

HOUSE BILL No. 5624

February 26, 2004, Introduced by Reps. Hoogendyk, Shaffer, Stahl, DeRossett, Drolet, Kooiman, Huizenga, Brandenburg, Garfield, Vander Veen and Pastor and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending sections 9, 39e, and 73 (MCL 208.9, 208.39e, and 208.73), section 9 as amended by 2001 PA 230, section 39e as amended by 2002 PA 622, and section 73 as amended by 1995 PA 80.

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
3 zero 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
7 the related portion of expenses not deducted in computing federal
8 taxable income because of sections 265 and 291 of the internal
9 revenue code.

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

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

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

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

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

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

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

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

1 expense in determining federal taxable income. For purposes of
2 this section, "floor plan interest" means interest paid that
3 finances any part of the taxpayer's purchase of automobile
4 inventory from a manufacturer, distributor, or supplier.
5 However, amounts attributable to any invoiced items used to
6 provide more favorable floor plan assistance to a taxpayer than
7 to a person who is not a taxpayer is considered interest paid by
8 a 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
12 internal 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
17 years 1986 and after 1986, a franchise fee as defined by
18 section 3 of the franchise investment law, 1974 PA 269,
19 MCL 445.1503, in the 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
23 fee.

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

26 (iv) For the tax years ending before 1991, this subdivision
27 does not apply to a fee for services paid by a franchisee that,

1 with respect to a specific provision of a franchise agreement, a
2 court of competent jurisdiction, before June 5, 1985, has
3 determined is not a royalty payment under this act.

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

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

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

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

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

26 (B) "Operating system software" means a set of statements or
27 instructions that when incorporated into a machine or device

1 having information processing capabilities is an interface
2 between the computer hardware and the application computer
3 software or system software.

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

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

27 (5) Add compensation.

1 (6) Add a capital gain related to business activity of
2 individuals to the extent excluded in arriving at federal taxable
3 income.

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

6 (a) A dividend received or considered received, including the
7 foreign dividend gross-up provided for in the internal revenue
8 code.

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

13 (c) All royalties except for the following:

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

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

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

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

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

27 (iii) For the tax years ending before 1991, this subdivision

1 does not apply to a fee for services paid by a franchisee that,
2 with respect to a specific provision of a franchise agreement, a
3 court of competent jurisdiction, before June 5, 1985, has
4 determined is not a royalty payment under this act.

5 (iv) Film rental or royalty payments paid by a theater owner
6 to a film distributor, a film producer, or a film distributor and
7 producer.

8 (v) Royalties, fees, charges, or other payments or
9 consideration paid or incurred by radio or television
10 broadcasters for program matter or signals.

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

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

20 (viii) For tax years that begin after December 31, 2000,
21 royalties, fees, or other payments or consideration paid or
22 incurred by a franchisee to a franchisor to establish or maintain
23 the franchise relationship other than payments for the sale or
24 lease of inventory, equipment, fixtures, or real property at fair
25 rental or fair market value.

26 (d) Rent attributable to a lease back that continues in
27 effect under the former provisions of section 168(f)(8) of the

1 internal revenue code of 1954 as that section provided
2 immediately before the tax reform act of 1986, Public Law 99-514,
3 became effective or to a lease back of property to which the
4 amendments made by the tax reform act of 1986 do not apply as
5 provided in section 204 of the tax reform act of 1986.

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

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

13 (10) For tax years that begin after December 31, 2004, deduct
14 \$350,000.00. For tax years that begin after December 31, 2005,
15 the deduction allowed under this subsection shall be adjusted by
16 the percentage increase in the United States consumer price index
17 for the immediately preceding calendar year. As used in this
18 subsection, "United States consumer price index" means the United
19 States consumer price index for all urban consumers as defined
20 and reported by the United States department of labor, bureau of
21 labor statistics.

22 Sec. 39e. (1) A taxpayer may claim a credit against the tax
23 imposed by this act for 1 or more of the following as
24 applicable:

25 (a) The credit allowed under subsection (2).

26 (b) The credit allowed under subsection (6).

27 (2) For tax years that begin after December 31, 2002, a

1 taxpayer that is certified under the Michigan next energy
2 authority act, 2002 PA 593, MCL 207.821 to 207.827, as an
3 eligible taxpayer may claim a nonrefundable credit for the tax
4 year equal to the amount determined under subdivision (a) or (b),
5 whichever is less:

6 (a) The amount by which the taxpayer's tax liability
7 attributable to qualified business activity for the tax year
8 exceeds the taxpayer's baseline tax liability attributable to
9 qualified business activity.

10 (b) For tax years that begin after December 31, 2002, 10% of
11 the amount by which the taxpayer's adjusted qualified business
12 activity performed in this state outside of a renaissance zone
13 for the tax year exceeds the taxpayer's adjusted qualified
14 business activity performed in this state outside of a
15 renaissance zone for the 2001 tax year.

