

HOUSE BILL No. 5112

June 17, 2009, Introduced by Rep. Calley and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 417 (MCL 208.1417).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 417. (1) The credit provided in this section shall be
2 taken after the credits under sections 403 and 405 and before any
3 other credit under this act and is available to any taxpayer with
4 gross receipts that do not exceed \$20,000,000.00 and with adjusted
5 business income minus the loss adjustment that does not exceed
6 \$1,300,000.00 as adjusted annually for inflation using the Detroit
7 consumer price index and subject to the following:

8 (a) An individual, a partnership, a limited liability company,
9 or a subchapter S corporation is disqualified if the individual,

any 1 partner of the partnership, any 1 member of the limited liability company, or any 1 shareholder of the subchapter S corporation receives more than \$180,000.00 as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, the limited liability company, or the subchapter S corporation.

(b) A corporation other than a subchapter S corporation is disqualified if either of the following occur for the respective tax year:

(i) Compensation and directors' fees of a shareholder or officer exceed \$180,000.00.

(ii) The sum of the following amounts exceeds \$180,000.00:

(A) Compensation and directors' fees of a shareholder.

(B) The product of the percentage of outstanding ownership or of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and, to the extent deducted in determining federal taxable income, a carryback or a carryover of a net operating loss or capital loss, minus the loss adjustment.

(c) Subject to the reduction percentage determined under subsection (3), the credit determined under this subsection shall be reduced by the following percentages in the following circumstances:

(i) If an individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted business income minus the loss adjustment of the

1 individual, partnership, limited liability company, or subchapter S
2 corporation; if compensation and directors' fees of a shareholder
3 or officer of a corporation other than a subchapter S corporation
4 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
5 is more than \$160,000.00 but less than \$165,000.00, the credit is
6 reduced by 20%.

7 (ii) If an individual, any 1 partner of the partnership, any 1
8 member of the limited liability company, or any 1 shareholder of
9 the subchapter S corporation receives as a distributive share of
10 adjusted business income minus the loss adjustment of the
11 individual, partnership, limited liability company, or subchapter S
12 corporation; if compensation and directors' fees of a shareholder
13 or officer of a corporation other than a subchapter S corporation
14 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
15 is \$165,000.00 or more but less than \$170,000.00, the credit is
16 reduced by 40%.

17 (iii) If an individual, any 1 partner of the partnership, any 1
18 member of the limited liability company, or any 1 shareholder of
19 the subchapter S corporation receives as a distributive share of
20 adjusted business income minus the loss adjustment of the
21 individual, partnership, limited liability company, or subchapter S
22 corporation; if compensation and directors' fees of a shareholder
23 or officer of a corporation other than a subchapter S corporation
24 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
25 is \$170,000.00 or more but less than \$175,000.00, the credit is
26 reduced by 60%.

27 (iv) If an individual, any 1 partner of the partnership, any 1

1 member of the limited liability company, or any 1 shareholder of
2 the subchapter S corporation receives as a distributive share of
3 adjusted business income minus the loss adjustment of the
4 individual, partnership, limited liability company, or subchapter S
5 corporation; if compensation and directors' fees of a shareholder
6 or officer of a corporation other than a subchapter S corporation
7 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
8 is \$175,000.00 or more but not in excess of \$180,000.00, the credit
9 is reduced by 80%.

10 (2) For the purposes of determining disqualification under
11 subsection (1), ~~an~~**BOTH OF THE FOLLOWING APPLY:**

12 (A) **AN** active shareholder's share of business income shall not
13 be attributed to another active shareholder.

14 (B) **THE RULES OF ATTRIBUTION UNDER SECTION 318(A)(1) OF THE**
15 **INTERNAL REVENUE CODE DO NOT APPLY. ACCORDINGLY, AN INDIVIDUAL IS**
16 **NOT CONSIDERED AS THE OWNER OF THE STOCK OWNED, DIRECTLY OR**
17 **INDIRECTLY, BY OR FOR FAMILY MEMBERS.**

18 (3) To determine the reduction percentage under subsection
19 (1)(c), the following apply:

20 (a) The reduction percentage for a partnership, limited
21 liability company, or subchapter S corporation is based on the
22 distributive share of adjusted business income minus loss
23 adjustment of the partner, member, or shareholder with the greatest
24 distributive share of adjusted business income minus loss
25 adjustment.

