



HOUSE BILL No. 4943

June 8, 1995, Introduced by Reps. Perricone and Bullard and referred to the Committee on Tax Policy.

A bill to amend sections 23 and 23b of Act No. 228 of the Public Acts of 1975, entitled "Single business tax act," section 23 as amended by Act No. 128 of the Public Acts of 1991 and section 23b as added by Act No. 77 of the Public Acts of 1991, being sections 208.23 and 208.23b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 23 and 23b of Act No. 228 of the Public
2 Acts of 1975, section 23 as amended by Act No. 128 of the Public
3 Acts of 1991 and section 23b as added by Act No. 77 of the Public
4 Acts of 1991, being sections 208.23 and 208.23b of the Michigan
5 Compiled Laws, are amended 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) For a tax year ending before March 31, 1991 for which
5 subdivision (c) is not in effect, deduct the cost, including fab-
6 rication 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 purposes
10 excluding costs of assets that are defined in section 1250 of the
11 internal revenue code. ~~, except that~~ HOWEVER, for tangible
12 assets that are subject to a lease back agreement under the
13 former provisions of section 168(f)(8) of the internal revenue
14 code as that section provided immediately before the tax reform
15 act of 1986, Public Law 99-514, became effective or to a lease
16 back of property to which the amendments made by the tax reform
17 act of 1986 do not apply as provided in section 204 of the tax
18 reform act of 1986, the deduction shall be allowed only to the
19 lessee or sublessee ~~as the case may be~~ under the 168(f)(8)
20 agreement. This deduction shall be multiplied by a fraction, the
21 numerator of which is the payroll factor plus the property factor
22 and the denominator of which is 2.

23 (b) For a tax year ending before March 31, 1991 for which
24 subdivision (c) is not in effect, deduct the cost including fab-
25 rication and installation, excluding the cost deducted under sub-
26 division (a) paid or accrued in the taxable year of tangible
27 assets of a type that are, or under the internal revenue code

1 will become eligible for depreciation, amortization, or
2 accelerated capital cost recovery for federal income tax pur-
3 poses, provided that the assets are physically located in
4 Michigan.

5 (c) For a tax year beginning after September 30, 1989 AND
6 BEFORE JANUARY 1, 1997, deduct the cost, including fabrication
7 and installation, paid or accrued in the taxable year of tangible
8 assets of a type that are, or under the internal revenue code
9 will become, eligible for depreciation, amortization, or acceler-
10 ated capital cost recovery for federal income tax purposes. This
11 deduction shall be multiplied by the apportionment factor for the
12 taxable year as defined in chapter 3. This subdivision does not
13 apply to a taxpayer's first tax year ending after September 29,
14 1991.

15 (d) For a taxpayer's first tax year ending after September
16 29, 1991, the adjustment provided by this section shall be calcu-
17 lated by computing the sum of the product of the cost, including
18 fabrication and installation, paid or accrued in the immediately
19 preceding tax year or tangible assets of a type that ~~were~~ ARE,
20 or under the internal revenue code will become, eligible for
21 depreciation, amortization, or accelerated capital cost recovery
22 for federal income tax purposes multiplied by the apportionment
23 factor as defined in chapter 3 for that immediately preceding tax
24 year, plus the product of the cost, including fabrication and
25 installation, paid or accrued in the taxpayer's first tax year
26 ending after September 29, 1991 of tangible assets of a type that
27 are, or under the internal revenue code will become, eligible for

1 depreciation, amortization, or accelerated capital cost recovery
2 for federal income tax purposes multiplied by the apportionment
3 factor as defined in chapter 3 for that tax year, and reducing
4 that sum by the adjustment for the cost, including fabrication
5 and installation, paid or accrued in the immediately preceding
6 tax year of tangible assets of a type that were, or under the
7 internal revenue code will become, eligible for depreciation,
8 amortization, or accelerated capital cost recovery for federal
9 income tax purposes claimed by the taxpayer or allowed to the
10 taxpayer under this act in the immediately preceding tax year.
11 If the adjustment calculated pursuant to this subdivision is a
12 positive amount, it shall be deducted from the tax base after
13 allocation or apportionment, and if the adjustment calculated
14 pursuant to this subdivision is a negative amount, it shall,
15 without reference to the negative sign, be added to the tax base
16 after allocation and apportionment. If any portion of this sub-
17 division is determined to be invalid pursuant to a final appel-
18 late court decision, this subdivision shall be severed from this
19 section.

