

Act No. 285
Public Acts of 1995
Approved by the Governor
January 9, 1996
Filed with the Secretary of State
January 9, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

Introduced by Senators Shugars, Steil, Gougeon, Carl, Schuette, Cisky, Rogers, Dunaskiss, North, Emmons, McManus, Berryman, Byrum, Bouchard, Bennett, Gast, Koivisto, Conroy, Hoffman and Dingell

ENROLLED SENATE BILL No. 545

AN ACT to amend section 4 of Act No. 228 of the Public Acts of 1975, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," as amended by Act No. 6 of the Public Acts of 1995, being section 208.4 of the Michigan Compiled Laws; to add section 36d; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Section 4 of Act No. 228 of the Public Acts of 1975, as amended by Act No. 6 of the Public Acts of 1995, being section 208.4 of the Michigan Compiled Laws, is amended and section 36d is added to read as follows:

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 state commissioner of revenue.

(3) Except as otherwise provided in this section, "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 and subject to or specifically exempt from withholding under chapter 24, sections 3401 to 3406 of the internal revenue code. Compensation 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 contribution act, the railroad retirement tax act, chapter 22 of title 26 of the United States Code, 26 U.S.C. 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 U.S.C. 51 to 60.

(4) "Department" means the revenue division of the department of treasury.

Sec. 36d. To determine the reduction percentage under section 36(2)(c), the following apply:

(a) The reduction percentage for a partnership or subchapter S corporation is based on the distributive share of adjusted gross income minus loss adjustment of the partner or shareholder with the greatest distributive share of adjusted gross income minus loss adjustment.

(b) The reduction percentage for a corporation other than a subchapter S corporation is the greater of the following:

(i) The reduction percentage based on the compensation and directors' fees of the shareholder or officer with the greatest amount of compensation and directors' fees.

(ii) The reduction percentage based on the sum of the amounts in section 36(2)(b)(i)(A) and (B) for the shareholder or officer with the greatest sum of the amounts in section 36(2)(b)(i)(A) and (B).

Section 2. Sections 4a, 4b, and 4c of Act No. 228 of the Public Acts of 1975, being sections 208.4a, 208.4b, and 208.4c of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 88th Legislature are enacted into law:

(a) Senate Bill No. 342.

(b) Senate Bill No. 472.

(c) House Bill No. 4358.

(d) House Bill No. 4404.

(e) House Bill No. 4605.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.