIS SECTION.**

24           (5) ~~(4)~~—As used in this section:

25           (a) "Eligible natural gas pipeline property" means natural gas  
26 pipelines that are classified as utility personal property under  
27 section 34c of the general property tax act, 1893 PA 206, MCL

1 211.34c, and are subject to regulation under the natural gas act,  
2 15 USC 717 to 717z.

3 (b) "Eligible personal property" means personal property that  
4 is classified as industrial personal property under section 34c of  
5 the general property tax act, 1893 PA 206, MCL 211.34c, or in the  
6 case of personal property that is subject to 1974 PA 198, MCL  
7 207.551 to 207.572, is situated on land classified as industrial  
8 real property under section 34c of the general property tax act,  
9 1893 PA 206, MCL 211.34c.

10 (c) "Eligible telephone personal property" means personal  
11 property of a telephone company subject to the tax levied under  
12 1905 PA 282, MCL 207.1 to 207.21.

13 (d) "Property taxes" means any of the following:

14 (i) Taxes collected under the general property tax act, 1893 PA  
15 206, MCL 211.1 to 211.155.

16 (ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

17 (iii) Taxes levied under the obsolete property rehabilitation  
18 act, 2000 PA 146, MCL 125.2781 to 125.2797.

19 (iv) Taxes levied under 1905 PA 282, MCL 207.1 to 207.21.