

HOUSE BILL No. 6103

May 4, 2010, Introduced by Reps. Amash, Genetski, McMillin, Agema, DeShazor, Haveman, Paul Scott, Calley, Green, Meekhof, Meltzer, Walsh, Daley, Bolger, Crawford, Lund, Rogers, Kowall and Booher and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 203 and 403 (MCL 208.1203 and 208.1403), section 203 as amended by 2008 PA 168 and section 403 as amended by 2008 PA 434.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 **THE FOLLOWING RATES IN THE FOLLOWING CIRCUMSTANCES:**

7 **(A) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007 AND**

1 **BEFORE JANUARY 1, 2011, 0.80%.**

2 **(B) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2010, 0.50%.**

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

5 (3) The modified gross receipts tax base means a taxpayer's
6 gross receipts subject to the adjustment in subsection (6), if
7 applicable, less purchases from other firms before apportionment
8 under this act. The modified gross receipts of a unitary business
9 group is the sum of modified gross receipts of each person, other
10 than a foreign operating entity or a person subject to the tax
11 imposed under chapter 2A or 2B, included in the unitary business
12 group less any modified gross receipts arising from transactions
13 between persons included in the unitary business group.

14 (4) For the 2008 tax year, deduct 65% of any remaining
15 business loss carryforward calculated under section 23b(h) of
16 former 1975 PA 228 that was actually incurred in the 2006 or 2007
17 tax year to the extent not deducted in tax years beginning before
18 January 1, 2008. A deduction under this subsection shall not
19 include any business loss carryforward that was incurred before
20 January 1, 2006. If the taxpayer is a unitary business group, the
21 business loss carryforward under this subsection may only be
22 deducted against the modified gross receipts tax base of that
23 person included in the unitary business group calculated as if the
24 person was not included in the unitary business group.

25 (5) Nothing in this act shall prohibit a taxpayer who
26 qualifies for the credit under section 445 or a taxpayer who is a
27 dealer of new or used personal watercraft from collecting the tax

1 imposed under this section in addition to the sales price. The
2 amount remitted to the department for the tax under this section
3 shall not be less than the stated and collected amount.

4 (6) Subject to the limitations provided in this subsection,
5 for a person that is a qualified affordable housing project, deduct
6 an amount equal to that person's total gross receipts attributable
7 to residential rental units in this state owned by the qualified
8 affordable housing project multiplied by a fraction, the numerator
9 of which is the number of rent restricted units in this state owned
10 by the qualified affordable housing project and the denominator of
11 which is the number of all rental units in this state owned by the
12 qualified affordable housing project. The amount of the deduction
13 calculated under this subsection shall be reduced by the amount of
14 limited dividends or other distributions made to the partners,
15 members, or shareholders of the qualified affordable housing
16 project. Gross receipts attributable to residential rental units do
17 not include amounts received by the management, construction, or
18 development company for completion and operation of the project and
19 those rental units.

20 (7) If a qualified affordable housing project no longer meets
21 the requirements of subsection (8)(b) or fails to operate those
22 residential rental units as rent restricted units in accordance
23 with the operation agreement and the requirements of subsection
24 (8)(c), the qualified affordable housing project is entitled to the
25 deduction under subsection (6) as long as the qualified affordable
26 housing project continues to offer some of the residential rental
27 units purchased as rent restricted units in accordance with the

1 operation agreement.

2 (8) For purposes of subsections (6) and (7) and this
3 subsection:

4 (a) "Limited dividend housing association" means a limited
5 dividend housing association, corporation, or cooperative organized
6 and qualified pursuant to chapter 7 of the state housing
7 development authority act of 1966, 1966 PA 346, MCL 125.1491 to
8 125.1496.

9 (b) "Qualified affordable housing project" means a person that
10 is organized, qualified, and operated as a limited dividend housing
11 association that has a limitation on the amount of dividends or
12 other distributions that may be distributed to its owners in any
13 given year and has received funding, subsidies, grants, operating
14 support, or construction or permanent funding through 1 or more of
15 the following sources and programs:

16 (i) Mortgage or other financing provided by the Michigan state
17 housing development authority created in section 21 of the state
18 housing development authority act of 1966, 1966 PA 346, MCL
19 125.1421, the United States department of housing and urban
20 development, the United States department of agriculture for rural
21 housing service, the Michigan interfaith housing trust fund,
22 Michigan housing and community development fund, federal home loan
23 bank, housing commission loan, community development financial
24 institution, or mortgage or other funding or guaranteed by Fannie,
25 Ginnie, federal housing association, United States department of
26 agriculture, or federal home loan mortgage corporation.

