

HOUSE BILL No. 5021

June 29, 2005, Introduced by Rep. Green and referred to the Committee on Banking and Financial Services.

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending section 9 (MCL 208.9), as amended by 2004 PA 258, and by adding section 35e.

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
8 taxable income because of sections 265 and 291 of the internal

1 revenue code.

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

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

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

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

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

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

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

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

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

9 (g) All royalties except for the following:

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

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

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

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

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

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

25 (iv) For the tax years ending before 1991, this subdivision
26 does not apply to a fee for services paid by a franchisee that,
27 with respect to a specific provision of a franchise agreement, a

1 court of competent jurisdiction, before June 5, 1985, has
2 determined is not a royalty payment under this act.

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

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

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

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

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

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

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

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

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

22 (5) Add compensation.

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

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

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

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

8 (c) All royalties except for the following:

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

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

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

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

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

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

26 (iv) Film rental or royalty payments paid by a theater owner to
27 a film distributor, a film producer, or a film distributor and

1 producer.

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

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

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

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

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

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

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

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

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

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

19 **(11) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, DEDUCT,**
20 **TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, THE AMOUNT**
21 **CONTRIBUTED BY THE TAXPAYER IN THE TAX YEAR TO THE RESERVE FUND OF**
22 **A COMMUNITY DEVELOPMENT ORGANIZATION PURSUANT TO THE INDIVIDUAL OR**
23 **FAMILY DEVELOPMENT ACCOUNT PROGRAM ACT. AS USED IN THIS SUBSECTION,**
24 **"COMMUNITY DEVELOPMENT ORGANIZATION" MEANS THAT TERM AS DEFINED IN**
25 **THE INDIVIDUAL OR FAMILY DEVELOPMENT ACCOUNT PROGRAM ACT.**

26 **SEC. 35E. (1) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31,**
27 **2005, A TAXPAYER THAT IS A QUALIFIED FINANCIAL INSTITUTION MAY**

1 CLAIM A CREDIT AGAINST THE TAX IMPOSED BY THIS ACT EQUAL TO THE
2 CONTRIBUTIONS MADE TO INDIVIDUAL OR FAMILY DEVELOPMENT ACCOUNTS
3 ESTABLISHED WITH THAT FINANCIAL INSTITUTION NOT TO EXCEED \$500.00
4 AND AN ADDITIONAL CREDIT OF \$50.00 EACH TAX YEAR FOR THE
5 ADMINISTRATION OF INDIVIDUAL OR FAMILY DEVELOPMENT ACCOUNTS
6 ESTABLISHED WITH THAT FINANCIAL INSTITUTION.

7 (2) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX YEAR
8 AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED UNDER THIS
9 SECTION EXCEED THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX YEAR,
10 THE EXCESS SHALL NOT BE REFUNDED, BUT MAY BE CARRIED FORWARD AS AN
11 OFFSET TO THE TAX LIABILITY IN SUBSEQUENT TAX YEARS FOR 10 TAX
12 YEARS OR UNTIL THE EXCESS CREDIT IS USED UP, WHICHEVER OCCURS
13 FIRST.

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

17 (a) Senate Bill No.____ or House Bill No. 5027(request no.
18 02527'05).

19 (b) Senate Bill No.____ or House Bill No.____ (request no.
20 03309'05).