

HOUSE BILL No. 5408

October 31, 2007, Introduced by Rep. Coulouris and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 201, 203, 235, 263, 417, and 601 (MCL 208.1201, 208.1203, 208.1235, 208.1263, 208.1417, and 208.1601), section 201 as amended by 2007 PA 90; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 201. (1) Except as otherwise provided in this act, there
2 is levied and imposed a business income tax on every taxpayer with
3 business activity ~~within~~**IN** this state unless prohibited by 15 USC
4 381 to 384. The business income tax is imposed on the business
5 income tax base, after allocation or apportionment to this state,
6 at the rate of 4.95%.

7 (2) The business income tax base means a taxpayer's business

1 income subject to the following adjustments, before allocation or
2 apportionment, and the adjustment in subsection (5) after
3 allocation or apportionment:

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

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

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

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

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

27 (f) Except as otherwise provided under this subdivision, to

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

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

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

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

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

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

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

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

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

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

10 (3) The deduction under subsection (2)(i) shall not exceed the
11 amount necessary to offset the net deferred tax liability of the
12 taxpayer as computed in accordance with generally accepted
13 accounting principles which would otherwise result from the
14 imposition of the business income tax under this section and the
15 modified gross receipts tax under section 203 if the deduction
16 provided under this subdivision were not allowed. For purposes of
17 the calculation of the deduction under subsection (2)(i), a book-
18 tax difference shall only be used once in the calculation of the
19 deduction arising from the taxpayer's business income tax base
20 under this section and once in the calculation of the deduction
21 arising from the taxpayer's modified gross receipts tax base under
22 section 203. The adjustment under subsection (2)(i) shall be
23 calculated without regard to the federal effect of the deduction.
24 If the adjustment under subsection (2)(i) is greater than the
25 taxpayer's business income tax base, any adjustment that is unused
26 may be carried forward and applied as an adjustment to the
27 taxpayer's business income tax base before apportionment in future

1 years. In order to claim this deduction, the department may require
2 the taxpayer to report the amount of this deduction on a form as
3 prescribed by the department that is to be filed on or after the
4 date that the first quarterly return and estimated payment are due
5 under this act. As used in subsection (2)(i) and this subsection:

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

11 (b) "Qualifying asset" means any asset shown on the person's
12 books and records for the first fiscal period ending after July 12,
13 2007, in accordance with generally accepted accounting principles.

14 (4) For purposes of subsections (2) and (3), the business
15 income of a unitary business group is the sum of the business
16 income of each **ENTITY OR** person, other than a foreign operating
17 entity or a person subject to the tax imposed under chapter 2A or
18 2B, included in the unitary business group less any items of income
19 and related deductions arising from transactions including
20 dividends between persons included in the unitary business group.

21 (5) Deduct any available business loss incurred after December
22 31, 2007. As used in this subsection, "business loss" means a
23 negative business income taxable amount after allocation or
24 apportionment. The business loss shall be carried forward to the
25 year immediately succeeding the loss year as an offset to the
26 allocated or apportioned business income tax base, then
27 successively to the next 9 taxable years following the loss year or

1 until the loss is used up, whichever occurs first, but for not more
2 than 10 taxable years after the loss year.

3 Sec. 203. (1) Except as otherwise provided in this act, there
4 is levied and imposed a modified gross receipts tax on every
5 taxpayer with nexus as determined under section 200. The modified
6 gross receipts tax is imposed on the modified gross receipts tax
7 base, after allocation or apportionment to this state at a rate of
8 0.80%.

9 (2) The tax levied and imposed under this section is upon the
10 privilege of doing business and not upon income or property.

11 (3) The modified gross receipts tax base means a taxpayer's
12 gross receipts less purchases from other firms before apportionment
13 under this act. The modified gross receipts of a unitary business
14 group is the sum of modified gross receipts of each **ENTITY OR**
15 person, other than a foreign operating entity or a person subject
16 to the tax imposed under chapter 2A or 2B, included in the unitary
17 business group less any modified gross receipts arising from
18 transactions between **ENTITIES OR** persons included in the unitary
19 business group.

