

Act No. 209
Public Acts of 2011
Approved by the Governor
October 25, 2011
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Rep. Gilbert

ENROLLED HOUSE BILL No. 4947

AN ACT to amend 2007 PA 36, entitled “An act to 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 for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations,” by amending sections 107, 117, 431, 500, and 503 (MCL 208.1107, 208.1117, 208.1431, 208.1500, and 208.1503), sections 107 and 117 as amended and section 500 as added by 2011 PA 39, section 431 as amended by 2009 PA 126, and section 503 as amended by 2009 PA 185.

The People of the State of Michigan enact:

Sec. 107. (1) “Certificated credit” means any of the following:

(a) A tax voucher certificate that has been issued to a taxpayer under an agreement entered into before January 1, 2012 under section 419 or section 23 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2253.

(b) A credit for which a preapproval letter has been issued to a qualified taxpayer under section 437 before January 1, 2012 to the extent the credit has not been fully claimed or paid prior to January 1, 2012.

(c) A credit for which a taxpayer or a qualified taxpayer has entered into an agreement with the Michigan economic growth authority under sections 430, 431, 431a, 431b, 431c, 432, 434, or 450 before January 1, 2012 to the extent the credit has not been fully claimed or paid prior to January 1, 2012.

(d) A credit for which a taxpayer or eligible production company has entered into an agreement with the Michigan film office with the concurrence of the state treasurer under section 455 or 457 before January 1, 2012 to the extent the credit has not been fully claimed or paid before January 1, 2012.

(e) A credit for which a qualified taxpayer has received a part 2 approval, approved rehabilitation plan, approved high community impact rehabilitation plan, or preapproval letter from the state historic preservation office under section 435 before January 1, 2012 to the extent the credit has not been fully claimed or paid before January 1, 2012.

(f) A credit under section 433 but only for a taxpayer that has a development agreement executed between a taxpayer and the Michigan strategic fund before January 1, 2012 or for a taxpayer that has entered into a qualified collaborative agreement under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, before January 1, 2012. As used in this subsection, “qualified collaborative agreement” means that term as defined in section 8d of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2688d.

(g) A credit applicable to this act granted under section 36109 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36109.

(h) A credit allowed a taxpayer under section 409 if the taxpayer has met the capital expenditure requirements under section 409(4).

(2) "Client" means an entity whose employment operations are managed by a professional employer organization.

(3) "Compensation" means all wages, salaries, fees, bonuses, commissions, other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayers, and any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to a pension, retirement, or profit sharing plan other than those payments attributable to unfunded accrued actuarial liabilities, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payment of fees for the administration of health and welfare and noninsured benefit plans. Compensation for a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, includes payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers.

(b) Except as otherwise provided in this subsection, payments to an independent contractor.

(c) Payments to state and federal unemployment compensation funds.

(d) The employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) Payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to 45 USC 51 to 60.

(4) "Corporation" means a taxpayer that is required or has elected to file as a corporation under the internal revenue code.

(5) "Department" means the department of treasury.

Sec. 117. (1) "Tangible personal property" means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) "Tax" means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) "Tax-exempt person" means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

(a) An organization exempt under section 501(c)(12) or (16) of the internal revenue code.

(b) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code but for its failure to meet the requirement in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(4) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act and except as otherwise provided under this subsection, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2008, then those referenced tax years are deemed those same tax years during which former 1975 PA 228 was in effect. A taxpayer that has a fiscal tax year ending after December 31, 2011 is considered to have 2 separate tax years as follows: the first tax year is for the fractional part of the fiscal tax year before January 1, 2012, and the second tax year is for the fractional part of the fiscal tax year after December 31, 2011. Each short period tax return filed for each fractional part of the fiscal year pursuant to this subsection is considered an annual return under section 505.

(5) "Taxpayer" means, through December 31, 2011, a person or a unitary business group liable for a tax, interest, or penalty under this act. Beginning January 1, 2012, taxpayer means either of the following:

(a) A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, and that elects under section 500 to file a return and pay the tax imposed under this act, if any.

