SINGLE BUSINESS TAX ACT (EXCERPT)
Act 228 of 1975

***** *208.23 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007* *****

208.23 Adjustment of tax base.

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 and before January 1, 2000 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 and before January 1, 2000, 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 and before January 1, 2000, 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 before January 1, 2000 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 before January 1, 2000 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 corporate division of the corporation, securities, and land development bureau of the department of consumer and industry services, is on or before January 9, 1996.

(*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, for tax years that begin before January 1, 1998, more than 50% or, for tax years that begin on and after January 1, 1998, more than 20% 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 and before January 1, 2000 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.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1977, Act 273, Imd. Eff. Dec. 15, 1977;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1991, Act 128, Imd. Eff. Oct. 25, 1991;—Am. 1995, Act 282, Imd. Eff. Jan. 9, 1996;—Am. 1998, Act 504, Imd. Eff. Jan. 5, 1999;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

Constitutionality: In Trinova Corp. v Michigan Department of Treasury, 111 S Ct 818 (1991), the United States Supreme Court held that Michigan's single business tax is not violative of the Commerce Clause or Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court stated that the single business tax meets the Court's test for sustaining a Commerce Clause challenge, by being a tax that: (1) Is applied to an activity with a substantial nexus with the taxing state; (2) Is fairly apportioned; (3) Does not discriminate against interstate commerce; and (4) Is fairly related to the services provided by the state. Neither does the tax violate due process requirements because there is a "minimal connection between the interstate activities and the taxing State, and a rational relationship between the income attributed to the State and the intrastate values of the enterprise."

In Caterpillar v Department of Treasury, 440 Mich 400 (1992) plaintiffs brought an action in Court of Claims against the Department of Treasury, Revenue Division, seeking a refund of all single business taxes paid between 1981 and 1984. Plaintiffs claimed that the capital acquisition deduction permitted under the Single Business Tax Act burdens interstate commerce in violation of the Commerce Clause of the U.S. Constitution. The court held the capital acquisition tax to be unconstitutional and disallowed its application beginning September 30, 1989. The Court of Appeals affirmed the decision to grant prospective relief and ruled that the language of the deduction

provision that produces a discriminatory effect should be removed. The Michigan Supreme Court reversed by holding that the capital acquisition deduction of the Single Business Tax Act does not violate the Commerce Clause of the United States Constitution. The Michigan Supreme Court determined that: (1) a nexus exists between the plaintiff Caterpillar Corporation and the state of Michigan; (2) the methods of apportionment are fair; (3) no facts were presented indicating substantial misappropriation or distorted results; (4) no evidence was introduced of discriminatory purpose or effect; and, (5) plaintiff received benefits fairly related to services provided by the state.

Compiler's note: In subsection (b), the clause "or under the internal revenue code will become ..." evidently should be followed by a comma to read "or under the internal revenue code will become, ..."

Section 2 of Act 208 of 1981 provides: "This amendatory act shall take effect for tax years beginning after December 31, 1980."

Section 2 of Act 77 of 1991 provides: "The provisions of section 23(c) of this amendatory act are curative and intended to correct any misinterpretation of legislative intent in the Michigan court of appeals decision in Caterpillar v State of Michigan, Department of Treasury, Docket No. 119584. The legislature finds that for persons whose tax base is apportioned under chapter 3 of the single business tax (SBT) act, an unapportioned capital acquisition deduction is inconsistent with the manifest intent of the legislature. This legislation further expresses the original intent of the legislature that for persons whose tax base is apportioned under chapter 3, the capital acquisition deduction shall be apportioned or allocated to Michigan."