

# HOUSE BILL No. 5098

August 17, 2005, Introduced by Rep. Condino and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending sections 3, 9, 22a, 31, 36, 38e, and 71 (MCL 208.3, 208.9, 208.22a, 208.31, 208.36, 208.38e, and 208.71), sections 3, 31, and 71 as amended by 1999 PA 115, section 9 as amended by 2004 PA 258, section 22a as amended by 1996 PA 578, section 36 as amended by 1995 PA 284, and section 38e as amended by 2003 PA 273, and by adding sections 32, 79, and 79a.

**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

1 this subsection, "United States corporation" means a domestic  
2 corporation as those terms are defined in section 7701(a)(3) and  
3 (4) of the internal revenue code.

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

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

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

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

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

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

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

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

19           (d) A dividend paid or accrued except a dividend that  
20 represents a reduction of premiums to policyholders of insurance  
21 companies.

22           (e) A deduction or exclusion by a taxpayer due to a  
23 classification as, or the payment of commissions or other fees to,  
24 a domestic international sales corporation or any like special  
25 classification the purpose of which is to reduce or postpone the  
26 federal income tax liability. This subdivision does not apply to  
27 the special provisions of sections 805, 809, and 815(c)(2)(A) of

1 the internal revenue code.

2 (f) All interest including amounts paid, credited, or reserved  
3 by insurance companies as amounts necessary to fulfill the policy  
4 and other contract liability requirements of sections 805 and 809  
5 of the internal revenue code. Interest does not include payments or  
6 credits made **BEFORE OCTOBER 1, 2005** to or on behalf of a taxpayer  
7 by a manufacturer, distributor, or supplier of inventory to defray  
8 any part of the taxpayer's floor plan interest, if these payments  
9 are used by the taxpayer to reduce interest expense in determining  
10 federal taxable income. For purposes of this section, "floor plan  
11 interest" means interest paid that finances any part of the  
12 taxpayer's purchase of automobile inventory from a manufacturer,  
13 distributor, or supplier. However, amounts attributable to any  
14 invoiced items used to provide more favorable floor plan assistance  
15 to a taxpayer than to a person who is not a taxpayer is considered  
16 interest paid by a manufacturer, distributor, or supplier.

17 (g) All royalties except for the following:

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

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

24 (iii) Except as provided in subparagraph (iv), for the tax years  
25 1986 and after 1986, a franchise fee as defined by section 3 of the  
26 franchise investment law, 1974 PA 269, MCL 445.1503, in the  
27 following amounts:

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

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

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

6 (iv) For the tax years ending before 1991, this subdivision  
7 does not apply to a fee for services paid by a franchisee that,  
8 with respect to a specific provision of a franchise agreement, a  
9 court of competent jurisdiction, before June 5, 1985, has  
10 determined is not a royalty payment under this act.

11 (v) Film rental or royalty payments paid by a theater owner to  
12 a film distributor, a film producer, or a film distributor and  
13 producer.

14 (vi) Royalties, fees, charges, or other payments or  
15 consideration paid or incurred by radio or television broadcasters  
16 for program matter or signals.

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

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

24 (A) "Application computer software" means a set of statements  
25 or instructions that when incorporated in a machine usable medium  
26 is capable of causing a machine or device having information  
27 processing capabilities to indicate, perform, or achieve a

1 particular business function, task, or result for the nontechnical  
2 end user. Application computer software includes any other computer  
3 software that does not qualify under sub-subparagraph (B) or (C).

4 (B) "Operating system software" means a set of statements or  
5 instructions that when incorporated into a machine or device having  
6 information processing capabilities is an interface between the  
7 computer hardware and the application computer software or system  
8 software.

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

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

23 (h) A deduction for rent attributable to a lease back that  
24 continues in effect under the former provisions of section  
25 168(f)(8) of the internal revenue code of 1954 as that section  
26 provided immediately before the tax reform act of 1986, Public Law  
27 99-514, became effective or to a lease back of property to which

1 the amendments made by the tax reform act of 1986 do not apply as  
2 provided in section 204 of the tax reform act of 1986.

