

HOUSE SUBSTITUTE FOR SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5098

(As amended, November 10, 2005)

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending sections 9, 22a, and 38e (MCL 208.9, 208.22a, and  
208.38e), section 9 as amended by 2004 PA 258, section 22a as  
amended by 1996 PA 578, and section 38e as amended by 2003 PA 273,  
and by adding sections 79 and 130.

**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 zero  
3       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 the

1 related portion of expenses not deducted in computing federal  
2 taxable income because of sections 265 and 291 of the internal  
3 revenue code.

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

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

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

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

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

13 (d) A dividend paid or accrued except a dividend that  
14 represents a reduction of premiums to policyholders of insurance  
15 companies.

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

23 (f) All interest including amounts paid, credited, or reserved  
24 by insurance companies as amounts necessary to fulfill the policy  
25 and other contract liability requirements of sections 805 and 809  
26 of the internal revenue code. Interest does not include payments or  
27 credits made to or on behalf of a taxpayer by a manufacturer,

1 distributor, or supplier of inventory to defray any part of the  
2 taxpayer's floor plan interest, if these payments are used by the  
3 taxpayer to reduce interest expense in determining federal taxable  
4 income. For purposes of this section, "floor plan interest" means  
5 interest paid that finances any part of the taxpayer's purchase of  
6 automobile inventory from a manufacturer, distributor, or supplier.  
7 However, amounts attributable to any invoiced items used to provide  
8 more favorable floor plan assistance to a taxpayer than to a person  
9 who is not a taxpayer is considered interest paid by a  
10 manufacturer, distributor, or supplier.

11 (g) All royalties except for the following:

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

15 (ii) Cable television franchise fees described in section 622  
16 of part III of title VI of the communications act of 1934, 47  
17 ~~U.S.C.~~ **USC** 542.

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

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

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

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

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

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

11 (vii) 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 (viii) For tax years that begin after December 31, 1993,  
15 royalties paid by a licensee of application computer software,  
16 operating system software, or system software pursuant to a license  
17 agreement. As used in this subparagraph and 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 nontechnical  
23 end user. Application computer software includes any other computer  
24 software that does not qualify under sub-subparagraph (B) or (C).

25 (B) "Operating system software" means a set of statements or  
26 instructions that when incorporated into a machine or device having  
27 information processing capabilities is an interface between the

1 computer hardware and the application computer software or system  
2 software.

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

11 (ix) For tax years that begin after December 31, 2000,  
12 royalties, fees, or other payments or consideration paid or  
13 incurred by a franchisee to a franchisor to establish or maintain  
14 the franchise relationship other than payments for the sale or  
15 lease of inventory, equipment, fixtures, or real property at fair  
16 rental or fair market value.

17 (h) A deduction for rent attributable to a lease back that  
18 continues in effect under the former provisions of section  
19 168(f)(8) of the internal revenue code of 1954 as that section  
20 provided immediately before the tax reform act of 1986, Public Law  
21 99-514, became effective or to a lease back of property to which  
22 the amendments made by the tax reform act of 1986 do not apply as  
23 provided in section 204 of the tax reform act of 1986.

24 (5) Add compensation.

25 (6) Add a capital gain related to business activity of  
26 individuals to the extent excluded in arriving at federal taxable  
27 income.

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

3           (a) A dividend received or considered received, including the  
4 foreign dividend gross-up provided for in the internal revenue  
5 code.

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

10          (c) All royalties except for the following:

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

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

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

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

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

23           (iii) For the tax years ending before 1991, this subdivision  
24 does not apply to a fee for services paid by a franchisee that,  
25 with respect to a specific provision of a franchise agreement, a  
26 court of competent jurisdiction, before June 5, 1985, has  
27 determined is not a royalty payment under this act.

1           (iv) Film rental or royalty payments paid by a theater owner to  
2 a film distributor, a film producer, or a film distributor and  
3 producer.

4           (v) Royalties, fees, charges, or other payments or  
5 consideration paid or incurred by radio or television broadcasters  
6 for program matter or signals.

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

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

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

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

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

3 (9) To the extent included in federal taxable income, add the  
4 loss or subtract the gain from the tax base that is attributable to  
5 another entity whose business activities are taxable under this act  
6 or, **FOR TAX YEARS FOR WHICH [SECTION << >> 35F IS] NOT IN EFFECT,**  
7 would be taxable under this act if the business activities were in  
8 this state.

