

SENATE BILL No. 155

February 6, 2013, Introduced by Senators BRANDENBURG, JANSEN and HILDENBRAND and referred to the Committee on Finance.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending sections 111, 113, 403, and 511 (MCL 208.1111,
208.1113, 208.1403, and 208.1511), section 111 as amended by 2012
PA 605, section 113 as amended by 2011 PA 77, section 403 as
amended by 2008 PA 434, and section 511 as amended by 2011 PA 292.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 111. (1) "Gross receipts" means the entire amount
2 received by the taxpayer as determined by using the taxpayer's
3 method of accounting used for federal income tax purposes, less any
4 amount deducted as bad debt for federal income tax purposes that
5 corresponds to items of gross receipts included in the modified
6 gross receipts tax base for the current tax year or a past tax year
7 phased in over a 5-year period starting with 50% of that amount in
8 the 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax
9 year, 75% in the 2011 tax year, and 100% in the 2012 tax year and

1 each tax year thereafter, from any activity whether in intrastate,
2 interstate, or foreign commerce carried on for direct or indirect
3 gain, benefit, or advantage to the taxpayer or to others except for
4 the following:

5 (a) Proceeds from sales by a principal that the taxpayer
6 collects in an agency capacity solely on behalf of the principal
7 and delivers to the principal.

8 (b) Amounts received by the taxpayer as an agent solely on
9 behalf of the principal that are expended by the taxpayer for any
10 of the following:

11 (i) The performance of a service by a third party for the
12 benefit of the principal that is required by law to be performed by
13 a licensed person.

14 (ii) The performance of a service by a third party for the
15 benefit of the principal that the taxpayer has not undertaken a
16 contractual duty to perform.

17 (iii) Principal and interest under a mortgage loan or land
18 contract, lease or rental payments, or taxes, utilities, or
19 insurance premiums relating to real or personal property owned or
20 leased by the principal.

21 (iv) A capital asset of a type that is, or under the internal
22 revenue code will become, eligible for depreciation, amortization,
23 or accelerated cost recovery by the principal for federal income
24 tax purposes, or for real property owned or leased by the
25 principal.

26 (v) Property not described under subparagraph (iv) that is
27 purchased by the taxpayer on behalf of the principal and that the

1 taxpayer does not take title to or use in the course of performing
2 its contractual business activities.

3 (vi) Fees, taxes, assessments, levies, fines, penalties, or
4 other payments established by law that are paid to a governmental
5 entity and that are the legal obligation of the principal.

6 (c) Amounts that are excluded from gross income of a foreign
7 corporation engaged in the international operation of aircraft
8 under section 883(a) of the internal revenue code.

9 (d) Amounts received by an advertising agency used to acquire
10 advertising media time, space, production, or talent on behalf of
11 another person.

12 (e) Amounts received by a newspaper to acquire advertising
13 space not owned by that newspaper in another newspaper on behalf of
14 another person. This subdivision does not apply to any
15 consideration received by the taxpayer for acquiring that
16 advertising space.

17 (f) Notwithstanding any other provision of this section,
18 amounts received by a taxpayer that manages real property owned by
19 a third party that are deposited into a separate account kept in
20 the name of that third party and that are not reimbursements to the
21 taxpayer and are not indirect payments for management services that
22 the taxpayer provides to that third party.

23 (g) Proceeds from the taxpayer's transfer of an account
24 receivable if the sale that generated the account receivable was
25 included in gross receipts for federal income tax purposes. This
26 subdivision does not apply to a taxpayer that during the tax year
27 both buys and sells any receivables.

1 (h) Proceeds from any of the following:

2 (i) The original issue of stock or equity instruments or equity
3 issued by a regulated investment company as that term is defined
4 under section 851 of the internal revenue code.

5 (ii) The original issue of debt instruments.

6 (i) Refunds from returned merchandise.

7 (j) Cash and in-kind discounts.

8 (k) Trade discounts.

9 (l) Federal, state, or local tax refunds.

10 (m) Security deposits.

11 (n) Payment of the principal portion of loans.

