

HOUSE BILL No. 4314

February 15, 2005, Introduced by Reps. Hoogendyk, Gosselin, Garfield, Baxter, Drolet, Sheen and Stahl and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 9, 39e, and 73 (MCL 208.9, 208.39e, and
208.73), section 9 as amended by 2004 PA 258, section 39e as
amended by 2002 PA 622, and section 73 as amended by 1995 PA 80.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (2) Add gross interest income and dividends derived from
5 obligations or securities of states other than Michigan, in the
6 same amount that was excluded from federal taxable income, less the
7 related portion of expenses not deducted in computing federal

1 taxable income because of sections 265 and 291 of the internal
2 revenue code.

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

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

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

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

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

12 (d) A dividend paid or accrued except a dividend that
13 represents a reduction of premiums to policyholders of insurance
14 companies.

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

22 (f) All interest including amounts paid, credited, or reserved
23 by insurance companies as amounts necessary to fulfill the policy
24 and other contract liability requirements of sections 805 and 809
25 of the internal revenue code. Interest does not include payments or
26 credits made to or on behalf of a taxpayer by a manufacturer,
27 distributor, or supplier of inventory to defray any part of the

1 taxpayer's floor plan interest, if these payments are used by the
2 taxpayer to reduce interest expense in determining federal taxable
3 income. For purposes of this section, "floor plan interest" means
4 interest paid that finances any part of the taxpayer's purchase of
5 automobile inventory from a manufacturer, distributor, or supplier.
6 However, amounts attributable to any invoiced items used to provide
7 more favorable floor plan assistance to a taxpayer than to a person
8 who is not a taxpayer is considered interest paid by a
9 manufacturer, distributor, or supplier.

10 (g) All royalties except for the following:

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

14 (ii) Cable television franchise fees described in section 622
15 of part III of title VI of the communications act of 1934, 47
16 ~~U.S.C.~~ USC 542.

17 (iii) Except as provided in subparagraph (iv), for the tax years
18 1986 and after 1986, a franchise fee as defined by section 3 of the
19 franchise investment law, 1974 PA 269, MCL 445.1503, in the
20 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 (iv) 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 (v) 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 (vi) Royalties, fees, charges, or other payments or
8 consideration paid or incurred by radio or television broadcasters
9 for program matter or signals.

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

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

24 (B) "Operating system software" means a set of statements or
25 instructions that when incorporated into a machine or device having
26 information processing capabilities is an interface between the
27 computer hardware and the application computer software or system

1 software.

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

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

16 (h) A deduction for rent attributable to a lease back that
17 continues in effect under the former provisions of section
18 168(f)(8) of the internal revenue code of 1954 as that section
19 provided immediately before the tax reform act of 1986, Public Law
20 99-514, became effective or to a lease back of property to which
21 the amendments made by the tax reform act of 1986 do not apply as
22 provided in section 204 of the tax reform act of 1986.

23 (5) Add compensation.

24 (6) Add a capital gain related to business activity of
25 individuals to the extent excluded in arriving at federal taxable
26 income.

27 (7) Deduct the following, to the extent included in arriving

1 at federal taxable income:

2 (a) A dividend received or considered received, including the
3 foreign dividend gross-up provided for in the internal revenue
4 code.

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

9 (c) All royalties except for the following:

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

13 (ii) Except as provided in subparagraph (iii), for the 1986 tax
14 year and after the 1986 tax year, a franchise fee as defined in
15 section 3 of the franchise investment law, 1974 PA 269, MCL
16 445.1503, in the following amounts:

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

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

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

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

27 (iv) Film rental or royalty payments paid by a theater owner to

1 a film distributor, a film producer, or a film distributor and
2 producer.

3 (v) Royalties, fees, charges, or other payments or
4 consideration paid or incurred by radio or television broadcasters
5 for program matter or signals.

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

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

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

27 (8) Deduct a capital loss not deducted in arriving at federal

1 taxable income in the year the loss occurred.

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

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

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

17 (b) Grants from the Michigan technology tri-corridor SBIR
18 emerging business fund administered by the Michigan economic
19 development corporation.

20 **(11) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, DEDUCT**
21 **\$350,000.00. FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, THE**
22 **DEDUCTION ALLOWED UNDER THIS SUBSECTION SHALL BE ADJUSTED BY THE**
23 **PERCENTAGE INCREASE IN THE UNITED STATES CONSUMER PRICE INDEX FOR**
24 **THE IMMEDIATELY PRECEDING CALENDAR YEAR. AS USED IN THIS**
25 **SUBSECTION, "UNITED STATES CONSUMER PRICE INDEX" MEANS THE UNITED**
26 **STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS DEFINED AND**
27 **REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR**

1 **STATISTICS.**

2 Sec. 39e. (1) A taxpayer may claim a credit against the tax
3 imposed by this act for 1 or more of the following as applicable:

4 (a) The credit allowed under subsection (2).

5 (b) The credit allowed under subsection (6).

