

HOUSE BILL No. 5108

August 24, 2005, Introduced by Rep. Sheen and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 4a, 31, 36, and 45a (MCL 208.4a, 208.31,
208.36, and 208.45a), section 4a as added by 2003 PA 241, sections
31 and 45a as amended by 1999 PA 115, and section 36 as amended by
1995 PA 284, and by adding section 35d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) For tax years that begin after December 31, 2006
2 **AND BEFORE JANUARY 1, 2008**, compensation for purposes of section
3 4(3) does not include 50% of payments under health and welfare and
4 noninsured benefit plans for the benefit of persons who are
5 residents of this state and payments of fees for the administration

1 of health and welfare and noninsured benefit plans for the benefit
2 of persons who are residents of this state paid by the taxpayer in
3 the tax year.

4 (2) FOR PURPOSES OF SECTION 4(3), COMPENSATION DOES NOT
5 INCLUDE THE FOLLOWING PERCENTAGES OF PAYMENTS UNDER HEALTH AND
6 WELFARE AND NONINSURED BENEFIT PLANS FOR THE BENEFIT OF PERSONS WHO
7 ARE RESIDENTS OF THIS STATE AND PAYMENTS OF FEES FOR THE
8 ADMINISTRATION OF HEALTH AND WELFARE AND NONINSURED BENEFIT PLANS
9 FOR THE BENEFIT OF PERSONS WHO ARE RESIDENTS OF THIS STATE PAID BY
10 THE TAXPAYER FOR THE SPECIFIED TAX YEARS:

11 (A) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007 AND
12 BEFORE JANUARY 1, 2009, 62.5%.

13 (B) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2008 AND
14 BEFORE JANUARY 1, 2010, 75%.

15 (C) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2009 AND
16 BEFORE JANUARY 1, 2011, 87.5%.

17 (D) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2010, 100%.

18 Sec. 31. (1) Except as provided in subsections (5) and (6),
19 there is levied and imposed a specific tax upon the adjusted tax
20 base of every person with business activity in this state that is
21 allocated or apportioned to this state at the following rates for
22 the specified periods:

23 (a) Before October 1, 1994, 2.35%.

24 (b) After September 30, 1994 and before January 1, 1999,
25 2.30%.

26 (c) Beginning January 1, 1999 and each January 1 after 1999,
27 the rate under this subsection shall be reduced as provided in

1 subsection (5).

2 (D) BEGINNING JANUARY 1, 2006, THE RATE UNDER THIS SUBSECTION
3 SHALL BE REDUCED AS PROVIDED IN SUBSECTION (6).

4 (2) As used in this section, "adjusted tax base" means the tax
5 base allocated or apportioned to this state pursuant to chapter 3
6 with the adjustments prescribed by sections 23 and 23b and the
7 exemptions prescribed by section 35. If the adjusted tax base
8 exceeds 50% of the sum of gross receipts plus the adjustments
9 provided in section 23b(a) to (g), apportioned or allocated to
10 Michigan with the apportionment fraction calculated pursuant to
11 chapter 3, the adjusted tax base may, at the option of the
12 taxpayer, be reduced by that excess. If a taxpayer reduces the
13 adjusted tax base under this subsection, the taxpayer is not
14 entitled to the adjustment provided in subsection (4) for the same
15 taxable year. This subsection does not apply to an adjusted tax
16 base under section 22a.

17 (3) The tax levied under this section and imposed is upon the
18 privilege of doing business and not upon income.

19 (4) In lieu of the reduction provided in subsection (2), a
20 person may elect to reduce the adjusted tax base by the percentage
21 that the compensation divided by the tax base exceeds 63%. The
22 deduction shall not exceed 37% of the adjusted tax base. For
23 purposes of computing the deduction allowed by this subsection, as
24 effective for the respective tax year, compensation does not
25 include amounts of compensation exempt from tax under section
26 35(1)(e). This subsection does not apply to an adjusted tax base
27 under section 22a.

1 (5) If the comprehensive annual financial report of this state
2 for a state fiscal year, published pursuant to section 494 of the
3 management and budget act, 1984 PA 431, MCL 18.1494, reports an
4 ending balance of more than \$250,000,000.00 in the countercyclical
5 budget and economic stabilization fund created under section 351 of
6 the management and budget act, 1984 PA 431, MCL 18.1351, for that
7 state fiscal year, the tax rate under this section shall be reduced
8 by 0.1 percentage point on the January 1 following the end of the
9 state fiscal year for which the report was issued.

