

1999 PUBLIC AND LOCAL ACTS

[No. 115]

(HB 4745)

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," 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:

208.3 Definitions; A, B. [M.S.A. 7.558(3)]

Sec. 3. (1) "Affiliated group" means 2 or more United States corporations, 1 of which owns or controls, directly or indirectly, 80% or more of the capital stock with voting rights of the other United States corporation or United States corporations. As used in this subsection, "United States corporation" means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

(2) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this act.

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

208.4 Definitions; C, D. [M.S.A. 7.558(4)]

Sec. 4. (1) "Casual transaction" means a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character, except that a transaction made or engaged in by a person that is incidental to that person's regular business activity is a business activity within the meaning of this act.

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

(3) Except as otherwise provided in this section, "compensation" means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or

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excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to state and federal unemployment compensation funds, payments under the federal insurance contribution act and similar social insurance programs, payments, including self-insurance, for worker's compensation insurance, payments to individuals not currently working, payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals, payments to a pension, retirement, or profit sharing plan, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payments of fees for the administration of health and welfare and noninsured benefit plans. Compensation does not include any of the following:

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

(b) Payments to an independent contractor.

(c) For tax years beginning after December 31, 1994, payments to state and federal unemployment compensation funds.

(d) For tax years beginning after December 31, 1994, the employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 U.S.C. 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 U.S.C. 3201 to 3233, and similar social insurance programs.

(e) For tax years beginning after December 31, 1994, payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to chapter 149, 35 Stat. 65, 45 U.S.C. 51 to 60.

(4) "Department" means the revenue bureau of the department of treasury.

208.5 Definitions; E to I. [M.S.A. 7.558(5)]

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

(2) "Employer" means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes shall prima facie be deemed an employer.

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

(4) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 1999 or, at the option of the taxpayer, in effect for the tax year.

208.19 Tax base of foreign person. [M.S.A. 7.558(19)]

Sec. 19. (1) For tax years that begin on or after January 1, 2000, except for a taxpayer that calculates tax base under section 22a, the tax base of a foreign person includes the sum of business income and the adjustments under section 9 that are related to United States business activity, whether or not the foreign person is subject to taxation under the internal revenue code.

(2) A foreign person shall calculate business income under this section.

(3) A foreign person shall calculate compensation by reporting total compensation paid to employees, officers, and directors of the foreign person for services performed in the United States.

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(4) Except as otherwise provided in this section, the tax base of a foreign person is subject to all adjustments and other provisions of this act.

(5) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both inside and outside the United States, based on cost of performance.

(b) "Compensation" means, for a foreign person, the daily compensation paid to each employee, officer, and director of the foreign person multiplied by the number of days that the employee, officer, or director has physical contact with the United States in the tax year. Physical contact with the United States for part of a day equals 1 day.

(c) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(6) As used in this section and sections 46, 49, and 51, "foreign person" means either of the following:

(a) An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.

(b) A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

208.23 Adjustment of tax base. [M.S.A. 7.558(23)]

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

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

(b) For a tax year ending before March 31, 1991 for which subdivision (c) is not in effect, deduct the cost including fabrication and installation, excluding the cost deducted under subdivision (a) paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in Michigan.

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

(d) For a taxpayer's first tax year ending after September 29, 1991, the adjustment provided by this section shall be calculated by computing the sum of the product of the cost, including fabrication and installation, paid or accrued in the immediately preceding tax year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes multiplied by the apportionment factor as defined in chapter 3 for that immediately preceding tax year, plus the product of the cost, including fabrication and installation, paid or accrued in the taxpayer's first tax year ending after September 29, 1991 of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes multiplied by the apportionment factor as defined in chapter 3 for that tax year, and reducing that sum by the adjustment for the cost, including fabrication and installation, paid or accrued in the immediately preceding tax year of tangible assets of a type that were, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes claimed by the taxpayer or allowed to the taxpayer under this act in the immediately preceding tax year. If the adjustment calculated pursuant to this subdivision is a positive amount, it shall be deducted from the tax base after allocation or apportionment, and if the adjustment calculated pursuant to this subdivision is a negative amount, it shall, without reference to the negative sign, be added to the tax base after allocation and apportionment. If any portion of this subdivision is determined to be invalid pursuant to a final appellate court decision, this subdivision shall be severed from this section.

(e) Except as provided in subdivisions (g), (h), and (i), for a tax year beginning after December 31, 1996 and before January 1, 2000, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) Except as provided in subdivision (h) and if subdivision (e) is in effect, for a tax year beginning after December 31, 1996 and before January 1, 2000, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3. As used in this section and section 23b, "mobile tangible assets" means all of the following:

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

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

(iii) Equipment used directly in completion of or in construction contracts for the construction, alteration, repair, or improvement of property.

