



HOUSE BILL No. 5542

May 11 1994 Introduced by Rep Munsell and referred to the Committee on Taxation

A bill to amend sections 4, 23 23b and 31 of Act No 228 of the Public Acts of 1975 entitled 'Single business tax act,"

section 4 as amended by Act No 484 of the Public Acts of 1982, section 23 as amended by Act No 128 of the Public Acts of 1991, section 23b as added by Act No 77 of the Public Acts of 1991, and section 31 as amended by Act No 329 of the Public Acts of 1993, being sections 208 4 208 23 208 23b and 208 31 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 4, 23, 23b, and 31 of Act No 228 of
2 the Public Acts of 1975, section 4 as amended by Act No 484 of
3 the Public Acts of 1982, section 23 as amended by Act No 128 of
4 the Public Acts of 1991, section 23b as added by Act No 77 of
5 the Public Acts of 1991, and section 31 as amended by Act No 329

1 of the Public Acts of 1993, being sections 208 4, 208 23,
 2 208 23b and 208 31 of the Michigan Compiled Laws, are amended to
 3 read as follows

4 Sec 4 (1) Casual transaction means a transaction made
 5 or engaged in other than in the ordinary course of repeated and
 6 successive transactions of a like character, except that a trans-
 7 action made or engaged in by a person ~~which~~ THAT is incidental
 8 to that person s regular business activity shall be considered to
 9 be a business activity within the meaning of this act

10 (2) Commissioner means the state commissioner of revenue

11 (3) Compensation means all wages, salaries, fees, bonuses,
 12 commissions, or other payments made in the taxable year on behalf
 13 of or for the benefit of employees, officers, or directors of the
 14 taxpayers and subject to or specifically exempt from withholding
 15 under ~~section~~ CHAPTER 24, SECTIONS 3401 TO 3406 of the internal
 16 revenue code Compensation ~~includes, on a cash or accrual basis~~
 17 ~~consistent with the taxpayer's method of accounting for federal~~
 18 ~~income tax purposes, payments~~ DOES NOT INCLUDE ANY OF THE
 19 FOLLOWING

20 (A) PAYMENTS to state and federal unemployment compensation
 21 funds ~~, payments~~

22 (B) PAYMENTS under the federal insurance contribution act
 23 and similar social insurance programs ~~, payments,~~

24 (C) PAYMENTS including self-insurance, for ~~workmen's~~
 25 WORKER'S compensation insurance ~~, payments~~

26 (D) PAYMENTS to individuals not currently working
 27 ~~payments~~

1 (E) PAYMENTS to dependents and heirs of individuals because
 2 of current or former labor services rendered by those
 3 individuals ~~/ payments~~

4 (F) PAYMENTS to a pension retirement, or profit sharing
 5 plan ~~and payments~~

6 (G) PAYMENTS for insurance for which employees are the bene-
 7 ficiaries including payments under health and welfare and nonin-
 8 sured benefit plans and payments of fees for the administration
 9 of health and welfare and noninsured benefit plans
 10 ~~Compensation does not include discounts~~

11 (H) DISCOUNTS on the price of the taxpayer s merchandise or
 12 services sold to the taxpayer s employees officers or directors
 13 ~~which~~ THAT are not available to other customers ~~or payments~~

14 (I) PAYMENTS to an independent contractor

15 (4) 'Department means the revenue division of the depart-
 16 ment of treasury

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

20 (a) For a tax year ending before March 31 1991 for which
 21 subdivision (c) is not in effect, deduct the cost including fab-
 22 rication and installation paid or accrued in the taxable year of
 23 tangible assets of a type that are, or under the internal revenue
 24 code will become, eligible for depreciation, amortization, or
 25 accelerated capital cost recovery for federal income tax purposes
 26 excluding costs of assets that are defined in section 1250 of the
 27 internal revenue code, except that for tangible assets that are

1 subject to a lease back agreement under the former provisions of
2 section 168(f)(8) of the internal revenue code as that section
3 provided immediately before the tax reform act of 1986, Public
4 Law 99-514 became effective or to a lease back of property to
5 which the amendments made by the tax reform act of 1986 do not
6 apply as provided in section 204 of the tax reform act of 1986,
7 the deduction shall be allowed only to the lessee or sublessee as
8 the case may be under the 168(f)(8) agreement This deduction
9 shall be multiplied by a fraction the numerator of which is the
10 payroll factor plus the property factor and the denominator of
11 which is 2

