

**House Bill 4773 (Substitute H-2)
First Analysis (5-20-97)**

**Sponsor: Rep. Kirk A. Profit
Committee: Tax Policy**

THE APPARENT PROBLEM:

The Single Business Tax Act contains an exemption for the production of agricultural goods by a business whose primary activity is the production of agricultural goods. The term, "the production of agricultural goods" applies to commercial farming, including cultivation of the soil; growing and harvesting agricultural, horticultural, and floricultural commodities; dairying; raising livestock, bees, fish, fur-bearing animals, and poultry; and turf and tree farming. It does not, however, extend to the marketing at retail of agricultural goods. Retail sales, in other words, are part of a business's SBT tax base. A spokesperson for the nursery industry has testified that in a recent audit of one nursery operation, the Department of Treasury determined that the nursery's sales to landscape contractors constitutes marketing at retail under the SBT. The nursery industry contends that sales to landscape contractors should not be construed as marketing at retail and should be treated like a wholesale transaction because the goods are subsequently resold to consumers for installation by the landscape contractor. The Department of Treasury, according to testimony, lacks any specific guidance on this subject in the SBT statute and is relying on definitions in the General Sales Tax Act. Legislation has been introduced to clarify this issue.

THE CONTENT OF THE BILL:

The bill would amend the Single Business Tax Act to modify the exemption from the business tax base provided to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. Under the act, the definition of "production of agricultural goods" does not include the marketing at retail of agricultural goods. The bill would add, "except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under Section 209 of the Insect Pest and Plant Disease Act."

(Note: The term "nursery dealer" in the Insect Pest and Plant Disease Act refers to a business not a grower or an original producer of nursery stock that buys nursery stock for the purpose of reselling or reshipping independently of the control of a nurseryman or who is engaged with a nurseryman or dealer in handling nursery stock on a consignment basis. (Underlining added))

The term "nursery stock" refers to all botanically classified hardy perennial or biennial trees, shrubs, vines, and plants, either domesticated or wild, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots thereof, and fruit pits. It also refers to other plants and plant parts for, or capable of, propagation, except field, vegetable and flower seeds, corms, and tubers.)

The bill contains an enacting section stating that its provisions "are curative and intended to express the original intent of the legislature in the definition of production of agricultural goods."

MCL 208.35

FISCAL IMPLICATIONS:

The bill notes that its intent is to be curative and express the original intent of the legislature when it enacted the exemption for the production of agricultural goods.

ARGUMENTS:

For:

The bill would clarify the treatment under the single business tax of sales of nursery stock by nurseries to landscape contractors. Such sales would not be part of a nursery's tax base under the SBT. This would be consistent with other sales of nursery goods for the purpose of resale. Nurseries would remain subject to the SBT when they sold goods to customers at retail for personal, family, or household purposes.

POSITIONS:

The Department of Treasury has indicated its support for the bill in its current form. (5-14-97)

The Michigan Nursery and Landscape Association supports the bill. (5-14-97)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.