

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2007**

Introduced by Rep. Coulouris

ENROLLED HOUSE BILL No. 5408

AN ACT to amend 2007 PA 36, entitled "An act to provide for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," by amending the title and sections 105, 111, 113, 201, 239, 265, 403, 405, 409, 413, 445, 447, 515, and 601 (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), section 201 as amended by 2007 PA 90, and by adding chapter 2C and section 451; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations.

Sec. 105. (1) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act.

(2) "Business income" means that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders. For an organization that is a mutual or cooperative electric company exempt under section 501(c)(12) of the internal revenue code, business income equals the organization's excess or deficiency of revenues over expenses as reported to the federal government by those organizations exempt from the federal income tax under the internal revenue code, less capital credits paid to members of that organization, less income attributed to equity in another organization's net

income, and less income resulting from a charge approved by a state or federal regulatory agency that is restricted for a specified purpose and refundable if it is not used for the specified purpose. For a tax-exempt person, business income means only that part of federal taxable income derived from unrelated business activity. For an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes, business income is that part of federal taxable income derived from transactions, activities, and sources in the regular course of the taxpayer's trade or business, including the following:

(a) All income from tangible and intangible property if the acquisition, rental, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(b) Gains or losses incurred in the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(c) Income derived from isolated sales, leases, assignment, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving property if the property is or was used in the taxpayer's trade or business operation.

(d) Income derived from the sale of a business.

(e) Income not included in business income for an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes includes, but is not limited to, the following:

(i) Personal investment activity, including interest, dividends, and gains from a personal investment portfolio or retirement account.

(ii) Disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

Sec. 111. (1) "Gross receipts" means the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except for the following:

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

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

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

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

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

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

(v) Property not described under subparagraph (iv) that is purchased by the taxpayer on behalf of the principal and that the taxpayer does not take title to or use in the course of performing its contractual business activities.

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

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

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

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

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

(g) Proceeds from any of the following:

(i) The original issue of stock or equity instruments.

(ii) The original issue of debt instruments.

(h) Refunds from returned merchandise.

(i) Cash and in-kind discounts.

(j) Trade discounts.

(k) Federal, state, or local tax refunds.

(l) Security deposits.

(m) Payment of the principal portion of loans.

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

(o) Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income.

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

(q) For a sales finance company, as defined in section 2 of the motor vehicles sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, amounts realized from the repayment, maturity, sale, or redemption of the principal of a loan, bond, or mutual fund, certificate of deposit, or similar marketable instrument.

(r) For a sales finance company, as defined in section 2 of the motor vehicles sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102, and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, the principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(s) For a mortgage company, proceeds representing the principal balance of loans transferred or sold in the tax year. For purposes of this subdivision, "mortgage company" means a person that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and has greater than 90% of its revenues, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.

(t) For a professional employer organization, any amount charged by a professional employer organization that represents the actual cost of wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer arrangement.

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

(v) For an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes, amounts received other than those from transactions, activities, and sources in the regular course of the taxpayer's trade or business, including the following:

(i) Receipts from tangible and intangible property if the acquisition, rental, management, or disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(ii) Receipts received in the course of the taxpayer's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.

(iii) Receipts derived from isolated sales, leases, assignment, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving property if the property is or was used in the taxpayer's trade or business operation.

(iv) Receipts derived from the sale of a business.

(v) Receipts excluded from gross receipts under this subsection for an individual, estate, partnership organized exclusively for estate or gift planning purposes, or trust organized exclusively for estate or gift planning purposes include, but are not limited to, the following:

(A) Personal investment activity, including interest, dividends, and gains from a personal investment portfolio or retirement account.

(B) Disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

(2) "Insurance company" means an authorized insurer as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106.

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

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

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

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

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

(d) Inventory does not include either of the following:

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

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

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

(a) The chairperson of the board.

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

(c) Persons performing similar duties to persons described in subdivisions (a) and (b).

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

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

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

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

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

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

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

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

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

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

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

(b) Assets, including the costs of fabrication and installation, acquired during the tax year 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.

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

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

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

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

(e) For a person included in major groups 15, 16, and 17 under the standard industrial classification code as compiled by the United States department of labor that does not qualify for a credit under section 417, payments to subcontractors for a construction project under a contract specific to that project.

