

HOUSE BILL No. 6293

June 23, 2010, Introduced by Reps. Scripps and Angerer 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, 281, 403, and 405 (MCL 208.1201, 208.1203, 208.1235, 208.1263, 208.1281, 208.1403, and 208.1405), section 201 as amended by 2009 PA 135, section 203 as amended by 2008 PA 168, section 235 as amended by 2008 PA 30, section 281 as added and section 405 as amended by 2007 PA 145, and section 403 as amended by 2008 PA 434.

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 this state unless prohibited by 15 USC 381
4 to 384. The business income tax is **LEVIED AND** imposed on the

1 business income tax base, after allocation or apportionment to this
2 state, at the rate of 4.95%.

3 (2) The business income tax base means a taxpayer's business
4 income subject to the following adjustments, before allocation or
5 apportionment, and the adjustments in subsections (5), (6), and (7)
6 after allocation or apportionment:

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

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

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

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

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

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

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

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

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

21 (iv) The related person recipient of the transaction is
22 organized under the laws of a foreign nation which has in force a
23 comprehensive income tax treaty with the United States.

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

26 (h) To the extent included in federal taxable income, deduct
27 any earnings that are net earnings from self-employment as defined

1 under section 1402 of the internal revenue code of the taxpayer or
2 a partner or limited liability company member of the taxpayer
3 except to the extent that those net earnings represent a reasonable
4 return on capital.

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

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

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

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

14 (j) For tax years that begin after December 31, 2009, to the
15 extent included in federal taxable income, deduct the amount of a
16 charitable contribution made to the advance tuition payment fund
17 created under section 9 of the Michigan education trust act, 1986
18 PA 316, MCL 390.1429.

19 (3) The deduction under subsection (2)(i) shall not exceed the
20 amount necessary to offset the net deferred tax liability of the
21 taxpayer as computed in accordance with generally accepted
22 accounting principles which would otherwise result from the
23 imposition of the business income tax under this section and the
24 modified gross receipts tax under section 203 if the deduction
25 provided under this subdivision were not allowed. The deduction
26 under subsection (2)(i) is intended to flow through and reduce the
27 surcharge imposed and levied under section 281. For purposes of the

1 calculation of the deduction under subsection (2)(i), a book-tax
2 difference shall only be used once in the calculation of the
3 deduction arising from the taxpayer's business income tax base
4 under this section and once in the calculation of the deduction
5 arising from the taxpayer's modified gross receipts tax base under
6 section 203. The adjustment under subsection (2)(i) shall be
7 calculated without regard to the federal effect of the deduction.
8 If the adjustment under subsection (2)(i) is greater than the
9 taxpayer's business income tax base, any adjustment that is unused
10 may be carried forward and applied as an adjustment to the
11 taxpayer's business income tax base before apportionment in future
12 years. In order to claim this deduction, the department may require
13 the taxpayer to report the amount of this deduction on a form as
14 prescribed by the department that is to be filed on or after the
15 date that the first quarterly return and estimated payment are due
16 under this act. As used in subsection (2)(i) and this subsection:

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

22 (b) "Qualifying asset" means any asset shown on the person's
23 books and records for the first fiscal period ending after July 12,
24 2007, in accordance with generally accepted accounting principles.

25 (4) For purposes of subsections (2) and (3), the business
26 income of a unitary business group is the sum of the business
27 income of each person, other than a foreign operating entity or a

1 person subject to the tax imposed under chapter 2A or 2B, included
2 in the unitary business group less any items of income and related
3 deductions arising from transactions including dividends between
4 persons included in the unitary business group.

5 (5) Deduct any available business loss incurred after December
6 31, 2007. As used in this subsection, "business loss" means a
7 negative business income taxable amount after allocation or
8 apportionment. The business loss shall be carried forward to the
9 year immediately succeeding the loss year as an offset to the
10 allocated or apportioned business income tax base, then
11 successively to the next 9 taxable years following the loss year or
12 until the loss is used up, whichever occurs first, but for not more
13 than 10 taxable years after the loss year.

