

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5108

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 4a and 36 (MCL 208.4a and 208.36), section 4a
as added by 2003 PA 241 and section 36 as amended by 1995 PA 284,
and by adding section 74.

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
6 of health and welfare and noninsured benefit plans for the benefit
7 of persons who are residents of this state paid by the taxpayer in

1 the tax year.

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

9 (A) FOR TAX YEARS THAT BEGIN AFTER THE DECEMBER 31 FOR WHICH
10 THE CRITERIA UNDER SECTION 74 ARE FIRST CONSIDERED TO HAVE BEEN MET
11 UNTIL SUBDIVISION (B) APPLIES, 62.5%.

12 (B) FOR THE FIRST TAX YEAR THAT BEGINS AFTER THE DECEMBER 31
13 FOR WHICH THE CRITERIA UNDER SECTION 74 HAVE BEEN MET AFTER THE TAX
14 YEARS TO WHICH SUBDIVISION (A) APPLIES, 75.0%.

15 (C) FOR THE FIRST TAX YEAR THAT BEGINS AFTER THE DECEMBER 31
16 FOR WHICH THE CRITERIA UNDER SECTION 74 HAVE BEEN MET AFTER THE TAX
17 YEARS TO WHICH SUBDIVISION (B) APPLIES, 87.5%.

18 (D) FOR THE FIRST TAX YEAR THAT BEGINS AFTER THE DECEMBER 31
19 FOR WHICH THE CRITERIA UNDER SECTION 74 HAVE BEEN MET AFTER THE TAX
20 YEARS TO WHICH SUBDIVISION (C) APPLIES AND ALL TAX YEARS AFTER THAT
21 TAX YEAR, 100%.

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

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

27 (b) "Officer" means an officer of a corporation other than a

1 subchapter S corporation including the chairperson of the board,
2 president, vice-president, secretary, and treasurer, or persons
3 performing similar duties.

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

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

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

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

11 (d) "Shareholder" means a person who owns outstanding stock in
12 the business **OR FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,**
13 **2006, A MEMBER OF A BUSINESS ENTITY THAT FILES AS A CORPORATION FOR**
14 **FEDERAL TAX PURPOSES.** An individual is considered as the owner of
15 the stock owned, directly or indirectly, by or for family members
16 as defined by section 318(a)(1) of the internal revenue code.

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

1 business income amount used as a loss adjustment in a previous tax
2 year or use a negative adjusted business income amount from a year
3 in which the taxpayer did not receive the credit under this
4 section.

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

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

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

27 (b) A corporation other than a subchapter S corporation is

1 disqualified if either of the following occur for the respective
2 tax year:

3 (i) Compensation and director's fees of a shareholder or
4 officer exceed \$95,000.00 for tax years commencing on or after
5 January 1, 1985 and before January 1, 1998 or exceed \$115,000.00
6 for tax years commencing after December 31, 1997.

7 (ii) The sum of the following amounts exceeds \$95,000.00 for
8 tax years commencing on or after January 1, 1985 and before January
9 1, 1998 or exceeds \$115,000.00 for tax years commencing after
10 December 31, 1997:

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

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

16 (c) Subject to section 36d, for a taxpayer that is eligible
17 for the credit under this subsection for tax years beginning after
18 December 31, 1997 the credit determined under this subsection shall
19 be reduced by the following percentages in the following
20 circumstances:

21 (i) If an individual, any 1 partner of the partnership, or any
22 1 shareholder of the subchapter S corporation receives as a
23 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
24 loss adjustment of the individual, partnership, or subchapter S
25 corporation; if compensation and directors' fees of a shareholder
26 or officer of a corporation other than a subchapter S corporation
27 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)

1 is more than \$95,000.00 but less than \$100,000.00, the credit is
2 reduced by 20%.

3 (ii) If an individual, any 1 partner of the partnership, or any
4 1 shareholder of the subchapter S corporation receives as a
5 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
6 loss adjustment of the individual, partnership, or subchapter S
7 corporation if compensation and directors' fees of a shareholder or
8 officer of a corporation other than a subchapter S corporation are;
9 or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is
10 \$100,000.00 or more but less than \$105,000.00, the credit is
11 reduced by 40%.

12 (iii) If an individual, any 1 partner of the partnership, or any
13 1 shareholder of the subchapter S corporation receives as a
14 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
15 loss adjustment of the individual, partnership, or subchapter S
16 corporation if compensation and directors' fees of a shareholder or
17 officer of a corporation other than a subchapter S corporation are;
18 or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is
19 \$105,000.00 or more but less than \$110,000.00, the credit is
20 reduced by 60%.

