

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4745**

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending sections 3, 4, 5, 23, 23b, 31, 45a, 46, 49, 51, 71, 77, and 78 (MCL 208.3, 208.4, 208.5, 208.23, 208.23b, 208.31, 208.45a, 208.46, 208.49, 208.51, 208.71, 208.77, and 208.78), section 4 as amended by 1995 PA 285, section 5 as amended by 1987 PA 253, sections 23 and 23b as amended by 1998 PA 504, section 31 as amended by 1994 PA 247, section 45a as added by 1995 PA 282, and section 71 as amended by 1984 PA 281, and by adding sections 19, 35a, and 54; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "Affiliated group" means 2 or more UNITED
2 STATES corporations, 1 of which owns or controls, directly or
3 indirectly, 80% or more of the capital stock with voting rights
4 of the other UNITED STATES corporation or UNITED STATES

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1 corporations. AS USED IN THIS SUBSECTION, "UNITED STATES
2 CORPORATION" MEANS A DOMESTIC CORPORATION AS THOSE TERMS ARE
3 DEFINED IN SECTION 7701(a)(3) AND (4) OF THE INTERNAL REVENUE
4 CODE.

5 (2) "Business activity" means a transfer of legal or equita-
6 ble title to or rental of property, whether real, personal, or
7 mixed, tangible or intangible, or the performance of services, or
8 a combination thereof, made or engaged in, or caused to be made
9 or engaged in, within this state, whether in intrastate, inter-
10 state, or foreign commerce, with the object of gain, benefit, or
11 advantage, whether direct or indirect, to the taxpayer or to
12 others, but shall not include the services rendered by an
13 employee to his employer, services as a director of a corpora-
14 tion, or a casual transaction. Although an activity of a tax-
15 payer may be incidental to another or other of his business
16 activities, each activity shall be considered to be business
17 engaged in within the meaning of this act.

18 (3) "Business income" means federal taxable income, except
19 that for a person other than a corporation it means that part of
20 federal taxable income derived from business activity. For a
21 partnership, business income includes payments and items of
22 income and expense which are attributable to business activity of
23 the partnership and separately reported to the partners.

24 Sec. 4. (1) "Casual transaction" means a transaction made
25 or engaged in other than in the ordinary course of repeated and
26 successive transactions of a like character, except that a
27 transaction made or engaged in by a person that is incidental to

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1 that person's regular business activity is a business activity
2 within the meaning of this act.

3 (2) "Commissioner" means the state commissioner of revenue.

4 (3) Except as otherwise provided in this section,
5 "compensation" means all wages, salaries, fees, bonuses, commis-
6 sions, or other payments made in the taxable year on behalf of or
7 for the benefit of employees, officers, or directors of the
8 taxpayers. ~~and~~ COMPENSATION INCLUDES, BUT IS NOT LIMITED TO,
9 PAYMENTS THAT ARE subject to or specifically exempt OR EXCEPTED
10 from withholding under ~~chapter 24,~~ sections 3401 to 3406 of the
11 internal revenue code. Compensation ALSO includes, on a cash or
12 accrual basis consistent with the taxpayer's method of accounting
13 for federal income tax purposes, payments to state and federal
14 unemployment compensation funds, payments under the federal
15 insurance contribution act and similar social insurance programs,
16 payments, including self-insurance, for worker's compensation
17 insurance, payments to individuals not currently working, pay-
18 ments to dependents and heirs of individuals because of current
19 or former labor services rendered by those individuals, payments
20 to a pension, retirement, or profit sharing plan, and payments
21 for insurance for which employees are the beneficiaries, includ-
22 ing payments under health and welfare and noninsured benefit
23 plans and payments of fees for the administration of health and
24 welfare and noninsured benefit plans. Compensation does not
25 include any of the following:

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1 (a) Discounts on the price of the taxpayer's merchandise or
2 services sold to the taxpayer's employees, officers, or directors
3 that are not available to other customers.

4 (b) Payments to an independent contractor.

5 (c) For tax years beginning after December 31, 1994, pay-
6 ments to state and federal unemployment compensation funds.

7 (d) For tax years beginning after December 31, 1994, the
8 employer's portion of payments under the federal insurance
9 ~~contribution~~ CONTRIBUTIONS act, CHAPTER 21 OF SUBTITLE C OF THE
10 INTERNAL REVENUE CODE, 26 U.S.C. 3101 TO 3128, the railroad
11 retirement tax act, chapter 22 of ~~title 26 of the United States~~
12 ~~Code~~ SUBTITLE C OF THE INTERNAL REVENUE CODE, 26 U.S.C. 3201 to
13 3233, and similar social insurance programs.

14 (e) For tax years beginning after December 31, 1994, pay-
15 ments, including self-insurance payments, for worker's compensa-
16 tion insurance or federal ~~employers~~ EMPLOYERS' liability act
17 insurance pursuant to chapter 149, 35 Stat. 65, 45 U.S.C. 51 to
18 60.

19 (4) "Department" means the revenue ~~division~~ BUREAU of the
20 department of treasury.

21 Sec. 5. (1) "Employee" means an employee as defined in sec-
22 tion 3401(c) of the internal revenue code. A person from whom an
23 employer is required to withhold for federal income tax purposes
24 shall prima facie be deemed an employee.

25 (2) "Employer" means an employer as defined in section
26 3401(d) of the internal revenue code. A person required to

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1 withhold for federal income tax purposes shall prima facie be
2 deemed an employer.

3 (3) "Federal taxable income" means taxable income as defined
4 in section 63 of the internal revenue code.

5 (4) "Internal revenue code" means the United States internal
6 revenue code of 1986 ~~, as amended, and~~ in effect on January 1,
7 ~~1987~~ 1999 OR, AT THE OPTION OF THE TAXPAYER, IN EFFECT FOR THE
8 TAX YEAR.

9 SEC. 19. (1) FOR TAX YEARS THAT BEGIN ON OR AFTER JANUARY
10 1, 2000, EXCEPT FOR A TAXPAYER THAT CALCULATES TAX BASE UNDER
11 SECTION 22A, THE TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF
12 BUSINESS INCOME AND THE ADJUSTMENTS UNDER SECTION 9 THAT ARE
13 RELATED TO UNITED STATES BUSINESS ACTIVITY, WHETHER OR NOT THE
14 FOREIGN PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE
15 CODE.

16 (2) A FOREIGN PERSON SHALL CALCULATE BUSINESS INCOME UNDER
17 THIS SECTION.

18 (3) A FOREIGN PERSON SHALL CALCULATE COMPENSATION BY REPORT-
19 ING TOTAL COMPENSATION PAID TO EMPLOYEES, OFFICERS, AND DIRECTORS
20 OF THE FOREIGN PERSON FOR SERVICES PERFORMED IN THE UNITED
21 STATES.

22 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE TAX
23 BASE OF A FOREIGN PERSON IS SUBJECT TO ALL ADJUSTMENTS AND OTHER
24 PROVISIONS OF THIS ACT.

