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Investment Tax Credit

Public Act 115 of 1999 enacted for the first time a Michigan Investment Tax Credit (ITC). The Act created a new Section 35A in the Single Business Tax Act. (MCL 208.35a) The statute replaces the Capital Acquisition Deduction (CAD) which is provided for in Section 23 and 23b, with the ITC. The CAD is available for tax years beginning before January 1, 2000. The new ITC is available for tax years beginning after December 31, 1999.

A taxpayer may claim the ITC for a percentage of the costs paid or accrued in a taxable year for tangible assets physically located in Michigan for use in a business activity in this state. When assets are sold or disposed of the cost must be recaptured to the extent of the undepreciated basis adjusted by the apportionment percentage for the year. (MCL 208.35a(1))

The formula for computing the ITC is as follows: (MCL 208.35a(1))

Credit Percentage X (Cost - Sale or Disposition)

Credit Percentage

Section 35a(2) specifies the credit percentage to be that percentage determined by dividing the tax rate for the year by 2.3% times the ITC Rate. (MCL 208.35a(2))

The ITC Rate is dependent upon the taxpayers adjusted gross receipts. To compute adjusted gross receipts use the apportioned gross receipts plus the apportioned recapture of capital acquisition deduction. In addition, a member of an affiliated group, controlled group of corporations, or an entity under common control shall determine adjusted gross receipts on a consolidated basis.

The table below outlines the applicable ITC Rate:

Adj Gross Rec.	ITC Rate	2006 ITC %
Up to $1 million	2.3%	1.9%
> $1 mil up to $2.5 mil	1.5%	1.23%
> $2.5 mil up to $5 mil	1.0%	0.83%
> $5 million	0.85%	0.70%

Cost

Cost is the amount paid or accrued in the taxable year, including fabrication and installation, for the acquisition of qualifying tangible assets. Qualifying tangible assets are of a type that under the Internal Revenue Code are eligible, or will become eligible, for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. The assets must be physically located in Michigan and used in a business activity in Michigan. Special rules apply for mobile tangible assets and assets acquired for use outside of Michigan. (MCL 208.35a(1)(a))

Cost for **mobile tangible assets** is the amount paid or accrued in the taxable year, including fabrication and installation, for the acquisition of qualifying mobile tangible assets. Qualifying mobile tangible assets are of a type that under the Internal revenue Code are eligible, or will become eligible, for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. The assets can be located everywhere, but the cost is multiplied by the apportionment factor for the year. (MCL 208.35a(1)(b))

Cost for assets acquired for use **outside of Michigan** in a tax year beginning after December 31, 1996 and physically located in Michigan after December 31, 1999 for use in a business activity in Michigan is the federal income tax basis of the asset which would have been used to compute gain or loss as of the date the tangible asset was physically located in Michigan plus the cost of fabrication and installation of the asset in Michigan. (MCL 208.35a(1)(c))

Sale or Disposition

Upon the sale or other disposition of qualified tangible assets, other than mobile tangible assets, the cost is recaptured based on a calculation which includes the gross proceeds or other benefit derived from the sale or other disposition of the tangible assets minus the gain multiplied by the apportionment factor for the taxable year or plus the loss multiplied by the apportionment factor for the taxable year reflected in federal taxable income and minus any gain added to the tax base.
(MCL 208.35a(1)(d))

If **mobile tangible assets** paid or accrued after December 31, 1999 are sold or disposed of the cost is recaptured based on a calculation which includes the gross proceeds or other benefit derived from the sale or other disposition of the tangible assets minus the gain or plus the loss for the taxable year reflected in federal taxable income and minus any gain added to the tax base. This amount is multiplied by the apportionment factor for the year. (MCL 208.35a(1)(e))

The cost of qualified tangible assets acquired after December 31, 1996 which were eligible for the Investment Tax Credit and are **transferred out of Michigan** are recaptured based on the federal income tax basis of the asset which would have been used to compute gain or loss as of the date of the transfer of the tangible asset. (MCL 208.35a(1)(f))

Negative Investment Tax Credit

If the ITC for a tax year is determined to be negative, the absolute value of the amount must be added to the taxpayer's tax liability for the tax year. (MCL 208.35a(3))

Carry forward Of Investment Tax Credit

If the credit for a tax year and any unused carry forward of the credit exceed the tax liability of the taxpayer for the tax year, the excess may not be refunded, but may be carried forward as an offset to the tax liability in nine subsequent tax years or until the excess credit is used up, whichever occurs first. (MCL 208.35a(4))

Order of Investment Tax Credit

The ITC must be taken before any other credit authorized under the Single Business Tax Act. The credits authorized under other provisions of the Single Business Tax Act must be calculated using the tax liability after the calculation of the investment tax credit and, to the extent provided by law, after the calculation of credits under other provisions of the Act. (MCL 208.35a(5))

Gross Receipts Method

If a taxpayer uses the gross receipts deduction, as provided for in Section 31(2), to calculate its tax base, then the ITC can not be claimed. (MCL 208.35a(6))

Excess Compensation Deduction

A taxpayer that reduces its adjusted tax base using the excess compensation deduction would have to reduce the investment tax credit by a percentage, not to exceed 100%, determined by dividing the Single Business Tax rate in effect for the tax year by the ITC rate in effect for the tax year and multiplying the result times the percentage reduction to the adjusted tax base used for purposes of the excess compensation reduction. (MCL 208.35a(7))

Depreciation Add back

Taxpayers will still be required to add back the full amount of depreciation on page one of the SBT tax return. In addition, recapture for assets previously subject to CAD will still be required on Form C-8000D.