3 (5) Add compensation.

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

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

9 (a) A dividend received or considered received, including the  
10 foreign dividend gross-up provided for in the internal revenue  
11 code.

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

16 (c) All royalties except for the following:

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

20 (ii) Except as provided in subparagraph (iii), for the 1986 tax  
21 year and after the 1986 tax year, a franchise fee as defined in  
22 section 3 of the franchise investment law, 1974 PA 269, MCL  
23 445.1503, in the following amounts:

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

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

27 (C) For the tax years 1991 and after 1991, 100% of the

1 franchise fee.

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

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

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

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

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

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

27 (d) Rent attributable to a lease back that continues in effect



1 under the former provisions of section 168(f)(8) of the internal  
2 revenue code of 1954 as that section provided immediately before  
3 the tax reform act of 1986, Public Law 99-514, became effective or  
4 to a lease back of property to which the amendments made by the tax  
5 reform act of 1986 do not apply as provided in section 204 of the  
6 tax reform act of 1986.

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

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

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

17 (a) Small business innovation research grants and small  
18 business technology transfer programs established under the small  
19 business innovation development act of 1982, Public Law 97-219,  
20 reauthorized under the small business research and development  
21 enhancement act, Public Law 102-564, and subsequently reauthorized  
22 under the small business reauthorization act of 2000, Public Law  
23 106-554.

24 (b) Grants from the Michigan technology tri-corridor SBIR  
25 emerging business fund administered by the Michigan economic  
26 development corporation.

27 Sec. 22a. (1) Except as otherwise provided, from August 3,

1 1987 to September 30, 1987, for the tax year beginning October 1,  
2 1987 and ending September 30, 1988, and each tax year thereafter,  
3 the tax base and adjusted tax base of an insurance company is the  
4 product of .25 times the insurance company's adjusted receipts as  
5 apportioned under section 62.

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

8 (3) The tax calculated under this section is in lieu of all  
9 other privilege or franchise fees or taxes imposed by any other law  
10 of this state, except taxes on real and personal property, **TAXES**  
11 **IMPOSED UNDER THE GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51 TO**  
12 **205.78, AND TAXES IMPOSED UNDER THE USE TAX ACT, 1937 PA 94, MCL**  
13 **205.91 TO 205.111,** and except as otherwise provided in this act and  
14 in ~~Act No. 218 of the Public Acts of 1956~~ **THE INSURANCE CODE OF**  
15 **1956, 1956 PA 218, MCL 500.100 TO 500.8302.**

16 (4) As used in this section:

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

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

21 (A) An affiliated insurance company.

22 (B) An insurance agent of the taxpayer licensed under chapter  
23 12 of the insurance code of 1956, ~~Act No. 218 of the Public Acts~~  
24 ~~of 1956, being sections 500.1200 to 500.1244 of the Michigan~~  
25 ~~Compiled Laws~~ **1956 PA 218, MCL 500.1200 TO 500.1247.**

26 (ii) Gross direct premiums received for insurance on property  
27 or risk, deducting premiums on policies not taken and returned

1 premiums on canceled policies.

2 (iii) Receipts from administrative services only contracts with  
3 a person who is not an affiliated insurance company or an  
4 affiliated nonprofit corporation.

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

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

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

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

14 (i) Receipts from interest, dividends, or proceeds from the  
15 sale of assets.

16 (ii) Receipts, other than receipts described in subsection  
17 (4)(a)(i) or (ii), from an affiliated insurance company, an  
18 affiliated nonprofit corporation, an employee of the taxpayer, or  
19 an insurance agent of the taxpayer licensed under chapter 12 of the  
20 insurance code of 1956, ~~Act No. 218 of the Public Acts of 1956,~~  
21 ~~being sections 500.1200 to 500.1244 of the Michigan Compiled Laws~~  
22 **1956 PA 218, MCL 500.1200 TO 500.1247.**

23 (iii) Receipts on the sale of annuities.