20 (4) For the 2008 tax year, deduct 65% of any remaining
21 business loss carryforward calculated under section 23b(h) of
22 former 1975 PA 228 that was actually incurred in the 2006 or 2007
23 tax year to the extent not deducted in tax years beginning before
24 January 1, 2008. A deduction under this subsection shall not
25 include any business loss carryforward that was incurred before
26 January 1, 2006. If the taxpayer is a unitary business group, the
27 business loss carryforward under this subsection may only be

1 deducted against the modified gross receipts tax base of that
2 **ENTITY OR** person included in the unitary business group calculated
3 as if the **ENTITY OR** person was not included in the unitary business
4 group.

5 (5) Nothing in this act shall prohibit a taxpayer who
6 qualifies for the credit under section 445 or a taxpayer who is a
7 dealer of new or used personal watercraft from collecting the tax
8 imposed under this section in addition to the sales price. The
9 amount remitted to the department for the tax under this section
10 shall not be less than the stated and collected amount.

11 Sec. 235. (1) ~~Each~~**AN** insurance company shall pay a ~~THE~~ tax
12 ~~determined~~**LEVIED AND IMPOSED** under this chapter.

13 (2) ~~The~~**AN INSURANCE COMPANY SHALL PAY A** tax ~~imposed by this~~
14 ~~chapter on each insurance company shall be a tax~~ equal to 1.25% of
15 gross direct premiums written on property or risk located or
16 residing in this state. Direct premiums do not include any of the
17 following:

18 (a) Premiums on policies not taken.

19 (b) Returned premiums on canceled policies.

20 (c) Receipts from the sale of annuities.

21 (d) Receipts on reinsurance premiums if the tax has been paid
22 on the original premiums.

23 (e) The first \$190,000,000.00 of disability insurance premiums
24 written in this state, other than credit insurance and disability
25 income insurance premiums, of each insurance company subject to tax
26 under this chapter. This exemption shall be reduced by \$2.00 for
27 each \$1.00 by which the insurance company's gross direct premiums

1 from insurance carrier services in this state and outside this
2 state exceed \$280,000,000.00.

3 (3) The tax ~~calculated~~ **LEVIED AND IMPOSED** under this chapter
4 is in lieu of all other privilege or franchise fees or taxes
5 imposed by this act or any other law of this state, except taxes on
6 real and personal property, taxes collected under the general sales
7 tax act, 1933 PA 167, MCL 205.1 to 205.78, and taxes collected
8 under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and
9 except as otherwise provided in the insurance code of 1956, 1956 PA
10 218, MCL 500.100 to 500.8302.

11 Sec. 263. (1) Every financial institution with nexus in this
12 state as determined under section 200 is subject to a franchise tax
13 **LEVIED AND IMPOSED UNDER THIS ACT**. The franchise tax is imposed
14 upon the tax base of the financial institution as determined under
15 section 265 after allocation or apportionment to this state, at the
16 rate of 0.235%.

17 (2) The tax under this chapter is in lieu of ~~the~~ **A** tax levied
18 and imposed under chapter 2 of this act.

19 Sec. 417. (1) The credit provided ~~in~~ **UNDER** this section shall
20 be taken after the credits under sections 403 and 405 and before
21 any other credit under this act and is available to any taxpayer
22 with gross receipts that do not exceed \$20,000,000.00 and with
23 adjusted business income minus the loss adjustment that does not
24 exceed \$1,300,000.00 as adjusted annually for inflation using the
25 Detroit consumer price index and subject to the following:

26 (a) An individual, a partnership, **A LIMITED PARTNERSHIP**, a
27 limited liability company, or a subchapter S corporation is

1 disqualified if the individual, any 1 partner of the partnership,
2 **ANY 1 PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the
3 limited liability company, or any 1 shareholder of the subchapter S
4 corporation receives more than \$180,000.00 as a distributive share
5 of the adjusted business income minus the loss adjustment of the
6 individual, the partnership, **THE LIMITED PARTNERSHIP**, the limited
7 liability company, or the subchapter S corporation.

8 (b) A corporation other than a subchapter S corporation is
9 disqualified if either of the following occur for the respective
10 tax year:

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

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

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

15 (B) The product of the percentage of outstanding ownership or
16 of outstanding stock owned by that shareholder multiplied by the
17 difference between the sum of business income and, to the extent
18 deducted in determining federal taxable income, a carryback or a
19 carryover of a net operating loss or capital loss, minus the loss
20 adjustment.