27 (ii) A tax-exempt bond issued by a nonprofit organization,

1 local governmental unit, or other authority.

2 (iii) A payment in lieu of tax agreement or other tax abatement.

3 (iv) Funding from the state or a local governmental unit
4 through a HOME investments partnership program authorized under 42
5 USC 12741 to 12756.

6 (v) A grant or other funding from a federal home loan bank's
7 affordable housing program.

8 (vi) Financing or funding under the new markets tax credit
9 program under section 45D of the internal revenue code.

10 (vii) Financed in whole or in part under the United States
11 department of housing and urban development's hope VI program as
12 authorized by section 803 of the national affordable housing act,
13 42 USC 8012.

14 (viii) Financed in whole or in part under the United States
15 department of housing and urban development's section 202 program
16 authorized by section 202 of the national housing act, 12 USC
17 1701q.

18 (ix) Financing or funding under the low-income housing tax
19 credit program under section 42 of the internal revenue code.

20 (x) Financing or other subsidies from any new programs similar
21 to any of the above.

22 (c) "Rent restricted unit" means any residential rental unit's
23 rental income is restricted in accordance with section 42(g)(1) of
24 the internal revenue code as if it was a qualified low-income
25 housing project, or receives rental assistance in the form of HUD
26 section 8 subsidies or HUD housing assistance program subsidies, or
27 rental assistance from the United States department of agriculture

1 rural housing programs, from any of the other programs described
2 under subdivision (b).

3 Sec. 403. (1) Notwithstanding any other provision in this act,
4 the credits provided in this section shall be taken before any
5 other credit under this act. Except as otherwise provided in
6 subsection (6), for the 2008 tax year, the total combined credit
7 allowed under this section shall not exceed 50% of the tax
8 liability imposed under this act before the imposition and levy of
9 the surcharge under section 281. For the 2009 tax year and ~~each tax~~
10 ~~year after 2009~~ **THE 2010 TAX YEAR**, the total combined credit
11 allowed under this section shall not exceed 52% of the tax
12 liability imposed under this act before the imposition and levy of
13 the surcharge under section 281.

14 (2) Subject to the limitation in subsection (1), for the 2008
15 tax year a taxpayer may claim a credit against the tax imposed by
16 this act equal to 0.296% of the taxpayer's compensation in this
17 state. For the 2009 tax year and ~~each tax year after 2009~~ **THE 2010**
18 **TAX YEAR**, subject to the limitation in subsection (1), a taxpayer
19 may claim a credit against the tax imposed by this act equal to
20 0.370% of the taxpayer's compensation in this state. For purposes
21 of this subsection, a taxpayer includes a person subject to the tax
22 imposed under chapter 2A and a person subject to the tax imposed
23 under chapter 2B. A professional employer organization shall not
24 include payments by the professional employer organization to the
25 officers and employees of a client of the professional employer
26 organization whose employment operations are managed by the
27 professional employer organization. A client may include payments

1 by the professional employer organization to the officers and
2 employees of the client whose employment operations are managed by
3 the professional employer organization.

4 (3) Subject to the limitation in subsection (1), for the 2008
5 tax year a taxpayer may claim a credit against the tax imposed by
6 this act equal to 2.32% multiplied by the result of subtracting the
7 sum of the amounts calculated under subdivisions (d), (e), and (f)
8 from the sum of the amounts calculated under subdivisions (a), (b),
9 and (c). Subject to the limitation in subsection (1), for the 2009
10 tax year and ~~each tax year after 2009~~ **THE 2010 TAX YEAR**, a taxpayer
11 may claim a credit against the tax imposed by this act equal to
12 2.9% multiplied by the result of subtracting the sum of the amounts
13 calculated under subdivisions (d), (e), and (f) from the sum of the
14 amounts calculated under subdivisions (a), (b), and (c):

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

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

1 tax year as prescribed in chapter 3.

