

# HOUSE BILL No. 5835

February 28, 2008, Introduced by Rep. Bieda and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled  
"Michigan business tax act,"  
by amending section 417 (MCL 208.1417).

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

1           Sec. 417. (1) The credit provided in this section shall be  
2 taken after the credits under sections 403 and 405 and before any  
3 other credit under this act and is available to any taxpayer with  
4 gross receipts that do not exceed \$20,000,000.00 and with adjusted  
5 business income minus the loss adjustment that does not exceed  
6 \$1,300,000.00 as adjusted annually for inflation using the Detroit  
7 consumer price index and subject to the following:

8           (a) An individual, a partnership, a limited liability company,  
9 or a subchapter S corporation is disqualified if the individual,  
10 any 1 partner of the partnership, any 1 member of the limited  
11 liability company, or any 1 shareholder of the subchapter S

1 corporation receives more than \$180,000.00 as a distributive share  
2 of the adjusted business income minus the loss adjustment of the  
3 individual, the partnership, the limited liability company, or the  
4 subchapter S corporation.

5 (b) A corporation other than a subchapter S corporation is  
6 disqualified if either of the following occur for the respective  
7 tax year:

8 (i) Compensation and directors' fees of a shareholder or  
9 officer exceed \$180,000.00.

10 (ii) The sum of the following amounts exceeds \$180,000.00:

11 (A) Compensation and directors' fees of a shareholder.

12 (B) The product of the percentage of outstanding ownership or  
13 of outstanding stock owned by that shareholder multiplied by the  
14 difference between the sum of business income and, to the extent  
15 deducted in determining federal taxable income, a carryback or a  
16 carryover of a net operating loss or capital loss, minus the loss  
17 adjustment.

18 (c) Subject to the reduction percentage determined under  
19 subsection (3), the credit determined under this subsection shall  
20 be reduced by the following percentages in the following  
21 circumstances:

22 (i) If an individual, any 1 partner of the partnership, any 1  
23 member of the limited liability company, or any 1 shareholder of  
24 the subchapter S corporation receives as a distributive share of  
25 adjusted business income minus the loss adjustment of the  
26 individual, partnership, limited liability company, or subchapter S  
27 corporation; if compensation and directors' fees of a shareholder

1 or officer of a corporation other than a subchapter S corporation  
2 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
3 is more than \$160,000.00 but less than \$165,000.00, the credit is  
4 reduced by 20%.

5 (ii) If an individual, any 1 partner of the partnership, any 1  
6 member of the limited liability company, or any 1 shareholder of  
7 the subchapter S corporation receives as a distributive share of  
8 adjusted business income minus the loss adjustment of the  
9 individual, partnership, limited liability company, or subchapter S  
10 corporation; if compensation and directors' fees of a shareholder  
11 or officer of a corporation other than a subchapter S corporation  
12 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
13 is \$165,000.00 or more but less than \$170,000.00, the credit is  
14 reduced by 40%.

15 (iii) If an individual, any 1 partner of the partnership, any 1  
16 member of the limited liability company, or any 1 shareholder of  
17 the subchapter S corporation receives as a distributive share of  
18 adjusted business income minus the loss adjustment of the  
19 individual, partnership, limited liability company, or subchapter S  
20 corporation; if compensation and directors' fees of a shareholder  
21 or officer of a corporation other than a subchapter S corporation  
22 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
23 is \$170,000.00 or more but less than \$175,000.00, the credit is  
24 reduced by 60%.

25 (iv) If an individual, any 1 partner of the partnership, any 1  
26 member of the limited liability company, or any 1 shareholder of  
27 the subchapter S corporation receives as a distributive share of

1 adjusted business income minus the loss adjustment of the  
2 individual, partnership, limited liability company, or subchapter S  
3 corporation; if compensation and directors' fees of a shareholder  
4 or officer of a corporation other than a subchapter S corporation  
5 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
6 is \$175,000.00 or more but not in excess of \$180,000.00, the credit  
7 is reduced by 80%.

8 (2) For the purposes of determining disqualification under  
9 subsection (1), an active shareholder's share of business income  
10 shall not be attributed to another active shareholder.