12 (o) Value of property received in a like-kind exchange.

13 (p) Proceeds from a sale, transaction, exchange, involuntary
14 conversion, maturity, redemption, repurchase, recapitalization, or
15 other disposition or reorganization of tangible, intangible, or
16 real property, less any gain from the disposition or reorganization
17 to the extent that the gain is included in the taxpayer's federal
18 taxable income, if the property satisfies 1 or more of the
19 following:

20 (i) The property is a capital asset as defined in section
21 1221(a) of the internal revenue code.

22 (ii) The property is land that qualifies as property used in
23 the trade or business as defined in section 1231(b) of the internal
24 revenue code.

25 (iii) The property is used in a hedging transaction entered into
26 by the taxpayer in the normal course of the taxpayer's trade or
27 business primarily to manage the risk of exposure to foreign

1 currency fluctuations that affect assets, liabilities, profits,
2 losses, equity, or investments in foreign operations; interest rate
3 fluctuations; or commodity price fluctuations. For purposes of this
4 subparagraph, the actual transfer of title of real or tangible
5 personal property to another person is not a hedging transaction.
6 Only the overall net gain from the hedging transactions entered
7 into during the tax year is included in gross receipts. As used in
8 this subparagraph, "hedging transaction" means that term as defined
9 under section 1221 of the internal revenue code regardless of
10 whether the transaction was identified by the taxpayer as a hedge
11 for federal income tax purposes, provided, however, that
12 transactions excluded under this subparagraph and not identified as
13 a hedge for federal income tax purposes shall be identifiable to
14 the department by the taxpayer as a hedge in its books and records.

15 (iv) The property is investment and trading assets managed as
16 part of the person's treasury function. For purposes of this
17 subparagraph, a person principally engaged in the trade or business
18 of purchasing and selling investment and trading assets is not
19 performing a treasury function. Only the overall net gain from the
20 treasury function incurred during the tax year is included in gross
21 receipts. As used in this subparagraph, "treasury function" means
22 the pooling and management of investment and trading assets for the
23 purpose of satisfying the cash flow or liquidity needs of the
24 taxpayer's trade or business.

25 (q) The proceeds from a policy of insurance, a settlement of a
26 claim, or a judgment in a civil action less any proceeds under this
27 subdivision that are included in federal taxable income.

1 (r) For a sales finance company, as defined in section 2 of
2 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
3 492.102, and directly or indirectly owned in whole or in part by a
4 motor vehicle manufacturer as of January 1, 2008, and for a person
5 that is a broker or dealer as defined under section 78c(a)(4) or
6 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
7 included in the unitary business group of that broker or dealer
8 that buys and sells for its own account, contracts that are subject
9 to the commodity exchange act, 7 USC 1 to 27f, amounts realized
10 from the repayment, maturity, sale, or redemption of the principal
11 of a loan, bond, or mutual fund, certificate of deposit, or similar
12 marketable instrument provided such instruments are not held as
13 inventory.

14 (s) For a sales finance company, as defined in section 2 of
15 the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL
16 492.102, and directly or indirectly owned in whole or in part by a
17 motor vehicle manufacturer as of January 1, 2008, and for a person
18 that is a broker or dealer as defined under section 78c(a)(4) or
19 (5) of the securities exchange act of 1934, 15 USC 78c, or a person
20 included in the unitary business group of that broker or dealer
21 that buys and sells for its own account, contracts that are subject
22 to the commodity exchange act, 7 USC 1 to 27f, the principal amount
23 received under a repurchase agreement or other transaction properly
24 characterized as a loan.

25 (t) For a mortgage company, proceeds representing the
26 principal balance of loans transferred or sold in the tax year. For
27 purposes of this subdivision, "mortgage company" means a person

1 that is licensed under the mortgage brokers, lenders, and servicers
2 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the
3 secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and
4 has greater than 90% of its revenues, in the ordinary course of
5 business, from the origination, sale, or servicing of residential
6 mortgage loans.