6 (2) For tax years that begin after December 31, 2002, a
7 taxpayer that is certified under the Michigan next energy authority
8 act, 2002 PA 593, MCL 207.821 to 207.827, as an eligible taxpayer
9 may claim a nonrefundable credit for the tax year equal to the
10 amount determined under subdivision (a) or (b), whichever is less:

11 (a) The amount by which the taxpayer's tax liability
12 attributable to qualified business activity for the tax year
13 exceeds the taxpayer's baseline tax liability attributable to
14 qualified business activity.

15 (b) For tax years that begin after December 31, 2002, 10% of
16 the amount by which the taxpayer's adjusted qualified business
17 activity performed in this state outside of a renaissance zone for
18 the tax year exceeds the taxpayer's adjusted qualified business
19 activity performed in this state outside of a renaissance zone for
20 the 2001 tax year.

21 (3) For any tax year in which the eligible taxpayer's tax
22 liability attributable to qualified business activity for the tax
23 year does not exceed the taxpayer's baseline tax liability
24 attributable to qualified business activity, the eligible taxpayer
25 shall not claim the credit allowed under subsection (2).

26 (4) An affiliated group as defined in this act, a controlled
27 group of corporations as defined in section 1563 of the internal

1 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1
2 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
3 defined by the internal revenue code shall not take the credit
4 allowed under subsection (2) unless the qualified business activity
5 of the group or entities is consolidated.

6 (5) A taxpayer that claims a credit under subsection (2) shall
7 attach a copy of each of the following as issued pursuant to the
8 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
9 207.827, to the annual return required under this act for each tax
10 year in which the taxpayer claims the credit allowed under
11 subsection (2):

12 (a) The proof of certification that the taxpayer is an
13 eligible taxpayer for the tax year.

14 (b) The proof of certification of the taxpayer's tax liability
15 attributable to qualified business activity for the tax year.

16 (c) The proof of certification of the taxpayer's baseline tax
17 liability attributable to qualified business activity.

18 (6) For tax years that begin after December 31, 2002, a
19 taxpayer that is a qualified alternative energy entity may claim a
20 credit for the taxpayer's qualified payroll amount. A taxpayer
21 shall claim the credit under this subsection after all allowable
22 nonrefundable credits under this act.

23 (7) If the credit allowed under subsection (6) exceeds the tax
24 liability of the taxpayer for the tax year, that portion of the
25 credit that exceeds the tax liability shall be refunded.

26 (8) Notwithstanding any other provision of this act and for
27 tax years that begin after December 31, 2002 **AND BEFORE JANUARY 1,**

1 2006, a person whose apportioned or allocated gross receipts are
2 less than \$350,000.00 for the tax year need not file a return or
3 pay the tax as provided under this act.

4 (9) As used in this section:

5 (a) "Adjusted qualified business activity performed in this
6 state outside of a renaissance zone" means either of the following:

7 (i) Except as provided in subparagraph (ii), the taxpayer's
8 payroll for qualified business activity performed in this state
9 outside of a renaissance zone.

10 (ii) For a partnership, limited liability company, S
11 corporation, or individual, the amount determined under
12 subparagraph (i) plus the product of the following as related to the
13 taxpayer:

14 (A) Business income.

15 (B) The apportionment factor as determined under chapter 3.

16 (C) The alternative energy business activity factor.

17 (b) "Alternative energy business activity factor" means a
18 fraction the numerator of which is the ratio of the value of the
19 taxpayer's property used for qualified business activity and
20 located in this state outside of a renaissance zone for the year
21 for which the factor is being calculated to the value of all of the
22 taxpayer's property located in this state for that year plus the
23 ratio of the taxpayer's payroll for qualified business activity
24 performed in this state outside of a renaissance zone for that year
25 to all of the taxpayer's payroll in this state for that year and
26 the denominator of which is 2.

27 (c) "Alternative energy marine propulsion system",

1 "alternative energy system", "alternative energy vehicle", and
2 "alternative energy technology" mean those terms as defined in the
3 Michigan next energy authority act, 2002 PA 593, MCL 207.821 to
4 207.827.

5 (d) "Alternative energy zone" means a renaissance zone
6 designated as an alternative energy zone by the board of the
7 Michigan strategic fund under section 8a of the Michigan
8 renaissance zone act, 1996 PA 376, MCL 125.2688a.

9 (e) "Baseline tax liability attributable to qualified business
10 activity" means the taxpayer's tax liability for the 2001 tax year
11 multiplied by the taxpayer's alternative energy business activity
12 factor for the 2001 tax year. A taxpayer with a 2001 tax year of
13 less than 12 months shall annualize the amount calculated under
14 this subdivision as necessary to determine baseline tax liability
15 attributable to qualified business activity that reflects a 12-
16 month period.

17 (f) "Eligible taxpayer" means a taxpayer that has proof of
18 certification of qualified business activity under the Michigan
19 next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

20 (g) "Payroll" means total salaries and wages before deducting
21 any personal or dependency exemptions.

22 (h) "Qualified alternative energy entity" means a taxpayer
23 located in an alternative energy zone.

24 (i) "Qualified business activity" means research, development,
25 or manufacturing of an alternative energy marine propulsion system,
26 an alternative energy system, an alternative energy vehicle,
27 alternative energy technology, or renewable fuel.

