

## SINGLE BUSINESS TAX ACT (EXCERPT)

### Act 228 of 1975

#### CHAPTER 1

\*\*\*\*\* 208.1 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### 208.1 Short title.

Sec. 1. This act shall be known and may be cited as the “single business tax act”.

**History:** 1975, Act 228, Eff. Jan. 1, 1976.

**Compiler's note:** Enacting section 3 of 1999 PA 115 provides:

“Enacting section 3. The single business tax act, 1975 PA 228, MCL 208.1 to 208.145, is repealed effective on the January 1 of the year in which the rate under section 31 is reduced to 0.0%, and is not effective for tax years that begin on or after that date.”

\*\*\*\*\* 208.2 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### 208.2 Meanings of words, phrases, and terms; references to internal revenue code.

Sec. 2. (1) For the purposes of this act, the words and phrases defined in sections 3 to 10 shall have the meanings respectively ascribed to them in those sections.

(2) A term used in this act and not defined differently shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required. A reference in this act to the internal revenue code includes other provisions of the laws of the United States relating to federal income taxes.

**History:** 1975, Act 228, Eff. Jan. 1, 1976.

\*\*\*\*\* 208.3 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### 208.3 Definitions; A, B.

Sec. 3. (1) “Affiliated group” means 2 or more United States corporations, 1 of which owns or controls, directly or indirectly, 80% or more of the capital stock with voting rights of the other United States corporation or United States corporations. As used in this subsection, “United States corporation” means a domestic corporation as those terms are defined in section 7701(a)(3) and (4) of the internal revenue code.

(2) “Business activity” means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this act.

(3) “Business income” means federal taxable income, except that for a person other than a corporation it means that part of federal taxable income derived from business activity. For a partnership, business income includes payments and items of income and expense which are attributable to business activity of the partnership and separately reported to the partners.

**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. 1999, Act 115, Imd. Eff. July 14, 1999.

\*\*\*\*\* 208.4 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### 208.4 Definitions; C, D.

Sec. 4. (1) “Casual transaction” means a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character, except that a transaction made or engaged in by a person that is incidental to that person's regular business activity is a business activity within the meaning of this act.

(2) “Commissioner” means the department.

(3) Except as otherwise provided in subsection (4), “compensation” means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to state and federal unemployment compensation funds, payments under the federal insurance contribution act and similar social insurance programs, payments, including self-insurance, for worker's compensation insurance, payments to individuals not currently working, payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals, payments to a pension, retirement, or profit sharing plan, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payments of fees for the administration of health and welfare and noninsured benefit plans. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers.

(b) Payments to an independent contractor.

(c) For tax years beginning after December 31, 1994, payments to state and federal unemployment compensation funds.

(d) For tax years beginning after December 31, 1994, the employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) For tax years beginning after December 31, 1994, payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to chapter 149, 35 Stat. 65, 45 USC 51 to 60.

(f) For tax years beginning after December 31, 2003, the following payments under health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state and payments of fees for the administration of health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state for the specified years:

(i) For tax years that begin after December 31, 2003 and before January 1, 2005, 5%.

(ii) For tax years that begin after December 31, 2004 and before January 1, 2006, 20%.

(iii) For tax years that begin after December 31, 2005 and before January 1, 2007, 40%.

(iv) For tax years that begin after December 31, 2006, the percentage of payments as provided under section 4a.

(4) For tax years that begin after December 31, 2003, for purposes of determining compensation of a professional employer organization, compensation includes payments by the professional employer organization to the officers and employees of an entity whose employment operations are managed by the professional employer organization. Compensation of the entity whose employment operations are managed by a professional employer organization does not include compensation paid by the professional employer organization to the officers and employees of the entity whose employment operations are managed by the professional employer organization. As used in this subsection, “professional employer organization” means an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

(a) Maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity.

(b) Paying wages and employment taxes of the employees out of its own accounts.

(c) Reporting, collecting, and depositing state and federal employment taxes for the employees.

(d) Retaining the right to hire and fire employees.

(5) “Department” means the department of treasury.

**History:** 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1982, Act 484, Imd. Eff. Dec. 30, 1982;—Am. 1995, Act 1, Imd. Eff. Mar. 8, 1995;—Am. 1995, Act 6, Imd. Eff. Mar. 8, 1995;—Am. 1995, Act 285, Imd. Eff. Jan. 9, 1996;—Am. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2002, Act 603, Imd. Eff. Dec. 20, 2002;—Am. 2003, Act 240, Imd. Eff. Dec. 29, 2003.

**Compiler's note:** Section 2 of Act 484 of 1982 provides: “This amendatory act shall take effect for tax years commencing after December 31, 1982.”

\*\*\*\*\* 208.4a THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

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#### **208.4a Compensation; payments not included.**

Sec. 4a. For tax years that begin after December 31, 2006, compensation for purposes of section 4(3) does not include 50% of payments under health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state and payments of fees for the administration of health and welfare and noninsured benefit plans for the benefit of persons who are residents of this state paid by the taxpayer in the tax year.