10 **(6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, BEGINNING**
11 **IN CALENDAR YEAR 2006 AND EACH CALENDAR YEAR AFTER 2006, IF THE**
12 **REVENUE ESTIMATING CONFERENCE THAT MEETS IN MAY, AS PROVIDED IN**
13 **SECTION 367B OF THE MANAGEMENT AND BUDGET ACT, 1984 PA 431, MCL**
14 **18.1367B, DETERMINES THAT THE AMOUNT ESTIMATED BY THAT REVENUE**
15 **ESTIMATING CONFERENCE FOR REVENUES UNDER THIS ACT FOR THAT STATE**
16 **FISCAL YEAR EXCEEDS THE REVENUES UNDER THIS ACT FOR THE STATE**
17 **FISCAL YEAR IMMEDIATELY PRECEDING THE STATE FISCAL YEAR IN WHICH**
18 **THE REVENUE ESTIMATING CONFERENCE MEETS BY \$80,000,000.00 OR MORE,**
19 **THE TAX RATE UNDER THIS SECTION SHALL BE REDUCED BY 0.05 PERCENTAGE**
20 **POINT ON THE JANUARY 1 IMMEDIATELY PRECEDING THE MAY IN WHICH THE**
21 **REVENUE ESTIMATING CONFERENCE MET. A REDUCTION UNDER THIS**
22 **SUBSECTION SHALL BE MADE AFTER THE APPLICATION OF SUBSECTION (5)**
23 **FOR THE SAME JANUARY 1. A MAXIMUM OF 4 REDUCTIONS UNDER THIS**
24 **SUBSECTION ARE ALLOWED.**

25 (7) ~~—(6)—~~ The department shall annualize the rate under this
26 section as necessary, and the applicable annualized rate shall be
27 imposed.

1 SEC. 35D. (1) A PERSON MAY CLAIM A CREDIT EQUAL TO THE SUM OF
2 THE FOLLOWING:

3 (A) FOR TAX YEARS THAT BEGIN ON OR AFTER JANUARY 1, 2006, 25%
4 OF THE PROPERTY TAXES PAID IN THE TAX YEAR BY THE PERSON ON
5 INDUSTRIAL PERSONAL PROPERTY.

6 (B) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005 AND
7 BEFORE JANUARY 1, 2007, 5% OF THE PROPERTY TAXES PAID ON COMMERCIAL
8 PERSONAL PROPERTY.

9 (C) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2006, 10% OF
10 THE PROPERTY TAXES PAID ON COMMERCIAL PERSONAL PROPERTY.

11 (2) A PERSON THAT IS NOT OTHERWISE REQUIRED TO FILE A RETURN
12 UNDER THIS ACT MAY CLAIM THE CREDIT UNDER THIS SECTION.

13 (3) TO QUALIFY FOR THE CREDITS UNDER THIS SECTION FOR AN ITEM
14 OF TANGIBLE PERSONAL PROPERTY, A PERSON THAT IS OTHERWISE ELIGIBLE
15 TO CLAIM THE CREDIT ALLOWED UNDER THIS SECTION SHALL FILE WITHIN
16 THE TIME REQUIRED THE STATEMENT OF PERSONAL PROPERTY DESCRIBED IN
17 SECTION 19 OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL
18 211.19, SEPARATELY FOR ITEMS OF TANGIBLE PERSONAL PROPERTY USED
19 THAT ARE CLASSIFIED AS INDUSTRIAL PERSONAL PROPERTY AND CLASSIFIED
20 AS COMMERCIAL PERSONAL PROPERTY FOR THE LOCATION AT WHICH THE
21 TANGIBLE PERSONAL PROPERTY THAT IS THE BASIS OF THE CREDIT ALLOWED
22 UNDER THIS SECTION IS LOCATED.

23 (4) IF THE TOTAL OF THE CREDITS ALLOWED UNDER THIS SECTION
24 EXCEEDS THE TAX LIABILITY OF THE PERSON FOR THE TAX YEAR OR IF
25 PERSON DOES NOT HAVE A TAX LIABILITY UNDER THIS ACT FOR THE TAX
26 YEAR, THE EXCESS OR THE AMOUNT OF THE CREDIT SHALL BE REFUNDED OR
27 PAID TO THE PERSON. THE STATE TREASURER SHALL ESTABLISH A RESERVE

1 ACCOUNT IN THE DEPARTMENT TO FUND AND PROVIDE FOR PAYMENT OF THE
2 AMOUNT OF REFUNDS OR PAYMENTS FOR CREDITS UNDER THIS SECTION THAT
3 ARE ATTRIBUTABLE TO THE FISCAL YEARS ENDING IN THE TAX YEARS FOR
4 WHICH CREDITS ARE CLAIMED.

