

MICHIGAN BUSINESS TAX ACT (EXCERPT)
Act 36 of 2007

***** 208.1403 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT
BEGIN AFTER DECEMBER 31, 2031 *****

208.1403 Allowable total combined credit; limitation; tax credit; payments by professional employer organization; calculation; tax year in which negative credit is calculated; credit claimed under MCL 208.1405; taxpayer engaged in furnishing electric and gas utility service.

Sec. 403. (1) Notwithstanding any other provision in this act, the credits provided in this section shall be taken before any other credit under this act. Except as otherwise provided in subsection (6), for the 2008 tax year, the total combined credit allowed under this section shall not exceed 50% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281. For the 2009 tax year and each tax year after 2009, the total combined credit allowed under this section shall not exceed 52% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281.

(2) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 0.296% of the taxpayer's compensation in this state. For the 2009 tax year and each tax year after 2009, subject to the limitation in subsection (1), a taxpayer may claim a credit against the tax imposed by this act equal to 0.370% of the taxpayer's compensation in this state. For purposes of this subsection, a taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B. A professional employer organization shall not include payments by the professional employer organization to the officers and employees of a client of the professional employer organization whose employment operations are managed by the professional employer organization. A client may include payments by the professional employer organization to the officers and employees of the client whose employment operations are managed by the professional employer organization.

(3) Subject to the limitation in subsection (1), for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 2.32% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c). Subject to the limitation in subsection (1), for the 2009 tax year and each tax year after 2009, a taxpayer may claim a credit against the tax imposed by this act equal to 2.9% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

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

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

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 2007 and subsequently transferred into this state and purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

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

(e) If the cost of mobile tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or to the extent the credit was used, and at the rate at which the credit was used under this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the mobile tangible assets minus the gain and plus the loss from the sale or other

disposition reflected in federal taxable income. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 2007, or before December 31, 2007 to the extent the credit is used and at the rate at which the credit was used under former 1975 PA 228 or to the extent the credit was used, and at the rate at which the credit was used under this act, that were eligible for a credit under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer. For purposes of this subdivision, "transferred out of this state" means removal from this state of tangible assets, other than mobile tangible assets, by means other than sale or other disposition.

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

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

(6) For a taxpayer primarily engaged in furnishing electric and gas utility service that makes capital investments in electric and gas distribution assets for which a portion of the credit provided under subsection (3) would be denied for the 2008 tax year by reason of the 50% limitation of subsection (1), the 50% limitation on the total combined credit for the 2008 tax year provided in subsection (1) shall be increased by an amount not to exceed the lesser of the amount of the denied credit or 50% of the tax increase under this act accrued for financial reporting purposes due to the elimination of the deduction under section 168(k) of the internal revenue code by 2008 PA 434. Provided, however, that the total combined credit allowed under this section for the 2008 tax year shall not exceed 80% of the tax liability imposed under this act after the imposition and levy of the surcharge under section 281.

History: 2007, Act 36, Eff. Jan. 1, 2008;—Am. 2007, Act 145, Eff. Jan. 1, 2008;—Am. 2008, Act 434, Eff. Jan. 1, 2008;—Am. 2014, Act 282, Imd. Eff. Sept. 12, 2014.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

Enacting section 3 of Act 145 of 2007 provides:

"Enacting section 3. Sections 281 and 451 of the Michigan business tax act, 2007 PA 36, MCL 208.1281 and 208.1451, as added by this amendatory act, and sections 105, 111, 113, 201, 239, 265, 403, 405, 409, 413, 445, 447, 515, and 601 of the Michigan business tax act, 2007 PA 36, MCL 208.1105, 208.1111, 208.1113, 208.1201, 208.1239, 208.1265, 208.1403, 208.1405, 208.1409, 208.1413, 208.1445, 208.1447, 208.1515, and 208.1601, as amended by this amendatory act, take effect January 1, 2008 and apply to all business activity occurring after December 31, 2007."

Enacting section 1 of Act 434 of 2008 provides:

"Enacting section 1. This amendatory act is retroactive and is effective January 1, 2008."

Enacting section 1 of Act 282 of 2014 provides:

"Enacting section 1. 1969 PA 343, MCL 205.581 to 205.589, is repealed retroactively and effective beginning January 1, 2008. It is the intent of the legislature that the repeal of 1969 PA 343, MCL 205.581 to 205.589, is to express the original intent of the legislature regarding the application of section 301 of the Michigan business tax act, 2007 PA 36, MCL 208.1301, and the intended effect of that section to eliminate the election provision included within section 1 of 1969 PA 343, MCL 205.581, and that the 2011 amendatory act that amended section 1 of 1969 PA 343, MCL 205.581, was to further express the original intent of the legislature regarding the application of section 301 of the Michigan business tax act, 2007 PA 36, MCL 208.1301, and to clarify that the election provision included within section 1 of 1969 PA 343, MCL 205.581, is not available under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713."

Enacting section 2 of Act 282 of 2014 provides:

"Enacting section 2. This amendatory act is retroactive and is effective for tax years beginning on and after January 1, 2010."

Popular name: MBT