

Act No. 240
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Gougeon, McManus, North and Schuette

ENROLLED SENATE BILL No. 116

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 35 (MCL 208.35), as amended by 1997 PA 124.

The People of the State of Michigan enact:

Sec. 35. (1) The following are exempt from the tax imposed by this act:

(a) For tax years beginning after 1976 and before January 1, 1989, the first \$40,000.00; for tax years beginning in 1989, the first \$41,000.00; for tax years beginning in 1990, the first \$42,000.00; for tax years beginning in 1991, the first \$43,000.00; for tax years beginning in 1992, the first \$44,000.00; and for tax years beginning after 1992, the first \$45,000.00 of the tax base of every person. This exemption shall be increased by \$12,000.00 for each partner of a partnership or shareholder of a subchapter S corporation or professional corporation in excess of 1 who is a full-time employee of the taxpayer, whose business income from that business is at least \$12,000.00, and who owns at least 10% of that business. The total increase in the exemption shall be not more than \$48,000.00. For a taxpayer whose business activity is for a fractional part of a year, the exemption provided in this subdivision including the increase in the exemption shall be prorated for the period of the taxpayer's business activity. This exemption shall be reduced by \$2.00 for each \$1.00 that business income exceeds the amount of the exemption. For the purposes of computing the exemption, "business income" means that term as defined in section 3 plus compensation and director's fees of shareholders of a corporation and any carryback or carryover of a net operating loss or capital loss to the extent deducted in arriving at federal taxable income. In calculating eligibility for the exemption provided in this subdivision, a person who is not a corporation may elect to average its business income for the current year and the previous 4 taxable years. Business income as defined in this subdivision shall not be less than zero. For the purposes of this subdivision, tax base shall be after allocation and apportionment provided in chapter 3 and the adjustments provided in sections 23 and 23b. This subdivision does not apply to an adjusted tax base under section 22a.

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

(c) A person who is exempt from federal income tax under the internal revenue code, and, for tax years that begin after December 31, 1995, a partnership, limited liability company, joint venture, general partnership, limited

partnership, unincorporated association, or other group or combination of entities acting as a unit if the activities of the entity are exclusively related to the charitable, educational, or other purpose or function that is the basis for the exemption under the internal revenue code from federal income taxation of the partners or members and if all of the partners or members of the entity are exempt from federal income tax under the internal revenue code, except the following:

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

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

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

(d) Before August 3, 1987, a foreign or alien insurance company subject to the provisions of the premium tax under sections 440 to 446 of the insurance code of 1956, 1956 PA 218, as those sections were in effect on December 27, 1987. This exemption does not apply to the tax base derived from a business activity other than insurance carrier services.

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

(f) Beginning August 3, 1987 and after being apportioned under section 62, the first \$130,000,000.00 of disability insurance premiums written in Michigan, or, for the 1991 tax year only, the first \$162,500,000.00 of disability insurance premiums written in Michigan, other than credit insurance and disability income insurance premiums, of each insurer subject to tax under this act. This exemption shall be reduced by \$2.00 for each \$1.00 by which the insurer's gross premiums from insurance carrier services in this state and outside this state exceed \$180,000,000.00, or, for the 1991 tax year only, \$225,000,000.00.

(g) A nonprofit cooperative housing corporation. As used in this subdivision, "nonprofit cooperative housing corporation" means a cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest upon stock or membership investment but that does distribute all earnings to its stockholders or members. This exemption does not apply to a business activity of a nonprofit cooperative housing corporation other than providing housing services to its stockholders and members.

(h) That portion of the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. "Production of agricultural goods" means commercial farming including, but not limited to, cultivation of the soil; growing and harvesting of an agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; or turf or tree farming, but not including the marketing at retail of agricultural goods except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under section 9 of the insect pest and plant disease act, 1931 PA 189, MCL 286.209.

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

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

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

(j) That portion of the tax base attributable to the direct and indirect marketing activities of a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, if those marketing activities are provided on behalf of the members of that corporation and are related to the members' direct sales of their products to third parties, or, for livestock, are related to the members' direct or indirect sales of that product to third parties. Marketing activities for a product that is not livestock are not exempt under this subdivision if the farmers' cooperative corporation takes physical possession of the product. As used in this subdivision, "marketing activities" includes, but is not limited to, activities under the agricultural commodities marketing act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726; dissemination of market information; establishment of price and other terms of trade; promotion; and research relating to members' products.

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

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

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

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

(4) For tax years that end after December 31, 1990 and except as otherwise provided in this section, a farmers' cooperative corporation shall exclude from adjusted tax base the revenue and expenses attributable to business transacted with farmer or farmer cooperative corporation patrons to whom net earnings are allocated in the form of patronage dividends as defined in section 1388 of the internal revenue code. In computing the adjusted tax base of a farmers' cooperative corporation, each of the additions and deductions under sections 9, 23, and 23b shall be multiplied by a fraction, the numerator of which is the gross profit of the nonpatronage sourced business of the farmers' cooperative corporation and the denominator of which is the gross profits of the farmers' cooperative corporation. As used in this subsection only, "farmers' cooperative corporation" means a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98.

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

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.