Act No. 169
Public Acts of 1991
Approved by the Governor
December 18, 1991
Filed with the Secretary of State
December 19, 1991

STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991

Introduced by Reps. Niederstadt, Randall, Gagliardi, Middaugh, Gnodtke, Hertel, Palamara and Olshove
Reps. Allen, Alley, Bankes, Barns, Bartnik, Berman, Bodem, Brackenridge, Brown, Clarke, Dalman, DeMars, Dobronski, Dolan, Goss, Harder, Harrison, Jacobetti, Jamian, Jaye, Martin, Profit, Shugars, Strand, Walberg, Weeks and Wozniak named co-sponsors

ENROLLED HOUSE BILL No. 5074

AN ACT to amend section 9 of Act No. 228 of the Public Acts of 1975, 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," as amended by Act No. 294 of the Public Acts of 1989, being section 208.9 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 9 of Act No. 228 of the Public Acts of 1975, as amended by Act No. 294 of the Public Acts of 1989, being section 208.9 of the Michigan Compiled Laws, is amended to read as follows:

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 subsections (2) to (9).

(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 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, 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. For tax years beginning after December 31, 1984, 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 as defined in section 622 of part III of title VI of the communications act of 1934, 47 U.S.C. 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, Act No. 269 of the Public Acts of 1974, being section 445.1503 of the Michigan Compiled Laws, 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.

(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 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, 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, Act No. 269 of the Public Acts of 1974, 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.

(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 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 would be taxable under this act if the business activities were in this state.

This act is ordered to take immediate effect.

....
Clerk of the House of Representatives.

....
Secretary of the Senate.

Approved ....

....
Governor.