

# HOUSE BILL No. 4773

May 13, 1997, Introduced by Reps. Profit, Wetters, Dobb, Brackenridge, Wallace, Palamara, Alley, Llewellyn and Perricone and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 35 (MCL 208.35), as amended by 1995 PA 255.

## **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

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 subdi-  
7 vision 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

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 ~~Act No. 218 of the Public Acts of 1956~~ THE INSUR-  
24 ANCE CODE OF 1956, 1956 PA 218, as those sections were in effect  
25 on December 27, 1987. This exemption does not apply to the tax  
26 base derived from a business activity other than insurance  
27 carrier services.

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

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.

13 (i) Except as provided in subsection (3), a farmers' cooper-  
14 ative corporation organized within the limitations of section 98  
15 of ~~Act No. 327 of the Public Acts of 1931, being section 450.98~~  
16 ~~of the Michigan Compiled Laws~~ 1931 PA 327, MCL 450.98, that was  
17 at any time exempt under subdivision (c) because the corporation  
18 was exempt from federal income taxes under section 521 of the  
19 internal revenue code and that would continue to be exempt under  
20 section 521 of the internal revenue code except for either of the  
21 following activities:

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

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 ~~Act~~  
7 ~~No. 327 of the Public Acts of 1931~~ 1931 PA 327, MCL 450.98, if  
8 those marketing activities are provided on behalf of the members  
9 of that corporation and are related to the members' direct sales  
10 of their products to third parties, or, for livestock, are  
11 related to the members' direct or indirect sales of that product  
12 to third parties. Marketing activities for a product that is not  
13 livestock are not exempt under this subdivision if the farmers'  
14 cooperative corporation takes physical possession of the  
15 product. As used in this subdivision, "marketing activities"  
16 includes, but is not limited to, activities under the agricul-  
17 tural commodities marketing act, ~~Act No. 232 of the Public Acts~~  
18 ~~of 1965, being sections 290.651 to 290.674 of the Michigan~~  
19 ~~Compiled Laws~~ 1965 PA 232, MCL 290.651 TO 290.674, and the agri-  
20 cultural marketing and bargaining act, ~~Act No. 344 of the Public~~  
21 ~~Acts of 1972, being sections 290.701 to 290.726 of the Michigan~~  
22 ~~Compiled Laws~~ 1972 PA 344, MCL 290.701 TO 290.726; dissemination  
23 of market information; establishment of price and other terms of  
24 trade; promotion; and research relating to members' products.

25       (2) An affiliated group, a controlled group of corporations  
26 as defined by section 1563 of the internal revenue code, or an  
27 entity under common control as defined by the internal revenue

1 code is entitled to only 1 exemption allowed by subsection (1)(a)  
2 whether or not a combined or consolidated return is filed.

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

8 (4) As used in subsection (1)(c), "exclusively" means that  
9 term as applied for purposes of section 501(c)(3) of the internal  
10 revenue code.

11 (5) AS USED IN SUBSECTION (1)(H) FOR TAX YEARS THAT END  
12 AFTER DECEMBER 31, 1990, "MARKETING AT RETAIL OF AGRICULTURAL  
13 GOODS" MEANS ACTIVITIES ASSOCIATED WITH THE SALE OF AGRICULTURAL  
14 GOODS TO A CONSUMER FOR A PERSONAL, FAMILY, OR HOUSEHOLD PURPOSE  
15 AND DOES NOT INCLUDE THE SALE OF AGRICULTURAL GOODS TO A CONTRAC-  
16 TOR FOR USE IN THE BUSINESS OF CONSTRUCTING, ALTERING, REPAIRING,  
17 OR IMPROVING REAL PROPERTY FOR OTHERS.