

SUBSTITUTE FOR
HOUSE BILL NO. 5331
(As amended April 27, 2004)

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
(MCL 208.1 to 208.145) by adding section 31a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31a. (1) For tax years that begin after December 31,
2 2004, a taxpayer [that meets the criteria under subsection (4) and] that
3 is a qualified start-up business that does
4 not have business income for 2 consecutive tax years may claim a
5 credit against the tax imposed under this act for the second of
6 those 2 consecutive tax years and each immediately following
7 consecutive tax year in which the taxpayer does not have business
8 income equal to the taxpayer's tax liability for the tax year in
9 which the taxpayer has no business income. If the taxpayer has
10 business income in any tax year after the credit under this
11 section is claimed, the taxpayer shall claim the credit under
this section for any following tax year only if the taxpayer

1 subsequently has no business income for 2 consecutive tax years.
2 The taxpayer may claim the credit for the second of those 2
3 consecutive tax years and each immediately following consecutive
4 tax year in which the taxpayer does not have business income. A
5 credit under this section shall not be claimed for more than a
6 total of 5 tax years.

7 (2) If a taxpayer that took the credit under this section has
8 no business activity in this state and has any business activity
9 outside of this state for any of the first 3 tax years after the
10 last tax year for which it took the credit under this section,
11 the taxpayer shall add to its tax liability the following
12 amounts:

13 (a) If the taxpayer has no business activity in this state
14 for the first tax year after the last tax year for which a credit
15 under this section is claimed, 100% of the total of all credits
16 claimed under this section.

17 (b) If the taxpayer has no business activity in this state
18 for the second tax year after the last tax year for which a
19 credit under this section is claimed, 67% of the total of all
20 credits claimed under this section.

21 (c) If the taxpayer has no business activity for the third
22 tax year after the last tax year for which a credit under this
23 section is claimed, 33% of the total of all credits claimed under
24 this section.

25 (3) A member of an affiliated group as defined in this act, a
26 controlled group of corporations as defined in section 1563 of
27 the internal revenue code and further described in 26 CFR

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1 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under
 2 common control as defined by the internal revenue code shall
 3 determine number of employees, sales, and business income for
 4 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 (5)] As used in this section:

6 (a) "Business income" means business income as defined in
 7 section 3 excluding funds received from small business innovation
 8 research grants and small business technology transfer programs
 9 established under the small business innovation development act
 10 of 1982, Public Law 97-219, reauthorized under the small business
 11 research and development enhancement act, Public Law 102-564, and
 12 subsequently reauthorized under the small business
 13 reauthorization act of 2000, Public Law 106-554.

14 (b) "Michigan economic development corporation" means the
 15 public body corporate created under section 28 of article VII of
 16 the state constitution of 1963 and the urban cooperation act of
 17 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a
 18 contractual interlocal agreement effective April 5, 1999, as
 19 amended, between local participating economic development
 20 corporations formed under the economic development corporations
 21 act, 1974 PA 338, MCL 125.1601 to 125.1636, and the Michigan
 22 strategic fund.

23 (c) "Qualified start-up business" means a business that meets
 24 all of the following criteria as certified annually by the
 25 Michigan economic development corporation:

- 26 (i) Has fewer than 25 full-time equivalent employees.
- 27 (ii) Has sales of less than \$1,000,000.00 in the tax year for

1 which the credit under this section is claimed.

2 (iii) Research and development make up at least 15% of its
3 expenses in the tax year for which the credit under this section
4 is claimed.

5 (iv) Is not publicly traded.

6 (v) Met 1 of the following criteria during 1 of the initial 2
7 consecutive tax years in which the qualified start-up business
8 had no business income:

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

12 (B) In the immediately preceding 7 years would have been in
13 the first 2 years of contribution liability under section 19 of
14 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
15 421.19, if the qualified start-up business had employees and was
16 liable under the Michigan employment security act, 1936 (Ex Sess)
17 PA 1, MCL 421.1 to 421.75.

18 (C) In the immediately preceding 7 years would have been in
19 the first 2 years of contribution liability under section 19 of
20 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
21 421.19, if the qualified start-up business had not assumed
22 successor liability under section 15(g) of the Michigan
23 employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

24 (d) "Research and development" means qualified research as
25 that term is defined in section 41(d) of the internal revenue
26 code.