

SB 1345, As Passed Senate, October 5, 2000

**SUBSTITUTE FOR
SENATE BILL NO. 1345**

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 35 and 35a (MCL 208.35 and 208.35a), section
35 as amended by 1998 PA 240 and section 35a as amended by 2000
PA 44.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) For tax years beginning after 1976 and before January 1,
4 1989, the first \$40,000.00; for tax years beginning in 1989, the
5 first \$41,000.00; for tax years beginning in 1990, the first
6 \$42,000.00; for tax years beginning in 1991, the first
7 \$43,000.00; for tax years beginning in 1992, the first
8 \$44,000.00; and for tax years beginning after 1992, the first
9 \$45,000.00 of the tax base of every person. This exemption shall

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

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

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1 (c) A person who is exempt from federal income tax under the
2 internal revenue code, and, for tax years that begin after
3 December 31, 1995, a partnership, limited liability company,
4 joint venture, general partnership, limited partnership, unincor-
5 porated association, or other group or combination of entities
6 acting as a unit if the activities of the entity are exclusively
7 related to the charitable, educational, or other purpose or func-
8 tion that is the basis for the exemption under the internal reve-
9 nue code from federal income taxation of the partners or members
10 and if all of the partners or members of the entity are exempt
11 from federal income tax under the internal revenue code, except
12 the following:

13 (i) An organization included under section 501(c)(12) or
14 501(c)(16) of the internal revenue code.

15 (ii) An organization exempt under section 501(c)(4) of the
16 internal revenue code that would be exempt under section
17 501(c)(12) of the internal revenue code but for its failure to
18 meet the requirements in section 501(c)(12) that 85% or more of
19 its income must consist of amounts collected from members.

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

23 (d) Before August 3, 1987, a foreign or alien insurance com-
24 pany subject to the provisions of the premium tax under sections
25 440 to 446 of the insurance code of 1956, 1956 PA 218, as those
26 sections were in effect on December 27, 1987. This exemption

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1 does not apply to the tax base derived from a business activity
2 other than insurance carrier services.

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

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

23 (g) A nonprofit cooperative housing corporation. As used in
24 this subdivision, "nonprofit cooperative housing corporation"
25 means a cooperative housing corporation that is engaged in pro-
26 viding housing services to its stockholders and members and that
27 does not pay dividends or interest upon stock or membership

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1 investment but that does distribute all earnings to its
2 stockholders or members. This exemption does not apply to a
3 business activity of a nonprofit cooperative housing corporation
4 other than providing housing services to its stockholders and
5 members.

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

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

25 (i) The corporation's repurchase from nonproducer customers
26 of portions or components of commodities the corporation markets
27 to those nonproducer customers and the corporation's subsequent

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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 1931
9 PA 327, MCL 450.98, if those marketing activities are provided on
10 behalf of the members of that corporation and are related to the
11 members' direct sales of their products to third parties, or, for
12 livestock, are related to the members' direct or indirect sales
13 of that product to third parties. Marketing activities for a
14 product that is not livestock are not exempt under this subdivi-
15 sion if the farmers' cooperative corporation takes physical pos-
16 session of the product. As used in this subdivision, "marketing
17 activities" includes, but is not limited to, activities under the
18 agricultural commodities marketing act, 1965 PA 232, MCL 290.651
19 to 290.674, and the agricultural marketing and bargaining act,
20 1972 PA 344, MCL 290.701 to 290.726; dissemination of market
21 information; establishment of price and other terms of trade;
22 promotion; and research relating to members' products.

23 (K) THAT PORTION OF THE TAX BASE ATTRIBUTABLE TO THE SERV-
24 ICES PROVIDED BY AN ATTORNEY-IN-FACT TO A RECIPROCAL INSURER PUR-
25 SUANT TO CHAPTER 72 OF THE INSURANCE CODE OF 1956, 1956 PA 218,
26 MCL 500.7200 TO 500.7234.

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

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

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

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

15 (4) For tax years that end after December 31, 1990 and
16 except as otherwise provided in this section, a farmers' coopera-
17 tive corporation shall exclude from adjusted tax base the revenue
18 and expenses attributable to business transacted with farmer or
19 farmer cooperative corporation patrons to whom net earnings are
20 allocated in the form of patronage dividends as defined in sec-
21 tion 1388 of the internal revenue code. In computing the
22 adjusted tax base of a farmers' cooperative corporation, each of
23 the additions and deductions under sections 9, 23, and 23b shall
24 be multiplied by a fraction, the numerator of which is the gross
25 profit of the nonpatronage sourced business of the farmers' coop-
26 erative corporation and the denominator of which is the gross
27 profits of the farmers' cooperative corporation. As used in this

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1 subsection only, "farmers' cooperative corporation" means a
2 farmers' cooperative corporation organized within the limitations
3 of section 98 of 1931 PA 327, MCL 450.98.

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

7 Sec. 35a. (1) For a tax year beginning after December 31,
8 1999, a taxpayer may claim a credit against the tax imposed by
9 this act of equal to the percentage determined under subsection
10 (2) multiplied by the result of subtracting the sum of the
11 amounts calculated under subdivisions (d), (e), and (f) from the
12 sum of the amounts calculated under subdivisions (a), (b), and
13 (c):

14 (a) Calculate the cost, including fabrication and installa-
15 tion, paid or accrued in the taxable year of tangible assets of a
16 type that are, or under the internal revenue code will become,
17 eligible for depreciation, amortization, or accelerated capital
18 cost recovery for federal income tax purposes, provided that the
19 assets are physically located in this state for use in a business
20 activity in this state and are not mobile tangible assets.