11 (3) To determine the reduction percentage under subsection  
12 (1) (c), the following apply:

13 (a) The reduction percentage for a partnership, limited  
14 liability company, or subchapter S corporation is based on the  
15 distributive share of adjusted business income minus loss  
16 adjustment of the partner, member, or shareholder with the greatest  
17 distributive share of adjusted business income minus loss  
18 adjustment.

19 (b) The reduction percentage for a corporation other than a  
20 subchapter S corporation is the greater of the following:

21 (i) The reduction percentage based on the compensation and  
22 directors' fees of the shareholder or officer with the greatest  
23 amount of compensation and directors' fees.

24 (ii) The reduction percentage based on the sum of the amounts  
25 in subsection (1) (b) (ii) (A) and (B) for the shareholder or officer  
26 with the greatest sum of the amounts in subsection (1) (b) (ii) (A) and  
27 (B).

1 (4) A taxpayer that qualifies under subsection (1) is allowed  
2 a credit against the tax imposed under this act. The credit under  
3 this subsection is the amount by which the tax imposed under this  
4 act exceeds 1.8% of adjusted business income.

5 (5) If gross receipts exceed ~~\$19,000,000.00~~ **\$18,000,000.00**,  
6 the credit shall be reduced by a fraction, the numerator of which  
7 is the amount of gross receipts over ~~\$19,000,000.00~~ **\$18,000,000.00**  
8 and the denominator of which is \$1,000,000.00. The credit shall not  
9 exceed 100% of the tax liability imposed under this act.

10 (6) For a taxpayer that reports for a tax year less than 12  
11 months, the amounts specified in this section for gross receipts,  
12 adjusted business income, and share of business income shall be  
13 multiplied by a fraction, the numerator of which is the number of  
14 months in the tax year and the denominator of which is 12.

15 (7) The department shall permit a taxpayer that elects to  
16 claim the credit allowed under this section based on the amount by  
17 which the tax imposed under this act exceeds the percentage of  
18 adjusted business income for the tax year as determined under  
19 subsection (4), and that is not required to reduce the credit  
20 pursuant to subsection (1) or (5), to file and pay the tax imposed  
21 by this act without computing the tax imposed under sections 201  
22 and 203.

23 (8) Compensation paid by the professional employer  
24 organization to the officers of the client and to employees of the  
25 professional employer organization who are assigned or leased to  
26 and perform services for the client shall be included in  
27 determining eligibility of the client under this section.

1 (9) As used in this section:

2 (a) "Active shareholder" means a shareholder who receives at  
3 least \$10,000.00 in compensation, directors' fees, or dividends  
4 from the business, and who owns at least 5% of the outstanding  
5 stock or other ownership interest.

6 (b) "Adjusted business income" means business income as  
7 defined in section 105 with all of the following adjustments:

8 (i) Add compensation and directors' fees of active shareholders  
9 of a corporation.

10 (ii) Add, to the extent deducted in determining federal taxable  
11 income, a carryback or a carryover of a net operating loss.

12 (iii) Add, to the extent deducted in determining federal taxable  
13 income, a capital loss.

14 (iv) Add compensation and directors' fees of officers of a  
15 corporation.

16 (c) "Detroit consumer price index" means the most  
17 comprehensive index of consumer prices available for the Detroit  
18 area from the United States department of labor, bureau of labor  
19 statistics.

20 (d) "Loss adjustment" means the amount by which adjusted  
21 business income was less than zero in any of the 5 tax years  
22 immediately preceding the tax year for which eligibility for the  
23 credit under this section is being determined. In determining the  
24 loss adjustment for a tax year, a taxpayer is not required to use  
25 more of the taxpayer's total negative adjusted business income than  
26 the amount needed to qualify the taxpayer for the credit under this  
27 section. A taxpayer shall not be considered to have used any

1 portion of the taxpayer's negative adjusted business income amount  
2 unless the portion used is necessary to qualify for the credit  
3 under this section. A taxpayer shall not reuse a negative adjusted  
4 business income amount used as a loss adjustment in a previous tax  
5 year or use a negative adjusted business income amount from a year  
6 in which the taxpayer did not receive the credit under this  
7 section.

8 Enacting section 1. This amendatory act takes effect January  
9 1, 2008.