



# SENATE BILL No. 545

May 18, 1995, Introduced by Senators SHUGARS, STEIL, GOUGEON and CARL and referred to the Committee on Finance.

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. 6 of the Public Acts of 1995, 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. 247 of the Public Acts of 1994, being sections 208.4, 208.23, 208.23b, and 208.31 of the Michigan Compiled Laws; and to add section 4d.

## 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. 6 of the  
3 Public Acts of 1995, section 23 as amended by Act No. 128 of the  
4 Public Acts of 1991, section 23b as added by Act No. 77 of the  
5 Public Acts of 1991, and section 31 as amended by Act No. 247 of

1 the Public Acts of 1994, being sections 208.4, 208.23, 208.23b,  
2 and 208.31 of the Michigan Compiled Laws, are amended and section  
3 4d is added to 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 that is incidental to that  
8 person's regular business activity is a business activity within  
9 the meaning of this act.

10       (2) "Commissioner" means the state commissioner of revenue.

11       (3) Except as otherwise provided in sections 4a, 4b, ~~and~~  
12 4c, AND 4D, "compensation" means all wages, salaries, fees,  
13 bonuses, commissions, or other payments made in the taxable year  
14 on behalf of or for the benefit of employees, officers, or direc-  
15 tors of the taxpayers and subject to or specifically exempt from  
16 withholding under chapter 24, sections 3401 to 3406 of the inter-  
17 nal revenue code. Compensation includes, on a cash or accrual  
18 basis consistent with the taxpayer's method of accounting for  
19 federal income tax purposes, payments to state and federal unem-  
20 ployment compensation funds, payments under the federal insurance  
21 contribution act and similar social insurance programs, payments,  
22 including self-insurance, for worker's compensation insurance,  
23 payments to individuals not currently working, payments to depen-  
24 dents and heirs of individuals because of current or former labor  
25 services rendered by those individuals, payments to a pension,  
26 retirement, or profit sharing plan, and payments for insurance  
27 for which employees are the beneficiaries, including payments

1 under health and welfare and noninsured benefit plans and  
2 payments of fees for the administration of health and welfare and  
3 noninsured benefit plans. Compensation does not include dis-  
4 counts on the price of the taxpayer's merchandise or services  
5 sold to the taxpayer's employees, officers, or directors that are  
6 not available to other customers or payments to an independent  
7 contractor.

8 (4) "Department" means the revenue division of the depart-  
9 ment of treasury.

10 SEC. 4D. (1) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31,  
11 1998, COMPENSATION DOES NOT INCLUDE THE FOLLOWING:

12 (A) PAYMENTS TO INDIVIDUALS NOT CURRENTLY WORKING.

13 (B) PAYMENTS TO DEPENDENTS AND HEIRS OF INDIVIDUALS BECAUSE  
14 OF CURRENT OR FORMER LABOR SERVICES RENDERED BY THOSE  
15 INDIVIDUALS.

16 (C) PAYMENTS TO A PENSION, RETIREMENT, OR PROFIT SHARING  
17 PLAN.

18 (D) PAYMENTS FOR INSURANCE FOR WHICH EMPLOYEES ARE THE BENE-  
19 FICIARIES, INCLUDING PAYMENTS UNDER HEALTH AND WELFARE AND NONIN-  
20 SURED BENEFIT PLANS AND PAYMENTS OF FEES FOR THE ADMINISTRATION  
21 OF HEALTH AND WELFARE AND NONINSURED BENEFIT PLANS.

22 (2) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1995 AND  
23 BEFORE JANUARY 1, 1999, COMPENSATION DOES NOT INCLUDE THE AMOUNTS  
24 DESCRIBED IN SUBSECTION (1) MULTIPLIED BY THE FOLLOWING PERCENT-  
25 TAGES FOR THE FOLLOWING TAX YEARS:

26 (A) FOR TAX YEARS ENDING AFTER DECEMBER 31, 1995 AND BEFORE  
27 JANUARY 1, 1997, 25%.

1 (B) FOR TAX YEARS ENDING AFTER DECEMBER 31, 1996 AND BEFORE  
2 JANUARY 1, 1998, 50%.

