

# HOUSE BILL No. 6359

July 23, 2008, Introduced by Reps. Meisner, Griffin, Gonzales, Polidori, Meadows, Hammel, Mayes, Angerer, Huizenga, Hildenbrand, Amos, Hansen, Sak, Farrah, Miller, Vagnozzi, Lahti, Accavitti and Johnson and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled  
"Income tax act of 1967,"  
by amending section 261 (MCL 206.261), as amended by 2007 PA 94.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 261. (1) For the 1989 tax year and each tax year after  
2       1989 and subject to the applicable limitations in this section, a  
3       taxpayer may credit against the tax imposed by this act 50% of the  
4       amount the taxpayer contributes during the tax year to an endowment  
5       fund of a community foundation or for the 1992 tax year and each  
6       tax year after 1992 and subject to the applicable limitations in  
7       this section, a taxpayer may credit against the tax imposed by this  
8       act 50% of the cash amount the taxpayer contributes during the tax  
9       year to a shelter for homeless persons, food kitchen, food bank, or

1 other entity located in this state, the primary purpose of which is  
2 to provide overnight accommodation, food, or meals to persons who  
3 are indigent if a contribution to that entity is tax deductible for  
4 the donor under the internal revenue code. **IN ADDITION TO THE OTHER**  
5 **CONTRIBUTIONS FOR WHICH A CREDIT MAY BE CLAIMED UNDER THIS SECTION,**  
6 **FOR THE 2008 TAX YEAR AND EACH TAX YEAR AFTER 2008 AND SUBJECT TO**  
7 **THE APPLICABLE LIMITATIONS IN THIS SECTION, A TAXPAYER MAY CREDIT**  
8 **AGAINST THE TAX IMPOSED BY THIS ACT 50% OF THE TOTAL AMOUNT THE**  
9 **TAXPAYER CONTRIBUTES DURING THE TAX YEAR TO AN ENDOWMENT FUND OF AN**  
10 **EDUCATION FOUNDATION OR TO A SPECIFIC PROJECT ORGANIZED BY AN**  
11 **EDUCATION FOUNDATION.**

12 (2) For a taxpayer other than a resident estate or trust, the  
13 credit allowed by this section for a contribution to a community  
14 foundation shall not exceed \$100.00, or \$200.00 for a husband and  
15 wife filing a joint return for tax years before the 2000 tax year  
16 and \$100.00 or \$200.00 for a husband and wife filing a joint return  
17 for tax years after the 1999 tax year. For the 1992 tax year and  
18 each tax year after 1992, a taxpayer may claim an additional credit  
19 under this section not to exceed \$100.00, or \$200.00 for a husband  
20 and wife filing a joint return, for total cash contributions made  
21 in the tax year to shelters for homeless persons, food kitchens,  
22 food banks, and, except for community foundations, other entities  
23 allowed under subsection (1). **FOR A TAXPAYER OTHER THAN A RESIDENT**  
24 **ESTATE OR TRUST, FOR THE 2008 TAX YEAR AND EACH TAX YEAR AFTER**  
25 **2008, A TAXPAYER MAY CLAIM AN ADDITIONAL CREDIT UNDER THIS SECTION**  
26 **NOT TO EXCEED \$100.00, OR \$200.00 FOR A HUSBAND AND WIFE FILING A**  
27 **JOINT RETURN, FOR CONTRIBUTIONS TO AN ENDOWMENT FUND OF AN**