14 (6) Deduct any gain from the sale of any residential rental
15 units in this state to a qualified affordable housing project that
16 enters an agreement to operate the residential rental units as rent
17 restricted units for a minimum of 15 years. If the qualified
18 affordable housing project does not agree to operate all of the
19 residential rental units as rent restricted units, the deduction
20 under this subsection is limited to an amount equal to the gain
21 from the sale multiplied by a fraction, the numerator of which is
22 the number of those residential rental units purchased that are to
23 be operated as a rent restricted unit and the denominator is the
24 number of all residential rental units purchased. In order to claim
25 this deduction, the department may require the taxpayer and the
26 qualified affordable housing project to report the amount of this
27 deduction on a form as prescribed by the department that is to be

1 signed by both the taxpayer and the qualified affordable housing
2 project and filed with the taxpayer's annual return. The department
3 shall record a lien against the property subject to the operation
4 agreement for the total amount of the deduction allowed under this
5 subsection. The department shall notify the qualified affordable
6 housing project of the maximum amount of the lien that the
7 qualified affordable housing project may be liable for if the
8 qualified affordable housing project fails to qualify and operate
9 as provided in the operation agreement within 15 years after the
10 purchase. The lien shall become payable in an amount as provided
11 under this subsection to the state by the qualified affordable
12 housing project if the qualified affordable housing project fails
13 to qualify as a qualified affordable housing project and fails to
14 operate all or some of the residential rental units as rent
15 restricted units in accordance with the operation agreement entered
16 upon the purchase of those units within 15 years after the
17 deduction is claimed by a taxpayer under this subsection. An amount
18 equal to the product of 100% of the amount of the deduction allowed
19 under this subsection multiplied by a fraction, the numerator of
20 which is the difference between 15 and the number of years the
21 affordable housing project qualified and operated rent restricted
22 units in accordance with the agreement and the denominator is 15,
23 shall be added back to the tax liability of the qualified
24 affordable housing project for the tax year that the qualified
25 affordable housing project fails to comply with the agreement.

26 (7) Subject to the limitations provided in this subsection,
27 for a person that is a qualified affordable housing project, deduct

1 an amount equal to the product of that person's taxable income that
2 is attributable to residential rental units in this state owned by
3 the qualified affordable housing project multiplied by a fraction,
4 the numerator of which is the number of rent restricted units in
5 this state owned by that qualified affordable housing project and
6 the denominator of which is the number of all residential rental
7 units in this state owned by the qualified affordable housing
8 project. The amount of the deduction calculated under this
9 subsection shall be reduced by the amount of limited dividends or
10 other distributions made to the partners, members, or shareholders
11 of the qualified affordable housing project. Taxable income that is
12 attributable to residential rental units does not include income
13 received by the management, construction, or development company
14 for completion and operation of the project and those rental units.

15 (8) If a qualified affordable housing project no longer meets
16 the requirements of subsection (9)(b) or fails to operate those
17 residential rental units as rent restricted units in accordance
18 with the operation agreement and the requirements of subsection
19 (9)(c), the taxpayer is entitled to the deductions under
20 subsections (6) and (7) as long as the qualified affordable housing
21 project continues to offer some of the residential rental units
22 purchased as rent restricted units in accordance with the operation
23 agreement.

24 (9) For purposes of subsections (6), (7), and (8) and this
25 subsection:

26 (a) "Limited dividend housing association" means a limited
27 dividend housing association, corporation, or cooperative organized

1 and qualified pursuant to chapter 7 of the state housing
2 development authority act of 1966, 1966 PA 346, MCL 125.1491 to
3 125.1496.