25 (5) AS USED IN THIS SECTION:

26 (A) "BUSINESS INCOME" MEANS, FOR A FOREIGN PERSON, GROSS
27 INCOME ATTRIBUTABLE TO THE TAXPAYER'S UNITED STATES BUSINESS

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1 ACTIVITY AND GROSS INCOME DERIVED FROM SOURCES WITHIN THE UNITED
2 STATES MINUS THE DEDUCTIONS ALLOWED UNDER THE INTERNAL REVENUE
3 CODE THAT ARE RELATED TO THAT GROSS INCOME. GROSS INCOME
4 INCLUDES THE PROCEEDS FROM SALES SHIPPED OR DELIVERED TO ANY PUR-
5 CHASER WITHIN THE UNITED STATES AND FOR WHICH TITLE TRANSFERS
6 WITHIN THE UNITED STATES; PROCEEDS FROM SERVICES PERFORMED WITHIN
7 THE UNITED STATES; AND A PRO RATA PROPORTION OF THE PROCEEDS FROM
8 SERVICES PERFORMED BOTH INSIDE AND OUTSIDE THE UNITED STATES,
9 BASED ON COST OF PERFORMANCE. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 (B) "COMPENSATION" MEANS, FOR A FOREIGN PERSON, THE DAILY
13 COMPENSATION PAID TO EACH EMPLOYEE, OFFICER, AND DIRECTOR OF THE
14 FOREIGN PERSON MULTIPLIED BY THE NUMBER OF DAYS THAT THE EMPLOY-
15 EE, OFFICER, OR DIRECTOR HAS PHYSICAL CONTACT WITH THE UNITED
16 STATES IN THE TAX YEAR. PHYSICAL CONTACT WITH THE UNITED STATES
17 FOR PART OF A DAY EQUALS 1 DAY.

18 (C) "UNITED STATES PERSON" MEANS THAT TERM AS DEFINED IN
19 SECTION 7701(a)(30) OF THE INTERNAL REVENUE CODE.

20 (6) AS USED IN THIS SECTION AND SECTIONS 46, 49, AND 51,
21 "FOREIGN PERSON" MEANS EITHER OF THE FOLLOWING:

22 (A) AN INDIVIDUAL WHO IS NOT A UNITED STATES RESIDENT,
23 WHETHER OR NOT THE INDIVIDUAL IS SUBJECT TO TAXATION UNDER THE
24 INTERNAL REVENUE CODE.

25 (B) A PERSON FORMED UNDER THE LAWS OF A FOREIGN COUNTRY OR A
26 POLITICAL SUBDIVISION OF A FOREIGN COUNTRY, WHETHER OR NOT THE
27 PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE.

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1 Sec. 23. After allocation as provided in section 40 or
2 apportionment as provided in section 41, the tax base shall be
3 adjusted by the following:

4 (a) For a tax year ending before March 31, 1991 for which
5 subdivision (c) is not in effect, deduct the cost, including fab-
6 rication and installation, paid or accrued in the taxable year of
7 tangible assets of a type that are, or under the internal revenue
8 code will become, eligible for depreciation, amortization, or
9 accelerated capital cost recovery for federal income tax purposes
10 excluding costs of assets that are defined in section 1250 of the
11 internal revenue code. However, for tangible assets that are
12 subject to a lease back agreement under the former provisions of
13 section 168(f)(8) of the internal revenue code as that section
14 provided immediately before the tax reform act of 1986, Public
15 Law 99-514, became effective or to a lease back of property to
16 which the amendments made by the tax reform act of 1986 do not
17 apply as provided in section 204 of the tax reform act of 1986,
18 the deduction shall be allowed only to the lessee or sublessee
19 under the 168(f)(8) agreement. This deduction shall be multi-
20 plied by a fraction, the numerator of which is the payroll factor
21 plus the property factor and the denominator of which is 2.

22 (b) For a tax year ending before March 31, 1991 for which
23 subdivision (c) is not in effect, deduct the cost including fab-
24 rication and installation, excluding the cost deducted under sub-
25 division (a) paid or accrued in the taxable year of tangible
26 assets of a type that are, or under the internal revenue code
27 will become eligible for depreciation, amortization, or

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1 accelerated capital cost recovery for federal income tax
2 purposes, provided that the assets are physically located in
3 Michigan.

4 (c) For a tax year beginning after September 30, 1989 but
5 before January 1, 1997 and for tax years beginning after
6 December 31, 1996 AND BEFORE JANUARY 1, 2000 as provided in
7 subdivision (h), deduct the cost, including fabrication and
8 installation, paid or accrued in the taxable year of tangible
9 assets of a type that are, or under the internal revenue code
10 will become, eligible for depreciation, amortization, or acceler-
11 ated capital cost recovery for federal income tax purposes. This
12 deduction shall be multiplied by the apportionment factor for the
13 taxable year as defined in chapter 3. This subdivision does not
14 apply to a taxpayer's first tax year ending after September 29,
15 1991.

16 (d) For a taxpayer's first tax year ending after September
17 29, 1991, the adjustment provided by this section shall be calcu-
18 lated by computing the sum of the product of the cost, including
19 fabrication and installation, paid or accrued in the immediately
20 preceding tax year of tangible assets of a type that are, or
21 under the internal revenue code will become, eligible for depre-
22 ciation, amortization, or accelerated capital cost recovery for
23 federal income tax purposes multiplied by the apportionment
24 factor as defined in chapter 3 for that immediately preceding tax
25 year, plus the product of the cost, including fabrication and
26 installation, paid or accrued in the taxpayer's first tax year
27 ending after September 29, 1991 of tangible assets of a type that

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1 are, or under the internal revenue code will become, eligible for
2 depreciation, amortization, or accelerated capital cost recovery
3 for federal income tax purposes multiplied by the apportionment
4 factor as defined in chapter 3 for that tax year, and reducing
5 that sum by the adjustment for the cost, including fabrication
6 and installation, paid or accrued in the immediately preceding
7 tax year of tangible assets of a type that were, or under the
8 internal revenue code will become, eligible for depreciation,
9 amortization, or accelerated capital cost recovery for federal
10 income tax purposes claimed by the taxpayer or allowed to the
11 taxpayer under this act in the immediately preceding tax year.
12 If the adjustment calculated pursuant to this subdivision is a
13 positive amount, it shall be deducted from the tax base after
14 allocation or apportionment, and if the adjustment calculated
15 pursuant to this subdivision is a negative amount, it shall,
16 without reference to the negative sign, be added to the tax base
17 after allocation and apportionment. If any portion of this sub-
18 division is determined to be invalid pursuant to a final appel-
19 late court decision, this subdivision shall be severed from this
20 section.

21 (e) Except as provided in subdivisions (g), (h), and (i), for
22 a tax year beginning after December 31, 1996 AND BEFORE JANUARY
23 1, 2000, deduct the cost, including fabrication and installation,
24 paid or accrued in the taxable year of tangible assets of a type
25 that are, or under the internal revenue code will become, eligi-
26 ble for depreciation, amortization, or accelerated capital cost
27 recovery for federal income tax purposes, provided that the

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1 assets are physically located in this state for use in a business
2 activity in this state and are not mobile tangible assets. This
3 deduction shall be multiplied by the apportionment factor for the
4 tax year as prescribed in chapter 3.