5 (5) AS USED IN THIS SECTION:

6 (A) "COMMERCIAL PERSONAL PROPERTY" MEANS PERSONAL PROPERTY
7 CLASSIFIED AS COMMERCIAL PERSONAL PROPERTY UNDER SECTION 34C OF THE
8 GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.34C.

9 (B) "INDUSTRIAL PERSONAL PROPERTY" MEANS PERSONAL PROPERTY
10 CLASSIFIED AS INDUSTRIAL PERSONAL PROPERTY UNDER SECTION 34C OF THE
11 GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.34C.

12 (C) "PROPERTY TAXES" MEANS A TAX LEVIED UNDER ANY OF THE
13 FOLLOWING ACTS:

14 (i) THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.1 TO
15 211.157.

16 (ii) 1974 PA 198, MCL 207.551 TO 207.572.

17 (iii) THE OBSOLETE PROPERTY REHABILITATION ACT, 2000 PA 146, MCL
18 125.2781 TO 125.2797.

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

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

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

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

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

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

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

8 (d) "Shareholder" means a person who owns outstanding stock in
9 the business. An individual is considered as the owner of the stock
10 owned, directly or indirectly, by or for family members as defined
11 by section 318(a)(1) of the internal revenue code.

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

27 (f) "Subchapter S corporation" means a corporation electing

1 taxation under subchapter S of chapter 1 of subtitle A of the
2 internal revenue code, sections 1361 to 1379 of the internal
3 revenue code.

4 (2) The credit provided in this section shall be taken before
5 any other credit under this act, and is available to any person
6 whose gross receipts do not exceed \$6,000,000.00 for tax years
7 commencing on or after January 1, 1984 and before January 1, 1989;
8 \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for
9 tax years commencing in 1990; \$7,500,000.00 for tax years
10 commencing in 1991; or \$10,000,000.00 for tax years commencing
11 after 1991, and whose adjusted business income minus the loss
12 adjustment does not exceed \$475,000.00 for tax years commencing on
13 or after January 1, 1985, subject to the following:

14 (a) An individual, a partnership, or a subchapter S
15 corporation is disqualified if the individual, any 1 partner of the
16 partnership, or any 1 shareholder of the subchapter S corporation
17 receives more than \$95,000.00 for tax years commencing on or after
18 January 1, 1985 and before January 1, 1998 or more than \$115,000.00
19 for tax years commencing after December 31, 1997 as a distributive
20 share of the adjusted business income minus the loss adjustment of
21 the individual, the partnership, or the subchapter S corporation.

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

25 (i) Compensation and director's fees of a shareholder or
26 officer exceed \$95,000.00 for tax years commencing on or after
27 January 1, 1985 and before January 1, 1998 or exceed \$115,000.00

1 for tax years commencing after December 31, 1997.

2 (ii) The sum of the following amounts exceeds \$95,000.00 for
3 tax years commencing on or after January 1, 1985 and before January
4 1, 1998 or exceeds \$115,000.00 for tax years commencing after
5 December 31, 1997:

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

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

11 (c) Subject to section 36d, for a taxpayer that is eligible
12 for the credit under this subsection for tax years beginning after
13 December 31, 1997, the credit determined under this subsection
14 shall be reduced by the following percentages in the following
15 circumstances:

16 (i) If an individual, any 1 partner of the partnership, or any
17 1 shareholder of the subchapter S corporation receives as a
18 distributive share of adjusted gross income minus the loss
19 adjustment of the individual, partnership, or subchapter S
20 corporation; if compensation and directors' fees of a shareholder
21 or officer of a corporation other than a subchapter S corporation
22 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
23 is more than \$95,000.00 but less than \$100,000.00, the credit is
24 reduced by 20%.

25 (ii) If an individual, any 1 partner of the partnership, or any
26 1 shareholder of the subchapter S corporation receives as a
27 distributive share of adjusted gross income minus the loss

1 adjustment of the individual, partnership, or subchapter S
2 corporation; if compensation and directors' fees of a shareholder
3 or officer of a corporation other than a subchapter S corporation
4 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
5 is \$100,000.00 or more but less than \$105,000.00, the credit is
6 reduced by 40%.

7 (iii) If an individual, any 1 partner of the partnership, or any
8 1 shareholder of the subchapter S corporation receives as a
9 distributive share of adjusted gross income minus the loss
10 adjustment of the individual, partnership, or subchapter S
11 corporation; if compensation and directors' fees of a shareholder
12 or officer of a corporation other than a subchapter S corporation
13 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
14 is \$105,000.00 or more but less than \$110,000.00, the credit is
15 reduced by 60%.

