

HOUSE BILL No. 4117

February 7, 1991, Introduced by Reps. Willis Bullard, Horton, Robertson, Middleton, Brackenridge, Gnodtke, Dolan, Munsell, Dalman, Power, O'Connor, Dresch, Dobb, Sparks, McBryde, Power, Bouchard, Strand, London, Law and Nye and referred to the Committee on Taxation.

A bill to amend section 35 of Act No. 228 of the Public Acts of 1975, entitled
"Single business tax act,"
as amended by Act No. 285 of the Public Acts of 1989, being section 208.35 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 35 of Act No. 228 of the Public Acts of
2 1975, as amended by Act No. 285 of the Public Acts of 1989, being
3 section 208.35 of the Michigan Compiled Laws, is amended to read
4 as follows:

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

7 (a) For tax years beginning after 1976 and before January 1,
8 1989, the first \$40,000.00; for tax years beginning in 1989, the
9 first \$41,000.00; for tax years beginning in 1990, the first

1 \$42,000.00; ~~for tax years beginning in 1991, the first~~
2 ~~\$43,000.00, for tax years beginning in 1992, the first~~
3 ~~\$44,000.00,~~ and for tax years beginning after ~~1992~~ 1990, the
4 first ~~\$45,000.00~~ \$100,000.00 of the tax base of every person.
5 This exemption shall be increased by ~~\$12,000.00~~ \$20,000.00 for
6 each partner of a partnership or shareholder of a subchapter S
7 corporation or professional corporation in excess of 1 who is a
8 full-time employee of the taxpayer, whose business income from
9 that business is at least ~~\$12,000.00~~ \$20,000.00, and who owns
10 at least 10% of that business. The total increase in the exemp-
11 tion shall be not more than ~~\$48,000.00~~ \$100,000.00. For a tax-
12 payer whose business activity is for a fractional part of a year,
13 the exemption provided in this subdivision including the increase
14 in the exemption shall be prorated for the period of the
15 taxpayer's business activity. This exemption shall be reduced by
16 \$2.00 for each \$1.00 that business income exceeds the amount of
17 the exemption. For the purposes of computing the exemption,
18 "business income" means that term as defined in section 3 plus
19 compensation and director's fees of shareholders of a corporation
20 and any carryback or carryover of a net operating loss or capital
21 loss to the extent deducted in arriving at federal taxable
22 income. In calculating eligibility for the exemption provided in
23 this subdivision, a person who is not a corporation may elect to
24 average its business income for the current year and the previous
25 4 taxable years. Business income as defined in this subdivision
26 shall not be less than zero. For the purposes of this
27 subdivision, tax base shall be after allocation and apportionment

1 provided in chapter 3 and the adjustments provided in section
2 23. This subdivision does not apply to an adjusted tax base
3 under section 22a.

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

6 (c) A person who is exempt from federal income tax pursuant
7 to the provisions of the internal revenue code except the
8 following:

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

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

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

19 (d) Before August 3, 1987, a foreign or alien insurance com-
20 pany subject to the provisions of the premium tax under sections
21 440 to 446 of Act No. 218 of the Public Acts of 1956, as those
22 sections were in effect on December 27, 1987. This exemption
23 does not apply to the tax base derived from a business activity
24 other than insurance carrier services.

25 (e) Before August 3, 1987, that portion of the payroll of a
26 domestic insurer or of a marketing corporation that constitutes
27 insurance sales commissions paid to employees and salaries of

1 employees primarily concerned with the adjustment of claims.

2 This exemption does not apply to a marketing corporation that is
3 not controlled, directly or indirectly, by stock ownership or
4 common management, by the domestic insurer or insurers from which
5 it derives all or substantially all of its gross income, exclu-
6 sive of income from investments.

7 (f) Beginning August 3, 1987 and after being apportioned
8 under section 62, the first \$130,000,000.00 of disability insur-
9 ance premiums, other than credit insurance and disability income
10 insurance premiums, of each insurer subject to tax under this
11 act. This exemption shall be reduced by \$2.00 for each \$1.00 by
12 which the insurer's gross premiums from insurance carrier serv-
13 ices in this state and outside this state exceed
14 \$180,000,000.00.

15 (g) A nonprofit cooperative housing corporation. As used in
16 this subdivision, "nonprofit cooperative housing corporation"
17 means a cooperative housing corporation that is engaged in pro-
18 viding housing services to its stockholders and members and that
19 does not pay dividends or interest upon stock or membership
20 investment but that does distribute all earnings to its stock-
21 holders or members. This exemption does not apply to a business
22 activity of a nonprofit cooperative housing corporation other
23 than providing housing services to its stockholders and members.

24 (h) That portion of the tax base attributable to the produc-
25 tion of agricultural goods by a person whose primary activity is
26 the production of agricultural goods. ~~"Production"~~ AS USED IN
27 THIS SUBDIVISION, "PRODUCTION of agricultural goods" means

1 commercial farming including, but not limited to, cultivation of
2 the soil; growing and harvesting of an agricultural, horticul-
3 tural, or floricultural commodity; dairying; raising of live-
4 stock, bees, fish, fur-bearing animals, or poultry; or turf or
5 tree farming, but not including the marketing at retail of agri-
6 cultural goods.

7 (i) Except as provided in subsection (3), a farmers' cooper-
8 ative corporation organized within the limitations of section 98
9 of Act No. 327 of the Public Acts of 1931, being section 450.98
10 of the Michigan Compiled Laws, which corporation was at any time
11 exempt under subdivision (c) because the corporation was exempt
12 from federal income taxes under section 521 of the internal reve-
13 nue code and which corporation would continue to be exempt under
14 section 521 of the internal revenue code except for either of the
15 following activities:

16 (i) The corporation's repurchase from nonproducer customers
17 of portions or components of commodities the corporation markets
18 to those nonproducer customers and the corporation's subsequent
19 manufacturing or marketing of the repurchased portions or compo-
20 nents of the commodities.

21 (ii) The corporation's incidental or emergency purchases of
22 commodities from nonproducers to facilitate the manufacturing or
23 marketing of commodities purchased from producers.

24 (j) That portion of the tax base attributable to the direct
25 and indirect marketing activities of a farmers' cooperative cor-
26 poration organized within the limitations of section 98 of Act
27 No. 327 of the Public Acts of 1931, if those marketing activities

1 are provided on behalf of the members of that corporation and are
2 related to the members' direct sales of their products to third
3 parties, or, for livestock, are related to the members' direct or
4 indirect sales of that product to third parties. Marketing
5 activities for a product that is not livestock are not exempt
6 under this subdivision if the farmers' cooperative corporation
7 takes physical possession of the product. As used in this subdi-
8 vision, "marketing activities" includes, but is not limited to,
9 activities under the agricultural commodities marketing act, Act
10 No. 232 of the Public Acts of 1965, being sections 290.651 to
11 290.674 of the Michigan Compiled Laws, and the agricultural mar-
12 keting and bargaining act, Act No. 344 of the Public Acts of
13 1972, being sections 290.701 to 290.726 of the Michigan Compiled
14 Laws; dissemination of market information; establishment of price
15 and other terms of trade; promotion; and research relating to
16 members' products.

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

22 (3) Subsection (1)(i) does not exempt a farmers' cooperative
23 corporation if the total dollar value of the corporation's inci-
24 dental and emergency purchases described in subsection (1)(i)(ii)
25 are equal to or greater than 5% of the total dollar value of the
26 corporation's repurchases described in subsection (1)(i)(i).