

SINGLE BUSINESS TAX ACT (EXCERPT)
Act 228 of 1975

***** 208.69 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.69 Apportionment as fairly representing extent of taxpayer's business activity in state; petition; alternative method; presumption; business domicile; filing of return or amended return not considered petition; "adjusted tax base" defined.

Sec. 69. (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the commissioner may require the following, in respect to all or a part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting.
 - (b) The exclusion of 1 or more of the factors.
 - (c) The inclusion of 1 or more additional factors which will fairly represent the taxpayer's business activity in this state.
 - (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.
- (2) An alternate method will be effective only if it is approved by the commissioner.
- (3) The apportionment provisions of this act shall fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of the tax base such as depreciation, compensation, or income, unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business transacted in this state and leads to a grossly distorted result. A taxpayer's business activity shall be presumed to be fairly represented if the adjusted tax base computed without regard to the reduction based upon gross receipts permitted by section 31(2) is not greater than the adjusted tax base computed after application of the reduction based upon gross receipts permitted by section 31(2) or if the adjusted tax base is not greater than the adjusted tax base which would result from an apportioned tax base computed by using the apportionment formula prescribed for a corporate income tax or franchise tax in the taxpayer's business domicile. The taxpayer's business domicile is the state in which the sum of the taxpayer's payroll factor and property factor is greatest. However, if the taxpayer fails to satisfy either of these tests, the taxpayer's business activity shall not be presumed to not be fairly represented.
- (4) The filing of a return or an amended return shall not be considered a petition for the purposes of subsection (1).
- (5) As used in this section, "adjusted tax base" means that term as defined in section 31.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1987, Act 39, Imd. Eff. June 9, 1987.

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."

Compiler's note: Section 2 of Act 39 of 1987 provides: "This amendatory act is curative, expressing the original intent of the legislature that the single business tax imposed under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, is an indivisible value added type of tax and not a combination or series of several smaller taxes and that relief from formulary apportionment should be granted only under extraordinary circumstances. This amendatory act clarifies the existing procedures and standards for granting relief under section 69 of the single business tax act, Act No. 228 of the Public Acts of 1975, being section 208.69 of the Michigan Compiled Laws."