

# HOUSE BILL No. 5614

February 25, 1998, Introduced by Reps. Middleton, Dobb, LeTarte, Galloway, Lowe, Brackenridge, Whyman, Cassis and Perricone and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending sections 35 and 73 (MCL 208.35 and 208.73), section  
35 as amended by 1997 PA 124 and section 73 as amended by 1995 PA  
80.

## 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~~  
4 ~~January 1, 1989, the first \$40,000.00; for tax years beginning in~~  
5 ~~1989, the first \$41,000.00; for tax years beginning in 1990, the~~  
6 ~~first \$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

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

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

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

13       (i) An organization included under section 501(c)(12) or  
14 501(c)(16) of the internal revenue code.

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

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

23       (d) Before August 3, 1987, a foreign or alien insurance com-  
24 pany subject to the provisions of the premium tax under sections  
25 440 to 446 of the insurance code of 1956, 1956 PA 218, as those  
26 sections were in effect on December 27, 1987. This exemption

1 does not apply to the tax base derived from a business activity  
2 other than insurance carrier services.

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

12 (f) Beginning August 3, 1987 and after being apportioned  
13 under section 62, the first \$130,000,000.00 of disability insur-  
14 ance premiums written in Michigan, or, for the 1991 tax year  
15 only, the first \$162,500,000.00 of disability insurance premiums  
16 written in Michigan, other than credit insurance and disability  
17 income insurance premiums, of each insurer subject to tax under  
18 this act. This exemption shall be reduced by \$2.00 for each  
19 \$1.00 by which the insurer's gross premiums from insurance car-  
20 rier services in this state and outside this state exceed  
21 \$180,000,000.00, or, for the 1991 tax year only,  
22 \$225,000,000.00.

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

1 investment but that does distribute all earnings to its  
2 stockholders or members. This exemption does not apply to a  
3 business activity of a nonprofit cooperative housing corporation  
4 other than providing housing services to its stockholders and  
5 members.

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

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

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

1 manufacturing or marketing of the repurchased portions or  
2 components of the commodities.

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

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

23 (K) IN ADDITION TO ANY OTHER EXEMPTION ALLOWED UNDER THIS  
24 SECTION, \$250,000.00 OF THE TAX BASE OF EVERY PERSON. FOR THE  
25 PURPOSES OF THIS SUBDIVISION, "TAX BASE" MEANS TAX BASE AFTER  
26 ALLOCATION AND APPORTIONMENT PROVIDED IN CHAPTER 3 AND THE

1 ADJUSTMENTS PROVIDED IN SECTIONS 23 AND 23B. THIS SUBDIVISION  
2 DOES NOT APPLY TO AN ADJUSTED TAX BASE UNDER SECTION 22A.

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

8 (3) Subsection (1)(i) does not exempt a farmers' cooperative  
9 corporation if the total dollar value of the corporation's inci-  
10 dental and emergency purchases described in subsection (1)(i)(ii)  
11 are equal to or greater than either of the following:

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

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

17 (4) For tax years that end after December 31, 1996 and  
18 except as otherwise provided in THIS section, ~~35,~~ a farmers'  
19 cooperative corporation shall exclude from adjusted tax base the  
20 revenue and expenses attributable to business transacted with  
21 farmer or farmer cooperative corporation patrons to whom net  
22 earnings are allocated in the form of patronage dividends as  
23 defined in section 1388 of the internal revenue code. In comput-  
24 ing the adjusted tax base of a farmers' cooperative corporation,  
25 each of the additions and deductions under sections 9, 23, and  
26 23b shall be multiplied by a fraction, the numerator of which is  
27 the gross profit of the nonpatronage sourced business of the

1 farmers' cooperative corporation and the denominator of which is  
2 the gross profits of the farmers' cooperative corporation. As  
3 used in this subsection only, "farmers' cooperative corporation"  
4 means a farmers' cooperative corporation organized within the  
5 limitations of section 98 of 1931 PA 327, MCL 450.98.

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

9 Sec. 73. (1) An annual or final return shall be filed with  
10 the department in the form and content prescribed by the depart-  
11 ment by the last day of the fourth month after the end of the  
12 taxpayer's tax year. Any final liability shall be remitted with  
13 this return. A person whose apportioned or allocated gross  
14 receipts plus the adjustments provided in section 23b(a) ~~—, (b),~~  
15 ~~and (c)~~ TO (G) are less than the following amount for the appro-  
16 priate year need not file a return or pay the tax provided under  
17 this act:

18 ~~—(a) \$40,000.00 for tax years beginning before January 1,~~  
19 ~~1991.~~

20 ~~—(b) \$60,000.00 for tax years beginning after December 31,~~  
21 ~~1990 and before January 1, 1992.~~

22 (A) ~~—(c)~~ \$100,000.00 for tax years beginning after  
23 December 31, 1991 and before January 1, 1994.

24 (B) ~~—(d)~~ \$137,500.00 for tax years beginning after December  
25 31, 1993 and before January 1, 1995.

26 (C) ~~—(e)~~ \$250,000.00 for tax years beginning after December  
27 31, 1994 AND BEFORE JANUARY 1, 1999.



1       (2) For a person whose apportioned or allocated gross  
2 receipts plus the adjustments provided in section 23b(a) ~~—, (b),~~  
3 ~~and (c),~~ TO (G) are for a tax year less than 12 months, the  
4 amount in subsection (1) shall be multiplied by a fraction, the  
5 numerator of which is the number of months in the tax year and  
6 the denominator of which is 12.

7       (3) The commissioner upon application of the taxpayer and  
8 for good cause shown may extend the date for filing the annual  
9 return. Interest at the rate of 9% per annum shall be added to  
10 the amount of the tax unpaid for the period of the extension.  
11 The commissioner shall require a tentative return and payment of  
12 an estimated tax.

13       (4) If a taxpayer is granted an extension of time within  
14 which to file the federal income tax return for any taxable year,  
15 the filing of a copy of the request for extension together with a  
16 tentative return and payment of an estimated tax with the commis-  
17 sioner by the due date provided in subsection (1) shall automati-  
18 cally extend the due date for the filing of a final return under  
19 this act for an equivalent period plus 60 days. Interest at the  
20 rate of 9% per annum shall be added to the amount of the tax  
21 unpaid for the period of the extension.

22       (5) For tax years that end after July 6, 1994, an affiliated  
23 group as defined in this act, a controlled group of corporations  
24 as defined in section 1563 of the internal revenue code and fur-  
25 ther described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to  
26 1.414(c)-5, or an entity under common control as defined in the  
27 internal revenue code shall consolidate the gross receipts of the

1 members of the affiliated group, member corporations of the  
2 controlled group, or entities under common control that have  
3 apportioned or allocated gross receipts, plus the adjustments  
4 provided in section 23b(a) ~~—, (b), and (c)~~ TO (G), of  
5 \$100,000.00 or more to determine if the group or entity shall pay  
6 a tax or file a return as provided under subsection (1). An  
7 individual member of an affiliated group or controlled group of  
8 corporations or an entity under common control is not required to  
9 file a return or pay the tax under this act if that member or  
10 entity has apportioned or allocated gross receipts, plus the  
11 adjustments provided in section 23b(a) ~~—, (b), and (c)~~ TO (G),  
12 of less than \$100,000.00.