

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 1052

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending sections 109 and 403 (MCL 208.1109 and 208.1403),  
section 403 as amended by 2007 PA 145, and by adding section 461.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 109. (1) "Employee" means an employee as defined in  
2 section 3401(c) of the internal revenue code. A person from whom an  
3 employer is required to withhold for federal income tax purposes is  
4 prima facie considered an employee.

5           (2) "Employer" means an employer as defined in section 3401(d)  
6 of the internal revenue code. A person required to withhold for  
7 federal income tax purposes is prima facie considered an employer.

8           (3) "Federal taxable income" means taxable income as defined  
9 in section 63 of the internal revenue code, **EXCEPT THAT FEDERAL**  
10 **TAXABLE INCOME SHALL BE CALCULATED AS IF SECTION 168(K) AND SECTION**

1 199 OF THE INTERNAL REVENUE CODE WERE NOT IN EFFECT.

2 (4) "Financial institution" means that term as defined under  
3 chapter 2B.

4 (5) "Foreign operating entity" means a United States person  
5 that satisfies each of the following:

6 (a) Would otherwise be a part of a unitary business group that  
7 has at least 1 person included in the unitary business group that  
8 is taxable in this state.

9 (b) Has substantial operations outside the United States, the  
10 District of Columbia, ~~the Commonwealth of Puerto Rico,~~ any  
11 territory or possession of the United States **EXCEPT FOR THE**  
12 **COMMONWEALTH OF PUERTO RICO**, or a political subdivision of any of  
13 the foregoing.

14 (c) At least 80% of its income is active foreign business  
15 income as defined in section 861(c)(1)(B) of the internal revenue  
16 code.

17 Sec. 403. (1) Notwithstanding any other provision in this act,  
18 the credits provided in this section shall be taken before any  
19 other credit under this act. ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN**  
20 **SUBSECTION (6), FOR** the 2008 tax year, the total combined credit  
21 allowed under this section shall not exceed 50% of the tax  
22 liability imposed under this act before the imposition and levy of  
23 the surcharge under section 281. For the 2009 tax year and each tax  
24 year after 2009, the total combined credit allowed under this  
25 section shall not exceed 52% of the tax liability imposed under  
26 this act before the imposition and levy of the surcharge under  
27 section 281.

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

18           (3) Subject to the limitation in subsection (1), for the 2008  
19 tax year a taxpayer may claim a credit against the tax imposed by  
20 this act equal to 2.32% multiplied by the result of subtracting the  
21 sum of the amounts calculated under subdivisions (d), (e), and (f)  
22 from the sum of the amounts calculated under subdivisions (a), (b),  
23 and (c). Subject to the limitation in subsection (1), for the 2009  
24 tax year and each tax year after 2009, a taxpayer may claim a  
25 credit against the tax imposed by this act equal to 2.9% multiplied  
26 by the result of subtracting the sum of the amounts calculated  
27 under subdivisions (d), (e), and (f) from the sum of the amounts

1 calculated under subdivisions (a), (b), and (c):

2 (a) Calculate the cost, including fabrication and  
3 installation, paid or accrued in the taxable year of tangible  
4 assets of a type that are, or under the internal revenue code will  
5 become, eligible for depreciation, amortization, or accelerated  
6 capital cost recovery for federal income tax purposes, provided  
7 that the assets are physically located in this state for use in a  
8 business activity in this state and are not mobile tangible assets.

9 (b) Calculate the cost, including fabrication and  
10 installation, paid or accrued in the taxable year of mobile  
11 tangible assets of a type that are, or under the internal revenue  
12 code will become, eligible for depreciation, amortization, or  
13 accelerated capital cost recovery for federal income tax purposes.  
14 This amount shall be multiplied by the apportionment factor for the  
15 tax year as prescribed in chapter 3.

16 (c) For tangible assets, other than mobile tangible assets,  
17 purchased or acquired for use outside of this state in a tax year  
18 beginning after December 31, 2007 and subsequently transferred into  
19 this state and purchased or acquired for use in a business  
20 activity, calculate the federal basis used for determining gain or  
21 loss as of the date the tangible assets were physically located in  
22 this state for use in a business activity plus the cost of  
23 fabrication and installation of the tangible assets in this state.