(f) For the 2009 tax year, 50% of film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer. For the 2010 tax year and each tax year after 2010, all film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

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

Sec. 201. (1) Except as otherwise provided in this act, there is levied and imposed a business income tax on every taxpayer with business activity within this state unless prohibited by 15 USC 381 to 384. The business income tax is imposed on the business income tax base, after allocation or apportionment to this state, at the rate of 4.95%.

(2) The business income tax base means a taxpayer's business income subject to the following adjustments, before allocation or apportionment, and the adjustment in subsection (5) after allocation or apportionment:

(a) Add interest income and dividends derived from obligations or securities of states other than this state, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(b) Add all taxes on or measured by net income and the tax imposed under this act to the extent the taxes were deducted in arriving at federal taxable income.

(c) Add any carryback or carryover of a net operating loss to the extent deducted in arriving at federal taxable income.

(d) To the extent included in federal taxable income, deduct dividends and royalties received from persons other than United States persons and foreign operating entities, including, but not limited to, amounts determined under section 78 of the internal revenue code or sections 951 to 964 of the internal revenue code.

(e) To the extent included in federal taxable income, add the loss or subtract the income from the business income tax base that is attributable to another entity whose business activities are taxable under this section or would be subject to the tax under this section if the business activities were in this state.

(f) Except as otherwise provided under this subdivision, to the extent deducted in arriving at federal taxable income, add any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group. The addition of any royalty, interest, or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business purpose other than avoidance of this tax, is conducted with arm's-length pricing and rates and terms as applied in accordance with sections 482 and 1274(d) of the internal revenue code, and satisfies 1 of the following:

(i) Is a pass through of another transaction between a third party and the related person with comparable rates and terms.

(ii) Results in double taxation. For purposes of this subparagraph, double taxation exists if the transaction is subject to tax in another jurisdiction.

(iii) Is unreasonable as determined by the treasurer, and the taxpayer agrees that the addition would be unreasonable based on the taxpayer's facts and circumstances.

(g) To the extent included in federal taxable income, deduct interest income derived from United States obligations.

(h) To the extent included in federal taxable income, deduct any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital.

(i) Subject to the limitation provided under this subdivision, if the book-tax differences for the first fiscal period ending after July 12, 2007 result in a deferred liability for a person subject to tax under this act, deduct the following percentages of the total book-tax difference for each qualifying asset, for each of the successive 15 tax years beginning with the 2015 tax year:

(i) For the 2015 through 2019 tax years, 4%.

(ii) For the 2020 through 2024 tax years, 6%.

(iii) For the 2025 through 2029 tax years, 10%.

(3) The deduction under subsection (2)(i) shall not exceed the amount necessary to offset the net deferred tax liability of the taxpayer as computed in accordance with generally accepted accounting principles which would otherwise result from the imposition of the business income tax under this section and the modified gross receipts tax under section 203 if the deduction provided under this subdivision were not allowed. The deduction under subsection (2)(i) is intended to flow through and reduce the surcharge imposed and levied under section 281. For purposes of the calculation of the deduction under subsection (2)(i), a book-tax difference shall only be used once in the calculation of the deduction arising from the taxpayer's business income tax base under this section and once in the calculation of the deduction arising from the taxpayer's modified gross receipts tax base under section 203. The adjustment under subsection (2)(i) shall be calculated without regard to the federal effect of the deduction. If the adjustment under subsection (2)(i) is greater than the taxpayer's business income tax base, any adjustment that is unused may be carried forward and applied as an adjustment to the taxpayer's business income tax base before apportionment in future years. In order to claim this deduction, the department may require the taxpayer to report the amount of this deduction on a form as prescribed by

the department that is to be filed on or after the date that the first quarterly return and estimated payment are due under this act. As used in subsection (2)(i) and this subsection:

(a) "Book-tax difference" means the difference, if any, between the person's qualifying asset's net book value shown on the person's books and records for the first fiscal period ending after July 12, 2007 and the qualifying asset's tax basis on that same date.

(b) "Qualifying asset" means any asset shown on the person's books and records for the first fiscal period ending after July 12, 2007, in accordance with generally accepted accounting principles.