(g) Except as provided in subdivision (h) and if subdivision (e) is in effect, for tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 1996 and before January 1, 2000 and physically located in this state after the assets are purchased or acquired for use in a business activity, deduct the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(h) For tax years beginning after December 31, 1996 and before January 1, 2000 and if subdivision (e) is in effect, subdivisions (e), (f), and (g) do not apply and subdivision (c) does apply to a taxpayer that meets all of the following criteria:

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

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

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

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

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

(B) Household products.

(C) Prescriptions.

(D) Health and beauty care products.

(E) Cosmetics.

(F) Pet products.

(G) Carbonated beverages.

(H) Beer, wine, or liquor.

(i) For a tax year beginning after December 31, 1996 and before January 1, 2000 if subdivision (e) is not in effect, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

208.23b Adjustment of tax base. [M.S.A. 7.558(23b)]

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

(a) If the cost of an asset was paid or accrued in a tax year ending before March 31, 1991 for which a deduction under section 23(c) is not in effect, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in

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section 23(a) minus the gain and plus the loss from the sale reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by a fraction, the numerator of which is the payroll factor plus the property factor and the denominator of which is 2. As used in this subdivision, "sale or other disposition" does not include the transfer of tangible assets that are leased back to the transferor under the former provisions of section 168(f)(8) of the internal revenue code as that section provided immediately before the tax reform act of 1986, Public Law 99-514, became effective or to a lease back of property to which the amendments made by the tax reform act of 1986 do not apply as provided in section 204 of the tax reform act of 1986.

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

(c) If the cost of an asset was paid or accrued in a tax year beginning after September 30, 1989 but before January 1, 1997 or paid or accrued in a tax year beginning after December 31, 1996 and before January 1, 2000 as provided in subdivision (f), add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets described in section 23(c) minus the gain and plus the loss from the sale reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed by chapter 3.

(d) Except as provided in subdivisions (f) and (g) and if the cost of tangible assets described in section 23(e), (f), or (g) was paid or accrued in a tax year beginning after December 31, 1996 and before January 1, 2000, add the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(e) Except as provided in subdivision (f) and if section 23(e) is in effect, for assets other than mobile tangible assets purchased or acquired in a tax year beginning after December 31, 1996 and before January 1, 2000 that were eligible for a deduction under section 23(e) or (g) and that were transferred out of this state, add the federal basis used for determining gain or loss as of the date of the transfer. This addition shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

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

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

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

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

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

- (A) Fresh, frozen, or processed food, food products, or consumable necessities.
- (B) Household products.
- (C) Prescriptions.
- (D) Health and beauty care products.
- (E) Cosmetics.
- (F) Pet products.
- (G) Carbonated beverages.
- (H) Beer, wine, or liquor.

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

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

208.31 Specific tax on adjusted tax base; rates; "adjusted tax base" defined; tax imposed on privilege of doing business; reduction of adjusted tax base in lieu of reduction; limitation; applicability of subsection (4); effect of comprehensive annual financial report; annualized rate. [M.S.A. 7.558(31)]

Sec. 31. (1) Except as provided in subsections (5) and (6), there is levied and imposed a specific tax upon the adjusted tax base of every person with business activity in this state that is allocated or apportioned to this state at the following rates for the specified periods:

(a) Before October 1, 1994, 2.35%.

(b) After September 30, 1994 and before January 1, 1999, 2.30%.

(c) Beginning January 1, 1999 and each January 1 after 1999, the rate under this subsection shall be reduced as provided in subsection (5).

(2) As used in this section, "adjusted tax base" means the tax base allocated or apportioned to this state pursuant to chapter 3 with the adjustments prescribed by sections 23 and 23b and the exemptions prescribed by section 35. If the adjusted tax base exceeds 50% of the sum of gross receipts plus the adjustments provided in section 23b(a) to (g), apportioned or allocated to Michigan with the apportionment fraction calculated pursuant to chapter 3, the adjusted tax base may, at the option of the taxpayer, be reduced by that excess. If a taxpayer reduces the adjusted tax base under this subsection, the taxpayer is not entitled to the adjustment provided in subsection (4) for the same taxable year. This subsection does not apply to an adjusted tax base under section 22a.

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

(4) In lieu of the reduction provided in subsection (2), a person may elect to reduce the adjusted tax base by the percentage that the compensation divided by the tax base exceeds 63%. The deduction shall not exceed 37% of the adjusted tax base. For purposes of computing the deduction allowed by this subsection, as effective for the respective tax year, compensation does not include amounts of compensation exempt from tax under section 35(1)(e). This subsection does not apply to an adjusted tax base under section 22a.