5 (f) Except as provided in subdivision (h) and if subdivision
6 (e) is in effect, for a tax year beginning after December 31,
7 1996 AND BEFORE JANUARY 1, 2000, deduct the cost, including fab-
8 rication and installation, paid or accrued in the taxable year of
9 mobile tangible assets of a type that are, or under the internal
10 revenue code will become, eligible for depreciation, amortiza-
11 tion, or accelerated capital cost recovery for federal income tax
12 purposes. This deduction shall be multiplied by the apportion-
13 ment factor for the tax year as prescribed in chapter 3. As used
14 in this section and section 23b, "mobile tangible assets" means
15 all of the following:

16 (i) Motor vehicles that have a gross vehicle weight rating
17 of 10,000 pounds or more and are used to transport persons for
18 compensation or property.

19 (ii) Rolling stock, aircraft, and watercraft used by the
20 owner to transport persons or property for compensation or used
21 by the owner to transport the owner's property for sale, rental,
22 or further processing.

23 (iii) Equipment used directly in completion of or in con-
24 struction contracts for the construction, alteration, repair, or
25 improvement of property.

26 (g) Except as provided in subdivision (h) and if subdivision
27 (e) is in effect, for tangible assets, other than mobile tangible

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1 assets, purchased or acquired for use outside of this state in a
2 tax year beginning after December 31, 1996 AND BEFORE JANUARY 1,
3 2000 and physically located in this state after the assets are
4 purchased or acquired for use in a business activity, deduct the
5 federal basis used for determining gain or loss as of the date
6 the tangible assets were physically located in this state for use
7 in a business activity plus the cost of fabrication and installa-
8 tion of the tangible assets in this state. This deduction shall
9 be multiplied by the apportionment factor for the tax year as
10 prescribed in chapter 3.

11 (h) For tax years beginning after December 31, 1996 AND
12 BEFORE JANUARY 1, 2000 and if subdivision (e) is in effect, sub-
13 divisions (e), (f), and (g) do not apply and subdivision (c) does
14 apply to a taxpayer that meets all of the following criteria:

15 (i) The taxpayer has its headquarters in this state.

16 (ii) The taxpayer's date of incorporation, as filed with the
17 corporate division of the corporation, securities, and land
18 development bureau of the department of consumer and industry
19 services, is on or before January 9, 1996.

20 (iii) The taxpayer's sales at retail of prescriptions are
21 more than 2% and less than 10% of the taxpayer's total sales at
22 retail.

23 (iv) The taxpayer sells at retail all of the following and,
24 for tax years that begin before January 1, 1998, more than 50%
25 or, for tax years that begin on and after January 1, 1998, more
26 than 20% of the taxpayer's total sales is comprised of the retail
27 sales of the following:

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1 (A) Fresh, frozen, or processed food, food products, or
2 consumable necessities.

3 (B) Household products.

4 (C) Prescriptions.

5 (D) Health and beauty care products.

6 (E) Cosmetics.

7 (F) Pet products.

8 (G) Carbonated beverages.

9 (H) Beer, wine, or liquor.

10 (i) For a tax year beginning after December 31, 1996 AND
11 BEFORE JANUARY 1, 2000 if subdivision (e) is not in effect,
12 deduct the cost, including fabrication and installation, paid or
13 accrued in the taxable year of tangible assets of a type that
14 are, or under the internal revenue code will become, eligible for
15 depreciation, amortization, or accelerated capital cost recovery
16 for federal income tax purposes. This deduction shall be multi-
17 plied by the apportionment factor for the tax year as prescribed
18 in chapter 3.

19 Sec. 23b. After allocation as provided in section 40 or
20 apportionment as provided in section 41, the tax base shall be
21 adjusted by the following:

22 (a) If the cost of an asset was paid or accrued in a tax
23 year ending before March 31, 1991 for which a deduction under
24 section 23(c) is not in effect, add the gross proceeds or benefit
25 derived from the sale or other disposition of the tangible assets
26 described in section 23(a) minus the gain and plus the loss from
27 the sale reflected in federal taxable income and minus the gain

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1 from the sale or other disposition added to the tax base in
2 section 9(6). This addition shall be multiplied by a fraction,
3 the numerator of which is the payroll factor plus the property
4 factor and the denominator of which is 2. As used in this subdi-
5 vision, "sale or other disposition" does not include the transfer
6 of tangible assets that are leased back to the transferor under
7 the former provisions of section 168(f)(8) of the internal reve-
8 nue code as that section provided immediately before the tax
9 reform act of 1986, Public Law 99-514, became effective or to a
10 lease back of property to which the amendments made by the tax
11 reform act of 1986 do not apply as provided in section 204 of the
12 tax reform act of 1986.

13 (b) If the cost of an asset was paid or accrued in a tax
14 year ending before March 31, 1991 for which a deduction under
15 section 23(c) is not in effect, add the gross proceeds or benefit
16 derived from the sale or other disposition of the tangible assets
17 described in section 23(b) for a tax year beginning before
18 January 1, 1991 minus the gain, multiplied by the apportionment
19 factor for the taxable year as prescribed in chapter 3, and plus
20 the loss, multiplied by the apportionment factor as prescribed in
21 chapter 3, from the sale or other disposition reflected in fed-
22 eral taxable income and minus the gain from the sale or other
23 disposition added to the tax base in section 9(6).

24 (c) If the cost of an asset was paid or accrued in a tax
25 year beginning after September 30, 1989 but before January 1,
26 1997 or paid or accrued in a tax year beginning after
27 December 31, 1996 AND BEFORE JANUARY 1, 2000 as provided in

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1 subdivision (f), add the gross proceeds or benefit derived from
2 the sale or other disposition of the tangible assets described in
3 section 23(c) minus the gain and plus the loss from the sale
4 reflected in federal taxable income and minus the gain from the
5 sale or other disposition added to the tax base in section 9(6).
6 This addition shall be multiplied by the apportionment factor for
7 the tax year as prescribed by chapter 3.

8 (d) Except as provided in subdivisions (f) and (g) and if
9 the cost of tangible assets described in section 23(e), (f), or
10 (g) was paid or accrued in a tax year beginning after
11 December 31, 1996 AND BEFORE JANUARY 1, 2000, add the gross pro-
12 ceeds or benefit derived from the sale or other disposition of
13 the tangible assets minus the gain and plus the loss from the
14 sale or other disposition reflected in federal taxable income and
15 minus the gain from the sale or other disposition added to the
16 tax base in section 9(6). This addition shall be multiplied by
17 the apportionment factor for the tax year as prescribed in
18 chapter 3.

