

Act No. 429  
Public Acts of 2000  
Approved by the Governor  
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**STATE OF MICHIGAN  
90TH LEGISLATURE  
REGULAR SESSION OF 2000**

Introduced by Senator Emmons

# **ENROLLED SENATE BILL No. 1345**

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 sections 35, 35a, 37c, and 38c (MCL 208.35, 208.35a, 208.37c, and 208.38c), section 35 as amended by 1998 PA 240, section 35a as amended by 2000 PA 44, section 37c as amended by 1999 PA 100, and section 38c as amended by 1997 PA 190.

*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.

(k) That portion of the tax base attributable to the services provided by an attorney-in-fact to a reciprocal insurer pursuant to chapter 72 of the insurance code of 1956, 1956 PA 218, MCL 500.7200 to 500.7234.

(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)(ii) 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)(i).

(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.

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

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

(b) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of mobile tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

(c) For tangible assets, other than mobile tangible assets, purchased or acquired for use outside of this state in a tax year beginning after December 31, 1996 and physically located in this state in a tax year beginning after December 31, 1999 and after the assets are purchased or acquired for use in a business activity, calculate the federal basis used for determining gain or loss as of the date the tangible assets were physically located in this state for use in a business activity plus the cost of fabrication and installation of the tangible assets in this state.

(d) If the cost of tangible assets described in subdivision (a) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6).

(e) If the cost of tangible assets described in subdivision (b) was paid or accrued in a tax year beginning after December 31, 1999, calculate the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This amount shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3.

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

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

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

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

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

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

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

(4) If the credit allowed under this section for the tax year and any unused carryforward of the credit allowed under this section exceed the tax liability of the taxpayer for the tax year, the excess shall not be refunded, but may be carried forward as an offset to the tax liability in subsequent tax years for 9 taxable years or until the excess credit is used up, whichever occurs first.

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

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

(7) A taxpayer that reduces the adjusted tax base under section 31(4) shall reduce the credit under this section by a percentage not to exceed 100% determined by dividing the applicable tax rate under section 31(1) by the percentage determined under subsection (2) and multiplying the result by the percentage reduction to the adjusted tax base claimed by the taxpayer for the tax year under section 31(4).

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

(9) A taxpayer that calculates its tax base under section 22a is not eligible for the credit allowed under this section.

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

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

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

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

Sec. 37c. (1) For tax years beginning after December 31, 1994 and for a period of time not to exceed 20 years as determined by the Michigan economic growth authority, a taxpayer that is an authorized business may credit against the tax imposed by section 31 the amount certified each year by the Michigan economic growth authority.

(2) The credit under this section for an authorized business for the tax year as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810, shall not exceed the payroll of the authorized business attributable to employees who perform qualified new jobs multiplied by the tax rate.

(3) A taxpayer shall not claim a credit under this section unless the Michigan economic growth authority has issued a certificate to the taxpayer. The taxpayer shall attach the certificate to the return filed under this act on which a credit under this section is claimed.

(4) The certificate required by subsection (3) shall state all of the following:

(a) The taxpayer is an authorized business.

(b) The amount of the credit under this section for the authorized business for the designated tax year.

(c) The taxpayer's federal employer identification number or the Michigan treasury number assigned to the taxpayer.

(5) If the credit allowed under this section exceeds the tax liability of the taxpayer for the tax year, the excess shall be refunded to the taxpayer.

(6) A taxpayer that claims a credit under this section or section 37d that has an agreement with the Michigan economic growth authority based on qualified new jobs as defined in section 3(j)(ii) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.803, that removes from this state 51% or more of those qualified new jobs within 3 years after the first year in which the taxpayer claims a credit described in this subsection shall pay to the department no later than 12 months after those qualified new jobs are removed from the state an amount equal to the total of all credits described in this subsection that were claimed by the taxpayer.

(7) An affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code shall claim only 1 credit under this section for each tax year for each expansion or location evidenced by a written agreement whether or not a combined or consolidated return is filed.

(8) A credit shall not be claimed by a taxpayer under this section if the taxpayer's initial certification as required in subsection (3) is issued after December 31, 2003.