**History:** Add. 2003, Act 241, Imd. Eff. Dec. 29, 2003.

#### **208.4b, 208.4c Repealed. 1995, Act 285, Imd. Eff. Jan. 9, 1996.**

**Compiler's note:** The repealed sections pertained to payments not included as compensation.

\*\*\*\*\* 208.5 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.5 Definitions; E to I.**

Sec. 5. (1) "Employee" means an employee as defined in section 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee.

(2) "Employer" means an employer as defined in section 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes shall prima facie be deemed an employer.

(3) "Federal taxable income" means taxable income as defined in section 63 of the internal revenue code.

(4) "Internal revenue code" means the United States internal revenue code of 1986 in effect on January 1, 1999 or, at the option of the taxpayer, in effect for the tax year.

**History:** 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1981, Act 208, Imd. Eff. Dec. 30, 1981;—Am. 1982, Act 388, Imd. Eff. Dec. 28, 1982;—Am. 1987, Act 253, Imd. Eff. Dec. 28, 1987;—Am. 1999, Act 115, Imd. Eff. July 14, 1999.

\*\*\*\*\* 208.5a THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.5a Definitions; I.**

Sec. 5a. "Insurance company" means an authorized insurer as defined in section 106 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.106 of the Michigan Compiled Laws.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

\*\*\*\*\* 208.6 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.6 Definitions; P to R.**

Sec. 6. (1) "Person" means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination acting as a unit.

(2) "Rent" includes a lease payment or other payment for the use of any property to which the taxpayer does not have legal or equitable title.

**History:** 1975, Act 228, Eff. Jan. 1, 1976.

\*\*\*\*\* 208.7 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.7 Definitions; S; "gross receipts" defined.**

Sec. 7. (1) As used in this act:

(a) "Sale" or "sales" means the amounts received by the taxpayer as consideration from the following:

(i) The transfer of title to, or possession of, property that is stock in trade or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(ii) The performance of services, which constitute business activities other than those included in subparagraph (i), or from any combination of business activities described in this subparagraph and

subparagraph (i).

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

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

(2) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country, or political subdivision of any of the foregoing.

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

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

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

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

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

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

(iv) A capital asset of a type that is, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or for real property owned or leased by the principal.

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

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

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

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

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

(f) Proceeds from the taxpayer's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes. This subdivision does not apply to a taxpayer that during the tax year both buys and sells any receivables.

(g) Proceeds from any of the following:

(i) The original issue of stock or equity instruments.

(ii) The original issue of debt instruments.

(h) Refunds from returned merchandise.

(i) Cash and in-kind discounts.

(j) Trade discounts.

(k) Federal, state, or local tax refunds.

(l) Security deposits.

(m) Payment of the principal portion of loans.

(n) Value of property received in a like-kind exchange.

(o) Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income.

(p) The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.

**History:** 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1982, Act 376, Eff. Mar. 30, 1983;—Am. 2000, Act 477, Imd. Eff. Jan. 11, 2001;—Am. 2001, Act 229, Imd. Eff. Jan. 3, 2002;—Am. 2002, Act 606, Eff. Oct. 1, 2003.

**Compiler's note:** Section 2 of Act 376 of 1982 provides:

“Enacting section 2. This amendatory act shall take effect for tax years commencing after December 31, 1982.”

Enacting section 1 of Act 477 of 2000 provides:

“Enacting section 1. This amendatory act takes effect for the tax years that begin after December 31, 2000.”

Enacting section 2 of Act 229 of 2001 provides:

“Enacting section 2. This amendatory act takes effect for tax years that begin after December 31, 2000.”

Enacting section 1 of 2002 PA 606 provides:

“This amendatory act takes effect for tax years that begin on or after October 1, 2003.”

\*\*\*\*\* 208.8 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

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## **208.8 Definitions; T.**

Sec. 8. “Tax” includes interest and penalties unless the intention to give it a more limited meaning is disclosed by the context.

**History:** 1975, Act 228, Eff. Jan. 1, 1976.

\*\*\*\*\* 208.9 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

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## **208.9 “Tax base” defined.**

Sec. 9. (1) “Tax base” means business income, before apportionment or allocation as provided in chapter 3, even if zero or negative, subject to the adjustments in this section.

(2) Add gross interest income and dividends derived from obligations or securities of states other than Michigan, in the same amount that was excluded from federal taxable income, less the related portion of expenses not deducted in computing federal taxable income because of sections 265 and 291 of the internal revenue code.

(3) Add all taxes on or measured by net income and the tax imposed by this act to the extent the taxes were deducted in arriving at federal taxable income.

(4) Add the following, to the extent deducted in arriving at federal taxable income:

(a) A carryback or carryover of a net operating loss.

(b) A carryback or carryover of a capital loss.

(c) A deduction for depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets.

(d) A dividend paid or accrued except a dividend that represents a reduction of premiums to policyholders of insurance companies.