(4) For purposes of subsections (2) and (3), the business income of a unitary business group is the sum of the business income of each person, other than a foreign operating entity or a person subject to the tax imposed under chapter 2A or 2B, included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.

(5) Deduct any available business loss incurred after December 31, 2007. As used in this subsection, "business loss" means a negative business income taxable amount after allocation or apportionment. The business loss shall be carried forward to the year immediately succeeding the loss year as an offset to the allocated or apportioned business income tax base, then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year.

Sec. 239. (1) An insurance company shall be allowed a credit against the tax imposed under this chapter in an amount equal to 50% of the examination fees paid by the insurance company during the tax year pursuant to section 224 of the insurance code of 1956, 1956 PA 218, MCL 500.224.

(2) An insurance company may claim a credit against the tax imposed under this act as provided under section 403(2), not to exceed 65% of the insurance company's tax liability for the tax year after claiming the other credits allowed by this chapter.

Sec. 265. (1) For a financial institution, tax base means the financial institution's net capital. Net capital means equity capital as computed in accordance with generally accepted accounting principles less goodwill and the average daily book value of United States obligations and Michigan obligations. If the financial institution does not maintain its books and records in accordance with generally accepted accounting principles, net capital shall be computed in accordance with the books and records used by the financial institution, so long as the method fairly reflects the financial institution's net capital for purposes of the tax levied by this chapter. Net capital does not include up to 125% of the minimum regulatory capitalization requirements of a person subject to the tax imposed under chapter 2A.

(2) Net capital shall be determined by adding the financial institution's net capital as of the close of the current tax year and preceding 4 tax years and dividing the resulting sum by 5. If a financial institution has not been in existence for a period of 5 tax years, net capital shall be determined by adding together the financial institution's net capital for the number of tax years the financial institution has been in existence and dividing the resulting sum by the number of years the financial institution has been in existence. For purposes of this section, a partial year shall be treated as a full year.

(3) For purposes of this section, each of the following applies:

(a) A change in identity, form, or place of organization of 1 financial institution shall be treated as if a single financial institution had been in existence for the entire tax year in which the change occurred and each tax year after the change.

(b) The combination of 2 or more financial institutions into 1 shall be treated as if the constituent financial institutions had been a single financial institution in existence for the entire tax year in which the combination occurred and each tax year after the combination, and the book values and deductions for United States obligations and Michigan obligations of the constituent institutions shall be combined. A combination shall include any acquisition required to be accounted for by the surviving financial institution in accordance with generally accepted accounting principles or a statutory merger or consolidation.

CHAPTER 2C

Sec. 281. (1) In addition to the taxes imposed and levied under this act and subject to subsections (2), (3), and (4), to meet deficiencies in state funds an annual surcharge is imposed and levied on each taxpayer equal to the following percentage of the taxpayer's tax liability under this act after allocation or apportionment to this state under this act but before calculation of the various credits available under this act:

(a) For each taxpayer other than a person subject to the tax imposed and levied under chapter 2B, 21.99%.

(b) For a person subject to the tax imposed and levied under chapter 2B:

(i) For tax years ending after December 31, 2007 and before January 1, 2009, 27.7%.

(ii) For tax years ending after December 31, 2008, 23.4%.

(2) If the Michigan personal income growth exceeds 0% in any 1 of the 3 calendar years immediately preceding the 2017 calendar year, then the surcharge under subsection (1) shall not be levied and imposed on or after January 1, 2017. For purposes of this subsection, "Michigan personal income" means personal income for this state as defined by the bureau of economic analysis of the United States department of commerce or its successor.

(3) The amount of the surcharge imposed and levied on any taxpayer under subsection (1)(a) shall not exceed \$6,000,000.00 for any single tax year.

(4) The surcharge imposed and levied under this section does not apply to either of the following:

(a) A person subject to the tax imposed and levied under chapter 2A.

(b) A person subject to the tax imposed and levied under chapter 2B that is authorized to exercise only trust powers.

(5) The surcharge imposed and levied under this section shall constitute a part of the tax imposed under this act and shall be administered, collected, and enforced as provided under this act.

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. 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 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 and minus the gain from the sale or other disposition added to the business income tax base in section 201.

(e) If the cost of 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 this act, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201. 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 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.

(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.