9 (10) For tax years that begin after December 31, 2004, deduct,  
10 to the extent included in federal taxable income, income received  
11 from either of the following:

12 (a) Small business innovation research grants and small  
13 business technology transfer programs established under the small  
14 business innovation development act of 1982, Public Law 97-219,  
15 reauthorized under the small business research and development  
16 enhancement act, Public Law 102-564, and subsequently reauthorized  
17 under the small business reauthorization act of 2000, Public Law  
18 106-554.

19 (b) Grants from the Michigan technology tri-corridor SBIR  
20 emerging business fund administered by the Michigan economic  
21 development corporation.

22 Sec. 22a. (1) Except as otherwise provided, from August 3,  
23 1987 to September 30, 1987, for the tax year beginning October 1,  
24 1987 and ending September 30, 1988, and each tax year thereafter,  
25 the tax base and adjusted tax base of an insurance company is the  
26 product of .25 times the insurance company's adjusted receipts as  
27 apportioned under section 62.



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1 (2) The tax base and adjusted tax base calculated under this  
2 section shall not be adjusted under sections 23 and 23b.

3 (3) The tax calculated under this section is in lieu of all  
4 other privilege or franchise fees or taxes imposed by any other law  
5 of this state, except taxes on real and personal property **AND, FOR**  
6 **TAX YEARS FOR WHICH <<SECTION 35F IS >> IN EFFECT, TAXES**  
7 **IMPOSED UNDER THE GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51 TO**  
8 **205.78, AND TAXES IMPOSED UNDER THE USE TAX ACT, 1937 PA 94, MCL**  
9 **205.91 TO 205.111, and except as otherwise provided in this act and**  
10 **in ~~Act No. 218 of the Public Acts of 1956~~ THE INSURANCE CODE OF**  
11 **1956, 1956 PA 218, MCL 500.100 TO 500.8302.**

12 (4) As used in this section:

13 (a) "Adjusted receipts" means, except as provided in  
14 subdivision (b), the sum of all of the following:

15 (i) Rental and royalty receipts from a person that is not  
16 either of the following:

17 (A) An affiliated insurance company.

18 (B) An insurance agent of the taxpayer licensed under chapter  
19 12 of the insurance code of 1956, ~~Act No. 218 of the Public Acts~~  
20 ~~of 1956, being sections 500.1200 to 500.1244 of the Michigan~~  
21 ~~Compiled Laws~~ **1956 PA 218, MCL 500.1200 TO 500.1247.**

22 (ii) Gross direct premiums received for insurance on property  
23 or risk, deducting premiums on policies not taken and returned  
24 premiums on canceled policies.

25 (iii) Receipts from administrative services only contracts with  
26 a person who is not an affiliated insurance company or an  
27 affiliated nonprofit corporation.

1 (iv) Receipts from business activity other than the business of  
2 insurance. As used in this subparagraph, "business of insurance"  
3 means any activity related to the sale of insurance, payment of  
4 claims, or claims handling, on policies written by the taxpayer.

5 (v) Charges not including interest charges attributable to  
6 premiums paid on a deferred or installment basis.

7 (vi) Receipts from servicing carrier fees received from the  
8 Michigan auto insurance placement facility.

9 (b) Adjusted receipts do not include any of the following:

10 (i) Receipts from interest, dividends, or proceeds from the  
11 sale of assets.

12 (ii) Receipts, other than receipts described in subsection  
13 (4) (a) (i) or (ii), from an affiliated insurance company, an  
14 affiliated nonprofit corporation, an employee of the taxpayer, or  
15 an insurance agent of the taxpayer licensed under chapter 12 of the  
16 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~  
17 ~~being sections 500.1200 to 500.1244 of the Michigan Compiled Laws~~  
18 **1956 PA 218, MCL 500.1200 TO 500.1247.**

19 (iii) Receipts on the sale of annuities.

20 (iv) Receipts on all reinsurance transactions.

21 (c) "Affiliated insurance company" means an insurance company  
22 that is a member of an affiliated group with the taxpayer or if the  
23 insurance company does not issue stock, 50% or more of the members  
24 of that insurance company's board of directors are members of the  
25 taxpayer's board of directors.

26 (d) "Affiliated nonprofit corporation" means a nonprofit  
27 corporation, of which 80% or more of the members of the board of

1 directors are members of the taxpayer's board of directors.

