

Act No. 77
Public Acts of 1991
Approved by the Governor
July 16, 1991
Filed with the Secretary of State
July 16, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Senators N. Smith and Posthumus

ENROLLED SENATE BILL No. 69

AN ACT to amend sections 23, 31, 45, and 73 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," section 23 as amended by Act No. 208 of the Public Acts of 1981 and section 31 as amended by Act No. 262 of the Public Acts of 1987, being sections 208.23, 208.31, 208.45, and 208.73 of the Michigan Compiled Laws; and to add sections 23b and 136b.

The People of the State of Michigan enact:

Section 1. Sections 23, 31, 45, and 73 of Act No. 228 of the Public Acts of 1975, section 23 as amended by Act No. 208 of the Public Acts of 1981 and section 31 as amended by Act No. 262 of the Public Acts of 1987, being sections 208.23, 208.31, 208.45, and 208.73 of the Michigan Compiled Laws, are amended and sections 23b and 136b are added to read as follows:

Sec. 23. After allocation as provided in section 40 or apportionment as provided in section 41, the tax base shall be adjusted by the following:

(a) For a tax year ending before March 31, 1991 for which subdivision (c) is not in effect, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes excluding costs of assets that are defined in section 1250 of the internal revenue code, except that for tangible assets that are subject to a lease back agreement 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, the deduction shall be allowed only to the lessee or sublessee as the case may be under the 168(f)(8) agreement. This deduction shall be multiplied by a fraction, the numerator of which is the payroll factor plus the property factor and the denominator of which is 2.

(b) For a tax year ending before March 31, 1991 for which subdivision (c) is not in effect, deduct the cost including fabrication and installation, excluding the cost deducted under subdivision (a) paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in Michigan.

(c) For a tax year beginning after September 30, 1989, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This deduction shall be multiplied by the apportionment factor for the taxable year as defined in chapter 3. This subdivision is not in effect for a tax year ending before January 1, 1992 if, pursuant to a court ruling, a deduction under subdivision (a) or (b) for a tax year ending before March 31, 1991 is allowed without allocation or apportionment.

Sec. 23b. After allocation as provided in section 40 or apportionment as provided in section 41, the tax base shall be adjusted by the following:

(a) If the cost of an asset was paid or accrued in a tax year ending before March 31, 1991 for which a deduction under section 23(c) is not in effect, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(a) minus the gain and plus the loss from the sale reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by a fraction, the numerator of which is the payroll factor plus the property factor and the denominator of which is 2. As used in this subdivision, "sale or other disposition" does not include the transfer of tangible assets that are leased back to the transferor 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.

(b) If the cost of an asset was paid or accrued in a tax year ending before March 31, 1991 for which a deduction under section 23(c) is not in effect, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(b) for a tax year beginning before January 1, 1991 minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor as prescribed in chapter 3, from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6).

(c) If the cost of an asset was paid or accrued in a tax year beginning after September 30, 1989, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(c) minus the gain and plus the loss from the sale reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed by chapter 3.

(d) Deduct any available business loss. As used in this subdivision, "business loss" means a negative amount after allocation or apportionment as provided in chapter 3 and after adjustments as provided in section 23 and subdivisions (a), (b), and (c) without regard to the deduction under this subdivision. The business loss shall be carried forward to the year next following the loss year as an offset to the allocated or apportioned tax base including the adjustments provided in subdivisions (a), (b), and (c), then successively to the next 9 taxable years following the loss year or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year.

Sec. 31. (1) There is levied and imposed a specific tax of 2.35% upon the adjusted tax base of every person with business activity in this state that is allocated or apportioned to this state.