24 (iv) Receipts on all reinsurance transactions.

25 (c) "Affiliated insurance company" means an insurance company  
26 that is a member of an affiliated group with the taxpayer or if the  
27 insurance company does not issue stock, 50% or more of the members

1 of that insurance company's board of directors are members of the  
2 taxpayer's board of directors.

3 (d) "Affiliated nonprofit corporation" means a nonprofit  
4 corporation, of which 80% or more of the members of the board of  
5 directors are members of the taxpayer's board of directors.

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

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

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

17 (b) After September 30, 1994 and before January 1, 1999,  
18 2.30%.

19 (c) Beginning January 1, 1999 and each January 1 after 1999,  
20 the rate under this subsection shall be reduced as provided in  
21 subsection (5).

22 (2) As used in this section, "adjusted tax base" means the tax  
23 base allocated or apportioned to this state pursuant to chapter 3  
24 with the adjustments prescribed by sections 23 and 23b and the  
25 exemptions prescribed by section 35. If the adjusted tax base  
26 exceeds 50% of the sum of gross receipts **FOR THE PERIOD BEFORE**  
27 **OCTOBER 1, 2005 AND 53% FOR THE PERIOD BEGINNING ON AND AFTER**

1 **OCTOBER 1, 2005** plus the adjustments provided in section 23b(a) to  
2 (g), apportioned or allocated to Michigan with the apportionment  
3 fraction calculated pursuant to chapter 3, the adjusted tax base  
4 may, at the option of the taxpayer, be reduced by that excess. If a  
5 taxpayer reduces the adjusted tax base under this subsection, the  
6 taxpayer is not entitled to the adjustment provided in subsection  
7 (4) for the same taxable year. This subsection does not apply to an  
8 adjusted tax base under section 22a.

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

11 (4) In lieu of the reduction provided in subsection (2), a  
12 person may elect to reduce the adjusted tax base by the percentage  
13 that the compensation divided by the tax base exceeds 63% **FOR THE**  
14 **PERIOD BEFORE OCTOBER 1, 2005 AND 66% FOR THE PERIOD BEGINNING ON**  
15 **AND AFTER OCTOBER 1, 2005**. The deduction shall not exceed 37% **FOR**  
16 **THE PERIOD BEFORE OCTOBER 1, 2005 AND 34% FOR THE PERIOD BEGINNING**  
17 **ON AND AFTER OCTOBER 1, 2005** of the adjusted tax base. For purposes  
18 of computing the deduction allowed by this subsection, as effective  
19 for the respective tax year, compensation does not include amounts  
20 of compensation exempt from tax under section 35(1)(e). This  
21 subsection does not apply to an adjusted tax base under section  
22 22a.

23 (5) If the comprehensive annual financial report of this state  
24 for a state fiscal year, published pursuant to section 494 of the  
25 management and budget act, 1984 PA 431, MCL 18.1494, reports an  
26 ending balance of more than \$250,000,000.00 in the countercyclical  
27 budget and economic stabilization fund created under section 351 of

1 the management and budget act, 1984 PA 431, MCL 18.1351, for that  
2 state fiscal year, the tax rate under this section shall be reduced  
3 by 0.1 percentage point on the January 1 following the end of the  
4 state fiscal year for which the report was issued.

5 (6) The department shall annualize the rate under this section  
6 as necessary, and the applicable annualized rate shall be imposed.

7 **SEC. 32. FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2005, A**  
8 **TAXPAYER SHALL ADD TO THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR**  
9 **AN AMOUNT EQUAL TO THE AMOUNT THE TAXPAYER CLAIMED AS A CREDIT**  
10 **PURSUANT TO CHAPTER 361 OF THE NATURAL RESOURCES AND ENVIRONMENTAL**  
11 **PROTECTION ACT, 1994 PA 451, MCL 324.36101 TO 324.36117.**

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

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

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

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

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

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

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

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

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

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

26 (2) The credit provided in this section shall be taken before  
27 any other credit under this act, and is available to any person

