

SENATE BILL No. 655

September 15, 2011, Introduced by Senator BRANDENBURG and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 671 (MCL 206.671), as added by 2011 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 671. (1) The credit provided in this section shall be
2 taken before any other credit under this part and is available to
3 any taxpayer, other than those taxpayers subject to the tax imposed
4 under chapter 12 or 13, with gross receipts that do not exceed
5 \$20,000,000.00 and with adjusted business income minus the loss
6 adjustment that does not exceed \$1,300,000.00 as adjusted annually
7 for inflation using the Detroit consumer price index, and subject
8 to the following:

9 (a) A corporation **OR UNITARY BUSINESS GROUP** is disqualified if
10 either of the following occurs for the respective tax year:

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

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

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

5 (B) The product of the percentage of outstanding ownership or
6 of outstanding stock owned by that shareholder multiplied by the
7 difference between the **FOLLOWING:**

8 (I) **THE** sum of business income and, to the extent deducted in
9 determining federal taxable income, a carryback or a carryover of a
10 net operating loss or capital loss. ~~, minus the~~

11 (II) **THE** loss adjustment.

12 (b) Subject to the reduction percentage determined under
13 subsection (3), the credit determined under this subsection shall
14 be reduced by the following percentages in the following
15 circumstances:

16 (i) If compensation and directors' fees of a shareholder or
17 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
18 and (B) is, more than \$160,000.00 but less than \$165,000.00, the
19 credit is reduced by 20%.

20 (ii) If compensation and directors' fees of a shareholder or
21 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
22 and (B) is, \$165,000.00 or more but less than \$170,000.00, the
23 credit is reduced by 40%.

24 (iii) If compensation and directors' fees of a shareholder or
25 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
26 and (B) is, \$170,000.00 or more but less than \$175,000.00, the
27 credit is reduced by 60%.

1 (iv) If compensation and directors' fees of a shareholder or
2 officer are, or if the sum of the amounts in subdivision (a) (ii) (A)
3 and (B) is, \$175,000.00 or more but not in excess of \$180,000.00,
4 the credit is reduced by 80%.

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

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

9 **(B) IF THE TAXPAYER IS A UNITARY BUSINESS GROUP, THE AMOUNT OF**
10 **ALL ITEMS PAID OR ALLOCABLE BY ALL PERSONS INCLUDED IN THE UNITARY**
11 **BUSINESS GROUP TO ANY 1 INDIVIDUAL WHO IS A SHAREHOLDER OR OFFICER**
12 **OF A SINGLE PERSON INCLUDED IN THE UNITARY BUSINESS GROUP SHALL BE**
13 **COMBINED.**

14 (3) The reduction percentage is the greater of the following:

15 (a) The reduction percentage based on the compensation and
16 directors' fees of the shareholder or officer with the greatest
17 amount of compensation and directors' fees.

18 (b) The reduction percentage based on the sum of the amounts
19 in subsection (1) (a) (ii) (A) and (B) for the shareholder or officer
20 with the greatest sum of the amounts in subsection (1) (a) (ii) (A) and
21 (B).

22 (4) A taxpayer that qualifies under subsection (1) is allowed
23 a credit against the tax imposed under this part. The credit under
24 this subsection is the amount by which the tax imposed under this
25 part exceeds 1.8% of adjusted business income.

26 (5) If gross receipts exceed \$19,000,000.00, the credit shall
27 be reduced by a fraction, the numerator of which is the amount of

1 gross receipts over \$19,000,000.00 and the denominator of which is
2 \$1,000,000.00. The credit shall not exceed 100% of the tax
3 liability imposed under this part.

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

9 (7) The department shall permit a taxpayer that elects to
10 claim the credit allowed under this section based on the amount by
11 which the tax imposed under this part exceeds the percentage of
12 adjusted business income for the tax year as determined under
13 subsection (4), and that is not required to reduce the credit
14 pursuant to subsection (1) or (5), to file and pay the tax imposed
15 by this part without computing the tax imposed under section 623.

16 (8) Compensation paid by a professional employer organization
17 to the officers of the client and to employees of the professional
18 employer organization who are assigned or leased to and perform
19 services for the client shall be included in determining
20 eligibility of the client under this section.

21 (9) A disqualifier or reduction under subsection (1) applies
22 to a taxpayer that is a unitary business group if a disqualifier or
23 reduction applies to any member of a unitary business group.

24 (10) As used in this section:

25 (a) "Active shareholder" means a shareholder who receives at
26 least \$10,000.00 in compensation, directors' fees, or dividends
27 from the business, and who owns at least 5% of the outstanding

1 stock or other ownership interest.

2 (b) "Adjusted business income" means business income as
3 defined in section 603 with all of the following adjustments:

4 (i) Add compensation and directors' fees of active shareholders
5 of a corporation.

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

8 (iii) Add, to the extent deducted in determining federal taxable
9 income, a carryback or carryover capital loss.

10 (iv) Add compensation and directors' fees of officers of a
11 corporation.

12 (c) "Client" means an entity whose employment operations are
13 managed by a professional employer organization.

14 (d) "Compensation" means all wages, salaries, fees, bonuses,
15 commissions, **AND** other payments made in the tax year on behalf of
16 or for the benefit of employees, officers, or directors of the
17 taxpayers. Compensation includes, but is not limited to, payments
18 that are subject to or specifically exempt or excepted from
19 withholding under sections 3401 to 3406 of the internal revenue
20 code. Compensation also includes, on a cash or accrual basis
21 consistent with the taxpayer's method of accounting for federal
22 income tax purposes, payments to a pension, retirement, or profit
23 sharing plan other than those payments attributable to unfunded
24 accrued actuarial liabilities, and payments for insurance for which
25 employees are the beneficiaries, including payments under health
26 and welfare and noninsured benefit plans and payment of fees for
27 the administration of health and welfare and noninsured benefit

1 ~~plans. Compensation for a taxpayer licensed under article 25 or 26~~
2 ~~of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and~~
3 ~~339.2601 to 339.2637, includes payments to an independent~~
4 ~~contractor licensed under article 25 or 26 of the occupational~~
5 ~~code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to~~
6 ~~339.2637.~~ Compensation does not include any of the following:

7 (i) Discounts on the price of the taxpayer's merchandise or
8 services sold to the taxpayer's employees, officers, or directors
9 that are not available to other customers.

10 (ii) Except as otherwise provided in this subdivision, payments
11 to an independent contractor.

12 (iii) Payments to state and federal unemployment compensation
13 funds.

14 (iv) The employer's portion of payments under the federal
15 insurance contributions act, chapter 21 of subtitle C of the
16 internal revenue code, 26 USC 3101 to 3128, the railroad retirement
17 tax act, chapter 22 of subtitle C of the internal revenue code, 26
18 USC 3201 to 3233, and similar social insurance programs.

19 (v) Payments, including self-insurance payments, for worker's
20 compensation insurance or federal employers' liability act
21 insurance pursuant to 45 USC 51 to 60.

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

26 (f) "Loss adjustment" means the amount by which adjusted
27 business income was less than zero in any of the 5 tax years

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

14 (g) "Officer" means an officer of a corporation including all
15 of the following:

16 (i) The chairperson of the board.

17 (ii) The president, vice president, secretary, or treasurer of
18 the corporation or board.

19 (iii) Persons performing similar duties to persons described in
20 subparagraphs (i) and (ii).

21 Enacting section 1. This amendatory act takes effect January
22 1, 2012.