

# SENATE BILL No. 704

November 30, 1989, Introduced by Senators SHINKLE, CARL, POSTHUMUS, WELBORN, CROSEY, DI NELLO, NICHOLS, DILLINGHAM, SCHWARZ, CRUCE, GEAKE, DE GROW, MACK, FAXON, FREDRICKS, ARTHURHULTZ, BINSFELD and O'BRIEN and referred to the Committee on Finance.

A bill to amend sections 9, 23, 31, and 73 of Act No. 228 of the Public Acts of 1975, entitled "Single business tax act," section 9 as amended by Act No. 80 of the Public Acts of 1985, section 23 as amended by Act No. 208 of the Public Acts of 1981, and section 31 as amended by Act No. 262 of the Public Acts of 1987, being sections 208.9, 208.23, 208.31, and 208.73 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 9, 23, 31, and 73 of Act No. 228 of the  
2 Public Acts of 1975, section 9 as amended by Act No. 80 of the  
3 Public Acts of 1985, section 23 as amended by Act No. 208 of the  
4 Public Acts of 1981, and section 31 as amended by Act No. 262 of  
5 the Public Acts of 1987, being sections 208.9, 208.23, 208.31,

1 and 208.73 of the Michigan Compiled Laws, are amended to read as  
2 follows:

3       Sec. 9. (1) "Tax base" means business income, before appor-  
4 tionment ~~—~~ or allocation as provided in chapter 3, even if zero  
5 or negative, subject to the adjustments in subsections (2) to  
6 (9).

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

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

16       (4) Add, to the extent deducted in arriving at federal tax-  
17 able income:

18       (a) ~~Any carry-back or carry-forward~~ A CARRYBACK OR  
19 CARRYOVER of a net operating loss.

20       (b) ~~Any carry-back or carry-forward~~ A CARRYBACK OR  
21 CARRYOVER of a capital loss.

22       (c) ~~Any~~ A deduction for depreciation, amortization, or  
23 immediate or accelerated write-off related to the cost of tangi-  
24 ble assets for which a capital acquisition deduction was claimed  
25 in any tax year pursuant to section 23, and for the 1976 tax  
26 year, 72%, and for the 1977 tax year and subsequent tax years  
27 100% of any deduction for other depreciation, amortization, or

1 immediate or accelerated write-off related to the cost of  
2 tangible assets. THIS SUBDIVISION DOES NOT APPLY ON AND AFTER  
3 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SUBDIVISION  
4 (I).

5 (d) ~~Any dividends~~ A DIVIDEND paid or accrued except  
6 ~~dividends that represent~~ A DIVIDEND THAT REPRESENTS A reduction  
7 of premiums to policyholders of insurance companies.

8 (e) ~~Any~~ A deduction or exclusion by a taxpayer due to a  
9 classification as, or the payment of commissions or other fees  
10 to, a domestic international sales corporation or any like spe-  
11 cial classification the purpose of which is to reduce or postpone  
12 the federal income tax liability. This subdivision shall not  
13 apply to the special provisions of sections 805, 809, AND  
14 815(c)(2)(A) ~~, 823(c), and 824(a)~~ of the internal revenue  
15 code.

16 (f) All interest including amounts paid, credited, or  
17 reserved by insurance companies as amounts necessary to fulfill  
18 the policy and other contract liability requirements of sections  
19 805 and 809 of the internal revenue code. For tax years begin-  
20 ning after December 31, 1978 and ending on or before December 31,  
21 1984, interest ~~shall~~ DOES not include payments or credits made  
22 to or on behalf of a taxpayer by a manufacturer, distributor, or  
23 supplier of inventory to defray any part of the taxpayer's floor  
24 plan interest, if these payments are not deducted as interest  
25 expense in determining federal taxable income. For purposes of  
26 this section, "floor plan interest" means interest paid to any  
27 financial organization ~~which~~ THAT finances any part of the

1 taxpayer's purchase of automobile inventory from a manufacturer,  
2 distributor, or supplier.

3 (g) All royalties except for the following:

4 (i) ~~Commencing~~ ON AND AFTER July 1, 1985, ~~and~~  
5 ~~thereafter,~~ oil and gas royalties ~~which~~ THAT are excluded in  
6 the depletion deduction calculation under the internal revenue  
7 code.