1 whose gross receipts do not exceed \$6,000,000.00 for tax years  
2 commencing on or after January 1, 1984 and before January 1, 1989;  
3 \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for  
4 tax years commencing in 1990; \$7,500,000.00 for tax years  
5 commencing in 1991; or \$10,000,000.00 for tax years commencing  
6 after 1991, and whose adjusted business income minus the loss  
7 adjustment does not exceed \$475,000.00 for tax years commencing on  
8 or after January 1, 1985, subject to the following:

9 (a) An individual, a partnership, **A BUSINESS ENTITY THAT FILES**  
10 **AS A PARTNERSHIP FOR FEDERAL TAX PURPOSES**, or a subchapter S  
11 corporation is disqualified if the individual, any 1 partner of the  
12 partnership, **ANY 1 MEMBER OF THE BUSINESS ENTITY THAT FILES AS A**  
13 **PARTNERSHIP FOR FEDERAL TAX PURPOSES**, or any 1 shareholder of the  
14 subchapter S corporation receives more than \$95,000.00 for tax  
15 years commencing on or after January 1, 1985 and before January 1,  
16 1998 or more than \$115,000.00 for tax years commencing after  
17 December 31, 1997 as a distributive share of the adjusted business  
18 income minus the loss adjustment of the individual, the  
19 partnership, or the subchapter S corporation.

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

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

27 (ii) The sum of the following amounts exceeds \$95,000.00 for



1 tax years commencing on or after January 1, 1985 and before January  
2 1, 1998 or exceeds \$115,000.00 for tax years commencing after  
3 December 31, 1997:

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

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

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

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

25 (ii) If an individual, any 1 partner of the partnership, **ANY 1**  
26 **MEMBER OF THE BUSINESS ENTITY THAT FILES AS A PARTNERSHIP FOR**  
27 **FEDERAL TAX PURPOSES**, or any 1 shareholder of the subchapter S

1 corporation receives as a distributive share of adjusted gross  
2 income minus the loss adjustment of the individual, partnership,  
3 **BUSINESS ENTITY THAT FILES AS A PARTNERSHIP FOR FEDERAL TAX**  
4 **PURPOSES**, or subchapter S corporation; if compensation and  
5 directors' fees of a shareholder or officer of a corporation other  
6 than a subchapter S corporation are; or if the sum of the amounts  
7 in subdivision (b)(ii)(A) and (B) is \$100,000.00 or more but less  
8 than \$105,000.00, the credit is reduced by 40%.

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

20 (iv) If an individual, any 1 partner of the partnership, **ANY 1**  
21 **MEMBER OF THE BUSINESS ENTITY THAT FILES AS A PARTNERSHIP FOR**  
22 **FEDERAL TAX PURPOSES**, or any 1 shareholder of the subchapter S  
23 corporation receives as a distributive share of adjusted gross  
24 income minus the loss adjustment of the individual, partnership,  
25 **BUSINESS ENTITY THAT FILES AS A PARTNERSHIP FOR FEDERAL TAX**  
26 **PURPOSES**, or subchapter S corporation; if compensation and  
27 directors' fees of a shareholder or officer of a corporation other

1 than a subchapter S corporation are; or if the sum of the amounts  
2 in subdivision (b)(ii)(A) and (B) is \$110,000.00 or more but less  
3 than \$115,000.00, the credit is reduced by 80%.

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

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

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

23 (6) If gross receipts exceed \$5,000,000.00 for tax years  
24 commencing on or after January 1, 1984 and before January 1, 1989;  
25 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for  
26 tax years commencing in 1990; \$6,500,000.00 for tax years  
27 commencing in 1991; or \$9,000,000.00 for tax years commencing after

1 1991, the credit shall be reduced by a fraction, the numerator of  
2 which is the amount of gross receipts over \$5,000,000.00 for tax  
3 years commencing on or after January 1, 1984 and before January 1,  
4 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00  
5 for tax years commencing in 1990; \$6,500,000.00 for tax years  
6 commencing in 1991; or \$9,000,000.00 for tax years commencing after  
7 1991, and the denominator of which is \$1,000,000.00. The credit  
8 shall not exceed 50% for tax years commencing before January 1,  
9 1984; 90% for tax years commencing on or after January 1, 1984 and  
10 before January 1, 1988; or 100% for tax years commencing on and  
11 after January 1, 1988 of the tax liability imposed by section 31.