Sec. 405. For the 2008 tax year, a taxpayer may claim a credit against the tax imposed by this act equal to 1.52% of the taxpayer's research and development expenses in this state in the tax year. 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 1.90% of the taxpayer's research and development expenses in this state in the tax year. The credit under this section combined with the total combined credit allowed under section 403 shall not exceed 65% of the tax liability imposed under this act before the imposition and levy of the surcharge under section 281. As used in this section, "research and development expenses" means that term as defined in section 41(b) of the internal revenue code.

Sec. 409. (1) For tax years that begin on or after January 1, 2008 and end before January 1, 2013, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the amount of capital expenditures on infield renovation, grandstand and infrastructure upgrades, and any other construction and upgrades, subject to the following:

(a) For the 2008 through 2010 tax years, the credit shall not exceed \$1,700,000.00 or the taxpayer's tax liability under this act, whichever is less.

(b) For the 2011 tax year, the credit shall not exceed \$1,180,000.00 or the taxpayer's tax liability under this act, whichever is less.

(c) For the 2012 tax year, the credit shall not exceed \$650,000.00 or the taxpayer's tax liability under this act, whichever is less.

(2) In addition to the credit allowed under subsection (1), for the 2009 tax year an eligible taxpayer may claim a credit against the tax imposed by this act equal to 50% of the amount of necessary expenditures incurred including any professional fees, additional police officers, and any traffic management devices, to ensure traffic and pedestrian safety while hosting the requisite motorsports events each calendar year. For the 2010 tax year and each tax year after 2010, an eligible taxpayer may claim a credit against the tax imposed by this act equal to all of the necessary expenditures incurred including any professional fees, additional police officers, and any traffic management devices, to ensure traffic and pedestrian safety while hosting the requisite motorsports events each calendar year. If the amount of the credit allowed under this subsection exceeds the tax liability of the taxpayer for the tax year that excess shall be refunded.

(3) An eligible taxpayer shall expend at least \$25,000,000.00 on capital expenditures before January 1, 2011.

(4) As used in this section:

(a) "Eligible taxpayer" means any of the following:

(i) A person who owns and operates a motorsports entertainment complex and has at least 2 days of motorsports events each calendar year which shall be comparable to NASCAR Nextel cup events held in 2007 or their successor events.

(ii) A person who is the lessee and operator of a motorsports entertainment complex or the lessee of the land on which a motorsports entertainment complex is located and operates that motorsports entertainment complex.

(iii) A person who operates and maintains a motorsports entertainment complex under an operation and management agreement.

(b) "Motorsports entertainment complex" means a closed-course motorsports facility, and its ancillary grounds and facilities, that satisfies all of the following:

(i) Has at least 70,000 fixed seats for race patrons.

(ii) Has at least 6 scheduled days of motorsports events each calendar year.

(iii) Serves food and beverages at the motorsports entertainment complex during motorsports events each calendar year through concession outlets, which are staffed by individuals who represent or are members of 1 or more nonprofit civic or charitable organizations that directly benefit from the concession outlets' sales.

(iv) Engages in tourism promotion.

(v) Has permanent exhibitions of motorsports history, events, or vehicles within the motorsports entertainment complex.

(c) "Motorsports event" means a motorsports race and its ancillary activities that have been sanctioned by a sanctioning body.

(d) "Sanctioning body" means the American motorcycle association (AMA); auto racing club of America (ARCA); championship auto racing teams (CART); grand American road racing association (GRAND AM); Indy racing league (IRL); national association for stock car auto racing (NASCAR); national hot rod association (NHRA); professional sports car racing (PSR); sports car club of America (SCCA); United States auto club (USAC); Michigan state promoters association; or any successor organization or any other nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events and grants rights to conduct the events, that has established and administers rules and regulations governing all participants involved in the events and all persons conducting the events, and that requires certain liability assurances, including insurance.

Sec. 413. (1) Subject to subsection (2), a taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) For property taxes levied after December 31, 2007, 35% of the amount paid for property taxes on eligible personal property in the tax year.

(b) Twenty-three percent of the amount paid for property taxes levied on eligible telephone personal property in the 2008 tax year and 13.5% of the amount paid for property taxes levied on eligible telephone personal property in subsequent tax years.