16 (3) For any tax year in which the eligible taxpayer's tax
17 liability attributable to qualified business activity for the tax
18 year does not exceed the taxpayer's baseline tax liability
19 attributable to qualified business activity, the eligible
20 taxpayer shall not claim the credit allowed under
21 subsection (2).

22 (4) An affiliated group as defined in this act, a controlled
23 group of corporations as defined in section 1563 of the internal
24 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1
25 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control
26 as defined by the internal revenue code shall not take the credit
27 allowed under subsection (2) unless the qualified business

1 activity of the group or entities is consolidated.

2 (5) A taxpayer that claims a credit under subsection (2)
3 shall attach a copy of each of the following as issued pursuant
4 to the Michigan next energy authority act, 2002 PA 593,
5 MCL 207.821 to 207.827, to the annual return required under this
6 act for each tax year in which the taxpayer claims the credit
7 allowed under subsection (2):

8 (a) The proof of certification that the taxpayer is an
9 eligible taxpayer for the tax year.

10 (b) The proof of certification of the taxpayer's tax
11 liability attributable to qualified business activity for the tax
12 year.

13 (c) The proof of certification of the taxpayer's baseline tax
14 liability attributable to qualified business activity.

15 (6) For tax years that begin after December 31, 2002, a
16 taxpayer that is a qualified alternative energy entity may claim
17 a credit for the taxpayer's qualified payroll amount. A taxpayer
18 shall claim the credit under this subsection after all allowable
19 nonrefundable credits under this act.

20 (7) If the credit allowed under subsection (6) exceeds the
21 tax liability of the taxpayer for the tax year, that portion of
22 the credit that exceeds the tax liability shall be refunded.

23 (8) Notwithstanding any other provision of this act and for
24 tax years that begin after December 31, 2002 **and before January**
25 **1, 2005**, a person whose apportioned or allocated gross receipts
26 are less than \$350,000.00 for the tax year need not file a return
27 or pay the tax as provided under this act.

1 (9) As used in this section:

2 (a) "Adjusted qualified business activity performed in this
3 state outside of a renaissance zone" means either of the
4 following:

5 (i) Except as provided in subparagraph (ii), the taxpayer's
6 payroll for qualified business activity performed in this state
7 outside of a renaissance zone.

8 (ii) For a partnership, limited liability company,
9 S corporation, or individual, the amount determined under
10 subparagraph (i) plus the product of the following as related to
11 the taxpayer:

12 (A) Business income.

13 (B) The apportionment factor as determined under chapter 3.

14 (C) The alternative energy business activity factor.

15 (b) "Alternative energy business activity factor" means a
16 fraction the numerator of which is the ratio of the value of the
17 taxpayer's property used for qualified business activity and
18 located in this state outside of a renaissance zone for the year
19 for which the factor is being calculated to the value of all of
20 the taxpayer's property located in this state for that year plus
21 the ratio of the taxpayer's payroll for qualified business
22 activity performed in this state outside of a renaissance zone
23 for that year to all of the taxpayer's payroll in this state for
24 that year and the denominator of which is 2.

25 (c) "Alternative energy marine propulsion system",
26 "alternative energy system", "alternative energy vehicle", and
27 "alternative energy technology" mean those terms as defined in

1 the Michigan next energy authority act, 2002 PA 593, MCL 207.821
2 to 207.827.

3 (d) "Alternative energy zone" means a renaissance zone
4 designated as an alternative energy zone by the board of the
5 Michigan strategic fund under section 8a of the Michigan
6 renaissance zone act, 1996 PA 376, MCL 125.2688a.

7 (e) "Baseline tax liability attributable to qualified
8 business activity" means the taxpayer's tax liability for the
9 2001 tax year multiplied by the taxpayer's alternative energy
10 business activity factor for the 2001 tax year. A taxpayer with
11 a 2001 tax year of less than 12 months shall annualize the amount
12 calculated under this subdivision as necessary to determine
13 baseline tax liability attributable to qualified business
14 activity that reflects a 12-month period.

15 (f) "Eligible taxpayer" means a taxpayer that has proof of
16 certification of qualified business activity under the Michigan
17 next energy authority act, 2002 PA 593, MCL 207.821 to 207.827.

18 (g) "Payroll" means total salaries and wages before deducting
19 any personal or dependency exemptions.

20 (h) "Qualified alternative energy entity" means a taxpayer
21 located in an alternative energy zone.

22 (i) "Qualified business activity" means research,
23 development, or manufacturing of an alternative energy marine
24 propulsion system, an alternative energy system, an alternative
25 energy vehicle, alternative energy technology, or renewable
26 fuel.

27 (j) "Qualified employee" means an individual who is employed

1 by a qualified alternative energy entity, whose job
2 responsibilities are related to the research, development, or
3 manufacturing activities of the qualified alternative energy
4 entity, and whose regular place of employment is within an
5 alternative energy zone.