7 (u) For a professional employer organization, any amount
8 charged by a professional employer organization that represents the
9 actual cost of wages and salaries, benefits, worker's compensation,
10 payroll taxes, withholding, or other assessments paid to or on
11 behalf of a covered employee by the professional employer
12 organization under a professional employer arrangement.

13 (v) Any invoiced items used to provide more favorable floor
14 plan assistance to a person subject to the tax imposed under this
15 act than to a person not subject to this tax and paid by a
16 manufacturer, distributor, or supplier.

17 (w) For an individual, estate, or person organized for estate
18 or gift planning purposes, amounts received other than those from
19 transactions, activities, and sources in the regular course of the
20 person's trade or business. For purposes of this subdivision, all
21 of the following apply:

22 (i) Amounts received from transactions, activities, and sources
23 in the regular course of the person's business include, but are not
24 limited to, the following:

25 (A) Receipts from tangible and intangible property if the
26 acquisition, rental, lease, management, or disposition of the
27 property constitutes integral parts of the person's regular trade

1 or business operations.

2 (B) Receipts received in the course of the person's trade or
3 business from stock and securities of any foreign or domestic
4 corporation and dividend and interest income.

5 (C) Receipts derived from isolated sales, leases, assignments,
6 licenses, divisions, or other infrequently occurring dispositions,
7 transfers, or transactions involving tangible, intangible, or real
8 property if the property is or was used in the person's trade or
9 business operation.

10 (D) Receipts derived from the sale of an interest in a
11 business that constitutes an integral part of the person's regular
12 trade or business.

13 (E) Receipts derived from the lease or rental of real
14 property.

15 (ii) Receipts excluded from gross receipts include, but are not
16 limited to, the following:

17 (A) Receipts derived from investment activity, including
18 interest, dividends, royalties, and gains from an investment
19 portfolio or retirement account, if the investment activity is not
20 part of the person's trade or business.

21 (B) Receipts derived from the disposition of tangible,
22 intangible, or real property held for personal use and enjoyment,
23 such as a personal residence or personal assets.

24 (x) Receipts derived from investment activity other than
25 receipts from transactions, activities, and sources in the regular
26 course of the person's trade or business by a person that is
27 organized exclusively to conduct investment activity and that does

1 not conduct investment activity for any person other than an
2 individual or a person related to that individual or by a common
3 trust fund established under the collective investment funds act,
4 1941 PA 174, MCL 555.101 to 555.113. For purposes of this
5 subdivision, a person is related to an individual if that person is
6 a spouse, brother or sister, whether of the whole or half blood or
7 by adoption, ancestor, lineal descendent of that individual or
8 related person, or a trust benefiting that individual or 1 or more
9 persons related to that individual.

10 (y) Interest income and dividends derived from obligations or
11 securities of the United States government, this state, or any
12 governmental unit of this state. As used in this subdivision,
13 "governmental unit" means that term as defined in section 3 of the
14 shared credit rating act, 1985 PA 227, MCL 141.1053.

15 (z) Dividends and royalties received or deemed received from a
16 foreign operating entity or a person other than a United States
17 person, including, but not limited to, the amounts determined under
18 section 78 of the internal revenue code and sections 951 to 964 of
19 the internal revenue code, phased in over a 5-year period starting
20 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
21 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%
22 in the 2012 tax year and each tax year thereafter.

23 (aa) To the extent not deducted as purchases from other firms
24 under section 203, each of the following:

25 (i) Sales or use taxes collected from or reimbursed by a
26 consumer or other taxes the taxpayer collected directly from or was
27 reimbursed by a purchaser and remitted to a local, state, or

1 federal tax authority, phased in over a 5-year period starting with
2 50% of that amount in the 2008 tax year, 60% in the 2009 tax year,
3 60% in the 2010 tax year, 75% in the 2011 tax year, and 100% in the
4 2012 tax year and each tax year thereafter.

