

SENATE BILL No. 1456

November 3, 2004, Introduced by Senators BISHOP and GEORGE and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
(MCL 208.1 to 208.145) by adding section 35c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35c. (1) For tax years that begin after December 31,
2 2004, a taxpayer may claim a credit against the tax imposed by
3 this act for the sum of all of the following:

4 (a) That portion of a taxpayer's equity investment in a
5 qualified business, as provided in subsection (2). A taxpayer
6 shall not claim a credit under this subdivision for the equity
7 investment of a partnership, limited liability company, S
8 corporation, estate, or trust electing to have income taxed
9 directly to the taxpayer. If the amount of the credit allowed
10 under this section exceeds the tax liability of the taxpayer for
11 the tax year, that portion of the credit that exceeds the tax

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1 liability shall not be carried forward or refunded.

2 (b) That portion of a taxpayer's equity investment, as
3 provided in subsection (2), in a community-based seed capital
4 fund. A taxpayer may claim a tax credit under this subdivision
5 for an investment of a partnership, limited liability company, S
6 corporation, estate, or trust electing to have income taxed
7 directly to the taxpayer. The amount claimed by the taxpayer
8 shall be based upon the pro rata share of the taxpayer's earnings
9 from the partnership, limited liability company, S corporation,
10 estate, or trust. If the amount of the credit allowed under this
11 section exceeds the tax liability of the taxpayer for the tax
12 year, that portion of the credit that exceeds the tax liability
13 shall not be carried forward or refunded.

14 (c) An investment made in the form of cash to purchase equity
15 in a qualified business or in a community-based seed capital
16 fund. A taxpayer shall not claim the credit under this
17 subdivision before the third tax year following the tax year in
18 which the investment is made. If the credit allowed under this
19 section for the tax year and any unused carryforward of the
20 credit allowed under this section exceed the tax liability of the
21 taxpayer for the tax year, the excess shall not be refunded, but
22 may be carried forward as an offset to the tax liability in
23 subsequent tax years for 10 tax years or until the excess credit
24 is used up, whichever occurs first. A credit under this
25 subdivision shall not be carried back to a tax year before the
26 tax year in which the taxpayer first claims the credit.

27 (2) The amount of the credit under this section determined

1 under subsection (1)(a) and (b) shall not exceed 20% of the
2 taxpayer's equity investment. The maximum amount of a credit
3 under this section for investment by an investor in any 1
4 qualified business is \$50,000.00. Each investor and all
5 affiliates of the investor shall not claim a total of all credits
6 under this section for more than 5 different investments in 5
7 different qualified businesses for any 1 year.

8 (3) An investment is considered to have been made on the same
9 date as the date of acquisition of the equity interest. For
10 purposes of this section, the date of acquisition is the same as
11 the date of acquisition of the equity interest under the internal
12 revenue code. Investments made before January 1, 2005 shall not
13 qualify for a tax credit under this subsection.

14 (4) The total of all credits to all taxpayers under this
15 section shall not exceed \$10,000,000.00. The total of all
16 credits for the state fiscal year beginning October 1, 2005 shall
17 not exceed \$3,000,000.00. The total amount of all credits for
18 the state fiscal year beginning October 1, 2006 shall not exceed
19 \$3,000,000.00. The total of all credits for the state fiscal
20 year beginning October 1, 2007 shall not exceed \$4,000,000.00.

21 (5) A credit allowed under this section shall not be claimed
22 for any tax year that begins before January 1, 2008.

23 (6) A credit allowed under this section is nontransferable
24 and shall not be transferred to any other taxpayer.

25 (7) A taxpayer shall not claim a credit under this section
26 for the same investment used as a basis for a credit under
27 section 37e.

1 (8) The Michigan capital investment board is created in the
2 department. The Michigan capital investment board shall do all
3 of the following:

4 (a) Develop an application process for credit certificates
5 for credits allowed under this section.

6 (b) Determine the distribution of credits to investors under
7 this section.

8 (c) Develop procedures for the qualification and
9 administration of qualified businesses and community-based seed
10 capital funds.

11 (d) Develop application forms and distribute copies of the
12 application forms to all community-based seed capital funds and
13 potential individual investors.

14 (9) For an equity investment to qualify for a credit under
15 this section, the business in which the equity investment is made
16 shall, within 100 days of the date of the first investment,
17 notify the board of the names, addresses, taxpayer identification
18 numbers, shares issued, consideration paid for the shares, and
19 the amount of any credits, of all shareholders who may initially
20 qualify for the credits under this section, and the earliest year
21 in which the tax credits may be claimed. The list of
22 shareholders who may qualify for the tax credits shall be amended
23 as new equity investments are sold or as any information on the
24 list changes.

25 (10) A business shall apply to the board to be designated as
26 a qualified business. To be designated as a qualified business a
27 business shall meet all of the following criteria:

1 (a) The principal business operations of the business are
2 located in this state.

3 (b) The business has been in operation for 3 years or less.

4 (c) The business has an owner who has successfully completed
5 1 of the following:

6 (i) An entrepreneurial venture development curriculum.

7 (ii) Three years of relevant business experience.

8 (iii) A 4-year college degree in business management,
9 business administration, or a related field.

