

HOUSE BILL No. 4745

May 27, 1999, Introduced by Rep. Cassis and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 4, 5, 6, 37c, 37d, and 49 (MCL 208.4, 208.5,
208.6, 208.37c, 208.37d, and 208.49), section 4 as amended by
1995 PA 285, section 5 as amended by 1987 PA 253, and
sections 37c and 37d as amended by 1996 PA 470, and by adding
section 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Casual transaction" means a transaction made
2 or engaged in other than in the ordinary course of repeated and
3 successive transactions of a like character, except that a trans-
4 action made or engaged in by a person that is incidental to that
5 person's regular business activity is a business activity within
6 the meaning of this act.

1 (2) "Commissioner" means the state commissioner of revenue.

2 (3) Except as otherwise provided in this section,

3 "compensation" means all wages, salaries, fees, bonuses, commis-

4 sions, or other payments made in the taxable year on behalf of or

5 for the benefit of employees, officers, or directors of the

6 taxpayers. ~~and~~ COMPENSATION INCLUDES, BUT IS NOT LIMITED TO,

7 PAYMENTS THAT ARE subject to or specifically exempt from with-

8 holding under chapter 24, sections 3401 to 3406 of the internal

9 revenue code. Compensation ALSO includes, on a cash or accrual

10 basis consistent with the taxpayer's method of accounting for

11 federal income tax purposes, payments to state and federal unem-

12 ployment compensation funds, payments under the federal insurance

13 contribution act and similar social insurance programs, payments,

14 including self-insurance, for worker's compensation insurance,

15 payments to individuals not currently working, payments to depen-

16 dents and heirs of individuals because of current or former labor

17 services rendered by those individuals, payments to a pension,

18 retirement, or profit sharing plan, and payments for insurance

19 for which employees are the beneficiaries, including payments

20 under health and welfare and noninsured benefit plans and pay-

21 ments of fees for the administration of health and welfare and

22 noninsured benefit plans. Compensation does not include any of

23 the following:

24 (a) Discounts on the price of the taxpayer's merchandise or

25 services sold to the taxpayer's employees, officers, or directors

26 that are not available to other customers.

(b) Payments to an independent contractor.

(c) For tax years beginning after December 31, 1994, payments to state and federal unemployment compensation funds.

(d) For tax years beginning after December 31, 1994, the employer's portion of payments under the federal insurance contribution act, the railroad retirement tax act, chapter 22 of title 26 of the United States Code, 26 U.S.C. 3201 to 3233, and similar social insurance programs.

(e) For tax years beginning after December 31, 1994, payments, including self-insurance payments, for worker's compensation insurance or federal employers liability act insurance pursuant to chapter 149, 35 Stat. 65, 45 U.S.C. 51 to 60.

(4) "Department" means the revenue ~~division~~ BUREAU of the department of treasury.

Sec. 5. (1) "Employee" means an employee as defined in section 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee.

(2) "Employer" means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes shall prima facie be deemed an employer.

(3) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code.

(4) "Internal revenue code" means the United States internal revenue code of 1986 ~~, as amended, and~~ in effect on January 1,

1 ~~1987~~ 1999 OR, AT THE OPTION OF THE TAXPAYER, IN EFFECT FOR THE
2 TAX YEAR.

3 Sec. 6. (1) "Person" means an individual, firm, bank,
4 financial institution, limited partnership, copartnership, part-
5 nership, joint venture, association, LIMITED LIABILITY COMPANY,
6 corporation, receiver, estate, trust, BUSINESS TRUST, BUSINESS
7 ORGANIZATION, or any other group or combination acting as a unit,
8 INCLUDING A PERSON THAT IS FORMED UNDER THE LAWS OF A FOREIGN
9 COUNTRY OR POLITICAL SUBDIVISION THEREOF.

10 (2) "Rent" includes a lease payment or other payment for the
11 use of any property to which the taxpayer does not have legal or
12 equitable title.

13 SEC. 19. (1) FOR TAX YEARS THAT BEGIN AFTER JUNE 1, 1999,
14 EXCEPT FOR A TAXPAYER THAT CALCULATES TAX BASE UNDER SECTION 22A,
15 THE TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF BUSINESS
16 INCOME AND THE ADJUSTMENTS UNDER SECTION 9, WHETHER OR NOT THE
17 FOREIGN PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE
18 CODE.

19 (2) A FOREIGN PERSON SHALL ELECT TO CALCULATE BUSINESS
20 INCOME EITHER BY COMPLETING A PRO FORMA UNITED STATES INCOME TAX
21 RETURN OR BY A REASONABLE APPROXIMATION OF FEDERAL TAXABLE INCOME
22 CALCULATED BY A METHOD APPROVED BY THE COMMISSIONER.

23 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAX
24 BASE OF A FOREIGN PERSON IS SUBJECT TO ALL ADJUSTMENTS AND OTHER
25 PROVISIONS OF THIS ACT.