1 **EDUCATION FOUNDATION OR TO A SPECIFIC PROJECT ORGANIZED BY AN**  
 2 **EDUCATION FOUNDATION.** For a resident estate or trust, the credit  
 3 allowed by this section for a contribution to a community  
 4 foundation shall not exceed 10% of the taxpayer's tax liability for  
 5 the tax year before claiming any credits allowed by this act or  
 6 \$5,000.00, whichever is less. For the 1992 tax year and each tax  
 7 year after 1992, a resident estate or trust may claim an additional  
 8 credit under this section not to exceed 10% of the taxpayer's tax  
 9 liability for the tax year before claiming any credits allowed by  
 10 this act or \$5,000.00, whichever is less, for total cash  
 11 contributions made in the tax year to shelters for homeless  
 12 persons, food kitchens, food banks, and, except for community  
 13 foundations, other entities allowed under subsection (1). **FOR THE**  
 14 **2008 TAX YEAR AND EACH TAX YEAR AFTER 2008, A RESIDENT ESTATE OR**  
 15 **TRUST MAY CLAIM AN ADDITIONAL CREDIT UNDER THIS SECTION NOT TO**  
 16 **EXCEED 10% OF THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR BEFORE**  
 17 **CLAIMING ANY CREDITS ALLOWED BY THIS ACT OR \$5,000.00, WHICHEVER IS**  
 18 **LESS, FOR TOTAL CONTRIBUTIONS MADE TO AN ENDOWMENT FUND OF AN**  
 19 **EDUCATION FOUNDATION OR TO A SPECIFIC PROJECT ORGANIZED BY AN**  
 20 **EDUCATION FOUNDATION.** For a resident estate or trust, the amount  
 21 used to calculate the credits under this section shall not have  
 22 been deducted in arriving at federal taxable income.

23 (3) The credits allowed under this section are nonrefundable  
 24 so that a taxpayer shall not claim under this section a total  
 25 credit amount that reduces the taxpayer's tax liability to less  
 26 than zero.

27 (4) As used in this section: ~~,"community~~

1           **(A) "COMMUNITY foundation"** means an organization that applies  
2 for certification on or before May 15 of the tax year for which the  
3 taxpayer is claiming the credit and that the department certifies  
4 for that tax year as meeting all of the following requirements:

5           **(i) ~~(a)~~**Qualifies for exemption from federal income taxation  
6 under section 501(c)(3) of the internal revenue code.

7           **(ii) ~~(b)~~**Supports a broad range of charitable activities within  
8 the specific geographic area of this state that it serves, such as  
9 a municipality or county.

10           **(iii) ~~(c)~~**Maintains an ongoing program to attract new endowment  
11 funds by seeking gifts and bequests from a wide range of potential  
12 donors in the community or area served.

13           **(iv) ~~(d)~~**Is publicly supported as defined by the regulations of  
14 the United States department of treasury, 26 CFR 1.170A-9(e)(10).  
15 To maintain certification, the community foundation shall submit  
16 documentation to the department annually that demonstrates  
17 compliance with this subdivision.

18           **(v) ~~(e)~~**Is not a supporting organization as an organization is  
19 described in section 509(a)(3) of the internal revenue code and the  
20 regulations of the United States department of treasury, 26 CFR  
21 1.509(a)-4 and 1.509(a)-5.

22           **(vi) ~~(f)~~**Meets the requirements for treatment as a single  
23 entity contained in the regulations of the United States department  
24 of treasury, 26 CFR 1.170A-9(e)(11).

25           **(vii) ~~(g)~~**Except as provided in subsection (6), is incorporated  
26 or established as a trust at least 6 months before the beginning of  
27 the tax year for which the credit under this section is claimed and

1 that has an endowment value of at least \$100,000.00 before the  
2 expiration of 18 months after the community foundation is  
3 incorporated or established.

4 (viii) ~~(h)~~—Has an independent governing body representing the  
5 general public's interest and that is not appointed by a single  
6 outside entity.

7 (ix) ~~(i)~~—Provides evidence to the department that the community  
8 foundation has, before the expiration of 6 months after the  
9 community foundation is incorporated or established, and maintains  
10 continually during the tax year for which the credit under this  
11 section is claimed, at least 1 part-time or full-time employee.

12 (x) ~~(j)~~—For community foundations that have an endowment value  
13 of \$1,000,000.00 or more only, the community foundation is subject  
14 to an annual independent financial audit and provides copies of  
15 that audit to the department not more than 3 months after the  
16 completion of the audit. For community foundations that have an  
17 endowment value of less than \$1,000,000.00, the community  
18 foundation is subject to an annual review and an audit every third  
19 year.

20 (xi) ~~(k)~~—In addition to all other criteria listed in this  
21 subsection for a community foundation that is incorporated or  
22 established after the effective date of the amendatory act that  
23 added this subdivision, operates in a county of this state that was  
24 not served by a community foundation when the community foundation  
25 was incorporated or established or operates as a geographic  
26 component of an existing certified community foundation.

