

SENATE BILL No. 709

September 18, 2003, Introduced by Senators BRATER and THOMAS 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 2001 PA 230.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 9. (1) "Tax base" means business income, before
2 apportionment or allocation as provided in chapter 3, even if
3 zero or negative, subject to the adjustments in this section.
- 4 (2) Add gross interest income and dividends derived from
5 obligations or securities of states other than Michigan, in the
6 same amount that was excluded from federal taxable income, less
7 the related portion of expenses not deducted in computing federal
8 taxable income because of sections 265 and 291 of the internal
9 revenue code.
- 10 (3) Add all taxes on or measured by net income and the tax
11 imposed by this act to the extent the taxes were deducted in

1 arriving at federal taxable income.

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

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

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

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

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

11 (e) A deduction or exclusion by a taxpayer due to a
12 classification as, or the payment of commissions or other fees
13 to, a domestic international sales corporation or any like
14 special classification the purpose of which is to reduce or
15 postpone the federal income tax liability. This subdivision does
16 not apply to the special provisions of sections 805, 809, and
17 815(c)(2)(A) of the internal revenue code.

18 (f) All interest including amounts paid, credited, or
19 reserved by insurance companies as amounts necessary to fulfill
20 the policy and other contract liability requirements of
21 sections 805 and 809 of the internal revenue code. Interest does
22 not include payments or credits made to or on behalf of a
23 taxpayer by a manufacturer, distributor, or supplier of inventory
24 to defray any part of the taxpayer's floor plan interest, if
25 these payments are used by the taxpayer to reduce interest
26 expense in determining federal taxable income. For purposes of
27 this section, "floor plan interest" means interest paid that

1 finances any part of the taxpayer's purchase of automobile
2 inventory from a manufacturer, distributor, or supplier.
3 However, amounts attributable to any invoiced items used to
4 provide more favorable floor plan assistance to a taxpayer than
5 to a person who is not a taxpayer is considered interest paid by
6 a manufacturer, distributor, or supplier.

7 (g) All royalties except for the following:

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

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

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

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

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

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

24 (iv) For the tax years ending before 1991, this subdivision
25 does not apply to a fee for services paid by a franchisee that,
26 with respect to a specific provision of a franchise agreement, a
27 court of competent jurisdiction, before June 5, 1985, has

1 determined is not a royalty payment under this act.

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

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

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

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

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

24 (B) "Operating system software" means a set of statements or
25 instructions that when incorporated into a machine or device
26 having information processing capabilities is an interface
27 between the computer hardware and the application computer

1 software or system software.

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

11 (ix) For tax years that begin after December 31, 2000,
12 royalties, fees, or other payments or consideration paid or
13 incurred by a franchisee to a franchisor to establish or maintain
14 the franchise relationship other than payments for the sale or
15 lease of inventory, equipment, fixtures, or real property at fair
16 rental or fair market value.

17 (h) A deduction for rent attributable to a lease back that
18 continues in effect under the former provisions of
19 section 168(f)(8) of the internal revenue code of 1954 as that
20 section provided immediately before the tax reform act of 1986,
21 Public Law 99-514, became effective or to a lease back of
22 property to which the amendments made by the tax reform act of
23 1986 do not apply as provided in section 204 of the tax reform
24 act of 1986.

25 (5) Add compensation.

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

1 income.

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

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

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

11 (c) All royalties except for the following:

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

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

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

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

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

25 (iii) For the tax years ending before 1991, this subdivision
26 does not apply to a fee for services paid by a franchisee that,
27 with respect to a specific provision of a franchise agreement, a

1 court of competent jurisdiction, before June 5, 1985, has
2 determined is not a royalty payment under this act.

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

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

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

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

18 (viii) For tax years that begin after December 31, 2000,
19 royalties, fees, or other payments or consideration paid or
20 incurred by a franchisee to a franchisor to establish or maintain
21 the franchise relationship other than payments for the sale or
22 lease of inventory, equipment, fixtures, or real property at fair
23 rental or fair market value.

24 (d) Rent attributable to a lease back that continues in
25 effect under the former provisions of section 168(f)(8) of the
26 internal revenue code of 1954 as that section provided
27 immediately before the tax reform act of 1986, Public Law 99-514,

1 became effective or to a lease back of property to which the
2 amendments made by the tax reform act of 1986 do not apply as
3 provided in section 204 of the tax reform act of 1986.

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

6 (9) To the extent included in federal taxable income, add the
7 loss or subtract the gain from the tax base that is attributable
8 to another entity whose business activities are taxable under
9 this act or would be taxable under this act if the business
10 activities were in this state.

11 (10) For tax years that begin after December 31, 2002, add
12 any settlement amount paid pursuant to an agreement with a state
13 or federal governmental agency based on questionable practices
14 related to stock or securities transactions to the extent that
15 amount was deducted in determining taxable income. For the
16 taxpayer's 2003 tax year only, add an amount equal to any
17 settlement amount paid pursuant to an agreement with a state or
18 federal governmental agency based on questionable practices
19 related to stock or securities transactions to the extent that
20 amount was deducted in determining taxable income for the
21 taxpayer's 2002 tax year.