

SINGLE BUSINESS TAX ACT (EXCERPT)

Act 228 of 1975

CHAPTER 3

***** 208.40 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.40 Allocation of tax base; business activities confined solely to state.

Sec. 40. In the case of a taxpayer whose business activities are confined solely to this state, the entire tax base of the taxpayer shall be allocated to this state except as provided in section 56.

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

***** 208.41 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.41 Apportionment of tax base; business activities taxable within and without state.

Sec. 41. A taxpayer whose business activities are taxable both within and without this state, shall apportion his tax base as provided in this chapter.

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

***** 208.42 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.42 Conditions to taxpayer being taxable in another state.

Sec. 42. For purposes of apportionment of the tax base from business activities under this act, a taxpayer is taxable in another state if, (a) in that state he is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax, a tax of the type imposed under this act, or (b) that state has jurisdiction to subject the taxpayer to 1 or more of the taxes regardless of whether, in fact, the state does or does not.

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

***** 208.45 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.45 Apportionment of tax base to state.

Sec. 45. (1) For tax years beginning before January 1, 1991, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

(2) For tax years beginning after December 31, 1990 and before January 1, 1993, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 30%.
- (b) The payroll factor multiplied by 30%.
- (c) The sales factor multiplied by 40%.

(3) Subsection (2) does not apply for a tax year in which a deduction is not allowed under section 23(c).

(4) For tax years beginning after December 31, 1992 and before January 1, 1997 and for tax years beginning after December 31, 1996 and before January 1, 1998 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 25%.
- (b) The payroll factor multiplied by 25%.
- (c) The sales factor multiplied by 50%.

(5) Except as provided in subsections (4) and (7) and for tax years beginning after December 31, 1996 and before January 1, 1999, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 10%.
- (b) The payroll factor multiplied by 10%.
- (c) The sales factor multiplied by 80%.

(6) For tax years beginning after December 31, 1998, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state as provided in section 45a.

(7) For tax years beginning after December 31, 1997 and before January 1, 1999 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 20%.
- (b) The payroll factor multiplied by 20%.
- (c) The sales factor multiplied by 60%.

(8) For purposes of this section, a taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December 31 of that year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1991, Act 77, Imd. Eff. July 16, 1991;—Am. 1995, Act 283, Imd. Eff. Jan. 9, 1996.

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."

***** 208.45a THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007

208.45a Apportionment of tax base.

Sec. 45a. (1) Except as provided in subsection (4) and for tax years beginning after December 31, 1998 and before January 1, 2006, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 5%.
- (b) The payroll factor multiplied by 5%.
- (c) The sales factor multiplied by 90%.

(2) For tax years beginning after December 31, 2005 and before January 1, 2008, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 3.75%.
- (b) The payroll factor multiplied by 3.75%.
- (c) The sales factor multiplied by 92.5%.

(3) For tax years beginning after December 31, 2007, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 2.5%.
- (b) The payroll factor multiplied by 2.5%.
- (c) The sales factor multiplied by 95%.

(4) For tax years beginning after December 31, 1998 and before January 1, 2000 if section 23(e) is not in effect, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:

- (a) The property factor multiplied by 15%.
- (b) The payroll factor multiplied by 15%.
- (c) The sales factor multiplied by 70%.

(5) For purposes of this section, a taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December 31 of that

year.

History: Add. 1995, Act 282, Imd. Eff. Jan. 9, 1996;—Am. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2005, Act 295, Imd. Eff. Dec. 20, 2005.

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

208.46 Property factor.

Sec. 46. (1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in this state during the tax year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented during the tax year.

(2) For a foreign person, the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in this state during the tax year by the taxpayer and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented in the United States during the tax year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—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."

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

208.47 Valuation of property owned or rented by taxpayer; net annual rental rate.

Sec. 47. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

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

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

208.48 Determining average value of property; periodic averaging of values.

Sec. 48. The average value of property shall be determined by averaging the values at the beginning and ending of the tax year, but the commissioner may require the periodic averaging of values during the tax year if reasonably required to reflect properly the average value of the taxpayer's property.

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

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

208.49 Payroll factor; "wages" defined.

Sec. 49. (1) The payroll factor is a fraction, the numerator of which is the total wages paid in this state during the tax year by the taxpayer and the denominator of which is the total wages paid everywhere during the tax year by the taxpayer. For the purposes of this chapter only, "wages" means all wages, salaries, fees, bonuses, commissions, paid in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayer and 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.

(2) For a foreign person, the payroll factor is a fraction, the numerator of which is the total wages paid for services performed in this state during the tax year by the taxpayer and the denominator of which is the total wages paid for services performed in the United States during the tax year by the taxpayer.