5 (ii) In the case of receipts from the sale of cigarettes or
6 tobacco products by a wholesale dealer, retail dealer, distributor,
7 manufacturer, or seller, an amount equal to the federal and state
8 excise taxes paid by any person on or for such cigarettes or
9 tobacco products under subtitle E of the internal revenue code or
10 other applicable state law, phased in over a 3-year period starting
11 with 60% of that amount in the 2008 tax year, 75% in the 2009 tax
12 year, and 100% in the 2010 tax year and each tax year thereafter.

13 (iii) In the case of receipts from the sale of motor fuel by a
14 person with a motor fuel tax license or a retail dealer, an amount
15 equal to federal and state excise taxes paid by any person on such
16 motor fuel under section 4081 of the internal revenue code or under
17 other applicable state law, phased in over a 5-year period starting
18 with 50% of that amount in the 2008 tax year, 60% in the 2009 tax
19 year, 60% in the 2010 tax year, 75% in the 2011 tax year, and 100%
20 in the 2012 tax year and each tax year thereafter.

21 (iv) In the case of receipts from the sale of beer, wine, or
22 intoxicating liquor by a person holding a license to sell,
23 distribute, or produce those products, an amount equal to federal
24 and state excise taxes paid by any person on or for such beer,
25 wine, or intoxicating liquor under subtitle E of the internal
26 revenue code or other applicable state law, phased in over a 5-year
27 period starting with 50% of that amount in the 2008 tax year, 60%

1 in the 2009 tax year, 60% in the 2010 tax year, 75% in the 2011 tax
2 year, and 100% in the 2012 tax year and each tax year thereafter.

3 (v) In the case of receipts from the sale of communication,
4 video, internet access and related services and equipment, any
5 government imposed tax, fee, or other imposition in the nature of a
6 tax or fee required by law, ordinance, regulation, ruling, or other
7 legal authority and authorized to be charged on a customer's bill
8 or invoice, phased in over a 5-year period starting with 50% of
9 that amount in the 2008 tax year, 60% in the 2009 tax year, 60% in
10 the 2010 tax year, 75% in the 2011 tax year, and 100% in the 2012
11 tax year and each tax year thereafter. This subparagraph does not
12 include the recovery of net income taxes, net worth taxes, property
13 taxes, or the tax imposed under this act.

14 (vi) In the case of receipts from the sale of electricity,
15 natural gas, or other energy source, any government imposed tax,
16 fee, or other imposition in the nature of a tax or fee required by
17 law, ordinance, regulation, ruling, or other legal authority and
18 authorized to be charged on a customer's bill or invoice, phased in
19 over a 5-year period starting with 50% of that amount in the 2008
20 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
21 in the 2011 tax year, and 100% in the 2012 tax year and each tax
22 year thereafter. This subparagraph does not include the recovery of
23 net income taxes, net worth taxes, property taxes, or the tax
24 imposed under this act.

25 (vii) Any deposit required under any of the following, phased
26 in over a 5-year period starting with 50% of that amount in the
27 2008 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year,

1 75% in the 2011 tax year, and 100% in the 2012 tax year and each
2 tax year thereafter:

3 (A) 1976 IL 1, MCL 445.571 to 445.576.

4 (B) R 436.1629 of the Michigan administrative code.

5 (C) R 436.1723a of the Michigan administrative code.

6 (D) Any substantially similar beverage container deposit law
7 of another state.

8 (viii) An excise tax collected pursuant to the airport parking
9 tax act, 1987 PA 248, MCL 207.371 to 207.383, collected from or
10 reimbursed by a consumer and remitted as provided in the airport
11 parking tax act, 1987 PA 248, MCL 207.371 to 207.383, phased in
12 over a 5-year period starting with 50% of that amount in the 2008
13 tax year, 60% in the 2009 tax year, 60% in the 2010 tax year, 75%
14 in the 2011 tax year, and 100% in the 2012 tax year and each tax
15 year thereafter.

16 (bb) Amounts attributable to an ownership interest in a pass-
17 through entity, regulated investment company, real estate
18 investment trust, or cooperative corporation whose business
19 activities are taxable under section 203 or would be subject to the
20 tax under section 203 if the business activities were in this
21 state. For purposes of this subdivision:

22 (i) "Cooperative corporation" means those organizations
23 described under subchapter T of the internal revenue code.