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

11 (i) Mortgage or other financing provided by the Michigan state
12 housing development authority created in section 21 of the state
13 housing development authority act of 1966, 1966 PA 346, MCL
14 125.1421, the United States department of housing and urban
15 development, the United States department of agriculture for rural
16 housing service, the Michigan interfaith housing trust fund,
17 Michigan housing and community development fund, federal home loan
18 bank, housing commission loan, community development financial
19 institution, or mortgage or other funding or guaranteed by Fannie,
20 Ginnie, federal housing association, United States department of
21 agriculture, or federal home loan mortgage corporation.

22 (ii) A tax-exempt bond issued by a nonprofit organization,
23 local governmental unit, or other authority.

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

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

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

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

5 (vii) Financed in whole or in part under the United States
6 department of housing and urban development's hope VI program as
7 authorized by section 803 of the national affordable housing act,
8 42 USC 8012.

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

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

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

17 (c) "Rent restricted unit" means any residential rental unit's
18 rental income is restricted in accordance with section 42(g)(1) of
19 the internal revenue code as if it was a qualified low-income
20 housing project, or receives rental assistance in the form of HUD
21 section 8 subsidies or HUD housing assistance program subsidies, or
22 rental assistance from the United States department of agriculture
23 rural housing programs, or from any of the other programs described
24 under subdivision (b).

25 Sec. 203. (1) Except as otherwise provided in this act, there
26 is levied and imposed a modified gross receipts tax on every
27 taxpayer with nexus as determined under section 200. The modified

1 gross receipts tax is **LEVIED AND** imposed on the modified gross
2 receipts tax base, after allocation or apportionment to this state
3 at a rate of 0.80%.

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

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

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

26 (5) Nothing in this act shall prohibit a taxpayer who
27 qualifies for the credit under section 445 or a taxpayer who is a

1 dealer of new or used personal watercraft from collecting the tax
2 imposed under this section in addition to the sales price. The
3 amount remitted to the department for the tax under this section
4 shall not be less than the stated and collected amount.

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

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

1 units purchased as rent restricted units in accordance with the
2 operation agreement.

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

5 (a) "Limited dividend housing association" means a limited
6 dividend housing association, corporation, or cooperative organized
7 and qualified pursuant to chapter 7 of the state housing
8 development authority act of 1966, 1966 PA 346, MCL 125.1491 to
9 125.1496.

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

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

- 1 (ii) A tax-exempt bond issued by a nonprofit organization,
2 local governmental unit, or other authority.
- 3 (iii) A payment in lieu of tax agreement or other tax abatement.
- 4 (iv) Funding from the state or a local governmental unit
5 through a HOME investments partnership program authorized under 42
6 USC 12741 to 12756.
- 7 (v) A grant or other funding from a federal home loan bank's
8 affordable housing program.
- 9 (vi) Financing or funding under the new markets tax credit
10 program under section 45D of the internal revenue code.
- 11 (vii) Financed in whole or in part under the United States
12 department of housing and urban development's hope VI program as
13 authorized by section 803 of the national affordable housing act,
14 42 USC 8012.
- 15 (viii) Financed in whole or in part under the United States
16 department of housing and urban development's section 202 program
17 authorized by section 202 of the national housing act, 12 USC
18 1701q.
- 19 (ix) Financing or funding under the low-income housing tax
20 credit program under section 42 of the internal revenue code.
- 21 (x) Financing or other subsidies from any new programs similar
22 to any of the above.
- 23 (c) "Rent restricted unit" means any residential rental unit's
24 rental income is restricted in accordance with section 42(g)(1) of
25 the internal revenue code as if it was a qualified low-income
26 housing project, or receives rental assistance in the form of HUD
27 section 8 subsidies or HUD housing assistance program subsidies, or

1 rental assistance from the United States department of agriculture
2 rural housing programs, from any of the other programs described
3 under subdivision (b).

4 Sec. 235. (1) Except as otherwise provided under subsection
5 (4), each insurance company shall pay a tax determined under this
6 chapter.