(c) For property taxes levied after December 31, 2007, 10% of the amount paid for property taxes on eligible natural gas pipeline property in the tax year.

(2) To qualify for the credit under subsection (1), the taxpayer shall file, if applicable, within the time prescribed each of the following:

(a) The statement of assessable personal property prepared pursuant to section 19 of the general property tax act, 1893 PA 206, MCL 211.19, identifying the eligible personal property or eligible natural gas pipeline property, or both, for which the credit under subsection (1) is claimed.

(b) The annual report filed under section 6 of 1905 PA 282, MCL 207.6, identifying the eligible telephone personal property for which the credit under subsection (1) is claimed.

(c) The assessment or bill issued to and paid by the taxpayer for the eligible personal property, eligible natural gas pipeline property, or eligible telephone property for which the credit under subsection (1) is claimed.

(3) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall be refunded.

(4) As used in this section:

(a) "Eligible natural gas pipeline property" means natural gas pipelines that are classified as utility personal property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, and are subject to regulation under the natural gas act, 15 USC 717 to 717z.

(b) "Eligible personal property" means personal property that is classified as industrial personal property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, or in the case of personal property that is subject to 1974 PA 198, MCL 207.551 to 207.572, is situated on land classified as industrial real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c.

(c) "Eligible telephone personal property" means personal property of a telephone company subject to the tax levied under 1905 PA 282, MCL 207.1 to 207.21.

(d) "Property taxes" means any of the following:

(i) Taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(ii) Taxes levied under 1974 PA 198, MCL 207.551 to 207.572.

(iii) Taxes levied under the obsolete property rehabilitation act, 2000 PA 146, MCL 125.2781 to 125.2797.

(iv) Taxes levied under 1905 PA 282, MCL 207.1 to 207.21.

Sec. 445. (1) A taxpayer that is a new motor vehicle dealer licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, may claim a credit against the tax imposed by this act equal to 0.25% of the amount paid by the taxpayer to acquire new motor vehicle inventory in the tax year.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) As used in this section, "new motor vehicle inventory" means new motor vehicles or motor vehicle parts.

Sec. 447. (1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to 1.0% of the taxpayer's compensation in this state, not to exceed \$8,500,000.00.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) A taxpayer that claims a credit under this section shall not claim a credit under section 449.

(4) As used in this section, "eligible taxpayer" means a taxpayer that meets all of the following conditions:

(a) Operates at least 17,000,000 square feet of enclosed retail space and 2,000,000 square feet of enclosed warehouse space in this state.

(b) Sells all of the following at retail:

(i) Fresh, frozen, or processed food, food products, or consumable necessities.

(ii) Prescriptions and over-the-counter medications.

(iii) Health and beauty care products.

(iv) Cosmetics.

(v) Pet products.

(vi) Carbonated beverages.

(vii) Beer, wine, or liquor.

(c) Sales of the items listed in subdivision (b) represent more than 35% of the taxpayer's total sales in the tax year.

(d) Maintains its headquarters operation in this state.

Sec. 451. (1) An eligible taxpayer may claim a credit against the tax imposed by this act equal to the following:

(a) If a surcharge is imposed and levied under section 281 for the same tax year for which the credit is claimed under this section, 30.5% of the taxpayer's expenses incurred during the tax year to comply with 1976 IL 1, MCL 445.571 to 445.576.

(b) If a surcharge is not imposed and levied under section 281 for the same tax year for which the credit is claimed under this section, 25% of the taxpayer's expenses incurred during the tax year to comply with 1976 IL 1, MCL 445.571 to 445.576.

(2) If the amount of the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that excess shall not be refunded and shall not be carried forward as an offset to the tax liability in subsequent tax years.

(3) As used in this section:

(a) "Beverage container" and "distributor" mean those terms as defined under 1976 IL 1, MCL 445.571 to 445.576.

(b) "Eligible taxpayer" means a distributor or manufacturer who originates a deposit on a beverage container in accordance with 1976 IL 1, MCL 445.571 to 445.576.

