



HOUSE BILL No. 5294

February 3, 2000, Introduced by Rep. Minore and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 4, 9, 31, and 73 (MCL 208.4, 208.9, 208.31,
and 208.73), sections 4 and 31 as amended by 1999 PA 115,
section 9 as amended by 1998 PA 539, and section 73 as amended by
1995 PA 80.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Casual transaction" means a transaction made
2 or engaged in other than in the ordinary course of repeated and
3 successive transactions of a like character, except that a trans-
4 action made or engaged in by a person that is incidental to that
5 person's regular business activity is a business activity within
6 the meaning of this act.

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

1 (3) Except as otherwise provided in this section,
2 "compensation" means all wages, salaries, fees, bonuses,
3 commissions, or other payments made in the taxable year on behalf
4 of or for the benefit of employees, officers, or directors of the
5 taxpayers. Compensation includes, but is not limited to, pay-
6 ments that are subject to or specifically exempt or excepted from
7 withholding under sections 3401 to 3406 of the internal revenue
8 code. Compensation also includes, on a cash or accrual basis
9 consistent with the taxpayer's method of accounting for federal
10 income tax purposes, payments to state and federal unemployment
11 compensation funds, payments under the federal insurance contri-
12 bution act and similar social insurance programs, payments,
13 including self-insurance, for worker's compensation insurance,
14 payments to individuals not currently working, payments to depen-
15 dents and heirs of individuals because of current or former labor
16 services rendered by those individuals, payments to a pension,
17 retirement, or profit sharing plan, and payments for insurance
18 for which employees are the beneficiaries, including payments
19 under health and welfare and noninsured benefit plans and pay-
20 ments of fees for the administration of health and welfare and
21 noninsured benefit plans. Compensation does not include any of
22 the following:

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

26 (b) Payments to an independent contractor.

1 (c) For tax years beginning after December 31, 1994,
2 payments to state and federal unemployment compensation funds.

3 (d) For tax years beginning after December 31, 1994, the
4 employer's portion of payments under the federal insurance con-
5 tributions act, chapter 21 of subtitle C of the internal revenue
6 code, 26 U.S.C. 3101 to 3128, the railroad retirement tax act,
7 chapter 22 of subtitle C of the internal revenue code, 26
8 U.S.C. 3201 to 3233, and similar social insurance programs.

9 (e) For tax years beginning after December 31, 1994, pay-
10 ments, including self-insurance payments, for worker's compensa-
11 tion insurance or federal employers' liability act insurance pur-
12 suant to chapter 149, 35 Stat. 65, 45 U.S.C. 51 to 60.

13 (F) FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 1999, PAY-
14 MENTS UNDER HEALTH AND WELFARE AND NONINSURED BENEFIT PLANS AND
15 PAYMENTS OF FEES FOR THE ADMINISTRATION OF HEALTH AND WELFARE AND
16 NONINSURED BENEFIT PLANS.

17 (4) "Department" means the revenue bureau of the department
18 of treasury.

19 Sec. 9. (1) "Tax base" means business income, before appor-
20 tionment or allocation as provided in chapter 3, even if zero or
21 negative, subject to the adjustments in ~~subsections (2) to (9)~~
22 THIS SECTION.

23 (2) Add gross interest income and dividends derived from
24 obligations or securities of states other than Michigan, in the
25 same amount that was excluded from federal taxable income, less
26 the related portion of expenses not deducted in computing federal

1 taxable income because of sections 265 and 291 of the internal
2 revenue code.

3 (3) Add all taxes on or measured by net income and the tax
4 imposed by this act to the extent the taxes were deducted in
5 arriving at federal taxable income.

6 (4) Add the following, to the extent deducted in arriving at
7 federal taxable income:

8 (a) A carryback or carryover of a net operating loss.

9 (b) A carryback or carryover of a capital loss.

10 (c) A deduction for depreciation, amortization, or immediate
11 or accelerated write-off related to the cost of tangible assets.

12 (d) A dividend paid or accrued except a dividend that repre-
13 sents a reduction of premiums to policyholders of insurance
14 companies.

15 (e) A deduction or exclusion by a taxpayer due to a classi-
16 fication as, or the payment of commissions or other fees to, a
17 domestic international sales corporation or any like special
18 classification the purpose of which is to reduce or postpone the
19 federal income tax liability. This subdivision does not apply to
20 the special provisions of sections 805, 809, and 815(c)(2)(A) of
21 the internal revenue code.