19 (e) Except as provided in subdivision (f) and if section
20 23(e) is in effect, for assets other than mobile tangible assets
21 purchased or acquired in a tax year beginning after December 31,
22 1996 AND BEFORE JANUARY 1, 2000 that were eligible for a deduc-
23 tion under section 23(e) or (g) and that were transferred out of
24 this state, add the federal basis used for determining gain or
25 loss as of the date of the transfer. This addition shall be
26 multiplied by the apportionment factor for the tax year as
27 prescribed in chapter 3.

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1 (f) For tax years beginning after December 31, 1996 and if
2 section 23(e) is in effect, subdivisions (d) and (e) do not apply
3 and subdivision (c) does apply to a taxpayer that meets all of
4 the following criteria:

5 (i) The taxpayer has its headquarters in this state.

6 (ii) The taxpayer's date of incorporation, as filed with the
7 corporate division of the corporation, securities, and land
8 development bureau of the department of consumer and industry
9 services, is on or before January 9, 1996.

10 (iii) The taxpayer's sales at retail of prescriptions are
11 more than 2% and less than 10% of the taxpayer's total sales at
12 retail.

13 (iv) The taxpayer sells at retail all of the following and,
14 for tax years that begin before January 1, 1998, more than 50%
15 or, for tax years that begin on and after January 1, 1998, more
16 than 20% of the taxpayer's total sales is comprised of the retail
17 sales of the following:

18 (A) Fresh, frozen, or processed food, food products, or con-
19 sumable necessities.

20 (B) Household products.

21 (C) Prescriptions.

22 (D) Health and beauty care products.

23 (E) Cosmetics.

24 (F) Pet products.

25 (G) Carbonated beverages.

26 (H) Beer, wine, or liquor.

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1 (g) If section 23(e) is not in effect and if the cost of
2 tangible assets described in section 23(i) was paid or accrued in
3 a tax year beginning after December 31, 1996 AND BEFORE JANUARY
4 1, 2000, add the gross proceeds or benefit derived from the sale
5 or other disposition of the tangible assets minus the gain and
6 plus the loss from the sale or other disposition reflected in
7 federal taxable income and minus the gain from the sale or other
8 disposition added to the tax base in section 9(6). This addition
9 shall be multiplied by the apportionment factor for the tax year
10 as prescribed in chapter 3.

11 (h) Deduct any available business loss. As used in this
12 subdivision, "business loss" means a negative amount after allo-
13 cation or apportionment as provided in chapter 3 and after
14 adjustments as provided in section 23 and subdivisions (a) to (g)
15 without regard to the deduction under this subdivision. The
16 business loss shall be carried forward to the year next following
17 the loss year as an offset to the allocated or apportioned tax
18 base including the adjustments provided in subdivisions (a) to
19 (g), then successively to the next 9 taxable years following the
20 loss year or until the loss is used up, whichever occurs first,
21 but for not more than 10 taxable years after the loss year.

22 Sec. 31. (1) ~~There~~ EXCEPT AS PROVIDED IN SUBSECTIONS (5)
23 AND (6), THERE is levied and imposed a specific tax ~~of 2.35%~~
24 ~~before October 1, 1994 and 2.30% after September 30, 1994 calcu-~~
25 ~~lated as provided in section 31a~~ upon the adjusted tax base of
26 every person with business activity in this state that is

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1 allocated or apportioned to this state — AT THE FOLLOWING RATES
2 FOR THE SPECIFIED PERIODS:

3 (A) BEFORE OCTOBER 1, 1994, 2.35%.

4 (B) AFTER SEPTEMBER 30, 1994 AND BEFORE JANUARY 1, 1999,
5 2.30%.

6 (C) BEGINNING JANUARY 1, 1999 AND EACH JANUARY 1 AFTER 1999,
7 THE RATE UNDER THIS SUBSECTION SHALL BE REDUCED AS PROVIDED IN
8 SUBSECTION (5).

9 (2) As used in this section, "adjusted tax base" means the
10 tax base allocated or apportioned to this state pursuant to chap-
11 ter 3 with the adjustments prescribed by sections 23 and 23b and
12 the exemptions prescribed by section 35. If the adjusted tax
13 base exceeds 50% of the sum of gross receipts plus the adjust-
14 ments provided in section 23b(a) ~~, (b), and (c)~~ TO (G), appor-
15 tioned or allocated to Michigan with the apportionment fraction
16 calculated pursuant to chapter 3, the adjusted tax base may, at
17 the option of the taxpayer, be reduced by that excess. If a tax-
18 payer reduces the adjusted tax base under this subsection, the
19 taxpayer is not entitled to the adjustment provided in subsection
20 (4) for the same taxable year. This subsection does not apply to
21 an adjusted tax base under section 22a.

22 (3) The tax levied under this section and imposed is upon
23 the privilege of doing business and not upon income.

24 (4) In lieu of the reduction provided in subsection (2), a
25 person may elect to reduce the adjusted tax base by the percen-
26 tage that the compensation divided by the tax base exceeds 63%.
27 The deduction shall not exceed 37% of the adjusted tax base. For

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1 purposes of computing the deduction allowed by this subsection,
2 as effective for the respective tax year, compensation does not
3 include amounts of compensation exempt from tax under section
4 35(1)(e). This subsection does not apply to an adjusted tax base
5 under section 22a.

6 (5) IF THE COMPREHENSIVE ANNUAL FINANCIAL REPORT OF THIS
7 STATE FOR A STATE FISCAL YEAR, PUBLISHED PURSUANT TO SECTION 494
8 OF THE MANAGEMENT AND BUDGET ACT, 1984 PA 431, MCL 18.1494,
9 REPORTS AN ENDING BALANCE OF MORE THAN \$250,000,000.00 IN THE
10 COUNTERCYCLICAL BUDGET AND ECONOMIC STABILIZATION FUND CREATED
11 UNDER SECTION 351 OF THE MANAGEMENT AND BUDGET ACT, 1984 PA 431,
12 MCL 18.1351, FOR THAT STATE FISCAL YEAR, THE TAX RATE UNDER THIS
13 SECTION SHALL BE REDUCED BY 0.1 PERCENTAGE POINT ON THE JANUARY 1
14 FOLLOWING THE END OF THE STATE FISCAL YEAR FOR WHICH THE REPORT
15 WAS ISSUED.

16 (6) THE DEPARTMENT SHALL ANNUALIZE THE RATE UNDER THIS SEC-
17 TION AS NECESSARY, AND THE APPLICABLE ANNUALIZED RATE SHALL BE
18 IMPOSED.

19 SEC. 35A. (1) FOR A TAX YEAR BEGINNING AFTER DECEMBER 31,
20 1999, A TAXPAYER MAY CLAIM A CREDIT AGAINST THE TAX IMPOSED BY
21 THIS ACT OF EQUAL TO THE PERCENTAGE DETERMINED UNDER SUBSECTION
22 (2) MULTIPLIED BY THE RESULT OF SUBTRACTING THE SUM OF THE
23 AMOUNTS CALCULATED UNDER SUBDIVISIONS (D), (E), AND (F) FROM THE
24 SUM OF THE AMOUNTS CALCULATED UNDER SUBDIVISIONS (A), (B), AND
25 (C):

26 (A) CALCULATE THE COST, INCLUDING FABRICATION AND
27 INSTALLATION, PAID OR ACCRUED IN THE TAXABLE YEAR OF TANGIBLE

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1 ASSETS OF A TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE CODE
2 WILL BECOME, ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR ACCELER-
3 ATED CAPITAL COST RECOVERY FOR FEDERAL INCOME TAX PURPOSES, PRO-
4 VIDED THAT THE ASSETS ARE PHYSICALLY LOCATED IN THIS STATE FOR
5 USE IN A BUSINESS ACTIVITY IN THIS STATE AND ARE NOT MOBILE TAN-
6 GIBLE ASSETS.

