

HOUSE BILL No. 5795

April 29, 1998, Introduced by Rep. Profit and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 23 and 23b (MCL 208.23 and 208.23b), as
amended by 1995 PA 282.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 internal revenue code. However, for tangible assets that are
2 subject to a lease back agreement under the former provisions of
3 section 168(f)(8) of the internal revenue code as that section
4 provided immediately before the tax reform act of 1986, Public
5 Law 99-514, became effective or to a lease back of property to
6 which the amendments made by the tax reform act of 1986 do not
7 apply as provided in section 204 of the tax reform act of 1986,
8 the deduction shall be allowed only to the lessee or sublessee
9 under the 168(f)(8) agreement. This deduction shall be multi-
10 plied by a fraction, the numerator of which is the payroll factor
11 plus the property factor and the denominator of 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 but
21 before January 1, 1997 and for tax years beginning after
22 December 31, 1996 as provided in subdivision (h), deduct the
23 cost, including fabrication and installation, paid or accrued in
24 the taxable year of tangible assets of a type that are, or under
25 the internal revenue code will become, eligible for depreciation,
26 amortization, or accelerated capital cost recovery for federal
27 income tax purposes. This deduction shall be multiplied by the

1 apportionment factor for the taxable year as defined in chapter
2 3. This subdivision does not apply to a taxpayer's first tax
3 year ending after September 29, 1991.

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

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

9 (e) Except as provided in subdivisions (g),(h), and (i), for
10 a tax year beginning after December 31, 1996, deduct the cost,
11 including fabrication and installation, paid or accrued in the
12 taxable year of tangible assets of a type that are, or under the
13 internal revenue code will become, eligible for depreciation,
14 amortization, or accelerated capital cost recovery for federal
15 income tax purposes, provided that the assets are physically
16 located in this state for use in a business activity in this
17 state and are not mobile tangible assets. This deduction shall
18 be multiplied by the apportionment factor for the tax year as
19 prescribed in chapter 3.

20 (f) Except as provided in subdivision (h) and if subdivision
21 (e) is in effect, for a tax year beginning after December 31,
22 1996, deduct the cost, including fabrication and installation,
23 paid or accrued in the taxable year of mobile tangible assets of
24 a type that are, or under the internal revenue code will become,
25 eligible for depreciation, amortization, or accelerated capital
26 cost recovery for federal income tax purposes. This deduction
27 shall be multiplied by the apportionment factor for the tax year

1 as prescribed in chapter 3. As used in this section and section
2 23b, "mobile tangible assets" means all of the following:

3 (i) Motor vehicles that have a gross vehicle weight rating
4 of 10,000 pounds or more and are used to transport persons for
5 compensation or property.

6 (ii) Rolling stock, aircraft, and watercraft used by the
7 owner to transport persons or property for compensation or used
8 by the owner to transport the owner's property for sale, rental,
9 or further processing.

10 (iii) Equipment used directly in completion of or in con-
11 struction contracts for the construction, alteration, repair, or
12 improvement of property.

13 (g) Except as provided in subdivision (h) and if subdivision
14 (e) is in effect, for tangible assets, other than mobile tangible
15 assets, purchased or acquired for use outside of this state in a
16 tax year beginning after December 31, 1996 and physically located
17 in this state after the assets are purchased or acquired for use
18 in a business activity, deduct the federal basis used for deter-
19 mining gain or loss as of the date the tangible assets were phys-
20 ically located in this state for use in a business activity plus
21 the cost of fabrication and installation of the tangible assets
22 in this state. This deduction shall be multiplied by the appor-
23 tionment factor for the tax year as prescribed in chapter 3.

24 (h) For tax years beginning after December 31, 1996 and if
25 subdivision (e) is in effect, subdivisions (e), (f), and (g) do
26 not apply and subdivision (c) does apply to a taxpayer that meets
27 all of the following criteria:

(i) The taxpayer has its headquarters in this state.

(ii) The taxpayer's date of incorporation, as filed with the ~~corporation and securities~~ CORPORATE division OF THE CORPORATION, SECURITIES, AND LAND DEVELOPMENT BUREAU of the department of ~~commerce~~ CONSUMER AND INDUSTRY SERVICES, is on or before ~~the effective date of the amendatory act that added this subdivision~~ JANUARY 9, 1996.

(iii) The taxpayer's sales at retail of prescriptions are more than 2% and less than 10% of the taxpayer's total sales at retail.

(iv) The taxpayer sells at retail all of the following and, FOR TAX YEARS THAT BEGIN BEFORE JANUARY 1, 1998, more than 50% OR, FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 1998, MORE THAN 20% of the taxpayer's total sales is comprised of the retail sales of the following:

(A) Fresh, frozen, or processed food, food products, or consumable necessities.

(B) Household products.

(C) Prescriptions.

(D) Health and beauty care products.

(E) Cosmetics.

