SENATE BILL No. 1098

February 12, 2002, Introduced by Senators HAMMERSTROM, SANBORN, HART, NORTH, BENNETT, MC COTTER, SHUGARS, SCHWARZ, BULLARD, BYRUM, GOUGEON, JOHNSON, GAST, GOSCHKA, GARCIA, SIKKEMA and STEIL and referred to the Committee on Finance.

A bill to amend 1975 PA 228, entitled

"Single business tax act,"

by amending section 9 (MCL 208.9), as amended by 1998 PA 539.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

(2) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

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

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

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

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

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

(d) A dividend paid or accrued except a dividend that represents a reduction of premiums to policyholders of insurance companies.

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

(f) All interest including amounts paid, credited, or reserved by insurance companies as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code. Interest does not include payments or credits made to or on behalf of a taxpayer by a manufacturer, distributor, or supplier of inventory to defray any part of the taxpayer’s floor plan interest, if these payments are used by the taxpayer to reduce interest expense in

determining federal taxable income. For purposes of this section, "floor plan interest" means interest paid that finances any part of the taxpayer's purchase of automobile inventory from a manufacturer, distributor, or supplier. However, amounts attributable to any invoiced items used to provide more favorable floor plan assistance to a taxpayer than to a person who is not a taxpayer is considered interest paid by a manufacturer, distributor, or supplier.

(g) All royalties except for the following:

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

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

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

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.

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

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

(*iv*) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that,

with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.

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

(*vi*) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(*vii*) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

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

(A) "Application computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular business function, task, or result for the nontechnical end user. Application computer software includes any other computer software that does not qualify under sub-subparagraph ~~(b) or (c)~~ (B) OR (C).

(B) "Operating system software" means a set of statements or instructions that when incorporated into a machine or device

having information processing capabilities is an interface between the computer hardware and the application computer software or system software.

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

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

(5) Add compensation.

(6) Add a capital gain related to business activity of individuals to the extent excluded in arriving at federal taxable income.

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

(a) A dividend received or considered received, including the foreign dividend gross-up provided for in the internal revenue code.

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

(c) All royalties except for the following:

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

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

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.

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

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

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

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

(*v*) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(*vi*) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

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

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

(8) Deduct a capital loss not deducted in arriving at federal taxable income in the year the loss occurred.

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

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

(10) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2000, DEDUCT, TO THE EXTENT INCLUDED IN FEDERAL TAXABLE INCOME, ANY INCOME RECEIVED BY A QUALIFIED TAXPAYER RELATED TO THE TERMINATION OF A SALES AND SERVICE AGREEMENT. AS USED IN THIS SUBSECTION, "QUALIFIED TAXPAYER" MEANS A TAXPAYER THAT IS A PARTY TO A MOTOR VEHICLE SALES AND SERVICE AGREEMENT WITH A MOTOR VEHICLE MANUFACTURER THAT ANNOUNCED IN DECEMBER 2000 THAT IT WOULD PHASE OUT THE MOTOR VEHICLE BRAND TO WHICH THE VEHICLE SALES AND SERVICE AGREEMENT RELATES AND THAT TREATS AMOUNTS RECEIVED FROM THAT MOTOR VEHICLE MANUFACTURER AS CONSIDERATION FOR THE TERMINATION OF THAT AGREEMENT.