7 (B) CALCULATE THE COST, INCLUDING FABRICATION AND INSTALLA-
8 TION, PAID OR ACCRUED IN THE TAXABLE YEAR OF MOBILE TANGIBLE
9 ASSETS OF A TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE CODE
10 WILL BECOME, ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR ACCELER-
11 ATED CAPITAL COST RECOVERY FOR FEDERAL INCOME TAX PURPOSES. THIS
12 AMOUNT SHALL BE MULTIPLIED BY THE APPORTIONMENT FACTOR FOR THE
13 TAX YEAR AS PRESCRIBED IN CHAPTER 3.

14 (C) FOR TANGIBLE ASSETS, OTHER THAN MOBILE TANGIBLE ASSETS,
15 PURCHASED OR ACQUIRED FOR USE OUTSIDE OF THIS STATE IN A TAX YEAR
16 BEGINNING AFTER DECEMBER 31, 1996 AND PHYSICALLY LOCATED IN THIS
17 STATE IN A TAX YEAR BEGINNING AFTER DECEMBER 31, 1999 AND AFTER THE
18 ASSETS ARE
19 PURCHASED OR ACQUIRED FOR USE IN A BUSINESS ACTIVITY, CALCULATE
20 THE FEDERAL BASIS USED FOR DETERMINING GAIN OR LOSS AS OF THE
21 DATE THE TANGIBLE ASSETS WERE PHYSICALLY LOCATED IN THIS STATE
22 FOR USE IN A BUSINESS ACTIVITY PLUS THE COST OF FABRICATION AND
23 INSTALLATION OF THE TANGIBLE ASSETS IN THIS STATE.

24 (D) IF THE COST OF TANGIBLE ASSETS DESCRIBED IN SUBDIVISION
25 (A) WAS PAID OR ACCRUED IN A TAX YEAR BEGINNING AFTER DECEMBER
26 31, 1999, CALCULATE THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
27 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS MINUS THE
GAIN, MULTIPLIED BY THE APPORTIONMENT FACTOR FOR THE TAXABLE YEAR

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1 AS PRESCRIBED IN CHAPTER 3, AND PLUS THE LOSS, MULTIPLIED BY THE
2 APPORTIONMENT FACTOR FOR THE TAXABLE YEAR AS PRESCRIBED IN CHAP-
3 TER 3 FROM THE SALE OR OTHER DISPOSITION REFLECTED IN FEDERAL
4 TAXABLE INCOME AND MINUS THE GAIN FROM THE SALE OR OTHER DISPOSI-
5 TION ADDED TO THE TAX BASE IN SECTION 9(6).

6 (E) IF THE COST OF TANGIBLE ASSETS DESCRIBED IN SUBDIVISION
7 (B) WAS PAID OR ACCRUED IN A TAX YEAR BEGINNING AFTER DECEMBER
8 31, 1999, CALCULATE THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
9 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS MINUS THE
10 GAIN AND PLUS THE LOSS FROM THE SALE OR OTHER DISPOSITION
11 REFLECTED IN FEDERAL TAXABLE INCOME AND MINUS THE GAIN FROM THE
12 SALE OR OTHER DISPOSITION ADDED TO THE TAX BASE IN SECTION 9(6).
13 THIS AMOUNT SHALL BE MULTIPLIED BY THE APPORTIONMENT FACTOR FOR
14 THE TAX YEAR AS PRESCRIBED IN CHAPTER 3.

15 (F) FOR ASSETS PURCHASED OR ACQUIRED IN A TAX YEAR BEGINNING
16 AFTER DECEMBER 31, 1996 THAT WERE ELIGIBLE FOR A DEDUCTION UNDER
17 SUBDIVISION (A) OR (C) AND THAT WERE TRANSFERRED OUT OF THIS
18 STATE, CALCULATE THE FEDERAL BASIS USED FOR DETERMINING GAIN OR
19 LOSS AS OF THE DATE OF THE TRANSFER.

20 (2) THE AMOUNT CALCULATED UNDER SUBSECTION (1) SHALL BE
21 MULTIPLIED BY A PERCENTAGE DETERMINED BY DIVIDING THE TAX RATE
22 FOR THE TAX YEAR IN WHICH THE CREDIT IS CLAIMED BY 2.3% AND
23 MULTIPLYING THAT RESULT BY 0.85%.

24 (3) FOR A TAX YEAR IN WHICH THE AMOUNT CALCULATED UNDER SUB-
25 SECTION (1) AND MULTIPLIED BY THE PERCENTAGE DETERMINED UNDER
26 SUBSECTION (2) IS NEGATIVE, THE ABSOLUTE VALUE OF THAT AMOUNT IS
27 ADDED TO THE TAXPAYER'S TAX LIABILITY FOR THE TAX YEAR.

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1 (4) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX
2 YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED UNDER THIS
3 SECTION EXCEED THE TAX LIABILITY OF THE TAXPAYER FOR THE TAX
4 YEAR, THE EXCESS SHALL NOT BE REFUNDED, BUT MAY BE CARRIED FOR-
5 WARD AS AN OFFSET TO THE TAX LIABILITY IN SUBSEQUENT TAX YEARS
6 FOR 9 TAXABLE YEARS OR UNTIL THE EXCESS CREDIT IS USED UP, WHICH-
7 EVER OCCURS FIRST.

8 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
9 CREDIT PROVIDED IN THIS SECTION SHALL BE TAKEN BEFORE ANY OTHER
10 CREDIT UNDER THIS ACT AND THE CREDITS UNDER OTHER SECTIONS OF
11 THIS ACT SHALL BE CALCULATED USING THE TAX LIABILITY AFTER THE
12 CALCULATION OF THE CREDIT UNDER THIS SECTION AND, TO THE EXTENT
13 PROVIDED BY LAW, AFTER THE CALCULATION OF CREDITS UNDER OTHER
14 SECTIONS OF THIS ACT.

15 (6) A TAXPAYER THAT REDUCES THE ADJUSTED TAX BASE UNDER SEC-
16 TION 31(2) SHALL NOT CLAIM A CREDIT UNDER THIS SECTION.