26 (4) AS USED IN THIS SECTION:

1 (A) "BUSINESS INCOME" MEANS, FOR TAX YEARS THAT BEGIN AFTER
2 JUNE 1, 1999 FOR A FOREIGN PERSON THAT IS A CORPORATION, AN
3 AMOUNT EQUAL TO FEDERAL TAXABLE INCOME CALCULATED AS IF THE FOR-
4 EIGN PERSON IS A UNITED STATES PERSON. FOR TAX YEARS THAT BEGIN
5 AFTER JUNE 1, 1999 FOR A FOREIGN PERSON OTHER THAN A CORPORATION,
6 BUSINESS INCOME MEANS THAT PART OF FEDERAL TAXABLE INCOME DERIVED
7 FROM BUSINESS ACTIVITY CALCULATED AS IF THE FOREIGN PERSON IS A
8 UNITED STATES PERSON. FOR A FOREIGN PERSON OTHER THAN A CORPORA-
9 TION, BUSINESS INCOME INCLUDES PAYMENTS AND ITEMS OF INCOME AND
10 EXPENSE THAT ARE ATTRIBUTABLE TO BUSINESS ACTIVITY OF THE PART-
11 NERSHIP AND SEPARATELY REPORTED TO THE PARTNERS OR SIMILAR FOR-
12 EIGN MEMBERS.

13 (B) "FOREIGN PERSON" MEANS EITHER OF THE FOLLOWING:

14 (i) AN INDIVIDUAL WHO IS NOT A UNITED STATES RESIDENT,
15 WHETHER OR NOT THE INDIVIDUAL IS SUBJECT TO TAXATION UNDER THE
16 INTERNAL REVENUE CODE.

17 (ii) A PERSON FORMED UNDER THE LAWS OF A FOREIGN COUNTRY OR
18 A POLITICAL SUBDIVISION OF A FOREIGN COUNTRY, WHETHER OR NOT THE
19 PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE.

20 (C) "UNITED STATES PERSON" MEANS A UNITED STATES PERSON AS
21 DEFINED IN SECTION 7701(a)(30) OF THE INTERNAL REVENUE CODE.

22 Sec. 37c. (1) For tax years beginning after December 31,
23 1994 and for a period of time not to exceed 20 years as deter-
24 mined by the Michigan economic growth authority, a taxpayer that
25 is an authorized business may credit against the tax imposed by
26 section 31 the amount certified each year by the Michigan
27 economic growth authority.

1 (2) The credit under this section for an authorized business
2 for the tax year as determined under the Michigan economic growth
3 authority act shall not exceed the payroll of the authorized
4 business attributable to employees who perform qualified new jobs
5 multiplied by the tax rate.

6 (3) A taxpayer shall not claim a credit under this section
7 unless the Michigan economic growth authority has issued a cer-
8 tificate to the taxpayer. The taxpayer shall attach the certifi-
9 cate to the return filed under this act on which a credit under
10 this section is claimed.

11 (4) The certificate required by subsection (3) shall state
12 all of the following:

13 (a) The taxpayer is an authorized business.

14 (b) The amount of the credit under this section for the
15 authorized business for the designated tax year.

16 (c) The taxpayer's federal employer identification number or
17 the Michigan treasury number assigned TO THE TAXPAYER.

18 (5) If the credit allowed under this section exceeds the tax
19 liability of the taxpayer for the tax year, the excess shall be
20 refunded to the taxpayer.

21 (6) An affiliated group AS DEFINED IN THIS ACT, a controlled
22 group of corporations as defined ~~by~~ IN SECTION 1563 OF the
23 internal revenue code AND FURTHER DESCRIBED IN 26
24 C.F.R. 1.414(b)-1 AND 1.414(c)-1 TO 1.414(c)-5, or an entity
25 under common control as defined by the internal revenue code
26 shall claim only 1 credit under this section for each tax year

1 for each expansion or location evidenced by a written agreement
2 whether or not a combined or consolidated return is filed.

3 (7) A credit shall not be claimed by a taxpayer under this
4 section if the taxpayer's initial certification as required in
5 subsection (3) is issued after December 31, ~~1999~~ 2003.

6 (8) As used in this section:

7 (a) "Authority" or "Michigan economic growth authority"
8 means the Michigan economic growth authority created in the
9 Michigan economic growth authority act, ~~Act No. 24 of the Public~~
10 ~~Acts of 1995, being sections 207.801 to 207.810 of the Michigan~~
11 ~~Compiled Laws~~ 1995 PA 24, MCL 207.801 TO 207.810.

12 (b) "Authorized business", "facility", "full-time job", and
13 "written agreement" mean those terms as defined in ~~Act No. 24 of~~
14 ~~the Public Acts of 1995~~ THE MICHIGAN ECONOMIC GROWTH AUTHORITY
15 ACT, 1995 PA 24, MCL 207.801 TO 207.810.

16 (c) "Payroll" means the total salaries and wages before
17 deducting any personal or dependency exemptions.

