

Act No. 44
Public Acts of 2000
Approved by the Governor
March 27, 2000
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March 27, 2000
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STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000

Introduced by Senators Hoffman, Steil, Bennett, Emmons, Hammerstrom, Rogers, Bullard, Shugars, Leland, Young, McCotter, North, Peters, A. Smith, Byrum, Miller, Koivisto, Vaughn, Johnson, Gougeon, Stille, Goschka, Dunaskiss, Sikkema, Gast, Jaye, McManus, Schuette and Schwarz

ENROLLED SENATE BILL No. 1040

AN ACT to amend 1975 PA 228, 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," by amending section 35a (MCL 208.35a), as added by 1999 PA 115.

The People of the State of Michigan enact:

Sec. 35a. (1) For a tax year beginning after December 31, 1999, a taxpayer may claim a credit against the tax imposed by this act of equal to the percentage determined under subsection (2) multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):

(a) Calculate 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.

(b) Calculate 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 amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) 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 in a tax year beginning after December 31, 1999 and after the assets are purchased or acquired for use in a business activity, calculate 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.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets 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 for the taxable year 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).

(e) If the cost of tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 1999, calculate 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 amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(f) For assets purchased or acquired in a tax year beginning after December 31, 1996 that were eligible for a deduction under subdivision (a) or (c) and that were transferred out of this state, calculate the federal basis used for determining gain or loss as of the date of the transfer.

(2) The amount calculated under subsection (1) shall be multiplied by a percentage determined by dividing the tax rate for the tax year in which the credit is claimed by 2.3% and multiplying that result by the following percentage as applicable:

- (a) For taxpayers with adjusted gross receipts for the tax year of \$1,000,000.00 or less, 2.3%.
- (b) For taxpayers with adjusted gross receipts for the tax year of more than \$1,000,000.00 but \$2,500,000.00 or less, 1.5%.
- (c) For taxpayers with adjusted gross receipts for the tax year of more than \$2,500,000.00 but \$5,000,000.00 or less, 1.0%.
- (d) For taxpayers with adjusted gross receipts for the tax year of more than \$5,000,000.00, 0.85%.

(3) For a tax year in which the amount calculated under subsection (1) and multiplied by the percentage determined under subsection (2) is negative, the absolute value of that amount is added to the taxpayer's tax liability for the tax year.

(4) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 9 taxable years or until the excess credit is used up, whichever occurs first.

(5) Notwithstanding any other provision of this act, the credit provided in this section shall be taken before any other credit under this act and the credits under other sections of this act shall be calculated using the tax liability after the calculation of the credit under this section and, to the extent provided by law, after the calculation of credits under other sections of this act.

(6) A taxpayer that reduces the adjusted tax base under section 31(2) shall not claim a credit under this section.

(7) A taxpayer that reduces the adjusted tax base under section 31(4) shall reduce the credit under this section by a percentage not to exceed 100% determined by dividing the applicable tax rate under section 31(1) by the percentage determined under subsection (2) and multiplying the result by the percentage reduction to the adjusted tax base claimed by the taxpayer for the tax year under section 31(4).

(8) A member of an affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall determine adjusted gross receipts for purposes of subsection (2) on a consolidated basis.

(9) As used in subsection (2), "adjusted gross receipts" means the sum of the following:

- (a) Gross receipts apportioned or allocated to Michigan with the apportionment fraction calculated pursuant to chapter 3.
- (b) Adjustments provided in section 23b(a) to (g).
- (c) Adjustments provided in subsection (1)(d) to (f).

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Ray E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.