

**SUBSTITUTE FOR
HOUSE BILL NO. 4745**

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending sections 3, 4, 5, 23, 23b, 31, [45a,] 49, 71, 77, and 78 (MCL 208.3, 208.4, 208.5, 208.23, 208.23b, 208.31, [208.45a,] 208.49, 208.71, 208.77, and 208.78), section 4 as amended by 1995 PA 285, section 5 as amended by 1987 PA 253, sections 23 and 23b as amended by 1998 PA 504, section 31 as amended by 1994 PA 247, [section 45a as added by 1995 PA 282,]and section 71 as amended by 1984 PA 281, and by adding sections 19, 35a, and 54; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "Affiliated group" means 2 or more UNITED
2 STATES corporations, 1 of which owns or controls, directly or
3 indirectly, 80% or more of the capital stock with voting rights
4 of the other UNITED STATES corporation or UNITED STATES
5 corporations. AS USED IN THIS SUBSECTION, "UNITED STATES

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

2

1 CORPORATION" MEANS A DOMESTIC CORPORATION AS THOSE TERMS ARE
2 DEFINED IN SECTION 7701(a)(3) AND (4) OF THE INTERNAL REVENUE
3 CODE.

4 (2) "Business activity" means a transfer of legal or equita-
5 ble title to or rental of property, whether real, personal, or
6 mixed, tangible or intangible, or the performance of services, or
7 a combination thereof, made or engaged in, or caused to be made
8 or engaged in, within this state, whether in intrastate, inter-
9 state, or foreign commerce, with the object of gain, benefit, or
10 advantage, whether direct or indirect, to the taxpayer or to
11 others, but shall not include the services rendered by an
12 employee to his employer, services as a director of a corpora-
13 tion, or a casual transaction. Although an activity of a tax-
14 payer may be incidental to another or other of his business
15 activities, each activity shall be considered to be business
16 engaged in within the meaning of this act.

17 (3) "Business income" means federal taxable income, except
18 that for a person other than a corporation it means that part of
19 federal taxable income derived from business activity. For a
20 partnership, business income includes payments and items of
21 income and expense which are attributable to business activity of
22 the partnership and separately reported to the partners.

23 Sec. 4. (1) "Casual transaction" means a transaction made
24 or engaged in other than in the ordinary course of repeated and
25 successive transactions of a like character, except that a trans-
26 action made or engaged in by a person that is incidental to that

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

3

1 person's regular business activity is a business activity within
2 the meaning of this act.

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

4 (3) Except as otherwise provided in this section,
5 "compensation" means all wages, salaries, fees, bonuses, commis-
6 sions, or other payments made in the taxable year on behalf of or
7 for the benefit of employees, officers, or directors of the
8 taxpayers. ~~and~~ COMPENSATION INCLUDES, BUT IS NOT LIMITED TO,
9 PAYMENTS THAT ARE subject to or specifically exempt OR EXCEPTED
10 from withholding under ~~chapter 24,~~ sections 3401 to 3406 of the
11 internal revenue code. Compensation ALSO includes, on a cash or
12 accrual basis consistent with the taxpayer's method of accounting
13 for federal income tax purposes, payments to state and federal
14 unemployment compensation funds, payments under the federal
15 insurance contribution act and similar social insurance programs,
16 payments, including self-insurance, for worker's compensation
17 insurance, payments to individuals not currently working, pay-
18 ments to dependents and heirs of individuals because of current
19 or former labor services rendered by those individuals, payments
20 to a pension, retirement, or profit sharing plan, and payments
21 for insurance for which employees are the beneficiaries, includ-
22 ing payments under health and welfare and noninsured benefit
23 plans and payments of fees for the administration of health and
24 welfare and noninsured benefit plans. Compensation does not
25 include any of the following:

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

4

1 (a) Discounts on the price of the taxpayer's merchandise or
2 services sold to the taxpayer's employees, officers, or directors
3 that are not available to other customers.

4 (b) Payments to an independent contractor.

5 (c) For tax years beginning after December 31, 1994, pay-
6 ments to state and federal unemployment compensation funds.

7 (d) For tax years beginning after December 31, 1994, the
8 employer's portion of payments under the federal insurance
9 ~~contribution~~ CONTRIBUTIONS act, CHAPTER 21 OF SUBTITLE C OF THE
10 INTERNAL REVENUE CODE, 26 U.S.C. 3101 TO 3127, the railroad
11 retirement tax act, chapter 22 of ~~title 26 of the United States~~
12 ~~Code~~ SUBTITLE C OF THE INTERNAL REVENUE CODE, 26 U.S.C. 3201 to
13 3233, and similar social insurance programs.

14 (e) For tax years beginning after December 31, 1994, pay-
15 ments, including self-insurance payments, for worker's compensa-
16 tion insurance or federal ~~employers~~ EMPLOYERS' liability act
17 insurance pursuant to chapter 149, 35 Stat. 65, 45 U.S.C. 51 to
18 60.

19 (4) "Department" means the revenue ~~division~~ BUREAU of the
20 department of treasury.

21 Sec. 5. (1) "Employee" means an employee as defined in sec-
22 tion 3401(c) of the internal revenue code. A person from whom an
23 employer is required to withhold for federal income tax purposes
24 shall prima facie be deemed an employee.

25 (2) "Employer" means an employer as defined in section
26 3401(d) of the internal revenue code. A person required to

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

5

1 withhold for federal income tax purposes shall prima facie be
2 deemed an employer.

