

**SUBSTITUTE FOR  
SENATE BILL NO. 1278**

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 19 (MCL 208.19), as amended by 2001 PA 278.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1       Sec. 19. (1) Except as otherwise provided in this section,  
2   for tax years that begin on or after January 1, 2000, except for  
3   a taxpayer that calculates tax base under section 22a, the tax  
4   base of a foreign person includes the sum of business income and  
5   the adjustments under section 9 that are related to United States  
6   business activity, whether or not the foreign person is subject  
7   to taxation under the internal revenue code.
- 8       (2) A foreign person shall calculate business income under  
9   this section.
- 10       (3) A foreign person shall calculate compensation by  
11   reporting total compensation paid to employees, officers, and

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1 directors of the foreign person for services performed in the  
2 United States.

3 (4) Except as otherwise provided in this section, the tax  
4 base of a foreign person is subject to all adjustments and other  
5 provisions of this act.

6 (5) As used in this section:

7 (a) "Business income" means, for a foreign person, gross  
8 income attributable to the taxpayer's United States business  
9 activity and gross income derived from sources within the United  
10 States minus the deductions allowed under the internal revenue  
11 code that are related to that gross income. Gross income  
12 includes the proceeds from sales shipped or delivered to any pur-  
13 chaser within the United States and for which title transfers  
14 within the United States; proceeds from services performed within  
15 the United States; and a pro rata proportion of the proceeds from  
16 services performed both inside and outside the United States,  
17 based on cost of performance.

18 (b) "Compensation" means, for a foreign person, the daily  
19 compensation paid to each employee, officer, and director of the  
20 foreign person multiplied by the number of days that the employ-  
21 ee, officer, or director has physical contact with the United  
22 States in the tax year. Physical contact with the United States  
23 for part of a day equals 1 day.

24 (C) "PERMANENT ESTABLISHMENT" MEANS THAT TERM AS DEFINED IN  
25 SECTION 35B(3)(A).

26 (D) ~~-(c)-~~ "United States person" means that term as defined  
27 in section 7701(a)(30) of the internal revenue code.

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1       (6) For tax years that begin after December 31, 1999 and  
2 before January 1, 2001, that portion of the tax base that is  
3 attributable to the international operation of aircraft by a for-  
4 eign corporation whose gross income is exempt under section  
5 883(a) of the internal revenue code is exempt from the tax  
6 imposed under this act.

7       (7) As used in this section and sections 46, 49, and 51,  
8 "foreign person" means either of the following:

9       (a) An individual who is not a United States resident,  
10 whether or not the individual is subject to taxation under the  
11 internal revenue code.

12       (b) A person formed under the laws of a foreign country or a  
13 political subdivision of a foreign country, whether or not the  
14 person is subject to taxation under the internal revenue code.

15       (8) TO CALCULATE BUSINESS INCOME AND THE ADJUSTMENTS UNDER  
16 SECTION 9 THAT ARE RELATED TO UNITED STATES BUSINESS ACTIVITY, A  
17 FOREIGN PERSON THAT DOES NOT HAVE A PERMANENT ESTABLISHMENT IN  
18 THE UNITED STATES DURING THE TAX YEAR OR WHO IS NOT SUBJECT TO  
19 TAXATION UNDER THE INTERNAL REVENUE CODE FOR THE TAX YEAR MAY USE  
20 AMOUNTS THAT REASONABLY APPROXIMATE THE FEDERAL TAXABLE INCOME  
21 AND THE PERMITTED DEDUCTIONS THE PERSON WOULD HAVE HAD HAD THE  
22 PERSON BEEN SUBJECT TO THE INTERNAL REVENUE CODE, PROVIDED THE  
23 FOREIGN PERSON DOES NOT IN THE ORDINARY COURSE OF ITS BUSINESS  
24 MAINTAIN TAX OR FINANCIAL ACCOUNTING RECORDS IN ACCORDANCE WITH  
25 THE TAX ACCOUNTING REQUIREMENTS OF THE INTERNAL REVENUE CODE.  
26 THE TAX BASE OF A FOREIGN PERSON DESCRIBED IN THIS SUBSECTION  
27 SHALL NOT INCLUDE GROSS INCOME FROM SALES SHIPPED OR DELIVERED TO

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1 ANY PURCHASER WITHIN THE UNITED STATES AND FOR WHICH TITLE  
2 TRANSFERS OUTSIDE THE UNITED STATES.

3 (9) TO CALCULATE BUSINESS INCOME AND THE ADJUSTMENTS UNDER  
4 SECTION 9 THAT ARE RELATED TO UNITED STATES BUSINESS ACTIVITY, A  
5 CANADIAN PERSON THAT IS SUBJECT TO CANADIAN FEDERAL INCOME TAX  
6 UNDER THE INCOME TAX ACT (R.S.C. 1985, C. 1 (5TH SUPP)) MAY USE  
7 AMOUNTS PROPERLY CALCULATED UNDER THE INCOME TAX ACT  
8 (R.S.C. 1985, C. 1 (5TH SUPP)) TO REASONABLY APPROXIMATE BUSINESS  
9 INCOME AND THE ADJUSTMENTS UNDER SECTION 9 THAT ARE RELATED TO  
10 UNITED STATES BUSINESS ACTIVITY. AMOUNTS CALCULATED UNDER THIS  
11 SUBSECTION SHALL BE PRESUMED TO REASONABLY APPROXIMATE BUSINESS  
12 INCOME AND THE ADJUSTMENTS UNDER SECTION 9 THAT ARE RELATED TO  
13 UNITED STATES BUSINESS ACTIVITY. THE TAX BASE OF A CANADIAN  
14 PERSON SHALL NOT INCLUDE GROSS INCOME FROM SALES SHIPPED OR  
15 DELIVERED TO ANY PURCHASER WITHIN THE UNITED STATES AND FOR WHICH  
16 TITLE TRANSFERS OUTSIDE THE UNITED STATES.

17 (10) AS USED IN SUBSECTION (9), "CANADIAN PERSON" MEANS A  
18 FOREIGN PERSON THAT DOES NOT HAVE A PERMANENT ESTABLISHMENT IN  
19 THE UNITED STATES DURING THE TAX YEAR OR THAT IS NOT SUBJECT TO  
20 TAXATION UNDER THE INTERNAL REVENUE CODE FOR THE TAX YEAR AND IS  
21 EITHER OF THE FOLLOWING:

22 (A) AN ENTITY FORMED UNDER THE LAWS OF CANADA OR A PROVINCE  
23 OF CANADA.

24 (B) AN INDIVIDUAL WHO IS PHYSICALLY PRESENT IN CANADA IN THE  
25 AGGREGATE EXCEEDING 182 DAYS IN THE TAX YEAR.

26 Enacting section 1. This amendatory act is retroactive and  
27 is effective for tax years that begin after December 31, 1999.