(e) A deduction or exclusion by a taxpayer due to a classification as, or the payment of commissions or other fees to, a domestic international sales corporation or any like special classification the purpose of which is to reduce or postpone the federal income tax liability. This subdivision does not apply to the special provisions of sections 805, 809, and 815(c)(2)(A) of the internal revenue code.

(f) All interest including amounts paid, credited, or reserved by insurance companies as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code. Interest does not include payments or credits made to or on behalf of a taxpayer by a manufacturer, distributor, or supplier of inventory to defray any part of the taxpayer's floor plan interest, if these payments are used by the taxpayer to reduce interest expense in determining federal taxable income. For purposes of this section, “floor plan interest” means interest paid that finances any part of the taxpayer's purchase of automobile inventory from a manufacturer, distributor, or supplier. However, amounts attributable to any invoiced items used to provide more favorable floor plan assistance to a taxpayer than to a person who is not a taxpayer is considered interest paid by a manufacturer, distributor, or supplier.

(g) All royalties except for the following:

(i) On and after July 1, 1985, oil and gas royalties that are excluded in the depletion deduction calculation under the internal revenue code.

(ii) Cable television franchise fees described in section 622 of part III of title VI of the communications act of 1934, 47 U.S.C. 542.

(iii) Except as provided in subparagraph (iv), for the tax years 1986 and after 1986, a franchise fee as defined by section 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in the following amounts:

(A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.



- (B) For the tax years 1989 and 1990, 50% of the franchise fee.
- (C) For the tax years 1991 and after 1991, 100% of the franchise fee.
- (iv) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that, with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.
- (v) Film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.
- (vi) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.
- (vii) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.
- (viii) For tax years that begin after December 31, 1993, royalties paid by a licensee of application computer software, operating system software, or system software pursuant to a license agreement. As used in this subparagraph and subsection (7)(c)(vii):
  - (A) "Application computer software" means a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular business function, task, or result for the nontechnical end user. Application computer software includes any other computer software that does not qualify under sub-subparagraph (B) or (C).
  - (B) "Operating system software" means a set of statements or instructions that when incorporated into a machine or device having information processing capabilities is an interface between the computer hardware and the application computer software or system software.
  - (C) "System software" means a set of statements or instructions that interacts with operating system software that is developed, licensed, and intended for the exclusive use of data processing professionals to build, test, manage, or maintain application computer software for which a license agreement is signed by the licensor and licensee at the time of the transfer of the software and that is not transferred to the licensee as part of or in conjunction with a sale or lease of computer hardware.
- (ix) For tax years that begin after December 31, 2000, royalties, fees, or other payments or consideration paid or incurred by a franchisee to a franchisor to establish or maintain the franchise relationship other than payments for the sale or lease of inventory, equipment, fixtures, or real property at fair rental or fair market value.
- (h) A deduction for rent attributable to a lease back that continues in effect under the former provisions of section 168(f)(8) of the internal revenue code of 1954 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.
- (5) Add compensation.
- (6) Add a capital gain related to business activity of individuals to the extent excluded in arriving at federal taxable income.
- (7) Deduct the following, to the extent included in arriving at federal taxable income:
  - (a) A dividend received or considered received, including the foreign dividend gross-up provided for in the internal revenue code.
  - (b) All interest except amounts paid, credited, or reserved by an insurance company as amounts necessary to fulfill the policy and other contract liability requirements of sections 805 and 809 of the internal revenue code.
  - (c) All royalties except for the following:
    - (i) On and after July 1, 1985, oil and gas royalties that are included in the depletion deduction calculation under the internal revenue code.
    - (ii) Except as provided in subparagraph (iii), for the 1986 tax year and after the 1986 tax year, a franchise fee as defined in section 3 of the franchise investment law, 1974 PA 269, MCL 445.1503, in the following amounts:
      - (A) For the tax years 1986, 1987, and 1988, 20% of the franchise fee.
      - (B) For the tax years 1989 and 1990, 50% of the franchise fee.
      - (C) For the tax years 1991 and after 1991, 100% of the franchise fee.
    - (iii) For the tax years ending before 1991, this subdivision does not apply to a fee for services paid by a franchisee that, with respect to a specific provision of a franchise agreement, a court of competent jurisdiction, before June 5, 1985, has determined is not a royalty payment under this act.

(iv) Film rental or royalty payments paid by a theater owner to a film distributor, a film producer, or a film distributor and producer.

(v) Royalties, fees, charges, or other payments or consideration paid or incurred by radio or television broadcasters for program matter or signals.

(vi) Royalties, fees, charges, or other payments or consideration paid by a film distributor for copyrighted motion picture films, program matter, or signals to a film producer.

(vii) For tax years that begin after December 31, 1997, royalties received by a licensor, distributor, developer, marketer, or copyright holder of application computer software or operating system software pursuant to a license agreement. System software is not included within the exception under this subparagraph.