3 (3) "Federal taxable income" means taxable income as defined
4 in section 63 of the internal revenue code.

5 (4) "Internal revenue code" means the United States internal
6 revenue code of 1986 ~~, as amended, and~~ in effect on January 1,
7 ~~1987~~ 1999 OR, AT THE OPTION OF THE TAXPAYER, IN EFFECT FOR THE
8 TAX YEAR.

9 SEC. 19. (1) FOR TAX YEARS THAT BEGIN AFTER JUNE 1, 1999,
10 EXCEPT FOR A TAXPAYER THAT CALCULATES TAX BASE UNDER SECTION 22A,
11 THE TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF BUSINESS
12 INCOME AND THE ADJUSTMENTS UNDER SECTION 9, WHETHER OR NOT THE
13 FOREIGN PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE
14 CODE.

15 (2) A FOREIGN PERSON SHALL ELECT TO CALCULATE BUSINESS
16 INCOME EITHER BY COMPLETING A PRO FORMA UNITED STATES INCOME TAX
17 RETURN OR BY A REASONABLE APPROXIMATION OF FEDERAL TAXABLE INCOME
18 CALCULATED BY A METHOD APPROVED BY THE COMMISSIONER.

19 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAX
20 BASE OF A FOREIGN PERSON IS SUBJECT TO ALL ADJUSTMENTS AND OTHER
21 PROVISIONS OF THIS ACT.

22 (4) AS USED IN THIS SECTION:

23 (A) "BUSINESS INCOME" MEANS EITHER OF THE FOLLOWING FOR TAX
24 YEARS THAT BEGIN AFTER JUNE 1, 1999:

25 (i) FOR A FOREIGN PERSON THAT IS A CORPORATION, AN AMOUNT
26 EQUAL TO FEDERAL TAXABLE INCOME CALCULATED AS IF THE FOREIGN
27 PERSON IS A UNITED STATES PERSON.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

6

1 (ii) FOR A FOREIGN PERSON OTHER THAN A CORPORATION, THAT
2 PART OF FEDERAL TAXABLE INCOME DERIVED FROM BUSINESS ACTIVITY
3 CALCULATED AS IF THE FOREIGN PERSON IS A UNITED STATES PERSON.
4 FOR A FOREIGN PERSON OTHER THAN A CORPORATION, BUSINESS INCOME
5 INCLUDES PAYMENTS AND ITEMS OF INCOME AND EXPENSE THAT ARE
6 ATTRIBUTABLE TO BUSINESS ACTIVITY OF THE FOREIGN PERSON AND
7 REPORTED SEPARATELY TO THE PARTNERS OF THE FOREIGN PERSON OR SIM-
8 ILAR FOREIGN MEMBERS.

9 (B) "FOREIGN PERSON" MEANS EITHER OF THE FOLLOWING:

10 (i) AN INDIVIDUAL WHO IS NOT A UNITED STATES RESIDENT,
11 WHETHER OR NOT THE INDIVIDUAL IS SUBJECT TO TAXATION UNDER THE
12 INTERNAL REVENUE CODE.

13 (ii) A PERSON FORMED UNDER THE LAWS OF A FOREIGN COUNTRY OR
14 A POLITICAL SUBDIVISION OF A FOREIGN COUNTRY, WHETHER OR NOT THE
15 PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE.

16 (C) "UNITED STATES PERSON" MEANS THAT TERM AS DEFINED IN
17 SECTION 7701(a)(30) OF THE INTERNAL REVENUE CODE.

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

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

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

7

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 AND BEFORE JANUARY 1, 1999 as provided in
23 subdivision (h), deduct the cost, including fabrication and
24 installation, paid or accrued in the taxable year of tangible
25 assets of a type that are, or under the internal revenue code
26 will become, eligible for depreciation, amortization, or
27 accelerated capital cost recovery for federal income tax

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

8

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

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

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

9

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

10 (e) Except as provided in subdivisions (g), (h), and (i), for
11 a tax year beginning after December 31, 1996 AND BEFORE JANUARY
12 1, 1999, deduct the cost, including fabrication and installation,
13 paid or accrued in the taxable year of tangible assets of a type
14 that are, or under the internal revenue code will become, eligi-
15 ble for depreciation, amortization, or accelerated capital cost
16 recovery for federal income tax purposes, provided that the
17 assets are physically located in this state for use in a business
18 activity in this state and are not mobile tangible assets. This
19 deduction shall be multiplied by the apportionment factor for the
20 tax year as prescribed in chapter 3.

21 (f) Except as provided in subdivision (h) and if subdivision
22 (e) is in effect, for a tax year beginning after December 31,
23 1996 AND BEFORE JANUARY 1, 1999, deduct the cost, including fab-
24 rication and installation, paid or accrued in the taxable year of
25 mobile tangible assets of a type that are, or under the internal
26 revenue code will become, eligible for depreciation,
27 amortization, or accelerated capital cost recovery for federal

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

10

1 income tax purposes. This deduction shall be multiplied by the
2 apportionment factor for the tax year as prescribed in chapter
3 3. As used in this section and section 23b, "mobile tangible
4 assets" means all of the following:

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

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

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

15 (g) Except as provided in subdivision (h) and if subdivision
16 (e) is in effect, for tangible assets, other than mobile tangible
17 assets, purchased or acquired for use outside of this state in a
18 tax year beginning after December 31, 1996 AND BEFORE JANUARY 1,
19 1999 and physically located in this state after the assets are
20 purchased or acquired for use in a business activity, deduct the
21 federal basis used for determining gain or loss 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. This deduction shall
25 be multiplied by the apportionment factor for the tax year as
26 prescribed in chapter 3.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

11

1 (h) For tax years beginning after December 31, 1996 AND
2 BEFORE JANUARY 1, 1999 and if subdivision (e) is in effect,
3 subdivisions (e), (f), and (g) do not apply and subdivision (c)
4 does apply to a taxpayer that meets all of the following
5 criteria:

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

7 (ii) The taxpayer's date of incorporation, as filed with the
8 corporate division of the corporation, securities, and land
9 development bureau of the department of consumer and industry
10 services, is on or before January 9, 1996.

