Act No. 221
Public Acts of 2005
Approved by the Governor
November 21, 2005

Filed with the Secretary of State
November 21, 2005

NO EFFECTIVE DATE: Tie-barred to bill which was vetoed by the Governor

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005

Introduced by Reps. Moore, Nofs, Ward, Pastor, Baxter, Moolenaar, Vander Veen, Robertson, Palsrok, Hoogendyk, Acciavatti, Drolet, Shaffer, Hansen, Caswell, Steil, Sheen, Green, Taub, Kooiman, LaJoy, Elsenheimer, Proos, Schuitmaker, Wenke, Nitz, Hummel, Jones, Mortimer, Pavlov, Garfield, Pearce, Ball, Caul, Booher, Marleau, Hune, Newell, Huizenga, Emmons, Hildenbrand, Stahl, David Law, Gosselin, Rocca, Van Regenmorter, Kahn, Stewart, Farhat, Brandenburg, Casperson, DeRoche, Gaffney, Meyer, Palmer, Stakoe and Walker

ENROLLED HOUSE BILL No. 4342

AN ACT to amend 1975 PA 228, 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," 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:

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 department.

(3) Except as otherwise provided in subsection (4), "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. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also 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 contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 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 USC 51 to 60.

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

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

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

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

(*iv*) For tax years that begin after December 31, 2006 and before January 1, 2009, 50%.

(*v*) For tax years that begin after December 31, 2008 and before January 1, 2010, 60%.

(*vi*) For tax years that begin after December 31, 2009 and before January 1, 2011, 70%.

(*vii*) For tax years that begin after December 31, 2010 and before January 1, 2012, 80%.

(*viii*) For tax years that begin after December 31, 2011 and before January 1, 2013, 90%.

(*ix*) For tax years that begin after December 31, 2012, 100%.

(4) For tax years that begin after December 31, 2003, for purposes of determining compensation of a professional employer organization, compensation includes payments by the professional employer organization to the officers and employees of an entity whose employment operations are managed by the professional employer organization. Compensation of the entity whose employment operations are managed by a professional employer organization does not include compensation paid by the professional employer organization to the officers and employees of the entity whose employment operations are managed by the professional employer organization. As used in this subsection, "professional employer organization" means an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

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

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

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

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

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

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

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) House Bill No. 4972.

(b) House Bill No. 4973.

(c) House Bill No. 4980.

(d) House Bill No. 5095.

(e) House Bill No. 5096.

(f) House Bill No. 5097.

(g) House Bill No. 5098.

(h) House Bill No. 5106.

(i) House Bill No. 5107.

(j) House Bill No. 5108.

(k) Senate Bill No. 633.

This act is ordered to take immediate effect.

Gary L Randall

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved ____________________

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Governor