22 (f) All interest including amounts paid, credited, or
23 reserved by insurance companies as amounts necessary to fulfill
24 the policy and other contract liability requirements of sections
25 805 and 809 of the internal revenue code. Interest does not
26 include payments or credits made to or on behalf of a taxpayer by
27 a manufacturer, distributor, or supplier of inventory to defray

1 any part of the taxpayer's floor plan interest, if these payments
2 are used by the taxpayer to reduce interest expense in determin-
3 ing federal taxable income. For purposes of this section, "floor
4 plan interest" means interest paid that finances any part of the
5 taxpayer's purchase of automobile inventory from a manufacturer,
6 distributor, or supplier. However, amounts attributable to any
7 invoiced items used to provide more favorable floor plan assist-
8 ance to a taxpayer than to a person who is not a taxpayer is con-
9 sidered interest paid by a manufacturer, distributor, or
10 supplier.

11 (g) All royalties except for the following:

12 (i) On and after July 1, 1985, oil and gas royalties that
13 are excluded in the depletion deduction calculation under the
14 internal revenue code.

15 (ii) Cable television franchise fees described in section
16 622 of part III of title VI of the communications act of 1934, 47
17 U.S.C. 542.

18 (iii) Except as provided in subparagraph (iv), for the tax
19 years 1986 and after 1986, a franchise fee as defined by section
20 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in
21 the following amounts:

22 (A) For the tax years 1986, 1987, and 1988, 20% of the fran-
23 chise fee.

24 (B) For the tax years 1989 and 1990, 50% of the franchise
25 fee.

26 (C) For the tax years 1991 and after 1991, 100% of the
27 franchise fee.

1 (iv) For the tax years ending before 1991, this subdivision
2 does not apply to a fee for services paid by a franchisee that,
3 with respect to a specific provision of a franchise agreement, a
4 court of competent jurisdiction, before June 5, 1985, has deter-
5 mined is not a royalty payment under this act.

6 (v) Film rental or royalty payments paid by a theater owner
7 to a film distributor, a film producer, or a film distributor and
8 producer.

9 (vi) Royalties, fees, charges, or other payments or consid-
10 eration paid or incurred by radio or television broadcasters for
11 program matter or signals.

12 (vii) Royalties, fees, charges, or other payments or consid-
13 eration paid by a film distributor for copyrighted motion picture
14 films, program matter, or signals to a film producer.

15 (viii) For tax years that begin after December 31, 1993,
16 royalties paid by a licensee of application computer software,
17 operating system software, or system software pursuant to a
18 license agreement. As used in this subparagraph and
19 subsection (7)(c)(vii):

20 (A) "Application computer software" means a set of state-
21 ments or instructions that when incorporated in a machine usable
22 medium is capable of causing a machine or device having informa-
23 tion processing capabilities to indicate, perform, or achieve a
24 particular business function, task, or result for the nontechni-
25 cal end user. Application computer software includes any other
26 computer software that does not qualify under
27 sub-subparagraph (b) or (c).

1 (B) "Operating system software" means a set of statements or
2 instructions that when incorporated into a machine or device
3 having information processing capabilities is an interface
4 between the computer hardware and the application computer soft-
5 ware or system software.

6 (C) "System software" means a set of statements or instruc-
7 tions that interacts with operating system software that is
8 developed, licensed, and intended for the exclusive use of data
9 processing professionals to build, test, manage, or maintain
10 application computer software for which a license agreement is
11 signed by the licensor and licensee at the time of the transfer
12 of the software and that is not transferred to the licensee as
13 part of or in conjunction with a sale or lease of computer
14 hardware.

15 (h) A deduction for rent attributable to a lease back that
16 continues in effect under the former provisions of section
17 168(f)(8) of the internal revenue code of 1954 as that section
18 provided immediately before the tax reform act of 1986, Public
19 Law 99-514, became effective or to a lease back of property to
20 which the amendments made by the tax reform act of 1986 do not
21 apply as provided in section 204 of the tax reform act of 1986.

22 (5) Add compensation.

23 (6) Add a capital gain related to business activity of indi-
24 viduals to the extent excluded in arriving at federal taxable
25 income.

26 (7) Deduct the following, to the extent included in arriving
27 at federal taxable income:

1 (a) A dividend received or considered received, including
2 the foreign dividend gross-up provided for in the internal reve-
3 nue code.

4 (b) All interest except amounts paid, credited, or reserved
5 by an insurance company as amounts necessary to fulfill the
6 policy and other contract liability requirements of sections 805
7 and 809 of the internal revenue code.

8 (c) All royalties except for the following:

9 (i) On and after July 1, 1985, oil and gas royalties that
10 are included in the depletion deduction calculation under the
11 internal revenue code.

