



SENATE BILL No. 768

November 28, 1995, Introduced by Senator EMMONS and referred to the Committee on Finance.

A bill to amend section 35 of Act No. 228 of the Public Acts of 1975, entitled "Single business tax act," as amended by Act No. 170 of the Public Acts of 1992, being section 208.35 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 35 of Act No. 228 of the Public Acts of
2 1975, as amended by Act No. 170 of the Public Acts of 1992, being
3 section 208.35 of the Michigan Compiled Laws, is amended to read
4 as follows:

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

7 (a) For tax years beginning after 1976 and before January 1,
8 1989, the first \$40,000.00; for tax years beginning in 1989, the
9 first \$41,000.00; for tax years beginning in 1990, the first

1 \$42,000.00; for tax years beginning in 1991, the first
2 \$43,000.00; for tax years beginning in 1992, the first
3 \$44,000.00; and for tax years beginning after 1992, the first
4 \$45,000.00 of the tax base of every person. This exemption shall
5 be increased by \$12,000.00 for each partner of a partnership or
6 shareholder of a subchapter S corporation or professional corpo-
7 ration in excess of 1 who is a full-time employee of the taxpay-
8 er, whose business income from that business is at least
9 \$12,000.00, and who owns at least 10% of that business. The
10 total increase in the exemption shall be not more than
11 \$48,000.00. For a taxpayer whose business activity is for a
12 fractional part of a year, the exemption provided in this subdi-
13 vision including the increase in the exemption shall be prorated
14 for the period of the taxpayer's business activity. This exemp-
15 tion shall be reduced by \$2.00 for each \$1.00 that business
16 income exceeds the amount of the exemption. For the purposes of
17 computing the exemption, "business income" means that term as
18 defined in section 3 plus compensation and director's fees of
19 shareholders of a corporation and any carryback or carryover of a
20 net operating loss or capital loss to the extent deducted in
21 arriving at federal taxable income. In calculating eligibility
22 for the exemption provided in this subdivision, a person who is
23 not a corporation may elect to average its business income for
24 the current year and the previous 4 taxable years. Business
25 income as defined in this subdivision shall not be less than
26 zero. For the purposes of this subdivision, tax base shall be
27 after 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 (b) The United States, this state, other states, and the
4 agencies, political subdivisions, and enterprises of each.

5 (c) A person who is exempt from federal income tax ~~pursuant~~
6 ~~to the provisions of~~ UNDER the internal revenue code, AND A
7 PARTNERSHIP, LIMITED LIABILITY COMPANY, JOINT VENTURE, GENERAL
8 PARTNERSHIP, LIMITED PARTNERSHIP, UNINCORPORATED ASSOCIATION, OR
9 OTHER GROUP OR COMBINATION OF ENTITIES ACTING AS A UNIT IF THE
10 ACTIVITIES OF THE ENTITY ARE EXCLUSIVELY RELATED TO THE CHARITA-
11 BLE, EDUCATIONAL, OR OTHER PURPOSE OR FUNCTION THAT IS THE BASIS
12 FOR THE EXEMPTION UNDER THE INTERNAL REVENUE CODE FROM FEDERAL
13 INCOME TAXATION OF THE PARTNERS OR MEMBERS AND IF ALL OF THE
14 PARTNERS OR MEMBERS OF THE ENTITY ARE EXEMPT FROM FEDERAL INCOME
15 TAX UNDER THE INTERNAL REVENUE CODE, except the following:

16 (i) An organization included under section 501(c)(12) or
17 501(c)(16) of the internal revenue code.

18 (ii) An organization exempt under section 501(c)(4) of the
19 internal revenue code that would be exempt under section
20 501(c)(12) of the internal revenue code but for its failure to
21 meet the requirements in section 501(c)(12) that 85% or more of
22 its income must consist of amounts collected from members.

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

26 (d) Before August 3, 1987, a foreign or alien insurance
27 company subject to the provisions of the premium tax under

1 sections 440 to 446 of Act No. 213 of the Public Acts of 1956, as
2 those sections were in effect on December 27, 1987. This exemp-
3 tion does not apply to the tax base derived from a business
4 activity other than insurance carrier services.