27 (B) "EDUCATION FOUNDATION" MEANS AN ORGANIZATION THAT APPLIES

1 FOR CERTIFICATION ON OR BEFORE APRIL 1 OF THE TAX YEAR FOR WHICH  
2 THE TAXPAYER IS CLAIMING THE CREDIT, THAT ANNUALLY SUBMITS  
3 DOCUMENTATION TO THE DEPARTMENT THAT DEMONSTRATES CONTINUED  
4 COMPLIANCE WITH THIS SUBDIVISION, AND THAT THE DEPARTMENT CERTIFIES  
5 FOR THAT TAX YEAR AS MEETING ALL OF THE FOLLOWING REQUIREMENTS:

6 (i) QUALIFIES FOR EXEMPTION FROM FEDERAL INCOME TAXATION UNDER  
7 SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.

8 (ii) MAINTAINS AN ONGOING PROGRAM TO ATTRACT NEW ENDOWMENT  
9 FUNDS BY SEEKING GIFTS AND BEQUESTS FROM A WIDE RANGE OF POTENTIAL  
10 DONORS IN THE COMMUNITY OR AREA SERVED.

11 (iii) ALL FUNDS, GIFTS, AND BEQUESTS ARE EXCLUSIVELY DEDICATED  
12 TO A SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY.

13 (iv) IS PUBLICLY SUPPORTED AS DEFINED BY THE REGULATIONS OF THE  
14 UNITED STATES DEPARTMENT OF TREASURY, 26 CFR 1.170A-9(E)(10).

15 (v) MEETS THE REQUIREMENTS FOR TREATMENT AS A SINGLE ENTITY  
16 CONTAINED IN THE REGULATIONS OF THE UNITED STATES DEPARTMENT OF  
17 TREASURY, 26 CFR 1.170A-9(E)(11).

18 (vi) IS INCORPORATED OR ESTABLISHED AS A TRUST AT LEAST 6  
19 MONTHS BEFORE THE BEGINNING OF THE TAX YEAR FOR WHICH THE CREDIT IS  
20 CLAIMED.

21 (vii) HAS AN INDEPENDENT GOVERNING BODY REPRESENTING THE  
22 GENERAL PUBLIC'S INTEREST AND THAT IS NOT APPOINTED BY A SINGLE  
23 OUTSIDE ENTITY.

24 (viii) IS SUBJECT TO A PROGRAM REVIEW EACH YEAR AND AN  
25 INDEPENDENT FINANCIAL AUDIT EVERY 3 YEARS AND PROVIDES COPIES OF  
26 THE REVIEWS AND AUDITS TO THE DEPARTMENT NOT MORE THAN 3 MONTHS  
27 AFTER THE REVIEW OR AUDIT IS COMPLETED.

1           (5) An entity other than a community foundation may request  
2 that the department determine if a contribution to that entity  
3 qualifies for the credit under this section. The department shall  
4 make a determination and respond to a request no later than 30 days  
5 after the department receives the request.

6           (6) A taxpayer may claim a credit under this section for  
7 contributions to a community foundation made before the expiration  
8 of the 18-month period after a community foundation was  
9 incorporated or established during which the community foundation  
10 must build an endowment value of \$100,000.00 as provided in  
11 subsection ~~(4)(g)~~ **(4) (A) (vii)**. If the community foundation does not  
12 reach the required \$100,000.00 endowment value during that 18-month  
13 period, contributions to the community foundation made after the  
14 date on which the 18-month period expires shall not be used to  
15 calculate a credit under this section. At any time after the  
16 expiration of the 18-month period under subsection ~~(4)(g)~~ **(4) (A) (vii)**  
17 that the community foundation has an endowment value of  
18 \$100,000.00, the community foundation may apply to the department  
19 for certification under this section.

20           (7) On or before July 1 of each year, the department shall  
21 report to the house committee on tax policy and the senate finance  
22 committee the total amount of tax credits claimed under this  
23 section and under section 38c of ~~the single business tax act,~~  
24 **FORMER** 1975 PA 228 , ~~MCL 208.38c,~~ or section 425 of the Michigan  
25 business tax act, 2007 PA 36, MCL 208.1425, for the immediately  
26 preceding tax year.