

# The MBT Credits Relating to a Michigan Business Activity

## CREDITS RELATING TO A MICHIGAN BUSINESS ACTIVITY

The MBTA provides a combined compensation and investment tax credit that must be taken before any other credit and is limited to 65% of a firm's tax liability.<sup>1</sup> In addition, the MBTA provides a research and development credit. The combined compensation credit and investment tax credit, together with the research and development credit cannot exceed 75% of a firm's tax liability.<sup>2</sup>

The compensation credit, investment tax credit and the research and development credit are not refundable and no carryover of any unused credit is available. The technology innovation credit is limited to \$300,000, however any excess credit is refundable. The entrepreneurial credit provides a credit equal to 100% of the taxpayer's tax liability for three years.

### Compensation Credit

The compensation credit will be equal to 0.370% of compensation in Michigan.<sup>3</sup> In the case of professional employer organizations (PEO), the compensation used to determine the credit will not include payments made for employees provided to a client<sup>4</sup>. The client could include payments made by the PEO for those employees in its calculation of the credit.<sup>5</sup>

Under The MBTA<sup>6</sup>, compensation will include wages, salaries, fees, bonuses, and other payments made for the benefit of employees, officers, or directors, and any self-employment net earnings (as defined in the Internal Revenue Code).

Compensation includes payments that are subject to or specifically exempt from withholding under the internal revenue code.

Compensation includes payments to a pension, retirement, or profit sharing plan.

Compensation includes payments for insurance for which the employees are the beneficiaries, including payments under a health and welfare and noninsured benefit plans and fees for the administration of a health and welfare and noninsured benefit plan.

Other costs, including employee discounts, unemployment compensation, worker's compensation, and payments to independent contractors will not be considered as

compensation<sup>7</sup>. However, compensation for firms licensed under Articles 25 and 26 of the Occupational Code (real estate brokers, salespersons, and appraisers) includes payments to independent contractors licensed under the two articles<sup>8</sup>.

### **Investment Tax Credit**

The investment tax credit is equal to 2.9%<sup>9</sup> of net capital assets and, in general, is carried over from the Investment Tax Credit allowed against the Single Business Tax<sup>10</sup>. Net capital assets generally include the costs (including fabrication and installation) of tangible assets located in Michigan<sup>11</sup>; apportioned mobile tangible assets<sup>12</sup>, wherever located; and the federal basis for eligible items moved into the state<sup>13</sup>; less a recapture calculation for like assets upon their sale, disposition, or removal from Michigan.<sup>14</sup> The assets must be of a type that are, or will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.<sup>15</sup>

If in any tax year the amount of the Investment Tax Credit is computed to be negative, because of recapture, the absolute value of the negative amount is added to the taxpayer's tax liability for the tax year.<sup>16</sup>

A taxpayer claiming an investment tax credit is not prohibited from claiming the research and development credit. However, the taxpayer shall not claim both the investment tax credit and a research and development credit based on the same costs and expenses.<sup>17</sup>

### **Research and Development Credit**

The MBTA provides two different and separate research and development credits. The first credit is equal to 1.9% of a taxpayer's research and development expenses, as defined in the federal Internal Revenue Code.<sup>18</sup> A taxpayer may not use the same research and development expenses to determine both the compensation credit and the research and development credit.<sup>19</sup>

### **Technology Innovation Credit**

The other research and development credit is generally equal to 30% of the amount of an "eligible contribution" to an "eligible business". The credit is available for the 2008, 2009 and 2010 tax years. The credit will be capped at \$300,000 per taxpayer, and will be available only in the 2008, 2009 and 2010 tax years. The Michigan Economic Growth Authority will approve the credit, and could not grant more than 20 credits in any one year.<sup>20</sup>

An "eligible contribution" is the transfer of cash not less than \$350,000 for the purpose of research and development and technology innovation.<sup>21</sup>