20 (E) EXCEPT AS PROVIDED IN SUBDIVISION (G) AND FOR A TAX YEAR
21 BEGINNING AFTER DECEMBER 31, 1996, 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 PUR-
26 POSES, PROVIDED THAT THE ASSETS WHEN INITIALLY USED IN A BUSINESS

1 ACTIVITY ARE PHYSICALLY LOCATED IN THIS STATE AND ARE NOT MOBILE
2 TANGIBLE ASSETS.

3 (F) FOR A TAX YEAR BEGINNING AFTER DECEMBER 31, 1996, DEDUCT
4 THE COST INCLUDING FABRICATION AND INSTALLATION PAID OR ACCRUED
5 IN THE TAXABLE YEAR OF MOBILE TANGIBLE ASSETS OF A TYPE THAT ARE,
6 OR UNDER THE INTERNAL REVENUE CODE WILL BECOME, ELIGIBLE FOR
7 DEPRECIATION, AMORTIZATION, OR ACCELERATED CAPITAL COST RECOVERY
8 FOR FEDERAL INCOME TAX PURPOSES MULTIPLIED BY A FRACTION, THE
9 NUMERATOR OF WHICH IS THE PAYROLL FACTOR PLUS THE PROPERTY FACTOR
10 AND DENOMINATOR OF WHICH IS 2. FOR PURPOSES OF THIS SECTION AND
11 SECTION 23B, "MOBILE TANGIBLE ASSETS" MEANS ROLLING STOCK EQUIP-
12 MENT USED IN TRANSPORTATION OF FREIGHT OR PASSENGERS AND EQUIP-
13 MENT USED DIRECTLY IN COMPLETION OF OR CONSTRUCTION CONTRACTS FOR
14 THE PLANNING, DESIGN, CONSTRUCTION, ALTERATION, REPAIR, OR
15 IMPROVEMENT OF PROPERTY.

16 (G) FOR TANGIBLE ASSETS, OTHER THAN MOBILE TANGIBLE ASSETS,
17 PURCHASED OR ACQUIRED AND INITIALLY USED OUTSIDE OF THIS STATE IN
18 A TAX YEAR BEGINNING AFTER DECEMBER 31, 1996 AND PHYSICALLY
19 LOCATED IN THIS STATE AFTER THE ASSETS ARE PURCHASED OR ACQUIRED
20 FOR USE IN A BUSINESS ACTIVITY, DEDUCT THE FEDERAL BASIS FOR
21 DEPRECIATION OR ACCELERATED CAPITAL COST RECOVERY AS OF THE DATE
22 THE TANGIBLE ASSETS WERE PHYSICALLY LOCATED IN THIS STATE FOR USE
23 IN A BUSINESS ACTIVITY PLUS THE COST OF FABRICATION AND INSTALLA-
24 TION OF THE TANGIBLE ASSETS IN THIS STATE.

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

1 (a) If the cost of an asset was paid or accrued in a tax
2 year ending before March 31, 1991 for which a deduction under
3 section 23(c) is not in effect, add the gross proceeds or benefit
4 derived from the sale or other disposition of the tangible assets
5 described in section 23(a) minus the gain and plus the loss from
6 the sale reflected in federal taxable income and minus the gain
7 from the sale or other disposition added to the tax base in sec-
8 tion 9(6). This addition shall be multiplied by a fraction, the
9 numerator of which is the payroll factor plus the property factor
10 and the denominator of which is 2. As used in this subdivision,
11 "sale or other disposition" does not include the transfer of tan-
12 gible assets that are leased back to the transferor under the
13 former provisions of section 168(f)(8) of the internal revenue
14 code as that section provided immediately before the tax reform
15 act of 1986, Public Law 99-514, became effective or to a lease
16 back of property to which the amendments made by the tax reform
17 act of 1986 do not apply as provided in section 204 of the tax
18 reform act of 1986.