24 (ii) "Pass-through" entity means a partnership, subchapter S
25 corporation, or other person, other than an individual, that is not
26 classified for federal income tax purposes as an association taxed
27 as a corporation.

1 (iii) "Real estate investment trust" means that term as defined
2 under section 856 of the internal revenue code.

3 (iv) "Regulated investment company" means that term as defined
4 under section 851 of the internal revenue code.

5 (cc) For a regulated investment company as that term is
6 defined under section 851 of the internal revenue code, receipts
7 derived from investment activity by that regulated investment
8 company.

9 (dd) For fiscal years that begin after September 30, 2009,
10 unless the state budget director certifies to the state treasurer
11 by January 1 of that fiscal year that the federally certified rates
12 for actuarial soundness required under 42 CFR 438.6 and that are
13 specifically developed for Michigan's health maintenance
14 organizations that hold a contract with this state for medicaid
15 services provide explicit adjustment for their obligations required
16 for payment of the tax under this act, amounts received by the
17 taxpayer during that fiscal year for medicaid premium or
18 reimbursement of costs associated with service provided to a
19 medicaid recipient or beneficiary.

20 (ee) For a taxpayer that provides health care management
21 consulting services, amounts received by the taxpayer as fees from
22 its clients that are expended by the taxpayer to reimburse those
23 clients for labor and nonlabor services that are paid by the client
24 and reimbursed to the client pursuant to a services agreement.

25 **(FF) AMOUNTS ATTRIBUTED TO THE TAXPAYER PURSUANT TO A**
26 **DISCHARGE OF INDEBTEDNESS AS DESCRIBED UNDER SECTION 61(A) (12) OF**
27 **THE INTERNAL REVENUE CODE, INCLUDING FORGIVENESS OF A NONRECOURSE**

1 **DEBT.**

2 (2) "Insurance company" means an authorized insurer as defined
3 in sections 106 and 108 of the insurance code of 1956, 1956 PA 218,
4 MCL 500.106 and 500.108.

5 (3) "Internal revenue code" means the United States internal
6 revenue code of 1986 in effect on January 1, 2008 or, at the option
7 of the taxpayer, in effect for the tax year.

8 (4) "Inventory" means, except as provided in subdivision (e),
9 all of the following:

10 (a) The stock of goods held for resale in the regular course
11 of trade of a retail or wholesale business, including electricity
12 or natural gas purchased for resale.

13 (b) Finished goods, goods in process, and raw materials of a
14 manufacturing business purchased from another person.

15 (c) For a person that is a new motor vehicle dealer licensed
16 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923,
17 floor plan interest expenses for new motor vehicles. For purposes
18 of this subdivision, "floor plan interest" means interest paid that
19 finances any part of the person's purchase of new motor vehicle
20 inventory from a manufacturer, distributor, or supplier. However,
21 amounts attributable to any invoiced items used to provide more
22 favorable floor plan assistance to a person subject to the tax
23 imposed under this act than to a person not subject to this tax is
24 considered interest paid by a manufacturer, distributor, or
25 supplier.

26 (d) For a person that is a securities trader, broker, or
27 dealer or a person included in the unitary business group of that

1 securities trader, broker, or dealer that buys and sells for its
2 own account, contracts that are subject to the commodity exchange
3 act, 7 USC 1 to 27f, the cost of securities as defined under
4 section 475(c)(2) of the internal revenue code and for a securities
5 trader the cost of commodities as defined under section 475(e)(2)
6 and for a broker or dealer the cost of commodities as defined under
7 section 475(e)(2)(b), (c), and (d) of the internal revenue code,
8 excluding interest expense other than interest expense related to
9 repurchase agreements. As used in this subdivision:

10 (i) "Broker" means that term as defined under section 78c(a)(4)
11 of the securities exchange act of 1934, 15 USC 78c.

12 (ii) "Dealer" means that term as defined under section
13 78c(a)(5) of the securities exchange act of 1934, 15 USC 78c.