An "eligible business" is a business engaged in research and development that, together with any affiliates, employs fewer than 50 employees or has gross receipts of

less than \$10 million and no prior financial interest with the taxpayer claiming the credit.<sup>22</sup>

### **Entrepreneurial Credit**

The MBTA provides a credit in 2008, 2009 and 2010 equal to 100% of the increased tax liability attributable to the increase in employment.<sup>23</sup> To claim the credit, firms will have to have less than \$25 million (adjusted annually for inflation) in gross receipts in the prior year, create or transfer at least 20 new jobs into the state, and make at least \$1.25 million in capital investments in the prior year. The credit will not be available to retail establishments, other than restaurants that are not part of a franchise or part of a unitary business group.<sup>24</sup>

The credit will also be available to firms qualifying for the technology innovation credit receiving a contribution if the firm has less than \$25 million in gross receipts and has a 20% increase in new jobs,<sup>25</sup>

Generally the tax liability attributable to increased employment will be the firm's total tax liability multiplied by a fraction where the numerator is payroll of the increased jobs and the denominator is the firm's total payroll.<sup>26</sup>

If the new or transferred jobs are relocated outside of the state or the firm reduces employment by more than 10% of the jobs used to qualify for the tax the amount of credit must be repaid and will be subject to collection by the Department of Treasury under the provisions of the Revenue Act.<sup>27</sup>

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<sup>1</sup> 2007 P.A. 36 §403(1) MCL 208.1403(1)

<sup>2</sup> 2007 P.A. 36 §405 MCL 208.1405

<sup>3</sup> 2007 P.A. 36 §403(2) MCL 208.1403(2)

<sup>4</sup> 2007 P.A. 36 §107(1) MCL 208.1107(1)

<sup>5</sup> 2007 P.A. 36 §403(2) MCL 208.1403(2)

<sup>6</sup> 2007 P.A. 36 §107(2) MCL 208.1107(2)

<sup>7</sup> 2007 P.A. 36 §107(2)(a-e) MCL 208.1107(2)(a-e)

<sup>8</sup> 2007 P.A. 36 §107(2) MCL 208.1107(2)

<sup>9</sup> 2007 P.A. 36 §403(3) MCL 208.1403(3)

<sup>10</sup> 1975 P.A. 228, MCL 208.38a

<sup>11</sup> 2007 P.A. 36 §403(3)(a) MCL 208.1403(3)(a)

<sup>12</sup> 2007 P.A. 36 §403(3)(b) MCL 208.1403(3)(b)

<sup>13</sup> 2007 P.A. 36 §403(3)(c) MCL 208.1403(3)(c)

<sup>14</sup> 2007 P.A. 36 §403(3)(d-f) MCL 208.1403(3)(d-f)

<sup>15</sup> 2007 P.A. 36 §403(3)(a) MCL 208.1403(3)(a)

<sup>16</sup> 2007 P.A. 36 §403(4) MCL 208.1403(4)

<sup>17</sup> 2007 P.A. 36 §403(5) MCL 208.1403(5)

<sup>18</sup> 2007 P.A. 36 §405 MCL 208.1405

<sup>19</sup> 2007 P.A. 36 §403(5) MCL 208.1403(5)

<sup>20</sup> 2007 P.A. 36 §407(1) MCL 208.1407(1)

<sup>21</sup> 2007 P.A. 36 §407(9)(b) MCL 208.1407(9)(b)

<sup>22</sup> 2007 P.A. 36 §407(9)(c) MCL 208.1407(9)(c)

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- <sup>23</sup> 2007 P.A. 36 §441(1) MCL 208.1441(1)  
<sup>24</sup> 2007 P.A. 36 §441(1)(a-d) MCL 208.1441(1)(a-d)  
<sup>25</sup> 2007 P.A. 36 §441(2) MCL 208.1441(2)  
<sup>26</sup> 2007 P.A. 36 §441(5) MCL 208.1441(5)  
<sup>27</sup> 2007 P.A. 36 §441(4) MCL 208.1441(4)

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