

SENATE BILL No. 38

January 27, 2009, Introduced by Senators PAPPAGEORGE, BIRKHOLZ, KAHN and RICHARDVILLE
and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 261 (MCL 206.261), as amended by 2008 PA 207.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 261. (1) For the 1989 tax year and each tax year after
2 1989 and subject to the applicable limitations in this section, a
3 taxpayer may credit against the tax imposed by this act 50% of the
4 amount the taxpayer contributes during the tax year to an endowment
5 fund of a community foundation or for the 1992 tax year and each
6 tax year after 1992 and subject to the applicable limitations in
7 this section, a taxpayer may credit against the tax imposed by this
8 act 50% of the sum of the cash amount and, for the 2008 tax year
9 and each tax year after 2008, if the food items are contributed in
10 conjunction with a program in which a vendor makes a matching

1 contribution of similar items, the value of those food items the
2 taxpayer contributes during the tax year to a shelter for homeless
3 persons, food kitchen, food bank, or other entity located in this
4 state, the primary purpose of which is to provide overnight
5 accommodation, food, or meals to persons who are indigent if a
6 contribution to that entity is tax deductible for the donor under
7 the internal revenue code. **IN ADDITION TO THE OTHER CONTRIBUTIONS**
8 **FOR WHICH A CREDIT MAY BE CLAIMED UNDER THIS SECTION, FOR THE 2010**
9 **TAX YEAR AND EACH TAX YEAR AFTER 2010 AND SUBJECT TO THE APPLICABLE**
10 **LIMITATIONS IN THIS SECTION, A TAXPAYER MAY CREDIT AGAINST THE TAX**
11 **IMPOSED BY THIS ACT 50% OF THE TOTAL AMOUNT THE TAXPAYER**
12 **CONTRIBUTES DURING THE TAX YEAR TO AN ENDOWMENT FUND OF AN**
13 **EDUCATION FOUNDATION OR TO A SPECIFIC PROJECT ORGANIZED BY AN**
14 **EDUCATION FOUNDATION.**

15 (2) For a taxpayer other than a resident estate or trust, the
16 credit allowed by this section for a contribution to a community
17 foundation shall not exceed \$100.00, or \$200.00 for a husband and
18 wife filing a joint return for tax years before the 2000 tax year
19 and \$100.00 or \$200.00 for a husband and wife filing a joint return
20 for tax years after the 1999 tax year. For the 1992 tax year and
21 each tax year after 1992, a taxpayer may claim an additional credit
22 under this section not to exceed \$100.00, or \$200.00 for a husband
23 and wife filing a joint return, for total cash contributions made
24 and, for the 2008 tax year and each tax year after 2008, including
25 the value of food items contributed as described in subsection (1)
26 in the tax year to shelters for homeless persons, food kitchens,
27 food banks, and, except for community foundations, other entities

1 allowed under subsection (1). FOR A TAXPAYER OTHER THAN A RESIDENT
2 ESTATE OR TRUST, FOR THE 2010 TAX YEAR AND EACH TAX YEAR AFTER
3 2010, A TAXPAYER MAY CLAIM AN ADDITIONAL CREDIT UNDER THIS SECTION
4 NOT TO EXCEED \$100.00, OR \$200.00 FOR A HUSBAND AND WIFE FILING A
5 JOINT RETURN, FOR CONTRIBUTIONS TO AN ENDOWMENT FUND OF AN
6 EDUCATION FOUNDATION OR TO A SPECIFIC PROJECT ORGANIZED BY AN
7 EDUCATION FOUNDATION. For a resident estate or trust, the credit
8 allowed by this section for a contribution to a community
9 foundation shall not exceed 10% of the taxpayer's tax liability for
10 the tax year before claiming any credits allowed by this act or
11 \$5,000.00, whichever is less. For the 1992 tax year and each tax
12 year after 1992, a resident estate or trust may claim an additional
13 credit under this section not to exceed 10% of the taxpayer's tax
14 liability for the tax year before claiming any credits allowed by
15 this act or \$5,000.00, whichever is less, for total cash
16 contributions made and, for the 2008 tax year and each tax year
17 after 2008, including the value of food items contributed as
18 described in subsection (1) in the tax year to shelters for
19 homeless persons, food kitchens, food banks, and, except for
20 community foundations, other entities allowed under subsection (1).
21 FOR THE 2010 TAX YEAR AND EACH TAX YEAR AFTER 2010, A RESIDENT
22 ESTATE OR TRUST MAY CLAIM AN ADDITIONAL CREDIT UNDER THIS SECTION
23 NOT TO EXCEED 10% OF THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR
24 BEFORE CLAIMING ANY CREDITS ALLOWED BY THIS ACT OR \$5,000.00,
25 WHICHEVER IS LESS, FOR TOTAL CONTRIBUTIONS MADE TO AN ENDOWMENT
26 FUND OF AN EDUCATION FOUNDATION OR TO A SPECIFIC PROJECT ORGANIZED
27 BY AN EDUCATION FOUNDATION. For a resident estate or trust, the