24 (d) If the cost of tangible assets described in subdivision  
25 (a) was paid or accrued in a tax year beginning after December 31,  
26 2007, or before December 31, 2007 to the extent the credit is used  
27 and at the rate at which the credit was used under former 1975 PA

1 228 or this act, calculate the gross proceeds or benefit derived  
2 from the sale or other disposition of the tangible assets minus the  
3 gain, multiplied by the apportionment factor for the taxable year  
4 as prescribed in chapter 3, and plus the loss, multiplied by the  
5 apportionment factor for the taxable year as prescribed in chapter  
6 3 from the sale or other disposition reflected in federal taxable  
7 income and minus the gain from the sale or other disposition added  
8 to the business income tax base in section 201.

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

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

27 (4) For a tax year in which the amount of the credit

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1 calculated under subsection (3) is negative, the absolute value of  
2 that amount is added to the taxpayer's tax liability for the tax  
3 year.

4 (5) A taxpayer that claims a credit under this section is not  
5 prohibited from claiming a credit under section 405. However, the  
6 taxpayer shall not claim a credit under this section and section  
7 405 based on the same costs and expenses.

8 (6) FOR A TAXPAYER PRIMARILY ENGAGED IN FURNISHING ELECTRIC  
9 AND GAS UTILITY SERVICE THAT MAKES CAPITAL INVESTMENTS IN ELECTRIC  
10 AND GAS DISTRIBUTION ASSETS FOR WHICH A PORTION OF THE CREDIT  
11 PROVIDED UNDER SUBSECTION (3) WOULD BE DENIED FOR THE 2008 TAX YEAR  
12 BY REASON OF THE 50% LIMITATION OF SUBSECTION (1), THE 50%  
13 LIMITATION ON THE TOTAL COMBINED CREDIT FOR THE 2008 TAX YEAR  
14 PROVIDED IN SUBSECTION (1) SHALL BE INCREASED BY AN AMOUNT NOT TO  
15 EXCEED THE LESSER OF THE AMOUNT OF THE DENIED CREDIT OR 50% OF THE  
16 TAX <<INCREASE>> UNDER THIS ACT <<ACCRUED FOR FINANCIAL REPORTING  
PURPOSES>> DUE TO THE ELIMINATION OF THE DEDUCTION  
17 UNDER SECTION 168<<(K)>> OF THE INTERNAL REVENUE CODE BY THE AMENDATORY  
18 ACT THAT ADDED THIS SUBSECTION. PROVIDED, HOWEVER, THAT THE TOTAL  
19 COMBINED CREDIT ALLOWED UNDER THIS SECTION FOR THE 2008 TAX YEAR  
20 SHALL NOT EXCEED 80% OF THE TAX LIABILITY IMPOSED UNDER THIS ACT  
21 AFTER THE IMPOSITION AND LEVY OF THE SURCHARGE UNDER SECTION 281.

22 SEC. 461. FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2008 AND  
23 ENDING BEFORE JANUARY 1, 2011, A TAXPAYER OTHER THAN A REGULATED  
24 UTILITY MAY CLAIM A CREDIT UNDER THIS ACT EQUAL TO 0.42% OF THE  
25 AMOUNT OF THE DEDUCTION CLAIMED FOR THE 2008 TAX YEAR FOR BONUS  
26 DEPRECIATION UNDER SECTION 168(K) OF THE INTERNAL REVENUE CODE  
27 APPORTIONED AS THE TAX BASE IS APPORTIONED UNDER THIS ACT. IF THE

1 AMOUNT OF THE CREDIT EXCEEDS THE LIABILITY OF THE TAXPAYER, THE  
2 EXCESS SHALL NOT BE REFUNDED BUT MAY BE CARRIED FORWARD FOR 10  
3 YEARS OR UNTIL USED UP, WHICHEVER OCCURS FIRST.

4 Enacting section 1. This amendatory act is retroactive and is  
5 effective January 1, 2008.

6 Enacting section 2. This amendatory act does not take effect  
7 unless Senate Bill No. 1038 of the 94th Legislature is enacted into  
8 law.