21 (iv) If an individual, any 1 partner of the partnership, or any
22 1 shareholder of the subchapter S corporation receives as a
23 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the
24 loss adjustment of the individual, partnership, or subchapter S
25 corporation if compensation and directors' fees of a shareholder or
26 officer of a corporation other than a subchapter S corporation are;
27 or if the sum of the amounts in subdivision (b)(ii)(A) and (B) is

1 \$110,000.00 or more but less than \$115,000.00, the credit is
2 reduced by 80%.

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

6 (4) A person who qualifies pursuant to subsection (2) is
7 allowed a credit against the tax imposed by section 31. For tax
8 years commencing before January 1, 1989, the credit is a percentage
9 reduction in tax liability. ~~For tax years commencing on and after~~
10 ~~January 1, 1989 and through tax years commencing in 1991, the~~
11 ~~credit is the greater of the amount by which the tax imposed by~~
12 ~~section 31 exceeds 4% of adjusted business income or 3% of adjusted~~
13 ~~business income for tax years commencing after 1991 or a percentage~~
14 ~~reduction in tax liability. However, beginning October 1, 1994, the~~
15 ~~percentage of adjusted business income shall be 2%.~~ The department
16 shall annualize the rates provided under this subsection as
17 necessary for tax years that end after September 30, 1994 and the
18 applicable annualized rate shall be imposed for those tax years.

19 **THE CREDIT UNDER THIS SUBSECTION IS THE GREATER OF THE AMOUNT BY**
20 **WHICH THE TAX IMPOSED BY SECTION 31 EXCEEDS THE FOLLOWING**
21 **PERCENTAGE OF ADJUSTED BUSINESS INCOME FOR THE SPECIFIED TAX YEARS**
22 **OR A PERCENTAGE REDUCTION IN TAX LIABILITY:**

23 (A) FOR TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 1989 AND
24 THROUGH TAX YEARS COMMENCING IN 1991, 4%.

25 (B) FOR TAX YEARS COMMENCING AFTER 1991 AND BEFORE OCTOBER 1,
26 1994, 3%.

27 (C) BEGINNING OCTOBER 1, 1994 AND BEFORE JANUARY 1, 2006, 2%.

1 (D) BEGINNING JANUARY 1, 2006, 1.7%.

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

5 (6) If gross receipts exceed \$5,000,000.00 for tax years
6 commencing on or after January 1, 1984 and before January 1, 1989;
7 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for
8 tax years commencing in 1990; \$6,500,000.00 for tax years
9 commencing in 1991; or \$9,000,000.00 for tax years commencing after
10 1991, the credit shall be reduced by a fraction, the numerator of
11 which is the amount of gross receipts over \$5,000,000.00 for tax
12 years commencing on or after January 1, 1984 and before January 1,
13 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00
14 for tax years commencing in 1990; \$6,500,000.00 for tax years
15 commencing in 1991; or \$9,000,000.00 for tax years commencing after
16 1991, and the denominator of which is \$1,000,000.00. The credit
17 shall not exceed 50% for tax years commencing before January 1,
18 1984; 90% for tax years commencing on or after January 1, 1984 and
19 before January 1, 1988; or 100% for tax years commencing on and
20 after January 1, 1988 of the tax liability imposed by section 31.

21 (7) An affiliated group as defined in this act, a controlled
22 group of corporations as defined in section 1563 of the internal
23 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1
24 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
25 defined by the internal revenue code shall not take the credit
26 allowed by this section unless the business activities of the
27 entities are consolidated. **FOR PURPOSES OF THIS SUBSECTION,**

1 BUSINESS ACTIVITIES INCLUDE ALL ACTIVITIES WITHIN AND OUTSIDE OF
2 THIS STATE.

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

10 (9) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007 AND FOR
11 WHICH THE CRITERIA UNDER SECTION 74 ARE CONSIDERED TO HAVE BEEN
12 MET, THE MAXIMUM AMOUNT UNDER SUBSECTION (2) (A), (B) (i), (B) (ii), AND
13 (C) (iv) SHALL BE ADJUSTED BY THE PERCENTAGE INCREASE IN THE RATE OF
14 PERSONAL INCOME GROWTH AS REPORTED BY THE FEDERAL GOVERNMENT FOR
15 THE IMMEDIATELY PRECEDING CALENDAR YEAR.