History: 1975, Act 228, Eff. Jan. 1, 1976;—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."

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."

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

208.50 Wages paid in state; conditions.

Sec. 50. Wages are paid in this state if:

- (a) The individual's service is performed entirely within the state.
- (b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state.
- (c) Some of the service is performed in the state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is in the state; or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

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

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

208.51 Sales factor.

Sec. 51. (1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

(2) For a foreign person, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer in the United States during the tax year.

History: 1975, Act 228, Eff. Jan. 1, 1976;—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."

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

208.52 Sales of tangible personal property in state; circumstances.

Sec. 52. Sales of tangible personal property are in this state in any of the following circumstances:

(a) For tax years beginning before January 1, 1998, the property is shipped or delivered to a purchaser, other than the United States government, within this state regardless of the free on board point or other conditions of the sales.

(b) For tax years beginning on and after January 1, 1998, the property is shipped or delivered to any purchaser within this state regardless of the free on board point or other conditions of the sales.

(c) For tax years beginning before January 1, 1998, the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government, or the taxpayer is not taxable in the state of the purchaser. For the purposes of this subdivision only, "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, or political subdivision thereof.

History: 1975, Act 228, Eff. Jan. 1, 1976;—Am. 1998, Act 225, Imd. Eff. July 1, 1998.

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

208.53 Sales other than of tangible personal property in state; conditions.

Sec. 53. Sales, other than sales of tangible personal property, are in this state if:

- (a) The business activity is performed in this state.

(b) The business activity is performed both in and outside this state and, based on costs of performance, a greater proportion of the business activity is performed in this state than is performed outside this state.

(c) Receipts derived from services performed for planning, design, or construction activities within this state shall be deemed Michigan receipts.

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

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

208.54 Calculation of sales factor by spun off corporation.

Sec. 54. (1) Notwithstanding sections 51 and 52, a spun off corporation may elect to calculate its sales factor under this section for a period of 5 years if the following criteria under subdivisions (a), (b), and (c) are met, for an additional 2 years following the 5 years, and for an additional 4 years following the additional 2 years if all of the following criteria under this subsection are met:

(a) The spun off corporation was included in a combined or consolidated return under this act for the tax year immediately preceding the restructuring transaction.

(b) As a result of the restructuring transaction that occurred on or after January 1, 1999, both of the following apply:

(i) The spun off corporation ceased to be included in the combined or consolidated annual return under this act described in subsection (1)(a).

(ii) Without regard to this section, the spun off corporation would have had an increased tax liability under this act for the tax year in which the election under this section is made.

(c) On or before the due date for filing the spun off corporation's first annual return under this act following the restructuring transaction, the spun off corporation shall request, in writing, approval from the state treasurer for the election provided under this section. The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:

(i) A statement that the spun off corporation qualifies for the election under this section.

(ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.

(iii) A commitment by the spun off corporation to invest at least \$500,000,000.00 of capital investment in this state within 5 years. The 5 years under this subparagraph shall commence with the first tax year following the tax year in which the restructuring transaction was completed.

(d) Prior to the end of the sixth year following the restructuring transaction and if the spun off corporation is not required to file amended returns under subsection (3), the spun off corporation shall request, in writing, approval from the state treasurer for the election of the 2 additional years under subsection (1). The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:

(i) A statement that the spun off corporation qualifies for the election under this section.

(ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.

(iii) A commitment by the spun off corporation to invest at least \$200,000,000.00 of capital investment in this state within the additional 2 years or a commitment by the spun off corporation to invest a total of \$700,000,000.00 of capital investment in this state within the 7-year period beginning with the year in which the restructuring transaction was completed. The 2 years under this subparagraph shall commence with the sixth tax year following the tax year in which the restructuring transaction was completed.

(e) Prior to the end of the eighth year following the restructuring transaction and if the spun off corporation is not required to file amended returns under subsection (5), the spun off corporation may request, in writing, approval from the state treasurer for the election of the 4 additional years under subsection (1). The state treasurer must approve the election under this subdivision. The request shall include all of the following:

(i) A statement that the spun off corporation qualifies for the election under this section.

(ii) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.

