

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 116

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 35 (MCL 208.35), as amended by 1997 PA 124.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) The following are exempt from the tax imposed
2 by this act:

3 (a) For tax years beginning after 1976 and before January 1,
4 1989, the first \$40,000.00; for tax years beginning in 1989, the
5 first \$41,000.00; for tax years beginning in 1990, the first
6 \$42,000.00; for tax years beginning in 1991, the first
7 \$43,000.00; for tax years beginning in 1992, the first
8 \$44,000.00; and for tax years beginning after 1992, the first
9 \$45,000.00 of the tax base of every person. This exemption shall
10 be increased by \$12,000.00 for each partner of a partnership or
11 shareholder of a subchapter S corporation or professional

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1 corporation in excess of 1 who is a full-time employee of the
2 taxpayer, whose business income from that business is at least
3 \$12,000.00, and who owns at least 10% of that business. The
4 total increase in the exemption shall be not more than
5 \$48,000.00. For a taxpayer whose business activity is for a
6 fractional part of a year, the exemption provided in this subdivi-
7 sion including the increase in the exemption shall be prorated
8 for the period of the taxpayer's business activity. This exemp-
9 tion shall be reduced by \$2.00 for each \$1.00 that business
10 income exceeds the amount of the exemption. For the purposes of
11 computing the exemption, "business income" means that term as
12 defined in section 3 plus compensation and director's fees of
13 shareholders of a corporation and any carryback or carryover of a
14 net operating loss or capital loss to the extent deducted in
15 arriving at federal taxable income. In calculating eligibility
16 for the exemption provided in this subdivision, a person who is
17 not a corporation may elect to average its business income for
18 the current year and the previous 4 taxable years. Business
19 income as defined in this subdivision shall not be less than
20 zero. For the purposes of this subdivision, tax base shall be
21 after allocation and apportionment provided in chapter 3 and the
22 adjustments provided in sections 23 and 23b. This subdivision
23 does not apply to an adjusted tax base under section 22a.

24 (b) The United States, this state, other states, and the
25 agencies, political subdivisions, and enterprises of each.

26 (c) A person who is exempt from federal income tax under the
27 internal revenue code, and, for tax years that begin after

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1 December 31, 1995, a partnership, limited liability company,
2 joint venture, general partnership, limited partnership, unincor-
3 porated association, or other group or combination of entities
4 acting as a unit if the activities of the entity are exclusively
5 related to the charitable, educational, or other purpose or func-
6 tion that is the basis for the exemption under the internal reve-
7 nue code from federal income taxation of the partners or members
8 and if all of the partners or members of the entity are exempt
9 from federal income tax under the internal revenue code, except
10 the following:

11 (i) An organization included under section 501(c)(12) or
12 501(c)(16) of the internal revenue code.

13 (ii) An organization exempt under section 501(c)(4) of the
14 internal revenue code that would be exempt under section
15 501(c)(12) of the internal revenue code but for its failure to
16 meet the requirements in section 501(c)(12) that 85% or more of
17 its income must consist of amounts collected from members.

18 (iii) The adjusted tax base attributable to the activities
19 giving rise to the unrelated taxable business income of an exempt
20 person.

21 (d) Before August 3, 1987, a foreign or alien insurance com-
22 pany subject to the provisions of the premium tax under sections
23 440 to 446 of the insurance code of 1956, 1956 PA 218, as those
24 sections were in effect on December 27, 1987. This exemption
25 does not apply to the tax base derived from a business activity
26 other than insurance carrier services.

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1 (e) Before August 3, 1987, that portion of the payroll of a
2 domestic insurer or of a marketing corporation that constitutes
3 insurance sales commissions paid to employees and salaries of
4 employees primarily concerned with the adjustment of claims.
5 This exemption does not apply to a marketing corporation that is
6 not controlled, directly or indirectly, by stock ownership or
7 common management, by the domestic insurer or insurers from which
8 it derives all or substantially all of its gross income, exclu-
9 sive of income from investments.

10 (f) Beginning August 3, 1987 and after being apportioned
11 under section 62, the first \$130,000,000.00 of disability insur-
12 ance premiums written in Michigan, or, for the 1991 tax year
13 only, the first \$162,500,000.00 of disability insurance premiums
14 written in Michigan, other than credit insurance and disability
15 income insurance premiums, of each insurer subject to tax under
16 this act. This exemption shall be reduced by \$2.00 for each
17 \$1.00 by which the insurer's gross premiums from insurance car-
18 rier services in this state and outside this state exceed
19 \$180,000,000.00, or, for the 1991 tax year only,
20 \$225,000,000.00.