7 (2) The tax **LEVIED AND** imposed by this chapter on each
8 insurance company shall be a tax equal to 1.25% of gross direct
9 premiums written on property or risk located or residing in this
10 state. Direct premiums do not include any of the following:

11 (a) Premiums on policies not taken.

12 (b) Returned premiums on canceled policies.

13 (c) Receipts from the sale of annuities.

14 (d) Receipts on reinsurance premiums if the tax has been paid
15 on the original premiums.

16 (e) The first \$190,000,000.00 of disability insurance premiums
17 written in this state, other than credit insurance and disability
18 income insurance premiums, of each insurance company subject to tax
19 under this chapter. This exemption shall be reduced by \$2.00 for
20 each \$1.00 by which the insurance company's gross direct premiums
21 from insurance carrier services in this state and outside this
22 state exceed \$280,000,000.00.

23 (3) The tax calculated under this chapter is in lieu of all
24 other privilege or franchise fees or taxes imposed by this act or
25 any other law of this state, except taxes on real and personal
26 property, taxes collected under the general sales tax act, 1933 PA
27 167, MCL 205.1 to 205.78, and taxes collected under the use tax

1 act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise
2 provided in the insurance code of 1956, 1956 PA 218, MCL 500.100 to
3 500.8302.

4 (4) The tax imposed and levied under this act does not apply
5 to an insurance company authorized under chapter 46 or 47 of the
6 insurance code of 1956, 1956 PA 218, MCL 500.4601 to 500.4673, and
7 MCL 500.4701 to 500.4747.

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

13 (2) The tax under this chapter is in lieu of the tax levied
14 and imposed under chapter 2 of this act.

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

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

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

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

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

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

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

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

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

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

18 (5) The surcharge imposed and levied under this section shall
19 constitute a part of the tax imposed **AND LEVIED** under this act and
20 shall be administered, collected, and enforced as provided under
21 this act.

22 Sec. 403. (1) Notwithstanding any other provision in this act,
23 the credits provided in this section shall be taken before any
24 other credit under this act. Except as otherwise provided in
25 subsection (6), for the 2008 tax year, the total combined credit
26 allowed under this section shall not exceed 50% of the tax
27 liability imposed under this act before the imposition and levy of

1 the surcharge under section 281. For ~~the 2009 tax year and each tax~~
2 ~~year after 2009~~ **TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2008**, the
3 total combined credit allowed under this section shall not exceed
4 52% of the tax liability imposed under this act before the
5 imposition and levy of the surcharge under section 281.

6 (2) Subject to the limitation in subsection (1), for the 2008
7 tax year a taxpayer may claim a credit against the tax imposed by
8 this act equal to 0.296% of the taxpayer's compensation in this
9 state. For ~~the 2009 tax year and each tax year after 2009~~ **TAX YEARS**
10 **THAT BEGIN AFTER DECEMBER 31, 2008**, subject to the limitation in
11 subsection (1), a taxpayer may claim a credit against the tax
12 imposed by this act equal to 0.370% of the taxpayer's compensation
13 in this state. For purposes of this subsection, a taxpayer includes
14 a person subject to the tax imposed under chapter 2A and a person
15 subject to the tax imposed under chapter 2B. A professional
16 employer organization shall not include payments by the
17 professional employer organization to the officers and employees of
18 a client of the professional employer organization whose employment
19 operations are managed by the professional employer organization. A
20 client may include payments by the professional employer
21 organization to the officers and employees of the client whose
22 employment operations are managed by the professional employer
23 organization.

