

SUBSTITUTE FOR
HOUSE BILL NO. 5408

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending the title and sections 265, 403, 447, 515, and 601 (MCL
208.1265, 208.1403, 208.1447, 208.1515, and 208.1601) and by adding
chapter 2C; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to ~~provide~~ **MEET DEFICIENCIES IN STATE FUNDS BY**
PROVIDING for the imposition, levy, computation, collection,
assessment, reporting, payment, and enforcement of taxes on certain
commercial, business, and financial activities; to prescribe the
powers and duties of public officers and state departments; to
provide for the inspection of certain taxpayer records; to provide

1 for interest and penalties; to provide exemptions, credits, and
2 refunds; to provide for the disposition of funds; to provide for
3 the interrelation of this act with other acts; and to make
4 appropriations.

5 Sec. 265. (1) For a financial institution, tax base means the
6 financial institution's net capital. Net capital means equity
7 capital as computed in accordance with generally accepted
8 accounting principles less goodwill ~~arising from purchase~~
9 ~~accounting adjustments for transactions that occurred after July 1,~~
10 ~~2007,~~ and the book value of United States obligations and Michigan
11 obligations. If the financial institution does not maintain its
12 books and records in accordance with generally accepted accounting
13 principles, net capital shall be computed in accordance with the
14 books and records used by the financial institution, so long as the
15 method fairly reflects the financial institution's net capital for
16 purposes of the tax levied by this chapter. Net capital does not
17 include up to 125% of the minimum regulatory capitalization
18 requirements of a person subject to the tax imposed under chapter
19 2A.

20 (2) Net capital shall be determined by adding the financial
21 institution's net capital as of the close of the current tax year
22 and preceding 4 tax years and dividing the resulting sum by 5. If a
23 financial institution has not been in existence for a period of 5
24 tax years, net capital shall be determined by adding together the
25 financial institution's net capital for the number of tax years the
26 financial institution has been in existence and dividing the
27 resulting sum by the number of years the financial institution has

1 been in existence. For purposes of this section, a partial year
2 shall be treated as a full year.

3 (3) For purposes of this section, each of the following
4 applies:

5 (a) A change in identity, form, or place of organization of 1
6 financial institution shall be treated as if a single financial
7 institution had been in existence for the entire tax year in which
8 the change occurred and each tax year after the change.

9 (b) The combination of 2 or more financial institutions into 1
10 shall be treated as if the constituent financial institutions had
11 been a single financial institution in existence for the entire tax
12 year in which the combination occurred and each tax year after the
13 combination, and the book values and deductions for United States
14 obligations and Michigan obligations of the constituent
15 institutions shall be combined. A combination shall include any
16 acquisition required to be accounted for by the surviving financial
17 institution in accordance with generally accepted accounting
18 principles or a statutory merger or consolidation.

19 **CHAPTER 2C**

20 **SEC. 281. (1) IN ADDITION TO THE TAXES IMPOSED AND LEVIED**
21 **UNDER THIS ACT AND SUBJECT TO THE LIMITATIONS PROVIDED UNDER**
22 **SUBSECTIONS (2) AND (3), TO MEET DEFICIENCIES IN STATE FUNDS AN**
23 **ANNUAL SURCHARGE IS IMPOSED AND LEVIED ON EACH TAXPAYER EQUAL TO**
24 **THE FOLLOWING PERCENTAGE OF THE TAXPAYER'S TAX LIABILITY UNDER THIS**
25 **ACT AFTER ALLOCATION OR APPORTIONMENT TO THIS STATE UNDER THIS ACT**
26 **BUT BEFORE CALCULATION OF THE VARIOUS CREDITS AVAILABLE UNDER THIS**
27 **ACT:**

1 (A) FOR EACH TAXPAYER OTHER THAN A PERSON SUBJECT TO THE TAX
2 IMPOSED AND LEVIED UNDER CHAPTER 2B:

3 (i) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2007 AND BEFORE
4 JANUARY 1, 2009, 32.9%.

5 (ii) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2008, 27.3%.

6 (B) FOR A PERSON SUBJECT TO THE TAX IMPOSED AND LEVIED UNDER
7 CHAPTER 2B:

8 (i) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2007 AND BEFORE
9 JANUARY 1, 2009, 27.7%.

10 (ii) FOR TAX YEARS ENDING AFTER DECEMBER 31, 2008, 23.4%.

11 (2) THE AMOUNT OF THE SURCHARGE IMPOSED AND LEVIED ON ANY
12 TAXPAYER UNDER SUBSECTION (1) (A) SHALL NOT EXCEED \$2,000,000.00 FOR
13 ANY SINGLE TAX YEAR.

