

Act No. 282
Public Acts of 1995
Approved by the Governor
January 9, 1996
Filed with the Secretary of State
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STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995

Introduced by Senators Van Regenmorter, Schuette, Steil, Rogers, Gougeon, Cisky, Shugars, Carl, Dunaskiss, Bouchard, North, Emmons, McManus, Dingell, Berryman, Bennett, Stille, Hoffman, Byrum and Gast

ENROLLED SENATE BILL No. 342

AN ACT to amend sections 23 and 23b of Act No. 228 of the Public Acts of 1975, 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," section 23 as amended by Act No. 128 of the Public Acts of 1991 and section 23b as added by Act No. 77 of the Public Acts of 1991, being sections 208.23 and 208.23b of the Michigan Compiled Laws; and to add sections 23a, 36c, and 45a.

The People of the State of Michigan enact:

Section 1. Sections 23 and 23b of Act No. 228 of the Public Acts of 1975, section 23 as amended by Act No. 128 of the Public Acts of 1991 and section 23b as added by Act No. 77 of the Public Acts of 1991, being sections 208.23 and 208.23b of the Michigan Compiled Laws, are amended and sections 23a, 36c, and 45a are added to read as follows:

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.

(c) For a tax year beginning after September 30, 1989 but before January 1, 1997 and for tax years beginning after December 31, 1996 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, 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, 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:

(i) 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.

(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 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 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 corporation and securities division of the department of commerce, is on or before the effective date of the amendatory act that added this subdivision.

(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 more than 50% 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 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.

Sec. 23a. For a year for which any portion of section 23(e) is declared unconstitutional in a decision rendered by an appellate court and if that decision is not under appeal, sections 23(e), (f), (g), and (h), 23b(e) and (f), and 36c are not effective.

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 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 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, 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 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 corporation and securities division of the department of commerce, is on or before the effective date of the amendatory act that added this subdivision.

(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 more than 50% 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, 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.

Sec. 36c. (1) For tax years that begin after December 31, 1996 and before January 1, 2000 and if section 23(e) is in effect, a taxpayer may claim a credit equal to a positive amount, if any, that results from the following calculations:

(a) Calculate the taxpayer's tax liability for the tax year before the credit under this section is taken.

(b) Calculate the taxpayer's tax liability for the tax year including the following criteria:

(i) Determine adjustments under section 23 as if section 23(c) is in effect and section 23(e), (f), (g), and (i) are not in effect.

(ii) Determine adjustments under section 23b as if section 23b(c) is in effect and section 23b(d), (e), and (g) are not in effect.

(iii) Determine the apportionment factor for the tax year as if section 45(4) is in effect and section 45(5), (6), and (7) are not in effect.

(iv) Section 45a is not in effect.

(c) Subtract the amount determined under subdivision (b) from the amount determined under subdivision (a). Subtract \$5,000,000.00 from that result.

(2) The credit under this section shall not be claimed by a taxpayer for a tax year in which the taxpayer claims a reduction under section 31(2).

(3) This section does not apply to taxpayers that determine adjusted tax base under section 22a.

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 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 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.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

- (a) Senate Bill No. 472.
- (b) Senate Bill No. 545.
- (c) House Bill No. 4358.
- (d) House Bill No. 4404.
- (e) House Bill No. 4605.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.