

SENATE BILL No. 864

November 3, 2005, Introduced by Senators KUIPERS, EMERSON, JOHNSON, JELINEK, SWITALSKI and PRUSI and referred to the Committee on Appropriations.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 4 (MCL 208.4), as amended by 2003 PA 240.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Casual transaction" means a transaction made or
2 engaged in other than in the ordinary course of repeated and
3 successive transactions of a like character, except that a
4 transaction made or engaged in by a person that is incidental to
5 that person's regular business activity is a business activity
6 within the meaning of this act.

7 (2) "Commissioner" means the department.

8 (3) Except as otherwise provided in subsection (4),
9 "compensation" means all wages, salaries, fees, bonuses,
10 commissions, or other payments made in the taxable year on behalf
11 of or for the benefit of employees, officers, or directors of the

1 taxpayers. Compensation includes, but is not limited to, payments
2 that are subject to or specifically exempt or excepted from
3 withholding under sections 3401 to 3406 of the internal revenue
4 code. Compensation also includes, on a cash or accrual basis
5 consistent with the taxpayer's method of accounting for federal
6 income tax purposes, payments to state and federal unemployment
7 compensation funds, payments under the federal insurance
8 contribution act and similar social insurance programs, payments,
9 including self-insurance, for worker's compensation insurance,
10 payments to individuals not currently working, payments to
11 dependents and heirs of individuals because of current or former
12 labor services rendered by those individuals, payments to a
13 pension, retirement, or profit sharing plan, and payments for
14 insurance for which employees are the beneficiaries, including
15 payments under health and welfare and noninsured benefit plans and
16 payments of fees for the administration of health and welfare and
17 noninsured benefit plans. Compensation does not include any of the
18 following:

19 (a) Discounts on the price of the taxpayer's merchandise or
20 services sold to the taxpayer's employees, officers, or directors
21 that are not available to other customers.

22 (b) Payments to an independent contractor.

23 (c) For tax years beginning after December 31, 1994, payments
24 to state and federal unemployment compensation funds.

25 (d) For tax years beginning after December 31, 1994, the
26 employer's portion of payments under the federal insurance
27 contributions act, chapter 21 of subtitle C of the internal revenue

1 code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter
2 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233,
3 and similar social insurance programs.

4 (e) For tax years beginning after December 31, 1994, payments,
5 including self-insurance payments, for worker's compensation
6 insurance or federal employers' liability act insurance pursuant to
7 chapter 149, 35 Stat. 65, 45 USC 51 to 60.

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

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

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

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

20 (iv) For tax years that begin after December 31, 2006, the
21 percentage of payments as provided under section 4a.

22 (4) For tax years that begin after December 31, 2003 **AND**
23 **BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**
24 **SUBSECTION (5)**, for purposes of determining compensation of a
25 professional employer organization, compensation includes payments
26 by the professional employer organization to the officers and
27 employees of an entity whose employment operations are managed by

1 the professional employer organization. Compensation of the entity
2 whose employment operations are managed by a professional employer
3 organization does not include compensation paid by the professional
4 employer organization to the officers and employees of the entity
5 whose employment operations are managed by the professional
6 employer organization. As used in this subsection, "professional
7 employer organization" means an organization that provides the
8 management and administration of the human resources and employer
9 risk of another entity by contractually assuming substantial
10 employer rights, responsibilities, and risk through a professional
11 employer agreement that establishes an employer relationship with
12 the leased officers or employees assigned to the other entity by
13 doing all of the following:

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

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

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

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

22 (5) **FOR TAX YEARS THAT BEGIN ON AND AFTER THE EFFECTIVE DATE**
23 **OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, COMPENSATION OF A**
24 **PROFESSIONAL EMPLOYER ORGANIZATION DOES NOT INCLUDE COMPENSATION OF**
25 **LEASED OFFICERS AND EMPLOYEES OF A CLIENT WHOSE EMPLOYMENT IS**
26 **SUBJECT TO A PROFESSIONAL EMPLOYMENT AGREEMENT BETWEEN THE**
27 **PROFESSIONAL EMPLOYER ORGANIZATION AND THE CLIENT. COMPENSATION OF**

1 A CLIENT OF A PROFESSIONAL EMPLOYER ORGANIZATION THAT IS NOT A
2 CAPTIVE PROVIDER INCLUDES COMPENSATION OF LEASED OFFICERS AND
3 EMPLOYEES OF THE CLIENT WHOSE EMPLOYMENT IS SUBJECT TO A
4 PROFESSIONAL EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER
5 ORGANIZATION AND THE CLIENT. AS USED IN THIS SUBSECTION:

6 (A) "CAPTIVE PROVIDER" MEANS AN ORGANIZATION THAT LIMITS
7 ITSELF TO PROVIDING SERVICES AND EMPLOYEES TO ONLY 1 ENTITY AND
8 THAT ENTITY'S SUBSIDIARIES AND AFFILIATES AND THAT DOES NOT HOLD
9 ITSELF OUT AS AVAILABLE TO PROVIDE ITS SERVICES TO OTHER ENTITIES
10 THAT DO NOT SHARE AN OWNERSHIP RELATIONSHIP WITH THE CAPTIVE
11 PROVIDER.

12 (B) "CLIENT" MEANS AN ENTITY THAT ENTERS INTO A PROFESSIONAL
13 EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER ORGANIZATION.

14 (C) "OFFICER" MEANS THAT TERM AS DEFINED IN SECTION 36.

15 (D) "PROFESSIONAL EMPLOYER ORGANIZATION" MEANS AN ORGANIZATION
16 THAT PROVIDES THE MANAGEMENT AND ADMINISTRATION OF THE HUMAN
17 RESOURCES AND EMPLOYMENT RISK OF MULTIPLE CLIENTS BY CONTRACTUALLY
18 ASSUMING SUBSTANTIAL EMPLOYER RIGHTS, RESPONSIBILITIES, AND RISK
19 THROUGH A PROFESSIONAL EMPLOYER AGREEMENT THAT ESTABLISHES AN
20 EMPLOYER RELATIONSHIP WITH THE LEASED OFFICERS OR EMPLOYEES
21 ASSIGNED TO THE CLIENT BY DOING OR CONTRACTING WITH A THIRD PARTY
22 TO DO ANY OR ALL OF THE FOLLOWING:

23 (i) MAINTAINING THE RIGHT OF DIRECTION AND CONTROL OF
24 EMPLOYEES' WORK, ALTHOUGH THIS RESPONSIBILITY MAY BE SHARED WITH
25 THE OTHER ENTITY.

26 (ii) PAYING WAGES AND EMPLOYMENT TAXES OF THE LEASED OFFICERS
27 AND EMPLOYEES OUT OF ITS OWN ACCOUNTS.

1 (iii) REPORTING, COLLECTING, AND DEPOSITING STATE AND FEDERAL
2 EMPLOYMENT TAXES FOR THE LEASED OFFICERS AND EMPLOYEES.

3 (iv) RETAINING THE RIGHT TO HIRE AND FIRE EMPLOYEES.

4 (6) ~~—(5)—~~ "Department" means the department of treasury.