1 amount used to calculate the credits under this section shall not
2 have been deducted in arriving at federal taxable income.

3 (3) For the 2008 tax year and each tax year after 2008 and
4 subject to the applicable limitations in this section, when
5 calculating the amount of the credit allowed under this section a
6 taxpayer may include as a cash contribution an amount equal to the
7 value of food items contributed as described in subsection (1) in
8 the tax year to a shelter for homeless persons, food kitchen, food
9 bank, or other entity located in this state as described in
10 subsection (1).

11 (4) The credits allowed under this section are nonrefundable
12 so that a taxpayer shall not claim under this section a total
13 credit amount that reduces the taxpayer's tax liability to less
14 than zero.

15 (5) As used in this section: ~~,"community~~

16 (A) **"COMMUNITY** foundation" means an organization that applies
17 for certification on or before May 15 of the tax year for which the
18 taxpayer is claiming the credit and that the department certifies
19 for that tax year as meeting all of the following requirements:

20 (i) ~~(a)~~ Qualifies for exemption from federal income taxation
21 under section 501(c)(3) of the internal revenue code.

22 (ii) ~~(b)~~ Supports a broad range of charitable activities within
23 the specific geographic area of this state that it serves, such as
24 a municipality or county.

25 (iii) ~~(c)~~ Maintains an ongoing program to attract new endowment
26 funds by seeking gifts and bequests from a wide range of potential
27 donors in the community or area served.

1 (iv) ~~(d)~~—Is publicly supported as defined by the regulations of
2 the United States department of treasury, 26 CFR 1.170A-9(e)(10).
3 To maintain certification, the community foundation shall submit
4 documentation to the department annually that demonstrates
5 compliance with this subdivision.

6 (v) ~~(e)~~—Is not a supporting organization as an organization is
7 described in section 509(a)(3) of the internal revenue code and the
8 regulations of the United States department of treasury, 26 CFR
9 1.509(a)-4 and 1.509(a)-5.

10 (vi) ~~(f)~~—Meets the requirements for treatment as a single
11 entity contained in the regulations of the United States department
12 of treasury, 26 CFR 1.170A-9(e)(11).

13 (vii) ~~(g)~~—Except as provided in subsection (7), is incorporated
14 or established as a trust at least 6 months before the beginning of
15 the tax year for which the credit under this section is claimed and
16 that has an endowment value of at least \$100,000.00 before the
17 expiration of 18 months after the community foundation is
18 incorporated or established.

19 (viii) ~~(h)~~—Has an independent governing body representing the
20 general public's interest and that is not appointed by a single
21 outside entity.

22 (ix) ~~(i)~~—Provides evidence to the department that the community
23 foundation has, before the expiration of 6 months after the
24 community foundation is incorporated or established, and maintains
25 continually during the tax year for which the credit under this
26 section is claimed, at least 1 part-time or full-time employee.

27 (x) ~~(j)~~—For community foundations that have an endowment value

1 of \$1,000,000.00 or more only, the community foundation is subject
2 to an annual independent financial audit and provides copies of
3 that audit to the department not more than 3 months after the
4 completion of the audit. For community foundations that have an
5 endowment value of less than \$1,000,000.00, the community
6 foundation is subject to an annual review and an audit every third
7 year.

8 **(xi)** ~~(k)~~—In addition to all other criteria listed in this
9 subsection for a community foundation that is incorporated or
10 established after June 22, 2000, operates in a county of this state
11 that was not served by a community foundation when the community
12 foundation was incorporated or established or operates as a
13 geographic component of an existing certified community foundation.