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

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

1           **(9) AS USED IN THIS SECTION, THE TERM "CORPORATION" INCLUDES A**  
2 **BUSINESS ENTITY THAT FILES AS A CORPORATION FOR FEDERAL TAX**  
3 **PURPOSES.**

4           Sec. 38e. (1) A taxpayer may claim a credit against the tax  
5 imposed by this act equal to the sum of 50% of the qualified  
6 expenses **INCURRED BEFORE OCTOBER 1, 2005 AS** defined in subsection  
7 (5)(d)(i) and (ii) and 100% of the qualified expenses **INCURRED BEFORE**  
8 **OCTOBER 1, 2005 AS** defined in subsection (5)(d)(iii) paid by the  
9 taxpayer in the tax year in each of the following circumstances:

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

13           (b) For companies that have a classification under the North  
14 American industrial classification system (NAICS) of 333511,  
15 333512, 333513, 333514, or 333515 and for tax years that begin  
16 after December 31, 2003, an amount not to exceed \$4,000.00 for each  
17 apprentice trained by the taxpayer in the tax year.

18           (c) For companies that have a classification under the North  
19 American industrial classification system (NAICS) of 333511,  
20 333512, 333513, 333514, or 333515 and for tax years that begin  
21 after December 31, 2003, an amount not to exceed \$1,000.00 for each  
22 special apprentice trained by the taxpayer in the tax year.

23           (2) If the credit allowed under this section exceeds the tax  
24 liability of the taxpayer under this act for the tax year, that  
25 portion of the credit that exceeds the tax liability shall be  
26 refunded.

27           (3) The credit allowed under this section shall be claimed on

1 the annual return required under section 73, or for a taxpayer that  
2 is not required to file an annual return, the department shall  
3 provide that the credit under this subsection may be claimed on the  
4 C-8044 form, a successor form for persons not required to file an  
5 annual return, or other simplified form prescribed by the  
6 department.

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

24 (5) As used in this section:

25 (a) "Apprentice" means a person who is a resident of this  
26 state, is 16 years of age or older but younger than 20 years of  
27 age, has not obtained a high school diploma, is enrolled in high

1 school or a general education development (G.E.D.) test preparation  
2 program, and is trained by a taxpayer through a program that meets  
3 all of the following criteria:

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

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

8 (iii) The program is filed with a local workforce development  
9 board.

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

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

15 (c) "Local workforce development board" means a board  
16 established by the chief elected official of a local unit of  
17 government pursuant to the job training partnership act, Public Law  
18 97-300, 96 Stat. 1322, that has the responsibility to ensure that  
19 the workforce needs of the employers in the geographic area  
20 governed by the local unit of government are met.

21 (d) "Qualified expenses" means all of the following expenses  
22 paid by the taxpayer in a tax year that begins after December 31,  
23 1996 for expenses used to calculate a credit under subsection  
24 (1)(a) and after December 31, 2003 for expenses used to calculate a  
25 credit under subsection (1)(b) that were not paid for with funds  
26 the taxpayer received or retained that the taxpayer would not  
27 otherwise have received or retained and that are used for training

1 an apprentice:

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

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

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

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

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

19 (2) For taxpayers on a calendar year basis the quarterly  
20 returns and estimated payments shall be made by April 30, July 31,  
21 October 31, and January 31. Taxpayers not on a calendar year basis  
22 shall file quarterly returns and make estimated payments on the  
23 appropriate due date which in the taxpayer's fiscal year  
24 corresponds to the calendar year.

