

# HOUSE BILL No. 5635

March 11, 2004, Introduced by Reps. Kooiman, Huizenga, Vander Veen, Voorhees, Richardville, Garfield, Drolet, Stahl, Rocca, Pappageorge, Ehardt, Anderson, Nofs, Robertson, Amos, Nitz, Walker and DeRoche and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 7 (MCL 208.7), as amended by 2002 PA 606.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 7. (1) As used in this act:

2       (a) "Sale" or "sales" means the amounts received by the  
3 taxpayer as consideration from the following:

4       (i) The transfer of title to, or possession of, property that  
5 is stock in trade or other property of a kind which would  
6 properly be included in the inventory of the taxpayer if on hand  
7 at the close of the tax period or property held by the taxpayer  
8 primarily for sale to customers in the ordinary course of its  
9 trade or business.

10       (ii) The performance of services, which constitute business  
11 activities other than those included in subparagraph (i), or from

1 any combination of business activities described in this  
2 subparagraph and subparagraph (i).

3 (iii) The rental, lease, licensing, or use of tangible or  
4 intangible property which constitutes business activity.

5 (b) "Sale" or "sales" does not include dividends, interest,  
6 and royalties received by the taxpayer to the extent deducted  
7 from the taxpayer's tax base under section 9(7) but does include  
8 royalties, fees, or other payments or consideration not deducted  
9 from tax base under section 9(7) except those royalties paid to a  
10 franchisor as consideration for the use outside of this state of  
11 trade names, trademarks, and similar intangible property.

12 (2) "State" means any state of the United States, the  
13 District of Columbia, the Commonwealth of Puerto Rico, any  
14 territory or possession of the United States, and any foreign  
15 country, or political subdivision of any of the foregoing.

16 (3) "Gross receipts" means the entire amount received by the  
17 taxpayer from any activity whether in intrastate, interstate, or  
18 foreign commerce carried on for direct or indirect gain, benefit,  
19 or advantage to the taxpayer or to others except for the  
20 following:

21 (a) Proceeds from sales by a principal that the taxpayer  
22 collects in an agency capacity solely on behalf of the principal  
23 and delivers to the principal.

24 (b) Amounts received by the taxpayer as an agent solely on  
25 behalf of the principal that are expended by the taxpayer for any  
26 of the following:

27 (i) The performance of a service by a third party for the

1 benefit of the principal that is required by law to be performed  
2 by a licensed person.

3 (ii) The performance of a service by a third party for the  
4 benefit of the principal that the taxpayer has not undertaken a  
5 contractual duty to perform.

6 (iii) Principal and interest under a mortgage loan or land  
7 contract, lease or rental payments, or taxes, utilities, or  
8 insurance premiums relating to real or personal property owned or  
9 leased by the principal.

10 (iv) A capital asset of a type that is, or under the internal  
11 revenue code will become, eligible for depreciation,  
12 amortization, or accelerated cost recovery by the principal for  
13 federal income tax purposes, or for real property owned or leased  
14 by the principal.

15 (v) Property not described under subparagraph (iv) purchased  
16 by the taxpayer on behalf of the principal and that the taxpayer  
17 does not take title to or use in the course of performing its  
18 contractual business activities.

19 (vi) Fees, taxes, assessments, levies, fines, penalties, or  
20 other payments established by law that are paid to a governmental  
21 entity and that are the legal obligation of the principal.

22 (c) Amounts that are excluded from gross income of a foreign  
23 corporation engaged in the international operation of aircraft  
24 under section 883(a) of the internal revenue code.

25 (d) Amounts received by an advertising agency used to acquire  
26 advertising media time, space, production, or talent on behalf of  
27 another person.

1           (e) Notwithstanding any other provision of this section,  
2 amounts received by a taxpayer that manages real property owned  
3 by the taxpayer's client that are deposited into a separate  
4 account kept in the name of the taxpayer's client and that are  
5 not reimbursements to the taxpayer and are not indirect payments  
6 for management services that the taxpayer provides to that  
7 client.

8           (f) Proceeds from the taxpayer's transfer of an account  
9 receivable if the sale that generated the account receivable was  
10 included in gross receipts for federal income tax purposes. This  
11 subdivision does not apply to a taxpayer that during the tax year  
12 both buys and sells any receivables.

13          (g) Proceeds from any of the following:

14           (i) The original issue of stock or equity instruments.

15           (ii) The original issue of debt instruments.

16          (h) Refunds from returned merchandise.

17          (i) Cash and in-kind discounts.

18          (j) Trade discounts.

19          (k) Federal, state, or local tax refunds.

20          (l) Security deposits.

21          (m) Payment of the principal portion of loans.

22          (n) Value of property received in a like-kind exchange.

23          (o) Proceeds from a sale, transaction, exchange, involuntary  
24 conversion, or other disposition of tangible, intangible, or real  
25 property that is a capital asset as defined in section 1221(a) of  
26 the internal revenue code or land that qualifies as property used  
27 in the trade or business as defined in section 1231(b) of the

1 internal revenue code, less any gain from the disposition to the  
2 extent that gain is included in federal taxable income.

3 (p) The proceeds from a policy of insurance, a settlement of  
4 a claim, or a judgment in a civil action less any proceeds under  
5 this subdivision that are included in federal taxable income.

6 (q) For tax years that begin after December 31, 2003,  
7 proceeds from the sale of rental property used in a trade or  
8 business or capital gains realized on the sale of real property  
9 used in a trade or business.