(viii) For tax years that begin after December 31, 2000, royalties, fees, or other payments or consideration paid or incurred by a franchisee to a franchisor to establish or maintain the franchise relationship other than payments for the sale or lease of inventory, equipment, fixtures, or real property at fair rental or fair market value.

(d) Rent attributable to a lease back that continues in effect under the former provisions of section 168(f)(8) of the internal revenue code of 1954 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.

(8) Deduct a capital loss not deducted in arriving at federal taxable income in the year the loss occurred.

(9) To the extent included in federal taxable income, add the loss or subtract the gain from the tax base that is attributable to another entity whose business activities are taxable under this act or would be taxable under this act if the business activities were in this state.

(10) For tax years that begin after December 31, 2004, deduct, to the extent included in federal taxable income, income received from either of the following:

(a) Small business innovation research grants and small business technology transfer programs established under the small business innovation development act of 1982, Public Law 97-219, reauthorized under the small business research and development enhancement act, Public Law 102-564, and subsequently reauthorized under the small business reauthorization act of 2000, Public Law 106-554.

(b) Grants from the Michigan technology tri-corridor SBIR emerging business fund administered by the Michigan economic development corporation.

**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. 1982, Act 406, Imd. Eff. Dec. 28, 1982;—Am. 1985, Act 27, Imd. Eff. June 5, 1985;—Am. 1985, Act 80, Imd. Eff. July 5, 1985;—Am. 1989, Act 294, Imd. Eff. Jan. 3, 1990;—Am. 1991, Act 169, Imd. Eff. Dec. 19, 1991;—Am. 1993, Act 105, Imd. Eff. July 15, 1993;—Am. 1996, Act 347, Eff. July 15, 1993;—Am. 1998, Act 539, Imd. Eff. Jan. 20, 1999;—Am. 2001, Act 230, Imd. Eff. Jan. 3, 2002;—Am. 2004, Act 258, Imd. Eff. July 23, 2004.

**Compiler's note:** Section 2 of Act 406 of 1982 provides: "This amendatory act shall take effect for tax years commencing after December 31, 1982."

Section 2 of Act 27 of 1985 provides: "This amendatory act shall apply for tax years commencing on or after January 1, 1985."

Section 2 of Act 347 of 1996 provides:

"This amendatory act is retroactive and effective on July 15, 1993."

\*\*\*\*\* 208.10 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

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## **208.10 Definitions; T, U; "financial organization" defined.**

Sec. 10. (1) "Tax year" or "taxable year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base is computed under this act. When a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year shall be for the same period as is covered by his federal income tax return.

(2) "Taxpayer" means a person liable for a tax, interest or penalty under this act.

(3) "Unrelated business activity" means any business activity that gives rise to unrelated taxable income as defined in the internal revenue code.

(4) "Financial organization" means a bank, industrial bank, trust company, building and loan or savings and loan association, bank holding company as defined in 12 U.S.C. 1841, credit union, safety and collateral deposit company, regulated investment company as defined in the internal revenue code, and any other association, joint stock company, or corporation at least 90% of whose assets consist of intangible personal property and at least 90% of whose gross receipts income consists of dividends or interest or other charges resulting from the use of money or credit.

**History:** 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976.

\*\*\*\*\* 208.19 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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### **208.19 Tax base of foreign person.**

Sec. 19. (1) Except as otherwise provided in this section, for tax years that begin on or after January 1, 2000, except for a taxpayer that calculates tax base under section 22a, the tax base of a foreign person includes the sum of business income and the adjustments under section 9 that are related to United States business activity, whether or not the foreign person is subject to taxation under the internal revenue code.

(2) A foreign person shall calculate business income under this section.

(3) A foreign person shall calculate compensation by reporting total compensation paid to employees, officers, and directors of the foreign person for services performed in the United States.

(4) Except as otherwise provided in this section, the tax base of a foreign person is subject to all adjustments and other provisions of this act.

(5) As used in this section:

(a) "Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the internal revenue code that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both inside and outside the United States, based on cost of performance.

(b) "Compensation" means, for a foreign person, the daily compensation paid to each employee, officer, and director of the foreign person multiplied by the number of days that the employee, officer, or director has physical contact with the United States in the tax year. Physical contact with the United States for part of a day equals 1 day.

(c) "Permanent establishment" means that term as defined in section 35b(3)(a).

(d) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(6) For tax years that begin after December 31, 1999 and before January 1, 2001, that portion of the tax base that is attributable to the international operation of aircraft by a foreign corporation whose gross income is exempt under section 883(a) of the internal revenue code is exempt from the tax imposed under this act.

(7) As used in this section and sections 46, 49, and 51, "foreign person" means either of the following:

(a) An individual who is not a United States resident, whether or not the individual is subject to taxation under the internal revenue code.

(b) A person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the internal revenue code.