1 (j) "Qualified employee" means an individual who is employed
2 by a qualified alternative energy entity, whose job
3 responsibilities are related to the research, development, or
4 manufacturing activities of the qualified alternative energy
5 entity, and whose regular place of employment is within an
6 alternative energy zone.

7 (k) "Qualified payroll amount" means an amount equal to
8 payroll of the qualified alternative energy entity attributable to
9 all qualified employees in the tax year of the qualified
10 alternative energy entity for which the credit under subsection (6)
11 is being claimed, multiplied by the tax rate for that tax year.

12 (l) "Renaissance zone" means a renaissance zone designated
13 under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681
14 to 125.2696.

15 (m) "Renewable fuel" means 1 or more of the following:

16 (i) Biodiesel or biodiesel blends containing at least 20%
17 biodiesel. As used in this subparagraph, "biodiesel" means a diesel
18 fuel substitute consisting of methyl or ethyl esters produced from
19 the transesterification of animal or vegetable fats with methanol
20 or ethanol.

21 (ii) Biomass. As used in this subparagraph, "biomass" means
22 residues from the wood and paper products industries, residues from
23 food production and processing, trees and grasses grown
24 specifically to be used as energy crops, and gaseous fuels produced
25 from solid biomass, animal wastes, municipal waste, or landfills.

26 (n) "Tax liability attributable to qualified business
27 activity" means the taxpayer's tax liability multiplied by the

1 taxpayer's alternative energy business activity factor for the tax
2 year.

3 (o) "Tax rate" means the rate imposed under sections 51, 51d,
4 and 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51,
5 206.51d, and 206.51e, annualized as necessary, for the tax year in
6 which the qualified alternative energy entity claims a credit under
7 subsection (6).

8 Sec. 73. (1) An annual or final return shall be filed with the
9 department in the form and content prescribed by the department by
10 the last day of the fourth month after the end of the taxpayer's
11 tax year. Any final liability shall be remitted with this return.
12 A person whose apportioned or allocated gross receipts plus the
13 adjustments provided in section 23b(a) ~~, (b), and (c)~~ **TO (G)** are
14 less than the following amount for the appropriate year need not
15 file a return or pay the tax provided under this act:

16 (a) \$40,000.00 for tax years beginning before January 1, 1991.

17 (b) \$60,000.00 for tax years beginning after December 31, 1990
18 and before January 1, 1992.

19 (c) \$100,000.00 for tax years beginning after December 31,
20 1991 and before January 1, 1994.

21 (d) \$137,500.00 for tax years beginning after December 31,
22 1993 and before January 1, 1995.

23 (e) \$250,000.00 for tax years beginning after December 31,
24 1994 **AND BEFORE JANUARY 1, 2003.**

25 **(F) \$350,000.00 FOR TAX YEARS BEGINNING AFTER DECEMBER 31,**
26 **2002 AND BEFORE JANUARY 1, 2006.**

27 (2) For a person whose apportioned or allocated gross receipts

1 plus the adjustments provided in section 23b(a), (b), and (c), are
2 for a tax year less than 12 months, the amount in subsection (1)
3 shall be multiplied by a fraction, the numerator of which is the
4 number of months in the tax year and the denominator of which is
5 12.

6 (3) The ~~commissioner~~ **DEPARTMENT** upon application of the
7 taxpayer and for good cause shown may extend the date for filing
8 the annual return. Interest at the rate of 9% per annum shall be
9 added to the amount of the tax unpaid for the period of the
10 extension. The ~~commissioner~~ **DEPARTMENT** shall require a tentative
11 return and payment of an estimated tax.

12 (4) If a taxpayer is granted an extension of time within
13 which to file the federal income tax return for any taxable year,
14 the filing of a copy of the request for extension together with a
15 tentative return and payment of an estimated tax with the
16 commissioner by the due date provided in subsection (1) shall
17 automatically extend the due date for the filing of a final return
18 under this act for an equivalent period plus 60 days. Interest at
19 the rate of 9% per annum shall be added to the amount of the tax
20 unpaid for the period of the extension.

21 (5) For tax years that end after July 6, 1994, an affiliated
22 group as defined in this act, a controlled group of corporations as
23 defined in section 1563 of the internal revenue code and further
24 described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-
25 5, or an entity under common control as defined in the internal
26 revenue code shall consolidate the gross receipts of the members of
27 the affiliated group, member corporations of the controlled group,

1 or entities under common control that have apportioned or allocated
2 gross receipts, plus the adjustments provided in section 23b(a) ~~7~~
3 ~~(b), and (c)~~ **TO (G)**, of \$100,000.00 or more to determine if the
4 group or entity shall pay a tax or file a return as provided under
5 subsection (1). An individual member of an affiliated group or
6 controlled group of corporations or an entity under common control
7 is not required to file a return or pay the tax under this act if
8 that member or entity has apportioned or allocated gross receipts,
9 plus the adjustments provided in section 23b(a) ~~7, (b), and (c)~~ **TO**
10 **(G)**, of less than \$100,000.00.