12 (ii) Except as provided in subparagraph (iii), for the 1986
13 tax year and after the 1986 tax year, a franchise fee as defined
14 in section 3 of the franchise investment law, 1974 PA 269,
15 MCL 445.1503, in the following amounts:

16 (A) For the tax years 1986, 1987, and 1988, 20% of the fran-
17 chise fee.

18 (B) For the tax years 1989 and 1990, 50% of the franchise
19 fee.

20 (C) For the tax years 1991 and after 1991, 100% of the fran-
21 chise fee.

22 (iii) For the tax years ending before 1991, this subdivision
23 does not apply to a fee for services paid by a franchisee that,
24 with respect to a specific provision of a franchise agreement, a
25 court of competent jurisdiction, before June 5, 1985, has deter-
26 mined is not a royalty payment under this act.

1 (iv) Film rental or royalty payments paid by a theater owner
2 to a film distributor, a film producer, or a film distributor and
3 producer.

4 (v) Royalties, fees, charges, or other payments or consider-
5 ation paid or incurred by radio or television broadcasters for
6 program matter or signals.

7 (vi) Royalties, fees, charges, or other payments or consid-
8 eration paid by a film distributor for copyrighted motion picture
9 films, program matter, or signals to a film producer.

10 (vii) For tax years that begin after December 31, 1997, roy-
11 alties received by a licensor, distributor, developer, marketer,
12 or copyright holder of application computer software or operating
13 system software pursuant to a license agreement. System software
14 is not included within the exception under this subparagraph.

15 (d) Rent attributable to a lease back that continues in
16 effect under the former provisions of section 168(f)(8) of the
17 internal revenue code of 1954 as that section provided immedi-
18 ately before the tax reform act of 1986, Public Law 99-514,
19 became effective or to a lease back of property to which the
20 amendments made by the tax reform act of 1986 do not apply as
21 provided in section 204 of the tax reform act of 1986.

22 (8) Deduct a capital loss not deducted in arriving at fed-
23 eral taxable income in the year the loss occurred.

24 (9) To the extent included in federal taxable income, add
25 the loss or subtract the gain from the tax base that is attribut-
26 able to another entity whose business activities are taxable

1 under this act or would be taxable under this act if the business
2 activities were in this state.

3 (10) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1998, A
4 TAXPAYER WITH GROSS RECEIPTS AS FOLLOWS MAY DEDUCT THE SPECIFIED
5 AMOUNTS:

6 (A) DEDUCT \$500,000.00 WITH GROSS RECEIPTS OF \$1,000,000.00
7 OR LESS.

8 (B) DEDUCT \$400,000.00 WITH GROSS RECEIPTS OF MORE THAN
9 \$1,000,000.00 BUT LESS THAN \$1,250,000.00.

10 (C) DEDUCT \$300,000.00 WITH GROSS RECEIPTS OF \$1,250,000.00
11 OR MORE BUT LESS THAN \$1,500,000.00.

12 Sec. 31. (1) Except as provided in subsections (5) and (6),
13 there is levied and imposed a specific tax upon the adjusted tax
14 base of every person with business activity in this state that is
15 allocated or apportioned to this state at the following rates for
16 the specified periods:

17 (a) Before October 1, 1994, 2.35%.

18 (b) After September 30, 1994 and before January 1, 1999,
19 2.30%.

20 (c) Beginning January 1, 1999 and each January 1 after 1999,
21 the rate under this subsection shall be reduced as provided in
22 subsection (5) UNTIL THE RATE IS 1.7%.

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~~
26 SECTION 35A and the exemptions prescribed by section 35. If the
27 adjusted tax base exceeds 50% of the sum of gross receipts, plus

1 the adjustments provided in section ~~23b(a) to (g)~~ 35A,
2 apportioned or allocated to Michigan with the apportionment frac-
3 tion calculated pursuant to chapter 3, the adjusted tax base may,
4 at the option of the taxpayer, be reduced by that excess. If a
5 taxpayer reduces the adjusted tax base under this subsection, the
6 taxpayer is not entitled to the adjustment provided in subsection
7 (4) for the same taxable year. This subsection does not apply to
8 an 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 of the reduction provided in subsection (2), a
12 person may elect to reduce the adjusted tax base by the percen-
13 tage that the compensation divided by the tax base exceeds 63%.
14 The deduction shall not exceed 37% of the adjusted tax base. For
15 purposes of computing the deduction allowed by this subsection,
16 as effective for the respective tax year, compensation does not
17 include amounts of compensation exempt from tax under section
18 35(1)(e). This subsection does not apply to an adjusted tax base
19 under section 22a.