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

14 (iv) The taxpayer sells at retail all of the following and,
15 for tax years that begin before January 1, 1998, more than 50%
16 or, for tax years that begin on and after January 1, 1998, more
17 than 20% of the taxpayer's total sales is comprised of the retail
18 sales of the following:

19 (A) Fresh, frozen, or processed food, food products, or con-
20 sumable necessities.

21 (B) Household products.

22 (C) Prescriptions.

23 (D) Health and beauty care products.

24 (E) Cosmetics.

25 (F) Pet products.

26 (G) Carbonated beverages.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

12

1 (H) Beer, wine, or liquor.

2 (i) For a tax year beginning after December 31, 1996 AND
3 BEFORE JANUARY 1, 1999 if subdivision (e) is not in effect,
4 deduct the cost, including fabrication and installation, paid or
5 accrued in the taxable year of tangible assets of a type that
6 are, or under the internal revenue code will become, eligible for
7 depreciation, amortization, or accelerated capital cost recovery
8 for federal income tax purposes. This deduction shall be multi-
9 plied by the apportionment factor for the tax year as prescribed
10 in chapter 3.

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

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

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

13

1 act of 1986, Public Law 99-514, became effective or to a lease
2 back of property to which the amendments made by the tax reform
3 act of 1986 do not apply as provided in section 204 of the tax
4 reform act of 1986.

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

16 (c) If the cost of an asset was paid or accrued in a tax
17 year beginning after September 30, 1989 but before January 1,
18 1997 or paid or accrued in a tax year beginning after
19 December 31, 1996 AND BEFORE JANUARY 1, 1999 as provided in
20 subdivision (f), add the gross proceeds or benefit derived from
21 the sale or other disposition of the tangible assets described in
22 section 23(c) minus the gain and plus the loss from the sale
23 reflected in federal taxable income and minus the gain from the
24 sale or other disposition added to the tax base in section 9(6).
25 This addition shall be multiplied by the apportionment factor for
26 the tax year as prescribed by chapter 3.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

14

1 (d) Except as provided in subdivisions (f) and (g) and if
2 the cost of tangible assets described in section 23(e), (f), or
3 (g) was paid or accrued in a tax year beginning after
4 December 31, 1996 AND BEFORE JANUARY 1, 1999, add the gross pro-
5 ceeds or benefit derived from the sale or other disposition of
6 the tangible assets minus the gain and plus the loss from the
7 sale or other disposition reflected in federal taxable income and
8 minus the gain from the sale or other disposition added to the
9 tax base in section 9(6). This addition shall be multiplied by
10 the apportionment factor for the tax year as prescribed in
11 chapter 3.

12 (e) Except as provided in subdivision (f) and if section
13 23(e) is in effect, for assets other than mobile tangible assets
14 purchased or acquired in a tax year beginning after December 31,
15 1996 AND BEFORE JANUARY 1, 1999 that were eligible for a deduc-
16 tion under section 23(e) or (g) and that were transferred out of
17 this state, add the federal basis used for determining gain or
18 loss as of the date of the transfer. This addition shall be
19 multiplied by the apportionment factor for the tax year as pre-
20 scribed in chapter 3.

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

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

26 (ii) The taxpayer's date of incorporation, as filed with the
27 corporate division of the corporation, securities, and land

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

15

1 development bureau of the department of consumer and industry
2 services, is on or before January 9, 1996.

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

6 (iv) The taxpayer sells at retail all of the following and,
7 for tax years that begin before January 1, 1998, more than 50%
8 or, for tax years that begin on and after January 1, 1998, more
9 than 20% of the taxpayer's total sales is comprised of the retail
10 sales of the following:

11 (A) Fresh, frozen, or processed food, food products, or con-
12 sumable necessities.

13 (B) Household products.

14 (C) Prescriptions.

15 (D) Health and beauty care products.

16 (E) Cosmetics.

17 (F) Pet products.

18 (G) Carbonated beverages.

19 (H) Beer, wine, or liquor.

20 (g) If section 23(e) is not in effect and if the cost of
21 tangible assets described in section 23(i) was paid or accrued in
22 a tax year beginning after December 31, 1996 AND BEFORE JANUARY
23 1, 1999, add the gross proceeds or benefit derived from the sale
24 or other disposition of the tangible assets minus the gain and
25 plus the loss from the sale or other disposition reflected in
26 federal taxable income and minus the gain from the sale or other
27 disposition added to the tax base in section 9(6). This addition

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

16

1 shall be multiplied by the apportionment factor for the tax year
2 as prescribed in chapter 3.

3 (h) Deduct any available business loss. As used in this
4 subdivision, "business loss" means a negative amount after allo-
5 cation or apportionment as provided in chapter 3 and after
6 adjustments as provided in section 23 and subdivisions (a) to (g)
7 without regard to the deduction under this subdivision. The
8 business loss shall be carried forward to the year next following
9 the loss year as an offset to the allocated or apportioned tax
10 base including the adjustments provided in subdivisions (a) to
11 (g), then successively to the next 9 taxable years following the
12 loss year or until the loss is used up, whichever occurs first,
13 but for not more than 10 taxable years after the loss year.