8 (ii) Cable television franchise fees as defined ~~by~~ IN sec-  
9 tion 622 of ~~Public Law 98-549~~ PART III OF TITLE VI OF THE COM-  
10 MUNICATIONS ACT OF 1934, 47 U.S.C. ~~622~~ 542.

11 (iii) Except as provided in subparagraph (iv), for the TAX  
12 YEARS 1986 ~~tax year and thereafter~~ AND AFTER 1986, a franchise  
13 fee as defined by section ~~2(3) or 3(1)~~ 3 of THE FRANCHISE  
14 INVESTMENT LAW, Act No. 269 of the Public Acts of 1974, being  
15 ~~sections 445.1502 and~~ SECTION 445.1503 of the Michigan Compiled  
16 Laws, in the following amounts:

17 (A) For the tax years 1986, 1987, and 1988, 20% of the fran-  
18 chise fee.

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

21 (C) For the tax years 1991 and ~~thereafter~~ AND AFTER 1991,  
22 100% OF THE FRANCHISE FEE.

23 (iv) For the tax years ending before 1991, this subdivision  
24 ~~shall~~ DOES not apply to a fee for services paid by a franchisee  
25 ~~which~~ THAT, with respect to a specific provision of a franchise  
26 agreement, a court of competent jurisdiction, ~~has, prior to the~~

1 ~~effective date of this amendatory act,~~ BEFORE JUNE 5, 1985, HAS  
 2 determined is not a royalty payment under this act.

3 (h) ~~Any~~ A deduction for rent attributable to a lease back  
 4 THAT CONTINUES IN EFFECT under THE FORMER PROVISIONS OF section  
 5 168(f)(8) of the internal revenue code AS THAT SECTION PROVIDED  
 6 IMMEDIATELY BEFORE THE ENACTMENT OF THE TAX REFORM ACT OF 1986,  
 7 PUBLIC LAW 99-514, OR TO A LEASE BACK OF PROPERTY TO WHICH THE  
 8 AMENDMENTS MADE BY THE TAX REFORM ACT OF 1986 DO NOT APPLY AS  
 9 PROVIDED IN SECTION 204 OF THE TAX REFORM ACT OF 1986.

10 (I) A DEDUCTION FOR DEPRECIATION, AMORTIZATION, OR IMMEDIATE  
 11 OR ACCELERATED WRITE-OFF RELATED TO THE COST OF TANGIBLE ASSETS.

12 (5) Add compensation as defined in section ~~4(3)~~ 4.

13 (6) Add ~~any~~ A capital ~~gains~~ GAIN related to business  
 14 activity of individuals to the extent excluded in arriving at  
 15 federal taxable income.

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

18 (a) ~~Dividends~~ A DIVIDEND received or ~~deemed~~ CONSIDERED  
 19 received, including the foreign dividend gross-up provided for in  
 20 the internal revenue code.

21 (b) All interest except amounts paid, credited, or reserved  
 22 by AN insurance ~~companies~~ COMPANY as amounts necessary to ful-  
 23 fill the policy and other contract liability requirements of sec-  
 24 tions 805 and 809 of the internal revenue code.

25 (c) All royalties except for the following:

26 (i) ~~Commencing~~ ON AND AFTER July 1, 1985, ~~and~~  
 27 ~~thereafter,~~ oil and gas royalties ~~which~~ THAT are included in

1 the depletion deduction calculation under the internal revenue  
2 code.

3 (ii) Except as provided in subparagraph (iii), for the 1986  
4 tax year and ~~thereafter~~ AFTER THE 1986 TAX YEAR, a franchise  
5 fee as defined in section ~~2(3) or 3(1)~~ 3 of Act No. 269 of the  
6 Public Acts of 1974, ~~being sections 445.1502 and 445.1503 of the~~  
7 ~~Michigan Compiled Laws,~~ in the following amounts:

8 (A) For the tax years 1986, 1987, and 1988, 20% of the fran-  
9 chise fee.

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

12 (C) For the tax years 1991 and ~~thereafter~~ AFTER 1991, 100%  
13 of the franchise fee.