16 (iv) If an individual, any 1 partner of the partnership, or any
17 1 shareholder of the subchapter S corporation receives as a
18 distributive share of adjusted gross income minus the loss
19 adjustment of the individual, partnership, or subchapter S
20 corporation; if compensation and directors' fees of a shareholder
21 or officer of a corporation other than a subchapter S corporation
22 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
23 is \$110,000.00 or more but less than \$115,000.00, the credit is
24 reduced by 80%.

25 (3) For the purposes of determining disqualification under
26 subsection (2), an active shareholder's share of business income
27 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, 2006, 2%.

(D) BEGINNING JANUARY 1, 2006 AND BEFORE JANUARY 1, 2007, 1.8%.

(E) BEGINNING JANUARY 1, 2007 AND BEFORE JANUARY 1, 2008, 1.6%.

(F) BEGINNING JANUARY 1, 2008 AND BEFORE JANUARY 1, 2009,

1 1.4%.

2 (G) BEGINNING JANUARY 1, 2009 AND BEFORE JANUARY 1, 2010,

3 1.2%.

4 (H) BEGINNING JANUARY 1, 2010, 1.0%.

5 (5) The percentage reduction provided in subsection (4) is
6 calculated by subtracting from 100% the percentage computed by
7 dividing adjusted business income by 45% of tax base.

8 (6) If gross receipts exceed \$5,000,000.00 for tax years
9 commencing on or after January 1, 1984 and before January 1, 1989;
10 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for
11 tax years commencing in 1990; \$6,500,000.00 for tax years
12 commencing in 1991; or \$9,000,000.00 for tax years commencing after
13 1991, the credit shall be reduced by a fraction, the numerator of
14 which is the amount of gross receipts over \$5,000,000.00 for tax
15 years commencing on or after January 1, 1984 and before January 1,
16 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00
17 for tax years commencing in 1990; \$6,500,000.00 for tax years
18 commencing in 1991; or \$9,000,000.00 for tax years commencing after
19 1991, and the denominator of which is \$1,000,000.00. The credit
20 shall not exceed 50% for tax years commencing before January 1,
21 1984; 90% for tax years commencing on or after January 1, 1984 and
22 before January 1, 1988; or 100% for tax years commencing on and
23 after January 1, 1988 of the tax liability imposed by section 31.
24 (7) An affiliated group as defined in this act, a controlled
25 group of corporations as defined in section 1563 of the internal
26 revenue code and further described in 26 C.F.R. 1.414(b)-1 and
27 1.414(c)-1 to 1.414(c)-5, or an entity under common control as

1 defined by the internal revenue code shall not take the credit
2 allowed by this section unless the business activities of the
3 entities are consolidated.

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

11 Sec. 45a. (1) Except as provided in subsection ~~-(2)-~~ (3) and
12 for tax years beginning after December 31, 1998 **AND BEFORE JANUARY**
13 **1, 2006**, all of the tax base, other than the tax base derived
14 principally from transportation, financial, or insurance carrier
15 services or specifically allocated, shall be apportioned to this
16 state by multiplying the tax base by a percentage, which is the sum
17 of all of the following percentages:

18 (a) The property factor multiplied by 5%.

19 (b) The payroll factor multiplied by 5%.

20 (c) The sales factor multiplied by 90%.

21 **(2) FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2005, ALL OF**
22 **THE TAX BASE, OTHER THAN THE TAX BASE DERIVED PRINCIPALLY FROM**
23 **TRANSPORTATION, FINANCIAL, OR INSURANCE CARRIER SERVICES OR**
24 **SPECIFICALLY ALLOCATED, SHALL BE APPORTIONED TO THIS STATE BY**
25 **MULTIPLYING THE TAX BASE BY THE SALES FACTOR.**

26 **(3) ~~-(2)-~~** For tax years beginning after December 31, 1998 and
27 before January 1, 2000 if section 23(e) is not in effect, all of

1 the tax base, other than the tax base derived principally from
2 transportation, financial, or insurance carrier services or
3 specifically allocated, shall be apportioned to this state by
4 multiplying the tax base by a percentage, which is the sum of all
5 of the following percentages:

6 (a) The property factor multiplied by 15%.

7 (b) The payroll factor multiplied by 15%.

8 (c) The sales factor multiplied by 70%.

9 **(4)** ~~—(3)—~~ For purposes of this section, a taxpayer that has a
10 52- or 53-week tax year beginning not more than 7 days before
11 December 31 of any year is considered to have a tax year beginning
12 after December 31 of that year.