17 (7) A TAXPAYER THAT REDUCES THE ADJUSTED TAX BASE UNDER SEC-
18 TION 31(4) SHALL REDUCE THE CREDIT UNDER THIS SECTION BY A PER-
19 CENTAGE NOT TO EXCEED 100% DETERMINED BY DIVIDING THE APPLICABLE TAX
20 RATE UNDER SEC-
21 TION 31(1) BY THE PERCENTAGE DETERMINED UNDER SUBSECTION (2)
22 AND MULTIPLYING THE RESULT BY THE PERCENTAGE REDUCTION TO THE
23 ADJUSTED TAX BASE CLAIMED BY THE TAXPAYER FOR THE TAX YEAR UNDER
24 SECTION 31(4).

24 Sec. 45a. (1) Except as provided in subsection (2) and
25 for tax years beginning after December 31, 1998, all of the
26 tax base, other than the tax base derived principally from
27 transportation, financial, or insurance carrier services or

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1 specifically allocated, shall be apportioned to this state by
2 multiplying the tax base by a percentage, which is the sum of all
3 of the following percentages:

4 (a) The property factor multiplied by 5%.

5 (b) The payroll factor multiplied by 5%.

6 (c) The sales factor multiplied by 90%.

7 (2) For tax years beginning after December 31, 1998 AND
8 BEFORE JANUARY 1, 2000 if section 23(e) is not in effect, all of
9 the tax base, other than the tax base derived principally from
10 transportation, financial, or insurance carrier services or spe-
11 cifically allocated, shall be apportioned to this state by multi-
12 plying the tax base by a percentage, which is the sum of all of
13 the following percentages:

14 (a) The property factor multiplied by 15%.

15 (b) The payroll factor multiplied by 15%.

16 (c) The sales factor multiplied by 70%.

17 (3) For purposes of this section, a taxpayer that has a 52-
18 or 53-week tax year beginning not more than 7 days before
19 December 31 of any year is considered to have a tax year begin-
20 ning after December 31 of that year.

21 Sec. 46. (1) The property factor is a fraction, the numera-
22 tor of which is the average value of the taxpayer's real and tan-
23 gible personal property owned or rented in this state during the
24 tax year and the denominator of which is the average value of all
25 the taxpayer's real and tangible personal property owned or
26 rented during the tax year.

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1 (2) FOR A FOREIGN PERSON, THE PROPERTY FACTOR IS A FRACTION,
2 THE NUMERATOR OF WHICH IS THE AVERAGE VALUE OF THE TAXPAYER'S
3 REAL AND TANGIBLE PERSONAL PROPERTY OWNED OR RENTED IN THIS STATE
4 DURING THE TAX YEAR BY THE TAXPAYER AND THE DENOMINATOR OF WHICH
5 IS THE AVERAGE VALUE OF ALL THE TAXPAYER'S REAL AND TANGIBLE PER-
6 SONAL PROPERTY OWNED OR RENTED IN THE UNITED STATES DURING THE
7 TAX YEAR.

8 Sec. 49. (1) The payroll factor is a fraction, the numera-
9 tor of which is the total wages paid in this state during the tax
10 year by the taxpayer and the denominator of which is the total
11 wages paid everywhere during the tax year by the taxpayer. For
12 the purposes of this chapter only, "wages" means ALL wages, ~~as~~
13 ~~defined in section 3401~~ SALARIES, FEES, BONUSES, COMMISSIONS,
14 PAID IN THE TAXABLE YEAR ON BEHALF OF OR FOR THE BENEFIT OF
15 EMPLOYEES, OFFICERS, OR DIRECTORS OF THE TAXPAYER AND INCLUDES,
16 BUT IS NOT LIMITED TO, PAYMENTS THAT ARE SUBJECT TO OR SPECIFI-
17 CALLY EXEMPT OR EXCEPTED FROM WITHHOLDING UNDER SECTIONS 3401 TO
18 3406 of the internal revenue code.

19 (2) FOR A FOREIGN PERSON, THE PAYROLL FACTOR IS A FRACTION,
20 THE NUMERATOR OF WHICH IS THE TOTAL WAGES PAID FOR SERVICES PER-
21 FORMED IN THIS STATE DURING THE TAX YEAR BY THE TAXPAYER AND THE
22 DENOMINATOR OF WHICH IS THE TOTAL WAGES PAID FOR SERVICES PER-
23 FORMED IN THE UNITED STATES DURING THE TAX YEAR BY THE TAXPAYER.

24 Sec. 51. (1) The sales factor is a fraction, the numerator
25 of which is the total sales of the taxpayer in this state during
26 the tax year, and the denominator of which is the total sales of
27 the taxpayer everywhere during the tax year.

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1 (2) FOR A FOREIGN PERSON, THE SALES FACTOR IS A FRACTION,
2 THE NUMERATOR OF WHICH IS THE TOTAL SALES OF THE TAXPAYER IN THIS
3 STATE DURING THE TAX YEAR, AND THE DENOMINATOR OF WHICH IS THE
4 TOTAL SALES OF THE TAXPAYER IN THE UNITED STATES DURING THE TAX
5 YEAR.

6 SEC. 54. (1) NOTWITHSTANDING SECTIONS 51 AND 52, A SPUN OFF
7 CORPORATION MAY ELECT TO CALCULATE ITS SALES FACTOR UNDER THIS
8 SECTION FOR A PERIOD OF 5 YEARS IF THE FOLLOWING CRITERIA UNDER
9 SUBDIVISIONS (A), (B), AND (C) ARE MET AND FOR AN ADDITIONAL 2
10 YEARS FOLLOWING THE 5 YEARS IF ALL OF THE FOLLOWING CRITERIA
11 UNDER THIS SUBSECTION ARE MET:

12 (A) THE SPUN OFF CORPORATION WAS INCLUDED IN A COMBINED OR
13 CONSOLIDATED RETURN UNDER THIS ACT FOR THE TAX YEAR IMMEDIATELY
14 PRECEDING THE RESTRUCTURING TRANSACTION.

15 (B) AS A RESULT OF THE RESTRUCTURING TRANSACTION THAT
16 OCCURRED ON OR AFTER JANUARY 1, 1999, BOTH OF THE FOLLOWING
17 APPLY:

18 (i) THE SPUN OFF CORPORATION CEASED TO BE INCLUDED IN THE
19 COMBINED OR CONSOLIDATED ANNUAL RETURN UNDER THIS ACT DESCRIBED
20 IN SUBSECTION (1)(A).

21 (ii) WITHOUT REGARD TO THIS SECTION, THE SPUN OFF CORPORA-
22 TION WOULD HAVE HAD AN INCREASED TAX LIABILITY UNDER THIS ACT FOR
23 THE TAX YEAR IN WHICH THE ELECTION UNDER THIS SECTION IS MADE.

24 (C) ON OR BEFORE THE DUE DATE FOR FILING THE SPUN OFF
25 CORPORATION'S FIRST ANNUAL RETURN UNDER THIS ACT FOLLOWING THE
26 RESTRUCTURING TRANSACTION, THE SPUN OFF CORPORATION SHALL
27 REQUEST, IN WRITING, APPROVAL FROM [REDACTED]

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1 [REDACTED] THE
2 STATE TREASURER FOR THE ELECTION PROVIDED UNDER THIS SECTION.