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

10 (d) If the cost of tangible assets described in subdivision
11 (a) was paid or accrued in a tax year beginning after December 31,
12 2007, or before December 31, 2007 to the extent the credit is used
13 and at the rate at which the credit was used under former 1975 PA
14 228 or this act, calculate the gross proceeds or benefit derived
15 from the sale or other disposition of the tangible assets minus the
16 gain, multiplied by the apportionment factor for the taxable year
17 as prescribed in chapter 3, and plus the loss, multiplied by the
18 apportionment factor for the taxable year as prescribed in chapter
19 3 from the sale or other disposition reflected in federal taxable
20 income and minus the gain from the sale or other disposition added
21 to the business income tax base in section 201.

22 (e) If the cost of tangible assets described in subdivision
23 (b) was paid or accrued in a tax year beginning after December 31,
24 2007, or before December 31, 2007 to the extent the credit is used
25 and at the rate at which the credit was used under former 1975 PA
26 228 or this act, calculate the gross proceeds or benefit derived
27 from the sale or other disposition of the tangible assets minus the

1 gain and plus the loss from the sale or other disposition reflected
2 in federal taxable income and minus the gain from the sale or other
3 disposition added to the business income tax base in section 201.
4 This amount shall be multiplied by the apportionment factor for the
5 tax year as prescribed in chapter 3.

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

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

17 (5) A taxpayer that claims a credit under this section is not
18 prohibited from claiming a credit under section 405. However, the
19 taxpayer shall not claim a credit under this section and section
20 405 based on the same costs and expenses.

21 (6) For a taxpayer primarily engaged in furnishing electric
22 and gas utility service that makes capital investments in electric
23 and gas distribution assets for which a portion of the credit
24 provided under subsection (3) would be denied for the 2008 tax year
25 by reason of the 50% limitation of subsection (1), the 50%
26 limitation on the total combined credit for the 2008 tax year
27 provided in subsection (1) shall be increased by an amount not to

1 exceed the lesser of the amount of the denied credit or 50% of the
2 tax increase under this act accrued for financial reporting
3 purposes due to the elimination of the deduction under section
4 168(k) of the internal revenue code by ~~the amendatory act that~~
5 ~~added this subsection.~~ **2008 PA 434**. Provided, however, that the
6 total combined credit allowed under this section for the 2008 tax
7 year shall not exceed 80% of the tax liability imposed under this
8 act after the imposition and levy of the surcharge under section
9 281.

10 Enacting section 1. This amendatory act does not take effect
11 unless all of the following bills of the 95th Legislature are
12 enacted into law:

13 (a) House Bill No. 5249.

14 (b) Senate Bill No. _____ or House Bill No. 6104 (request no.
15 04275'09).

16 (c) Senate Bill No. _____ or House Bill No. 6105 (request no.
17 05670'09).

18 (d) Senate Bill No. _____ or House Bill No. 6106 (request no.
19 05671'09).

20 (e) Senate Bill No. _____ or House Bill No. 6107 (request no.
21 05672'09).

22 (f) Senate Bill No. _____ or House Bill No. 6112 (request no.
23 05673'09).

24 (g) Senate Bill No. _____ or House Bill No. 6113 (request no.
25 05675'09*).

26 (h) Senate Bill No. _____ or House Bill No. 6109 (request no.
27 05676'09).

1 (i) Senate Bill No. _____ or House Bill No. 6110 (request no.
2 05677'09).

3 (j) Senate Bill No. _____ or House Bill No. 6116 (request no.
4 05678'09).

5 (k) Senate Bill No. _____ or House Bill No. 6114 (request no.
6 05679'09).

7 (l) Senate Bill No. _____ or House Bill No. 6117 (request no.
8 05680'09).

9 (m) Senate Bill No. _____ or House Bill No. 6108 (request no.
10 05681'09).

11 (n) Senate Bill No. _____ or House Bill No. 6119 (request no.
12 05930'10).

13 (o) Senate Bill No. _____ or House Bill No. 6111 (request no.
14 05931'10).

15 (p) Senate Bill No. _____ or House Bill No. 6115 (request no.
16 05932'10).

17 (q) Senate Bill No. _____ or House Bill No. 6118 (request no.
18 05933'10).