

SENATE BILL No. 1422

September 18, 2002, Introduced by Senator EMMONS and referred to the
Committee on Finance

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 7 and 35a (MCL 208.7 and 208.35a), section 7
as amended by 2001 PA 229 and section 35a as amended by 2000 PA
429.

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.

1 (ii) The performance of services, which constitute business
2 activities other than those included in subparagraph (i), or from
3 any combination of business activities described in this subpara-
4 graph and subparagraph (i).

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

7 (b) "Sale" or "sales" does not include dividends, interest,
8 and royalties received by the taxpayer to the extent deducted
9 from the taxpayer's tax base under section 9(7) but does include
10 royalties, fees, or other payments or consideration not deducted
11 from tax base under section 9(7) except those royalties paid to a
12 franchisor as consideration for the use outside of this state of
13 trade names, trademarks, and similar intangible property.

14 (2) "State" means any state of the United States, the
15 District of Columbia, the Commonwealth of Puerto Rico, any terri-
16 tory or possession of the United States, and any foreign country,
17 or political subdivision of any of the foregoing.

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

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

1 (b) Amounts received by the taxpayer as an agent solely on
2 behalf of the principal that are expended by the taxpayer for any
3 of the following:

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

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

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

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

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

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

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

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

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

14 (F) AMOUNTS RECEIVED FROM THE SALE OF SECURITIES, INCLUDING,
15 BUT NOT LIMITED TO, STOCK, SHORT-TERM BONDS, AND NOTES, IN THE
16 COURSE OF THE MANAGEMENT OF THE TAXPAYER'S OPERATING CASH
17 ACCOUNTS.

18 Sec. 35a. (1) For a tax year beginning after December 31,
19 1999, a taxpayer may claim a credit against the tax imposed by
20 this act of equal to the percentage determined under subsection
21 (2) multiplied by the result of subtracting the sum of the
22 amounts calculated under subdivisions (d), (e), and (f) from the
23 sum of the amounts calculated under subdivisions (a), (b), and
24 (c):

25 (a) Calculate the cost, including fabrication and installa-
26 tion, paid or accrued in the taxable year of tangible assets of a
27 type that are, or under the internal revenue code will become,

1 eligible for depreciation, amortization, or accelerated capital
2 cost recovery for federal income tax purposes, provided that the
3 assets are physically located in this state for use in a business
4 activity in this state and are not mobile tangible assets.

5 (b) Calculate the cost, including fabrication and installa-
6 tion, paid or accrued in the taxable year of mobile tangible
7 assets of a type that are, or under the internal revenue code
8 will become, eligible for depreciation, amortization, or acceler-
9 ated capital cost recovery for federal income tax purposes. This
10 amount shall be multiplied by the apportionment factor for the
11 tax year as prescribed in chapter 3.

12 (c) For tangible assets, other than mobile tangible assets,
13 purchased or acquired for use outside of this state in a tax year
14 beginning after December 31, 1996 and physically located in this
15 state in a tax year beginning after December 31, 1999 and after
16 the assets are purchased or acquired for use in a business activ-
17 ity, calculate the federal basis used for determining gain or
18 loss as of the date the tangible assets were physically located
19 in this state for use in a business activity plus the cost of
20 fabrication and installation of the tangible assets in this
21 state.

22 (d) If the cost of tangible assets described in subdivision
23 (a) was paid or accrued in a tax year beginning after December
24 31, 1999, calculate the gross proceeds or benefit derived from
25 the sale or other disposition of the tangible assets minus the
26 gain, multiplied by the apportionment factor for the taxable year
27 as prescribed in chapter 3, and plus the loss, multiplied by the

1 apportionment factor for the taxable year as prescribed in
2 chapter 3 from the sale or other disposition reflected in federal
3 taxable income and minus the gain from the sale or other disposi-
4 tion added to the tax base in section 9(6).

5 (e) If the cost of tangible assets described in subdivision
6 (b) was paid or accrued in a tax year beginning after December
7 31, 1999, calculate the gross proceeds or benefit derived from
8 the sale or other disposition of the tangible assets minus the
9 gain and plus the loss from the sale or other disposition
10 reflected in federal taxable income and minus the gain from the
11 sale or other disposition added to the tax base in section 9(6).
12 This amount shall be multiplied by the apportionment factor for
13 the tax year as prescribed in chapter 3.

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

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

24 (a) For taxpayers with adjusted gross receipts for the tax
25 year of \$1,000,000.00 or less, 2.3%.

1 (b) For taxpayers with adjusted gross receipts for the tax
2 year of more than \$1,000,000.00 but \$2,500,000.00 or less, ~~1.5%~~
3 1.75%.

4 (c) For taxpayers with adjusted gross receipts for the tax
5 year of more than \$2,500,000.00 but \$5,000,000.00 or less, ~~1.0%~~
6 1.25%.

7 (d) For taxpayers with adjusted gross receipts for the tax
8 year of more than \$5,000,000.00, 0.85%.

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

13 (4) If the credit allowed under this section for the tax
14 year and any unused carryforward of the credit allowed under this
15 section exceed the tax liability of the taxpayer for the tax
16 year, the excess shall not be refunded, but may be carried for-
17 ward as an offset to the tax liability in subsequent tax years
18 for 9 taxable years or until the excess credit is used up, which-
19 ever occurs first.

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

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

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

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

17 (9) A taxpayer that calculates its tax base under section
18 22a is not eligible for the credit allowed under this section.

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

21 (a) Gross receipts apportioned or allocated to Michigan with
22 the apportionment fraction calculated pursuant to chapter 3.

23 (b) Adjustments provided in section 23b(a) to (g).

24 (c) Adjustments provided in subsection (1)(d) to (f).