18 (d) "Qualified new jobs" means the average number of
19 full-time jobs at a facility of an authorized business for a tax
20 year in excess of the average number of full-time jobs the autho-
21 rized business maintained in this state prior to the expansion or
22 location as that is determined under ~~Act No. 24 of the Public~~
23 ~~Acts of 1995~~ THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT, 1995
24 PA 24, MCL 207.801 TO 207.810.

25 (e) "Tax rate" means the rate imposed under ~~section 51(1)~~
26 SECTIONS 51 AND 51B TO 51E of the income tax act of 1967, ~~Act~~
27 ~~No. 281 of the Public Acts of 1967, being section 206.51 of the~~

~~1 Michigan Compiled Laws~~ 1967 PA 281, MCL 206.51 AND 206.51B TO
2 206.51E, for the tax year in which the tax year of the taxpayer
3 for which the credit is being computed begins.

4 Sec. 37d. (1) For tax years beginning after December 31,
5 1994, and for a period of time not to exceed 20 years as deter-
6 mined by the Michigan economic growth authority plus any carry-
7 forward years allowed under subsection (5), a taxpayer that is an
8 authorized business may credit against the tax imposed by section
9 31 an amount equal to the tax liability attributable to autho-
10 rized business activity.

11 (2) A taxpayer shall not claim a credit under this section
12 unless the Michigan economic growth authority has issued a cer-
13 tificate to the taxpayer. The taxpayer shall attach the certifi-
14 cate to the return filed under this act on which a credit under
15 this section is claimed.

16 (3) The certificate required by subsection (2) shall state
17 both of the following:

18 (a) The taxpayer is an authorized business.

19 (b) The amount of the credit under this section for the
20 authorized business for the designated tax year.

21 (c) The taxpayer's federal employer identification number or
22 the Michigan treasury number assigned.

23 (4) The tax liability attributable to authorized business
24 activity is the tax liability imposed by this act after the cal-
25 culation of the credits provided in sections 36, 37, 38, and 39
26 multiplied by either of the following fractions as appropriate:

1 (a) For an authorized business locating a facility in this
2 state, a fraction the numerator of which is the ratio of the
3 value of the facility to all of the taxpayer's property located
4 in this state plus the ratio of the taxpayer's payroll attribut-
5 able to qualified new jobs to all of the taxpayer's payroll in
6 this state and the denominator of which is 2.

7 (b) For an authorized business expanding at an existing
8 site, a fraction the numerator of which is the ratio of the value
9 of the new property added to the site as part of that expansion
10 to all of the taxpayer's property located in this state plus the
11 ratio of the taxpayer's payroll attributable to qualified new
12 jobs to all of the taxpayer's payroll in this state and the
13 denominator of which is 2.

14 (5) If the credit allowed under this section for the tax
15 year and any unused carryforward of the credit allowed by this
16 section exceed the taxpayer's tax liability for the tax year,
17 that portion that exceeds the tax liability for the tax year
18 shall not be refunded but may be carried forward to offset tax
19 liability in subsequent tax years for 10 years or until used up,
20 whichever occurs first.

21 (6) A credit shall not be claimed by a taxpayer under this
22 section if the taxpayer's initial certification, as required in
23 subsection (2), is issued after December 31, ~~1999~~ 2003.

24 (7) As used in this section:

25 (a) "Authorized business" and "facility" mean those terms as
26 defined in the Michigan economic growth authority act, ~~Act~~
27 ~~No. 24 of the Public Acts of 1995, being sections 207.801 to~~

1 ~~207.810 of the Michigan Compiled Laws~~ 1995 PA 24, MCL 207.801 TO
2 207.810.

3 (b) "Authorized business activity" means the business activ-
4 ity of an authorized business certified under ~~Act No. 24 of the~~
5 ~~Public Acts of 1995~~ THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT,
6 1995 PA 24, MCL 207.801 TO 207.810.

7 (c) "Michigan economic growth authority" means the Michigan
8 economic growth authority created in ~~Act No. 24 of the Public~~
9 ~~Acts of 1995~~ THE MICHIGAN ECONOMIC GROWTH AUTHORITY ACT, 1995
10 PA 24, MCL 207.801 TO 207.810.

11 (d) "Qualified new jobs" means that term as defined in
12 section 37c.

13 Sec. 49. The payroll factor is a fraction, the numerator of
14 which is the total wages paid in this state during the tax year
15 by the taxpayer and the denominator of which is the total wages
16 paid everywhere during the tax year by the taxpayer. For the
17 purposes of this chapter only, "wages" means ALL wages, ~~as~~
18 ~~defined in section 3401~~ SALARIES, FEES, BONUSSES, COMMISSIONS, OR
19 OTHER PAYMENTS MADE IN THE TAXABLE YEAR ON BEHALF OF OR FOR THE
20 BENEFIT OF EMPLOYEES, OFFICERS, OR DIRECTORS OF THE TAXPAYER AND
21 INCLUDES, BUT IS NOT LIMITED TO, PAYMENTS THAT ARE SUBJECT TO OR
22 SPECIFICALLY EXEMPT FROM WITHHOLDING UNDER CHAPTER 24,
23 SECTIONS 3401 TO 3406 of the internal revenue code.