3 (C) FOR TAX YEARS ENDING AFTER DECEMBER 31, 1997 AND BEFORE  
4 JANUARY 1, 1999, 75%.

5 Sec. 23. (1) ~~After~~ EXCEPT AS PROVIDED IN SUBSECTION (2),  
6 FOR A TAX YEAR ENDING BEFORE JANUARY 1, 1999, AFTER allocation as  
7 provided in section 40 or apportionment as provided in section  
8 41, the tax base shall be adjusted by the following:

9 (a) For a tax year ending before March 31, 1991 for which  
10 subdivision (c) is not in effect, deduct the cost, including fab-  
11 rication and installation, paid or accrued in the taxable year of  
12 tangible assets of a type that are, or under the internal revenue  
13 code will become, eligible for depreciation, amortization, or  
14 accelerated capital cost recovery for federal income tax purposes  
15 excluding costs of assets that are defined in section 1250 of the  
16 internal revenue code. ~~, except that~~ HOWEVER, for tangible  
17 assets that are subject to a lease back agreement under the  
18 former provisions of section 168(f)(8) of the internal revenue  
19 code as that section provided immediately before the tax reform  
20 act of 1986, Public Law 99-514, became effective or to a lease  
21 back of property to which the amendments made by the tax reform  
22 act of 1986 do not apply as provided in section 204 of the tax  
23 reform act of 1986, the deduction shall be allowed only to the  
24 lessee or sublessee ~~as the case may be~~ under the 168(f)(8)  
25 agreement. This deduction shall be multiplied by a fraction, the  
26 numerator of which is the payroll factor plus the property factor  
27 and the denominator of which is 2.

1 (b) For a tax year ending before March 31, 1991 for which  
2 subdivision (c) is not in effect, deduct the cost including fab-  
3 rication and installation, excluding the cost deducted under sub-  
4 division (a) paid or accrued in the taxable year of tangible  
5 assets of a type that are, or under the internal revenue code  
6 will become, eligible for depreciation, amortization, or acceler-  
7 ated capital cost recovery for federal income tax purposes, pro-  
8 vided that the assets are physically located in Michigan.

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

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

1 installation, paid or accrued in the taxpayer's first tax year  
2 ending after September 29, 1991 of tangible assets of a type that  
3 are, or under the internal revenue code will become, eligible for  
4 depreciation, amortization, or accelerated capital cost recovery  
5 for federal income tax purposes multiplied by the apportionment  
6 factor as defined in chapter 3 for that tax year, and reducing  
7 that sum by the adjustment for the cost, including fabrication  
8 and installation, paid or accrued in the immediately preceding  
9 tax year of tangible assets of a type that were, or under the  
10 internal revenue code will become, eligible for depreciation,  
11 amortization, or accelerated capital cost recovery for federal  
12 income tax purposes claimed by the taxpayer or allowed to the  
13 taxpayer under this act in the immediately preceding tax year.  
14 If the adjustment calculated pursuant to this subdivision is a  
15 positive amount, it shall be deducted from the tax base after  
16 allocation or apportionment, and if the adjustment calculated  
17 pursuant to this subdivision is a negative amount, it shall,  
18 without reference to the negative sign, be added to the tax base  
19 after allocation and apportionment. If any portion of this sub-  
20 division is determined to be invalid pursuant to a final appel-  
21 late court decision, this subdivision shall be severed from this  
22 section.

23 (2) THE CREDIT ALLOWED UNDER THIS SECTION SHALL BE REDUCED  
24 BY THE FOLLOWING PERCENTAGES FOR THE FOLLOWING TAX YEARS:

25 (A) FOR TAX YEARS ENDING AFTER DECEMBER 31, 1995 AND BEFORE  
26 JANUARY 1, 1997, 25%.

1 (B) FOR TAX YEARS ENDING AFTER DECEMBER 31, 1996 AND BEFORE  
2 JANUARY 1, 1998, 50%.

3 (C) FOR TAX YEARS ENDING AFTER DECEMBER 31, 1997 AND BEFORE  
4 JANUARY 1, 1999, 75%.

