

**SUBSTITUTE FOR
SENATE BILL NO. 1009**

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 207 (MCL 208.1207).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 207. (1) Except as otherwise provided in this section,
2 the following are exempt from the tax imposed by this act:

3 (a) The United States, this state, other states, and the
4 agencies, political subdivisions, and enterprises of the United
5 States, this state, and other states, including any grantor trust
6 established by a municipality with the municipality as the grantor
7 and exempt from federal income tax under the internal revenue code.

8 (b) A person who is exempt from federal income tax under the
9 internal revenue code, and a partnership, limited liability
10 company, joint venture, general partnership, limited partnership,
11 unincorporated association, or other group or combination of

1 entities acting as a unit if the activities of the entity are
2 exclusively related to the charitable, educational, or other
3 purpose or function that is the basis for the exemption under the
4 internal revenue code from federal income taxation of the partners
5 or members and if all of the partners or members of the entity are
6 exempt from federal income tax under the internal revenue code,
7 except the following:

8 (i) An organization included under section 501(c)(12) or
9 501(c)(16) of the internal revenue code.

10 (ii) An organization exempt under section 501(c)(4) of the
11 internal revenue code that would be exempt under section 501(c)(12)
12 of the internal revenue code except that it failed to meet the
13 requirements in section 501(c)(12) that 85% or more of its income
14 consist of amounts collected from members.

15 (iii) The tax base attributable to the activities giving rise to
16 the unrelated taxable business income of an exempt person.

17 (c) A nonprofit cooperative housing corporation. As used in
18 this subdivision, "nonprofit cooperative housing corporation" means
19 a cooperative housing corporation that is engaged in providing
20 housing services to its stockholders and members and that does not
21 pay dividends or interest on stock or membership investment but
22 that does distribute all earnings to its stockholders or members.
23 The exemption under this subdivision does not apply to a business
24 activity of a nonprofit cooperative housing corporation other than
25 providing housing services to its stockholders and members.

26 (d) That portion of the tax base attributable to the
27 production of agricultural goods by a person whose primary activity

1 is the production of agricultural goods. "Production of
2 agricultural goods" means commercial farming, including, but not
3 limited to, cultivation of the soil; growing and harvesting of an
4 agricultural, horticultural, or floricultural commodity; dairying;
5 raising of livestock, bees, fish, fur-bearing animals, or poultry;
6 or turf or tree farming, but does not include the marketing at
7 retail of agricultural goods except for sales of nursery stock
8 grown by the seller and sold to a nursery dealer licensed under
9 section 9 of the insect pest and plant disease act, 1931 PA 189,
10 MCL 286.209.

11 (e) Except as provided in subsection (2), a farmers'
12 cooperative corporation organized within the limitations of section
13 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under
14 subdivision (b) because the corporation was exempt from federal
15 income taxes under section 521 of the internal revenue code and
16 that would continue to be exempt under section 521 of the internal
17 revenue code except for either of the following activities:

18 (i) The corporation's repurchase from nonproducer customers of
19 portions or components of commodities the corporation markets to
20 those nonproducer customers and the corporation's subsequent
21 manufacturing or marketing of the repurchased portions or
22 components of the commodities.

23 (ii) The corporation's incidental or emergency purchases of
24 commodities from nonproducers to facilitate the manufacturing or
25 marketing of commodities purchased from producers.

26 (f) That portion of the tax base attributable to the direct
27 and indirect marketing activities of a farmers' cooperative

Senate Bill No. 1009 as amended January 31, 2008

1 corporation organized within the limitations of section 98 of 1931
2 PA 327, MCL 450.98, if those marketing activities are provided on
3 behalf of the members of that corporation and are related to the
4 members' direct sales of their products to third parties or, for
5 livestock, are related to the members' direct or indirect sales of
6 that product to third parties. Marketing activities for a product
7 that is not livestock are not exempt under this subdivision if the
8 farmers' cooperative corporation takes physical possession of the
9 product. As used in this subdivision, "marketing activities" means
10 activities that include, but are not limited to, all of the
11 following:

12 (i) Activities under the agricultural commodities marketing
13 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural
14 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

15 (ii) Dissemination of market information.

16 (iii) Establishment of price and other terms of trade.

17 (iv) Promotion.

18 (v) Research relating to members' products.

19 (g) That portion of the tax base attributable to the services
20 provided by an attorney-in-fact to a reciprocal insurer pursuant to
21 chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200
22 to 500.7234.

23 (h) That portion of the tax base attributable to a multiple
24 employer welfare arrangement that provides dental benefits only and
25 that has a certificate of authority under chapter 70 of the
26 insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

27 <<(I) A FOREIGN PERSON IS NOT SUBJECT TO TAXATION UNDER THIS ACT IF

1 THE FOREIGN PERSON IS DOMICILED IN A SUBNATIONAL JURISDICTION THAT DOES
 2 NOT IMPOSE AN INCOME TAX ON A SIMILARLY SITUATED PERSON DOMICILED IN THIS
 3 STATE WHOSE PRESENCE IN THE FOREIGN JURISDICTION IS THE SAME AS THE
 4 FOREIGN PERSON'S PRESENCE IN THIS STATE.>>

5 (2) Subsection (1)(e) does not exempt a farmers' cooperative
 6 corporation if the total dollar value of the farmers' cooperative
 7 corporation's incidental and emergency purchases described in
 8 subsection (1)(e)(ii) are equal to or greater than 5% of the
 9 corporation's total purchases.

