Act No. 229
Public Acts of 2005
Approved by the Governor
November 21, 2005
Filed with the Secretary of State
November 21, 2005
NO EFFECTIVE DATE: Tie-barred to bill which was vetoed by the Governor

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005

Introduced by Rep. Condino

ENROLLED HOUSE BILL No. 5098

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," 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:

Sec. 9. (1) "Tax base" means business income, before apportionment or allocation as provided in chapter 3, even if zero or negative, subject to the adjustments in this section.

(2) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

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

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

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

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

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

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

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

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

(g) All royalties except for the following:

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

(*ii*) Cable television franchise fees described in section 622 of part III of title VI of the communications act of 1934, 47 USC 542.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Add compensation.

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

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

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

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

(c) All royalties except for the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) To the extent included in federal taxable income, add the loss or subtract the gain from the tax base that is attributable to another entity whose business activities are taxable under this act or, for tax years for which section 35f is not in effect, would be taxable under this act if the business activities were in this state.

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

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

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

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

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

(3) The tax calculated under this section is in lieu of all other privilege or franchise fees or taxes imposed by any other law of this state, except taxes on real and personal property and, for tax years for which section 35f is in effect, taxes imposed under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, and taxes imposed under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, and except as otherwise provided in this act and in the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(4) As used in this section:

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

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

(A) An affiliated insurance company.

(B) An insurance agent of the taxpayer licensed under chapter 12 of the insurance code of 1956, 1956 PA 218, MCL 500.1200 to 500.1247.

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

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

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

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

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

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

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

(*ii*) Receipts, other than receipts described in subsection (4)(a)(*i*) or (*ii*), from an affiliated insurance company, an affiliated nonprofit corporation, an employee of the taxpayer, or an insurance agent of the taxpayer licensed under chapter 12 of the insurance code of 1956, 1956 PA 218, MCL 500.1200 to 500.1247.

(*iii*) Receipts on the sale of annuities.

(*iv*) Receipts on all reinsurance transactions.

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

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

(5) A refund for taxes paid for tax years before the 1996 tax year shall not be paid under this section if the refund claim is made after June 30, 1997 and is based on this section as it existed on January 1, 1991.

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

(a) Except for apprentices trained under subdivision (b) or (c) and except as otherwise provided under subsection (2), an amount not to exceed $2,000.00 for each apprentice trained by the taxpayer in the tax year.

(b) Except as otherwise provided under subsection (2), for companies that have a classification under the North American industrial classification system (NAICS) of 333511, 333512, 333513, 333514, or 333515 and for tax years that begin after December 31, 2003, an amount not to exceed $4,000.00 for each apprentice trained by the taxpayer in the tax year.

(c) Except as otherwise provided in subsection (2), for companies that have a classification under the North American industrial classification system (NAICS) of 333511, 333512, 333513, 333514, or 333515 and for tax years that begin after December 31, 2003, an amount not to exceed $1,000.00 for each special apprentice trained by the taxpayer in the tax year.

(d) For tax years for which section 35f is in effect, for companies that have a classification under the North American industrial classification system (NAICS) of 236115 to 238990 and for tax years that begin after December 31, 2005, an amount not to exceed $2,000.00 for each apprentice trained by the taxpayer in the tax year.

(2) For tax years that begin after December 31, 2005, the credits allowed under subsection (1)(a) to (c) shall be claimed only in tax years for which section 35f is not in effect.

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

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

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

(6) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 79. For tax years that begin on and after January 1, 2006 and for which section 35f is in effect, a taxpayer that files a return under this act that includes a disregarded entity under an election pursuant to 26 CFR 301.7701-1 to 301.7701-3, section 1361(b)(3) of the internal revenue code, or any other section of the internal revenue code, shall not claim on that return a credit carryforward or business loss deduction under section 23b from a year in which the entity from whom the credit carryforward or business loss deduction under section 23b originated did not file a return on a disregarded entity basis in an amount greater than the total credit carryforward or business loss deduction under section 23b that could have been claimed by that entity if that entity had filed a separate return.

Sec. 130. If a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired determines that any provision of this act that provides a deduction, credit, or exemption with respect to employment, persons, services, taxes, investment, or any other activity that is limited only to this state is unconstitutional or applies to employment, persons, services, taxes, investment, or any other activity outside of this state, then that deduction, credit, or exemption shall be severed from this act in its entirety and shall not be effective for any tax year for which the final ruling applies and the remaining provisions of this act shall remain in effect.

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

(a) House Bill No. 4342.

(b) House Bill No. 4972.

(c) House Bill No. 4973.

(d) House Bill No. 4980.

(e) House Bill No. 5095.

(f) House Bill No. 5096.

(g) House Bill No. 5097.

(h) House Bill No. 5106.

(i) House Bill No. 5107.

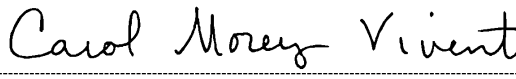
(j) House Bill No. 5108.

(k) Senate Bill No. 633.

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

This act is ordered to take immediate effect.

Clerk of the House of Representatives



Secretary of the Senate

Approved _____

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Governor