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

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

1 (b) 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 WAS TAKEN BUT FOR WHICH A DEDUCTION UNDER section  
4 23(c) is not in effect, add the gross proceeds or benefit derived  
5 from the sale or other disposition of the tangible assets  
6 described in section 23(b) for a tax year beginning before  
7 January 1, 1991 minus the gain, multiplied by the apportionment  
8 factor for the taxable year as prescribed in chapter 3, and plus  
9 the loss, multiplied by the apportionment factor as prescribed in  
10 chapter 3, from the sale or other disposition reflected in fed-  
11 eral taxable income and minus the gain from the sale or other  
12 disposition added to the tax base in section 9(6).

13 (c) If the cost of an asset was paid or accrued in a tax  
14 year beginning after September 30, 1989 AND A DEDUCTION WAS TAKEN  
15 FOR THAT COST UNDER SECTION 23, add the gross proceeds or benefit  
16 derived from the sale or other disposition of the tangible assets  
17 described in section 23(c), NOT TO EXCEED THE AMOUNT OF THE  
18 DEDUCTION CLAIMED UNDER SECTION 23, minus the gain and plus the  
19 loss from the sale reflected in federal taxable income and minus  
20 the gain from the sale or other disposition added to the tax base  
21 in section 9(6). This addition shall be multiplied by the appor-  
22 tionment factor for the tax year as prescribed by chapter 3.

23 (d) Deduct any available business loss. As used in this  
24 subdivision, "business loss" means a negative amount after allo-  
25 cation or apportionment as provided in chapter 3 and after  
26 adjustments as provided in section 23 and subdivisions (a), (b),  
27 and (c) without regard to the deduction under this subdivision.

1 The business loss shall be carried forward to the year ~~next~~  
2 ~~following~~ IMMEDIATELY SUCCEEDING the loss year as an offset to  
3 the allocated or apportioned tax base including the adjustments  
4 provided in subdivisions (a), (b), and (c), then successively to  
5 the next 9 taxable years following the loss year or until the  
6 loss is used up, whichever occurs first, but for not more than 10  
7 taxable years after the loss year.

8 Sec. 31. (1) There is levied and imposed a specific tax ~~of~~  
9 ~~2.35% before October 1, 1994 and 2.30% after September 30, 1994~~  
10 calculated as provided in section 31a upon the adjusted tax base  
11 of every person with business activity in this state that is  
12 allocated or apportioned to this state ~~—~~ AT THE FOLLOWING RATES  
13 FOR THE FOLLOWING TAX YEARS:

14 (A) FOR TAX YEARS THAT BEGIN AFTER SEPTEMBER 30, 1994 AND  
15 BEFORE JANUARY 1, 1996, 2.30%.

16 (B) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1995 AND  
17 BEFORE JANUARY 1, 1997, 2.25%.

18 (C) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1996 AND  
19 BEFORE JANUARY 1, 1998, 2.20%.

20 (D) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1997 AND  
21 BEFORE JANUARY 1, 1999, 2.15%.

22 (E) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1998, 2.10%.

23 (2) As used in this section, "adjusted tax base" means the  
24 tax base allocated or apportioned to this state pursuant to chap-  
25 ter 3 with the adjustments prescribed by sections 23 and 23b and  
26 the exemptions prescribed by section 35. If the adjusted tax  
27 base exceeds 50% of the sum of gross receipts plus the

1 adjustments provided in section 23b(a), (b), and (c), apportioned  
2 or allocated to Michigan with the apportionment fraction calcu-  
3 lated pursuant to chapter 3, the adjusted tax base may, at the  
4 option of the taxpayer, be reduced by that excess. If a taxpayer  
5 reduces the adjusted tax base under this subsection, the taxpayer  
6 is not entitled to the adjustment provided in subsection (4) for  
7 the same taxable year. This subsection does not apply to an  
8 adjusted tax base under section 22a.

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

11 (4) ~~In lieu~~ INSTEAD of the reduction provided in subsec-  
12 tion (2), a person may elect to reduce the adjusted tax base by  
13 the percentage that the compensation divided by the tax base  
14 exceeds 63%. The deduction shall not exceed 37% of the adjusted  
15 tax base. For purposes of computing the deduction allowed by  
16 this subsection, as effective for the respective tax year, com-  
17 pensation does not include amounts of compensation exempt from  
18 tax under section 35(1)(e). This subsection does not apply to an  
19 adjusted tax base under section 22a.