19 (b) 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(b) for a tax year beginning before
24 January 1, 1991 minus the gain, multiplied by the apportionment
25 factor for the taxable year as prescribed in chapter 3, and plus
26 the loss, multiplied by the apportionment factor as prescribed in
27 chapter 3, from the sale or other disposition reflected in

1 federal taxable income and minus the gain from the sale or other
2 disposition added to the tax base in section 9(6).

3 (c) If the cost of an asset was paid or accrued in a tax
4 year beginning after September 30, 1989 AND BEFORE JANUARY 1,
5 1997, add the gross proceeds or benefit derived from the sale or
6 other disposition of the tangible assets described in section
7 23(c) minus the gain and plus the loss from the sale reflected in
8 federal taxable income and minus the gain from the sale or other
9 disposition added to the tax base in section 9(6). This addition
10 shall be multiplied by the apportionment factor ~~for the tax~~
11 ~~year~~ as prescribed by chapter 3 THAT WAS IN EFFECT FOR TAX YEARS
12 BEGINNING IN 1994.

13 (D) IF THE COST OF TANGIBLE ASSETS DESCRIBED IN SECTION
14 23(E) OR (G) WAS PAID OR ACCRUED IN A TAX YEAR BEGINNING AFTER
15 DECEMBER 31, 1996, ADD THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
16 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS MINUS THE
17 GAIN, MULTIPLIED BY THE APPORTIONMENT FACTOR FOR THE TAXABLE YEAR
18 AS PRESCRIBED IN CHAPTER 3, AND PLUS THE LOSS, MULTIPLIED BY THE
19 APPORTIONMENT FACTOR FOR THE TAXABLE YEAR AS PRESCRIBED IN CHAP-
20 TER 3, FROM THE SALE OR OTHER DISPOSITION REFLECTED IN FEDERAL
21 TAXABLE INCOME AND MINUS THE GAIN FROM THE SALE OR OTHER DISPOSI-
22 TION ADDED TO THE TAX BASE IN SECTION 9(6).

23 (E) IF THE COST OF A MOBILE TANGIBLE ASSET DESCRIBED IN SEC-
24 TION 23(F) WAS PAID OR ACCRUED IN A TAX YEAR BEGINNING AFTER
25 DECEMBER 31, 1996, ADD THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
26 THE SALE OR OTHER DISPOSITION OF THE MOBILE TANGIBLE ASSET MINUS
27 THE GAIN AND PLUS THE LOSS FROM THE SALE OR OTHER DISPOSITION

1 REFLECTED IN FEDERAL TAXABLE INCOME AND MINUS THE GAIN FROM THE
 2 SALE OR OTHER DISPOSITION ADDED TO THE TAX BASE IN SECTION 9(6).
 3 THIS ADDITION SHALL BE MULTIPLIED BY A FRACTION, THE NUMERATOR OF
 4 WHICH IS THE PAYROLL FACTOR PLUS THE PROPERTY FACTOR AND THE
 5 DENOMINATOR OF WHICH IS 2.

6 (F) FOR ASSETS OTHER THAN MOBILE TANGIBLE ASSETS PURCHASED
 7 OR ACQUIRED IN A TAX YEAR BEGINNING AFTER DECEMBER 31, 1996 THAT
 8 ARE ELIGIBLE FOR A DEDUCTION UNDER SECTION 23(E) OR (G) AND THAT
 9 ARE TRANSFERRED OUT OF THIS STATE, ADD THE FEDERAL BASIS FOR
 10 DEPRECIATION OR ACCELERATED CAPITAL COST RECOVERY AS OF THE DATE
 11 OF THE TRANSFER.

12 (G) ~~(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) ~~—~~
 16 ~~(b), and (c)~~ TO (F) AND IN SECTION 23 without regard to the
 17 deduction under this subdivision. The business loss shall be
 18 carried forward to the year next following the loss year as an
 19 offset to the allocated or apportioned tax base including the
 20 adjustments provided in subdivisions (a) ~~, (b), and (c)~~ TO (F),
 21 then successively to the next 9 taxable years following the loss
 22 year or until the loss is used up, whichever occurs first, but
 23 for not more than 10 taxable years after the loss year.

24 Section 2. This amendatory act shall not take effect unless
 25 House Bill No. 4594 of the 88th Legislature is enacted into law.