

Act No. 126
Public Acts of 2004
Approved by the Governor
May 28, 2004
Filed with the Secretary of State
May 28, 2004
EFFECTIVE DATE: May 28, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Reps. Wenke, Huizenga, Howell, Koetje, Palsrok, Palmer and Drolet

ENROLLED HOUSE BILL No. 5331

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," (MCL 208.1 to 208.145) by adding section 31a.

The People of the State of Michigan enact:

Sec. 31a. (1) For tax years that begin after December 31, 2004, a taxpayer that meets the criteria under subsection (4) 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 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. A credit under this section shall not be claimed for more than a total of 5 tax years.

(2) If a taxpayer that took the credit under this section 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.

(3) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 CFR 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine number of employees, sales, and business income for purposes of this section on a consolidated basis.

(4) For the tax year for which a credit under this section is claimed, compensation, director's fees, or distributive shares paid by the taxpayer to any 1 of the following does 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.
- (5) As used in this section:

(a) "Business income" means business income as defined in section 3 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 and development 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:

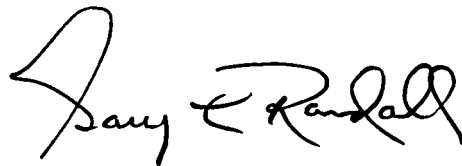
(A) During the immediately preceding 7 years was in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19.

(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.

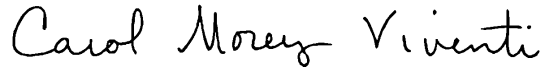
(C) During the immediately preceding 7 years would have been in 1 of the first 2 years of contribution liability under section 19 of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.19, if the qualified start-up business had not assumed successor liability under section 15(g) of the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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor