

# SENATE BILL No. 202

March 19, 1991, Introduced by Senators N. SMITH and  
POSTHUMUS and referred to the Committee on Finance.

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 sections 23a and 35a.

## 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 sections 23a and 35a are  
6 added to 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 BEFORE MARCH 31, 1991 IF  
5 SECTION 23A IS NOT IN EFFECT, DEDUCT the cost, including fabrica-  
6 tion and installation, paid or accrued in the taxable year of  
7 tangible assets of a type ~~which~~ THAT are, or under the internal  
8 revenue code will become, eligible for depreciation, amortiza-  
9 tion, or accelerated capital cost recovery for federal income tax  
10 purposes excluding costs of assets ~~which~~ THAT are defined in  
11 section 1250 of the internal revenue code, except that for tangi-  
12 ble assets ~~which~~ THAT are subject to a lease back agreement  
13 under ~~section 168(f)(8) of the internal revenue code~~ THE FORMER  
14 PROVISIONS OF SECTION 168(F)(8) OF THE INTERNAL REVENUE CODE AS  
15 THAT SECTION PROVIDED IMMEDIATELY BEFORE THE TAX REFORM ACT OF  
16 1986, PUBLIC LAW 99-514, BECAME EFFECTIVE OR TO A LEASE BACK OF  
17 PROPERTY TO WHICH THE AMENDMENTS MADE BY THE TAX REFORM ACT OF  
18 1986 DO NOT APPLY AS PROVIDED IN SECTION 204 OF THE TAX REFORM  
19 ACT OF 1986, the deduction shall be allowed only to the lessee or  
20 sublessee as the case may be under the 168(f)(8) agreement. This  
21 deduction shall be multiplied by a fraction, the numerator of  
22 which is the payroll factor plus the property factor and the  
23 denominator of which is 2.

24       (b) ~~Add~~ IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A  
25 TAX YEAR ENDING BEFORE MARCH 31, 1991 AND IF SECTION 23A IS NOT  
26 IN EFFECT FOR THAT YEAR, ADD the gross proceeds or benefit  
27 derived from the sale or other disposition of the tangible assets

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

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

24 (d) ~~Add~~ IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A  
25 TAX YEAR ENDING BEFORE MARCH 31, 1991 AND IF SECTION 23A IS NOT  
26 IN EFFECT FOR THAT YEAR, ADD the gross proceeds or benefit  
27 derived from the sale or other disposition of the tangible assets

1 ~~defined in subsection~~ DESCRIBED IN SUBDIVISION (c), minus the  
2 gain, multiplied by the apportionment factor for the taxable year  
3 as ~~defined~~ PRESCRIBED in chapter 3, and plus the loss, multi-  
4 plied by the apportionment factor as ~~defined~~ PRESCRIBED in  
5 chapter 3, from the sale or other disposition reflected in fed-  
6 eral taxable income and minus the gain from the sale or other  
7 disposition added to the tax base in section 9(6).

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

21 ~~-(f) Deduct any unused net operating loss carryover arising~~  
22 ~~under former sections 32(3) and 34(3) of Act No. 281 of the~~  
23 ~~Public Acts of 1967, pertaining to net operating losses of corpo-~~  
24 ~~rations and financial institutions. This deduction shall not be~~  
25 ~~made for a tax year ending after December 31, 1980.~~

1 SEC. 23A. (1) 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) FOR TAX YEARS BEGINNING AFTER SEPTEMBER 30, 1989 AND  
5 ENDING BEFORE MARCH 31, 1991, DEDUCT THE COST, INCLUDING FABRICA-  
6 TION AND INSTALLATION, PAID OR ACCRUED IN THE TAXABLE YEAR OF  
7 TANGIBLE ASSETS OF A TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE  
8 CODE WILL BECOME, ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR  
9 ACCELERATED CAPITAL COST RECOVERY FOR FEDERAL INCOME TAX  
10 PURPOSES. THIS DEDUCTION SHALL BE MULTIPLIED BY THE APPORTION-  
11 MENT FACTOR FOR THE TAXABLE YEAR AS DEFINED IN CHAPTER 3.

12 (B) IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A TAX  
13 YEAR BEGINNING AFTER SEPTEMBER 30, 1989 AND ENDING BEFORE  
14 MARCH 31, 1991, ADD THE GROSS PROCEEDS OR BENEFIT DERIVED FROM  
15 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS DESCRIBED IN  
16 SUBDIVISION (A) MINUS THE GAIN AND PLUS THE LOSS FROM THE SALE  
17 REFLECTED IN FEDERAL TAXABLE INCOME AND MINUS THE GAIN FROM THE  
18 SALE OR OTHER DISPOSITION ADDED TO THE TAX BASE IN SECTION 9(6).  
19 THIS ADDITION SHALL BE MULTIPLIED BY THE APPORTIONMENT FACTOR FOR  
20 THE TAXABLE YEAR AS PRESCRIBED IN CHAPTER 3.

21 (2) THIS SECTION DOES NOT APPLY TO A TAX BASE OR ADJUSTED  
22 TAX BASE THAT IS CALCULATED UNDER SECTION 22A.

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

1       (2) As used in this section, "adjusted tax base" means the  
2 tax base allocated or apportioned to this state pursuant to  
3 chapter 3 ~~and~~ WITH the adjustments ~~permitted~~ PRESCRIBED by  
4 ~~section~~ SECTIONS 23 AND 23A and the exemptions ~~permitted~~  
5 PRESCRIBED by ~~sections 35 and 37~~ SECTION 35. If the adjusted  
6 tax base, REDUCED FOR TAX YEARS BEGINNING AFTER MARCH 30, 1991 BY  
7 THE SUM OF THE AMOUNTS CALCULATED UNDER SECTION 35A(1)(A) TO (G),  
8 exceeds 50% of the sum of gross receipts APPORTIONED OR ALLOCATED  
9 TO THIS STATE WITH THE APPORTIONMENT FACTOR CALCULATED PURSUANT  
10 TO CHAPTER 3 plus the adjustments provided in section 23(b) and  
11 (d) AND SECTION 23A(B), ~~apportioned or allocated to Michigan~~  
12 ~~with the apportionment fraction calculated pursuant to chapter 3~~  
13 AND PLUS THE AMOUNTS CALCULATED PURSUANT TO SECTION 35A(1)(D) AND  
14 (G), the adjusted tax base may, at the option of the taxpayer, be  
15 reduced by ~~such~~ THAT excess. ~~The taxpayer shall not be~~ IF A  
16 TAXPAYER REDUCES THE ADJUSTED TAX BASE UNDER THIS SUBSECTION, THE  
17 TAXPAYER IS NOT entitled to the adjustment provided in subsection  
18 (4) for the same taxable year. This subsection does not apply to  
19 an adjusted tax base under section 22a.

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

22       (4) In lieu of the ~~adjustment~~ REDUCTION provided in sub-  
23 section (2), a person may elect to ~~reduce~~ CLAIM A DEDUCTION FOR  
24 AN AMOUNT EQUAL TO THE PRODUCT OF the adjusted tax base, ~~by~~  
25 REDUCED FOR TAX YEARS BEGINNING AFTER MARCH 30, 1991 BY THE SUM  
26 OF THE AMOUNTS CALCULATED UNDER SECTION 35A(1)(A) TO (G), AND the  
27 percentage that the compensation divided by the tax base exceeds

1 63%. ~~The~~ FOR A TAX YEAR ENDING BEFORE MARCH 31, 1991, THE  
2 deduction shall not exceed 37% of the adjusted tax base. FOR A  
3 TAX YEAR BEGINNING AFTER MARCH 30, 1991, THE DEDUCTION SHALL NOT  
4 EXCEED 37% OF AN AMOUNT EQUAL TO THE ADJUSTED TAX BASE MINUS THE  
5 SUM OF THE AMOUNTS CALCULATED UNDER SECTION 35A(1)(A) TO (G). For  
6 ~~the 1976 tax year and each tax year thereafter, for~~ purposes of  
7 computing the deduction allowed by this subsection, as effective  
8 for the respective tax year, compensation ~~shall~~ DOES not  
9 include amounts of compensation exempt from tax under section  
10 35(1)(e). ~~or(f).~~ This subsection does not apply to an adjusted  
11 tax base under section 22a.

12 SEC. 35A. (1) EXCEPT AS PROVIDED IN SUBSECTION (6), FOR A  
13 TAX YEAR ENDING AFTER MARCH 30, 1991, A TAXPAYER MAY CLAIM AN  
14 INVESTMENT TAX CREDIT AGAINST THE TAX IMPOSED BY THIS ACT OF  
15 2.35% OF AN AMOUNT CALCULATED PURSUANT TO THE FOLLOWING:

16 (A) ADD THE COST, INCLUDING FABRICATION AND INSTALLATION,  
17 PAID OR ACCRUED IN THE TAXABLE YEAR OF TANGIBLE ASSETS, EXCEPT  
18 MOBILE TANGIBLE ASSETS AND SPECIAL TOOLS, OF A TYPE THAT ARE, OR  
19 UNDER THE INTERNAL REVENUE CODE WILL BECOME, ELIGIBLE FOR DEPRE-  
20 CIATION, AMORTIZATION, OR ACCELERATED CAPITAL COST RECOVERY FOR  
21 FEDERAL INCOME TAX PURPOSES, PROVIDED THAT THE ASSETS ARE PHYSI-  
22 CALLY LOCATED IN MICHIGAN FOR USE IN A BUSINESS ACTIVITY.