(iii) A commitment by the spun off corporation to invest at least an additional \$200,000,000.00 of capital investment in this state within the additional 4 years and maintain at least 80% of the number of full-time equivalent employees in this state based on the number of full-time equivalent employees in this state at the beginning of the additional 4-year period for all of the additional 4 years; a commitment by the spun off corporation to invest an additional \$400,000,000.00 in this state within the additional 4 years; or a commitment by the spun off corporation to invest a total of \$1,300,000,000.00 in this state within the 11-year

period commencing with the year in which the restructuring transaction was completed. The 4 years under this subparagraph shall commence with the eighth year following the tax year in which the restructuring transaction was completed. For purposes of this subparagraph, the number of full-time equivalent employees includes employees in all of the following circumstances:

- (A) On temporary layoff.
- (B) On strike.
- (C) On a type of temporary leave other than the type under sub-subparagraphs (A) and (B).
- (D) Transferred by the spun off corporation to a related entity or to its immediately preceding former parent corporation.

(E) Transferred by the spun off corporation to another employer because of the sale of the spun off corporation's location in this state that was the work site of the employees.

(2) Prior to the end of the eleventh year following the restructuring transaction, a taxpayer that is a buyer of a plant located in this state that was included in the initial restructuring transaction under subsection (1) may elect to calculate its sales factor under subsection (3) and disregard sales by the taxpayer attributable to that plant to a former parent of a spun off corporation and the sales attributable to the plant shall be treated as sales by a spun off corporation. This election shall extend for a period of 4 years following the date that the plant was purchased. On or before the due date for filing the buyer's first annual return following the purchase of the plant, the buyer shall request, in writing, approval from the state treasurer for the election provided under this section and shall attach a statement that the buyer qualifies for the election under this section.

(3) A spun off corporation qualified under subsection (1) or (2) and that makes an election and is approved under subsection (1) or (2) calculates its sales factor under sections 51 and 52 subject to both of the following:

(a) A purchaser in this state under section 52 does not include a person who purchases from a seller that was included in the purchaser's combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return under this act. For tax years that begin after December 31, 2005, for a taxpayer that has filed for bankruptcy protection under federal law in calendar year 2005 and for tax years that begin after December 31, 2006 for all other taxpayers, this subdivision applies only to sales that originate from a plant located in this state.

(b) Total sales under section 51 do not include sales to a purchaser that was a member of a Michigan affiliated group that had included the seller in the filing of a combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to include the seller. For tax years that begin after December 31, 2005, for a taxpayer that has filed for bankruptcy protection under federal law in calendar year 2005 and for tax years that begin after December 31, 2006 for all other taxpayers, this subdivision applies only to sales that originate from a plant located in this state to a location in this state.

(4) At the end of the fifth year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section for the additional 2 years allowed under subsection (1) has failed to pay or accrue the amount of capital investment required under subsection (1)(c), the spun off corporation shall file amended annual returns under this act for each of the years the spun off corporation calculated its sales factor under this section regardless of the applicable statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

(5) At the end of the seventh tax year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section has failed to pay or accrue the capital investment required under subsection (1)(d), the spun off corporation shall be required to file amended annual returns under this act for the sixth and seventh tax years following the restructuring transaction and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

(6) At the end of the eleventh tax year following the restructuring transaction, if the spun off corporation that elected to calculate its sales factor under this section for the additional 2 years and the additional 4 years allowed under subsection (1) has failed to maintain the required number of employees or failed to pay or accrue the capital investment required under subsection (1)(e), the spun off corporation shall file amended annual returns under this act for the eighth through eleventh tax years following the restructuring transaction, regardless of the statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

(7) The amount of the spun off corporation's investment commitments required under this section shall not be reduced by the amount of any qualifying investments in Michigan plants that are sold.

(8) As used in this section:

(a) "Spun off corporation" means an entity treated as a controlled corporation under section 355 of the

internal revenue code. Controlled corporation includes a corporate subsidiary created for the purpose of a restructuring transaction, a limited liability company, or an operational unit or division with business activities that were previously carried out as a part of the distributing corporation.

(b) "Restructuring transaction" means a tax free distribution under section 355 of the internal revenue code and includes tax free transactions under section 355 that are commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

History: Add. 1999, Act 115, Imd. Eff. July 14, 1999;—Am. 2005, Act 296, Imd. Eff. Dec. 20, 2005.

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

208.56 Transportation services; determination of tax base.

Sec. 56. The tax base of a taxpayer whose business activities consist of transportation services rendered either entirely within or partly within and partly without this state shall be determined under the provisions of sections 57 and 58.

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

***** 208.57 THIS SECTION IS REPEALED BY ACT 325 OF 2006 EFFECTIVE DECEMBER 31, 2007
***** ***** 208.57 SUBSECTION (3) EXPIRES DECEMBER 31, 1982: See (3) of 208.57 *****

208.57 Transportation services; tax base attributable to Michigan sources; data; computation; expiration of subsection (3).

