

HOUSE BILL No. 5392

December 2, 1997, Introduced by Rep. Dobb and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 3 (MCL 208.3) and by adding section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "Affiliated group" means 2 or more corpora-
2 tions, 1 of which owns or controls, directly or indirectly, 80%
3 or more of the capital stock with voting rights of the other cor-
4 poration or corporations.

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~~ BY A PERSON WITH NEXUS IN this state,
10 whether in intrastate, interstate, or foreign commerce, with the
11 object of gain, benefit, or advantage, whether direct or

1 indirect, to the taxpayer or to others, but ~~shall~~ DOES not
2 include the services rendered by an employee to his employer,
3 services as a director of a corporation, or a casual
4 transaction. ~~Although an~~ EACH activity of a taxpayer ~~may be~~
5 THAT IS incidental to another or other of his OR HER business
6 activities ~~, each activity shall be~~ IS considered to be busi-
7 ness engaged in within the meaning of this act.

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

15 SEC. 3A. (1) A PERSON HAS NEXUS TO THIS STATE IF THAT
16 PERSON HAS A PHYSICAL PRESENCE IN THIS STATE TO THE EXTENT THAT
17 THE PERSON OR THE BUSINESS IN WHICH THAT PERSON IS ENGAGED MEETS
18 1 OR MORE OF THE FOLLOWING CRITERIA:

19 (A) THE BUSINESS HAS 1 OR MORE EMPLOYEES WHO ARE RESIDENTS
20 OF THIS STATE WHO WORK IN THIS STATE IN THE PERSON'S BUSINESS.

21 (B) THE PERSON OWNS, RENTS, LEASES, MAINTAINS, OR HAS THE
22 RIGHT TO USE TANGIBLE PERSONAL OR REAL PROPERTY THAT IS PER-
23 MANENTLY OR TEMPORARILY LOCATED IN THIS STATE.

24 (C) THE PERSON REGULARLY AND SYSTEMATICALLY CONDUCTS BUSI-
25 NESS ACTIVITY THROUGH EMPLOYEES IN THIS STATE. AS USED IN THIS
26 SUBDIVISION, "REGULARLY AND SYSTEMATICALLY CONDUCTS BUSINESS"

1 MEANS THAT AT LEAST 10 DAYS OF BUSINESS ACTIVITY OCCUR IN THIS
2 STATE ON AN ANNUAL BASIS.

3 (D) EMPLOYEES OF THE PERSON OR BUSINESS ACTING ON THEIR OWN
4 BEHALF OWN, LEASE, USE, OR MAINTAIN AN OFFICE OR OTHER ESTABLISH-
5 MENT IN THIS STATE AND THAT PROPERTY IS USED IN THE REPRESENTA-
6 TION OF THE PERSON OR BUSINESS AND IS SIGNIFICANTLY ASSOCIATED
7 WITH THE ABILITY OF THE PERSON OR BUSINESS TO ESTABLISH AND MAIN-
8 TAIN A MARKET IN THIS STATE.

9 (2) FOR PURPOSES OF APPORTIONMENT, A PERSON IS CONSIDERED TO
10 BE TAXABLE IN A STATE OTHER THAN THIS STATE TO THE EXTENT THAT
11 THE PERSON OR THE BUSINESS IN WHICH THAT PERSON IS ENGAGED MEETS
12 1 OR MORE OF THE FOLLOWING CRITERIA:

13 (A) THE BUSINESS HAS 1 OR MORE EMPLOYEES WHO ARE RESIDENTS
14 OF THAT OTHER STATE WHO WORK IN THAT STATE IN THE PERSON'S
15 BUSINESS.

16 (B) THE PERSON OWNS, RENTS, LEASES, MAINTAINS, OR HAS THE
17 RIGHT TO USE TANGIBLE PERSONAL OR REAL PROPERTY THAT IS PER-
18 MANENTLY OR TEMPORARILY LOCATED IN THAT OTHER STATE.

19 (C) THE PERSON REGULARLY AND SYSTEMATICALLY CONDUCTS BUSI-
20 NESS ACTIVITY THROUGH EMPLOYEES IN THAT OTHER STATE. AS USED IN
21 THIS SUBDIVISION, "REGULARLY AND SYSTEMATICALLY CONDUCTS
22 BUSINESS" MEANS THAT AT LEAST 10 DAYS OF BUSINESS ACTIVITY OCCUR
23 IN THAT OTHER STATE ON AN ANNUAL BASIS.

24 (D) EMPLOYEES OF THE PERSON OR BUSINESS ACTING ON THEIR OWN
25 BEHALF OWN, LEASE, USE, OR MAINTAIN AN OFFICE OR OTHER ESTABLISH-
26 MENT IN THAT OTHER STATE AND THE PROPERTY IS USED IN THE
27 REPRESENTATION OF THE PERSON OR BUSINESS AND IS SIGNIFICANTLY

1 ASSOCIATED WITH THE ABILITY OF THE PERSON OR BUSINESS TO
2 ESTABLISH AND MAINTAIN A MARKET IN THAT OTHER STATE.

3 (3) IF NEXUS IS ESTABLISHED AT ANY TIME DURING THE PERSON'S
4 TAX YEAR, NEXUS IS CONSIDERED TO EXIST FOR THAT ENTIRE TAX YEAR.

5 Enacting section 1. This amendatory act is effective for
6 tax years that begin after December 31, 1997.

7 Enacting section 2. This amendatory act does not take
8 effect unless House Bill No. 4910 of the 89th Legislature is
9 enacted into law.