

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1278 (as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 442 of 2002

Date Completed: 1-6-03

CONTENT

The bill amended the Single Business Tax (SBT) Act to provide for the calculation of business income by a foreign person and, specifically, a Canadian person, that does not have a permanent establishment in the United States or is not subject to Federal taxation. The bill is retroactive and effective for tax years beginning after December 31, 1999.

The Act provides that the tax base (upon which the SBT is levied) of a foreign person includes the sum of business income and the adjustments under the Act that are related to United States business activity, whether or not the foreign person is subject to taxation under the Internal Revenue Code (IRC). A "foreign person" is either an individual who is not a U.S. resident, or a person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the individual or person is subject to taxation under the IRC.

The bill provides that to calculate business income and adjustments that are related to United States business activity, a foreign person that does not have a permanent establishment in the United States during the tax year, or who is not subject to taxation under the IRC for the tax year, may use amounts that reasonably approximate the Federal taxable income and the permitted deductions the person would have had if the person were subject to taxation under the IRC, provided that the person does not in the ordinary course of business maintain tax or financial accounting records in accordance with the tax accounting requirements of the IRC.

To calculate business income and adjustments that are related to United States business

activity, a Canadian person that is subject to Canadian federal income tax may use amounts, properly calculated under Canada's Income Tax Act, reasonably to approximate business income and the adjustments required under the SBT Act that are related to United States business activity. Amounts calculated in this manner must be presumed to approximate business income and the adjustments that are related to United States business activity.

The tax base of a foreign or Canadian person may not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

The bill defines "Canadian person" as a foreign person that does not have a permanent establishment in the U.S. during the tax year or that is not subject to taxation under the IRC for the tax year and is either an entity formed under the laws of Canada or a province of Canada; or an individual who is physically present in Canada, in the aggregate, exceeding 182 days in the tax year.

MCL 208.19

Legislative Analyst: George Towne

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Jay Wortley

S0102\S1278es

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.