14 Sec. 31. (1) ~~There~~ EXCEPT AS PROVIDED IN SUBSECTIONS (5)
15 AND (6), THERE is levied and imposed a specific tax ~~of 2.35%~~
16 ~~before October 1, 1994 and 2.30% after September 30, 1994 calcu-~~
17 ~~lated as provided in section 31a~~ upon the adjusted tax base of
18 every person with business activity in this state that is allo-
19 cated or apportioned to this state ~~—~~ AT THE FOLLOWING RATES FOR
20 THE SPECIFIED PERIODS:

21 (A) BEFORE OCTOBER 1, 1994, 2.35%.

22 (B) AFTER SEPTEMBER 30, 1994 AND BEFORE JANUARY 1, 1999,
23 2.30%.

24 (C) BEGINNING JANUARY 1, 1999 AND EACH JANUARY 1 AFTER 1999,
25 THE RATE UNDER THIS SUBSECTION SHALL BE REDUCED AS PROVIDED IN
26 SUBSECTION (5).

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

17

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 with the adjustments prescribed by sections 23 and 23b
4 and the exemptions prescribed by section 35. If the adjusted tax
5 base exceeds 50% of the sum of gross receipts plus the adjust-
6 ments provided in section 23b(a) ~~, (b), and (c)~~ TO (G), appor-
7 tioned or allocated to Michigan with the apportionment fraction
8 calculated pursuant to chapter 3, the adjusted tax base may, at
9 the option of the taxpayer, be reduced by that excess. If a tax-
10 payer reduces the adjusted tax base under this subsection, the
11 taxpayer is not entitled to the adjustment provided in subsection
12 (4) for the same taxable year. This subsection does not apply to
13 an adjusted tax base under section 22a.

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

16 (4) In lieu of the reduction provided in subsection (2), a
17 person may elect to reduce the adjusted tax base by the percen-
18 tage that the compensation divided by the tax base exceeds 63%.
19 The deduction shall not exceed 37% of the adjusted tax base. For
20 purposes of computing the deduction allowed by this subsection,
21 as effective for the respective tax year, compensation does not
22 include amounts of compensation exempt from tax under section
23 35(1)(e). This subsection does not apply to an adjusted tax base
24 under section 22a.

25 (5) IF THE COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THIS
26 STATE FOR A STATE FISCAL YEAR, PUBLISHED PURSUANT TO SECTION 494
27 OF THE MANAGEMENT AND BUDGET ACT, 1984 PA 431, MCL 18.1494,

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

18

1 REPORTS AN ENDING BALANCE OF MORE THAN \$250,000,000.00 IN THE
2 COUNTERCYCLICAL BUDGET AND ECONOMIC STABILIZATION FUND CREATED
3 UNDER SECTION 351 OF THE MANAGEMENT AND BUDGET ACT, 1984 PA 431,
4 MCL 18.1351, FOR THAT STATE FISCAL YEAR, THE TAX RATE UNDER THIS
5 SECTION SHALL BE REDUCED BY 0.1% ON THE JANUARY 1 FOLLOWING THE
6 END OF THE STATE FISCAL YEAR FOR WHICH THE REPORT WAS ISSUED.

7 (6) THE DEPARTMENT SHALL ANNUALIZE THE RATE UNDER THIS SEC-
8 TION AS NECESSARY, AND THE APPLICABLE ANNUALIZED RATE SHALL BE
9 IMPOSED.

10 SEC. 35A. (1) FOR A TAX YEAR BEGINNING AFTER DECEMBER 31,
11 1998, A TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY
12 THIS ACT OF EQUAL TO THE PERCENTAGE DETERMINED UNDER SUBSECTION
13 (2) MULTIPLIED BY THE RESULT OF SUBTRACTING THE SUM OF THE
14 AMOUNTS CALCULATED UNDER SUBDIVISIONS (D), (E), AND (F) FROM THE
15 SUM OF THE AMOUNTS CALCULATED UNDER SUBDIVISIONS (A), (B), AND
16 (C):

17 (A) CALCULATE THE COST, INCLUDING FABRICATION AND INSTALLA-
18 TION, PAID OR ACCRUED IN THE TAXABLE YEAR OF TANGIBLE ASSETS OF A
19 TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE CODE WILL BECOME,
20 ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR ACCELERATED CAPITAL
21 COST RECOVERY FOR FEDERAL INCOME TAX PURPOSES, PROVIDED THAT THE
22 ASSETS ARE PHYSICALLY LOCATED IN THIS STATE FOR USE IN A BUSINESS
23 ACTIVITY IN THIS STATE AND ARE NOT MOBILE TANGIBLE ASSETS.

24 (B) CALCULATE THE COST, INCLUDING FABRICATION AND INSTALLA-
25 TION, PAID OR ACCRUED IN THE TAXABLE YEAR OF MOBILE TANGIBLE
26 ASSETS OF A TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE CODE
27 WILL BECOME, ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

19

1 ACCELERATED CAPITAL COST RECOVERY FOR FEDERAL INCOME TAX
2 PURPOSES. THIS AMOUNT SHALL BE MULTIPLIED BY THE APPORTIONMENT
3 FACTOR FOR THE TAX YEAR AS PRESCRIBED IN CHAPTER 3.