21 (b) Calculate the cost, including fabrication and installa-
22 tion, paid or accrued in the taxable year of mobile tangible
23 assets of a type that are, or under the internal revenue code
24 will become, eligible for depreciation, amortization, or acceler-
25 ated capital cost recovery for federal income tax purposes. This
26 amount shall be multiplied by the apportionment factor for the
27 tax year as prescribed in chapter 3.

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1 (c) For tangible assets, other than mobile tangible assets,
2 purchased or acquired for use outside of this state in a tax year
3 beginning after December 31, 1996 and physically located in this
4 state in a tax year beginning after December 31, 1999 and after
5 the assets are purchased or acquired for use in a business activ-
6 ity, calculate the federal basis used for determining gain or
7 loss as of the date the tangible assets were physically located
8 in this state for use in a business activity plus the cost of
9 fabrication and installation of the tangible assets in this
10 state.

11 (d) If the cost of tangible assets described in subdivision
12 (a) was paid or accrued in a tax year beginning after December
13 31, 1999, calculate the gross proceeds or benefit derived from
14 the sale or other disposition of the tangible assets minus the
15 gain, multiplied by the apportionment factor for the taxable year
16 as prescribed in chapter 3, and plus the loss, multiplied by the
17 apportionment factor for the taxable year as prescribed in chap-
18 ter 3 from the sale or other disposition reflected in federal
19 taxable income and minus the gain from the sale or other disposi-
20 tion added to the tax base in section 9(6).

21 (e) If the cost of tangible assets described in subdivision
22 (b) was paid or accrued in a tax year beginning after December
23 31, 1999, calculate the gross proceeds or benefit derived from
24 the sale or other disposition of the tangible assets minus the
25 gain and plus the loss from the sale or other disposition
26 reflected in federal taxable income and minus the gain from the
27 sale or other disposition added to the tax base in section 9(6).

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1 This amount shall be multiplied by the apportionment factor for
2 the tax year as prescribed in chapter 3.

3 (f) For assets purchased or acquired in a tax year beginning
4 after December 31, 1996 that were eligible for a deduction under
5 subdivision (a) or (c) and that were transferred out of this
6 state, calculate the federal basis used for determining gain or
7 loss as of the date of the transfer.

8 (2) The amount calculated under subsection (1) shall be
9 multiplied by a percentage determined by dividing the tax rate
10 for the tax year in which the credit is claimed by 2.3% and
11 multiplying that result by the following percentage as
12 applicable:

13 (a) For taxpayers with adjusted gross receipts for the tax
14 year of \$1,000,000.00 or less, 2.3%.

15 (b) For taxpayers with adjusted gross receipts for the tax
16 year of more than \$1,000,000.00 but \$2,500,000.00 or less, 1.5%.

17 (c) For taxpayers with adjusted gross receipts for the tax
18 year of more than \$2,500,000.00 but \$5,000,000.00 or less, 1.0%.

19 (d) For taxpayers with adjusted gross receipts for the tax
20 year of more than \$5,000,000.00, 0.85%.

21 (3) For a tax year in which the amount calculated under sub-
22 section (1) and multiplied by the percentage determined under
23 subsection (2) is negative, the absolute value of that amount is
24 added to the taxpayer's tax liability for the tax year.

25 (4) If the credit allowed under this section for the tax
26 year and any unused carryforward of the credit allowed under this
27 section exceed the tax liability of the taxpayer for the tax

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1 year, the excess shall not be refunded, but may be carried
2 forward as an offset to the tax liability in subsequent tax years
3 for 9 taxable years or until the excess credit is used up, which-
4 ever occurs first.

5 (5) Notwithstanding any other provision of this act, the
6 credit provided in this section shall be taken before any other
7 credit under this act and the credits under other sections of
8 this act shall be calculated using the tax liability after the
9 calculation of the credit under this section and, to the extent
10 provided by law, after the calculation of credits under other
11 sections of this act.

12 (6) A taxpayer that reduces the adjusted tax base under sec-
13 tion 31(2) shall not claim a credit under this section.

14 (7) A taxpayer that reduces the adjusted tax base under sec-
15 tion 31(4) shall reduce the credit under this section by a per-
16 centage not to exceed 100% determined by dividing the applicable
17 tax rate under section 31(1) by the percentage determined under
18 subsection (2) and multiplying the result by the percentage
19 reduction to the adjusted tax base claimed by the taxpayer for
20 the tax year under section 31(4).

21 (8) A member of an affiliated group as defined in this act,
22 a controlled group of corporations as defined in section 1563 of
23 the internal revenue code and further described in 26
24 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity
25 under common control as defined by the internal revenue code
26 shall determine adjusted gross receipts for purposes of
27 subsection (2) on a consolidated basis.

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1 (9) A TAXPAYER THAT CALCULATES ITS TAX BASE UNDER SECTION
2 22A IS NOT ELIGIBLE FOR THE CREDIT ALLOWED UNDER THIS SECTION.

3 (10) ~~(9)~~ As used in subsection (2), "adjusted gross
4 receipts" means the sum of the following:

5 (a) Gross receipts apportioned or allocated to Michigan with
6 the apportionment fraction calculated pursuant to chapter 3.

7 (b) Adjustments provided in section 23b(a) to (g).

8 (c) Adjustments provided in subsection (1)(d) to (f).