(5) If the comprehensive annual financial report of this state for a state fiscal year, published pursuant to section 494 of the management and budget act, 1984 PA 431, MCL 18.1494, reports an ending balance of more than \$250,000,000.00 in the countercyclical budget and economic stabilization fund created under section 351 of the management and budget act, 1984 PA 431, MCL 18.1351, for that state fiscal year, the tax rate under this section shall be reduced by 0.1 percentage point on the January 1 following the end of the state fiscal year for which the report was issued.

(6) The department shall annualize the rate under this section as necessary, and the applicable annualized rate shall be imposed.

208.35a Tax credit for year beginning after December 31, 1999.
[M.S.A. 7.558(35a)]

Sec. 35a. (1) For a tax year beginning after December 31, 1999, a taxpayer may claim a credit against the tax imposed by this act of equal to the percentage determined under subsection (2) multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

(a) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets.

(b) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 1996 and physically located in this state in a tax year beginning after December 31, 1999 and after the assets are purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6).

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(e) If the cost of tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 1996 that were eligible for a deduction under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer.

(2) The amount calculated under subsection (1) shall be multiplied by a percentage determined by dividing the tax rate for the tax year in which the credit is claimed by 2.3% and multiplying that result by 0.85%.

(3) For a tax year in which the amount calculated under subsection (1) and multiplied by the percentage determined under subsection (2) is negative, the absolute value of that amount is added to the taxpayer's tax liability for the tax year.

(4) If the credit allowed under this section for the tax year and any unused carry-forward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 9 taxable years or until the excess credit is used up, whichever occurs first.

(5) Notwithstanding any other provision of this act, the credit provided in this section shall be taken before any other credit under this act and the credits under other sections of this act shall be calculated using the tax liability after the calculation of the credit under this section and, to the extent provided by law, after the calculation of credits under other sections of this act.

(6) A taxpayer that reduces the adjusted tax base under section 31(2) shall not claim a credit under this section.

(7) A taxpayer that reduces the adjusted tax base under section 31(4) shall reduce the credit under this section by a percentage not to exceed 100% determined by dividing the applicable tax rate under section 31(1) by the percentage determined under subsection (2) and multiplying the result by the percentage reduction to the adjusted tax base claimed by the taxpayer for the tax year under section 31(4).

208.45a Apportionment of tax base. [M.S.A. 7.558(45a)]

Sec. 45a. (1) Except as provided in subsection (2) and for tax years beginning after December 31, 1998, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 5%.
- (b) The payroll factor multiplied by 5%.
- (c) The sales factor multiplied by 90%.

(2) For tax years beginning after December 31, 1998 and before January 1, 2000 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall

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be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 15%.
- (b) The payroll factor multiplied by 15%.
- (c) The sales factor multiplied by 70%.

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

208.46 Property factor. [M.S.A. 7.558(46)]

Sec. 46. (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in this state during the tax year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented during the tax year.

(2) For a foreign person, the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in this state during the tax year by the taxpayer and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented in the United States during the tax year.

208.49 Payroll factor; "wages" defined. [M.S.A. 7.558(49)]

Sec. 49. (1) The payroll factor is a fraction, the numerator of which is the total wages paid in this state during the tax year by the taxpayer and the denominator of which is the total wages paid everywhere during the tax year by the taxpayer. For the purposes of this chapter only, "wages" means all wages, salaries, fees, bonuses, commissions, paid in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayer and includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code.

(2) For a foreign person, the payroll factor is a fraction, the numerator of which is the total wages paid for services performed in this state during the tax year by the taxpayer and the denominator of which is the total wages paid for services performed in the United States during the tax year by the taxpayer.

208.51 Sales factor. [M.S.A. 7.558(51)]

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

(2) For a foreign person, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer in the United States during the tax year.

208.54 Calculation of sales factor by spun off corporation. [M.S.A. 7.558(54)]

Sec. 54. (1) Notwithstanding sections 51 and 52, a spun off corporation may elect to calculate its sales factor under this section for a period of 5 years if the following criteria under subdivisions (a), (b), and (c) are met and for an additional 2 years following the 5 years if all of the following criteria under this subsection are met:

(a) The spun off corporation was included in a combined or consolidated return under this act for the tax year immediately preceding the restructuring transaction.

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(b) As a result of the restructuring transaction that occurred on or after January 1, 1999, both of the following apply:

(i) The spun off corporation ceased to be included in the combined or consolidated annual return under this act described in subsection (1)(a).

(ii) Without regard to this section, the spun off corporation would have had an increased tax liability under this act for the tax year in which the election under this section is made.

(c) On or before the due date for filing the spun off corporation's first annual return under this act following the restructuring transaction, the spun off corporation shall request, in writing, approval from the state treasurer for the election provided under this section. The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:

(i) A statement that the spun off corporation qualifies for the election under this section.

(ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.

(iii) A commitment by the spun off corporation to invest at least \$500,000,000.00 of capital investment in this state within 5 years. The 5 years under this subparagraph shall commence with the first tax year following the tax year in which the restructuring transaction was completed.

(d) Prior to the end of the sixth year following the restructuring transaction and if the spun off corporation is not required to file amended returns under subsection (3), the spun off corporation shall request, in writing, approval from the state treasurer for the election provided under this section. The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:

(i) A statement that the spun off corporation qualifies for the election under this section.

(ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.

(iii) A commitment by the spun off corporation to invest at least \$200,000,000.00 of capital investment in this state within the next 2 years. The 2 years under this subparagraph shall commence with the sixth tax year following the tax year in which the restructuring transaction was completed.

(2) A spun off corporation qualified under subsection (1) and that makes an election and is approved under subsection (1) calculates its sales factor under sections 51 and 52 subject to both of the following:

(a) A purchaser in this state under section 52 does not include a person who purchases from a seller that was included in the purchaser's combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return under this act.

(b) Total sales under section 51 do not include sales to a purchaser that was a member of a Michigan affiliated group that had included the seller in the filing of a combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to include the seller.

(3) At the end of the fifth year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section has failed to pay or accrue the amount of capital investment required under subsection (1)(c), the spun off corporation shall be required to file amended annual returns under this act for each of the years the spun off corporation calculated its sales factor under this section regardless of

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the applicable statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

(4) At the end of the seventh tax year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section has failed to pay or accrue the capital investment required under subsection (1)(d), the spun off corporation shall be required to file amended annual returns under this act for the sixth and seventh tax years following the restructuring transaction and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

(5) As used in this section:

(a) "Spun off corporation" means an entity treated as a controlled corporation under section 355 of the internal revenue code. Controlled corporation includes a corporate subsidiary created for the purpose of a restructuring transaction, a limited liability company, or an operational unit or division with business activities that were previously carried out as a part of the distributing corporation.

(b) "Restructuring transaction" means a tax free distribution under section 355 of the internal revenue code and includes tax free transactions under section 355 that are commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

208.71 Estimated returns and payments. [M.S.A. 7.558(71)]

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

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

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

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

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

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

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

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

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

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

(9) A taxpayer that elects under the internal revenue code to file an annual federal income tax return by March 1 in the year following the taxpayer's tax year and does not make a quarterly estimate or payment, or does not make a quarterly estimate or payment and files a tentative annual return with a tentative payment by January 15, in the year following the taxpayer's tax year and a final return by April 15 in the year following the taxpayer's tax year, shall have the same option in filing the estimated and annual returns required by this act.

(10) Instead of the quarterly return prescribed in subsections (1) and (2) the taxpayer may elect either of the following options:

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

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

(11) A penalty for underpayment of an estimated tax under this act shall not be assessed for the taxpayer's first tax year beginning after December 31, 1999 if the taxpayer claimed a credit under section 35a for the first time on the taxpayer's annual return for that tax year and a penalty would not have applied if the taxpayer had made adjustments under section 23 or 23b on that return.

208.77 Filing of consolidated or combined return by affiliated group of corporations; conditions; "United States corporation" defined. [M.S.A. 7.558(77)]

Sec. 77. (1) The commissioner may require or permit the filing of a consolidated or combined return by an affiliated group of United States corporations if all of the following conditions exist:

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

(b) Each member of the affiliated group maintains a relationship with 1 or more members of the group which includes intercorporate transactions of a substantial nature other than control, ownership, or financing arrangements, or any combination thereof.

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

(2) As used in this section, "United States corporation" means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

208.78 Consolidated or combined return, tax base, or apportionment factors. [M.S.A. 7.558(78)]

Sec. 78. (1) Except as expressly provided in section 77, a provision of this act shall not be construed to permit or require the filing of a consolidated or combined return or a consolidation or combination of the tax base or apportionment factors of 2 or more United States corporations.

(2) As used in this section, "United States corporation" means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

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Repeal of §208.31a.

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

Conditional effective date.

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

- (a) Senate Bill No. 544.
- (b) House Bill No. 4744.

Repeal of §§208.1 to 208.145; condition.

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

This act is ordered to take immediate effect.

Approved July 14, 1999.

Filed with Secretary of State July 14, 1999.

Compiler's note: Senate Bill No. 544, referred to in enacting section 2, was filed with the Secretary of State July 14, 1999, and became P.A. 1999, No. 116, Imd. Eff. July 14, 1999.

House Bill No. 4744, also referred to in enacting section 2, was filed with the Secretary of State July 14, 1999, and became P.A. 1999, No. 117, Imd. Eff. July 14, 1999.