(b) A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act, if any. If a person or unitary business group that elects under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act is part of a unitary business group as defined under this act, the unitary business group as defined under this act shall file the return and pay the tax, if any, under this act.

(6) "Unitary business group" means a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

(7) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(8) "Unrelated business activity" means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

Sec. 431. (1) Except as otherwise provided under this subsection, for a period of time not to exceed 20 years as determined by the Michigan economic growth authority, a taxpayer that is an authorized business may claim a credit against the tax imposed by this act equal to the amount certified each year by the Michigan economic growth authority as follows:

(a) Except as otherwise provided under this subdivision, for an authorized business for the tax year, an amount not to exceed the payroll of the authorized business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate; beginning after April 28, 2008, for an authorized business for the tax year, an amount not to exceed the sum of the payroll and health care benefits of the authorized business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate.

(b) For an eligible business as determined under section 8(5)(a) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount not to exceed 50% of the payroll of the authorized business attributable to employees who perform retained jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the tax year.

(c) For an eligible business as determined under section 8(5)(b) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount not to exceed the payroll of the authorized business attributable to employees who perform retained jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the tax year.

(d) For an authorized business that is a qualified high-technology business, for a period of time not to exceed 7 years as determined by the Michigan economic growth authority, an amount not to exceed 200% of the sum of the payroll and health care benefits of the qualified high-technology business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, for the first 3 tax years of the credit, multiplied by the tax rate and, for each of the remaining tax years of the credit, an amount not to exceed 100% of the sum of the payroll and health care benefits of the qualified high-technology business attributable to employees who perform qualified new jobs as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate.

(e) For an authorized business as determined under section 8(9) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount up to, but not to exceed 100% of, the sum of the payroll and health care benefits of the authorized business attributable to employees who perform retained jobs multiplied by a fraction, the numerator of which is the amount of new capital investment made at the facility and the denominator of which is the product of the number of retained jobs multiplied by \$100,000.00, and then multiplied by the tax rate for the tax year.

(f) For an authorized business as determined under section 8(11) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.808, an amount not to exceed 100% of the sum of the payroll and health care benefits of the authorized business attributable to employees who perform new full-time jobs and retained jobs as determined under

the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, multiplied by the tax rate for the tax year.

(2) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the annual return filed under this act on which a credit under this section is claimed.

(3) The certificate required by subsection (2) shall state all of the following:

(a) The taxpayer is an authorized business.

(b) The amount of the credit under this section for the authorized business for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan department of treasury number assigned to the taxpayer.

(4) The Michigan economic growth authority may certify a credit under this section based on an agreement entered into prior to January 1, 2008 pursuant to section 37c of former 1975 PA 228. The number of years for which the credit may be claimed under this section shall equal the maximum number of years designated in the resolution reduced by the number of years for which a credit has been claimed or could have been claimed under section 37c of former 1975 PA 228.

(5) If the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, that portion of the credit that exceeds the tax liability of the taxpayer shall be refunded.

(6) Except as otherwise provided under this subsection, a taxpayer that claims a credit under subsection (1) or section 37c or 37d of former 1975 PA 228, that has an agreement with the Michigan economic growth authority based on qualified new jobs as defined in section 3(q)(ii) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803, and that removes from this state 51% or more of those qualified new jobs within 3 years after the first year in which the taxpayer claims a credit described in this subsection shall pay to the department no later than 12 months after those qualified new jobs are removed from the state an amount equal to the total of all credits described in this subsection that were claimed by the taxpayer. Beginning after April 28, 2008, a taxpayer that claims a credit under subsection (1) and subsequently fails to meet the requirements of this section or any other conditions included in an agreement entered into with the Michigan economic growth authority in order to obtain a certificate for the credit claimed under this section or removes any of the qualified new jobs from this state during the term of the written agreement and for a period of years after the term of the written agreement, as determined by the Michigan economic growth authority, may have its credit reduced or terminated or have a percentage of the credit amount previously claimed under this section added back to the tax liability of the taxpayer in the tax year that the taxpayer fails to comply with this section or the agreement.

