

SUBSTITUTE FOR
HOUSE BILL NO. 5098
(As amended August 31, 2005)

[A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 3, 36, 38e, and 71 (MCL 208.3, 208.36, 208.38e, and
208.71), sections 3 and 71 as amended by 1999 PA 115, 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.
8 (2) "Business activity" means a transfer of legal or equitable

House Bill No. 5098 (H-3) as amended August 31, 2005 (1 of 5)

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

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

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

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

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

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

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

House Bill No. 5098 (H-3) as amended August 31, 2005 (2 of 5)

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

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

(d) "Shareholder" means a person who owns outstanding stock in the business **OR FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2007, A MEMBER OF A BUSINESS ENTITY THAT FILES AS A CORPORATION FOR FEDERAL TAX PURPOSES**. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

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

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

(2) The credit provided in this section shall be taken before any other credit under this act, and is available to any person whose gross receipts do not exceed \$6,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for tax years commencing in 1990; \$7,500,000.00 for tax years commencing in 1991; or \$10,000,000.00 for tax years commencing after 1991, and whose adjusted business income minus the loss adjustment does not exceed \$475,000.00 for tax years commencing on or after January 1, 1985, subject to the following:

(a) An individual, a partnership, ~~or~~ a subchapter S corporation, **OR, FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2007, A BUSINESS ENTITY THAT FILES AS A PARTNERSHIP FOR FEDERAL TAX PURPOSES** is disqualified if the individual, any 1 partner of the partnership, ~~or~~ any 1 shareholder of the subchapter S corporation, **OR, FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2007, ANY 1 MEMBER OF A BUSINESS ENTITY THAT FILES AS A PARTNERSHIP FOR FEDERAL TAX PURPOSES** receives more than \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998 or more than \$115,000.00 for tax years commencing after December 31, 1997 **AND BEFORE JANUARY 1, 2007, OR MORE THAN \$175,000.00 AS ADJUSTED UNDER SUBSECTION (9) FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 2006** as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, or the subchapter S corporation.

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

House Bill No. 5098 (H-3) as amended August 31, 2005 (3 of 5)
year:

(i) Compensation and director's fees of a shareholder or officer exceed \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998 or exceed \$115,000.00 for tax years commencing after December 31, 1997 **AND BEFORE JANUARY 1, 2007, OR EXCEED \$175,000.00 AS ADJUSTED UNDER SUBSECTION (9) FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 2006.**

(ii) The sum of the following amounts exceeds \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998 or exceeds \$115,000.00 for tax years commencing after December 31, 1997 **AND BEFORE JANUARY 1, 2007, OR EXCEED \$175,000.00 AS ADJUSTED UNDER SUBSECTION (9) FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 2006:**

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

(B) The product of the percentage of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and the adjustments provided in section 9(4)(a) and (b) minus the loss adjustment.

(c) Subject to section 36d, for a taxpayer that is eligible for the credit under this subsection for tax years beginning after December 31, 1997 **AND BEFORE JANUARY 1, 2007**, the credit determined under this subsection shall be reduced by the following percentages in the following circumstances:

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

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

(iii) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the individual, partnership, or subchapter S corporation if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$105,000.00 or more but less than \$110,000.00, the credit is reduced by 60%.

(iv) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted gross income minus the loss adjustment of the

House Bill No. 5098 (H-3) as amended August 31, 2005 (4 of 5)
 individual, partnership, or subchapter S corporation if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is \$110,000.00 or more but less than \$115,000.00, the credit is reduced by 80%.

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

(4) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by section 31. For tax years commencing before January 1, 1989, the credit is a percentage reduction in tax liability. ~~For tax years commencing on and after January 1, 1989 and through tax years commencing in 1991, the credit is the greater of the amount by which the tax imposed by section 31 exceeds 4% of adjusted business income or 3% of adjusted business income for tax years commencing after 1991 or a percentage 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, 2008, 2%.

(D) BEGINNING JANUARY 1, 2008 AND BEFORE JANUARY 1, 2009, 1.8%.

(E) BEGINNING JANUARY 1, 2009 AND BEFORE JANUARY 1, 2010, 1.6%.

(F) BEGINNING JANUARY 1, 2010, 1.4%.

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

House Bill No. 5098 (H-3) as amended August 31, 2005 (5 of 5)

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

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

(9) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007, THE MAXIMUM AMOUNT UNDER SUBSECTION (2)(A), (B)(i), AND (B)(ii) SHALL BE ADJUSTED BY THE PERCENTAGE INCREASE IN THE RATE OF PERSONAL INCOME GROWTH AS REPORTED BY THE FEDERAL GOVERNMENT FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR.

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

24 Sec. 38e. (1) A taxpayer may claim a credit against the tax
25 imposed by this act equal to the sum of 50% of the qualified
26 expenses **INCURRED BEFORE JANUARY 1, 2006 AS** defined in subsection
27 (5)(d)(i) and (ii) and 100% of the qualified expenses **INCURRED BEFORE**

1 **JANUARY 1, 2006 AS** defined in subsection (5)(d)(iii) paid by the
2 taxpayer in the tax year in each of the following circumstances:

3 (a) Except for apprentices trained under subdivision (b) or
4 (c), an amount not to exceed \$2,000.00 for each apprentice trained
5 by the taxpayer in the tax year.

6 (b) For companies that have a classification under the North
7 American industrial classification system (NAICS) of 333511,
8 333512, 333513, 333514, or 333515 and for tax years that begin
9 after December 31, 2003, an amount not to exceed \$4,000.00 for each
10 apprentice trained by the taxpayer in the tax year.

