

HOUSE BILL No. 5403

November 1, 2001, Introduced by Reps. Newell, Cassis, Woronchak, Meyer, Richardville and Faunce and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled "Single business tax act," by amending section 9 (MCL 208.9), as amended by 1998 PA 539.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) "Tax base" means business income, before appor-
2 tionment or allocation as provided in chapter 3, even if zero or
3 negative, subject to the adjustments in ~~subsections (2) to (9)~~
4 THIS SECTION.

5 (2) Add gross interest income and dividends derived from
6 obligations or securities of states other than Michigan, in the
7 same amount that was excluded from federal taxable income, less
8 the related portion of expenses not deducted in computing federal
9 taxable income because of sections 265 and 291 of the internal
10 revenue code.

1 (3) Add all taxes on or measured by net income and the tax
2 imposed by this act to the extent the taxes were deducted in
3 arriving at federal taxable income.

4 (4) Add the following, to the extent deducted in arriving at
5 federal taxable income:

6 (a) A carryback or carryover of a net operating loss.

7 (b) A carryback or carryover of a capital loss.

8 (c) A deduction for depreciation, amortization, or immediate
9 or accelerated write-off related to the cost of tangible assets.

10 (d) A dividend paid or accrued except a dividend that repre-
11 sents a reduction of premiums to policyholders of insurance
12 companies.

13 (e) A deduction or exclusion by a taxpayer due to a classi-
14 fication as, or the payment of commissions or other fees to, a
15 domestic international sales corporation or any like special
16 classification the purpose of which is to reduce or postpone the
17 federal income tax liability. This subdivision does not apply to
18 the special provisions of sections 805, 809, and 815(c)(2)(A) of
19 the internal revenue code.

20 (f) All interest including amounts paid, credited, or
21 reserved by insurance companies as amounts necessary to fulfill
22 the policy and other contract liability requirements of sections
23 805 and 809 of the internal revenue code. Interest does not
24 include payments or credits made to or on behalf of a taxpayer by
25 a manufacturer, distributor, or supplier of inventory to defray
26 any part of the taxpayer's floor plan interest, if these payments
27 are used by the taxpayer to reduce interest expense in

1 determining federal taxable income. For purposes of this
2 section, "floor plan interest" means interest paid that finances
3 any part of the taxpayer's purchase of automobile inventory from
4 a manufacturer, distributor, or supplier. However, amounts
5 attributable to any invoiced items used to provide more favorable
6 floor plan assistance to a taxpayer than to a person who is not a
7 taxpayer is considered interest paid by a manufacturer, distribu-
8 tor, or supplier.

9 (g) All royalties except for the following:

10 (i) On and after July 1, 1985, oil and gas royalties that
11 are excluded in the depletion deduction calculation under the
12 internal revenue code.

13 (ii) Cable television franchise fees described in section
14 622 of part III of title VI of the communications act of 1934, 47
15 U.S.C. 542.

16 (iii) Except as provided in subparagraph (iv), for the tax
17 years 1986 and after 1986, a franchise fee as defined by section
18 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in
19 the following amounts:

20 (A) For the tax years 1986, 1987, and 1988, 20% of the fran-
21 chise fee.

22 (B) For the tax years 1989 and 1990, 50% of the franchise
23 fee.

24 (C) For the tax years 1991 and after 1991, 100% of the fran-
25 chise fee.

26 (iv) For the tax years ending before 1991, this subdivision
27 does not apply to a fee for services paid by a franchisee that,

1 with respect to a specific provision of a franchise agreement, a
2 court of competent jurisdiction, before June 5, 1985, has deter-
3 mined is not a royalty payment under this act.

4 (v) Film rental or royalty payments paid by a theater owner
5 to a film distributor, a film producer, or a film distributor and
6 producer.

7 (vi) Royalties, fees, charges, or other payments or consid-
8 eration paid or incurred by radio or television broadcasters for
9 program matter or signals.

10 (vii) Royalties, fees, charges, or other payments or consid-
11 eration paid by a film distributor for copyrighted motion picture
12 films, program matter, or signals to a film producer.

13 (viii) For tax years that begin after December 31, 1993,
14 royalties paid by a licensee of application computer software,
15 operating system software, or system software pursuant to a
16 license agreement. As used in this subparagraph and
17 subsection (7)(c)(vii):

18 (A) "Application computer software" means a set of state-
19 ments or instructions that when incorporated in a machine usable
20 medium is capable of causing a machine or device having informa-
21 tion processing capabilities to indicate, perform, or achieve a
22 particular business function, task, or result for the nontechni-
23 cal end user. Application computer software includes any other
24 computer software that does not qualify under
25 sub-subparagraph (b) or (c).

26 (B) "Operating system software" means a set of statements or
27 instructions that when incorporated into a machine or device

1 having information processing capabilities is an interface
2 between the computer hardware and the application computer soft-
3 ware or system software.

4 (C) "System software" means a set of statements or instruc-
5 tions that interacts with operating system software that is
6 developed, licensed, and intended for the exclusive use of data
7 processing professionals to build, test, manage, or maintain
8 application computer software for which a license agreement is
9 signed by the licensor and licensee at the time of the transfer
10 of the software and that is not transferred to the licensee as
11 part of or in conjunction with a sale or lease of computer
12 hardware.

13 (h) A deduction for rent attributable to a lease back that
14 continues in effect under the former provisions of section
15 168(f)(8) of the internal revenue code of 1954 as that section
16 provided immediately before the tax reform act of 1986, Public
17 Law 99-514, became effective or to a lease back of property to
18 which the amendments made by the tax reform act of 1986 do not
19 apply as provided in section 204 of the tax reform act of 1986.

