

HOUSE BILL No. 4931

June 6, 1991, Introduced by Rep. Jondahl and referred to the Committee on Taxation.

A bill to amend sections 23 and 31 of Act No. 228 of the Public Acts of 1975, entitled "Single business tax act," 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 and 208.31 of the Michigan Compiled Laws; and to add section 23b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 23 and 31 of Act No. 228 of the Public
2 Acts of 1975, section 23 as amended by Act No. 208 of the Public
3 Acts of 1981 and section 31 as amended by Act No. 262 of the
4 Public Acts of 1987, being sections 208.23 and 208.31 of the
5 Michigan Compiled Laws, are amended and section 23b is added to
6 read as follows:

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

4 (a) ~~Deduct~~ FOR A TAX YEAR ENDING AFTER DECEMBER 31, 1991
5 AND FOR A TAX YEAR ENDING BEFORE MARCH 31, 1991 FOR WHICH SECTION
6 23B IS NOT IN EFFECT, DEDUCT the cost, including fabrication and
7 installation, paid or accrued in the taxable year of tangible
8 assets of a type ~~which~~ THAT are, or under the internal revenue
9 code will become, eligible for depreciation, amortization, or
10 accelerated capital cost recovery for federal income tax purposes
11 excluding costs of assets ~~which~~ THAT are defined in section
12 1250 of the internal revenue code, except that for tangible
13 assets ~~which~~ THAT are subject to a lease back agreement under
14 ~~section 168(f)(8) of the internal revenue code~~ THE FORMER PRO-
15 VISIONS OF SECTION 168(F)(8) OF THE INTERNAL REVENUE CODE AS THAT
16 SECTION PROVIDED IMMEDIATELY BEFORE THE TAX REFORM ACT OF 1986,
17 PUBLIC LAW 99-514, BECAME EFFECTIVE OR TO A LEASE BACK OF PROP-
18 ERTY TO WHICH THE AMENDMENTS MADE BY THE TAX REFORM ACT OF 1986
19 DO NOT APPLY AS PROVIDED IN SECTION 204 OF THE TAX REFORM ACT OF
20 1986, the deduction shall be allowed only to the lessee or sub-
21 lessee as the case may be under the 168(f)(8) agreement. This
22 deduction shall be multiplied by a fraction, the numerator of
23 which is the payroll factor plus the property factor and the
24 denominator of which is 2.

25 (b) ~~Add~~ IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A
26 TAX YEAR ENDING BEFORE MARCH 31, 1991 FOR WHICH SECTION 23B IS
27 NOT IN EFFECT OR IN A TAX YEAR ENDING AFTER DECEMBER 31, 1991,

1 ADD the gross proceeds or benefit derived from the sale or other
2 disposition of the tangible assets ~~defined~~ DESCRIBED in subdi-
3 vision (a) minus the gain and plus the loss from the sale
4 reflected in federal taxable income and minus the gain from the
5 sale or other disposition added to the tax base in section 9(6).
6 This addition shall be multiplied by a fraction, the numerator of
7 which is the payroll factor plus the property factor and the
8 denominator of which is 2. As used in this subdivision, "sale or
9 other disposition" ~~shall~~ DOES not include the transfer of tan-
10 gible assets that are leased back to the transferor under
11 ~~section 168(f)(8) of the internal revenue code~~ THE FORMER PRO-
12 VISIONS OF SECTION 168(F)(8) OF THE INTERNAL REVENUE CODE AS THAT
13 SECTION PROVIDED IMMEDIATELY BEFORE THE TAX REFORM ACT OF 1986,
14 PUBLIC LAW 99-514, BECAME EFFECTIVE OR TO A LEASE BACK OF PROP-
15 ERTY TO WHICH THE AMENDMENTS MADE BY THE TAX REFORM ACT OF 1986
16 DO NOT APPLY AS PROVIDED IN SECTION 204 OF THE TAX REFORM ACT OF
17 1986.

18 (c) ~~Deduct~~ FOR A TAX YEAR ENDING AFTER DECEMBER 31, 1991
19 AND FOR A TAX YEAR ENDING BEFORE MARCH 31, 1991 FOR WHICH
20 SECTION 23B IS NOT IN EFFECT, DEDUCT the cost including fabrica-
21 tion and installation, excluding the cost deducted under subdivi-
22 sion (a) paid or accrued in the taxable year of tangible assets
23 of a type ~~which~~ THAT are, or under the internal revenue code
24 will become eligible for depreciation, amortization, or acceler-
25 ated capital cost recovery for federal income tax purposes, pro-
26 vided that the assets are physically located in Michigan.