25 (3) The estimated payment made with each quarterly return of  
26 each tax year shall be for the estimated tax base for the quarter  
27 or 25% of the estimated annual liability. The second, third, and



1 fourth estimated payments in each tax year shall include  
2 adjustments, if necessary, to correct underpayments or overpayments  
3 from previous quarterly payments in the tax year to a revised  
4 estimate of the annual tax liability.

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

7 (a) If the sum of the estimated payments equals at least 85%  
8 of the liability or 1% of the gross receipts for the tax year and  
9 the amount of each estimated payment reasonably approximates the  
10 tax liability incurred during the quarter for which the estimated  
11 payment was made.

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

15 **(C) EFFECTIVE FOR THE 1 TAX YEAR OF THE TAXPAYER DURING WHICH**  
16 **THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION BECAME EFFECTIVE, IF**  
17 **THE UNDERPAYMENT IS DUE TO SECTION 79A OR TO THE CHANGES MADE TO**  
18 **SECTIONS 3 AND 36 BY THE AMENDATORY ACT THAT ADDED THIS**  
19 **SUBDIVISION.**

20 (5) Each estimated return shall be made on a form prescribed  
21 by the department and shall include an estimate of the annual tax  
22 liability and other information required by the commissioner. This  
23 form may be combined with any other tax reporting form prescribed  
24 by the department.

25 (6) With respect to a taxpayer filing an estimated tax return  
26 for the taxpayer's first tax year of less than 12 months, the  
27 amounts paid with each return shall be proportional to the number

1 of payments made in the first tax year.

2 (7) Payments made under this section shall be a credit against  
3 the payment required with the annual tax return required in section  
4 73.

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

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

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

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

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

26 (11) A penalty for underpayment of an estimated tax under this  
27 act shall not be assessed for the taxpayer's first tax year

1 beginning after December 31, 1999 if the taxpayer claimed a credit  
2 under section 35a for the first time on the taxpayer's annual  
3 return for that tax year and a penalty would not have applied if  
4 the taxpayer had made adjustments under section 23 or 23b on that  
5 return.

6       SEC. 79. A TAXPAYER THAT FILES A CONSOLIDATED OR COMBINED  
7 RETURN UNDER THIS ACT SHALL NOT CLAIM A CREDIT CARRYFORWARD OR LOSS  
8 CARRYFORWARD FROM A YEAR IN WHICH THE MEMBER FROM WHOM THE CREDIT  
9 CARRYFORWARD OR LOSS CARRYFORWARD ORIGINATED DID NOT FILE A RETURN  
10 ON A CONSOLIDATED OR COMBINED BASIS IN AN AMOUNT GREATER THAN THE  
11 TOTAL CREDIT CARRYFORWARD OR LOSS CARRYFORWARD THAT COULD HAVE BEEN  
12 CLAIMED BY THAT MEMBER FOR THE SAME TAXABLE PERIOD IF THAT MEMBER  
13 HAD FILED A SEPARATE RETURN.

14       SEC. 79A. FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,  
15 2006, A TAXPAYER THAT FILES A RETURN UNDER THIS ACT THAT INCLUDES A  
16 DISREGARDED ENTITY UNDER AN ELECTION PURSUANT TO 26 CFR 301.7701-1  
17 TO 301.7701-3 OR SECTION 1361(B)(3) OF THE INTERNAL REVENUE CODE  
18 SHALL NOT CLAIM ON THAT RETURN A CREDIT CARRYFORWARD OR LOSS  
19 CARRYFORWARD FROM A YEAR IN WHICH THE ENTITY FROM WHOM THE CREDIT  
20 CARRYFORWARD OR LOSS CARRYFORWARD ORIGINATED DID NOT FILE A RETURN  
21 ON A DISREGARDED ENTITY BASIS IN AN AMOUNT GREATER THAN THE TOTAL  
22 CREDIT CARRYFORWARD OR LOSS CARRYFORWARD THAT COULD HAVE BEEN  
23 CLAIMED BY THAT ENTITY IF THAT ENTITY HAD FILED A SEPARATE RETURN.