21 (c) Subject to the reduction percentage determined under
22 subsection (3), the credit determined under this subsection shall
23 be reduced by the following percentages in the following
24 circumstances:

25 (i) If an individual, any 1 partner of the partnership, **ANY 1**
26 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
27 liability company, or any 1 shareholder of the subchapter S

1 corporation receives as a distributive share of adjusted business
2 income minus the loss adjustment of the individual, partnership,
3 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
4 corporation; if compensation and directors' fees of a shareholder
5 or officer of a corporation other than a subchapter S corporation
6 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
7 is more than \$160,000.00 but less than \$165,000.00, the credit is
8 reduced by 20%.

9 (ii) If an individual, any 1 partner of the partnership, **ANY 1**
10 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
11 liability company, or any 1 shareholder of the subchapter S
12 corporation receives as a distributive share of adjusted business
13 income minus the loss adjustment of the individual, partnership,
14 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
15 corporation; if compensation and directors' fees of a shareholder
16 or officer of a corporation other than a subchapter S corporation
17 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
18 is \$165,000.00 or more but less than \$170,000.00, the credit is
19 reduced by 40%.

20 (iii) If an individual, any 1 partner of the partnership, **ANY 1**
21 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
22 liability company, or any 1 shareholder of the subchapter S
23 corporation receives as a distributive share of adjusted business
24 income minus the loss adjustment of the individual, partnership,
25 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
26 corporation; if compensation and directors' fees of a shareholder
27 or officer of a corporation other than a subchapter S corporation

1 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
2 is \$170,000.00 or more but less than \$175,000.00, the credit is
3 reduced by 60%.

4 (iv) If an individual, any 1 partner of the partnership, **ANY 1**
5 **PARTNER OF THE LIMITED PARTNERSHIP**, any 1 member of the limited
6 liability company, or any 1 shareholder of the subchapter S
7 corporation receives as a distributive share of adjusted business
8 income minus the loss adjustment of the individual, partnership,
9 **LIMITED PARTNERSHIP**, limited liability company, or subchapter S
10 corporation; if compensation and directors' fees of a shareholder
11 or officer of a corporation other than a subchapter S corporation
12 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
13 is \$175,000.00 or more but not in excess of \$180,000.00, the credit
14 is reduced by 80%.

15 (2) For the purposes of determining disqualification under
16 subsection (1), an active shareholder's share of business income
17 shall not be attributed to another active shareholder.

18 (3) To determine the reduction percentage under subsection
19 (1) (c), the following apply:

20 (a) The reduction percentage for a partnership, **LIMITED**
21 **PARTNERSHIP**, limited liability company, or subchapter S corporation
22 is based on the distributive share of adjusted business income
23 minus loss adjustment of the partner, **LIMITED PARTNER**, member, or
24 shareholder with the greatest distributive share of adjusted
25 business income minus loss adjustment.

26 (b) The reduction percentage for a corporation other than a
27 subchapter S corporation is the greater of the following:

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

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

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

12 (5) If gross receipts exceed \$19,000,000.00, the credit shall
13 be reduced by a fraction, the numerator of which is the amount of
14 gross receipts over \$19,000,000.00 and the denominator of which is
15 \$1,000,000.00. The credit shall not exceed 100% of the tax
16 liability imposed under this act.

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

22 (7) The department shall permit a taxpayer that elects to
23 claim the credit allowed under this section based on the amount by
24 which the tax imposed under this act exceeds the percentage of
25 adjusted business income for the tax year as determined under
26 subsection (4), and that is not required to reduce the credit
27 pursuant to subsection (1) or (5), to file and pay the tax imposed

1 by this act without computing ~~the~~^A tax imposed under sections 201
2 and 203.

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

8 (9) As used in this section:

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

13 (b) "Adjusted business income" means business income as
14 defined in section 105 with all of the following adjustments:

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

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

19 (iii) Add, to the extent deducted in determining federal taxable
20 income, a capital loss.

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

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

27 (d) "Loss adjustment" means the amount by which adjusted

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

15 Sec. 601. (1) For the 2008 fiscal year, except as otherwise
16 provided under subsection (4), if total net cash payments from the
17 tax imposed under this act plus any net cash payments from former
18 1975 PA 228 less any net cash payments made by insurance companies
19 under ~~either act~~ **THIS ACT OR FORMER 1975 PA 228** exceed
20 \$2,398,000,000.00, 50% of that excess shall be refunded in the
21 immediately succeeding fiscal year as provided in subsection (5)
22 and the remaining 50% shall be deposited into the ~~countercyclical~~
23 ~~budget and economic stabilization fund. pursuant to section 353 of~~
24 ~~the management and budget act, 1984 PA 431, MCL 18.1353.~~