1 (d) ~~Add~~ IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A
 2 TAX YEAR ENDING BEFORE MARCH 31, 1991 FOR WHICH SECTION 23B IS
 3 NOT IN EFFECT OR FOR A TAX YEAR ENDING AFTER DECEMBER 31, 1991,
 4 ADD the gross proceeds or benefit derived from the sale or other
 5 disposition of the tangible assets ~~defined in subsection~~
 6 DESCRIBED IN SUBDIVISION (c), minus the gain, multiplied by the
 7 apportionment factor for the taxable year as ~~defined~~ PRESCRIBED
 8 in chapter 3, and plus the loss, multiplied by the apportionment
 9 factor as ~~defined~~ PRESCRIBED in chapter 3, from the sale or
 10 other disposition reflected in federal taxable income and minus
 11 the gain from the sale or other disposition added to the tax base
 12 in section 9(6).

13 (e) Deduct any available business loss. ~~"Business~~ AS USED
 14 IN THIS SUBDIVISION, "BUSINESS loss" means ~~any~~ A negative
 15 amount after allocation or apportionment as ~~provided~~ PRESCRIBED
 16 in chapter 3, ~~and~~ AFTER adjustments as provided in subdivisions
 17 (a) to (d) without regard to the deduction under this
 18 subdivision, AND AFTER ADJUSTMENTS AS PRESCRIBED IN SECTION 23B.
 19 The business loss shall be carried forward to the year next fol-
 20 lowing the loss year as an offset to the allocated or apportioned
 21 tax base including the adjustments provided in subdivisions (a)
 22 to (d), then successively to the next 9 taxable years following
 23 the loss year or until the loss is used up, whichever occurs
 24 first, but for not more than 10 taxable years after the loss
 25 year.

26 ~~(f) Deduct any unused net operating loss carryover arising~~
 27 ~~under former sections 32(3) and 34(3) of Act No. 281 of the~~

~~1 Public Acts of 1967, pertaining to net operating losses of~~
~~2 corporations and financial institutions. This deduction shall~~
~~3 not be made for a tax year ending after December 31, 1980.~~

4 SEC. 23B. (1) AFTER ALLOCATION AS PROVIDED IN SECTION 40 OR
5 APPORTIONMENT AS PROVIDED IN SECTION 41, THE TAX BASE SHALL BE
6 ADJUSTED BY THE FOLLOWING:

7 (A) FOR A TAX YEAR BEGINNING AFTER SEPTEMBER 30, 1989 AND
8 ENDING BEFORE JANUARY 1, 1992, DEDUCT THE COST, INCLUDING FABRI-
9 CATION AND INSTALLATION, PAID OR ACCRUED IN THE TAXABLE YEAR OF
10 TANGIBLE ASSETS OF A TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE
11 CODE WILL BECOME, ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR
12 ACCELERATED CAPITAL COST RECOVERY FOR FEDERAL INCOME TAX
13 PURPOSES. THIS DEDUCTION SHALL BE MULTIPLIED BY THE APPORTION-
14 MENT FACTOR FOR THE TAXABLE YEAR AS DEFINED IN CHAPTER 3.

15 (B) IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A TAX
16 YEAR BEGINNING AFTER SEPTEMBER 30, 1989 AND ENDING BEFORE JANUARY
17 1, 1992, ADD THE GROSS PROCEEDS OR BENEFIT DERIVED FROM THE SALE
18 OR OTHER DISPOSITION OF THE TANGIBLE ASSETS DESCRIBED IN
19 SUBDIVISION (A) MINUS THE GAIN AND PLUS THE LOSS FROM THE SALE
20 REFLECTED IN FEDERAL TAXABLE INCOME AND MINUS THE GAIN FROM THE
21 SALE OR OTHER DISPOSITION ADDED TO THE TAX BASE IN SECTION 9(6).
22 THIS ADDITION SHALL BE MULTIPLIED BY THE APPORTIONMENT FACTOR FOR
23 THE TAXABLE YEAR AS PRESCRIBED IN CHAPTER 3.

