

SENATE BILL No. 1278

May 7, 2002, Introduced by Senator BULLARD and referred to the Committee on Finance.

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

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, EXCEPT AS OTHERWISE PROVIDED IN
8 THIS SECTION, for a foreign person, gross income attributable to
9 the taxpayer's United States business activity and gross income
10 derived from sources within the United States minus the deduc-
11 tions allowed under the internal revenue code that are related to
12 that gross income. Gross income includes the proceeds from sales
13 shipped or delivered to any purchaser within the United States
14 and for which title transfers within the United States; proceeds
15 from services performed within the United States; and a pro rata
16 proportion of the proceeds from services performed both inside
17 and outside the United States, 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.

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) FOR A PERSON THAT DOES NOT HAVE A PERMANENT ESTABLISH-
16 MENT IN THE UNITED STATES DURING THE TAX YEAR OR WHO IS NOT
17 SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE FOR THE TAX
18 YEAR, "BUSINESS INCOME" MEANS AN AMOUNT CALCULATED TO REASONABLY
19 APPROXIMATE THE FEDERAL TAXABLE INCOME THE PERSON WOULD HAVE HAD
20 HAD THE PERSON BEEN SUBJECT TO TAXATION UNDER THE INTERNAL REVE-
21 NUE CODE, PROVIDED THAT THE PERSON DOES NOT IN THE ORDINARY
22 COURSE OF BUSINESS MAINTAIN TAX OR FINANCIAL ACCOUNTING RECORDS
23 IN ACCORDANCE WITH THE TAX ACCOUNTING REQUIREMENTS OF THE INTER-
24 NAL REVENUE CODE.

25 (9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, TO
26 CALCULATE THE SUM OF BUSINESS INCOME AND THE ADJUSTMENTS UNDER
27 SECTION 9 THAT ARE RELATED TO UNITED STATES BUSINESS ACTIVITY, A

1 PERSON THAT IS SUBJECT TO CANADIAN FEDERAL INCOME TAX UNDER THE
2 INCOME TAX ACT, (R.S.C. 1985, c. 1 (5TH SUPP.)) MAY USE AMOUNTS,
3 PROPERLY CALCULATED UNDER THE INCOME TAX ACT, (R.S.C. 1985, c. 1
4 (5TH SUPP.)), THAT REASONABLY APPROXIMATE BUSINESS INCOME AND THE
5 ADJUSTMENTS UNDER SECTION 9 THAT ARE RELATED TO UNITED STATES
6 BUSINESS ACTIVITY.

7 (10) FOR A PERSON DESCRIBED IN SUBSECTION (9), AN AMOUNT
8 PROPERLY CALCULATED FOR CANADIAN INCOME TAX PURPOSE UNDER THE
9 INCOME TAX ACT, (R.S.C. 1985, c. 1 (5TH SUPP.)), SHALL BE CONCLU-
10 SIVELY PRESUMED TO REASONABLY APPROXIMATE THE SAME TYPE OF AMOUNT
11 THAT WOULD HAVE BEEN CALCULATED UNDER THE INTERNAL REVENUE CODE
12 HAD THE PERSON BEEN SUBJECT TO TAXATION UNDER THE INTERNAL REVE-
13 NUE CODE.

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