14 (3) THE SURCHARGE IMPOSED AND LEVIED UNDER THIS SECTION DOES
15 NOT APPLY TO A PERSON SUBJECT TO THE TAX IMPOSED AND LEVIED UNDER
16 CHAPTER 2A.

17 (4) THE SURCHARGE IMPOSED AND LEVIED UNDER THIS SECTION SHALL
18 CONSTITUTE A PART OF THE TAX IMPOSED UNDER THIS ACT AND SHALL BE
19 ADMINISTERED, COLLECTED, AND ENFORCED AS PROVIDED UNDER THIS ACT.

20 Sec. 403. (1) Notwithstanding any other provision in this act,
21 the credits provided in this section shall be taken before any
22 other credit under this act. The total combined credit allowed
23 under this section shall not exceed 65% of the total tax liability
24 imposed under this act.

25 (2) Subject to the limitation in subsection (1), a taxpayer
26 may claim a credit against the tax imposed by this act equal to
27 0.370% of the taxpayer's compensation in this state. For purposes

1 of this subsection, a taxpayer includes a person **SUBJECT TO THE TAX**
2 **IMPOSED UNDER CHAPTER 2B AND A PERSON** described in section 239(2)
3 and subject to the tax imposed under chapter 2A. A professional
4 employer organization shall not include payments by the
5 professional employer organization to the officers and employees of
6 a client of the professional employer organization whose employment
7 operations are managed by the professional employer organization. A
8 client may include payments by the professional employer
9 organization to the officers and employees of the client whose
10 employment operations are managed by the professional employer
11 organization.

12 (3) Subject to the limitation in subsection (1), a taxpayer
13 may claim a credit against the tax imposed by this act equal to
14 2.9% multiplied by the result of subtracting the sum of the amounts
15 calculated under subdivisions (d), (e), and (f) from the sum of the
16 amounts calculated under subdivisions (a), (b), and (c):

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

24 (b) Calculate the cost, including fabrication and
25 installation, paid or accrued in the taxable year of mobile
26 tangible assets of a type that are, or under the internal revenue
27 code will become, eligible for depreciation, amortization, or

1 accelerated capital cost recovery for federal income tax purposes.
2 This amount shall be multiplied by the apportionment factor for the
3 tax year as prescribed in chapter 3.

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

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

24 (e) If the cost of tangible assets described in subdivision
25 (b) 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 and plus the loss from the sale or other disposition reflected
4 in federal taxable income and minus the gain from the sale or other
5 disposition added to the business income tax base in section 201.
6 This amount shall be multiplied by the apportionment factor for the
7 tax year as prescribed in chapter 3.

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

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

19 (5) A taxpayer that claims a credit under this section is not
20 prohibited from claiming a credit under section 405. However, the
21 taxpayer shall not claim a credit under this section and section
22 405 based on the same costs and expenses.

23 Sec. 447. (1) An eligible taxpayer may claim a credit against
24 the tax imposed by this act equal to ~~0.535%~~ **1.0%** of the taxpayer's
25 compensation in this state. ~~, not to exceed \$4,500,000.00.~~ **IF THE**
26 **LIMITATION ON THE AMOUNT OF THE SURCHARGE THAT MAY BE LEVIED AND**
27 **IMPOSED UPON AN ELIGIBLE TAXPAYER UNDER SECTION 281(1)(A) IS**

1 \$2,000,000.00 OR LESS, THEN THE AMOUNT OF THE CREDIT ALLOWED UNDER
2 THIS SECTION SHALL NOT EXCEED \$4,500,000.00.

3 (2) If the amount of the credit allowed under this section
4 exceeds the tax liability of the taxpayer for the tax year, that
5 excess shall not be refunded and shall not be carried forward as an
6 offset to the tax liability in subsequent tax years.

7 (3) A taxpayer that claims a credit under this section shall
8 not claim a credit under section 449.

9 (4) As used in this section, "eligible taxpayer" means a
10 taxpayer that meets all of the following conditions:

11 (a) Operates at least 17,000,000 square feet of enclosed
12 retail space and 2,000,000 square feet of enclosed warehouse space
13 in this state.

14 (b) Sells all of the following at retail:

15 (i) Fresh, frozen, or processed food, food products, or
16 consumable necessities:

17 (ii) Prescriptions and over-the-counter medications.

18 (iii) Health and beauty care products.

19 (iv) Cosmetics.

20 (v) Pet products.