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

19 SEC. 74. (1) THE STATE TREASURER AND THE HOUSE AND SENATE
20 FISCAL AGENCIES SHALL JOINTLY DO ALL OF THE FOLLOWING DURING
21 DECEMBER 2006 AND DURING EACH SUBSEQUENT DECEMBER THROUGH DECEMBER
22 2010:

23 (A) DETERMINE THE AMOUNT OF SPECIFIED REVENUES COLLECTED FOR
24 THE STATE FISCAL YEAR ENDING ON THE IMMEDIATELY PRECEDING SEPTEMBER
25 30 AND THE AMOUNT OF THE SPECIFIED REVENUES FOR THE STATE FISCAL
26 YEAR IMMEDIATELY PRECEDING THAT STATE FISCAL YEAR.

27 (B) CALCULATE THE DIFFERENCE BETWEEN THE SPECIFIED REVENUES

1 FOR EACH OF THE 2 STATE FISCAL YEARS UNDER SUBDIVISION (A) .

2 (C) MULTIPLY THE TOTAL OF THE SPECIFIED REVENUES FOR THE STATE
3 FISCAL YEAR IMMEDIATELY PRECEDING THE STATE FISCAL YEAR ENDING ON
4 THE IMMEDIATELY PRECEDING SEPTEMBER 30 BY THE CONSUMER PRICE INDEX
5 PLUS 1%.

6 (2) IF THE AMOUNT DETERMINED UNDER SUBSECTION (1) (B) EXCEEDS
7 THE AMOUNT CALCULATED UNDER SUBSECTION (1) (C) PLUS \$50,000,000.00
8 OR MORE, THE CRITERIA UNDER THIS SECTION ARE CONSIDERED TO HAVE
9 BEEN MET.

10 (3) IF THE AMOUNT DETERMINED UNDER SUBSECTION (1) (B) IS MORE
11 THAN THE AMOUNT CALCULATED UNDER SUBSECTION (1) (C) PLUS
12 \$50,000,000.00, THE AMOUNT IN EXCESS OF \$50,000,000.00 SHALL BE
13 USED AS FOLLOWS:

14 (A) DEPOSIT 50% OF THE AMOUNT IN EXCESS OF \$50,000,000.00 INTO
15 THE COUNTERCYCLICAL BUDGET AND ECONOMIC STABILIZATION FUND CREATED
16 UNDER SECTION 351 OF THE MANAGEMENT AND BUDGET ACT, 1984 PA 431,
17 MCL 18.1351.

18 (B) REDUCE THE TAX RATE UNDER SECTION 31, AS PROVIDED BY LAW,
19 TO A RATE THAT PROVIDES FOR A REDUCTION EQUAL TO 50% OF THE AMOUNT
20 IN EXCESS OF \$50,000,000.00.

21 (4) "SPECIFIED REVENUES" MEANS THE REVENUES COLLECTED PURSUANT
22 TO THE FOLLOWING ACTS AND PARTS OF ACTS:

23 (A) INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532.

24 (B) GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51 TO 205.78.

25 (C) USE TAX ACT, 1937 PA 94, MCL 205.91 TO 205.111.

26 (D) SINGLE BUSINESS TAX ACT, 1975 PA 228, MCL 208.1 TO
27 208.145.

1 (E) SECTION 476A OF THE INSURANCE CODE OF 1956, 1956 PA 218,
2 MCL 500.476A.

3 (F) TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO
4 205.436.

5 (G) MICHIGAN GAMING CONTROL AND REVENUE ACT, THE INITIATED LAW
6 OF 1996, MCL 432.201 TO 432.226.

7 (H) STATE EDUCATION ACT, 1993 PA 331, MCL 211.901 TO 211.906.

8 (I) REAL ESTATE TRANSFER TAX ACT, 1966 PA 134, MCL 207.501 TO
9 207.513.

10 (J) 1929 PA 48, MCL 205.301 TO 205.317

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

14 (a) House Bill No. 4972.

15 (b) House Bill No. 4980.

16 (c) House Bill No. 5095.

17 (d) House Bill No. 5096.

18 (e) House Bill No. 5097.

19 (f) House Bill No. 5098.

20 (g) House Bill No. 5106.

21 (h) House Bill No. 5107.

22 (i) Senate Bill No. 633.

23 (j) Senate Bill No. 634.