20 (5) If the comprehensive annual financial report of this
21 state for a state fiscal year, published pursuant to section 494
22 of the management and budget act, 1984 PA 431, MCL 18.1494,
23 reports an ending balance of more than \$250,000,000.00 in the
24 countercyclical budget and economic stabilization fund created
25 under section 351 of the management and budget act, 1984 PA 431,
26 MCL 18.1351, for that state fiscal year, the tax rate under this
27 section shall be reduced by 0.1 percentage point on the January 1

1 following the end of the state fiscal year for which the report
2 was issued UNTIL THE RATE IS 1.7%.

3 (6) The department shall annualize the rate under this sec-
4 tion as necessary, and the applicable annualized rate shall be
5 imposed.

6 Sec. 73. (1) An annual or final return shall be filed with
7 the department in the form and content prescribed by the depart-
8 ment by the last day of the fourth month after the end of the
9 taxpayer's tax year. Any final liability shall be remitted with
10 this return. A person whose apportioned or allocated gross
11 receipts plus the adjustments provided in section ~~23b(a), (b),~~
12 ~~and (c)~~ 35A are less than the following amount for the appropri-
13 ate year need not file a return or pay the tax provided under
14 this act:

15 (a) \$40,000.00 for tax years beginning before January 1,
16 1991.

17 (b) \$60,000.00 for tax years beginning after December 31,
18 1990 and before January 1, 1992.

19 (c) \$100,000.00 for tax years beginning after December 31,
20 1991 and before January 1, 1994.

21 (d) \$137,500.00 for tax years beginning after December 31,
22 1993 and before January 1, 1995.

23 (e) \$250,000.00 for tax years beginning after December 31,
24 1994 AND BEFORE JANUARY 1, 2000.

25 (F) EXCEPT AS PROVIDED IN SUBSECTION (6), \$500,000.00 FOR
26 TAX YEARS BEGINNING AFTER DECEMBER 31, 1999.

1 (2) For a person whose apportioned or allocated gross
2 receipts plus the adjustments provided in section ~~23b(a), (b),~~
3 ~~and (c),~~ 35A are for a tax year less than 12 months, the amount
4 in subsection (1) shall be multiplied by a fraction, the numera-
5 tor of which is the number of months in the tax year and the
6 denominator of which is 12.

7 (3) The commissioner upon application of the taxpayer and
8 for good cause shown may extend the date for filing the annual
9 return. Interest at the rate of 9% per annum shall be added to
10 the amount of the tax unpaid for the period of the extension.
11 The commissioner shall require a tentative return and payment of
12 an estimated tax.

13 (4) If a taxpayer is granted an extension of time within
14 which to file the federal income tax return for any taxable year,
15 the filing of a copy of the request for extension together with a
16 tentative return and payment of an estimated tax with the commis-
17 sioner by the due date provided in subsection (1) shall automati-
18 cally extend the due date for the filing of a final return under
19 this act for an equivalent period plus 60 days. Interest at the
20 rate of 9% per annum shall be added to the amount of the tax
21 unpaid for the period of the extension.

22 (5) For tax years that end after July 6, 1994, an affiliated
23 group as defined in this act, a controlled group of corporations
24 as defined in section 1563 of the internal revenue code and fur-
25 ther described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to
26 1.414(c)-5, or an entity under common control as defined in the
27 internal revenue code shall consolidate the gross receipts of the

1 members of the affiliated group, member corporations of the
2 controlled group, or entities under common control that have
3 apportioned or allocated gross receipts, plus the adjustments
4 provided in section ~~23b(a), (b), and (c)~~ 35A, of \$100,000.00 or
5 more to determine if the group or entity shall pay a tax or file
6 a return as provided under subsection (1). An individual member
7 of an affiliated group or controlled group of corporations or an
8 entity under common control is not required to file a return or
9 pay the tax under this act if that member or entity has appor-
10 tioned or allocated gross receipts, plus the adjustments provided
11 in section ~~23b(a), (b), and (c)~~ 35A, of less than \$100,000.00.

12 (6) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 1999, A
13 PERSON WHOSE APPORTIONED OR ALLOCATED GROSS RECEIPTS PLUS THE
14 ADJUSTMENTS PROVIDED IN SECTION 35A ARE LESS THAN \$1,000,000.00
15 AND THAT PROVIDES HEALTH CARE COVERAGE OR HEALTH INSURANCE TO ITS
16 EMPLOYEES NEED NOT FILE A RETURN OR PAY THE TAX PROVIDED UNDER
17 THIS ACT.

18 Enacting section 1. This amendatory act does not take
19 effect unless House Bill No. 5295 (request no. 05125'99) of
20 the 90th Legislature is enacted into law.