(F) Pet products.

(G) Carbonated beverages.

(H) Beer, wine, or liquor.

(i) For a tax year beginning after December 31, 1996 if subdivision (e) is not in effect, deduct the cost, including fabrication and installation, paid or accrued in the taxable year

1 of tangible assets of a type that are, or under the internal
2 revenue code will become, eligible for depreciation, amortiza-
3 tion, or accelerated capital cost recovery for federal income tax
4 purposes. This deduction shall be multiplied by the apportion-
5 ment factor for the tax year as prescribed in chapter 3.

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

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

12 (c) If the cost of an asset was paid or accrued in a tax
13 year beginning after September 30, 1989 but before January 1,
14 1997 or paid or accrued in a tax year beginning after
15 December 31, 1996 as provided in subdivision (f), add the gross
16 proceeds or benefit derived from the sale or other disposition of
17 the tangible assets described in section 23(c) minus the gain and
18 plus the loss from the sale reflected in federal taxable income
19 and minus the gain from the sale or other disposition added to
20 the tax base in section 9(6). This addition shall be multiplied
21 by the apportionment factor for the tax year as prescribed by
22 chapter 3.

23 (d) Except as provided in subdivisions (f) and (g) and if
24 the cost of tangible assets described in section 23(e), (f), or
25 (g) was paid or accrued in a tax year beginning after
26 December 31, 1996, add the gross proceeds or benefit derived from
27 the sale or other disposition of the tangible assets minus the

1 gain and plus the loss from the sale or other disposition
 2 reflected in federal taxable income and minus the gain from the
 3 sale or other disposition added to the tax base in section 9(6).
 4 This addition shall be multiplied by the apportionment factor for
 5 the tax year as prescribed in chapter 3.

6 (e) Except as provided in subdivision (f) and if section
 7 23(e) is in effect, for assets other than mobile tangible assets
 8 purchased or acquired in a tax year beginning after December 31,
 9 1996 that were eligible for a deduction under section 23(e) or
 10 (g) and that were transferred out of this state, add the federal
 11 basis used for determining gain or loss as of the date of the
 12 transfer. This addition shall be multiplied by the apportionment
 13 factor for the tax year as prescribed in chapter 3.

14 (f) For tax years beginning after December 31, 1996 and if
 15 section 23(e) is in effect, subdivisions (d) and (e) do not apply
 16 and subdivision (c) does apply to a taxpayer that meets all of
 17 the following criteria:

18 (i) The taxpayer has its headquarters in this state.

19 (ii) The taxpayer's date of incorporation, as filed with the
 20 ~~corporation and securities~~ CORPORATE division OF THE CORPORA-
 21 TION, SECURITIES, AND LAND DEVELOPMENT BUREAU of the department
 22 of ~~commerce~~ CONSUMER AND INDUSTRY SERVICES, is on or before
 23 ~~the effective date of the amendatory act that added this~~
 24 ~~subdivision~~ JANUARY 9, 1996.

25 (iii) The taxpayer's sales at retail of prescriptions are
 26 more than 2% and less than 10% of the taxpayer's total sales at
 27 retail.

1 (iv) The taxpayer sells at retail all of the following and,
2 FOR TAX YEARS THAT BEGIN BEFORE JANUARY 1, 1998, more than 50%
3 OR, FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 1998, MORE
4 THAN 20% of the taxpayer's total sales is comprised of the retail
5 sales of the following:

6 (A) Fresh, frozen, or processed food, food products, or con-
7 sumable necessities.

8 (B) Household products.

9 (C) Prescriptions.

10 (D) Health and beauty care products.

11 (E) Cosmetics.

12 (F) Pet products.

13 (G) Carbonated beverages.

14 (H) Beer, wine, or liquor.

15 (g) If section 23(e) is not in effect and if the cost of
16 tangible assets described in section 23(i) was paid or accrued in
17 a tax year beginning after December 31, 1996, add the gross pro-
18 ceeds or benefit derived from the sale or other disposition of
19 the tangible assets minus the gain and plus the loss from the
20 sale or other disposition reflected in federal taxable income and
21 minus the gain from the sale or other disposition added to the
22 tax base in section 9(6). This addition shall be multiplied by
23 the apportionment factor for the tax year as prescribed in
24 chapter 3.

25 (h) Deduct any available business loss. As used in this
26 subdivision, "business loss" means a negative amount after
27 allocation or apportionment as provided in chapter 3 and after

1 adjustments as provided in section 23 and subdivisions (a) to (g)
2 without regard to the deduction under this subdivision. The
3 business loss shall be carried forward to the year next following
4 the loss year as an offset to the allocated or apportioned tax
5 base including the adjustments provided in subdivisions (a) to
6 (g), then successively to the next 9 taxable years following the
7 loss year or until the loss is used up, whichever occurs first,
8 but for not more than 10 taxable years after the loss year.