

HOUSE BILL No. 4884

May 5, 2009, Introduced by Rep. Calley and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 207 (MCL 208.1207), as amended by 2008 PA 435.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 207. (1) Except as otherwise provided in this section,
2 the following are exempt from the tax imposed by this act:

3 (a) The United States, this state, other states, and the
4 agencies, political subdivisions, and enterprises of the United
5 States, this state, and other states, including any grantor trust
6 established by a municipality with the municipality as the grantor
7 and exempt from federal income tax under the internal revenue code.

8 (b) A person who is exempt from federal income tax under the
9 internal revenue code, and a partnership, limited liability

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

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

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

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

19 (c) A nonprofit cooperative housing corporation. As used in
20 this subdivision, "nonprofit cooperative housing corporation" means
21 a cooperative housing corporation that is engaged in providing
22 housing services to its stockholders and members and that does not
23 pay dividends or interest on stock or membership investment but
24 that does distribute all earnings to its stockholders or members.
25 The exemption under this subdivision does not apply to a business
26 activity of a nonprofit cooperative housing corporation other than
27 providing housing services to its stockholders and members.

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

13 (e) Except as provided in subsection (2), a farmers'
14 cooperative corporation organized within the limitations of section
15 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under
16 subdivision (b) because the corporation was exempt from federal
17 income taxes under section 521 of the internal revenue code and
18 that would continue to be exempt under section 521 of the internal
19 revenue code except for either of the following activities:

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

25 (ii) The corporation's incidental or emergency purchases of
26 commodities from nonproducers to facilitate the manufacturing or
27 marketing of commodities purchased from producers.

1 (f) That portion of the tax base attributable to the direct
2 and indirect marketing activities of a farmers' cooperative
3 corporation organized within the limitations of section 98 of 1931
4 PA 327, MCL 450.98, if those marketing activities are provided on
5 behalf of the members of that corporation and are related to the
6 members' direct sales of their products to third parties or, for
7 livestock, are related to the members' direct or indirect sales of
8 that product to third parties. Marketing activities for a product
9 that is not livestock are not exempt under this subdivision if the
10 farmers' cooperative corporation takes physical possession of the
11 product. As used in this subdivision, "marketing activities" means
12 activities that include, but are not limited to, all of the
13 following:

14 (i) Activities under the agricultural commodities marketing
15 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural
16 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

17 (ii) Dissemination of market information.

18 (iii) Establishment of price and other terms of trade.

19 (iv) Promotion.

20 (v) Research relating to members' products.

21 (g) That portion of the tax base attributable to the services
22 provided by an attorney-in-fact to a reciprocal insurer pursuant to
23 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200
24 to 500.7234.

25 (h) That portion of the tax base attributable to a multiple
26 employer welfare arrangement that provides dental benefits only and
27 that has a certificate of authority under chapter 70 of the

1 insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

2 (i) A foreign person is not subject to taxation under this act
3 if the foreign person is domiciled in a subnational jurisdiction
4 that does not impose an income tax on a similarly situated person
5 domiciled in this state whose presence in the foreign country is
6 the same as the foreign person's presence in the United States. If
7 a foreign person is domiciled in a subnational jurisdiction that
8 does not impose an income tax on businesses, but instead imposes
9 some other type of subnational business tax, that foreign person is
10 not subject to taxation under this act if that subnational business
11 tax is not imposed on a similarly situated person domiciled in this
12 state whose presence in the foreign country is the same as the
13 foreign person's presence in the United States.