14 (iii) For the tax years ending before 1991, this subdivision  
15 ~~shall~~ DOES not apply to a fee for services paid by a franchisee  
16 ~~which~~ THAT, with respect to a specific provision of a franchise  
17 agreement, a court of competent jurisdiction, ~~has, prior to the~~  
18 ~~effective date of this amendatory act,~~ BEFORE JUNE 5, 1985, HAS  
19 determined is not a royalty payment under this act.

20 (d) Rent attributable to a lease BACK THAT CONTINUES IN  
21 EFFECT under THE FORMER PROVISIONS OF section 168(f)(8) of the  
22 internal revenue code AS THAT SECTION PROVIDED IMMEDIATELY BEFORE  
23 THE ENACTMENT OF THE TAX REFORM ACT OF 1986, PUBLIC LAW 99-514,  
24 OR TO A LEASE BACK OF PROPERTY TO WHICH THE AMENDMENTS MADE BY  
25 THE TAX REFORM ACT OF 1986 DO NOT APPLY AS PROVIDED IN SECTION  
26 204 OF THE TAX REFORM ACT OF 1986.

1           (8) Deduct ~~any~~ A capital loss not deducted in arriving at  
2 federal taxable income in the year the loss occurred.

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

8           Sec. 23. After allocation as provided in section 40 or  
9 apportionment as provided in section 41, the tax base shall be  
10 adjusted by ~~the following: (a) Deduct the cost, including fab-~~  
11 ~~rication and installation, paid or accrued in the taxable year of~~  
12 ~~tangible assets of a type which are, or under the internal reve-~~  
13 ~~nue code will become, eligible for depreciation, amortization, or~~  
14 ~~accelerated capital cost recovery for federal income tax purposes~~  
15 ~~excluding costs of assets which are defined in section 1250 of~~  
16 ~~the internal revenue code, except that for tangible assets which~~  
17 ~~are subject to a lease back agreement under section 168(f)(8) of~~  
18 ~~the internal revenue code, the deduction shall be allowed only to~~  
19 ~~the lessee or sublessee as the case may be under the 168(f)(8)~~  
20 ~~agreement. This deduction shall be multiplied by a fraction, the~~  
21 ~~numerator of which is the payroll factor plus the property factor~~  
22 ~~and the denominator of which is 2. (b) Add the gross proceeds or~~  
23 ~~benefit derived from the sale or other disposition of the tangi-~~  
24 ~~ble assets defined in subdivision (a) minus the gain and plus the~~  
25 ~~loss from the sale reflected in federal taxable income and minus~~  
26 ~~the gain from the sale or other disposition added to the tax base~~  
27 ~~in section 9(6). This addition shall be multiplied by a~~

1 ~~fraction, the numerator of which is the payroll factor plus the~~  
2 ~~property factor and the denominator of which is 2. As used in~~  
3 ~~this subdivision, "sale or other disposition" shall not include~~  
4 ~~the transfer of tangible assets that are leased back to the~~  
5 ~~transferor under section 168(f)(8) of the internal revenue code.~~  
6 ~~(c) Deduct the cost, including fabrication and installation,~~  
7 ~~excluding the cost deducted under subdivision (a) paid or accrued~~  
8 ~~in the taxable year of tangible assets of a type which are, or~~  
9 ~~under the internal revenue code will become eligible for depreci-~~  
10 ~~ation, amortization, or accelerated capital cost recovery for~~  
11 ~~federal income tax purposes, provided that the assets are physi-~~  
12 ~~cally located in Michigan. (d) Add the gross proceeds or benefit~~  
13 ~~derived from the sale or other disposition of the tangible assets~~  
14 ~~defined in subsection (c), minus the gain, multiplied by the~~  
15 ~~apportionment factor for the taxable year as defined in chapter~~  
16 ~~3, and plus the loss, multiplied by the apportionment factor as~~  
17 ~~defined in chapter 3, from the sale or other disposition~~  
18 ~~reflected in federal taxable income and minus the gain from the~~  
19 ~~sale or other disposition added to the tax base in section 9(6).~~  
20 ~~(e) Deduct any DEDUCTING available business loss. "Business~~  
21 ~~loss" means any negative amount after allocation or apportionment~~  
22 ~~as provided in chapter 3 and adjustments as provided in subdivi-~~  
23 ~~sions (a) to (d) without regard to the deduction under this~~  
24 ~~subdivision~~ SECTION. The business loss shall be carried for-  
25 ward to the year next following the loss year as an offset to the  
26 allocated or apportioned tax base, ~~including the adjustments~~  
27 ~~provided in subdivisions (a) to (d),~~ then successively to the



1 next 9 taxable years following the loss year or until the loss is  
2 used up, whichever occurs first, but for not more than 10 taxable  
3 years after the loss year.

