

HOUSE BILL No. 5816

February 16, 2010, Introduced by Reps. Calley, Amash, Lori, Moss, Opsommer, Green, Hildenbrand, Marleau, Walsh, DeShazor, Kurtz, Scripps, Wayne Schmidt and Pearce and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 200, 411, 417, and 505 (MCL 208.1200,
208.1411, 208.1417, and 208.1505).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 200. (1) Except as otherwise provided in this act or
2 under subsection (2), a taxpayer has substantial nexus in this
3 state and is subject to the tax imposed under this act if the
4 taxpayer has a physical presence in this state for a period of more
5 than 1 day during the tax year or if the taxpayer actively solicits
6 sales in this state and has gross receipts of ~~\$350,000.00~~
7 \$1,000,000.00 or more sourced to this state.

8 (2) For purposes of this section: ~~,"actively~~

9 (A) "ACTIVELY solicits" shall be defined by the department

through written guidance that shall be applied prospectively.

~~—— (3) As used in this section, "physical~~

(B) "PHYSICAL presence" means any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity. Physical presence does not include the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer's ability to establish and maintain a market in this state.

Sec. 411. A taxpayer whose gross receipts allocated or apportioned to this state are greater than ~~\$350,000.00~~ \$1,000,000.00 but less than ~~\$700,000.00~~ \$1,500,000.00, may claim a credit against the tax imposed under this act equal to the tax liability after the credit under section 417 multiplied by a fraction the numerator of which is the difference between the person's allocated or apportioned gross receipts and ~~\$700,000.00~~ \$1,500,000.00 and the denominator of which is ~~\$350,000.00~~ \$1,000,000.00.

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

~~—— (a) An individual, a partnership, a limited liability company,~~

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

~~—— (ii) 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 individual, partnership, limited liability company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is \$165,000.00 or more but less than \$170,000.00, the credit is reduced by 40%.~~

~~—— (iii) 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 individual, partnership, limited liability company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is \$170,000.00 or more but less than \$175,000.00, the credit is reduced by 60%.~~

~~—— (iv) 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 individual, partnership, limited liability company, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is \$175,000.00 or more but not in excess of \$180,000.00, the credit is reduced by 80%.~~

~~—— (2) For the purposes of determining disqualification under subsection (1), an active shareholder's share of business income shall not be attributed to another active shareholder.~~

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

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

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

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

~~—— (ii) The reduction percentage based on the sum of the amounts~~

1 ~~in subsection (1) (b) (ii) (A) and (B) for the shareholder or officer~~
2 ~~with the greatest sum of the amounts in subsection (1) (b) (ii) (A) and~~
3 ~~(B).~~

4 (2) ~~(4)~~ A taxpayer that qualifies under subsection (1) is
5 allowed a credit against the tax imposed under this act. The credit
6 under this subsection is the amount by which the tax imposed under
7 this act exceeds 1.8% of adjusted business income.

8 (3) ~~(5)~~ If gross receipts exceed \$19,000,000.00, the credit
9 shall be reduced by a fraction, the numerator of which is the
10 amount of gross receipts over \$19,000,000.00 and the denominator of
11 which is \$1,000,000.00. The credit shall not exceed 100% of the tax
12 liability imposed under this act.

13 (4) ~~(6)~~ For a taxpayer that reports for a tax year less than
14 12 months, the amounts specified in this section for gross
15 receipts, adjusted business income, and share of business income
16 shall be multiplied by a fraction, the numerator of which is the
17 number of months in the tax year and the denominator of which is
18 12.

19 (5) ~~(7)~~ The department shall permit a taxpayer that elects to
20 claim the credit allowed under this section based on the amount by
21 which the tax imposed under this act exceeds the percentage of
22 adjusted business income for the tax year as determined under
23 subsection ~~(4)~~ (2), and that is not required to reduce the credit
24 pursuant to subsection ~~(1) or (5)~~ (3), to file and pay the tax
25 imposed by this act without computing the tax imposed under
26 sections 201 and 203.

27 (6) ~~(8)~~ Compensation paid by the professional employer

1 organization to the officers of the client and to employees of the
2 professional employer organization who are assigned or leased to
3 and perform services for the client shall be included in
4 determining eligibility of the client under this section.

5 (7) ~~(9)~~—As used in this section:

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

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

12 (i) Add compensation and directors' fees of active shareholders
13 of a corporation.

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

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

18 (iv) Add compensation and directors' fees of officers of a
19 corporation.

20 ~~—— (c) "Detroit consumer price index" means the most~~
21 ~~comprehensive index of consumer prices available for the Detroit~~
22 ~~area from the United States department of labor, bureau of labor~~
23 ~~statistics.~~

24 ~~—— (d) "Loss adjustment" means the amount by which adjusted~~
25 ~~business income was less than zero in any of the 5 tax years~~
26 ~~immediately preceding the tax year for which eligibility for the~~
27 ~~credit under this section is being determined. In determining the~~

~~loss adjustment for a tax year, a taxpayer is not required to use more of the taxpayer's total negative adjusted business income than the amount needed to qualify the taxpayer for the credit under this section. A taxpayer shall not be considered to have used any portion of the taxpayer's negative adjusted business income amount unless the portion used is necessary to qualify for the credit under this section. A taxpayer shall not reuse a negative adjusted business income amount used as a loss adjustment in a previous tax year or use a negative adjusted business income amount from a year in which the taxpayer did not receive the credit under this section.~~

Sec. 505. (1) An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return. A taxpayer, other than a taxpayer subject to the tax imposed under chapter 2A or 2B, whose apportioned or allocated gross receipts are less than ~~\$350,000.00~~ **\$1,000,000.00** does not need to file a return or pay the tax imposed under this act.

(2) If a taxpayer has apportioned or allocated gross receipts for a tax year of less than 12 months, the amount in subsection (1) shall be multiplied by a fraction, the numerator of which is the number of months in the tax year and the denominator of which is 12.

(3) The department, upon application of the taxpayer and for good cause shown, may extend the date for filing the annual return. Interest at the rate under section 23(2) of 1941 PA 122, MCL

1 205.23, shall be added to the amount of the tax unpaid for the
2 period of the extension. The treasurer shall require with the
3 application payment of the estimated tax liability unpaid for the
4 tax period covered by the extension.

5 (4) If a taxpayer is granted an extension of time within which
6 to file the federal income tax return for any tax year, the filing
7 of a copy of the request for extension together with a tentative
8 return and payment of an estimated tax with the department by the
9 due date provided in subsection (1) shall automatically extend the
10 due date for the filing of an annual or final return under this act
11 until the last day of the eighth month following the original due
12 date of the return. Interest at the rate under section 23(2) of
13 1941 PA 122, MCL 205.23, shall be added to the amount of the tax
14 unpaid for the period of the extension.