12 (b) For a tax year ending before March 31 1991 for which
13 subdivision (c) is not in effect deduct the cost including fab-
14 rication and installation excluding the cost deducted under sub-
15 division (a) paid or accrued in the taxable year of tangible
16 assets of a type that are or under the internal revenue code
17 will become eligible for depreciation amortization or acceler-
18 ated capital cost recovery for federal income tax purposes pro-
19 vided that the assets are physically located in Michigan

20 (c) For a tax year beginning after September 30 1989
21 deduct the cost, including fabrication and installation paid or
22 accrued in the taxable year of tangible assets of a type that
23 are, or under the internal revenue code will become eligible for
24 depreciation, amortization, or accelerated capital cost recovery
25 for federal income tax purposes This deduction shall be multi-
26 plied by the apportionment factor for the taxable year as defined

1 in chapter 3 This subdivision does not apply to a taxpayer s
2 first tax year ending after September 29 1991

3 (d) For a taxpayer s first tax year ending after September
4 29 1991, the adjustment provided by this section shall be calcu-
5 lated by computing the sum of the product of the cost including
6 fabrication and installation, paid or accrued in the immediately
7 preceding tax year of tangible assets of a type that were or
8 under the internal revenue code will become eligible for depre-
9 ciation, amortization, or accelerated capital cost recovery for
10 federal income tax purposes multiplied by the apportionment
11 factor as defined in chapter 3 for that immediately preceding tax
12 year plus the product of the cost including fabrication and
13 installation, paid or accrued in the taxpayer s first tax year
14 ending after September 29 1991 of tangible assets of a type that
15 are, or under the internal revenue code will become, eligible for
16 depreciation amortization, or accelerated capital cost recovery
17 for federal income tax purposes multiplied by the apportionment
18 factor as defined in chapter 3 for that tax year, and reducing
19 that sum by the adjustment for the cost including fabrication
20 and installation paid or accrued in the immediately preceding
21 tax year of tangible assets of a type that were, or under the
22 internal revenue code will become eligible for depreciation
23 amortization, or accelerated capital cost recovery for federal
24 income tax purposes claimed by the taxpayer or allowed to the
25 taxpayer under this act in the immediately preceding tax year
26 If the adjustment calculated pursuant to this subdivision is a
27 positive amount, it shall be deducted from the tax base after

1 allocation or apportionment, and if the adjustment calculated
 2 pursuant to this subdivision is a negative amount, it shall,
 3 without reference to the negative sign, be added to the tax base
 4 after allocation and apportionment. If any portion of this sub-
 5 division is determined to be invalid pursuant to a final appel-
 6 late court decision, this subdivision shall be severed from this
 7 section.

8 (E) FOR A TAX YEAR BEGINNING AFTER DECEMBER 31 1993 DEDUCT
 9 THE COST, INCLUDING FABRICATION AND INSTALLATION PAID OR ACCRUED
 10 IN THE TAXABLE YEAR OF INTANGIBLE ASSETS OF A TYPE THAT ARE OR
 11 UNDER THE INTERNAL REVENUE CODE WILL BECOME, ELIGIBLE FOR DEPRE-
 12 CIATION, AMORTIZATION, OR ACCELERATED CAPITAL COST RECOVERY FOR
 13 FEDERAL INCOME TAX PURPOSES. THIS DEDUCTION SHALL BE MULTIPLIED
 14 BY THE APPORTIONMENT FACTOR FOR THE TAXABLE YEAR AS DEFINED IN
 15 CHAPTER 3.