14 **(B) "EDUCATION FOUNDATION" MEANS AN ORGANIZATION THAT APPLIES**
15 **FOR CERTIFICATION ON OR BEFORE APRIL 1 OF THE TAX YEAR FOR WHICH**
16 **THE TAXPAYER IS CLAIMING THE CREDIT, THAT ANNUALLY SUBMITS**
17 **DOCUMENTATION TO THE DEPARTMENT THAT DEMONSTRATES CONTINUED**
18 **COMPLIANCE WITH THIS SUBDIVISION, AND THAT THE DEPARTMENT CERTIFIES**
19 **FOR THAT TAX YEAR AS MEETING ALL OF THE FOLLOWING REQUIREMENTS:**

20 **(i) QUALIFIES FOR EXEMPTION FROM FEDERAL INCOME TAXATION UNDER**
21 **SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.**

22 **(ii) MAINTAINS AN ONGOING PROGRAM TO ATTRACT NEW ENDOWMENT**
23 **FUNDS BY SEEKING GIFTS AND BEQUESTS FROM A WIDE RANGE OF POTENTIAL**
24 **DONORS IN THE COMMUNITY OR AREA SERVED.**

25 **(iii) ALL FUNDS, GIFTS, AND BEQUESTS ARE EXCLUSIVELY DEDICATED**
26 **TO A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY.**

27 **(iv) IS PUBLICLY SUPPORTED AS DEFINED BY THE REGULATIONS OF THE**

1 UNITED STATES DEPARTMENT OF TREASURY, 26 CFR 1.170A-9(E)(10).

2 (v) MEETS THE REQUIREMENTS FOR TREATMENT AS A SINGLE ENTITY
3 CONTAINED IN THE REGULATIONS OF THE UNITED STATES DEPARTMENT OF
4 TREASURY, 26 CFR 1.170A-9(E)(11).

5 (vi) IS INCORPORATED OR ESTABLISHED AS A TRUST AT LEAST 6
6 MONTHS BEFORE THE BEGINNING OF THE TAX YEAR FOR WHICH THE CREDIT IS
7 CLAIMED.

8 (vii) HAS AN INDEPENDENT GOVERNING BODY REPRESENTING THE
9 GENERAL PUBLIC'S INTEREST AND THAT IS NOT APPOINTED BY A SINGLE
10 OUTSIDE ENTITY.

11 (viii) IS SUBJECT TO A PROGRAM REVIEW EACH YEAR AND AN
12 INDEPENDENT FINANCIAL AUDIT EVERY 3 YEARS AND PROVIDES COPIES OF
13 THE REVIEWS AND AUDITS TO THE DEPARTMENT NOT MORE THAN 3 MONTHS
14 AFTER THE REVIEW OR AUDIT IS COMPLETED.

15 (6) An entity other than a community foundation may request
16 that the department determine if a contribution to that entity
17 qualifies for the credit under this section. The department shall
18 make a determination and respond to a request no later than 30 days
19 after the department receives the request.

20 (7) A taxpayer may claim a credit under this section for
21 contributions to a community foundation made before the expiration
22 of the 18-month period after a community foundation was
23 incorporated or established during which the community foundation
24 must build an endowment value of \$100,000.00 as provided in
25 subsection ~~(5)(g)~~ (5) (A) (vii). If the community foundation does not
26 reach the required \$100,000.00 endowment value during that 18-month
27 period, contributions to the community foundation made after the

1 date on which the 18-month period expires shall not be used to
2 calculate a credit under this section. At any time after the
3 expiration of the 18-month period under subsection ~~(5)(g)~~ **(5) (A) (vii)**
4 that the community foundation has an endowment value of
5 \$100,000.00, the community foundation may apply to the department
6 for certification under this section.

7 (8) On or before July 1 of each year, the department shall
8 report to the house committee on tax policy and the senate finance
9 committee the total amount of tax credits claimed under this
10 section and under section 38c of the former single business tax
11 act, 1975 PA 228, or section 425 of the Michigan business tax act,
12 2007 PA 36, MCL 208.1425, for the immediately preceding tax year.