

SENATE BILL No. 878

May 19, 1988, Introduced by Senators SHINKLE, ENGLER, SCHWARZ, EHLERS, ARTHURHULTZ, DILLINGHAM, CARL, NICHOLS, DE GROW, GEAKE, CRUCE, FAUST, VAUGHN, CONROY, POSTHUMUS, IRWIN, DINGELL, WELBORN, CROPSEY, DI NELLO, FESSLER, FREDRICKS, FAXON, MACK, SEDERBURG, CHERRY, J. HART, BARCIA, GAST, BINSFELD, O'BRIEN and N. SMITH and referred to the Committee on Finance.

A bill to amend sections 9 and 31 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 and section 31 as amended by Act No. 262 of the Public Acts of 1987, being sections 208.9 and 208.31 of the Michigan Compiled Laws; to add section 32; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 9 and 31 of Act No. 228 of the Public
2 Acts of 1975, section 9 as amended by Act No. 80 of the Public
3 Acts of 1985 and section 31 as amended by Act No. 262 of the
4 Public Acts of 1987, being sections 208.9 and 208.31 of the
5 Michigan Compiled Laws, are amended and section 32 is added to
6 read as follows:

1 Sec. 9. (1) "Tax base" means, EXCEPT AS OTHERWISE
2 SPECIFICALLY PROVIDED IN THIS ACT, business income, before
3 apportionment ~~—~~ or allocation as provided in chapter 3, even if
4 zero or negative, subject to the adjustments in subsections (2)
5 to (9).

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

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

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

17 (a) ~~Any carry back or carry forward~~ A CARRYBACK OR
18 CARRYFORWARD of a net operating loss.

19 (b) ~~Any carry back or carry forward~~ A CARRYBACK OR
20 CARRYFORWARD of a capital loss.

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

1 amortization, or immediate or accelerated write-off related to
2 the cost of tangible assets.

3 (d) ~~Any dividends~~ DIVIDENDS paid or accrued except divi-
4 dends that represent reduction of premiums to policyholders of
5 insurance companies.

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

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

(g) All royalties except for the following:

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

(ii) Cable television franchise fees as defined ~~by~~ IN section 622 of ~~Public Law 98-549~~ PART III OF TITLE VI OF THE COMMUNICATIONS ACT OF 1934, 47 U.S.C. ~~622~~ 542.

(iii) Except as provided in subparagraph (iv), for the 1986 tax year and ~~thereafter~~ SUBSEQUENT TAX YEARS, a franchise fee as defined by section ~~2(3) or~~ 3(1) of Act No. 269 of the Public Acts of 1974, being ~~sections 445.1502 and~~ SECTION 445.1503 of the Michigan Compiled Laws, 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 ~~thereafter~~ SUBSEQUENT TAX YEARS, 100% OF THE FRANCHISE FEE.

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

(h) ~~Any~~ A deduction for rent attributable to a lease back ~~under~~ TO WHICH FORMER section 168(f)(8) of the internal revenue

1 code CONTINUES TO APPLY AS PROVIDED IN SECTION 204(a) (4) OF THE
2 TAX REFORM ACT OF 1986, PUBLIC LAW 99-514.

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

4 (6) Add ~~any~~ capital gains related to business activity of
5 individuals to the extent excluded in arriving at federal taxable
6 income.

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

9 (a) Dividends received or deemed received, including the
10 foreign dividend gross-up provided for in the internal revenue
11 code.

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

16 (c) All royalties except for the following:

17 (i) Commencing July 1, 1985 and ~~thereafter~~ AFTER THAT
18 DATE, oil and gas royalties ~~which~~ THAT are included in the
19 depletion deduction calculation under the internal revenue code.

20 (ii) Except as provided in subparagraph (iii), for the 1986
21 tax year and ~~thereafter~~ SUBSEQUENT TAX YEARS, a franchise fee
22 as defined in section ~~2(3) or~~ 3(1) of Act No. 269 of the Public
23 Acts of 1974, ~~being sections 445.1502 and 445.1503 of the~~
24 ~~Michigan Compiled Laws,~~ in the following amounts:

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

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

3 (C) For the tax years 1991 and ~~thereafter~~ SUBSEQUENT TAX
4 YEARS, 100% OF THE FRANCHISE FEE.

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

11 (d) Rent attributable to a lease ~~under~~ TO WHICH FORMER
12 section 168(f)(8) of the internal revenue code continues to apply
13 as provided in section 204(a) (4) OF THE TAX REFORM ACT OF 1986,
14 PUBLIC LAW 99-514.