4 (C) FOR TANGIBLE ASSETS, OTHER THAN MOBILE TANGIBLE ASSETS,
5 PURCHASED OR ACQUIRED FOR USE OUTSIDE OF THIS STATE IN A TAX YEAR
6 BEGINNING AFTER DECEMBER 31, 1996 AND PHYSICALLY LOCATED IN THIS
7 STATE BEGINNING AFTER DECEMBER 31, 1998 AND AFTER THE ASSETS ARE
8 PURCHASED OR ACQUIRED FOR USE IN A BUSINESS ACTIVITY, CALCULATE
9 THE FEDERAL BASIS USED FOR DETERMINING GAIN OR LOSS AS OF THE
10 DATE THE TANGIBLE ASSETS WERE PHYSICALLY LOCATED IN THIS STATE
11 FOR USE IN A BUSINESS ACTIVITY PLUS THE COST OF FABRICATION AND
12 INSTALLATION OF THE TANGIBLE ASSETS IN THIS STATE.

13 (D) IF THE COST OF TANGIBLE ASSETS DESCRIBED IN SUBDIVISION
14 (A) WAS PAID OR ACCRUED IN A TAX YEAR BEGINNING AFTER DECEMBER
15 31, 1998, CALCULATE THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
16 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS PLUS THE
17 GAIN MULTIPLIED BY THE APPORTIONMENT FACTOR FOR THE TAXABLE YEAR
18 AS PRESCRIBED IN CHAPTER 3, AND MINUS 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 PLUS 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 TANGIBLE ASSETS DESCRIBED IN SUBDIVISION
24 (B) WAS PAID OR ACCRUED IN A TAX YEAR BEGINNING AFTER DECEMBER
25 31, 1998, CALCULATE THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
26 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS PLUS THE
27 GAIN AND MINUS THE LOSS FROM THE SALE OR OTHER DISPOSITION

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

20

1 REFLECTED IN FEDERAL TAXABLE INCOME AND PLUS THE GAIN FROM THE
2 SALE OR OTHER DISPOSITION ADDED TO THE TAX BASE IN SECTION 9(6).
3 THIS AMOUNT SHALL BE MULTIPLIED BY THE APPORTIONMENT FACTOR FOR
4 THE TAX YEAR AS PRESCRIBED IN CHAPTER 3.

5 (F) FOR ASSETS PURCHASED OR ACQUIRED IN A TAX YEAR BEGINNING
6 AFTER DECEMBER 31, 1996 THAT WERE ELIGIBLE FOR A DEDUCTION UNDER
7 SUBDIVISION (A) OR (C) AND THAT WERE TRANSFERRED OUT OF THIS
8 STATE, CALCULATE THE FEDERAL BASIS USED FOR DETERMINING GAIN OR
9 LOSS AS OF THE DATE OF THE TRANSFER.

10 (2) THE AMOUNT CALCULATED UNDER SUBSECTION (1) SHALL BE
11 MULTIPLIED BY A PERCENTAGE DETERMINED BY DIVIDING THE TAX RATE
12 FOR THE TAX YEAR IN WHICH THE CREDIT IS CLAIMED BY 2.3 AND MULTI-
13 PLYING THAT RESULT BY 0.85.

14 (3) FOR A TAX YEAR IN WHICH THE AMOUNT CALCULATED UNDER SUB-
15 SECTION (1) AND MULTIPLIED BY THE PERCENTAGE DETERMINED UNDER
16 SUBSECTION (2) IS NEGATIVE, THE ABSOLUTE VALUE OF THAT AMOUNT IS
17 ADDED TO THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR.

18 (4) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX
19 YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED UNDER THIS
20 SECTION EXCEED THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX
21 YEAR, THE EXCESS SHALL NOT BE REFUNDED, BUT MAY BE CARRIED FOR-
22 WARD AS AN OFFSET TO THE TAX LIABILITY IN SUBSEQUENT TAX YEARS
23 FOR 9 TAXABLE YEARS OR UNTIL THE EXCESS CREDIT IS USED UP, WHICH-
24 EVER OCCURS FIRST.

25 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
26 CREDIT PROVIDED IN THIS SECTION SHALL BE TAKEN BEFORE ANY OTHER
27 CREDIT UNDER THIS ACT AND THE CREDITS UNDER OTHER SECTIONS OF

1 THIS ACT SHALL BE CALCULATED USING THE TAX LIABILITY AFTER THE
 2 CALCULATION OF THE CREDIT UNDER THIS SECTION AND, TO THE EXTENT
 3 PROVIDED BY LAW, AFTER THE CALCULATION OF CREDITS UNDER OTHER
 4 SECTIONS OF THIS ACT.

5 (6) A TAXPAYER THAT REDUCES THE ADJUSTED TAX BASE UNDER SEC-
 6 TION 31(2) SHALL NOT CLAIM A CREDIT UNDER THIS SECTION.

7 (7) A TAXPAYER THAT REDUCES THE ADJUSTED TAX BASE UNDER SEC-
 8 TION 31(4) SHALL REDUCE THE CREDIT UNDER THIS SECTION BY A PER-
 9 CENTAGE DETERMINED BY DIVIDING THE APPLICABLE TAX RATE UNDER SEC-
 10 TION 31(1) BY THE AMOUNT OF THE CREDIT RATE UNDER SUBSECTION (1)
 11 AND MULTIPLYING THE RESULT BY THE PERCENTAGE REDUCTION TO THE
 12 ADJUSTED TAX BASE CLAIMED BY THE TAXPAYER FOR THE TAX YEAR UNDER
 13 SECTION 31(4).