(7) If the Michigan economic growth authority or a designee of the Michigan economic growth authority requests that a taxpayer that claims the credit under this section get a statement prepared by a certified public accountant verifying that the actual number of new jobs created is the same number of new jobs used to calculate the credit under this section, the taxpayer shall get the statement and attach that statement to its annual return under this act on which the credit under this section is claimed. For compliance reporting purposes, a taxpayer that claims the credit under this section for health care benefits may report to the Michigan economic growth authority the aggregate cost of applicable employer-sponsored coverage applicable to employees who perform qualified new jobs and employees who perform retained jobs, as determined by the Michigan economic growth authority.

(8) A credit shall not be claimed by a taxpayer under this section if the taxpayer's initial certification as required in subsection (3) is issued after December 31, 2013.

(9) For the 2010 calendar year and each calendar year after 2010, the total amount of all credits allowed to be claimed in the first year of all new written agreements approved in that calendar year under this section shall not exceed \$95,000,000.00.

(10) For purposes of this section, taxpayer includes a person subject to the tax imposed under chapter 2A and a person subject to the tax imposed under chapter 2B.

(11) As used in this section:

(a) "Authorized business", "facility", "full-time job", "qualified high-technology business", "retained jobs", and "written agreement" mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(b) "Health care benefits" means, as determined by the Michigan economic growth authority, all costs paid for a self-funded health care benefit plan or for an expense-incurred hospital, medical, or surgical policy or certificate, nonprofit health care corporation certificate, or health maintenance organization contract. Health care benefit does not include accident-only, credit, dental, or disability income insurance; long-term care insurance; coverage issued as a supplement to liability insurance; coverage only for a specified disease or illness; worker's compensation or similar insurance; or automobile medical payment insurance.

(c) "Michigan economic growth authority" means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(d) "Payroll" means the total salaries and wages before deducting any personal or dependency exemptions.

(e) "Qualified new jobs" means 1 or more of the following:

(i) The average number of full-time jobs at a facility of an authorized business for a tax year in excess of the average number of full-time jobs the authorized business maintained in this state prior to the expansion or location as that is determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(ii) The average number of full-time jobs at a facility created by an eligible business up to 90 days before becoming an authorized business that is in excess of the average number of full-time jobs that the business maintained in this state up to 90 days before becoming an authorized business, as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(f) "Tax rate" means the rate imposed under section 51 of the income tax act of 1967, 1967 PA 281, MCL 206.51, for the tax year in which the tax year of the taxpayer for which the credit is being computed begins.

Sec. 500. (1) Except as otherwise provided in subsection (2), a taxpayer described under section 117(5)(a) or under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, that voluntarily elects for the taxpayer's first tax year ending after December 31, 2011 to file a return and pay the tax imposed by this act in order to claim a certificated credit or any unused carryforward for that tax year shall continue to file a return and pay the tax imposed under this act for each tax year thereafter until that certificated credit and any carryforward from that credit is used up. If a person awarded a certificated credit is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under this act and claim the certificated credit. If the taxpayer that elects to file a return and pay the tax imposed by this act in order to claim a certificated credit or any unused carryforward of that credit for that tax year is a unitary business group, the return filed by the unitary business group shall include all persons included in the unitary business group regardless of whether that person is incorporated.

(2) A taxpayer with a certificated credit under section 435 or 437, which certificated credit or any unused carryforward may be claimed in a tax year ending after December 31, 2011 may elect to pay the tax imposed by this act in the tax year in which that certificated credit may be claimed in lieu of the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713. If a person with a certificated credit under section 435 or 437 that elects under this subsection to pay the tax imposed by this act is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under this act and claim that certificated credit.

