

Act No. 128  
Public Acts of 1991  
Approved by the Governor  
October 25, 1991  
Filed with the Secretary of State  
October 25, 1991

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

Introduced by Senators N. Smith and Posthumus

# **ENROLLED SENATE BILL No. 202**

AN ACT to amend section 23 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. 77 of the Public Acts of 1991, being section 208.23 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 23 of Act No. 228 of the Public Acts of 1975, as amended by Act No. 77 of the Public Acts of 1991, being section 208.23 of the Michigan Compiled Laws, is amended 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 does not apply to a taxpayer's first tax year ending after September 29, 1991.

(d) For a taxpayer's first tax year ending after September 29, 1991, the adjustment provided by this section shall be calculated by computing the sum of the product of the cost, including fabrication and installation, paid or accrued in the immediately preceding tax year of tangible assets of a type that were, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes multiplied by the apportionment factor as defined in chapter 3 for that immediately preceding tax year, plus the product of the cost, including fabrication and installation, paid or accrued in the taxpayer's first tax year ending after September 29, 1991 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 multiplied by the apportionment factor as defined in chapter 3 for that tax year, and reducing that sum by the adjustment for the cost, including fabrication and installation, paid or accrued in the immediately preceding tax year of tangible assets of a type that were, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes claimed by the taxpayer or allowed to the taxpayer under this act in the immediately preceding tax year. If the adjustment calculated pursuant to this subdivision is a positive amount, it shall be deducted from the tax base after allocation or apportionment, and if the adjustment calculated pursuant to this subdivision is a negative amount, it shall, without reference to the negative sign, be added to the tax base after allocation and apportionment. If any portion of this subdivision is determined to be invalid pursuant to a final appellate court decision, this subdivision shall be severed from this section.

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.