[Sec. 45a. (1) ~~Except as provided in subsection (2) and for~~
 FOR tax years beginning after December 31, 1998, all of the tax
 base, other than the tax base derived principally from
 transportation, financial, or insurance carrier services or
 specifically allocated, shall be apportioned to this state by
 multiplying the tax base by a percentage, which is the sum of all of
 the following percentages:

- (a) The property factor multiplied by 5%.
- (b) The payroll factor multiplied by 5%.
- (c) The sales factor multiplied by 90%.

~~(2) For tax years beginning after December 31, 1998 if section
 23(e) is not in effect, all of the tax base, other than the tax base
 derived principally from transportation, financial, or insurance
 carrier services or specifically allocated, shall be apportioned to
 this state by multiplying the tax base by a percentage, which is the
 sum of all of the following percentages:~~

- ~~(a) The property factor multiplied by 15%.~~
- ~~(b) The payroll factor multiplied by 15%.~~
- ~~(c) The sales factor multiplied by 70%.~~

(2) ~~(3)~~ For purposes of this section, a taxpayer that has a
 52or 53-week tax year beginning not more than 7 days before December
 31 of any year is considered to have a tax year beginning after
 December 31 of that year.]

14 Sec. 49. The payroll factor is a fraction, the numerator of
 15 which is the total wages paid in this state during the tax year
 16 by the taxpayer and the denominator of which is the total wages
 17 paid everywhere during the tax year by the taxpayer. For the
 18 purposes of this chapter only, "wages" means ALL wages, ~~as~~
 19 ~~defined in section 3401-~~ SALARIES, FEES, BONUSES, COMMISSIONS,
 20 PAID IN THE TAXABLE YEAR ON BEHALF OF OR FOR THE BENEFIT OF
 21 EMPLOYEES, OFFICERS, OR DIRECTORS OF THE TAXPAYER AND INCLUDES,
 22 BUT IS NOT LIMITED TO, PAYMENTS THAT ARE SUBJECT TO OR SPECIFI-
 23 CALLY EXEMPT OR EXCEPTED FROM WITHHOLDING UNDER SECTIONS 3401 TO
 24 3406 of the internal revenue code.

25 SEC. 54. (1) NOTWITHSTANDING SECTIONS 51 AND 52, A CORPORA-
 26 TION MAY ELECT TO CALCULATE ITS SALES FACTOR UNDER THIS SECTION
 27 FOR A PERIOD OF 5 YEARS IF THE FOLLOWING CRITERIA UNDER

HB4745, As Passed House, June 2, 1999

03636'99 (H-3)
House Bill No. 4745

22

1 SUBDIVISIONS (A), (B), (C), AND (D) ARE MET AND FOR AN ADDITIONAL
2 2 YEARS FOLLOWING THE 5 YEARS IF ALL OF THE FOLLOWING CRITERIA
3 UNDER THIS SUBSECTION ARE MET:

4 (A) AS A RESULT OF A RESTRUCTURING TRANSACTION THAT OCCURRED
5 AFTER JANUARY 1, 1999 PURSUANT TO SECTION 355 OF THE INTERNAL
6 REVENUE CODE, THE CORPORATION OR ITS PREDECESSOR IS NO LONGER A
7 MEMBER OF AN AFFILIATED GROUP.

8 (B) THE CORPORATION OR ITS PREDECESSOR THAT RESTRUCTURES
9 UNDER SUBDIVISION (A) WAS A MEMBER OF A MICHIGAN AFFILIATED GROUP
10 THAT FILED A COMBINED RETURN UNDER THIS ACT IN THE TAX YEAR IMME-
11 DIATELY PRECEDING THE TAX YEAR OF THE RESTRUCTURING UNDER SUBDI-
12 VISION (A).

13 (C) AS A RESULT OF THE RESTRUCTURING TRANSACTION UNDER SUB-
14 DIVISION (A) AND WITHOUT REGARD TO THIS SECTION, THE CORPORATION
15 WOULD HAVE AN INCREASED TAX LIABILITY UNDER THIS ACT FOR THE TAX
16 YEAR IN WHICH THE ELECTION UNDER THIS SECTION IS MADE.

17 (D) BEFORE THE END OF THE FIRST TAX YEAR FOLLOWING THE
18 RESTRUCTURING TRANSACTION UNDER SUBDIVISION (A), THE CORPORATION
19 SENT A LETTER TO THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION
20 WITH A COPY TO THE STATE TREASURER COMMITTING TO INVEST AT LEAST
21 \$500,000,000.00 OF CAPITAL INVESTMENT WITHIN THIS STATE WITHIN 5
22 YEARS, STATING THAT IT QUALIFIES UNDER THIS SUBSECTION, AND
23 ELECTING TO CALCULATE ITS SALES FACTOR SUBJECT TO SUBSECTION
24 (2). THE 5-YEAR PERIOD UNDER THIS SUBDIVISION SHALL COMMENCE
25 WITH THE FIRST TAX YEAR FOLLOWING THE TAX YEAR IN WHICH THE
26 RESTRUCTURING TRANSACTION UNDER SUBDIVISION (A) WAS COMPLETED.
27 THE LETTER MUST BE ACKNOWLEDGED AND THE ELECTION APPROVED BY BOTH

03636'99 (H-3)