10 (iv) Other training or experience that the board determines
11 is sufficient to increase the probability of success of the
12 qualified business.

13 (d) The business is not a business engaged primarily in
14 retail sales, real estate, or the provision of health care or
15 other professional services.

16 (e) The business has a net worth of \$3,000,000.00 or less.

17 (f) The business has secured, within 24 months after the
18 first date on which the equity investments qualifying for credits
19 under this section have been made, total equity or near equity
20 financing equal to at least \$250,000.00.

21 (11) A qualified business shall notify the board in a timely
22 manner of any changes in the qualifications of the business or in
23 the eligibility of investors to claim a credit under this
24 section.

25 (12) If the board determines that the business is a qualified
26 business, the board shall issue tax credit certificates to be
27 attached to the equity investors' tax returns required under this

1 act. The tax credit certificate shall contain the taxpayer's
2 name, address, tax identification number, the amount of credit,
3 the name of the qualified business, and other information
4 required by the department.

5 (13) A community-based seed capital fund shall apply to the
6 board for eligibility under this section. An investment in a
7 community-based seed capital fund qualifies for a credit under
8 this section if, in addition to all other requirements under this
9 section, the board determines that the following requirements are
10 met:

11 (a) The community-based seed capital fund meets all of the
12 following criteria:

13 (i) The fund is a limited partnership or limited liability
14 company.

15 (ii) The fund has, on or after January 1, 2004, a total of
16 both capital commitments from investors and investments in
17 qualified businesses of at least \$500,000.00 but not more than
18 \$3,000,000.00.

19 (b) The fund has no fewer than 10 individual investors who
20 are not affiliates, with no single investor and affiliates of
21 that investor together owning a total of more than 25% of the
22 ownership interests outstanding in the fund.

23 (c) The fund notifies the board within 120 days of the date
24 of the first investment of the names, addresses, taxpayer
25 identification numbers, equity interests issued, consideration
26 paid for the interests, and the amount of any credits under this
27 section, of all limited partners or members who may initially

1 qualify for the tax credits, and the earliest year in which the
2 tax credits may be claimed. The list of limited partners or
3 members who qualify for the credits under this section shall be
4 amended as new equity interests are sold or as any information on
5 the list changes.

6 (14) If the board determines that investments in a
7 community-based seed capital fund are eligible for a credit under
8 this section, the board shall issue a tax credit certificate to
9 be attached to the taxpayer's tax return. The tax credit
10 certificate shall contain the taxpayer's name, address, tax
11 identification number, the amount of the tax credit, the name of
12 the community-based seed capital fund, and other information
13 required by the department. A community-based seed capital fund
14 shall notify the board in a timely manner of any changes in the
15 qualifications of the community-based seed capital fund, in the
16 qualifications of any qualified business in which the fund has
17 invested, or in the eligibility of limited partners or members to
18 redeem the tax credits in any year.

19 (15) If a community-based seed capital fund fails to meet or
20 maintain any requirement for eligibility under this section, or
21 if the community-based seed capital fund has not invested at
22 least 35% of its invested capital in at least 2 separate
23 qualified businesses, measured at the end of the 36-month period
24 beginning after the date that the fund began its investing
25 activities, the board shall rescind any tax credit certificates
26 issued to the community-based seed capital fund for investments
27 by limited partners or members and shall notify the department of

1 the rescission. Tax credit certificates that have been rescinded
2 are null and void. However, a community-based seed capital fund
3 may apply to the board for a 1-year waiver of the requirements of
4 this subsection.

5 (16) An investor in a community-based seed capital fund may
6 claim a credit under this section only for the investor's
7 investment in the community-based seed capital fund and shall not
8 claim any additional credit for the investor's share of
9 investments in a qualified business made by the community-based
10 seed capital fund. However, an investor in a community-based
11 seed capital fund may claim a credit under this section for a
12 separate direct investment made by the investor in the same
13 qualified business in which the community-based seed capital fund
14 invests.

15 (17) On or before April 1 each year, the board shall publish
16 an annual report of the activities conducted under this section
17 and shall submit the report to the governor and the legislature.
18 The report shall include a listing of eligible qualified
19 businesses, a list of eligible community-based seed capital
20 funds, the number of tax credit certificates issued by the board
21 and the total amount of credits authorized by those certificates,
22 and the total amount of credits claimed under this section for
23 the immediately preceding calendar year.

24 (18) As used in this section:

25 (a) "Affiliate" means a spouse, child, or sibling of an
26 investor or a corporation, partnership, or trust in which an
27 investor has a controlling equity interest or in which an

1 investor exercises management control.

2 (b) "Board" or "Michigan capital investment board" means the
3 Michigan capital investment board created in subsection (8).

4 (c) "Investor" means an individual who makes a cash
5 investment in a qualified business or a person who makes a cash
6 investment in a community-based seed capital fund. Investor does
7 not include a person that is a current or previous owner, member,
8 or shareholder in a qualified business.

9 (d) "Near equity" means debt that may be converted to equity
10 at the option of the debt holder, and royalty agreements.

11 (e) "Qualified business" means a business that meets the
12 criteria in subsection (10).