

HOUSE BILL No. 5444

February 3, 2004, Introduced by Rep. Drolet and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 4 (MCL 208.4), as amended by 2003 PA 240; and
to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Casual transaction" means a transaction made
2 or engaged in other than in the ordinary course of repeated and
3 successive transactions of a like character, except that a
4 transaction made or engaged in by a person that is incidental to
5 that person's regular business activity is a business activity
6 within the meaning of this act.

7 (2) "Commissioner" means the department.

8 (3) Except as otherwise provided in subsection (4),
9 "compensation" means all wages, salaries, fees, bonuses,
10 commissions, or other payments made in the taxable year on behalf

1 of or for the benefit of employees, officers, or directors of the
2 taxpayers. Compensation includes, but is not limited to,
3 payments that are subject to or specifically exempt or excepted
4 from withholding under sections 3401 to 3406 of the internal
5 revenue code. Compensation also includes, on a cash or accrual
6 basis consistent with the taxpayer's method of accounting for
7 federal income tax purposes, payments to state and federal
8 unemployment compensation funds, payments under the federal
9 insurance contribution act and similar social insurance programs,
10 payments, including self-insurance, for worker's compensation
11 insurance, payments to individuals not currently working,
12 payments to dependents and heirs of individuals because of
13 current or former labor services rendered by those individuals,
14 payments to a pension, retirement, or profit sharing plan, and
15 payments for insurance for which employees are the beneficiaries,
16 including payments under health and welfare and noninsured
17 benefit plans and payments of fees for the administration of
18 health and welfare and noninsured benefit plans. Compensation
19 does not include any of the following:

20 (a) Discounts on the price of the taxpayer's merchandise or
21 services sold to the taxpayer's employees, officers, or directors
22 that are not available to other customers.

23 (b) Payments to an independent contractor.

24 (c) For tax years beginning after December 31, 1994, payments
25 to state and federal unemployment compensation funds.

26 (d) For tax years beginning after December 31, 1994, the
27 employer's portion of payments under the federal insurance

1 contributions act, chapter 21 of subtitle C of the internal
 2 revenue code, 26 USC 3101 to 3128, the railroad retirement tax
 3 act, chapter 22 of subtitle C of the internal revenue code, 26
 4 USC 3201 to 3233, and similar social insurance programs.

5 (e) For tax years beginning after December 31, 1994,
 6 payments, including self-insurance payments, for worker's
 7 compensation insurance or federal employers' liability act
 8 insurance pursuant to chapter 149, 35 Stat. 65, 45 USC 51 to 60.

9 (f) For tax years beginning after December 31, 2003, the
 10 following payments under health and welfare and noninsured
 11 benefit plans for the benefit of persons who are residents of
 12 this state and payments of fees for the administration of health
 13 and welfare and noninsured benefit plans for the benefit of
 14 persons who are residents of this state for the specified years:

15 (i) For tax years that begin after December 31, 2003 and
 16 before January 1, 2005, 5%.

17 (ii) For tax years that begin after December 31, 2004 and
 18 before January 1, 2006, 20%.

19 (iii) For tax years that begin after December 31, 2005 and
 20 before January 1, 2007, 40%.

21 (iv) For tax years that begin after December 31, 2006 **and**
 22 **before January 1, 2008, —the percentage of payments as provided**
 23 ~~under section 4a—~~ 50%.

24 **(v) For tax years that begin after December 31, 2007, 100%.**

25 (4) For tax years that begin after December 31, 2003, for
 26 purposes of determining compensation of a professional employer
 27 organization, compensation includes payments by the professional

1 employer organization to the officers and employees of an entity
2 whose employment operations are managed by the professional
3 employer organization. Compensation of the entity whose
4 employment operations are managed by a professional employer
5 organization does not include compensation paid by the
6 professional employer organization to the officers and employees
7 of the entity whose employment operations are managed by the
8 professional employer organization. As used in this subsection,
9 "professional employer organization" means an organization that
10 provides the management and administration of the human resources
11 and employer risk of another entity by contractually assuming
12 substantial employer rights, responsibilities, and risk through a
13 professional employer agreement that establishes an employer
14 relationship with the leased officers or employees assigned to
15 the other entity by doing all of the following:

16 (a) Maintaining the right of direction and control of
17 employees' work, although this responsibility may be shared with
18 the other entity.

19 (b) Paying wages and employment taxes of the employees out of
20 its own accounts.

21 (c) Reporting, collecting, and depositing state and federal
22 employment taxes for the employees.

23 (d) Retaining the right to hire and fire employees.

24 (5) "Department" means the department of treasury.

25 Enacting section 1. Section 4a of the single business tax
26 act, 1975 PA 228, MCL 208.4a, is repealed.