(8) To calculate business income and the adjustments under section 9 that are related to United States business activity, a foreign person that does not have a permanent establishment in the United States during the tax year or who is not subject to taxation under the internal revenue code for the tax year may use amounts that reasonably approximate the federal taxable income and the permitted deductions the person would have had had the person been subject to the internal revenue code, provided the foreign person does not in the ordinary course of its business maintain tax or financial accounting records in accordance with the tax accounting requirements of the internal revenue code. The tax base of a foreign person described in this subsection shall not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

(9) To calculate business income and the adjustments under section 9 that are related to United States business activity, a Canadian person that is subject to Canadian federal income tax under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) may use amounts properly calculated under the income tax act (R.S.C. 1985, c. 1 (5th Supp)) to reasonably approximate business income and the adjustments under section 9 that are related to United States business activity. Amounts calculated under this subsection shall be presumed to reasonably approximate business income and the adjustments under section 9 that are related to United States business activity. The tax base of a Canadian person shall not include gross income from sales shipped or delivered to any purchaser within the United States and for which title transfers outside the United States.

(10) As used in subsection (9), "Canadian person" means a foreign person that does not have a permanent establishment in the United States during the tax year or that is not subject to taxation under the internal revenue code for the tax year and is either of the following:



- (a) An entity formed under the laws of Canada or a province of Canada.
- (b) An individual who is physically present in Canada in the aggregate exceeding 182 days in the tax year.

**History:** Add. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2001, Act 278, Imd. Eff. Jan. 11, 2002;—Am. 2002, Act 442, Imd. Eff. June 14, 2002.

**Compiler's note:** Enacting section 1 of Act 442 of 2002 provides:

“Enacting section 1. This amendatory act is retroactive and is effective for tax years that begin after December 31, 1999.”

\*\*\*\*\* 208.20 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.20 Tax base of certain nonprofit persons.**

Sec. 20. The tax base of nonprofit persons not required to pay federal income taxes shall be the sum of the net additions specified in sections 9 and 23 less the deductions specified in those sections.

**History:** 1975, Act 228, Eff. Jan. 1, 1976.

\*\*\*\*\* 208.21 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.21 Tax base of financial organizations.**

Sec. 21. (1) Except as otherwise provided in this act, the tax base of a financial organization is business income subject to the adjustments provided in section 9, with the exception of section 9(4)(f) and (7)(b), plus the following adjustments:

(a) Deduct, to the extent included in federal taxable income, interest income derived from obligations of the United States which this state is by federal law prohibited from subjecting to taxation, other than nondiscriminatory franchise or nonproperty taxes.

(b) For tax years ending after 1984, add expenses deducted from federal taxable income, to the extent not included in the tax base under this act, multiplied by a fraction, the numerator of which is the sum of interest income deducted under subdivision (a) plus interest from Michigan obligations and the denominator of which is total interest income. For tax years ending in 1985, in addition, add expenses deducted from federal taxable income in tax year 1984, to the extent not included in the tax base under this act, multiplied by a fraction, the numerator of which is the sum of interest income deducted in tax year 1984 under subdivision (a) plus interest income from Michigan obligations in tax year 1984 and the denominator of which is total interest income in tax year 1984. For tax years after 1984, the amount of an addition under this subdivision shall not exceed the amount of a deduction under subdivision (a), except for tax years ending in 1985 in which the addition shall not exceed the amount deducted under subdivision (a) in tax year 1984 plus the amount deducted under subdivision (a) in tax year 1985.

(2) In calculating its tax base, a financial organization that is defined or treated as a regulated investment company under the internal revenue code is not subject to the adjustments provided in section 9(2), (4)(d), and (7)(a).

**History:** 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1984, Act 360, Eff. Mar. 29, 1985;—Am. 1990, Act 65, Imd. Eff. Apr. 24, 1990.

\*\*\*\*\* 208.21a THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.21a Carryback of net operating loss or capital loss for federal income tax purposes; recomputation of allowable addition to reserve for bad debts; change to tax base; amended return; assessment of penalties, interest, or outstanding liability prohibited; statute of limitations not suspended.**

Sec. 21a. (1) If a financial organization, to which section 593 of the internal revenue code applies, carries back a net operating loss or capital loss for federal income tax purposes, if federal income tax law requires the financial organization to recompute, solely because of the loss carryback, its allowable addition to its reserve for bad debts under section 593(b)(2) of the internal revenue code for 1 or more prior tax years, and if the recomputation would result, but for the application of this section, in an addition to the tax base for the tax year or years affected by the carryback, then both of the following apply:

(a) For a tax year prior to the year of the loss, there shall be no change to the tax base because of the federal loss carryback or the federal reduction in the reserve for bad debts.

(b) For a tax year beginning after 1978 in which a loss is incurred, the financial organization shall add to its tax base the amount of the loss but not more than the sum of the following:

(i) Fifty percent of the federal income tax reductions to the reserves for bad debts for all tax years beginning before 1976 resulting solely because of the loss carryback.

(ii) One hundred percent of the federal income tax reductions to the reserves for bad debts for all tax years beginning after 1975 resulting solely because of the loss carryback.