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

23

1 THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION AND THE STATE
2 TREASURER.

3 (E) PRIOR TO THE END OF THE SIXTH YEAR FOLLOWING THE
4 RESTRUCTURING TRANSACTION UNDER SUBDIVISION (A) AND IF SUBSECTION
5 (3) IS NOT IN EFFECT, THE CORPORATION SENT A LETTER TO THE
6 MICHIGAN ECONOMIC DEVELOPMENT CORPORATION WITH A COPY TO THE
7 STATE TREASURER COMMITTING TO INVEST AT LEAST \$200,000,000.00 OF
8 CAPITAL INVESTMENT WITHIN THIS STATE DURING THE NEXT 2 YEARS,
9 STATING THAT IT QUALIFIES UNDER THIS SUBSECTION, AND ELECTING TO
10 CALCULATE ITS SALES FACTOR SUBJECT TO SUBSECTION (2). THE LETTER
11 MUST BE ACKNOWLEDGED AND THE ELECTION APPROVED BY BOTH THE
12 MICHIGAN ECONOMIC DEVELOPMENT CORPORATION AND THE STATE
13 TREASURER.

14 (2) A CORPORATION THAT QUALIFIED UNDER THIS SECTION MAY
15 ELECT TO CALCULATE ITS SALES FACTOR UNDER SECTIONS 51 AND 52
16 SUBJECT TO BOTH OF THE FOLLOWING:

17 (A) A PURCHASER IN THIS STATE UNDER SECTION 52 DOES NOT
18 INCLUDE A PURCHASER WHO PURCHASES FROM A SELLER THAT WAS A MEMBER
19 OF THE PURCHASER'S MICHIGAN AFFILIATED GROUP BUT, AS A RESULT OF
20 THE RESTRUCTURING TRANSACTION UNDER SUBSECTION (1), CEASED TO BE
21 AFFILIATED WITH THE PURCHASER.

22 (B) TOTAL SALES UNDER SECTION 51 DO NOT INCLUDE SALES TO A
23 FORMER MEMBER OF A MICHIGAN AFFILIATED GROUP THAT HAD INCLUDED
24 THE SELLER IN THE FILING OF A COMBINED RETURN UNDER THIS ACT BUT,
25 AS A RESULT OF THE RESTRUCTURING TRANSACTION UNDER SUBSECTION
26 (1), CEASED TO INCLUDE THE SELLER.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

24

1 (3) AT THE END OF THE FIFTH YEAR FOLLOWING THE RESTRUCTURING
2 TRANSACTION UNDER SUBSECTION (1), IF A CORPORATION THAT ELECTED
3 TO CALCULATE ITS SALES FACTOR SUBJECT TO SUBSECTION (2) HAS
4 FAILED TO PAY OR ACCRUE THE AMOUNT OF CAPITAL INVESTMENT REQUIRED
5 UNDER SUBSECTION (1)(D), THE CORPORATION SHALL BE REQUIRED TO
6 FILE AMENDED ANNUAL RETURNS UNDER THIS ACT FOR EACH OF THE YEARS
7 THE CORPORATION CALCULATED ITS SALES FACTOR SUBJECT TO SUBSECTION
8 (2) REGARDLESS OF THE EXPIRATION OF THE 4-YEAR STATUTE OF LIMITA-
9 TIONS UNDER SECTION 27A OF 1941 PA 122, MCL 205.27A, AND PAY ANY
10 ADDITIONAL TAX PLUS INTEREST BASED ON THE SALES FACTOR AS CALCU-
11 LATED UNDER SECTIONS 51 AND 52. INTEREST SHALL BE CALCULATED
12 FROM THE DUE DATE OF THE ORIGINAL RETURN.

13 (4) AT THE END OF THE SEVENTH TAX YEAR FOLLOWING THE
14 RESTRUCTURING TRANSACTION UNDER SUBSECTION (1), IF A CORPORATION
15 THAT ELECTED TO CALCULATE ITS SALES FACTOR SUBJECT TO SUBSECTION
16 (2) HAS FAILED TO PAY OR ACCRUE THE CAPITAL INVESTMENT REQUIRED
17 UNDER SUBSECTION (1)(E), THE CORPORATION SHALL BE REQUIRED TO
18 FILE AMENDED ANNUAL RETURNS UNDER THIS ACT FOR EACH OF THE YEARS
19 THE CORPORATION CALCULATED ITS SALES FACTOR SUBJECT TO SUBSECTION
20 (2) AND PAY ANY ADDITIONAL TAX PLUS INTEREST BASED ON THE SALES
21 FACTOR AS CALCULATED UNDER SECTIONS 51 AND 52. INTEREST SHALL BE
22 CALCULATED FROM THE DUE DATE OF THE ORIGINAL RETURN.

23 Sec. 71. (1) A taxpayer ~~who~~ THAT reasonably expects
24 liability for the tax year to exceed \$600.00 or adjustments under
25 section 23 to exceed \$100,000.00 shall file an estimated return
26 and pay an estimated tax for each quarter of the taxpayer's tax
27 year.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

25

1 (2) For taxpayers on a calendar year basis the quarterly
2 returns and estimated payments shall be made by April 30,
3 July 31, October 31, and January 31. Taxpayers not on a calendar
4 year basis shall file quarterly returns and make estimated pay-
5 ments on the appropriate due date which in the taxpayer's fiscal
6 year corresponds to the calendar year.