14 (J) THAT PORTION OF THE TAX BASE ATTRIBUTABLE TO THE BUSINESS
15 OF PRINTING A NEWSPAPER, PUBLISHING A NEWSPAPER, OR BOTH BY A
16 PERSON WHOSE PRIMARY ACTIVITY IS THE PRINTING, PUBLISHING, OR BOTH
17 OF A NEWSPAPER. AS USED IN THIS SUBDIVISION, "NEWSPAPER" IS LIMITED
18 TO A NEWSPAPER PUBLISHED IN THE ENGLISH LANGUAGE FOR THE
19 DISSEMINATION OF LOCAL OR TRANSMITTED NEWS AND INTELLIGENCE OF A
20 GENERAL CHARACTER OR FOR THE DISSEMINATION OF LEGAL NEWS, WHICH HAS
21 A BONA FIDE LIST OF PAYING SUBSCRIBERS OR HAS BEEN PUBLISHED AT NOT
22 LESS THAN WEEKLY INTERVALS IN THE SAME COMMUNITY WITHOUT
23 INTERRUPTION FOR AT LEAST 2 YEARS, AND HAS BEEN ESTABLISHED,
24 PUBLISHED, AND CIRCULATED AT NOT LESS THAN WEEKLY INTERVALS WITHOUT
25 INTERRUPTION FOR AT LEAST 1 YEAR IN THE SAME COUNTY.

26 (K) THAT PORTION OF THE TAX BASE ATTRIBUTABLE TO THE
27 PRODUCTION, ACQUISITION, DISTRIBUTION, OR DISSEMINATION OF THE NEWS

1 TO THE PUBLIC BY A PERSON THAT IS A TELEVISION OR RADIO BROADCAST
2 STATION.

3 (2) Subsection (1)(e) does not exempt a farmers' cooperative
4 corporation if the total dollar value of the farmers' cooperative
5 corporation's incidental and emergency purchases described in
6 subsection (1)(e)(ii) are equal to or greater than 5% of the
7 corporation's total purchases.

8 (3) Except as otherwise provided in this section, a farmers'
9 cooperative corporation that is structured to allocate net earnings
10 in the form of patronage dividends as defined in section 1388 of
11 the internal revenue code to its farmer or farmer cooperative
12 corporation patrons shall exclude from its adjusted tax base the
13 revenue and expenses attributable to business transacted with its
14 farmer or farmer cooperative corporation patrons.

15 (4) Notwithstanding any other provision of this act to the
16 contrary, a foreign person subject to tax under this act shall
17 calculate its business income tax base and modified gross receipts
18 tax base under this section. Except as otherwise provided in this
19 section, the business income tax base and modified gross receipts
20 tax base of a foreign person is subject to all adjustments and
21 other provisions of this act. However, neither the business income
22 tax base nor the modified gross receipts tax base shall include
23 proceeds from sales where title passes outside the United States.

24 (5) Except as otherwise provided in this section, the modified
25 gross receipts tax base of a foreign person includes the sum of
26 gross receipts and the adjustments under section 203 that are
27 related to United States business activity.

1 (6) Except as otherwise provided in this section, the business
2 income tax base of a foreign person includes the sum of business
3 income and the adjustments under section 201 that are related to
4 United States business activity.

5 (7) The sales factor for a foreign person is a fraction, the
6 numerator of which is the taxpayer's total sales in this state
7 where title passes inside the United States during the tax year and
8 the denominator of which is the taxpayer's total sales in the
9 United States where title passes inside the United States during
10 the tax year.

11 (8) As used in this section:

12 (a) "Business income" means, for a foreign person, gross
13 income attributable to the taxpayer's United States business
14 activity and gross income derived from sources within the United
15 States minus the deductions allowed under the internal revenue code
16 that are related to that gross income. Gross income includes the
17 proceeds from sales shipped or delivered to any purchaser within
18 the United States and for which title transfers within the United
19 States; proceeds from services performed within the United States;
20 and a pro rata proportion of the proceeds from services performed
21 both within and outside the United States to the extent the
22 recipient receives benefit of the services within the United
23 States.

24 (b) "Domiciled" means the location of the headquarters of the
25 trade or business from which the trade or business of the foreign
26 person is principally managed and directed.

27 (c) For subsection (1)(b), "exclusively" means that term as

1 applied for purposes of section 501(c)(3) of the internal revenue
2 code.

3 (d) "Foreign person" means either of the following:

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

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

10 (e) "Gross receipts" means, for a foreign person, gross
11 receipts as defined in section 111(1) from United States business
12 activity or from sources within the United States. Gross receipts
13 include all sales for which title transfers within the United
14 States; proceeds from all services performed within the United
15 States; and a pro rata portion of proceeds from services performed
16 both within and outside of the United States to the extent the
17 recipient receives benefit of the services within the United
18 States.