Sec. 57. (1) In the case of a taxpayer under section 56 other than one whose activity consists of the transportation of oil or gas by pipeline, the tax base attributable to Michigan sources shall be that portion of the tax base of the taxpayer derived from transportation services wherever performed that the revenue miles of the taxpayer in Michigan bear to the revenue miles of the taxpayer everywhere. A revenue mile means the transportation for a consideration of 1 net ton in weight or 1 passenger the distance of 1 mile. The tax base attributable to Michigan sources in the case of a taxpayer engaged in the transportation both of property and of individuals, shall be that portion of the entire tax base of the taxpayer which is equal to the sum of his passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.

(2) If it is shown to the satisfaction of the commissioner that the foregoing information is not available or cannot be obtained without unreasonable expense to the taxpayer, the commissioner may use such other data which may be available and which in the opinion of the commissioner will result in an equitable allocation of the receipts to this state.

(3) The tax base attributable to this state shall be the following percentage of the tax base otherwise computed under subsection (1): 30% for the 1977, 1978, and 1979 tax years; 70% for the 1980 and 1981 tax years; and 90% for the 1982 tax year. The tax computed shall not be less than an amount equal to the 5-year average tax liability measured as a percentage of gross receipts, determined by computing the percentage that the taxpayer's liability for the taxes levied under Act No. 85 of the Public Acts of 1921, as amended, being sections 450.304 to 450.310 of the Michigan Compiled Laws, Act No. 281 of the Public Acts of 1967, as amended, being sections 206.1 to 206.532 of the Michigan Compiled Laws, Act No. 301 of the Public Acts of 1939, as amended, being sections 205.131 to 205.147 of the Michigan Compiled Laws, and the tax levied on the inventory portion of personal property under Act No. 206 of the Public Acts of 1893, as amended, being sections 211.1 to 211.157 of the Michigan Compiled Laws, or Act No. 282 of the Public Acts of 1905, as amended, being sections 207.1 to 207.21 of the Michigan Compiled Laws, bears to the gross receipts of the taxpayer. The 5-year average tax liability under this subsection shall be computed and determined from the 1971 to 1975 tax years. For the tax years beginning after December 31, 1976, the percentage established for the 5-year average liability for the 1976 tax year shall be used for calculating this minimum tax. This subsection shall expire December 31, 1982.

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.

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

208.58 Transportation of oil or gas by pipeline; tax base attributable to Michigan.

Sec. 58. (1) When the tax base is derived from the transportation of oil by pipeline, the tax base attributable to Michigan shall be the tax base of the taxpayer in the ratio that the barrel miles transported in Michigan bear to the barrel miles transported by the taxpayer everywhere.

(2) When the tax base is derived from the transportation of gas by pipeline, the tax base attributable to Michigan shall be the tax base of the taxpayer in the ratio that the 1,000 cubic feet miles transported in Michigan bear to the 1,000 cubic feet miles transported by the taxpayer everywhere.

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

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

208.62 Tax base of insurer doing business within and without state.

Sec. 62. The tax base of an insurer doing business both within and without the state or partly within and without the state shall be that portion of the tax base of the taxpayer that the gross direct premiums received for insurance upon property or risk in this state, deducting premiums upon policies not taken and returned premiums on canceled policies from Michigan, bears to the gross direct premiums received for insurance upon property or risk, deducting premiums upon policies not taken and returned premiums on canceled policies everywhere.

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

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

208.65 Financial organization; tax base attributable to Michigan sources.

Sec. 65. The tax base of a financial organization attributable to Michigan sources shall be taken to be:

(a) The entire tax base of a taxpayer whose business activities are confined solely to this state.

(b) In the case of a taxpayer whose business activities are conducted partially within and partially without this state that portion of its tax base as its gross business in this state is to its gross business everywhere during the period covered by its return. Gross business includes the sum of:

(i) Fees, commissions, or other compensation for financial services.

(ii) Gross profits from trading in stocks, bonds, or other securities.

(iii) Interest charged to customers for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying the accounts.

(iv) Interest and dividends received.

(v) Any other gross income resulting from the operation as a financial organization.

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

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

208.68 Election by taxpayer.

Sec. 68. (1) If the taxpayer's business activities within this state do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within this state is not in excess of \$100,000.00, the taxpayer may elect for that year to report and pay a tax on the tax base arrived at by multiplying total sales in this state for the taxable year by the ratio of the tax base, for the tax imposed by this act, to total sales as reported on the taxpayer's federal income tax return for the same taxable year.

(2) The election is not available for any taxable year for which a consolidated or combined return is filed.

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

***** 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."