

# SENATE BILL No. 157

February 3, 2005, Introduced by Senators BRATER, BASHAM, JACOBS, PATTERSON, CHERRY and SCHAUER and referred to the Committee on Finance.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 9 (MCL 208.9), as amended by 2004 PA 258.

## 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  
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.

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

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

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

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

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

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

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

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

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

8 (g) All royalties except for the following:

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

12 (ii) Cable television franchise fees described in section 622  
13 of part III of title VI of the communications act of 1934, 47  
14 U.S.C. 542.

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

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

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

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

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

1 determined is not a royalty payment under this act.

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

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

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

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

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

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

27 (C) "System software" means a set of statements or

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

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

14 (h) A deduction for rent attributable to a lease back that  
15 continues in effect under the former provisions of section  
16 168(f)(8) of the internal revenue code of 1954 as that section  
17 provided immediately before the tax reform act of 1986, Public Law  
18 99-514, became effective or to a lease back of property to which  
19 the amendments made by the tax reform act of 1986 do not apply as  
20 provided in section 204 of the tax reform act of 1986.

21 (5) Add compensation.

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

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

27 (a) A dividend received or considered received, including the

1 foreign dividend gross-up provided for in the internal revenue  
2 code.

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

7 (c) All royalties except for the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (9) To the extent included in federal taxable income, add the

1 loss or subtract the gain from the tax base that is attributable to  
2 another entity whose business activities are taxable under this act  
3 or would be taxable under this act if the business activities were  
4 in this state.

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

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

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

18 (11) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2003, ADD ANY  
19 SETTLEMENT AMOUNT PAID PURSUANT TO AN AGREEMENT WITH A STATE OR  
20 FEDERAL GOVERNMENTAL AGENCY BASED ON QUESTIONABLE PRACTICES RELATED  
21 TO STOCK OR SECURITIES TRANSACTIONS TO THE EXTENT THAT AMOUNT WAS  
22 DEDUCTED IN DETERMINING TAXABLE INCOME. FOR THE TAXPAYER'S 2004 TAX  
23 YEAR ONLY, ADD AN AMOUNT EQUAL TO ANY SETTLEMENT AMOUNT PAID  
24 PURSUANT TO AN AGREEMENT WITH A STATE OR FEDERAL GOVERNMENTAL  
25 AGENCY BASED ON QUESTIONABLE PRACTICES RELATED TO STOCK OR  
26 SECURITIES TRANSACTIONS TO THE EXTENT THAT AMOUNT WAS DEDUCTED IN  
27 DETERMINING TAXABLE INCOME FOR THE TAXPAYER'S 2002 OR 2003 TAX

1 YEAR.