(2) If a taxpayer is required to file an amended return under this section and the amended return is filed before June 15, 1990, the department shall not assess penalties or interest against the taxpayer for taxes due on that amended return as a result of the operation of this section. If a taxpayer complies with this section, the department shall not assess an outstanding liability under the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being sections 206.1 to 206.532 of the Michigan Compiled Laws, that results solely from the adjustments in the taxpayer's bad debt reserve.

(3) This section does not suspend the running of the statute of limitations for a tax year beginning before 1979 for any purpose other than for purposes of complying with this section.

**History:** Add. 1990, Act 36, Imd. Eff. Mar. 22, 1990.

**Compiler's note:** Section 2 of Act 36 of 1990 provides: "This amendatory act shall apply to tax years beginning after 1978."

\*\*\*\*\* 208.22 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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## **208.22 Tax base of insurance company not subject to premium tax under §§ 500.440 to 500.446.**

Sec. 22. Before August 3, 1987, the tax base of an insurance company not subject to the provisions of the premiums tax under sections 440 to 446 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, as amended, being sections 500.440 to 500.446 of the Michigan Compiled Laws, shall be the sum of the business income and the adjustments provided in section 9. The tax calculated thereon shall be in lieu of all other privilege or franchise fees or taxes imposed by another law of the state, except taxes on real and personal property.

**History:** 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1976, Act 389, Imd. Eff. Dec. 30, 1976;—Am. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

\*\*\*\*\* 208.22a THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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## **208.22a Tax base and adjusted tax base of insurance company; definitions.**

Sec. 22a. (1) Except as otherwise provided, from August 3, 1987 to September 30, 1987, for the tax year beginning October 1, 1987 and ending September 30, 1988, and each tax year thereafter, the tax base and adjusted tax base of an insurance company is the product of .25 times the insurance company's adjusted receipts as apportioned under section 62.

(2) The tax base and adjusted tax base calculated under this section shall not be adjusted under sections 23 and 23b.

(3) The tax calculated under this section is in lieu of all other privilege or franchise fees or taxes imposed by any other law of this state, except taxes on real and personal property and except as otherwise provided in this act and in Act No. 218 of the Public Acts of 1956.

(4) As used in this section:

(a) "Adjusted receipts" means, except as provided in subdivision (b), the sum of all of the following:

(i) Rental and royalty receipts from a person that is not either of the following:

(A) An affiliated insurance company.

(B) An insurance agent of the taxpayer licensed under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.1200 to 500.1244 of the Michigan Compiled Laws.

(ii) Gross direct premiums received for insurance on property or risk, deducting premiums on policies not taken and returned premiums on canceled policies.

(iii) Receipts from administrative services only contracts with a person who is not an affiliated insurance company or an affiliated nonprofit corporation.

(iv) Receipts from business activity other than the business of insurance. As used in this subparagraph, "business of insurance" means any activity related to the sale of insurance, payment of claims, or claims handling, on policies written by the taxpayer.

(v) Charges not including interest charges attributable to premiums paid on a deferred or installment basis.

(vi) Receipts from servicing carrier fees received from the Michigan auto insurance placement facility.

- (b) Adjusted receipts do not include any of the following:
- (i) Receipts from interest, dividends, or proceeds from the sale of assets.
  - (ii) Receipts, other than receipts described in subsection (4)(a)(i) or (ii), from an affiliated insurance company, an affiliated nonprofit corporation, an employee of the taxpayer, or an insurance agent of the taxpayer licensed under chapter 12 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.1200 to 500.1244 of the Michigan Compiled Laws.
  - (iii) Receipts on the sale of annuities.
  - (iv) Receipts on all reinsurance transactions.
- (c) "Affiliated insurance company" means an insurance company that is a member of an affiliated group with the taxpayer or if the insurance company does not issue stock, 50% or more of the members of that insurance company's board of directors are members of the taxpayer's board of directors.
- (d) "Affiliated nonprofit corporation" means a nonprofit corporation, of which 80% or more of the members of the board of directors are members of the taxpayer's board of directors.
- (5) A refund for taxes paid for tax years before the 1996 tax year shall not be paid under this section if the refund claim is made after June 30, 1997 and is based on this section as it exists on the effective date of the amendatory act that added this subsection.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1995, Act 77, Eff. Aug. 3, 1987;—Am. 1996, Act 578, Eff. Jan. 1, 1991.

**Compiler's note:** Section 2 of Act 77 of 1995 provides:

"Section 22a of Act No. 228 of the Public Acts of 1975, being section 208.22a of the Michigan Compiled Laws, as amended by this amendatory act, is retroactive and effective beginning August 3, 1987."

Section 2 of Act 578 of 1996 provides:

"Section 2. Section 22a of Act No. 228 of the Public Acts of 1975, as amended by this amendatory act, is retroactive and effective January 1, 1991."