24 (2) SUBSECTION (1) DOES NOT APPLY TO A TAX BASE AND ADJUSTED
25 TAX BASE CALCULATED PURSUANT TO SECTION 22A.

26 (3) SUBSECTION (1) IS NOT EFFECTIVE FOR ANY TAX YEAR IF,
27 PURSUANT TO A COURT RULING, A DEDUCTION UNDER SECTION 23 FOR A

1 TAX YEAR ENDING BEFORE MARCH 31, 1991, IS ALLOWED WITHOUT
2 APPORTIONMENT OR ALLOCATION.

3 Sec. 31. (1) There is ~~hereby~~ levied and imposed a spe-
4 cific tax of 2.35% upon the adjusted tax base of every person
5 with business activity in this state ~~which~~ THAT is allocated or
6 apportioned to this state.

7 (2) As used in this section, "adjusted tax base" means the
8 tax base allocated or apportioned to this state pursuant to chap-
9 ter 3 ~~and~~ WITH the adjustments ~~permitted~~ PRESCRIBED by
10 ~~section~~ SECTIONS 23 AND 23B and the exemptions ~~permitted~~
11 PRESCRIBED by ~~sections 35 and 37~~ SECTION 35. If the adjusted
12 tax base exceeds 50% of the sum of gross receipts plus the
13 adjustments provided in section 23(b) and (d) AND SECTION 23B,
14 apportioned or allocated to Michigan with the apportionment frac-
15 tion calculated pursuant to chapter 3, the adjusted tax base may,
16 at the option of the taxpayer, be reduced by ~~such~~ THAT excess.
17 ~~The taxpayer shall not be~~ IF A TAXPAYER REDUCES THE ADJUSTED
18 TAX BASE UNDER THIS SUBSECTION, THE TAXPAYER IS NOT entitled to
19 the adjustment provided in subsection (4) for the same taxable
20 year. This subsection does not apply to an adjusted tax base
21 under section 22a.

22 (3) The tax ~~so~~ levied UNDER THIS SECTION and imposed is
23 upon the privilege of doing business and not upon income.

24 (4) In lieu of the ~~adjustment~~ REDUCTION provided in sub-
25 section (2), a person may elect to reduce the adjusted tax base
26 by the percentage that the compensation divided by the tax base
27 exceeds 63%. The deduction shall not exceed 37% of the adjusted

1 tax base. For ~~the 1976 tax year and each tax year thereafter,~~
2 ~~for~~ purposes of computing the deduction allowed by this subsec-
3 tion, as effective for the respective tax year, compensation
4 ~~shall~~ DOES not include amounts of compensation exempt from tax
5 under section 35(1)(e). ~~or (f).~~ This subsection does not apply
6 to an adjusted tax base under section 22a.

7 Section 2. The provision of section 23b of this amendatory
8 act is curative and intended to correct any misinterpretation of
9 legislative intent in the Michigan court of appeals decision in
10 Caterpillar v State of Michigan, Department of Treasury, Docket
11 No. 119584. The legislature finds that for persons whose tax
12 base is apportioned under chapter 3 of the single business tax
13 (SBT) act, an unapportioned capital acquisition deduction is
14 inconsistent with the manifest intent of the legislature. This
15 legislation further expresses the original intent of the legisla-
16 ture that if a capital acquisition deduction is available, for
17 persons whose tax base is apportioned under chapter 3, the capi-
18 tal acquisition deduction shall be apportioned or allocated to
19 Michigan. Consistent with these findings, it is the intention of
20 the legislature to further amend the single business tax act for
21 tax years beginning after December 31, 1991.

22 Section 3. This amendatory act shall not take effect unless
23 the following bills of the 86th Legislature are enacted into
24 law:

25 (a) House Bill No. 4572.

26 (b) House Bill No. 4573.

- 1 (c) House Bill No. 4574.
- 2 (d) House Bill No. 4575.
- 3 (e) House Bill No. 4579.
- 4 (f) House Bill No. 4580.
- 5 (g) House Bill No. 4582.
- 6 (h) House Bill No. 4583.
- 7 (i) House Bill No. 4586.
- 8 (j) Senate Bill No. 212.
- 9 (k) Senate Bill No. 218.
- 10 (l) Senate Bill No. 220.
- 11 (m) Senate Bill No. 221.
- 12 (n) Senate Bill No. 224.