3 [REDACTED]
4 [REDACTED] THE STATE TREASURER MUST APPROVE THE
5 REQUEST UNDER THIS SUBDIVISION BY THE SPUN OFF CORPORATION. THE
6 REQUEST SHALL INCLUDE ALL OF THE FOLLOWING:

7 (i) A STATEMENT THAT THE SPUN OFF CORPORATION QUALIFIES FOR
8 THE ELECTION UNDER THIS SECTION.

9 (ii) A LIST OF ALL CORPORATIONS, LIMITED LIABILITY COM-
10 PANIES, AND ANY OTHER BUSINESS ENTITIES THAT THE SPUN OFF CORPO-
11 RATION CONTROLLED AT THE TIME OF THE RESTRUCTURING TRANSACTION.

12 (iii) A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST AT
13 LEAST \$500,000,000.00 OF CAPITAL INVESTMENT IN THIS STATE WITHIN
14 5 YEARS. THE 5 YEARS UNDER THIS SUBPARAGRAPH SHALL COMMENCE WITH
15 THE FIRST TAX YEAR FOLLOWING THE TAX YEAR IN WHICH THE RESTRUC-
16 TURING TRANSACTION WAS COMPLETED.

17 (D) PRIOR TO THE END OF THE SIXTH YEAR FOLLOWING THE
18 RESTRUCTURING TRANSACTION AND IF THE SPUN OFF CORPORATION IS NOT
19 REQUIRED TO FILE AMENDED RETURNS UNDER SUBSECTION (3), THE SPUN
20 OFF CORPORATION SHALL REQUEST, IN WRITING, APPROVAL FROM [REDACTED]

21 [REDACTED]
22 [REDACTED] THE STATE TREASURER FOR THE ELECTION PROVIDED
23 UNDER THIS SECTION. [REDACTED]

24 [REDACTED] THE STATE TREASURER
25 MUST APPROVE THE REQUEST UNDER THIS SUBDIVISION BY THE SPUN OFF
26 CORPORATION. THE REQUEST SHALL INCLUDE ALL OF THE FOLLOWING:

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1 (i) A STATEMENT THAT THE SPUN OFF CORPORATION QUALIFIES FOR
2 THE ELECTION UNDER THIS SECTION.

3 (ii) A LIST OF ALL CORPORATIONS, LIMITED LIABILITY COM-
4 PANIES, AND ANY OTHER BUSINESS ENTITIES THAT THE SPUN OFF CORPO-
5 RATION CONTROLLED AT THE TIME OF THE RESTRUCTURING TRANSACTION.

6 (iii) A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST AT
7 LEAST \$200,000,000.00 OF CAPITAL INVESTMENT IN THIS STATE WITHIN
8 THE NEXT 2 YEARS. THE 2 YEARS UNDER THIS SUBPARAGRAPH SHALL COM-
9 MENCE WITH THE SIXTH TAX YEAR FOLLOWING THE TAX YEAR IN WHICH THE
10 RESTRUCTURING TRANSACTION WAS COMPLETED.

11 (2) A SPUN OFF CORPORATION QUALIFIED UNDER SUBSECTION (1)
12 AND THAT MAKES AN ELECTION AND IS APPROVED UNDER SUBSECTION (1)
13 CALCULATES ITS SALES FACTOR UNDER SECTIONS 51 AND 52 SUBJECT TO
14 BOTH OF THE FOLLOWING:

15 (A) A PURCHASER IN THIS STATE UNDER SECTION 52 DOES NOT
16 INCLUDE A PERSON WHO PURCHASES FROM A SELLER THAT WAS INCLUDED IN
17 THE PURCHASER'S COMBINED OR CONSOLIDATED ANNUAL RETURN UNDER THIS
18 ACT BUT, AS A RESULT OF THE RESTRUCTURING TRANSACTION, CEASED TO
19 BE INCLUDED IN THE PURCHASER'S COMBINED OR CONSOLIDATED ANNUAL
20 RETURN UNDER THIS ACT.

21 (B) TOTAL SALES UNDER SECTION 51 DO NOT INCLUDE SALES TO A
22 PURCHASER THAT WAS A MEMBER OF A MICHIGAN AFFILIATED GROUP THAT
23 HAD INCLUDED THE SELLER IN THE FILING OF A COMBINED OR CONSOLI-
24 DATED ANNUAL RETURN UNDER THIS ACT BUT, AS A RESULT OF THE
25 RESTRUCTURING TRANSACTION, CEASED TO INCLUDE THE SELLER.

26 (3) AT THE END OF THE FIFTH YEAR FOLLOWING THE RESTRUCTURING
27 TRANSACTION, IF A SPUN OFF CORPORATION THAT ELECTED TO CALCULATE

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1 ITS SALES FACTOR UNDER THIS SECTION HAS FAILED TO PAY OR ACCRUE
2 THE AMOUNT OF CAPITAL INVESTMENT REQUIRED UNDER SUBSECTION
3 (1)(C), THE SPUN OFF CORPORATION SHALL BE REQUIRED TO FILE
4 AMENDED ANNUAL RETURNS UNDER THIS ACT FOR EACH OF THE YEARS THE
5 SPUN OFF CORPORATION CALCULATED ITS SALES FACTOR UNDER THIS SEC-
6 TION REGARDLESS OF THE APPLICABLE STATUTE OF LIMITATIONS UNDER
7 SECTION 27A OF 1941 PA 122, MCL 205.27A, AND PAY ANY ADDITIONAL
8 TAX PLUS INTEREST BASED ON THE SALES FACTOR AS CALCULATED UNDER
9 SECTIONS 51 AND 52. INTEREST SHALL BE CALCULATED FROM THE DUE
10 DATE OF THE ORIGINAL RETURN.

11 (4) AT THE END OF THE SEVENTH TAX YEAR FOLLOWING THE
12 RESTRUCTURING TRANSACTION, IF A SPUN OFF CORPORATION THAT ELECTED
13 TO CALCULATE ITS SALES FACTOR UNDER THIS SECTION HAS FAILED TO
14 PAY OR ACCRUE THE CAPITAL INVESTMENT REQUIRED UNDER SUBSECTION
15 (1)(D), THE SPUN OFF CORPORATION SHALL BE REQUIRED TO FILE
16 AMENDED ANNUAL RETURNS UNDER THIS ACT FOR THE SIXTH AND SEVENTH
17 TAX YEARS FOLLOWING THE RESTRUCTURING TRANSACTION AND PAY ANY
18 ADDITIONAL TAX PLUS INTEREST BASED ON THE SALES FACTOR AS CALCU-
19 LATED UNDER SECTIONS 51 AND 52. INTEREST SHALL BE CALCULATED
20 FROM THE DUE DATE OF THE ORIGINAL RETURN.