(3) A taxpayer with a certificated credit under section 435 or 437 that elects under subsection (2) after the taxpayer's first tax year ending after December 31, 2011 to pay the tax imposed by this act may claim any other certificated credit that taxpayer would be eligible for in the year in which the taxpayer claims a certificated credit under section 435 or 437, but not any certificated credit that would have accrued in any year before the election under subsection (2). A taxpayer with a certificated credit under section 437(10) that elects under subsection (2) after the taxpayer's first tax year after December 31, 2011 to pay the tax imposed by this act shall continue to file a return and pay the tax imposed under this act for each tax year thereafter until the certificated credit under section 437(10) is complete and that credit is used up. When the taxpayer's certificated credit under section 435 or 437 that was the basis for the taxpayer's election under subsection (2) is extinguished, the taxpayer is no longer eligible to pay the tax under this act and may no longer claim any other remaining certificated credits.

(4) For tax years that begin after December 31, 2011, a taxpayer's tax liability under this act, after application of all credits, deductions, and exemptions, shall be the greater of the following:

(a) The amount of the taxpayer's tax liability under this act, notwithstanding the calculation required under this section, after application of all credits, deductions, and exemptions and any carryforward of any unused credit as prescribed in this act.

(b) An amount equal to the taxpayer's tax liability as computed pursuant to part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, after application of all credits, deductions, and exemptions under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, as if the taxpayer were subject to the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, less the amount of the taxpayer's certificated credits, including any unused carryforward of a certificated credit, that the taxpayer was allowed to claim for the tax year under this act. However, in calculating the amount under this subdivision, the following apply:

(i) A taxpayer described under section 117(5)(a) shall not include a deduction for any business loss under section 623(4) of the income tax act of 1967, 1967 PA 281, MCL 206.623, for any prior year in which the taxpayer was not subject to the tax levied under this act.

(ii) A taxpayer shall not include any nonrefundable certificated credit to the extent that credit exceeds the taxpayer's tax liability. Any nonrefundable credit remaining after application of the limitation in this subparagraph may be carried forward.

(iii) For a taxpayer that is a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the members.

(5) If the result of the calculation under subsection (4) is negative, the taxpayer shall be refunded that amount.

(6) A taxpayer with a certificated credit under section 435 or 437 that elects to pay the tax under this act may elect to claim a refundable credit as provided under section 510. If a refundable credit is claimed under section 510, that credit shall not be used to calculate a taxpayer's tax liability under subsection (4).

Sec. 503. (1) If a taxpayer's tax year to which this act applies ends before December 31, 2008 or if a taxpayer's first tax year is less than 12 months then a taxpayer subject to this act may elect to compute the tax imposed by this act for the portion of that tax year to which this act applies or that first tax year in accordance with 1 of the following methods:

(a) The tax may be computed as if this act were effective on the first day of the taxpayer's annual accounting period and the amount computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first tax year and the denominator of which is the number of months in the taxpayer's annual accounting period.

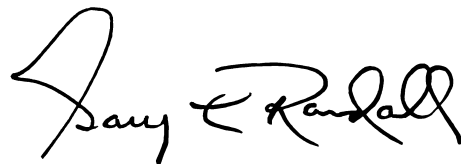
(b) The tax may be computed by determining the business income tax base and modified gross receipts tax base in the first tax year in accordance with an accounting method satisfactory to the department that reflects the actual business income tax base and modified gross receipts tax base attributable to the period.

(2) The method chosen by a taxpayer under this section that is subject to the tax imposed under this act and the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, for a portion of the same tax year shall be the same as the method used by that same taxpayer when computing the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, for the other portion of that same tax year.

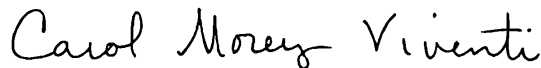
(3) A taxpayer that is subject to the tax imposed under this act and required to file 2 separate short period annual returns encompassing a fractional part of the taxpayer's same fiscal tax year shall elect to compute the tax imposed by this act for each short period return for each respective portion of the same fiscal tax year using the same method as provided under this section. A taxpayer that files 2 separate short period annual returns for a fractional part of the same year as provided under this subsection and section 117(4) shall calculate and claim its credits based on actions taken or payments made during the period represented on each short period return of those respective parts of the same tax year.

Enacting section 1. This amendatory act takes effect January 1, 2012.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor