

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5098

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 3, 9, 22a, 36, 38e, and 71 (MCL 208.3, 208.9,
208.22a, 208.36, 208.38e, and 208.71), sections 3 and 71 as amended
by 1999 PA 115, section 9 as amended by 2004 PA 258, section 22a as
amended by 1996 PA 578, section 36 as amended by 1995 PA 284, and
section 38e as amended by 2003 PA 273, and by adding section 79.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "Affiliated group" means 2 or more United States
2 corporations, 1 of which owns or controls, directly or indirectly,
3 80% or more of the capital stock with voting rights of the other
4 United States corporation or United States corporations. As used in
5 this subsection, "United States corporation" means a domestic
6 corporation as those terms are defined in section 7701(a)(3) and
7 (4) of the internal revenue code.

1 (2) "Business activity" means a transfer of legal or equitable
2 title to or rental of property, whether real, personal, or mixed,
3 tangible or intangible, or the performance of services, or a
4 combination thereof, made or engaged in, or caused to be made or
5 engaged in, within this state, whether in intrastate, interstate,
6 or foreign commerce, with the object of gain, benefit, or
7 advantage, whether direct or indirect, to the taxpayer or to
8 others, but shall not include the services rendered by an employee
9 to his **OR HER** employer, services as a director of a corporation, or
10 a casual transaction. Although an activity of a taxpayer may be
11 incidental to another or other of his **OR HER** business activities,
12 each activity shall be considered to be business engaged in within
13 the meaning of this act.

14 (3) "Business income" means federal taxable income **PLUS THE**
15 **AMOUNT OF A DEDUCTION CLAIMED UNDER SECTION 199 OF THE INTERNAL**
16 **REVENUE CODE RELATED TO DOMESTIC PRODUCTION ACTIVITIES**, except that
17 for a person other than a corporation it means that part of federal
18 taxable income derived from business activity **PLUS THE AMOUNT OF A**
19 **DEDUCTION CLAIMED UNDER SECTION 199 OF THE INTERNAL REVENUE CODE**
20 **RELATED TO DOMESTIC PRODUCTION ACTIVITIES**. For a partnership,
21 business income includes payments and items of income and expense
22 ~~which~~ **THAT** are attributable to business activity of the
23 partnership and separately reported to the partners **OF THE**
24 **PARTNERSHIP**.

25 Sec. 9. (1) "Tax base" means business income, before
26 apportionment or allocation as provided in chapter 3, even if zero
27 or negative, subject to the adjustments in this section.

1 (2) Add gross interest income and dividends derived from
2 obligations or securities of states other than Michigan, in the
3 same amount that was excluded from federal taxable income, less the
4 related portion of expenses not deducted in computing federal
5 taxable income because of sections 265 and 291 of the internal
6 revenue code.

7 (3) Add all taxes on or measured by net income and the tax
8 imposed by this act to the extent the taxes were deducted in
9 arriving at federal taxable income.

10 (4) Add the following, to the extent deducted in arriving at
11 federal taxable income:

12 (a) A carryback or carryover of a net operating loss.

13 (b) A carryback or carryover of a capital loss.

14 (c) A deduction for depreciation, amortization, or immediate
15 or accelerated write-off related to the cost of tangible assets.

16 (d) A dividend paid or accrued except a dividend that
17 represents a reduction of premiums to policyholders of insurance
18 companies.

19 (e) A deduction or exclusion by a taxpayer due to a
20 classification as, or the payment of commissions or other fees to,
21 a domestic international sales corporation or any like special
22 classification the purpose of which is to reduce or postpone the
23 federal income tax liability. This subdivision does not apply to
24 the special provisions of sections 805, 809, and 815(c)(2)(A) of
25 the internal revenue code.

26 (f) All interest including amounts paid, credited, or reserved
27 by insurance companies as amounts necessary to fulfill the policy

1 and other contract liability requirements of sections 805 and 809
2 of the internal revenue code. Interest does not include payments or
3 credits made to or on behalf of a taxpayer by a manufacturer,
4 distributor, or supplier of inventory to defray any part of the
5 taxpayer's floor plan interest, if these payments are used by the
6 taxpayer to reduce interest expense in determining federal taxable
7 income. For purposes of this section, "floor plan interest" means
8 interest paid that finances any part of the taxpayer's purchase of
9 automobile inventory from a manufacturer, distributor, or supplier.
10 However, amounts attributable to any invoiced items used to provide
11 more favorable floor plan assistance to a taxpayer than to a person
12 who is not a taxpayer is considered interest paid by a
13 manufacturer, distributor, or supplier.

14 (g) All royalties except for the following:

15 (i) On and after July 1, 1985, oil and gas royalties that are
16 excluded in the depletion deduction calculation under the internal
17 revenue code.

18 (ii) Cable television franchise fees described in section 622
19 of part III of title VI of the communications act of 1934, 47
20 U.S.C. 542.

21 (iii) Except as provided in subparagraph (iv), for the tax years
22 1986 and after 1986, a franchise fee as defined by section 3 of the
23 franchise investment law, 1974 PA 269, MCL 445.1503, in the
24 following amounts:

25 (A) For the tax years 1986, 1987, and 1988, 20% of the
26 franchise fee.

27 (B) For the tax years 1989 and 1990, 50% of the franchise fee.

1 (C) For the tax years 1991 and after 1991, 100% of the
2 franchise fee.

3 (iv) For the tax years ending before 1991, this subdivision
4 does not apply to a fee for services paid by a franchisee that,
5 with respect to a specific provision of a franchise agreement, a
6 court of competent jurisdiction, before June 5, 1985, has
7 determined is not a royalty payment under this act.

8 (v) Film rental or royalty payments paid by a theater owner to
9 a film distributor, a film producer, or a film distributor and
10 producer.

11 (vi) Royalties, fees, charges, or other payments or
12 consideration paid or incurred by radio or television broadcasters
13 for program matter or signals.

14 (vii) Royalties, fees, charges, or other payments or
15 consideration paid by a film distributor for copyrighted motion
16 picture films, program matter, or signals to a film producer.

17 (viii) For tax years that begin after December 31, 1993,
18 royalties paid by a licensee of application computer software,
19 operating system software, or system software pursuant to a license
20 agreement. As used in this subparagraph and subsection (7)(c)(vii):

21 (A) "Application computer software" means a set of statements
22 or instructions that when incorporated in a machine usable medium
23 is capable of causing a machine or device having information
24 processing capabilities to indicate, perform, or achieve a
25 particular business function, task, or result for the nontechnical
26 end user. Application computer software includes any other computer
27 software that does not qualify under sub-subparagraph (B) or (C).

1 (B) "Operating system software" means a set of statements or
2 instructions that when incorporated into a machine or device having
3 information processing capabilities is an interface between the
4 computer hardware and the application computer software or system
5 software.

6 (C) "System software" means a set of statements or
7 instructions that interacts with operating system software that is
8 developed, licensed, and intended for the exclusive use of data
9 processing professionals to build, test, manage, or maintain
10 application computer software for which a license agreement is
11 signed by the licensor and licensee at the time of the transfer of
12 the software and that is not transferred to the licensee as part of
13 or in conjunction with a sale or lease of computer hardware.

14 (ix) For tax years that begin after December 31, 2000,
15 royalties, fees, or other payments or consideration paid or
16 incurred by a franchisee to a franchisor to establish or maintain
17 the franchise relationship other than payments for the sale or
18 lease of inventory, equipment, fixtures, or real property at fair
19 rental or fair market value.

20 (h) A deduction for rent attributable to a lease back that
21 continues in effect under the former provisions of section
22 168(f)(8) of the internal revenue code of 1954 as that section
23 provided immediately before the tax reform act of 1986, Public Law
24 99-514, became effective or to a lease back of property to which
25 the amendments made by the tax reform act of 1986 do not apply as
26 provided in section 204 of the tax reform act of 1986.

27 (5) Add compensation.

1 (6) Add a capital gain related to business activity of
2 individuals to the extent excluded in arriving at federal taxable
3 income.

4 (7) Deduct the following, to the extent included in arriving
5 at federal taxable income:

6 (a) A dividend received or considered received, including the
7 foreign dividend gross-up provided for in the internal revenue
8 code.

9 (b) All interest except amounts paid, credited, or reserved by
10 an insurance company as amounts necessary to fulfill the policy and
11 other contract liability requirements of sections 805 and 809 of
12 the internal revenue code.

13 (c) All royalties except for the following:

14 (i) On and after July 1, 1985, oil and gas royalties that are
15 included in the depletion deduction calculation under the internal
16 revenue code.

17 (ii) Except as provided in subparagraph (iii), for the 1986 tax
18 year and after the 1986 tax year, a franchise fee as defined in
19 section 3 of the franchise investment law, 1974 PA 269, MCL
20 445.1503, in the following amounts:

21 (A) For the tax years 1986, 1987, and 1988, 20% of the
22 franchise fee.

23 (B) For the tax years 1989 and 1990, 50% of the franchise fee.

24 (C) For the tax years 1991 and after 1991, 100% of the
25 franchise fee.

26 (iii) For the tax years ending before 1991, this subdivision
27 does not apply to a fee for services paid by a franchisee that,

1 with respect to a specific provision of a franchise agreement, a
2 court of competent jurisdiction, before June 5, 1985, has
3 determined is not a royalty payment under this act.

4 (iv) Film rental or royalty payments paid by a theater owner to
5 a film distributor, a film producer, or a film distributor and
6 producer.

7 (v) Royalties, fees, charges, or other payments or
8 consideration paid or incurred by radio or television broadcasters
9 for program matter or signals.

10 (vi) Royalties, fees, charges, or other payments or
11 consideration paid by a film distributor for copyrighted motion
12 picture films, program matter, or signals to a film producer.

13 (vii) For tax years that begin after December 31, 1997,
14 royalties received by a licensor, distributor, developer, marketer,
15 or copyright holder of application computer software or operating
16 system software pursuant to a license agreement. System software is
17 not included within the exception under this subparagraph.

18 (viii) For tax years that begin after December 31, 2000,
19 royalties, fees, or other payments or consideration paid or
20 incurred by a franchisee to a franchisor to establish or maintain
21 the franchise relationship other than payments for the sale or
22 lease of inventory, equipment, fixtures, or real property at fair
23 rental or fair market value.

24 (d) Rent attributable to a lease back that continues in effect
25 under the former provisions of section 168(f)(8) of the internal
26 revenue code of 1954 as that section provided immediately before
27 the tax reform act of 1986, Public Law 99-514, became effective or

1 to a lease back of property to which the amendments made by the tax
2 reform act of 1986 do not apply as provided in section 204 of the
3 tax reform act of 1986.

4 (8) Deduct a capital loss not deducted in arriving at federal
5 taxable income in the year the loss occurred.

6 (9) To the extent included in federal taxable income, add the
7 loss or subtract the gain from the tax base that is attributable to
8 another entity whose business activities are taxable under this
9 act. ~~or would be taxable under this act if the business activities~~
10 ~~were in this state.~~

11 (10) For tax years that begin after December 31, 2004, deduct,
12 to the extent included in federal taxable income, income received
13 from either of the following:

14 (a) Small business innovation research grants and small
15 business technology transfer programs established under the small
16 business innovation development act of 1982, Public Law 97-219,
17 reauthorized under the small business research and development
18 enhancement act, Public Law 102-564, and subsequently reauthorized
19 under the small business reauthorization act of 2000, Public Law
20 106-554.

21 (b) Grants from the Michigan technology tri-corridor SBIR
22 emerging business fund administered by the Michigan economic
23 development corporation.

24 Sec. 22a. (1) Except as otherwise provided, from August 3,
25 1987 to September 30, 1987, for the tax year beginning October 1,
26 1987 and ending September 30, 1988, and each tax year thereafter,
27 the tax base and adjusted tax base of an insurance company is the

1 product of .25 times the insurance company's adjusted receipts as
2 apportioned under section 62.

3 (2) The tax base and adjusted tax base calculated under this
4 section shall not be adjusted under sections 23 and 23b.

5 (3) The tax calculated under this section is in lieu of all
6 other privilege or franchise fees or taxes imposed by any other law
7 of this state, except taxes on real and personal property, **TAXES**
8 **IMPOSED UNDER THE GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51 TO**
9 **205.78, AND TAXES IMPOSED UNDER THE USE TAX ACT, 1937 PA 94, MCL**
10 **205.91 TO 205.111, and except as otherwise provided in this act and**
11 **in ~~Act No. 218 of the Public Acts of 1956~~ THE INSURANCE CODE OF**
12 **1956, 1956 PA 218, MCL 500.100 TO 500.8302.**

13 (4) As used in this section:

14 (a) "Adjusted receipts" means, except as provided in
15 subdivision (b), the sum of all of the following:

16 (i) Rental and royalty receipts from a person that is not
17 either of the following:

18 (A) An affiliated insurance company.

19 (B) An insurance agent of the taxpayer licensed under chapter
20 12 of the insurance code of 1956, ~~Act No. 218 of the Public Acts~~
21 ~~of 1956, being sections 500.1200 to 500.1244 of the Michigan~~
22 ~~Compiled Laws~~ **1956 PA 218, MCL 500.1200 TO 500.1247.**

23 (ii) Gross direct premiums received for insurance on property
24 or risk, deducting premiums on policies not taken and returned
25 premiums on canceled policies.

26 (iii) Receipts from administrative services only contracts with
27 a person who is not an affiliated insurance company or an

1 affiliated nonprofit corporation.

2 (iv) Receipts from business activity other than the business of
3 insurance. As used in this subparagraph, "business of insurance"
4 means any activity related to the sale of insurance, payment of
5 claims, or claims handling, on policies written by the taxpayer.

6 (v) Charges not including interest charges attributable to
7 premiums paid on a deferred or installment basis.

8 (vi) Receipts from servicing carrier fees received from the
9 Michigan auto insurance placement facility.

10 (b) Adjusted receipts do not include any of the following:

11 (i) Receipts from interest, dividends, or proceeds from the
12 sale of assets.

13 (ii) Receipts, other than receipts described in subsection
14 (4)(a)(i) or (ii), from an affiliated insurance company, an
15 affiliated nonprofit corporation, an employee of the taxpayer, or
16 an insurance agent of the taxpayer licensed under chapter 12 of the
17 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~
18 ~~being sections 500.1200 to 500.1244 of the Michigan Compiled Laws~~
19 **1956 PA 218, MCL 500.1200 TO 500.1247.**

20 (iii) Receipts on the sale of annuities.

21 (iv) Receipts on all reinsurance transactions.

22 (c) "Affiliated insurance company" means an insurance company
23 that is a member of an affiliated group with the taxpayer or if the
24 insurance company does not issue stock, 50% or more of the members
25 of that insurance company's board of directors are members of the
26 taxpayer's board of directors.

27 (d) "Affiliated nonprofit corporation" means a nonprofit

1 corporation, of which 80% or more of the members of the board of
2 directors are members of the taxpayer's board of directors.

3 (5) A refund for taxes paid for tax years before the 1996 tax
4 year shall not be paid under this section if the refund claim is
5 made after June 30, 1997 and is based on this section as it ~~exists~~
6 ~~on the effective date of the amendatory act that added this~~
7 ~~subsection~~ **EXISTED ON JANUARY 1, 1991.**

8 Sec. 36. (1) As used in this section:

9 (a) "Active shareholder" means a shareholder who receives at
10 least \$10,000.00 in compensation, director's fees, or dividends
11 from the business, and who owns at least 5% of the outstanding
12 stock.

13 (b) "Officer" means an officer of a corporation other than a
14 subchapter S corporation including the chairperson of the board,
15 president, vice-president, secretary, and treasurer, or persons
16 performing similar duties.

17 (c) "Adjusted business income" means business income as
18 defined in section 3 with all of the following adjustments:

19 (i) Add compensation and director's fees of active shareholders
20 of a corporation.

21 (ii) Make the adjustments provided in section 9(4)(a) and (b).

22 (iii) Add compensation and director's fees of officers of a
23 corporation.

24 (d) "Shareholder" means a person who owns outstanding stock in
25 the business **OR FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,**
26 **2006, A MEMBER OF A BUSINESS ENTITY THAT FILES AS A CORPORATION FOR**
27 **FEDERAL TAX PURPOSES.** An individual is considered as the owner of

1 the stock owned, directly or indirectly, by or for family members
2 as defined by section 318(a)(1) of the internal revenue code.

3 (e) "Loss adjustment" means the amount by which adjusted
4 business income was less than zero in any of the 5 tax years
5 immediately preceding the tax year for which eligibility for the
6 credit provided by this section is being determined. In determining
7 the loss adjustment for a tax year, a taxpayer is not required to
8 use more of the taxpayer's total negative adjusted business income
9 than the amount needed to qualify the taxpayer for the credit under
10 this section. A taxpayer shall not be considered to have used any
11 portion of the taxpayer's negative adjusted business income amount
12 unless the portion used is necessary to qualify for the credit
13 under this section. A taxpayer shall not reuse a negative adjusted
14 business income amount used as a loss adjustment in a previous tax
15 year or use a negative adjusted business income amount from a year
16 in which the taxpayer did not receive the credit under this
17 section.

18 (f) "Subchapter S corporation" means a corporation electing
19 taxation under subchapter S of chapter 1 of subtitle A of the
20 internal revenue code, sections 1361 to 1379 of the internal
21 revenue code.

22 (2) The credit provided in this section shall be taken before
23 any other credit under this act, and is available to any person
24 whose gross receipts do not exceed \$6,000,000.00 for tax years
25 commencing on or after January 1, 1984 and before January 1, 1989;
26 \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for
27 tax years commencing in 1990; \$7,500,000.00 for tax years

1 commencing in 1991; or \$10,000,000.00 for tax years commencing
2 after 1991, and whose adjusted business income minus the loss
3 adjustment does not exceed \$475,000.00 for tax years commencing on
4 or after January 1, 1985, subject to the following:

5 (a) An individual, a partnership, or a subchapter S
6 corporation is disqualified if the individual, any 1 partner of the
7 partnership, or any 1 shareholder of the subchapter S corporation
8 receives more than \$95,000.00 for tax years commencing on or after
9 January 1, 1985 and before January 1, 1998 or more than \$115,000.00
10 for tax years commencing after December 31, 1997 as a distributive
11 share of the adjusted business income minus the loss adjustment of
12 the individual, the partnership, or the subchapter S corporation.

13 (b) A corporation other than a subchapter S corporation is
14 disqualified if either of the following occur for the respective
15 tax year:

16 (i) Compensation and director's fees of a shareholder or
17 officer exceed \$95,000.00 for tax years commencing on or after
18 January 1, 1985 and before January 1, 1998 or exceed \$115,000.00
19 for tax years commencing after December 31, 1997.

20 (ii) The sum of the following amounts exceeds \$95,000.00 for
21 tax years commencing on or after January 1, 1985 and before January
22 1, 1998 or exceeds \$115,000.00 for tax years commencing after
23 December 31, 1997:

24 (A) Compensation and director's fees of a shareholder.

25 (B) The product of the percentage of outstanding stock owned
26 by that shareholder multiplied by the difference between the sum of
27 business income and the adjustments provided in section 9(4)(a) and

1 (b) minus the loss adjustment.

2 (c) Subject to section 36d, for a taxpayer that is eligible
3 for the credit under this subsection for tax years beginning after
4 December 31, 1997 the credit determined under this subsection shall
5 be reduced by the following percentages in the following
6 circumstances:

7 (i) If an individual, any 1 partner of the partnership, or any
8 1 shareholder of the subchapter S corporation receives as a
9 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
10 loss adjustment of the individual, partnership, or subchapter S
11 corporation; if compensation and directors' fees of a shareholder
12 or officer of a corporation other than a subchapter S corporation
13 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
14 is more than \$95,000.00 but less than \$100,000.00, the credit is
15 reduced by 20%.

16 (ii) If an individual, any 1 partner of the partnership, or any
17 1 shareholder of the subchapter S corporation receives as a
18 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
19 loss adjustment of the individual, partnership, or subchapter S
20 corporation if compensation and directors' fees of a shareholder or
21 officer of a corporation other than a subchapter S corporation are;
22 or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is
23 \$100,000.00 or more but less than \$105,000.00, the credit is
24 reduced by 40%.

25 (iii) If an individual, any 1 partner of the partnership, or any
26 1 shareholder of the subchapter S corporation receives as a
27 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the

1 loss adjustment of the individual, partnership, or subchapter S
2 corporation if compensation and directors' fees of a shareholder or
3 officer of a corporation other than a subchapter S corporation are;
4 or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is
5 \$105,000.00 or more but less than \$110,000.00, the credit is
6 reduced by 60%.

7 (iv) If an individual, any 1 partner of the partnership, or any
8 1 shareholder of the subchapter S corporation receives as a
9 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
10 loss adjustment of the individual, partnership, or subchapter S
11 corporation if compensation and directors' fees of a shareholder or
12 officer of a corporation other than a subchapter S corporation are;
13 or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is
14 \$110,000.00 or more but less than \$115,000.00, the credit is
15 reduced by 80%.

16 (3) For the purposes of determining disqualification under
17 subsection (2), an active shareholder's share of business income
18 shall not be attributed to another active shareholder.

19 (4) A person who qualifies pursuant to subsection (2) is
20 allowed a credit against the tax imposed by section 31. For tax
21 years commencing before January 1, 1989, the credit is a percentage
22 reduction in tax liability. ~~For tax years commencing on and after~~
23 ~~January 1, 1989 and through tax years commencing in 1991, the~~
24 ~~credit is the greater of the amount by which the tax imposed by~~
25 ~~section 31 exceeds 4% of adjusted business income or 3% of adjusted~~
26 ~~business income for tax years commencing after 1991 or a percentage~~
27 ~~reduction in tax liability. However, beginning October 1, 1994, the~~

~~percentage of adjusted business income shall be 2%.~~ The department shall annualize the rates provided under this subsection as necessary for tax years that end after September 30, 1994 and the applicable annualized rate shall be imposed for those tax years.

THE CREDIT UNDER THIS SUBSECTION IS THE GREATER OF THE AMOUNT BY WHICH THE TAX IMPOSED BY SECTION 31 EXCEEDS THE FOLLOWING PERCENTAGE OF ADJUSTED BUSINESS INCOME FOR THE SPECIFIED TAX YEARS OR A PERCENTAGE REDUCTION IN TAX LIABILITY:

(A) FOR TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 1989 AND THROUGH TAX YEARS COMMENCING IN 1991, 4%.

(B) FOR TAX YEARS COMMENCING AFTER 1991 AND BEFORE OCTOBER 1, 1994, 3%.

(C) BEGINNING OCTOBER 1, 1994 AND BEFORE JANUARY 1, 2006, 2%.

(D) BEGINNING JANUARY 1, 2006, 1.7%.

(5) The percentage reduction provided in subsection (4) is calculated by subtracting from 100% the percentage computed by dividing adjusted business income by 45% of tax base.

(6) If gross receipts exceed \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for tax years commencing in 1991; or \$9,000,000.00 for tax years commencing after 1991, the credit shall be reduced by a fraction, the numerator of which is the amount of gross receipts over \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for tax years

1 commencing in 1991; or \$9,000,000.00 for tax years commencing after
2 1991, and the denominator of which is \$1,000,000.00. The credit
3 shall not exceed 50% for tax years commencing before January 1,
4 1984; 90% for tax years commencing on or after January 1, 1984 and
5 before January 1, 1988; or 100% for tax years commencing on and
6 after January 1, 1988 of the tax liability imposed by section 31.

7 (7) An affiliated group as defined in this act, a controlled
8 group of corporations as defined in section 1563 of the internal
9 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1
10 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
11 defined by the internal revenue code shall not take the credit
12 allowed by this section unless the business activities of the
13 entities are consolidated. **FOR PURPOSES OF THIS SUBSECTION,**
14 **BUSINESS ACTIVITIES INCLUDE ALL ACTIVITIES WITHIN AND OUTSIDE OF**
15 **THIS STATE.**

16 (8) The department shall permit a taxpayer who elects to claim
17 the credit allowed by this section based on the amount by which the
18 tax imposed by section 31 exceeds the percentage of adjusted
19 business income for the tax year as determined under subsection
20 (4), and who is not required to reduce the credit pursuant to
21 subsection (2) or (6), to file and pay the tax imposed by this act
22 without computing the tax imposed under section 31.

23 (9) **FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007 AND FOR**
24 **WHICH THE CRITERIA UNDER SECTION 74 ARE CONSIDERED TO HAVE BEEN**
25 **MET, THE MAXIMUM AMOUNT UNDER SUBSECTION (2) (A), (B) (i), (B) (ii), AND**
26 **(C) (iv) SHALL BE ADJUSTED BY THE PERCENTAGE INCREASE IN THE RATE OF**
27 **PERSONAL INCOME GROWTH AS REPORTED BY THE FEDERAL GOVERNMENT FOR**

House Bill No. 5098 as amended October 25, 2005

1 THE IMMEDIATELY PRECEDING CALENDAR YEAR.

2 (10) AS USED IN THIS SECTION, THE TERM "CORPORATION" INCLUDES
3 A BUSINESS ENTITY THAT FILES AS A CORPORATION FOR FEDERAL TAX
4 PURPOSES.

5 Sec. 38e. (1) A taxpayer may claim a credit against the tax
6 imposed by this act equal to the sum of 50% of the qualified
7 expenses << >> AS defined in subsection
8 (5)(d)(i) and (ii) and 100% of the qualified expenses <<
9 >> AS defined in subsection (5)(d)(iii) paid by the
10 taxpayer in the tax year in each of the following circumstances:

11 (a) Except for apprentices trained under subdivision (b) or
12 (c), <<an amount QUALIFIED EXPENSES INCURRED BEFORE JANUARY 1, 2006>> not
13 to exceed \$2,000.00 for each apprentice trained
14 by the taxpayer in the tax year.

15 (b) For companies that have a classification under the North
16 American industrial classification system (NAICS) of 333511,
17 333512, 333513, 333514, or 333515 and for tax years that begin
18 after December 31, 2003, <<an amount QUALIFIED EXPENSES INCURRED BEFORE
19 JANUARY 1, 2006>> not to exceed \$4,000.00 for each
20 apprentice trained by the taxpayer in the tax year.

21 (c) For companies that have a classification under the North
22 American industrial classification system (NAICS) of 333511,
23 333512, 333513, 333514, or 333515 and for tax years that begin
24 after December 31, 2003, <<an amount QUALIFIED EXPENSES INCURRED BEFORE
25 JANUARY 1, 2006>> not to exceed \$1,000.00 for each
26 special apprentice trained by the taxpayer in the tax year.

27 <<(D) FOR COMPANIES THAT HAVE A CLASSIFICATION UNDER THE NORTH
AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) OF 236115 TO 238990 AND
FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, AN AMOUNT NOT TO EXCEED
\$2,000.00 FOR EACH APPRENTICE TRAINED BY THE TAXPAYER IN THE TAX YEAR.>>

(2) If the credit allowed under this section exceeds the tax
liability of the taxpayer under this act for the tax year, that
portion of the credit that exceeds the tax liability shall be
refunded.

1 (3) The credit allowed under this section shall be claimed on
2 the annual return required under section 73, or for a taxpayer that
3 is not required to file an annual return, the department shall
4 provide that the credit under this subsection may be claimed on the
5 C-8044 form, a successor form for persons not required to file an
6 annual return, or other simplified form prescribed by the
7 department.

8 (4) For each year that this credit is in effect, the
9 department of labor and economic growth shall prepare a report
10 containing information including, but not limited to, the number of
11 companies taking advantage of the apprenticeship credit, the number
12 of apprentices participating in the program, the number of
13 apprentices who complete a program the costs of which were the
14 basis of a credit under this section, the number of apprentices
15 that were hired by the taxpayer after the apprenticeship training
16 was completed for which the taxpayer claimed a credit under this
17 section for the costs of training that apprentice, information on
18 the employment status of individuals who have completed an
19 apprenticeship to the extent the information is available, and the
20 fiscal impact of the apprenticeship credit. This report shall then
21 be transmitted to the house tax policy and senate finance
22 committees and to the house and senate appropriations committees.
23 This report shall be due no later than the first day of March each
24 year.

25 (5) As used in this section:

26 (a) "Apprentice" means a person who is a resident of this
27 state, is 16 years of age or older but younger than 20 years of

1 age, has not obtained a high school diploma, is enrolled in high
2 school or a general education development (G.E.D.) test preparation
3 program, and is trained by a taxpayer through a program that meets
4 all of the following criteria:

5 (i) The program is registered with the bureau of apprenticeship
6 and training of the United States department of labor.

7 (ii) The program is provided pursuant to an apprenticeship
8 agreement signed by the taxpayer and the apprentice.

9 (iii) The program is filed with a local workforce development
10 board.

11 (iv) The minimum term in hours for the program shall be not
12 less than 4,000 hours.

13 (b) "Enrolled" means currently enrolled or expecting to enroll
14 after a period of less than 3 months during which the program is
15 not in operation and the apprentice is not enrolled.

16 (c) "Local workforce development board" means a board
17 established by the chief elected official of a local unit of
18 government pursuant to the job training partnership act, Public Law
19 97-300, 96 Stat. 1322, that has the responsibility to ensure that
20 the workforce needs of the employers in the geographic area
21 governed by the local unit of government are met.

22 (d) "Qualified expenses" means all of the following expenses
23 paid by the taxpayer in a tax year that begins after December 31,
24 1996 for expenses used to calculate a credit under subsection

25 (1)(a) and after December 31, 2003 for expenses used to calculate a
26 credit under subsection (1)(b) that were not paid for with funds
27 the taxpayer received or retained that the taxpayer would not

1 otherwise have received or retained and that are used for training
2 an apprentice:

3 (i) Salary and wages paid to an apprentice.

4 (ii) Fringe benefits and other payroll expenses paid for the
5 benefit of an apprentice.

6 (iii) Costs of classroom instruction and related expenses
7 identified as costs for which the taxpayer is responsible under an
8 apprenticeship agreement, including but not limited to tuition,
9 fees, and books for college level courses taken while the
10 apprentice is enrolled in high school.

11 (e) "Special apprentice" means a person who is not an
12 apprentice as defined by section (5)(a), is a resident of this
13 state, is 16 years of age or older but younger than 25 years of
14 age, and is trained by a taxpayer through a program that meets all
15 of the criteria under subdivision (a)(i) to (iv).

16 Sec. 71. (1) A taxpayer that reasonably expects liability for
17 the tax year to exceed \$600.00 or adjustments under section 23 to
18 exceed \$100,000.00 shall file an estimated return and pay an
19 estimated tax for each quarter of the taxpayer's tax year.

20 (2) For taxpayers on a calendar year basis the quarterly
21 returns and estimated payments shall be made by April 30, July 31,
22 October 31, and January 31. Taxpayers not on a calendar year basis
23 shall file quarterly returns and make estimated payments on the
24 appropriate due date which in the taxpayer's fiscal year
25 corresponds to the calendar year.

26 (3) The estimated payment made with each quarterly return of
27 each tax year shall be for the estimated tax base for the quarter

1 or 25% of the estimated annual liability. The second, third, and
2 fourth estimated payments in each tax year shall include
3 adjustments, if necessary, to correct underpayments or overpayments
4 from previous quarterly payments in the tax year to a revised
5 estimate of the annual tax liability.

6 (4) The interest **AND PENALTY** provided by this act shall not be
7 assessed if any of the following occur:

8 (a) If the sum of the estimated payments equals at least 85%
9 of the liability or 1% of the gross receipts for the tax year and
10 the amount of each estimated payment reasonably approximates the
11 tax liability incurred during the quarter for which the estimated
12 payment was made.

13 (b) If the preceding year's tax liability was \$20,000.00 or
14 less and if the taxpayer submitted 4 equal installments the sum of
15 which equals the previous year's tax liability.

16 **(C) EFFECTIVE FOR THE 1 TAX YEAR OF THE TAXPAYER DURING WHICH**
17 **THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION BECAME EFFECTIVE, IF**
18 **THE UNDERPAYMENT IS DUE TO THE CHANGES MADE TO SECTION 36 BY THE**
19 **AMENDATORY ACT THAT ADDED THIS SUBDIVISION.**

20 (5) Each estimated return shall be made on a form prescribed
21 by the department and shall include an estimate of the annual tax
22 liability and other information required by the commissioner. This
23 form may be combined with any other tax reporting form prescribed
24 by the department.

25 (6) With respect to a taxpayer filing an estimated tax return
26 for the taxpayer's first tax year of less than 12 months, the
27 amounts paid with each return shall be proportional to the number

1 of payments made in the first tax year.

2 (7) Payments made under this section shall be a credit against
3 the payment required with the annual tax return required in section
4 73.

5 (8) When the commissioner considers it necessary to insure
6 payment of the tax or to provide a more efficient administration of
7 the tax, the commissioner may require filing of the returns and
8 payment of the tax for other than quarterly or annual periods.

9 (9) A taxpayer that elects under the internal revenue code to
10 file an annual federal income tax return by March 1 in the year
11 following the taxpayer's tax year and does not make a quarterly
12 estimate or payment, or does not make a quarterly estimate or
13 payment and files a tentative annual return with a tentative
14 payment by January 15, in the year following the taxpayer's tax
15 year and a final return by April 15 in the year following the
16 taxpayer's tax year, shall have the same option in filing the
17 estimated and annual returns required by this act.

18 (10) Instead of the quarterly return prescribed in subsections
19 (1) and (2) the taxpayer may elect either of the following options:

20 (a) To file and pay before the sixteenth day of each month an
21 estimated return computed at the rate of 1% of the gross receipts
22 for the preceding month.

23 (b) To file and pay before the sixteenth day of the months
24 specified in subsection (2) an estimated return computed at the
25 rate of 1% of the gross receipts for the preceding quarter.

26 (11) A penalty for underpayment of an estimated tax under this
27 act shall not be assessed for the taxpayer's first tax year

1 beginning after December 31, 1999 if the taxpayer claimed a credit
2 under section 35a for the first time on the taxpayer's annual
3 return for that tax year and a penalty would not have applied if
4 the taxpayer had made adjustments under section 23 or 23b on that
5 return.

6 SEC. 79. FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,
7 2006, A TAXPAYER THAT FILES A RETURN UNDER THIS ACT THAT INCLUDES A
8 DISREGARDED ENTITY UNDER AN ELECTION PURSUANT TO 26 CFR 301.7701-1
9 TO 301.7701-3, SECTION 1361(B)(3) OF THE INTERNAL REVENUE CODE, OR
10 ANY OTHER SECTION OF THE INTERNAL REVENUE CODE, SHALL NOT CLAIM ON
11 THAT RETURN A CREDIT CARRYFORWARD OR BUSINESS LOSS DEDUCTION UNDER
12 SECTION 23B FROM A YEAR IN WHICH THE ENTITY FROM WHOM THE CREDIT
13 CARRYFORWARD OR BUSINESS LOSS DEDUCTION UNDER SECTION 23B
14 ORIGINATED DID NOT FILE A RETURN ON A DISREGARDED ENTITY BASIS IN
15 AN AMOUNT GREATER THAN THE TOTAL CREDIT CARRYFORWARD OR BUSINESS
16 LOSS DEDUCTION UNDER SECTION 23B THAT COULD HAVE BEEN CLAIMED BY
17 THAT ENTITY IF THAT ENTITY HAD FILED A SEPARATE RETURN.

18 Enacting section 1. This amendatory act does not take effect
19 unless all of the following bills of the 93rd Legislature are
20 enacted into law:

- 21 (a) House Bill No. 4972.
- 22 (b) House Bill No. 4980.
- 23 (c) House Bill No. 5095.
- 24 (d) House Bill No. 5096.
- 25 (e) House Bill No. 5097.
- 26 (f) House Bill No. 5106.
- 27 (g) House Bill No. 5107.

1 (h) House Bill No. 5108.

2 (i) Senate Bill No. 633.

3 (j) Senate Bill No. 634.

4 Enacting section 2. Section 9 of the single business tax act,
5 1975 PA 228, MCL 208.9, as amended by this amendatory act takes
6 effect for tax years that begin on and after January 1, 2006.

7 Enacting section 3. Enacting section 1 of 2002 PA 531 is
8 repealed.

9 Enacting section 4. Enacting section 3 of 1999 PA 115 is
10 repealed.