2 (5) A refund for taxes paid for tax years before the 1996 tax  
3 year shall not be paid under this section if the refund claim is  
4 made after June 30, 1997 and is based on this section as it ~~exists~~  
5 ~~on the effective date of the amendatory act that added this~~  
6 ~~subsection~~ **EXISTED ON JANUARY 1, 1991.**

7 Sec. 38e. (1) A taxpayer may claim a credit against the tax  
8 imposed by this act equal to the sum of 50% of the qualified  
9 expenses **AS** defined in subsection ~~(5)(d)(i)~~ **(6)(D)(i)** and *(ii)* and  
10 100% of the qualified expenses **AS** defined in subsection ~~(5)(d)(iii)~~  
11 **(6)(D)(iii)** paid by the taxpayer in the tax year in each of the  
12 following circumstances:

13 (a) Except for apprentices trained under subdivision (b) or  
14 (c) **AND EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (2)**, an  
15 amount not to exceed \$2,000.00 for each apprentice trained by the  
16 taxpayer in the tax year.

17 (b) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (2)**,  
18 **FOR** companies that have a classification under the North American  
19 industrial classification system (NAICS) of 333511, 333512, 333513,  
20 333514, or 333515 and for tax years that begin after December 31,  
21 2003, an amount not to exceed \$4,000.00 for each apprentice trained  
22 by the taxpayer in the tax year.

23 (c) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)**, **FOR**  
24 companies that have a classification under the North American  
25 industrial classification system (NAICS) of 333511, 333512, 333513,  
26 333514, or 333515 and for tax years that begin after December 31,  
27 2003, an amount not to exceed \$1,000.00 for each special apprentice

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1 trained by the taxpayer in the tax year.

2 (D) FOR TAX YEARS FOR WHICH <<SECTION 35F IS >> IN EFFECT,  
3 FOR COMPANIES THAT HAVE A CLASSIFICATION UNDER THE NORTH AMERICAN  
4 INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) OF 236115 TO 238990 AND  
5 FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, AN AMOUNT NOT TO  
6 EXCEED \$2,000.00 FOR EACH APPRENTICE TRAINED BY THE TAXPAYER IN THE  
7 TAX YEAR.

8 (2) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, THE  
9 CREDITS ALLOWED UNDER SUBSECTION (1) (A) TO (C) SHALL BE CLAIMED  
10 ONLY IN TAX YEARS FOR WHICH [SECTION << >> 35F IS] NOT IN EFFECT.

11 (3) ~~—(2)—~~ If the credit allowed under this section exceeds the  
12 tax liability of the taxpayer under this act for the tax year, that  
13 portion of the credit that exceeds the tax liability shall be  
14 refunded.

15 (4) ~~—(3)—~~ The credit allowed under this section shall be  
16 claimed on the annual return required under section 73, or for a  
17 taxpayer that is not required to file an annual return, the  
18 department shall provide that the credit under this subsection may  
19 be claimed on the C-8044 form, a successor form for persons not  
20 required to file an annual return, or other simplified form  
21 prescribed by the department.

22 (5) ~~—(4)—~~ For each year that this credit is in effect, the  
23 department of labor and economic growth shall prepare a report  
24 containing information including, but not limited to, the number of  
25 companies taking advantage of the apprenticeship credit, the number  
26 of apprentices participating in the program, the number of  
27 apprentices who complete a program the costs of which were the

1 basis of a credit under this section, the number of apprentices  
2 that were hired by the taxpayer after the apprenticeship training  
3 was completed for which the taxpayer claimed a credit under this  
4 section for the costs of training that apprentice, information on  
5 the employment status of individuals who have completed an  
6 apprenticeship to the extent the information is available, and the  
7 fiscal impact of the apprenticeship credit. This report shall then  
8 be transmitted to the house tax policy and senate finance  
9 committees and to the house and senate appropriations committees.  
10 This report shall be due no later than the first day of March each  
11 year.

12 (6) ~~—(5)—~~ As used in this section:

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

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

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

23 (iii) The program is filed with a local workforce development  
24 board.

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

27 (b) "Enrolled" means currently enrolled or expecting to enroll

1 after a period of less than 3 months during which the program is  
2 not in operation and the apprentice is not enrolled.

3 (c) "Local workforce development board" means a board  
4 established by the chief elected official of a local unit of  
5 government pursuant to the job training partnership act, Public Law  
6 97-300, 96 Stat. 1322, that has the responsibility to ensure that  
7 the workforce needs of the employers in the geographic area  
8 governed by the local unit of government are met.