21 (vi) Carbonated beverages.

22 (vii) Beer, wine, or liquor.

23 (c) Sales of the items listed in subdivision (b) represent
24 more than 35% of the taxpayer's total sales in the tax year.

25 (d) Maintains its headquarters operation in this state.

26 Sec. 515. (1) In fiscal year 2007-2008, ~~\$136,000,000.00~~
27 \$341,000,000.00 of the revenue collected under this act shall be

1 distributed to the school aid fund and the balance shall be
 2 deposited into the general fund. In fiscal year 2008-2009,
 3 ~~\$479,000,000.00~~ **\$729,000,000.00** of the revenue collected under this
 4 act shall be distributed to the school aid fund and the balance
 5 shall be deposited into the general fund. For each fiscal year
 6 after the 2008-2009 fiscal year, that amount from the immediately
 7 preceding fiscal year as adjusted by an amount equal to the growth
 8 in the United States consumer price index in the immediately
 9 preceding year shall be distributed to the school aid fund and the
 10 balance shall be deposited into the general fund.

11 (2) As used in this section, "United States consumer price
 12 index" means the United States consumer price index for all urban
 13 consumers as defined and reported by the United States department
 14 of labor, bureau of labor statistics.

15 Sec. 601. (1) For the 2008 fiscal year, except as otherwise
 16 provided under subsection ~~(4)~~ **(5)**, if total net cash payments from
 17 the tax imposed **AND LEVIED** under this act plus any net cash
 18 payments from former 1975 PA 228 less any net cash payments made by
 19 insurance companies under ~~either act~~ **THIS ACT OR FORMER 1975 PA 228**
 20 exceed ~~\$2,398,000,000.00, 50% of that~~ **\$2,796,000,000.00, THE** excess
 21 shall be refunded in the immediately succeeding fiscal year as
 22 provided in subsection **(6)**. ~~(5) and the remaining 50% shall be~~
 23 ~~deposited into the countercyclical budget and economic~~
 24 ~~stabilization fund pursuant to section 353 of the management and~~
 25 ~~budget act, 1984 PA 431, MCL 18.1353.~~

26 (2) For the 2009 fiscal year, except as otherwise provided
 27 under subsection ~~(4)~~ **(5)**, if total net cash payments from the tax

1 imposed **AND LEVIED** under this act, excluding any revenue collected
2 pursuant to chapter 2A, exceed the fiscal year 2009 base, ~~50% of~~
3 ~~that~~ ~~THE~~ excess shall be refunded in the immediately succeeding
4 fiscal year as provided in subsection (6). ~~(5) and the remaining~~
5 ~~50% shall be deposited into the countercyclical budget and economic~~
6 ~~stabilization fund pursuant to section 353 of the management and~~
7 ~~budget act, 1984 PA 431, MCL 18.1353.~~ To calculate the fiscal year
8 2009 base, **THE DEPARTMENT SHALL** multiply ~~\$2,398,000,000.00~~
9 **\$3,238,000,000.00** by 1.01 and then multiply this product by 2009
10 fiscal year Michigan personal income divided by 2008 fiscal year
11 Michigan personal income.

12 (3) For the 2010 fiscal year, except as otherwise provided
13 under subsection ~~(4)~~ ~~(5)~~, if total net cash payments from the tax
14 imposed **AND LEVIED** under this act, excluding any revenue collected
15 pursuant to chapter 2A, exceed the fiscal year 2010 base, ~~50% of~~
16 ~~that~~ ~~THE~~ excess shall be refunded in the immediately succeeding
17 fiscal year as provided in subsection (6). ~~(5) and the remaining~~
18 ~~50% shall be deposited into the countercyclical budget and economic~~
19 ~~stabilization fund pursuant to section 353 of the management and~~
20 ~~budget act, 1984 PA 431, MCL 18.1353.~~ To calculate the fiscal year
21 2010 base, **THE DEPARTMENT SHALL** multiply ~~\$2,398,000,000.00~~
22 **\$3,180,000,000.00** by 1.0201 and then multiply this product by 2010
23 fiscal year Michigan personal income divided by 2008 fiscal year
24 Michigan personal income.