21 (5) AS USED IN THIS SECTION:

22 (A) "SPUN OFF CORPORATION" MEANS AN ENTITY TREATED AS A CON-
23 TROLLED CORPORATION UNDER SECTION 355 OF THE INTERNAL REVENUE
24 CODE. CONTROLLED CORPORATION INCLUDES A CORPORATE SUBSIDIARY
25 CREATED FOR THE PURPOSE OF A RESTRUCTURING TRANSACTION, A LIMITED
26 LIABILITY COMPANY, OR AN OPERATIONAL UNIT OR DIVISION WITH

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1 BUSINESS ACTIVITIES THAT WERE PREVIOUSLY CARRIED OUT AS A PART OF
2 THE DISTRIBUTING CORPORATION.

3 (B) "RESTRUCTURING TRANSACTION" MEANS A TAX FREE DISTRIBU-
4 TION UNDER SECTION 355 OF THE INTERNAL REVENUE CODE AND INCLUDES
5 TAX FREE TRANSACTIONS UNDER SECTION 355 THAT ARE COMMONLY
6 REFERRED TO AS SPIN OFFS, SPLIT UPS, SPLIT OFFS, OR TYPE D
7 REORGANIZATIONS.

8 Sec. 71. (1) A taxpayer ~~who~~ THAT reasonably expects
9 liability for the tax year to exceed \$600.00 or adjustments under
10 section 23 to exceed \$100,000.00 shall file an estimated return
11 and pay an estimated tax for each quarter of the taxpayer's tax
12 year.

13 (2) For taxpayers on a calendar year basis the quarterly
14 returns and estimated payments shall be made by April 30,
15 July 31, October 31, and January 31. Taxpayers not on a calendar
16 year basis shall file quarterly returns and make estimated pay-
17 ments on the appropriate due date which in the taxpayer's fiscal
18 year corresponds to the calendar year.

19 (3) The estimated payment made with each quarterly return of
20 each tax year shall be for the estimated tax base for the quarter
21 or 25% of the estimated annual liability. The second, third, and
22 fourth estimated payments in each tax year shall include adjust-
23 ments, if necessary, to correct underpayments or overpayments
24 from previous quarterly payments in the tax year to a revised
25 estimate of the annual tax liability.

26 (4) The interest provided by this act shall not be assessed
27 if any of the following occur:

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1 (a) If the sum of the estimated payments equals at least 85%
2 of the liability or 1% of the gross receipts for the tax year and
3 the amount of each estimated payment reasonably approximates the
4 tax liability incurred during the quarter for which the estimated
5 payment was made.

6 (b) If the preceding year's tax liability was \$20,000.00 or
7 less and if the taxpayer submitted 4 equal installments the sum
8 of which equals the previous year's tax liability.

9 (5) Each estimated return shall be made on a form prescribed
10 by the department and shall include an estimate of the annual tax
11 liability and other information required by the commissioner.
12 This form may be combined with any other tax reporting form pre-
13 scribed by the department.

14 (6) With respect to a taxpayer filing an estimated tax
15 return for the taxpayer's first tax year of less than 12 months,
16 the amounts paid with each return shall be proportional to the
17 number of payments made in the first tax year.

18 (7) Payments made under this section shall be a credit
19 against the payment required with the annual tax return required
20 in section 73.

21 (8) When the commissioner considers it necessary to insure
22 payment of the tax or to provide a more efficient administration
23 of the tax, the commissioner may require filing of the returns
24 and payment of the tax for other than quarterly or annual
25 periods.

26 (9) A taxpayer ~~who~~ THAT elects under the internal revenue
27 code to file an annual federal income tax return by March 1 in

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1 the year following the taxpayer's tax year and does not make a
2 quarterly estimate or payment, or does not make a quarterly esti-
3 mate or payment and files a tentative annual return with a tenta-
4 tive payment by January 15, in the year following the taxpayer's
5 tax year and a final return by April 15 in the year following the
6 taxpayer's tax year, shall have the same option in filing the
7 estimated and annual returns required by this act.

8 (10) Instead of the quarterly return prescribed in subsec-
9 tions (1) and (2) the taxpayer may elect either of the following
10 options:

11 (a) To file and pay before the sixteenth day of each month
12 an estimated return computed at the rate of 1% of the gross
13 receipts for the preceding month.

14 (b) To file and pay before the sixteenth day of the months
15 specified in subsection (2) an estimated return computed at the
16 rate of 1% of the gross receipts for the preceding quarter.

17 (11) A PENALTY FOR UNDERPAYMENT OF AN ESTIMATED TAX UNDER
18 THIS ACT SHALL NOT BE ASSESSED FOR THE TAXPAYER'S FIRST TAX YEAR
19 BEGINNING AFTER DECEMBER 31, 1999 IF THE TAXPAYER CLAIMED A
20 CREDIT UNDER SECTION 35A FOR THE FIRST TIME ON THE TAXPAYER'S
21 ANNUAL RETURN FOR THAT TAX YEAR AND A PENALTY WOULD NOT HAVE
22 APPLIED IF THE TAXPAYER HAD MADE ADJUSTMENTS UNDER SECTION 23 OR
23 23B ON THAT RETURN.

24 Sec. 77. (1) The commissioner may require or permit the
25 filing of a consolidated or combined return by an affiliated
26 group of UNITED STATES corporations ~~which are Michigan~~
27 ~~taxpayers~~ if all of the following conditions exist:

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1 (a) All members of the affiliated group are Michigan
2 taxpayers.

3 (b) Each member of the affiliated group maintains a rela-
4 tionship with 1 or more members of the group which includes
5 intercorporate transactions of a substantial nature other than
6 control, ownership, or financing arrangements, or any combination
7 thereof.

8 (c) The business activities of each member of the affiliated
9 group are subject to apportionment by a specific apportionment
10 formula contained in this act which specific formula also is
11 applicable to all other members of the affiliated group, and
12 would be so applicable to each member even if it were not a
13 member of the affiliated group.

14 (2) AS USED IN THIS SECTION, "UNITED STATES CORPORATION"
15 MEANS A DOMESTIC CORPORATION AS THOSE TERMS ARE DEFINED IN
16 SECTION 7701(a)(3) AND (4) OF THE INTERNAL REVENUE CODE.

17 Sec. 78. (1) Except as expressly provided in section 77, a
18 provision of this act shall not be construed to permit or require
19 the filing of a consolidated or combined return or a consolida-
20 tion or combination of the tax base or apportionment factors of 2
21 or more UNITED STATES corporations.

22 (2) AS USED IN THIS SECTION, "UNITED STATES CORPORATION"
23 MEANS A DOMESTIC CORPORATION AS THOSE TERMS ARE DEFINED IN
24 SECTION 7701(a)(3) AND (4) OF THE INTERNAL REVENUE CODE.

25 Enacting section 1. Section 31a of the single business tax
26 act, 1975 PA 228, MCL 208.31a, is repealed.

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1 Enacting section 2. This amendatory act does not take
2 effect unless all of the following bills of the 90th Legislature
3 are enacted into law:

4 (a) Senate Bill No. 544.

5 (b) House Bill No. 4744.

6 Enacting section 3. The single business tax act, 1975 PA
7 228, MCL 208.1 to 208.145, is repealed effective on the January 1
8 of the year in which the rate under section 31 is reduced to
9 0.0%, and is not effective for tax years that begin on or after
10 that date.