23 (B) FOR MOBILE TANGIBLE ASSETS AND SPECIAL TOOLS, ADD THE  
24 COST PAID OR ACCRUED IN THE TAXABLE YEAR OF THOSE ASSETS THAT  
25 ARE, OR UNDER THE INTERNAL REVENUE CODE WILL BECOME, ELIGIBLE FOR  
26 DEPRECIATION, AMORTIZATION, OR ACCELERATED CAPITAL COST RECOVERY

1 FOR FEDERAL INCOME TAX PURPOSES MULTIPLIED BY THE APPORTIONMENT  
2 FACTOR FOR THE TAXABLE YEAR AS PRESCRIBED IN CHAPTER 3.

3 (C) FOR TANGIBLE ASSETS, OTHER THAN MOBILE TANGIBLE ASSETS  
4 OR SPECIAL TOOLS, PURCHASED OR ACQUIRED OUTSIDE OF THIS STATE IN  
5 A TAX YEAR ENDING AFTER MARCH 30, 1991 AND PHYSICALLY LOCATED IN  
6 THIS STATE AFTER A TAX YEAR ENDING AFTER MARCH 30, 1991 FOR USE  
7 IN A BUSINESS ACTIVITY, ADD THE FEDERAL ADJUSTED BASIS FOR DEPRE-  
8 CIATION OR ACCELERATED CAPITAL COST RECOVERY AS OF THE DATE THE  
9 TANGIBLE ASSETS WERE PHYSICALLY LOCATED IN THIS STATE FOR USE IN  
10 A BUSINESS ACTIVITY PLUS THE COST OF FABRICATION OR INSTALLATION  
11 OF THE TANGIBLE ASSET IN THIS STATE.

12 (D) FOR TANGIBLE ASSETS DESCRIBED IN SUBDIVISION (A) THAT  
13 ARE SOLD OR OTHERWISE DISPOSED OF, SUBTRACT THE FEDERAL ADJUSTED  
14 BASIS FOR DEPRECIATION OR ACCELERATED CAPITAL COST RECOVERY AS OF  
15 THE DATE OF THE SALE OR DISPOSITION.

16 (E) FOR MOBILE TANGIBLE ASSETS AND SPECIAL TOOLS AS  
17 DESCRIBED IN SUBDIVISION (B) THAT ARE SOLD OR OTHERWISE DISPOSED  
18 OF, SUBTRACT THE FEDERAL ADJUSTED BASIS FOR DEPRECIATION OR  
19 ACCELERATED CAPITAL COST RECOVERY AS OF THE DATE OF THE SALE OR  
20 DISPOSITION. THIS SUBTRACTION SHALL BE MULTIPLIED BY THE APPOR-  
21 TIONMENT FACTOR FOR THE TAXABLE YEAR AS PRESCRIBED IN CHAPTER 3.

22 (F) FOR ASSETS, OTHER THAN MOBILE TANGIBLE ASSETS AND SPE-  
23 CIAL TOOLS, PURCHASED OR ACQUIRED IN A TAX YEAR ENDING AFTER  
24 MARCH 30, 1991 ELIGIBLE FOR A CREDIT UNDER SUBDIVISION (A) AND  
25 THAT ARE TRANSFERRED OUT OF THIS STATE, SUBTRACT THE FEDERAL  
26 ADJUSTED BASIS FOR DEPRECIATION OR ACCELERATED CAPITAL COST  
27 RECOVERY AS OF THE DATE OF THE TRANSFER.



1 (G) FOR TANGIBLE PERSONAL PROPERTY TAXABLE UNDER THE GENERAL  
2 PROPERTY TAX ACT, ACT NO. 206 OF THE PUBLIC ACTS OF 1893, BEING  
3 SECTIONS 211.1 TO 211.157 OF THE MICHIGAN COMPILED LAWS, PUR-  
4 CHASED OR ACQUIRED IN A TAX YEAR ENDING AFTER MARCH 30, 1991 THAT  
5 WAS ELIGIBLE FOR A CREDIT UNDER SUBDIVISION (A) IN THE IMMEDI-  
6 ATELY PRECEDING YEAR, SUBTRACT THE AMOUNT INCLUDED IN  
7 SUBDIVISION (A) IN THE IMMEDIATELY PRECEDING YEAR IF THE COST OF  
8 THE ASSET WAS NOT REPORTED IN THE CALENDAR YEAR FOLLOWING THE  
9 PURCHASE TO THE LOCAL ASSESSOR ON THE STATEMENT REQUIRED BY  
10 SECTION 18 OF THE GENERAL PROPERTY TAX ACT, ACT NO. 206 OF THE  
11 PUBLIC ACTS OF 1893, BEING SECTION 211.18 OF THE MICHIGAN  
12 COMPILED LAWS.