4 ~~(f) Deduct any unused net operating loss carryover arising~~  
5 ~~under former sections 32(3) and 34(3) of Act No. 281 of the~~  
6 ~~Public Acts of 1967, pertaining to net operating losses of corpo-~~  
7 ~~rations and financial institutions. This deduction shall not be~~  
8 ~~made for a tax year ending after December 31, 1980.~~

9 Sec. 31. (1) There is ~~hereby~~ levied and imposed a spe-  
10 cific tax of ~~2.35%~~ 1.8% upon the adjusted tax base of every  
11 person with business activity in this state ~~which~~ THAT is allo-  
12 cated or apportioned to this state.

13 (2) As used in this section, "adjusted tax base" means the  
14 tax base allocated or apportioned to this state pursuant to chap-  
15 ter 3 ~~and~~ WITH the ~~adjustments~~ ADJUSTMENT permitted by sec-  
16 tion 23 and the exemptions permitted by ~~sections 35 and 37~~  
17 SECTION 35. If the adjusted tax base exceeds 50% of the ~~sum of~~  
18 gross receipts, ~~plus the adjustments provided in section 23(b)~~  
19 ~~and (d)~~, apportioned or allocated to Michigan with the appor-  
20 tionment fraction calculated pursuant to chapter 3, the adjusted  
21 tax base may, at the option of the taxpayer, be reduced by such  
22 excess. The taxpayer shall not be entitled to the adjustment  
23 provided in subsection (4) for the same taxable year. This sub-  
24 section does not apply to an adjusted tax base under section  
25 22a.

26 (3) The tax ~~so~~ levied and imposed UNDER THIS SECTION is  
27 upon the privilege of doing business and not upon income.

1 (4) In lieu of the adjustment provided in subsection (2), a  
2 person may elect to reduce the adjusted tax base by the percen-  
3 tage that the compensation divided by the tax base exceeds 63%.  
4 The deduction shall not exceed 37% of the adjusted tax base. For  
5 ~~the 1976 tax year and each tax year thereafter, for~~ purposes of  
6 computing the ~~deduction~~ REDUCTION allowed by this subsection,  
7 as effective for the respective tax year, compensation shall not  
8 include amounts of compensation exempt from tax under section  
9 35(1)(e) or (f). This subsection does not apply to an adjusted  
10 tax base under section 22a.

11 Sec. 73. (1) An annual or final return shall be filed with  
12 the department, in the form and content prescribed by the depart-  
13 ment ~~by~~ ON OR BEFORE the last day of the fourth month after the  
14 end of the taxpayer's tax year. Any final liability shall be  
15 remitted with this return. A person whose apportioned or allo-  
16 cated gross receipts ~~plus the adjustments provided in section~~  
17 ~~23(b) and (d)~~ are less than \$40,000.00 need not file a return or  
18 pay the tax provided under this act. For a person whose appor-  
19 tioned or allocated gross receipts ~~plus the adjustments provided~~  
20 ~~in section 23(b) and (d)~~ are for a tax year less than 12 months,  
21 the \$40,000.00 shall be multiplied by a fraction, the numerator  
22 of which is the number of months in the tax year and the denomi-  
23 nator of which is 12.

24 (2) The commissioner upon application of the taxpayer and  
25 for good cause shown may extend the date for filing the annual  
26 return. Interest at the rate of 9% per annum shall be added to  
27 the amount of the tax unpaid for the period of the extension.

1 The commissioner shall require a tentative return and payment of  
2 an estimated tax.

3 (3) When a taxpayer is granted an extension of time within  
4 which to file the federal income tax return for any taxable year,  
5 the filing of a copy of the request for extension together with a  
6 tentative return and payment of an estimated tax with the commis-  
7 sioner by the due date provided in subsection (1) shall automati-  
8 cally extend the due date for the filing of a final return under  
9 this act for an equivalent period plus 60 days. Interest at the  
10 rate of 9% per annum shall be added to the amount of the tax  
11 unpaid for the period of the extension.