\*\*\*\*\* 208.22b *THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007*  
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#### **208.22b Surcharge.**

Sec. 22b. From August 3, 1987 to September 30, 1987, an insurance company shall pay a surcharge that is the product of .7 times the insurance company's tax liability under sections 22a and 31 before applying any credit allowed under this act. For the tax year beginning October 1, 1987 and ending September 30, 1988 and each tax year thereafter, an insurance company shall pay a surcharge that is the product of 1.26 times the insurance company's tax liability under sections 22a and 31 before applying any credit allowed under this act.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

\*\*\*\*\* 208.22c *THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007*  
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#### **208.22c Credit against tax and surcharge; limitations; use of tax liability and assessments from preceding year; certification of amounts needed to calculate credits.**

Sec. 22c. (1) For the tax year beginning October 1, 1987 and ending September 30, 1988 and each tax year thereafter, an insurance company may claim a credit against the tax and surcharge imposed by this act in the following amounts, but not to exceed the limitations provided in this section:

(a) Amounts paid to the Michigan worker's compensation placement facility pursuant to chapter 23 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2301 to 500.2352 of the Michigan Compiled Laws.

(b) Amounts paid to the Michigan basic property insurance association pursuant to chapter 29 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.2901 to 500.2954 of the Michigan Compiled Laws.

(c) Amounts paid to the Michigan automobile insurance placement facility pursuant to chapter 33 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3301 to 500.3390 of the Michigan Compiled Laws.

(d) Amounts paid to the property and casualty guaranty association pursuant to chapter 79 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.7901 to 500.7949 of the Michigan Compiled Laws.

(e) Amounts paid to the Michigan life and health guaranty association pursuant to chapter 77 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.7701 to 500.7780 of the Michigan Compiled Laws.

(2) For the tax year beginning October 1, 1987 and ending September 30, 1988, the credit provided in subsection (1) shall not exceed 56% of the insurance company's tax liability under this act before applying the surcharge and credits.

(3) Except as otherwise provided in subsections (5) and (6), for the tax year beginning October 1, 1988 and ending September 30, 1989 and each tax year thereafter, the total credit provided in subsection (1) for all insurance companies shall not exceed the product of the remainder obtained by deducting the sum of \$30,000,000.00 plus the credits allowed under section 22e from the total tax liability of domestic insurance companies under this act including the surcharge but before applying any credits multiplied by a fraction the numerator of which is the total assessments paid by all insurance companies to the associations and facilities described in subsection (1) and the denominator of which is the total assessments paid by domestic insurance companies to the associations and facilities described in subsection (1). The \$30,000,000.00 subtrahend shall be adjusted annually in proportion to the change in total general fund/general purpose revenues for the immediately preceding year, as certified by the director of management and budget.

(4) For the tax year beginning October 1, 1988 and ending September 30, 1989 and each tax year thereafter, the credit for each insurance company shall not exceed an amount equal to the product of the total credit limitation calculated under subsection (3) multiplied by a fraction the numerator of which is the insurance company's total assessments paid to the associations and facilities described in subsection (1) and the denominator of which is the total assessments paid by all insurance companies to the associations and facilities described in subsection (1).

(5) For the tax year beginning October 1, 1988 and ending September 30, 1989, the credit provided in subsection (1) shall be 40.366% of the total assessments paid by the insurance company to the facilities and associations described in subsection (1).

(6) The tax liability and assessments of insurance companies from the immediately preceding tax year shall be used in calculating the credits allowed under this section for each tax year, except for the following:

(a) In calculating the total authorized credits for the 1991 tax year, assessments of insurance companies for calendar year 1990 shall be used and the total credit limitation calculated under subsection (3) shall be multiplied by 1.25.

(b) In calculating the total authorized credits for the 1992 tax year, assessments of insurance companies for calendar year 1991 shall be used and the total tax liability of domestic insurance companies for tax year 1991 shall be multiplied by 0.8.

(c) For tax years that begin after December 31, 1992 and before January 1, 1996, an affiliated group, 1 or more of the members of which have no employees and acquire goods or services from other affiliated group members, may allocate the amounts paid under subsection (1)(e) and used to determine the credit under this section for each tax year among the members of the affiliated group.

(7) Not later than June 30 of each year after 1990, the state treasurer shall certify the amounts needed to calculate the credits allowed under this section for the insurance company tax year ending in that calendar year.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1990, Act 255, Imd. Eff. Oct. 15, 1990;—Am. 1995, Act 256, Imd. Eff. Jan. 5, 1996.

**Compiler's note:** Section 2 of Act 255 of 1990 provides: "This act is curative and intended to validate the state treasurer's calculation of credit amounts for the 1989 tax year. Provisions of this act relating to the 1989 tax year credits are intended not to be severable from provisions of this act relating to calculation of the 1990 tax year credits."

\*\*\*\*\* 208.22d THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007 \*\*\*\*\*

## **208.22d Insurance policyholder protection fund; creation; appropriations or transfers; deposits; disbursements.**

Sec. 22d. (1) There is created within the department of treasury an insurance policyholder protection fund. Amounts deposited in the insurance policyholder protection fund shall not be appropriated or transferred except as provided by this section.