24 (3) Subject to the limitation in subsection (1), for the 2008
25 tax year a taxpayer may claim a credit against the tax imposed by
26 this act equal to 2.32% multiplied by the result of subtracting the
27 sum of the amounts calculated under subdivisions (d), (e), and (f)

1 from the sum of the amounts calculated under subdivisions (a), (b),
2 and (c). Subject to the limitation in subsection (1), for ~~the 2009~~
3 ~~tax year and each tax year after 2009~~ **TAX YEARS THAT BEGIN AFTER**
4 **DECEMBER 31, 2008**, a taxpayer may claim a credit against the tax
5 imposed by this act equal to 2.9% multiplied by the result of
6 subtracting the sum of the amounts calculated under subdivisions
7 (d), (e), and (f) from the sum of the amounts calculated under
8 subdivisions (a), (b), and (c):

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

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

23 (c) For tangible assets, other than mobile tangible assets,
24 purchased or acquired for use outside of this state in a tax year
25 beginning after December 31, 2007 and subsequently transferred into
26 this state and purchased or acquired for use in a business
27 activity, calculate the federal basis used for determining gain or

1 loss as of the date the tangible assets were physically located in
2 this state for use in a business activity plus the cost of
3 fabrication and installation of the tangible assets in this state.

4 (d) If the cost of tangible assets described in subdivision
5 (a) was paid or accrued in a tax year beginning after December 31,
6 2007, or before December 31, 2007 to the extent the credit is used
7 and at the rate at which the credit was used under former 1975 PA
8 228 or this act, calculate the gross proceeds or benefit derived
9 from the sale or other disposition of the tangible assets minus the
10 gain, multiplied by the apportionment factor for the taxable year
11 as prescribed in chapter 3, and plus the loss, multiplied by the
12 apportionment factor for the taxable year as prescribed in chapter
13 3 from the sale or other disposition reflected in federal taxable
14 income and minus the gain from the sale or other disposition added
15 to the business income tax base in section 201.

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

27 (f) For assets purchased or acquired in a tax year beginning

1 after December 31, 2007, or before December 31, 2007 to the extent
2 the credit is used and at the rate at which the credit was used
3 under former 1975 PA 228 or this act, that were eligible for a
4 credit under subdivision (a) or (c) and that were transferred out
5 of this state, calculate the federal basis used for determining
6 gain or loss as of the date of the transfer.

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

11 (5) A taxpayer that claims a credit under this section is not
12 prohibited from claiming a credit under section 405. However, the
13 taxpayer shall not claim a credit under this section and section
14 405 based on the same costs and expenses.

15 (6) For a taxpayer primarily engaged in furnishing electric
16 and gas utility service that makes capital investments in electric
17 and gas distribution assets for which a portion of the credit
18 provided under subsection (3) would be denied for the 2008 tax year
19 by reason of the 50% limitation of subsection (1), the 50%
20 limitation on the total combined credit for the 2008 tax year
21 provided in subsection (1) shall be increased by an amount not to
22 exceed the lesser of the amount of the denied credit or 50% of the
23 tax increase under this act accrued for financial reporting
24 purposes due to the elimination of the deduction under section
25 168(k) of the internal revenue code by ~~the amendatory act that~~
26 ~~added this subsection~~ **2008 PA 434**. Provided, however, that the
27 total combined credit allowed under this section for the 2008 tax

1 year shall not exceed 80% of the tax liability imposed under this
2 act after the imposition and levy of the surcharge under section
3 281.

4 Sec. 405. For the 2008 tax year, a taxpayer may claim a credit
5 against the tax imposed by this act equal to 1.52% of the
6 taxpayer's research and development expenses in this state in the
7 tax year. For ~~the 2009 tax year and each tax year after 2009~~ **TAX**
8 **YEARS THAT BEGIN AFTER DECEMBER 31, 2008**, a taxpayer may claim a
9 credit against the tax imposed by this act equal to 1.90% of the
10 taxpayer's research and development expenses in this state in the
11 tax year. The credit under this section combined with the total
12 combined credit allowed under section 403 shall not exceed 65% of
13 the tax liability imposed under this act before the imposition and
14 levy of the surcharge under section 281. As used in this section,
15 "research and development expenses" means that term as defined in
16 section 41(b) of the internal revenue code.