26 (b) The reduction percentage for a corporation other than a
27 subchapter S corporation is the greater of the following:

1 (i) The reduction percentage based on the compensation and
2 directors' fees of the shareholder or officer with the greatest
3 amount of compensation and directors' fees.

4 (ii) The reduction percentage based on the sum of the amounts
5 in subsection (1)(b)(ii)(A) and (B) for the shareholder or officer
6 with the greatest sum of the amounts in subsection (1)(b)(ii)(A) and
7 (B).

8 (4) A taxpayer that qualifies under subsection (1) is allowed
9 a credit against the tax imposed under this act. The credit under
10 this subsection is the amount by which the tax imposed under this
11 act exceeds 1.8% of adjusted business income.

12 (5) If gross receipts exceed \$19,000,000.00, the credit shall
13 be reduced by a fraction, the numerator of which is the amount of
14 gross receipts over \$19,000,000.00 and the denominator of which is
15 \$1,000,000.00. The credit shall not exceed 100% of the tax
16 liability imposed under this act.

17 (6) For a taxpayer that reports for a tax year less than 12
18 months, the amounts specified in this section for gross receipts,
19 adjusted business income, and share of business income shall be
20 multiplied by a fraction, the numerator of which is the number of
21 months in the tax year and the denominator of which is 12.

22 (7) The department shall permit a taxpayer that elects to
23 claim the credit allowed under this section based on the amount by
24 which the tax imposed under this act exceeds the percentage of
25 adjusted business income for the tax year as determined under
26 subsection (4), and that is not required to reduce the credit
27 pursuant to subsection (1) or (5), to file and pay the tax imposed

1 by this act without computing the tax imposed under sections 201
2 and 203.

3 (8) Compensation paid by the professional employer
4 organization to the officers of the client and to employees of the
5 professional employer organization who are assigned or leased to
6 and perform services for the client shall be included in
7 determining eligibility of the client under this section.

8 (9) As used in this section:

9 (a) "Active shareholder" means a shareholder who receives at
10 least \$10,000.00 in compensation, directors' fees, or dividends
11 from the business, and who owns at least 5% of the outstanding
12 stock or other ownership interest.

13 (b) "Adjusted business income" means business income as
14 defined in section 105 with all of the following adjustments:

15 (i) Add compensation and directors' fees of active shareholders
16 of a corporation.

17 (ii) Add, to the extent deducted in determining federal taxable
18 income, a carryback or a carryover of a net operating loss.

19 (iii) Add, to the extent deducted in determining federal taxable
20 income, a capital loss.

21 (iv) Add compensation and directors' fees of officers of a
22 corporation.

23 (c) "Detroit consumer price index" means the most
24 comprehensive index of consumer prices available for the Detroit
25 area from the United States department of labor, bureau of labor
26 statistics.

27 (d) "Loss adjustment" means the amount by which adjusted

1 business income was less than zero in any of the 5 tax years
2 immediately preceding the tax year for which eligibility for the
3 credit under this section is being determined. In determining the
4 loss adjustment for a tax year, a taxpayer is not required to use
5 more of the taxpayer's total negative adjusted business income than
6 the amount needed to qualify the taxpayer for the credit under this
7 section. A taxpayer shall not be considered to have used any
8 portion of the taxpayer's negative adjusted business income amount
9 unless the portion used is necessary to qualify for the credit
10 under this section. A taxpayer shall not reuse a negative adjusted
11 business income amount used as a loss adjustment in a previous tax
12 year or use a negative adjusted business income amount from a year
13 in which the taxpayer did not receive the credit under this
14 section.