14 (iii) "Securities trader" means a person that engages in the
15 trade or business of purchasing and selling investments and trading
16 assets.

17 (e) Inventory does not include either of the following:

18 (i) Personal property under lease or principally intended for
19 lease rather than sale.

20 (ii) Property allowed a deduction or allowance for depreciation
21 or depletion under the internal revenue code.

22 (5) "Officer" means an officer of a corporation other than a
23 subchapter S corporation, including all of the following:

24 (a) The chairperson of the board.

25 (b) The president, vice president, secretary, or treasurer of
26 the corporation or board.

27 (c) Persons performing similar duties and responsibilities to

1 persons described in subdivisions (a) and (b) that include, at a
2 minimum, major decision making.

3 Sec. 113. (1) "Partner" means a partner or member of a
4 partnership.

5 (2) "Partnership" means a taxpayer that is required to or has
6 elected to file as a partnership for federal income tax purposes.

7 (3) "Person" means an individual, firm, bank, financial
8 institution, insurance company, limited partnership, limited
9 liability partnership, copartnership, partnership, joint venture,
10 association, corporation, subchapter S corporation, limited
11 liability company, receiver, estate, trust, or any other group or
12 combination of groups acting as a unit.

13 (4) "Professional employer organization" means an organization
14 that provides the management and administration of the human
15 resources of another entity by contractually assuming substantial
16 employer rights and responsibilities through a professional
17 employer agreement that establishes an employer relationship with
18 the leased officers or employees assigned to the other entity by
19 doing all of the following:

20 (a) Maintaining a right of direction and control of employees'
21 work, although this responsibility may be shared with the other
22 entity.

23 (b) Paying wages and employment taxes of the employees out of
24 its own accounts.

25 (c) Reporting, collecting, and depositing state and federal
26 employment taxes for the employees.

27 (d) Retaining a right to hire and fire employees.

1 (5) Professional employer organization is not a staffing
2 company as that term is defined in subsection (6).

3 (6) "Purchases from other firms" means all of the following:

4 (a) Inventory acquired during the tax year, including freight,
5 shipping, delivery, or engineering charges included in the original
6 contract price for that inventory.

7 (b) Assets, including the costs of fabrication and
8 installation, acquired **OR SELF-CONSTRUCTED** during the tax year of a
9 type that are, or under the internal revenue code will become,
10 eligible for depreciation, amortization, or accelerated capital
11 cost recovery for federal income tax purposes.

12 (c) To the extent not included in inventory or depreciable
13 property, materials and supplies, including repair parts and fuel.

14 **FOR PURPOSES OF THIS SUBDIVISION, MATERIALS AND SUPPLIES MEAN**
15 **TANGIBLE PERSONAL PROPERTY EXPENSED BY THE TAXPAYER AND NOT**
16 **CAPITALIZED FOR FEDERAL INCOME TAX PURPOSES.**

17 (d) For a staffing company, compensation of personnel supplied
18 to customers of staffing companies. As used in this subdivision:

19 (i) "Compensation" means that term as defined under section 107
20 plus all payroll tax and worker's compensation costs.

21 (ii) "Staffing company" means a taxpayer whose business
22 activities are included in industry group 736 under the standard
23 industrial classification code as compiled by the United States
24 department of labor.

25 (e) For a person included in major group 15, 16, or 17 under
26 the standard industrial classification code as compiled by the
27 United States department of labor that does not qualify for a

1 credit under section 417, both of the following:

2 (i) Payments to subcontractors for a construction project under
3 a contract specific to that project.

4 (ii) To the extent not deducted under subdivisions (a) and (c),
5 payments for materials deducted as purchases in determining the
6 cost of goods sold for the purpose of calculating total income on
7 the taxpayer's federal income tax return.

8 (f) For the 2008 tax year and each tax year after 2008, all
9 film rental or royalty payments paid by a theater owner to a film
10 distributor, a film producer, or a film distributor and producer.

11 (g) For a taxpayer licensed under article 25 or 26 of the
12 occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and
13 339.2601 to 339.2637, payments to an independent contractor
14 licensed under article 25 or 26 of the occupational code, 1980 PA
15 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637.