(2) For the tax year beginning October 1, 1987 and ending September 30, 1988, an amount equal to the revenue collected from insurance companies pursuant to this act and section 476a of the insurance code of 1956, and from the accident fund pursuant to section 476c of the insurance code of 1956, for that tax year that are in excess of \$195,000,000.00 shall be deposited in the insurance policyholder protection fund.

(3) For the tax year beginning October 1, 1988 and ending September 30, 1989, an amount equal to the revenue collected from insurance companies pursuant to this act and section 476a of the insurance code of 1956, and from the accident fund pursuant to section 476c of the insurance code of 1956, for that tax year that

are in excess of \$193,000,000.00 shall be deposited in the insurance policyholder protection fund.

(4) Amounts deposited in the fund shall be disbursed annually from the fund pursuant to the following order of priority:

(a) To the life and health guaranty association under chapter 77 of the insurance code of 1956 and the property and casualty guaranty association under chapter 79 of the insurance code of 1956, to be used solely for the reduction of assessments to members for that year, in proportion to the assessments levied by the associations.

(b) If assessments to members of the life and health guaranty association and the property and casualty association are eliminated pursuant to subdivision (a), any excess shall be transferred to the Michigan basic property insurance association under chapter 29 of the insurance code of 1956, the automobile insurance placement facility under chapter 33 of the insurance code of 1956, and the Michigan worker's compensation placement facility under chapter 23 of the insurance code of 1956, to be used solely for the reduction of assessments to members for that year in proportion to the premium volume of the association and facilities for each rating plan or line of insurance.

(c) If assessments to member insurers are eliminated pursuant to subdivision (b), any excess shall be credited to the general fund.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

\*\*\*\*\* 208.22e THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.22e Credit against tax and surcharge.**

Sec. 22e. For the tax year beginning October 1, 1987 and ending September 30, 1988 and each tax year thereafter, an insurance company shall be allowed a credit against the tax and surcharge imposed by this act in an amount equal to 50% of the examination fees paid by the insurance company during the tax year pursuant to section 224 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.224 of the Michigan Compiled Laws.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987.

\*\*\*\*\* 208.22f THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007  
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#### **208.22f Tax to which insurance company subject; payment; tax year; determination of liability; basis of prorating; schedule of estimated payments; filing annual return; automatic extension not available; calculating estimated payment; disclosure.**

Sec. 22f. (1) Beginning August 3, 1987, an insurance company shall be subject to the tax as provided in this act or section 476a of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.476a of the Michigan Compiled Laws, if applicable, whichever is greater.

(2) For a tax year beginning before 1990, an insurance company shall pay the taxes required by this act on a tax year that begins on October 1 and ends on September 30 of the following year. The 1991 tax year for an insurance company begins October 1, 1990, and ends on December 31, 1991. For a tax year beginning after 1991, the insurance company tax year is the calendar year. The liability of a domestic insurer for the period before August 3, 1987 shall be determined on a calendar year basis and prorated based on the portion of the tax year before August 3, 1987. The commissioner shall determine a schedule of estimated payments for the 1991 insurance company tax year.

(3) Notwithstanding section 73, an insurance company shall file the annual return required under this act before March 2 after the end of the tax year, and an automatic extension under section 73(3) is not available.

(4) For the purpose of calculating an estimated payment required by section 71 for a tax year ending after 1989, the greater of the amount of tax imposed on an insurance company under this act or under section 476a of Act No. 218 of the Public Acts of 1956, shall be considered the insurance company's tax liability for the immediately preceding tax year.

(5) The requirements of section 28(1)(f) of Act No. 122 of the Public Acts of 1941, being section 205.28 of the Michigan Compiled Laws, that prohibit an employee or authorized representative of, a former employee or authorized representative of, or anyone connected with the department of treasury from divulging any facts or information obtained in connection with the administration of a tax, do not apply to disclosure of a tax return required by this section.

**History:** Add. 1987, Act 262, Imd. Eff. Dec. 28, 1987;—Am. 1990, Act 255, Imd. Eff. Oct. 15, 1990.



**Compiler's note:** Section 2 of Act 255 of 1990 provides: "This act is curative and intended to validate the state treasurer's calculation of credit amounts for the 1989 tax year. Provisions of this act relating to the 1989 tax year credits are intended not to be severable from provisions of this act relating to calculation of the 1990 tax year credits."

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

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### **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."

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

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### **208.23a Decision declaring § 208.23(e) unconstitutional; effect.**

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.

**History:** Add. 1995, Act 282, Imd. Eff. Jan. 9, 1996.

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

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### **208.23b Adjustment of tax base.**

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 and before January 1, 2000 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 and before January 1, 2000, 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 and before January 1, 2000 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 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.

(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 and before January 1, 2000, 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.

**History:** Add. 1991, Act 77, Imd. Eff. July 16, 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.