9 (d) "Qualified expenses" means all of the following expenses  
10 paid by the taxpayer in a tax year that begins after December 31,  
11 1996 for expenses used to calculate a credit under subsection  
12 (1)(a) and after December 31, 2003 for expenses used to calculate a  
13 credit under subsection (1)(b) that were not paid for with funds  
14 the taxpayer received or retained that the taxpayer would not  
15 otherwise have received or retained and that are used for training  
16 an apprentice:

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

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

20 (iii) Costs of classroom instruction and related expenses  
21 identified as costs for which the taxpayer is responsible under an  
22 apprenticeship agreement, including but not limited to tuition,  
23 fees, and books for college level courses taken while the  
24 apprentice is enrolled in high school.

25 (e) "Special apprentice" means a person who is not an  
26 apprentice as defined by section (5)(a), is a resident of this  
27 state, is 16 years of age or older but younger than 25 years of

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1 age, and is trained by a taxpayer through a program that meets all  
2 of the criteria under subdivision (a) (i) to (iv).

3 SEC. 79. FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2006  
4 AND FOR WHICH <<SECTION 35F IS >> IN EFFECT, A TAXPAYER THAT  
5 FILES A RETURN UNDER THIS ACT THAT INCLUDES A DISREGARDED ENTITY  
6 UNDER AN ELECTION PURSUANT TO 26 CFR 301.7701-1 TO 301.7701-3,  
7 SECTION 1361(B) (3) OF THE INTERNAL REVENUE CODE, OR ANY OTHER  
8 SECTION OF THE INTERNAL REVENUE CODE, SHALL NOT CLAIM ON THAT  
9 RETURN A CREDIT CARRYFORWARD OR BUSINESS LOSS DEDUCTION UNDER  
10 SECTION 23B FROM A YEAR IN WHICH THE ENTITY FROM WHOM THE CREDIT  
11 CARRYFORWARD OR BUSINESS LOSS DEDUCTION UNDER SECTION 23B  
12 ORIGINATED DID NOT FILE A RETURN ON A DISREGARDED ENTITY BASIS IN  
13 AN AMOUNT GREATER THAN THE TOTAL CREDIT CARRYFORWARD OR BUSINESS  
14 LOSS DEDUCTION UNDER SECTION 23B THAT COULD HAVE BEEN CLAIMED BY  
15 THAT ENTITY IF THAT ENTITY HAD FILED A SEPARATE RETURN.

16 SEC. 130. IF A FINAL ORDER OF A COURT OF COMPETENT  
17 JURISDICTION FOR WHICH ALL RIGHTS OF APPEAL HAVE BEEN EXHAUSTED OR  
18 HAVE EXPIRED DETERMINES THAT ANY PROVISION OF THIS ACT THAT  
19 PROVIDES A DEDUCTION, CREDIT, OR EXEMPTION WITH RESPECT TO  
20 EMPLOYMENT, PERSONS, SERVICES, TAXES, INVESTMENT, OR ANY OTHER  
21 ACTIVITY THAT IS LIMITED ONLY TO THIS STATE IS UNCONSTITUTIONAL OR  
22 APPLIES TO EMPLOYMENT, PERSONS, SERVICES, TAXES, INVESTMENT, OR ANY  
23 OTHER ACTIVITY OUTSIDE OF THIS STATE, THEN THAT DEDUCTION, CREDIT,  
24 OR EXEMPTION SHALL BE SEVERED FROM THIS ACT IN ITS ENTIRETY AND  
25 SHALL NOT BE EFFECTIVE FOR ANY TAX YEAR FOR WHICH THE FINAL RULING  
26 APPLIES AND THE REMAINING PROVISIONS OF THIS ACT SHALL REMAIN IN  
27 EFFECT.

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

4 (a) House Bill No. 4342.

5 (b) House Bill No. 4972.

6 (c) House Bill No. 4973.

7 (d) House Bill No. 4980.

8 (e) House Bill No. 5095.

9 (f) House Bill No. 5096.

10 (g) House Bill No. 5097.

11 (h) House Bill No. 5106.

12 (i) House Bill No. 5107.

13 (j) House Bill No. 5108.

14 (k) Senate Bill No. 633.

15 [ ]

16 Enacting section 2. Sections 9 and 22a of the single business  
17 tax act, 1975 PA 228, MCL 208.9 and 208.22a, as amended by this  
18 amendatory act, take effect for tax years that begin on and after  
19 January 1, 2006.