25 (4) **FOR EACH FISCAL YEAR AFTER FISCAL YEAR 2010, EXCEPT AS**
26 **OTHERWISE PROVIDED IN SUBSECTION (5), IF TOTAL NET CASH PAYMENTS**
27 **FROM THE TAX IMPOSED AND LEVIED UNDER THIS ACT, EXCLUDING ANY**

1 REVENUE COLLECTED PURSUANT TO CHAPTER 2A, EXCEED THE FISCAL YEAR
 2 BASE, THE EXCESS SHALL BE REFUNDED IN THE IMMEDIATELY SUCCEEDING
 3 FISCAL YEAR AS PROVIDED IN SUBSECTION (6). TO CALCULATE THE FISCAL
 4 YEAR BASE, THE DEPARTMENT SHALL MULTIPLY THE FISCAL YEAR BASE FOR
 5 THE IMMEDIATELY PRECEDING FISCAL YEAR BY 1.01 AND THEN BY A
 6 FRACTION THE NUMERATOR OF WHICH IS FISCAL YEAR PERSONAL INCOME FOR
 7 THE FISCAL YEAR FOR WHICH THE CALCULATION IS BEING PERFORMED AND
 8 THE DENOMINATOR OF WHICH IS FISCAL YEAR PERSONAL INCOME FOR THE
 9 FISCAL YEAR PRECEDING THE FISCAL YEAR FOR WHICH THE CALCULATION IS
 10 BEING PERFORMED.

11 (5) ~~(4)~~—If the amount of the total net cash payments collected
 12 from the tax imposed **AND LEVIED** under this act, excluding any
 13 revenue collected pursuant to chapter 2A, exceeds the amount
 14 described in the applicable subsection by less than \$5,000,000.00,
 15 then all of that excess shall be deposited into the countercyclical
 16 budget and economic stabilization fund ~~pursuant to section 353~~
 17 **CREATED UNDER SECTION 351** of the management and budget act, 1984 PA
 18 431, ~~MCL 18.1353~~ **MCL 18.1351**.

19 (6) ~~(5)~~ **FOR THE 2008 FISCAL YEAR, THE** refund available
 20 **AUTHORIZED** under subsection (1), (2), ~~or~~ (3), **OR (4)** shall be
 21 applied pro rata to the taxpayers that made positive net cash
 22 payments during the fiscal year. The taxpayer's pro rata share
 23 shall be the total amount to be refunded under subsection (1), (2),
 24 ~~or~~ (3), **OR (4)** multiplied by a fraction the numerator of which is
 25 the positive net payments made by the taxpayer during the fiscal
 26 year and the denominator of which is the sum of the positive net
 27 cash payments made by all taxpayers during the fiscal year. **FOR**

1 EACH FISCAL YEAR AFTER THE 2008 FISCAL YEAR, THE REFUND AUTHORIZED
2 UNDER SUBSECTION (1), (2), (3), OR (4) SHALL BE APPLIED PRO RATA TO
3 THE TAXPAYERS THAT HAD A SURCHARGE LIABILITY IMPOSED AND LEVIED
4 UNDER SECTION 281 DURING THE IMMEDIATELY PRECEDING FISCAL YEAR. THE
5 TAXPAYER'S PRO RATA SHARE SHALL BE THE TOTAL AMOUNT TO BE REFUNDED
6 UNDER SUBSECTION (1), (2), (3), OR (4) MULTIPLIED BY A FRACTION THE
7 NUMERATOR OF WHICH IS THE SURCHARGE LIABILITY IMPOSED AND LEVIED ON
8 THE TAXPAYER UNDER SECTION 281 DURING THE IMMEDIATELY PRECEDING
9 FISCAL YEAR AND THE DENOMINATOR OF WHICH IS THE SUM OF ALL
10 SURCHARGE LIABILITIES IMPOSED ON ALL TAXPAYERS UNDER SECTION 281
11 DURING THE IMMEDIATELY PRECEDING FISCAL YEAR.

12 (7) ~~(6)~~—As used in this section:

13 (a) "Fiscal year" means the state fiscal year that commences
14 October 1 and continues through September 30.

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

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

1 Enacting section 1. (1) Sections 353c, 353e, and 353f of the
2 management and budget act, 1984 PA 431, MCL 18.1353c, 18.1353e, and
3 18.1353f, are repealed.

4 (2) Section 3d of the use tax act, 1937 PA 94, MCL 205.93d, is
5 repealed immediately after it takes effect on December 1, 2007.

6 Enacting section 2. Section 281 of the Michigan business tax
7 act, 2007 PA 36, MCL 208.1281, as added by this amendatory act, and
8 sections 265, 403, 447, 515, and 601 of the Michigan business tax
9 act, 2007 PA 36, MCL 208.1265, 208.1403, 208.1447, 208.1515, and
10 208.1601, as amended by this amendatory act, take effect January 1,
11 2008 and apply to all business activity occurring after December
12 31, 2007.