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

14 (f) Beginning August 3, 1987 and after being apportioned
15 under section 62, the first \$130,000,000.00 of disability insur-
16 ance premiums written in Michigan, or, for the 1991 tax year
17 only, the first \$162,500,000.00 of disability insurance premiums
18 written in Michigan, other than credit insurance and disability
19 income insurance premiums, of each insurer subject to tax under
20 this act. This exemption shall be reduced by \$2.00 for each
21 \$1.00 by which the insurer's gross premiums from insurance car-
22 rier services in this state and outside this state exceed
23 \$180,000,000.00, or, for the 1991 tax year only,
24 \$225,000,000.00.

25 (g) A nonprofit cooperative housing corporation. As used in
26 this subdivision, "nonprofit cooperative housing corporation"
27 means a cooperative housing corporation that is engaged in

1 providing housing services to its stockholders and members and
2 that does not pay dividends or interest upon stock or membership
3 investment but that does distribute all earnings to its stock-
4 holders or members. This exemption does not apply to a business
5 activity of a nonprofit cooperative housing corporation other
6 than providing housing services to its stockholders and members.

7 (h) That portion of the tax base attributable to the produc-
8 tion of agricultural goods by a person whose primary activity is
9 the production of agricultural goods. "Production of agricul-
10 tural goods" means commercial farming including, but not limited
11 to, cultivation of the soil; growing and harvesting of an agri-
12 cultural, horticultural, or floricultural commodity; dairying;
13 raising of livestock, bees, fish, fur-bearing animals, or poul-
14 try; or turf or tree farming, but not including the marketing at
15 retail of agricultural goods.

16 (i) Except as provided in subsection (3), a farmers' cooper-
17 ative corporation organized within the limitations of section 98
18 of Act No. 327 of the Public Acts of 1931, being section 450.98
19 of the Michigan Compiled Laws, that was at any time exempt under
20 subdivision (c) because the corporation was exempt from federal
21 income taxes under section 521 of the internal revenue code and
22 that would continue to be exempt under section 521 of the inter-
23 nal revenue code except for either of the following activities:

24 (i) The corporation's repurchase from nonproducer customers
25 of portions or components of commodities the corporation markets
26 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 Act
9 No. 327 of the Public Acts of 1931, if those marketing activities
10 are provided on behalf of the members of that corporation and are
11 related to the members' direct sales of their products to third
12 parties, or, for livestock, are related to the members' direct or
13 indirect sales of that product to third parties. Marketing
14 activities for a product that is not livestock are not exempt
15 under this subdivision if the farmers' cooperative corporation
16 takes physical possession of the product. As used in this subdi-
17 vision, "marketing activities" includes, but is not limited to,
18 activities under the agricultural commodities marketing act, Act
19 No. 232 of the Public Acts of 1965, being sections 290.651 to
20 290.674 of the Michigan Compiled Laws, and the agricultural mar-
21 keting and bargaining act, Act No. 344 of the Public Acts of
22 1972, being sections 290.701 to 290.726 of the Michigan Compiled
23 Laws; dissemination of market information; establishment of price
24 and other terms of trade; promotion; and research relating to
25 members' products.

26 (2) An affiliated group, a controlled group of corporations
27 as defined by section 1563 of the internal revenue code, or an

1 entity under common control as defined by the internal revenue
2 code is entitled to only 1 exemption allowed by subsection (1)(a)
3 whether or not a combined or consolidated return is filed.

4 (3) Subsection (1)(i) does not exempt a farmers' cooperative
5 corporation if the total dollar value of the corporation's inci-
6 dental and emergency purchases described in subsection (1)(i)(ii)
7 are equal to or greater than 5% of the total dollar value of the
8 corporation's repurchases described in subsection (1)(i)(i).

9 (4) AS USED IN SUBSECTION (1)(C), "EXCLUSIVELY" MEANS THAT
10 TERM AS APPLIED FOR PURPOSES OF SECTION 501(c)(3) OF THE INTERNAL
11 REVENUE CODE.