20 (5) Add compensation. FOR TAX YEARS THAT BEGIN AFTER
21 DECEMBER 31, 2001, FOR PURPOSES OF DETERMINING COMPENSATION, COM-
22 PENSATION PAID TO THE OFFICERS OF AN ENTITY THAT HAS A PROFES-
23 SIONAL EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER ORGANIZA-
24 TION SHALL BE INCLUDED IN THE TAX BASE OF THE ENTITY AND NOT IN
25 THE TAX BASE OF THE PROFESSIONAL EMPLOYER ORGANIZATION. AS USED
26 IN THIS SUBSECTION:

1 (A) "PROFESSIONAL EMPLOYER AGREEMENT" MEANS AN ONGOING AND
2 LONG-TERM AGREEMENT BETWEEN A PROFESSIONAL EMPLOYER ORGANIZATION
3 AND A CLIENT IN WHICH THE EMPLOYER RESPONSIBILITIES FOR WORKSITE
4 EMPLOYEES, INCLUDING HIRING, FIRING, DISCIPLINING, AND JOB
5 ASSIGNMENT AND DIRECTION, ARE ALLOCATED BETWEEN THE PROFESSIONAL
6 EMPLOYER ORGANIZATION AND THE CLIENT.

7 (B) "PROFESSIONAL EMPLOYER ORGANIZATION" MEANS AN ORGANIZA-
8 TION THAT PROVIDES THE MANAGEMENT AND ADMINISTRATION OF THE HUMAN
9 RESOURCES AND EMPLOYER RISK OF ITS CLIENTS BY CONTRACTUALLY
10 ASSUMING SUBSTANTIAL EMPLOYER RIGHTS, RESPONSIBILITIES, AND RISK
11 THROUGH A PROFESSIONAL EMPLOYER AGREEMENT THAT ESTABLISHES AN
12 EMPLOYER RELATIONSHIP WITH THE WORKERS ASSIGNED TO ITS CLIENT BY
13 DOING ALL OF THE FOLLOWING:

14 (i) ASSIGNING WORKERS TO LOCATIONS AND TASKS.

15 (ii) MAINTAINING DIRECTION AND CONTROL OF EMPLOYEES' WORK,
16 ALTHOUGH THIS RESPONSIBILITY MAY BE SHARED WITH THE CLIENT.

17 (iii) PAYING WAGES AND EMPLOYMENT TAXES OF THE EMPLOYEES OUT
18 OF ITS OWN ACCOUNTS.

19 (iv) REPORTING, COLLECTING, AND DEPOSITING STATE AND FEDERAL
20 EMPLOYMENT TAXES FOR THE EMPLOYEES.

21 (v) RETAINING THE RIGHT TO HIRE AND FIRE EMPLOYEES.

22 (6) Add a capital gain related to business activity of indi-
23 viduals to the extent excluded in arriving at federal taxable
24 income.

25 (7) Deduct the following, to the extent included in arriving
26 at federal taxable income:

1 (a) A dividend received or considered received, including
2 the foreign dividend gross-up provided for in the internal
3 revenue code.

4 (b) All interest except amounts paid, credited, or reserved
5 by an insurance company as amounts necessary to fulfill the
6 policy and other contract liability requirements of sections 805
7 and 809 of the internal revenue code.

8 (c) All royalties except for the following:

9 (i) On and after July 1, 1985, oil and gas royalties that
10 are included in the depletion deduction calculation under the
11 internal revenue code.

12 (ii) Except as provided in subparagraph (iii), for the 1986
13 tax year and after the 1986 tax year, a franchise fee as defined
14 in section 3 of the franchise investment law, 1974 PA 269,
15 MCL 445.1503, in the following amounts:

16 (A) For the tax years 1986, 1987, and 1988, 20% of the fran-
17 chise fee.

18 (B) For the tax years 1989 and 1990, 50% of the franchise
19 fee.

20 (C) For the tax years 1991 and after 1991, 100% of the fran-
21 chise fee.

22 (iii) For the tax years ending before 1991, this subdivision
23 does not apply to a fee for services paid by a franchisee that,
24 with respect to a specific provision of a franchise agreement, a
25 court of competent jurisdiction, before June 5, 1985, has deter-
26 mined is not a royalty payment under this act.

1 (iv) Film rental or royalty payments paid by a theater owner
2 to a film distributor, a film producer, or a film distributor and
3 producer.

4 (v) Royalties, fees, charges, or other payments or consider-
5 ation paid or incurred by radio or television broadcasters for
6 program matter or signals.

7 (vi) Royalties, fees, charges, or other payments or consid-
8 eration paid by a film distributor for copyrighted motion picture
9 films, program matter, or signals to a film producer.

10 (vii) For tax years that begin after December 31, 1997, roy-
11 alties received by a licensor, distributor, developer, marketer,
12 or copyright holder of application computer software or operating
13 system software pursuant to a license agreement. System software
14 is not included within the exception under this subparagraph.

15 (d) Rent attributable to a lease back that continues in
16 effect under the former provisions of section 168(f)(8) of the
17 internal revenue code of 1954 as that section provided immedi-
18 ately before the tax reform act of 1986, Public Law 99-514,
19 became effective or to a lease back of property to which the
20 amendments made by the tax reform act of 1986 do not apply as
21 provided in section 204 of the tax reform act of 1986.

22 (8) Deduct a capital loss not deducted in arriving at fed-
23 eral taxable income in the year the loss occurred.

24 (9) To the extent included in federal taxable income, add
25 the loss or subtract the gain from the tax base that is attribut-
26 able to another entity whose business activities are taxable

1 under this act or would be taxable under this act if the business
2 activities were in this state.