16 (h) For a person classified under the 2002 North American
17 industrial classification system number 484 as compiled by the
18 United States office of management and budget that does not qualify
19 for a credit under section 417, payments to subcontractors to
20 transport freight by motor vehicle under a contract specific to
21 that freight to be transported by motor vehicle.

22 (7) "Revenue mile" means the transportation for a
23 consideration of 1 net ton in weight or 1 passenger the distance of
24 1 mile.

25 Sec. 403. (1) Notwithstanding any other provision in this act,
26 the credits provided in this section **AND SECTION 405** shall be taken
27 before any **UNUSED CARRYFORWARD ALLOWED UNDER SECTION 401 AND BEFORE**

1 **ANY** other credit under this act. Except as otherwise provided in
2 subsection (6), for the 2008 tax year, the total combined credit
3 allowed under this section shall not exceed 50% of the tax
4 liability imposed under this act before the imposition and levy of
5 the surcharge under section 281. For the 2009 tax year and each tax
6 year after 2009, the total combined credit allowed under this
7 section shall not exceed 52% of the tax liability imposed under
8 this act before the imposition and levy of the surcharge under
9 section 281.

10 (2) Subject to the limitation in subsection (1), for the 2008
11 tax year a taxpayer may claim a credit against the tax imposed by
12 this act equal to 0.296% of the taxpayer's compensation in this
13 state. For the 2009 tax year and each tax year after 2009, subject
14 to the limitation in subsection (1), a taxpayer may claim a credit
15 against the tax imposed by this act equal to 0.370% of the
16 taxpayer's compensation in this state. For purposes of this
17 subsection, a taxpayer includes a person subject to the tax imposed
18 under chapter 2A and a person subject to the tax imposed under
19 chapter 2B. A professional employer organization shall not include
20 payments by the professional employer organization to the officers
21 and employees of a client of the professional employer organization
22 whose employment operations are managed by the professional
23 employer organization. A client may include payments by the
24 professional employer organization to the officers and employees of
25 the client whose employment operations are managed by the
26 professional employer organization.

27 (3) Subject to the limitation in subsection (1), for the 2008

1 tax year a taxpayer may claim a credit against the tax imposed by
2 this act equal to 2.32% multiplied by the result of subtracting the
3 sum of the amounts calculated under subdivisions (d), (e), and (f)
4 from the sum of the amounts calculated under subdivisions (a), (b),
5 and (c). Subject to the limitation in subsection (1), for the 2009
6 tax year and each tax year after 2009, a taxpayer may claim a
7 credit against the tax imposed by this act equal to 2.9% multiplied
8 by the result of subtracting the sum of the amounts calculated
9 under subdivisions (d), (e), and (f) from the sum of the amounts
10 calculated under subdivisions (a), (b), and (c):

11 (a) Calculate the cost, including fabrication and
12 installation, paid or accrued in the taxable year of tangible
13 assets of a type that are, or under the internal revenue code will
14 become, eligible for depreciation, amortization, or accelerated
15 capital cost recovery for federal income tax purposes, provided
16 that the assets are physically located in this state for use in a
17 business activity in this state and are not mobile tangible assets.

18 (b) Calculate the cost, including fabrication and
19 installation, paid or accrued in the taxable year of mobile
20 tangible assets of a type that are, or under the internal revenue
21 code will become, eligible for depreciation, amortization, or
22 accelerated capital cost recovery for federal income tax purposes.
23 This amount shall be multiplied by the apportionment factor for the
24 tax year as prescribed in chapter 3.

25 (c) For tangible assets, other than mobile tangible assets,
26 purchased or acquired for use outside of this state in a tax year
27 beginning after December 31, 2007 and subsequently transferred into

1 this state and purchased or acquired for use in a business
2 activity, calculate the federal basis used for determining gain or
3 loss as of the date the tangible assets were physically located in
4 this state for use in a business activity plus the cost of
5 fabrication and installation of the tangible assets in this state.