25 (2) For the 2009 fiscal year, except as otherwise provided
26 under subsection (4), if total net cash payments from the tax
27 imposed under this act, excluding any revenue collected pursuant to

1 chapter 2A, exceed the fiscal year 2009 base, 50% of that excess
2 shall be refunded in the immediately succeeding fiscal year as
3 provided in subsection (5) and the remaining 50% shall be deposited
4 into the ~~countercyclical budget and economic stabilization fund.~~
5 ~~pursuant to section 353 of the management and budget act, 1984 PA~~
6 ~~431, MCL 18.1353.~~ To calculate the fiscal year 2009 base, **THE**
7 **DEPARTMENT SHALL** multiply \$2,398,000,000.00 by 1.01 and then
8 multiply this product by 2009 fiscal year Michigan personal income
9 divided by 2008 fiscal year Michigan personal income.

10 (3) For the 2010 fiscal year, except as otherwise provided
11 under subsection (4), if total net cash payments from the tax
12 imposed under this act, excluding any revenue collected pursuant to
13 chapter 2A, exceed the fiscal year 2010 base, 50% of that excess
14 shall be refunded in the immediately succeeding fiscal year as
15 provided in subsection (5) and the remaining 50% shall be deposited
16 into the ~~countercyclical budget and economic stabilization fund.~~
17 ~~pursuant to section 353 of the management and budget act, 1984 PA~~
18 ~~431, MCL 18.1353.~~ To calculate the fiscal year 2010 base, **THE**
19 **DEPARTMENT SHALL** multiply \$2,398,000,000.00 by 1.0201 and then
20 multiply this product by 2010 fiscal year Michigan personal income
21 divided by 2008 fiscal year Michigan personal income.

22 (4) If the amount of the total net cash payments collected
23 from the tax imposed under this act, excluding any revenue
24 collected pursuant to chapter 2A, exceeds the amount described in
25 the applicable subsection by less than \$5,000,000.00, then all of
26 that excess shall be deposited into the ~~countercyclical budget and~~
27 ~~economic stabilization fund.~~ ~~pursuant to section 353 of the~~

1 ~~management and budget act, 1984 PA 431, MCL 18.1353.~~

2 (5) The refund ~~available~~ **AUTHORIZED** under subsection (1), (2),
3 or (3) shall be applied pro rata to the taxpayers that made
4 positive net cash payments during the fiscal year. The taxpayer's
5 pro rata share shall be the total amount to be refunded under
6 subsection (1), (2), or (3) multiplied by a fraction the numerator
7 of which is the positive net payments made by the taxpayer during
8 the fiscal year and the denominator of which is the sum of the
9 positive net cash payments made by all taxpayers during the fiscal
10 year.

11 (6) As used in this section:

12 (A) **"BUDGET STABILIZATION FUND" MEANS THE COUNTERCYCLICAL**
13 **BUDGET AND ECONOMIC STABILIZATION FUND CREATED UNDER SECTION 351 OF**
14 **THE MANAGEMENT AND BUDGET ACT, 1984 PA 431, MCL 18.1351.**

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

17 (C) ~~(b)~~ "Fiscal year Michigan personal income" ~~is~~ **MEANS** the
18 average of the 4 quarterly values for the fiscal year, as published
19 by the United States **DEPARTMENT OF COMMERCE**, bureau of economic
20 analysis. Fiscal year personal income for subsection (2) is
21 calculated using the personal income totals published in December
22 2009. Fiscal year personal income for subsection (3) is calculated
23 using the personal income totals published in December 2010.

24 (D) ~~(c)~~ "Net cash payments" for the fiscal year are equal to
25 cash annual and estimated payments made during the fiscal year less
26 refunds paid during the fiscal year. Refunds paid under this
27 section are not used to reduce net cash payments for purposes of

1 calculating refunds paid out under this section.

2 Enacting section 1. (1) Section 6a of the use tax act, 1937 PA
3 94, MCL 205.96a, is repealed effective December 31, 2010.

4 (2) Sections 353c, 353e, and 353f of the management and budget
5 act, 1984 PA 431, MCL 18.1353c, 18.1353e, and 18.1353f, are
6 repealed.

7 Enacting section 2. This amendatory act takes effect January
8 1, 2008 and applies to all business activity occurring after
9 December 31, 2007.