21 (g) A nonprofit cooperative housing corporation. As used in
22 this subdivision, "nonprofit cooperative housing corporation"
23 means a cooperative housing corporation that is engaged in pro-
24 viding housing services to its stockholders and members and that
25 does not pay dividends or interest upon stock or membership
26 investment but that does distribute all earnings to its
27 stockholders or members. This exemption does not apply to a

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1 business activity of a nonprofit cooperative housing corporation
2 other than providing housing services to its stockholders and
3 members.

4 (h) That portion of the tax base attributable to the produc-
5 tion of agricultural goods by a person whose primary activity is
6 the production of agricultural goods. "Production of agricul-
7 tural goods" means commercial farming including, but not limited
8 to, cultivation of the soil; growing and harvesting of an agri-
9 cultural, horticultural, or floricultural commodity; dairying;
10 raising of livestock, bees, fish, fur-bearing animals, or poul-
11 try; or turf or tree farming, but not including the marketing at
12 retail of agricultural goods except for sales of nursery stock
13 grown by the seller and sold to a nursery dealer licensed under
14 section ~~209~~ 9 of the insect pest and plant disease act, 1931
15 PA 189, MCL 286.209.

16 (i) Except as provided in subsection (3), a farmers' cooper-
17 ative corporation organized within the limitations of section 98
18 of 1931 PA 327, MCL 450.98, that was at any time exempt under
19 subdivision (c) because the corporation was exempt from federal
20 income taxes under section 521 of the internal revenue code and
21 that would continue to be exempt under section 521 of the inter-
22 nal revenue code except for either of the following activities:

23 (i) The corporation's repurchase from nonproducer customers
24 of portions or components of commodities the corporation markets
25 to those nonproducer customers and the corporation's subsequent
26 manufacturing or marketing of the repurchased portions or
27 components of the commodities.

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1 (ii) The corporation's incidental or emergency purchases of
2 commodities from nonproducers to facilitate the manufacturing or
3 marketing of commodities purchased from producers.

4 (j) That portion of the tax base attributable to the direct
5 and indirect marketing activities of a farmers' cooperative cor-
6 poration organized within the limitations of section 98 of 1931
7 PA 327, MCL 450.98, if those marketing activities are provided on
8 behalf of the members of that corporation and are related to the
9 members' direct sales of their products to third parties, or, for
10 livestock, are related to the members' direct or indirect sales
11 of that product to third parties. Marketing activities for a
12 product that is not livestock are not exempt under this subdivi-
13 sion if the farmers' cooperative corporation takes physical pos-
14 session of the product. As used in this subdivision, "marketing
15 activities" includes, but is not limited to, activities under the
16 agricultural commodities marketing act, 1965 PA 232, MCL 290.651
17 to 290.674, and the agricultural marketing and bargaining act,
18 1972 PA 344, MCL 290.701 to 290.726; dissemination of market
19 information; establishment of price and other terms of trade;
20 promotion; and research relating to members' products.

21 (2) An affiliated group, a controlled group of corporations
22 as defined by section 1563 of the internal revenue code, or an
23 entity under common control as defined by the internal revenue
24 code is entitled to only 1 exemption allowed by subsection (1)(a)
25 whether or not a combined or consolidated return is filed.

26 (3) Subsection (1)(i) does not exempt a farmers' cooperative
27 corporation if the total dollar value of the corporation's

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1 incidental and emergency purchases described in subsection

2 (1)(i)(ii) are equal to or greater than either of the following:

3 (a) For tax years that end before January 1, 1995, 5% of the
4 total dollar value of the corporation's repurchases described in
5 subsection (1)(i)(i).

6 (b) For tax years that end after December 31, 1994, 5% of
7 the corporation's total purchases.

8 (4) For tax years that end after December 31, ~~1996~~ 1990
9 and except as otherwise provided in ~~section 35~~ THIS SECTION, a
10 farmers' cooperative corporation shall exclude from adjusted tax
11 base the revenue and expenses attributable to business transacted
12 with farmer or farmer cooperative corporation patrons to whom net
13 earnings are allocated in the form of patronage dividends as
14 defined in section 1388 of the internal revenue code. In comput-
15 ing the adjusted tax base of a farmers' cooperative corporation,
16 each of the additions and deductions under sections 9, 23, and
17 23b shall be multiplied by a fraction, the numerator of which is
18 the gross profit of the nonpatronage sourced business of the
19 farmers' cooperative corporation and the denominator of which is
20 the gross profits of the farmers' cooperative corporation. As
21 used in this subsection only, "farmers' cooperative corporation"
22 means a farmers' cooperative corporation organized within the
23 limitations of section 98 of 1931 PA 327, MCL 450.98.

24 (5) As used in subsection (1)(c), "exclusively" means that
25 term as applied for purposes of section 501(c)(3) of the internal
26 revenue code.