6 (d) If the cost of tangible assets described in subdivision
7 (a) was paid or accrued in a tax year beginning after December 31,
8 2007, or before December 31, 2007 to the extent the credit is used
9 and at the rate at which the credit was used under former 1975 PA
10 228 or this act, calculate the gross proceeds or benefit derived
11 from the sale or other disposition of the tangible assets minus the
12 gain, multiplied by the apportionment factor for the taxable year
13 as prescribed in chapter 3, and plus the loss, multiplied by the
14 apportionment factor for the taxable year as prescribed in chapter
15 3 from the sale or other disposition reflected in federal taxable
16 income and minus the gain from the sale or other disposition added
17 to the business income tax base in section 201.

18 (e) If the cost of tangible assets described in subdivision
19 (b) was paid or accrued in a tax year beginning after December 31,
20 2007, or before December 31, 2007 to the extent the credit is used
21 and at the rate at which the credit was used under former 1975 PA
22 228 or this act, calculate the gross proceeds or benefit derived
23 from the sale or other disposition of the tangible assets minus the
24 gain and plus the loss from the sale or other disposition reflected
25 in federal taxable income and minus the gain from the sale or other
26 disposition added to the business income tax base in section 201.
27 This amount shall be multiplied by the apportionment factor for the

1 tax year as prescribed in chapter 3.

2 (f) For assets purchased or acquired in a tax year beginning
3 after December 31, 2007, or before December 31, 2007 to the extent
4 the credit is used and at the rate at which the credit was used
5 under former 1975 PA 228 or this act, that were eligible for a
6 credit under subdivision (a) or (c) and that were transferred out
7 of this state, calculate the federal basis used for determining
8 gain or loss as of the date of the transfer.

9 (4) For a tax year in which the amount of the credit
10 calculated under subsection (3) is negative, the absolute value of
11 that amount is added to the taxpayer's tax liability for the tax
12 year.

13 (5) A taxpayer that claims a credit under this section is not
14 prohibited from claiming a credit under section 405. However, the
15 taxpayer shall not claim a credit under this section and section
16 405 based on the same costs and expenses.

17 (6) For a taxpayer primarily engaged in furnishing electric
18 and gas utility service that makes capital investments in electric
19 and gas distribution assets for which a portion of the credit
20 provided under subsection (3) would be denied for the 2008 tax year
21 by reason of the 50% limitation of subsection (1), the 50%
22 limitation on the total combined credit for the 2008 tax year
23 provided in subsection (1) shall be increased by an amount not to
24 exceed the lesser of the amount of the denied credit or 50% of the
25 tax increase under this act accrued for financial reporting
26 purposes due to the elimination of the deduction under section
27 168(k) of the internal revenue code by the amendatory act that

1 added this subsection. Provided, however, that the total combined
2 credit allowed under this section for the 2008 tax year shall not
3 exceed 80% of the tax liability imposed under this act after the
4 imposition and levy of the surcharge under section 281.

5 Sec. 511. A unitary business group shall file a combined
6 return that includes each United States person, other than a
7 foreign operating entity, that is included in the unitary business
8 group. Each United States person included in a unitary business
9 group or included in a combined return shall be treated as a single
10 person and all transactions between those persons included in the
11 unitary business group shall be eliminated from the business income
12 tax base, modified gross receipts tax base, and ~~the~~**FOR PURPOSES OF**
13 **DETERMINING THE EXEMPTIONS, DEDUCTIONS, SUBTRACTIONS, CREDITS,**
14 **apportionment formula, AND FILING THRESHOLD** under this act. If a
15 United States person included in a unitary business group or
16 included in a combined return is subject to the tax under chapter
17 2A or 2B, any business income attributable to that person shall be
18 eliminated from the business income tax base, any modified gross
19 receipts attributable to that person shall be eliminated from the
20 modified gross receipts tax base, and any sales attributable to
21 that person shall be eliminated from the apportionment formula
22 under this act.

23 Enacting section 1. This amendatory act is curative and
24 intended to clarify the original intent of 2007 PA 36.