15 (8) Deduct any capital loss not deducted in arriving at fed-
16 eral taxable income in the year the loss occurred.

17 (9) To the extent included in federal taxable income, add
18 the loss or subtract the gain from the tax base that is attribut-
19 able to another entity whose business activities are taxable
20 under this act or would be taxable under this act if the business
21 ~~activities~~ were in this state.

22 Sec. 31. (1) There is ~~hereby~~ levied and imposed BY THIS
23 ACT a specific tax of 2.35% upon the adjusted tax base of every
24 person ~~with~~ THAT HAS business activity in this state ~~which~~
25 THAT is allocated or apportioned to this state. THIS SUBSECTION
26 DOES NOT APPLY TO A PERSON THAT ELECTS TO BE SUBJECT TO THE TAX
27 IMPOSED BY SECTION 32.

1 (2) As used in this section, "adjusted tax base" means the
2 tax base allocated or apportioned to this state pursuant to chap-
3 ter 3 ~~and~~ WITH the adjustments permitted by section 23 and the
4 exemptions permitted by ~~sections~~ SECTION 35. ~~and 37.~~ If the
5 adjusted tax base exceeds 50% of the sum of gross receipts plus
6 the adjustments provided in section 23(b) and (d), apportioned or
7 allocated to Michigan with the apportionment fraction calculated
8 pursuant to chapter 3, the adjusted tax base may, at the option
9 of the taxpayer, be reduced by ~~such~~ THAT excess. ~~The~~ A tax-
10 payer ~~shall~~ THAT REDUCES ITS TAX BASE BY THAT EXCESS IS not
11 ~~be~~ entitled to the adjustment provided in subsection (4) for
12 the same taxable year. This subsection does not apply to an
13 adjusted tax base under section 22a.

14 (3) The tax ~~so~~ levied and imposed IN SUBSECTION (1) is
15 upon the privilege of doing business and not upon income.

16 (4) In lieu of the GROSS RECEIPTS adjustment provided in
17 subsection (2), a person may elect to reduce the adjusted tax
18 base by the percentage that the compensation divided by the tax
19 base exceeds 63%. The deduction shall not exceed 37% of the
20 adjusted tax base. For the 1976 tax year and each SUBSEQUENT tax
21 year, ~~thereafter,~~ for purposes of computing the deduction
22 allowed by this subsection ~~—~~ as effective for the respective
23 tax year, compensation ~~shall~~ DOES not include amounts of com-
24 pensation exempt from tax under section 35(1)(e). ~~or (f).~~ This
25 subsection does not apply to an adjusted tax base under section
26 22a.

1 SEC. 32. (1) THERE IS LEVIED AND IMPOSED A SPECIFIC TAX OF
2 4.6% ON THE TAX BASE OF A PERSON THAT HAS BUSINESS ACTIVITY IN
3 THIS STATE, THAT HAS GROSS RECEIPTS OF LESS THAN \$6,000,000.00,
4 AND THAT ELECTS TO BE SUBJECT TO THE TAX IMPOSED BY THIS
5 SECTION. THE TAX BASE UNDER THIS SECTION IS NOT SUBJECT TO THE
6 ADJUSTMENTS UNDER SECTION 23.

7 (2) FOR THE PURPOSES OF THIS SECTION:

8 (A) "TAX BASE" MEANS THE PERSON'S BUSINESS INCOME DERIVED
9 FROM BUSINESS ACTIVITY IN THIS STATE.

10 (B) "GROSS RECEIPTS" MEANS, FOR A CONTROLLED GROUP OF CORPO-
11 RATIONS OR AN ENTITY UNDER COMMON CONTROL AS USED IN THE INTERNAL
12 REVENUE CODE OR FOR AN AFFILIATED GROUP, THE CONSOLIDATED GROSS
13 RECEIPTS OF THE CORPORATIONS, ENTITY, OR GROUP.

14 (3) THE TAX IMPOSED BY THIS SECTION IS UPON THE PRIVILEGE OF
15 DOING BUSINESS AND NOT UPON INCOME, AND SHALL BE LEVIED AND COL-
16 LECTED IN THE SAME MANNER AS THE TAX LEVIED AND IMPOSED UNDER
17 SECTION 31. IF ANOTHER PROVISION OF THIS ACT CONFLICTS WITH A
18 PROVISION OF THIS SECTION, THIS SECTION CONTROLS.

19 Section 2. Section 36 of Act No. 228 of the Public Acts of
20 1975, being section 208.36 of the Michigan Compiled Laws, is
21 repealed.