

SINGLE BUSINESS TAX ACT (EXCERPT)
Act 228 of 1975

***** 208.31 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

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.

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.

(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.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1982, Act 414, Imd. Eff. Dec. 28, 1982;—Am. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1993, Act 329, Eff. Apr. 1, 1994;—Am. 1994, Act 247, Eff. July 7, 1994;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In *Trinova Corp. v. Michigan Department of Treasury*, 111 S.Ct. 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a “minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise.”

Compiler's note: Section 2 of Act 414 of 1982 provides: “This amendatory act shall take effect for tax years commencing after December 31, 1982.”

Section 3 of Act 208 of 1981 provides: “Deletions of the word “total” made by this amendatory act in section 31 of the single business tax act, Act No. 281 of the Public Acts of 1975, as amended, being section 208.35 of the Michigan Compiled Laws, shall serve to cure and clarify any misinterpretation of the operation of section 31 since the effective date of Act No. 273 of the Public Acts of 1977. When originally enacted by Act No. 228 of the Public Acts of 1975, section 31 used the term “total tax base” to indicate that the exclusions made by section 9(4)(c) of the single business tax act of a portion of the depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets should be added back to the tax base, before apportionment or allocation, for purposes of section 31. However when, by Act No. 273 of the Public Acts of 1977, section 9(4)(c) was amended to require that all depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets be included in a person's tax base, there became no difference. Rendered Thursday, January 03, 2008

between the “tax base” and “total tax base” of a person. The deletion of the word “total” by this amendatory act is an expression of the Legislature's intent that the terms “total tax base” and “tax base” were, since the effective date of Act No. 273 of the Public Acts of 1977, to be considered synonymous and that its deletion by this amendatory act should be interpreted as a resolution of further misinterpretations.”

Enacting section 3 of 1999 PA 115 provides:

“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.”