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

19 (a) If the cost of an asset was paid or accrued in a tax
 20 year ending before March 31 1991 for which a deduction under
 21 section 23(c) is not in effect, add the gross proceeds or benefit
 22 derived from the sale or other disposition of the tangible assets
 23 described in section 23(a) minus the gain and plus the loss from
 24 the sale reflected in federal taxable income and minus the gain
 25 from the sale or other disposition added to the tax base ~~in~~
 26 UNDER section 9(6). This addition shall be multiplied by a
 27 fraction, the numerator of which is the payroll factor plus the

1 property factor and the denominator of which is 2 As used in
 2 this subdivision, 'sale or other disposition' does not include
 3 the transfer of tangible assets that are leased back to the
 4 transferor under the former provisions of section 168(f)(8) of
 5 the internal revenue code as that section provided immediately
 6 before the tax reform act of 1986 Public Law 99-514 became
 7 effective or to a lease back of property to which the amendments
 8 made by the tax reform act of 1986 do not apply as provided in
 9 section 204 of the tax reform act of 1986

10 (b) If the cost of an asset was paid or accrued in a tax
 11 year ending before March 31 1991 for which a deduction under
 12 section 23(c) is not in effect add the gross proceeds or benefit
 13 derived from the sale or other disposition of the tangible assets
 14 described in section 23(b) for a tax year beginning before
 15 January 1 1991 minus the gain multiplied by the apportionment
 16 factor for the taxable year as prescribed in chapter 3 and plus
 17 the loss, multiplied by the apportionment factor as prescribed in
 18 chapter 3 from the sale or other disposition reflected in fed-
 19 eral taxable income and minus the gain from the sale or other
 20 disposition added to the tax base ~~in~~ UNDER section 9(6)

21 (c) If the cost of an asset was paid or accrued in a tax
 22 year beginning after September 30 1989, add the gross proceeds
 23 or benefit derived from the sale or other disposition of the tan-
 24 gible assets described in section 23(c) minus the gain and plus
 25 the loss from the sale reflected in federal taxable income and
 26 minus the gain from the sale or other disposition added to the
 27 tax base ~~in~~ UNDER section 9(6) This addition shall be

1 multiplied by the apportionment factor for the tax year as
 2 prescribed by chapter 3

3 (D) IF THE COST OF AN ASSET WAS PAID OR ACCRUED IN A TAX
 4 YEAR BEGINNING AFTER DECEMBER 31 1993 ADD THE GROSS PROCEEDS OR
 5 BENEFIT DERIVED FROM THE SALE OR OTHER DISPOSITION OF THE INTAN-
 6 GIBLE ASSETS DESCRIBED IN SECTION 23(E) MINUS THE GAIN AND PLUS
 7 THE LOSS FROM THE SALE REFLECTED IN FEDERAL TAXABLE INCOME AND
 8 MINUS THE GAIN FROM THE SALE OR OTHER DISPOSITION ADDED TO THE
 9 TAX BASE UNDER SECTION 9(6) THIS ADDITION SHALL BE MULTIPLIED
 10 BY THE APPORTIONMENT FACTOR FOR THE TAX YEAR AS PRESCRIBED BY
 11 CHAPTER 3

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

24 Sec 31 (1) There is levied and imposed a specific tax of
 25 2 35% upon the adjusted tax base of every person with business
 26 activity in this state that is allocated or apportioned to this
 27 state ~~Beginning May 1, 1994, provided no amendment to the~~

~~1 state constitution has been approved prior to that date by the
2 electors to allow a sales tax rate in excess of 4% there is
3 levied and imposed an additional tax of 0.4% upon the adjusted
4 tax base of every person with business activity in this state
5 that is allocated or apportioned to this state. The gross reve-
6 nues from the additional tax of 0.4% shall be deposited in the
7 state school aid fund created in section 11 of article IX of the
8 state constitution of 1963. The department shall annualize the
9 rates provided under this subsection as necessary for tax years
10 that end after April 30, 1994 and the applicable annualized rate
11 shall be imposed for those tax years.~~

12 (2) As used in this section "adjusted tax base" means the
13 tax base allocated or apportioned to this state pursuant to chap-
14 ter 3 with the adjustments prescribed by sections 23 and 23b and
15 the exemptions prescribed by section 35. If the adjusted tax
16 base exceeds 50% of the sum of gross receipts plus the adjust-
17 ments provided in section 23b(a), (b) ~~and~~ (c) AND (D), appor-
18 tioned or allocated to Michigan with the apportionment fraction
19 calculated pursuant to chapter 3, the adjusted tax base may, at
20 the option of the taxpayer, be reduced by that excess. ~~If a~~
21 ~~taxpayer reduces the adjusted tax base under this subsection, the~~
22 ~~taxpayer is not entitled to the adjustment provided in subsection~~
23 ~~(4) for the same taxable year.~~ This subsection does not apply to
24 an adjusted tax base under section 22a.

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

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