10 (3) Except as otherwise provided in this section, a farmers'
 11 cooperative corporation that is structured to allocate net earnings
 12 in the form of patronage dividends as defined in section 1388 of
 13 the internal revenue code to its farmer or farmer cooperative
 14 corporation patrons shall exclude from its adjusted tax base the
 15 revenue and expenses attributable to business transacted with its
 16 farmer or farmer cooperative corporation patrons.

<<(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT TO THE
 CONTRARY, A FOREIGN PERSON SUBJECT TO TAX UNDER THIS ACT SHALL CALCULATE
 ITS BUSINESS INCOME TAX BASE AND MODIFIED GROSS RECEIPTS TAX BASES UNDER
 THIS SECTION. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE BUSINESS
 INCOME TAX BASE AND MODIFIED GROSS RECEIPTS TAX BASE OF A FOREIGN PERSON
 IS SUBJECT TO ALL ADJUSTMENTS AND OTHER PROVISIONS OF THIS ACT.

(5) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE MODIFIED
 GROSS RECEIPTS TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF GROSS
 RECEIPTS AND THE ADJUSTMENTS UNDER SECTION 203 THAT ARE RELATED TO UNITED
 STATES BUSINESS ACTIVITY.

(6) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE BUSINESS
 INCOME TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF BUSINESS INCOME
 AND THE ADJUSTMENTS UNDER SECTION 201 THAT ARE RELATED TO UNITED STATES
 BUSINESS ACTIVITY.

(7) THE SALES FACTOR FOR A FOREIGN PERSON IS A FRACTION, THE
 NUMERATOR OF WHICH IS THE TOTAL SALES OF THE TAXPAYER IN THIS STATE
 DURING THE TAX YEAR AND THE DENOMINATOR OF WHICH IS THE TOTAL SALES OF
 THE TAXPAYER IN THE UNITED STATES DURING THE TAX YEAR. IN CALCULATING THE
 SALES FACTOR OF A FOREIGN PERSON, NEITHER THE NUMERATOR NOR THE
 DENOMINATOR SHALL INCLUDE SALES IF TITLE TRANSFERS OUTSIDE THE UNITED
 STATES.

17 (8) ~~(4)~~>> As used in subsection ~~(1)(b)~~, "exclusively" ~~THIS~~
 SECTION:

Senate Bill No. 1009 as amended January 31, 2008

<<(A) "BUSINESS INCOME" MEANS, FOR A FOREIGN PERSON, GROSS INCOME ATTRIBUTABLE TO THE TAXPAYER'S UNITED STATES BUSINESS ACTIVITY AND GROSS INCOME DERIVED FROM SOURCES WITHIN THE UNITED STATES MINUS THE DEDUCTIONS ALLOWED UNDER THE INTERNAL REVENUE CODE THAT ARE RELATED TO THAT GROSS INCOME. GROSS INCOME INCLUDES THE PROCEEDS FROM SALES SHIPPED OR DELIVERED TO ANY PURCHASER WITHIN THE UNITED STATES AND FOR WHICH TITLE TRANSFERS WITHIN THE UNITED STATES; PROCEEDS FROM SERVICES PERFORMED WITHIN THE UNITED STATES; AND A PRO RATA PROPORTION OF THE PROCEEDS FROM SERVICES PERFORMED BOTH WITHIN AND OUTSIDE THE UNITED STATES TO THE EXTENT THE RECIPIENT RECEIVES BENEFIT OF THE SERVICES WITHIN THE UNITED STATES.

18 (B) FOR SUBSECTION (1) (B), "EXCLUSIVELY">> means that term as applied for purposes of

19 section 501(c)(3) of the internal revenue code.

20 <<(C)>> "FOREIGN PERSON" MEANS EITHER OF THE FOLLOWING:

21 (i) AN INDIVIDUAL WHO IS NOT A UNITED STATES RESIDENT, WHETHER
22 OR NOT THE INDIVIDUAL IS SUBJECT TO TAXATION UNDER THE INTERNAL
23 REVENUE CODE.

24 (ii) A PERSON FORMED UNDER THE LAWS OF A FOREIGN COUNTRY OR A
25 POLITICAL SUBDIVISION OF A FOREIGN COUNTRY, WHETHER OR NOT THE
26 PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE.

<<(D) "GROSS RECEIPTS" MEANS, FOR A FOREIGN PERSON, GROSS RECEIPTS AS DEFINED IN SECTION 111(1) FROM UNITED STATES BUSINESS ACTIVITY OR FROM SOURCES WITHIN THE UNITED STATES. GROSS RECEIPTS INCLUDE ALL SALES FOR WHICH TITLE TRANSFERS WITHIN THE UNITED STATES; PROCEEDS FROM ALL SERVICES PERFORMED WITHIN THE UNITED STATES; AND A PRO RATA PORTION OF PROCEEDS FROM SERVICES PERFORMED BOTH WITHIN AND OUTSIDE OF THE UNITED STATES TO THE EXTENT THE RECIPIENT RECEIVES BENEFIT OF THE SERVICES WITHIN THE UNITED STATES.>>

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Senate Bill No. 1009 as amended January 31, 2008

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Enacting section 1. This amendatory act is retroactive and
effective January 1, 2008 and applies to all business activity
occurring after December 31, 2007.

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