13 (2) IF THE AMOUNT CALCULATED UNDER SUBSECTION (1) IS NEGA-  
14 TIVE, THAT AMOUNT IS CONSIDERED AN ADDITIONAL TAX LEVIED UNDER  
15 THIS ACT.

16 (3) IF THE CREDIT UNDER THIS SECTION EXCEEDS THE TAX LIABIL-  
17 ITY OF THE TAXPAYER FOR THE TAX YEAR, THE FIRST \$500.00 OF EXCESS  
18 CREDIT SHALL BE REFUNDED, WITHOUT INTEREST, BY THE DEPARTMENT TO  
19 THE TAXPAYER AND THE REMAINDER SHALL BE CARRIED FORWARD TO THE  
20 YEAR NEXT FOLLOWING THE TAXABLE YEAR AS AN OFFSET TO THE TAX  
21 LIABILITY, THEN SUCCESSIVELY TO THE NEXT 9 TAXABLE YEARS OR UNTIL  
22 THE EXCESS CREDIT IS USED UP, WHICHEVER OCCURS FIRST.

23 (4) NOTWITHSTANDING SECTIONS 36 AND 38C, THE CREDIT PROVIDED  
24 IN THIS SECTION SHALL BE TAKEN BEFORE ANY OTHER CREDIT UNDER THIS  
25 ACT AND THE CREDITS UNDER SECTIONS 36 AND 38C SHALL BE CALCULATED  
26 USING THE TAX LIABILITY AFTER THE CALCULATION OF THE CREDIT UNDER  
27 THIS SECTION. THE CALCULATION FOR THE CREDIT UNDER SECTION 37

1 SHALL USE THE TAX LIABILITY AFTER THE CALCULATION OF THE CREDITS  
2 UNDER THIS SECTION AND SECTION 36. THE CALCULATION FOR THE CRED-  
3 ITS UNDER SECTIONS 37A AND 37B SHALL USE THE TAX LIABILITY AFTER  
4 THE CALCULATION OF THE CREDITS PROVIDED BY THIS SECTION AND  
5 SECTIONS 36, 37, 38, AND 39.

6 (5) IF ANY PART OF THIS SECTION IS DETERMINED, PURSUANT TO A  
7 FINAL ORDER OF A COURT, TO BE A VIOLATION OF THE UNITED STATES  
8 CONSTITUTION, THE ENTIRE SECTION SHALL EXPIRE ON THE EFFECTIVE  
9 DATE OF THE RULING AND SHALL BE SEVERED FROM THE REMAINDER OF THE  
10 ACT.

11 (6) IF, NOTWITHSTANDING THE PROVISIONS OF SECTION 23A, THE  
12 DEDUCTION UNDER SECTION 23 IS ALLOWED WITHOUT APPORTIONMENT, PUR-  
13 SUANT TO A COURT RULING, FOR A TAX YEAR ENDING BEFORE MARCH 31,  
14 1991, THIS SECTION SHALL BE EFFECTIVE FOR THE 1992 TAX YEAR AND  
15 EACH TAX YEAR AFTER 1992.

16 (7) A TAXPAYER WHOSE TAX BASE OR ADJUSTED TAX BASE IS CALCU-  
17 LATED PURSUANT TO SECTION 22A IS NOT ELIGIBLE FOR A CREDIT UNDER  
18 THIS SECTION.

19 (8) AS USED IN THIS SECTION:

20 (A) "MOBILE TANGIBLE ASSETS" MEANS ROLLING STOCK EQUIPMENT  
21 USED IN TRANSPORTATION OF FREIGHT OR PASSENGERS AND EQUIPMENT  
22 USED DIRECTLY IN COMPLETION OF CONSTRUCTION CONTRACTS FOR THE  
23 PLANNING, DESIGN, CONSTRUCTION, ALTERATION, REPAIR, OR IMPROVE-  
24 MENT OF PROPERTY.

25 (B) "SPECIAL TOOLS" MEANS THAT TERM AS DEFINED BY SECTION 9B  
26 OF ACT NO. 206 OF THE PUBLIC ACTS OF 1893, BEING SECTION 211.9B  
27 OF THE MICHIGAN COMPILED LAWS.

1       Section 2. The provision of section 23a of this amendatory  
2 act is curative and intended to correct any misinterpretation of  
3 legislative intent in the Michigan court of appeals decision in  
4 Caterpillar v State of Michigan, Department of Treasury, Docket  
5 No. 119584. The legislature finds that for persons whose tax  
6 base is apportioned under chapter 3 of the single business tax  
7 (SBT) act, an unapportioned capital acquisition deduction is  
8 inconsistent with the manifest intent of the legislature. This  
9 legislation further expresses the original intent of the legisla-  
10 ture to either apportion or allocate to Michigan the capital  
11 acquisition deduction for persons whose tax base is apportioned  
12 under chapter 3.