

SUBSTITUTE FOR
HOUSE BILL NO. 5474

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 7 (MCL 208.7), as amended by 2000 PA 477.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7. (1) As used in this act:
- 2 (a) "Sale" or "sales" means the amounts received by the tax-
- 3 payer as consideration from the following:
- 4 (i) The transfer of title to, or possession of, property
- 5 that is stock in trade or other property of a kind which would
- 6 properly be included in the inventory of the taxpayer if on hand
- 7 at the close of the tax period or property held by the taxpayer
- 8 primarily for sale to customers in the ordinary course of its
- 9 trade or business.
- 10 (ii) The performance of services, which constitute business
- 11 activities other than those included in subparagraph (i), or from

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1 any combination of business activities described in this
2 subparagraph and subparagraph (i).

3 (iii) The rental, lease, licensing, or use of tangible or
4 intangible property which constitutes business activity.

5 (b) "Sale" or "sales" does not include dividends, interest,
6 and royalties received by the taxpayer to the extent deducted
7 from the taxpayer's tax base under section 9(7) BUT DOES INCLUDE
8 ROYALTIES, FEES, OR OTHER PAYMENTS OR CONSIDERATION NOT DEDUCTED
9 FROM TAX BASE UNDER SECTION 9(7) EXCEPT BOTH OF THE FOLLOWING:

10 (i) THOSE ROYALTIES PAID TO A FRANCHISOR AS CONSIDERATION
11 FOR THE USE OF TRADE NAMES, TRADEMARKS, AND SIMILAR INTANGIBLE
12 PROPERTY.

13 (ii) ROYALTIES, FEES, OR OTHER PAYMENTS OR CONSIDERATION
14 PAID OR INCURRED BY A FRANCHISEE TO A FRANCHISOR TO ESTABLISH OR
15 MAINTAIN THE FRANCHISE RELATIONSHIP OTHER THAN PAYMENTS FOR THE
16 SALE OR LEASE OF INVENTORY, EQUIPMENT, FIXTURES, OR REAL PROPERTY
17 AT FAIR RENTAL OR FAIR MARKET VALUE.

18 (2) "State" means any state of the United States, the
19 District of Columbia, the Commonwealth of Puerto Rico, any terri-
20 tory or possession of the United States, and any foreign country,
21 or political subdivision of any of the foregoing.

22 (3) "Gross receipts" means the entire amount received by the
23 taxpayer from any activity whether in intrastate, interstate, or
24 foreign commerce carried on for direct or indirect gain, benefit,
25 or advantage to the taxpayer or to others except for the
26 following:

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1 (a) Proceeds from sales by a principal that the taxpayer
2 collects in an agency capacity solely on behalf of the principal
3 and delivers to the principal.

4 (b) Amounts received by the taxpayer as an agent solely on
5 behalf of the principal that are expended by the taxpayer for any
6 of the following:

7 (i) The performance of a service by a third party for the
8 benefit of the principal that is required by law to be performed
9 by a licensed person.

10 (ii) The performance of a service by a third party for the
11 benefit of the principal that the taxpayer has not undertaken a
12 contractual duty to perform.

13 (iii) Principal and interest under a mortgage loan or land
14 contract, lease or rental payments, or taxes, utilities, or
15 insurance premiums relating to real or personal property owned or
16 leased by the principal.

17 (iv) A capital asset of a type that is, or under the inter-
18 nal revenue code will become, eligible for depreciation, amorti-
19 zation, or accelerated cost recovery by the principal for federal
20 income tax purposes, or for real property owned or leased by the
21 principal.

22 (v) Property not described under subparagraph (iv) purchased
23 by the taxpayer on behalf of the principal and that the taxpayer
24 does not take title to or use in the course of performing its
25 contractual business activities.

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1 (vi) Fees, taxes, assessments, levies, fines, penalties, or
2 other payments established by law that are paid to a governmental
3 entity and that are the legal obligation of the principal.

4 (c) Amounts that are excluded from gross income of a foreign
5 corporation engaged in the international operation of aircraft
6 under section 883(a) of the internal revenue code.

7 (d) Amounts received by an advertising agency used to
8 acquire advertising media time, space, production, or talent on
9 behalf of another person.

10 (e) Notwithstanding any other provision of this section,
11 amounts received by a taxpayer that manages real property owned
12 by the taxpayer's client that are deposited into a separate
13 account kept in the name of the taxpayer's client and that are
14 not reimbursements to the taxpayer and are not indirect payments
15 for management services that the taxpayer provides to that
16 client.

17 Enacting section 1. This amendatory act does not take
18 effect unless Senate Bill No. 486 of the 91st Legislature is
19 enacted into law.