6 (k) "Qualified payroll amount" means an amount equal to
7 payroll of the qualified alternative energy entity attributable
8 to all qualified employees in the tax year of the qualified
9 alternative energy entity for which the credit under
10 subsection (6) is being claimed, multiplied by the tax rate for
11 that tax year.

12 (l) "Renaissance zone" means a renaissance zone designated
13 under the Michigan renaissance zone act, 1996 PA 376,
14 MCL 125.2681 to 125.2696.

15 (m) "Renewable fuel" means 1 or more of the following:

16 (i) Biodiesel or biodiesel blends containing at least
17 20% biodiesel. As used in this subparagraph, "biodiesel" means a
18 diesel fuel substitute consisting of methyl or ethyl esters
19 produced from the transesterification of animal or vegetable fats
20 with methanol or ethanol.

21 (ii) Biomass. As used in this subparagraph, "biomass" means
22 residues from the wood and paper products industries, residues
23 from food production and processing, trees and grasses grown
24 specifically to be used as energy crops, and gaseous fuels
25 produced from solid biomass, animal wastes, municipal waste, or
26 landfills.

27 (n) "Tax liability attributable to qualified business

1 activity" means the taxpayer's tax liability multiplied by the
2 taxpayer's alternative energy business activity factor for the
3 tax year.

4 (o) "Tax rate" means the rate imposed under sections 51, 51d,
5 and 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51,
6 206.51d, and 206.51e, annualized as necessary, for the tax year
7 in which the qualified alternative energy entity claims a credit
8 under subsection (6).

9 Sec. 73. (1) An annual or final return shall be filed with
10 the department in the form and content prescribed by the
11 department by the last day of the fourth month after the end of
12 the taxpayer's tax year. Any final liability shall be remitted
13 with this return. ~~A person whose apportioned or allocated gross~~
14 ~~receipts plus the adjustments provided in section 23b(a), (b),~~
15 ~~and (c) are less than the following amount for the appropriate~~
16 ~~year need not file a return or pay the tax provided under this~~
17 ~~act:~~

18 ~~—— (a) \$40,000.00 for tax years beginning before January 1,~~
19 ~~1991.~~

20 ~~—— (b) \$60,000.00 for tax years beginning after December 31,~~
21 ~~1990 and before January 1, 1992.~~

22 ~~—— (c) \$100,000.00 for tax years beginning after December 31,~~
23 ~~1991 and before January 1, 1994.~~

24 ~~—— (d) \$137,500.00 for tax years beginning after December 31,~~
25 ~~1993 and before January 1, 1995.~~

26 ~~—— (e) \$250,000.00 for tax years beginning after December 31,~~
27 ~~1994.~~

1 ~~—— (2) For a person whose apportioned or allocated gross~~
2 ~~receipts plus the adjustments provided in section 23b(a), (b),~~
3 ~~and (c), are for a tax year less than 12 months, the amount in~~
4 ~~subsection (1) shall be multiplied by a fraction, the numerator~~
5 ~~of which is the number of months in the tax year and the~~
6 ~~denominator of which is 12.~~

7 (2) ~~—(3)—~~ The ~~commissioner~~ **department** upon application of
8 the taxpayer and for good cause shown may extend the date for
9 filing the annual return. Interest at the rate of 9% per annum
10 shall be added to the amount of the tax unpaid for the period of
11 the extension. The ~~commissioner~~ **department** shall require a
12 tentative return and payment of an estimated tax.

13 (3) ~~—(4)—~~ If a taxpayer is granted an extension of time
14 within which to file the federal income tax return for any
15 taxable year, the filing of a copy of the request for extension
16 together with a tentative return and payment of an estimated tax
17 with the commissioner by the due date provided in subsection (1)
18 shall automatically extend the due date for the filing of a final
19 return under this act for an equivalent period plus 60 days.
20 Interest at the rate of 9% per annum shall be added to the amount
21 of the tax unpaid for the period of the extension.

22 (4) ~~—(5)—~~ For tax years that end after July 6, 1994, an
23 affiliated group as defined in this act, a controlled group of
24 corporations as defined in section 1563 of the internal revenue
25 code and further described in 26 ~~C.F.R.—~~ **CFR** 1.414(b)-1 and
26 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
27 defined in the internal revenue code shall consolidate the gross

1 receipts of the members of the affiliated group, member
2 corporations of the controlled group, or entities under common
3 control that have apportioned or allocated gross receipts, plus
4 the adjustments provided in section 23b(a) ~~, (b), and (c)~~ to
5 **(g)**, of \$100,000.00 or more to determine if the group or entity
6 shall pay a tax or file a return as provided under subsection
7 (1). An individual member of an affiliated group or controlled
8 group of corporations or an entity under common control is not
9 required to file a return or pay the tax under this act if that
10 member or entity has apportioned or allocated gross receipts,
11 plus the adjustments provided in section 23b(a) ~~, (b), and (c)~~
12 **to (g)**, of less than \$100,000.00.