(2) As used in this section, "adjusted tax base" means the tax base allocated or apportioned to this state pursuant to chapter 3 with the adjustments prescribed by sections 23 and 23b and the exemptions prescribed by section 35. If the adjusted tax base exceeds 50% of the sum of gross receipts plus the adjustments provided in section 23b(a), (b), and (c), apportioned or allocated to Michigan with the apportionment fraction calculated pursuant to chapter 3, the adjusted tax base may, at the option of the taxpayer, be reduced by that excess. If a taxpayer reduces the adjusted tax base under this subsection, the taxpayer is not entitled to the adjustment provided in subsection (4) for the same taxable year. This subsection does not apply to an adjusted tax base under section 22a.

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

(4) In lieu of the reduction provided in subsection (2), a person may elect to reduce the adjusted tax base by the percentage that the compensation divided by the tax base exceeds 63%. The deduction shall not exceed 37% of the adjusted tax base. For purposes of computing the deduction allowed by this subsection, as effective for the respective tax year, compensation does not include amounts of compensation exempt from tax under section 35(1)(e). This subsection does not apply to an adjusted tax base under section 22a.

Sec. 45. (1) Except as provided in subsection (2), all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

(2) For tax years beginning after December 31, 1990 and before January 1, 1993, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

(a) The property factor multiplied by 30%.

(b) The payroll factor multiplied by 30%.

(c) The sales factor multiplied by 40%.

(3) Subsection (2) does not apply for a tax year in which a deduction is not allowed under section 23(c).

(4) For tax years beginning after December 31, 1992, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

(a) The property factor multiplied by 25%.

(b) The payroll factor multiplied by 25%.

(c) The sales factor multiplied by 50%.

Sec. 73. (1) An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return. A person whose apportioned or allocated gross receipts plus the adjustments provided in section 23b(a), (b), and (c) are less than the following amount for the appropriate year need not file a return or pay the tax provided under this act:

(a) \$40,000.00 for tax years beginning before January 1, 1991.

(b) \$60,000.00 for tax years beginning after December 31, 1990 and before January 1, 1992.

(c) \$100,000.00 for tax years beginning after December 31, 1991.

(2) For a person whose apportioned or allocated gross receipts plus the adjustments provided in section 23b(a), (b), and (c), are for a tax year less than 12 months, the amount in subsection (1) shall be multiplied by a fraction, the numerator of which is the number of months in the tax year and the denominator of which is 12.

(3) The commissioner upon application of the taxpayer and for good cause shown may extend the date for filing the annual return. Interest at the rate of 9% per annum shall be added to the amount of the tax unpaid for the period of the extension. The commissioner shall require a tentative return and payment of an estimated tax.

(4) If a taxpayer is granted an extension of time within which to file the federal income tax return for any taxable year, the filing of a copy of the request for extension together with a tentative return and payment of an estimated tax with the commissioner by the due date provided in subsection (1) shall automatically extend the due date for the filing of a final return under this act for an equivalent period plus 60 days. Interest at the rate of 9% per annum shall be added to the amount of the tax unpaid for the period of the extension.

Sec. 136b. If section 23 is repealed by a law initiated pursuant to section 9 of article II of the state constitution of 1963, the state treasurer shall certify not later than March 1, 1993, and each year thereafter, the anticipated increase in collections under this act as a result of the repeal of section 23. The state treasurer shall establish a separate account within the department and shall deposit the amounts certified, adjusted to reflect actual collections, in that account. Funds in the account shall not be expended or transferred from the account unless the expenditure or transfer is specifically provided for by law. Funds in the account shall not be subject to a distribution pursuant to section 134, 135, or 136. If section 23 is not repealed on or before December 31, 1992, this section is repealed on January 1, 1993.

Section 2. The provisions of section 23(c) of this amendatory act are curative and intended to correct any misinterpretation of legislative intent in the Michigan court of appeals decision in *Caterpillar v State of Michigan, Department of Treasury*, Docket No. 119584. The legislature finds that for persons whose tax base is apportioned under chapter 3 of the single business tax (SBT) act, an unapportioned capital acquisition deduction is inconsistent with the manifest intent of the legislature. This legislation further expresses the original intent of the legislature that for persons whose tax base is apportioned under chapter 3, the capital acquisition deduction shall be apportioned or allocated to Michigan.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.