HOUSE BILL No. 5794

February 9, 2010, Introduced by Reps. Hansen, Rick Jones, Proos, Schuitmaker, Haveman, Booher, Meltzer, Moore, Marleau and Meekhof and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled

"Michigan business tax act,"

by amending section 415 (MCL 208.1415).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 415. (1) A taxpayer that meets the criteria under subsection ~~(4)~~ **(5)** and that is a qualified start-up business that does not have business income for 2 consecutive tax years may claim a credit against the tax imposed under this act for the second of those 2 consecutive tax years and each immediately following consecutive tax year in which the taxpayer does not have business income equal to the taxpayer's tax liability for the tax year in which the taxpayer has no business income. If the taxpayer has business income in any tax year after the credit under this section

HOUSE BILL No. 5794

is claimed, the taxpayer shall claim the credit under this section for any following tax year only if the taxpayer subsequently has no business income for 2 consecutive tax years. The taxpayer may claim the credit for the second of those 2 consecutive tax years and each immediately following consecutive tax year in which the taxpayer does not have business income.

(2) A credit under this section shall not be claimed for more than a total of 5 tax years.

(3) A taxpayer that qualified to claim the credit under section 31a of former 1975 PA 228 may claim the credit under this section for a total of 5 years, reduced by the number of years the taxpayer was eligible to claim the credit under section 31a of former 1975 PA 228.

(4) If a taxpayer that took the credit under this section or under former 1975 PA 228 has no business activity in this state and has any business activity outside of this state for any of the first 3 tax years after the last tax year for which it took the credit under this section, the taxpayer shall add to its tax liability the following amounts:

(a) If the taxpayer has no business activity in this state for the first tax year after the last tax year for which a credit under this section is claimed, 100% of the total of all credits claimed under this section.

(b) If the taxpayer has no business activity in this state for the second tax year after the last tax year for which a credit under this section is claimed, 67% of the total of all credits claimed under this section.

(c) If the taxpayer has no business activity for the third tax year after the last tax year for which a credit under this section is claimed, 33% of the total of all credits claimed under this section.

(5) For the tax year for which a credit under this section is claimed, compensation, directors' fees, or distributive shares paid by the taxpayer to any 1 of the following shall not exceed $135,000.00:

(a) A shareholder or officer of a corporation other than an S corporation.

(b) A partner of a partnership or limited liability partnership.

(c) A shareholder of an S corporation.

(d) A member of a limited liability corporation.

(e) An individual who is an owner.

(6) As used in this section:

(a) "Business income" means business income as defined in section 105 excluding funds received from small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) "Michigan economic development corporation" means the public body corporate created under section 28 of article VII of the state constitution of 1963 and the urban cooperation act of

1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, as amended, between local participating economic development corporations formed under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan strategic fund.

(c) "Qualified start-up business" means a business that meets all of the following criteria as certified annually by the Michigan economic development corporation:

(*i*) Has fewer than 25 full-time equivalent employees.

(*ii*) Has sales of less than $1,000,000.00 in the tax year for which the credit under this section is claimed.

(*iii*) ~~Research~~ **FOR TAX YEARS THAT BEGIN BEFORE JANUARY 1, 2010, RESEARCH** and development expenses make up at least 15% of its expenses in the tax year for which the credit under this section is claimed.

(*iv*) Is not publicly traded.

(*v*) Met 1 of the following criteria during 1 of the initial 2 consecutive tax years in which the qualified start-up business had no business income:

(A) During the immediately preceding 7 years was in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19.

(B) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had employees and was liable under the Michigan employment security act, 1936 (Ex

Sess) PA 1, MCL 421.1 to 421.75.

(C) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had not assumed successor liability under section 15(g) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

(d) "Research and development" means qualified research as that term is defined in section 41(d) of the internal revenue code.

Enacting section 1. This amendatory act is retroactive and effective January 1, 2010 and applies to all taxes levied after December 31, 2009.