Sec. 515. (1) In fiscal year 2007-2008, \$341,000,000.00 of the revenue collected under this act shall be distributed to the school aid fund and the balance shall be deposited into the general fund. In fiscal year 2008-2009, \$729,000,000.00 of the revenue collected under this act shall be distributed to the school aid fund and the balance shall be deposited into the general fund. For each fiscal year after the 2008-2009 fiscal year, that amount from the immediately preceding fiscal year as adjusted by an amount equal to the growth in the United States consumer price index in the immediately preceding year shall be distributed to the school aid fund and the balance shall be deposited into the general fund.

(2) As used in this section, "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics.

Sec. 601. (1) For the 2008 fiscal year, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act plus any net cash payments from former 1975 PA 228 less any net cash payments made by insurance companies under either act exceed the fiscal year 2008 base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year 2008 base, multiply \$2,619,100,000.00 by 1.0075 and then multiply this product by the United States consumer price index for fiscal year 2008 and then divide this product by the United States consumer price index for fiscal year 2007.

(2) For the 2009 fiscal year, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act, excluding any revenue collected pursuant to chapter 2A, exceed the fiscal year 2009 base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year 2009 base, multiply \$3,051,500,000.00 by 1.015 and then multiply this product by the United States consumer price index for fiscal year 2009 and then divide this product by the United States consumer price index for fiscal year 2007.

(3) For the 2010 fiscal year and each fiscal year after 2010, except as otherwise provided under subsection (4), if total net cash payments from the tax imposed under this act, excluding any revenue collected pursuant to chapter 2A, exceed the fiscal year base, 60% of that excess shall be refunded in the immediately succeeding fiscal year as provided in subsection (5) and the remaining 40% shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351. To calculate the fiscal year base, multiply the fiscal year base for the immediately preceding fiscal year by 1.0075 and then multiply this product by the United States consumer price index for the fiscal year and divide this product by the United States consumer price index for the immediately preceding fiscal year.

(4) If the amount of the total net cash payments collected from the tax imposed under this act, excluding any revenue collected pursuant to chapter 2A, exceeds the amount described in the applicable subsection by less than

\$5,000,000.00, then all of that excess shall be deposited into the countercyclical budget and economic stabilization fund created in section 351 of the management and budget act, 1984 PA 431, MCL 18.1351.

(5) For the 2008 fiscal year, the refund available under subsection (1) shall be applied pro rata to the taxpayers that made positive net cash payments during the fiscal year. The taxpayer's pro rata share shall be the total amount to be refunded under subsection (1) multiplied by a fraction the numerator of which is the positive net payments made by the taxpayer during the fiscal year and the denominator of which is the sum of the positive net cash payments made by all taxpayers during the fiscal year. For each fiscal year after the 2008 fiscal year, the refund available under subsection (2) or (3) shall be applied pro rata to the taxpayers that claimed 1 or more credits under section 403 or 405 during the immediately preceding fiscal year. The taxpayer's pro rata share shall be the total amount to be refunded under subsection (2) or (3) multiplied by a fraction the numerator of which is the credits claimed under sections 403 and 405 by the taxpayer during the immediately preceding fiscal year and the denominator of which is the sum of the credits claimed under sections 403 and 405 by all taxpayers during the immediately preceding fiscal year.

(6) As used in this section:

(a) "Fiscal year" means the state fiscal year that commences October 1 and continues through September 30.

(b) "Net cash payments" for the fiscal year are equal to cash annual and estimated payments made during the fiscal year less refunds paid during the fiscal year. Refunds paid under this section are not used to reduce net cash payments for purposes of calculating refunds paid out under this section.

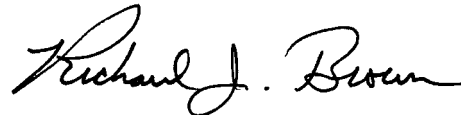
(c) "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics.

Enacting section 1. Sections 353c, 353e, and 353f of the management and budget act, 1984 PA 431, MCL 18.1353c, 18.1353e, and 18.1353f, are repealed.

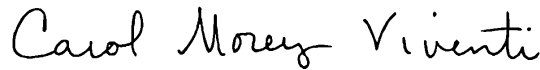
Enacting section 2. Section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is repealed. It is the intent of the legislature that the repeal of section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is retroactive and is effective immediately after section 3d of the use tax act, 1937 PA 94, MCL 205.93d, took effect on December 1, 2007.

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.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor