

Act No. 185
Public Acts of 2011
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Senator Brandenburg

ENROLLED SENATE BILL No. 655

AN ACT to amend 1967 PA 281, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts," by amending section 671 (MCL 206.671), as added by 2011 PA 38.

The People of the State of Michigan enact:

Sec. 671. (1) The credit provided in this section shall be taken before any other credit under this part and is available to any taxpayer, other than those taxpayers subject to the tax imposed under chapter 12 or 13, 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) A corporation or unitary business group is disqualified if either of the following occurs 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 following:

(I) 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.

(II) The loss adjustment.

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

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

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

(iv) If compensation and directors' fees of a shareholder or officer are, or if the sum of the amounts in subdivision (a)(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), both of the following apply:

(a) An active shareholder's share of business income shall not be attributed to another active shareholder.

(b) If the taxpayer is a unitary business group, the amount of all items paid or allocable by all persons included in the unitary business group to any 1 individual who is a shareholder or officer of a single person included in the unitary business group shall be combined.

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

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

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

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

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

(6) For a taxpayer that reports for a tax year less than 12 months, the amounts specified in this section for gross receipts, adjusted business income, and share of business income 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.

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

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

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

(10) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) "Loss adjustment" means the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit under this section is being determined. In determining the loss adjustment for a tax year, a corporation is not required to use more of the taxpayer's total negative adjusted business income than the amount needed to qualify the corporation for the credit under this section. A corporation 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 corporation 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 corporation did not receive the credit under this section.

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

(i) The chairperson of the board.

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

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

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

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Governor