7 (3) The estimated payment made with each quarterly return of
8 each tax year shall be for the estimated tax base for the quarter
9 or 25% of the estimated annual liability. The second, third, and
10 fourth estimated payments in each tax year shall include adjust-
11 ments, if necessary, to correct underpayments or overpayments
12 from previous quarterly payments in the tax year to a revised
13 estimate of the annual tax liability.

14 (4) The interest provided by this act shall not be assessed
15 if any of the following occur:

16 (a) If the sum of the estimated payments equals at least 85%
17 of the liability or 1% of the gross receipts for the tax year and
18 the amount of each estimated payment reasonably approximates the
19 tax liability incurred during the quarter for which the estimated
20 payment was made.

21 (b) If the preceding year's tax liability was \$20,000.00 or
22 less and if the taxpayer submitted 4 equal installments the sum
23 of which equals the previous year's tax liability.

24 (5) Each estimated return shall be made on a form prescribed
25 by the department and shall include an estimate of the annual tax
26 liability and other information required by the commissioner.

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

26

1 This form may be combined with any other tax reporting form
2 prescribed by the department.

3 (6) With respect to a taxpayer filing an estimated tax
4 return for the taxpayer's first tax year of less than 12 months,
5 the amounts paid with each return shall be proportional to the
6 number of payments made in the first tax year.

7 (7) Payments made under this section shall be a credit
8 against the payment required with the annual tax return required
9 in section 73.

10 (8) When the commissioner considers it necessary to insure
11 payment of the tax or to provide a more efficient administration
12 of the tax, the commissioner may require filing of the returns
13 and payment of the tax for other than quarterly or annual
14 periods.

15 (9) A taxpayer ~~who~~ THAT elects under the internal revenue
16 code to file an annual federal income tax return by March 1 in
17 the year following the taxpayer's tax year and does not make a
18 quarterly estimate or payment, or does not make a quarterly esti-
19 mate or payment and files a tentative annual return with a tenta-
20 tive payment by January 15, in the year following the taxpayer's
21 tax year and a final return by April 15 in the year following the
22 taxpayer's tax year, shall have the same option in filing the
23 estimated and annual returns required by this act.

24 (10) Instead of the quarterly return prescribed in subsec-
25 tions (1) and (2) the taxpayer may elect either of the following
26 options:

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

27

1 (a) To file and pay before the sixteenth day of each month
2 an estimated return computed at the rate of 1% of the gross
3 receipts for the preceding month.

4 (b) To file and pay before the sixteenth day of the months
5 specified in subsection (2) an estimated return computed at the
6 rate of 1% of the gross receipts for the preceding quarter.

7 (11) A PENALTY FOR UNDERPAYMENT OF AN ESTIMATED TAX UNDER
8 THIS ACT SHALL NOT BE ASSESSED FOR THE TAXPAYER'S FIRST TAX YEAR
9 BEGINNING AFTER DECEMBER 31, 1998 IF THE TAXPAYER CLAIMED A
10 CREDIT UNDER SECTION 35A FOR THE FIRST TIME ON THE TAXPAYER'S
11 ANNUAL RETURN FOR THAT TAX YEAR AND A PENALTY WOULD NOT HAVE
12 APPLIED IF THE TAXPAYER HAD MADE ADJUSTMENTS UNDER SECTION 23 OR
13 23B ON THAT RETURN.

14 Sec. 77. (1) The commissioner may require or permit the
15 filing of a consolidated or combined return by an affiliated
16 group of UNITED STATES corporations ~~which are Michigan~~
17 ~~taxpayers~~ if all of the following conditions exist:

18 (a) All members of the affiliated group are Michigan
19 taxpayers.

20 (b) Each member of the affiliated group maintains a rela-
21 tionship with 1 or more members of the group which includes
22 intercorporate transactions of a substantial nature other than
23 control, ownership, or financing arrangements, or any combination
24 thereof.

25 (c) The business activities of each member of the affiliated
26 group are subject to apportionment by a specific apportionment
27 formula contained in this act which specific formula also is

HB4745, As Passed House, June 2, 1999

House Bill No. 4745

28

1 applicable to all other members of the affiliated group, and
2 would be so applicable to each member even if it were not a
3 member of the affiliated group.

4 (2) AS USED IN THIS SECTION, "UNITED STATES CORPORATION"
5 MEANS A DOMESTIC CORPORATION AS THOSE TERMS ARE DEFINED IN
6 SECTION 7701(a)(3) AND (4) OF THE INTERNAL REVENUE CODE.

7 Sec. 78. (1) Except as expressly provided in section 77, a
8 provision of this act shall not be construed to permit or require
9 the filing of a consolidated or combined return or a consolida-
10 tion or combination of the tax base or apportionment factors of 2
11 or more UNITED STATES corporations.

12 (2) AS USED IN THIS SECTION, "UNITED STATES CORPORATION"
13 MEANS A DOMESTIC CORPORATION AS THOSE TERMS ARE DEFINED IN
14 SECTION 7701(a)(3) AND (4) OF THE INTERNAL REVENUE CODE.

15 Enacting section 1. Section 31a of the single business tax
16 act, 1975 PA 228, MCL 208.31a, is repealed.

17 Enacting section 2. This amendatory act does not take
18 effect unless all of the following bills of the 90th Legislature
19 are enacted into law:

20 (a) Senate Bill No. 544.

21 (b) House Bill No. 4744.

22 Enacting section 3. The single business tax act, 1975 PA
23 228, MCL 208.1 to 208.145, is repealed effective on the January 1
24 of the year in which the rate under section 31 is reduced to
25 0.0%, and is not effective for tax years that begin on or after
26 that date.