11 (c) For companies that have a classification under the North
12 American industrial classification system (NAICS) of 333511,
13 333512, 333513, 333514, or 333515 and for tax years that begin
14 after December 31, 2003, an amount not to exceed \$1,000.00 for each
15 special apprentice trained by the taxpayer in the tax year.

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

20 (3) The credit allowed under this section shall be claimed on
21 the annual return required under section 73, or for a taxpayer that
22 is not required to file an annual return, the department shall
23 provide that the credit under this subsection may be claimed on the
24 C-8044 form, a successor form for persons not required to file an
25 annual return, or other simplified form prescribed by the
26 department.

27 (4) For each year that this credit is in effect, the

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

17 (5) As used in this section:

18 (a) "Apprentice" means a person who is a resident of this
19 state, is 16 years of age or older but younger than 20 years of
20 age, has not obtained a high school diploma, is enrolled in high
21 school or a general education development (G.E.D.) test preparation
22 program, and is trained by a taxpayer through a program that meets
23 all of the following criteria:

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

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

1 (iii) The program is filed with a local workforce development
2 board.

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

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

8 (c) "Local workforce development board" means a board
9 established by the chief elected official of a local unit of
10 government pursuant to the job training partnership act, Public Law
11 97-300, 96 Stat. 1322, that has the responsibility to ensure that
12 the workforce needs of the employers in the geographic area
13 governed by the local unit of government are met.

14 (d) "Qualified expenses" means all of the following expenses
15 paid by the taxpayer in a tax year that begins after December 31,
16 1996 for expenses used to calculate a credit under subsection
17 (1)(a) and after December 31, 2003 for expenses used to calculate a
18 credit under subsection (1)(b) that were not paid for with funds
19 the taxpayer received or retained that the taxpayer would not
20 otherwise have received or retained and that are used for training
21 an apprentice:

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

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

25 (iii) Costs of classroom instruction and related expenses
26 identified as costs for which the taxpayer is responsible under an
27 apprenticeship agreement, including but not limited to tuition,

1 fees, and books for college level courses taken while the
2 apprentice is enrolled in high school.

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

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

12 (2) For taxpayers on a calendar year basis the quarterly
13 returns and estimated payments shall be made by April 30, July 31,
14 October 31, and January 31. Taxpayers not on a calendar year basis
15 shall file quarterly returns and make estimated payments on the
16 appropriate due date which in the taxpayer's fiscal year
17 corresponds to the calendar year.

18 (3) The estimated payment made with each quarterly return of
19 each tax year shall be for the estimated tax base for the quarter
20 or 25% of the estimated annual liability. The second, third, and
21 fourth estimated payments in each tax year shall include
22 adjustments, if necessary, to correct underpayments or overpayments
23 from previous quarterly payments in the tax year to a revised
24 estimate of the annual tax liability.

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

27 (a) If the sum of the estimated payments equals at least 85%

1 of the liability or 1% of the gross receipts for the tax year and
2 the amount of each estimated payment reasonably approximates the
3 tax liability incurred during the quarter for which the estimated
4 payment was made.

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

8 (C) EFFECTIVE FOR THE 1 TAX YEAR OF THE TAXPAYER DURING WHICH
9 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION BECAME EFFECTIVE, IF
10 THE UNDERPAYMENT IS DUE TO THE CHANGES MADE TO SECTION 36 BY THE
11 AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

12 (5) Each estimated return shall be made on a form prescribed
13 by the department and shall include an estimate of the annual tax
14 liability and other information required by the commissioner. This
15 form may be combined with any other tax reporting form prescribed
16 by the department.

17 (6) With respect to a taxpayer filing an estimated tax return
18 for the taxpayer's first tax year of less than 12 months, the
19 amounts paid with each return shall be proportional to the number
20 of payments made in the first tax year.

21 (7) Payments made under this section shall be a credit against
22 the payment required with the annual tax return required in section
23 73.

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

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

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

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

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

(11) A penalty for underpayment of an estimated tax under this act shall not be assessed for the taxpayer's first tax year beginning after December 31, 1999 if the taxpayer claimed a credit under section 35a for the first time on the taxpayer's annual return for that tax year and a penalty would not have applied if the taxpayer had made adjustments under section 23 or 23b on that return.

SEC. 79. FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2006, A TAXPAYER THAT FILES A CONSOLIDATED OR COMBINED RETURN UNDER THIS ACT SHALL NOT CLAIM A CREDIT CARRYFORWARD OR LOSS CARRYFORWARD

1 FROM A YEAR IN WHICH THE MEMBER FROM WHOM THE CREDIT CARRYFORWARD
2 OR LOSS CARRYFORWARD ORIGINATED DID NOT FILE A RETURN ON A
3 CONSOLIDATED OR COMBINED BASIS IN AN AMOUNT GREATER THAN THE TOTAL
4 CREDIT CARRYFORWARD OR LOSS CARRYFORWARD THAT COULD HAVE BEEN
5 CLAIMED BY THAT MEMBER FOR THE SAME TAXABLE PERIOD IF THAT MEMBER
6 HAD FILED A SEPARATE RETURN. THIS LIMITATION DOES NOT APPLY TO A
7 CREDIT CARRYFORWARD OR LOSS CARRYFORWARD GENERATED BY A MEMBER THAT
8 CEASES TO BE A TAXPAYER AS A RESULT OF A LIQUIDATION, MERGER, OR
9 TERMINATION.

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

13 (a) House Bill No. 4972.

14 (b) House Bill No. 4973.

15 (c) House Bill No. 4980.

16 (d) House Bill No. 5095.

17 (e) House Bill No. 5096.

18 (f) House Bill No. 5097.

19 (g) House Bill No. 5106.

20 (h) House Bill No. 5107.

21 (i) House Bill No. 5108.