(9) As used in this section:

(a) "Authority" or "Michigan economic growth authority" means the Michigan economic growth authority created in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(b) "Authorized business", "facility", "full-time job", and "written agreement" mean those terms as defined in the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(c) "Payroll" means the total salaries and wages before deducting any personal or dependency exemptions.

(d) "Qualified new jobs" means 1 or more of the following:

(i) The average number of full-time jobs at a facility of an authorized business for a tax year in excess of the average number of full-time jobs the authorized business maintained in this state prior to the expansion or location as that is determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(ii) After July 1, 2000, the average number of full-time jobs at a facility created by an eligible business within 120 days before becoming an authorized business, that is in excess of the average number of full-time jobs that the business maintained in this state 120 days before becoming an authorized business, as determined under the Michigan economic growth authority act, 1995 PA 24, MCL 207.801 to 207.810.

(e) "Tax rate" means the rate imposed under sections 51 and 51b to 51e of the income tax act of 1967, 1967 PA 281, MCL 206.51 and 206.51b to 206.51e, for the tax year in which the tax year of the taxpayer for which the credit is being computed begins.

Sec. 38c. (1) For the 1989 tax year and each tax year after the 1989 tax year and subject to the applicable limitations in this section, a taxpayer who does not claim a credit under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, may credit against the tax imposed by this act 50% of the amount the taxpayer contributes during the taxable year to an endowment fund of a community foundation.

(2) The credit allowed by this section shall not exceed 5% of the taxpayer's tax liability for the tax year before claiming any credits allowed by this act or \$5,000.00, whichever is less.

(3) The credit allowed by this section is nonrefundable so that a taxpayer shall not claim under this section a total credit amount that reduces the taxpayer's tax liability to less than zero.

(4) As used in this section, "community foundation" means an organization that applies for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit and that the department certifies for that tax year as meeting all of the following requirements:

(a) Qualifies for exemption from federal income taxation under section 501(c)(3) of the internal revenue code.

(b) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality or county.

(c) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served.

(d) Is publicly supported as defined by the regulations of the United States department of treasury, 26 C.F.R. 1.170A-9(e)(10). To maintain certification, the community foundation shall submit documentation to the department annually that demonstrates compliance with this subdivision.

(e) Is not a supporting organization as an organization is described in section 509(a)(3) of the internal revenue code and the regulations of the United States department of treasury, 26 C.F.R. 1.509(a)-4 and 1.509(a)-5.

(f) Meets the requirements for treatment as a single entity contained in the regulations of the United States department of treasury, 26 C.F.R. 1.170A-9(e)(11).

(g) Except as provided in subsection (6), is incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit under this section is claimed and that has an endowment value of at least \$100,000.00 before the expiration of 18 months after the community foundation is incorporated or established.

(h) Has an independent governing body representing the general public's interest and that is not appointed by a single outside entity.

(i) Provides evidence to the department that the community foundation has, before the expiration of 6 months after the community foundation is incorporated or established, and maintains continually during the tax year for which the credit under this section is claimed, at least 1 part-time or full-time employee.

(j) For community foundations that have an endowment value of \$1,000,000.00 or more only, the community foundation is subject to an annual independent financial audit and provides copies of that audit to the department not more than 3 months after the completion of the audit. For community foundations that have an endowment value of less than \$1,000,000.00, the community foundation is subject to an annual review and an audit every third year.

(k) In addition to all other criteria listed in this subsection for a community foundation that is incorporated or established after the effective date of the amendatory act that added this subdivision, operates in a county of this state

that was not served by a community foundation when the community foundation was incorporated or established or operates as a geographic component of an existing certified community foundation.

(5) On or before July 1 of each year, the department shall report to the house of representatives committee on taxation and the senate committee on finance the total amount of tax credits claimed under this section and under section 261 of the income tax act of 1967, 1967 PA 281, MCL 206.261, for the immediately preceding tax year.

(6) A taxpayer may claim a credit under this section for contributions to a community foundation made before the expiration of the 18-month period after a community foundation was incorporated or established during which the community foundation must build an endowment value of \$100,000.00 as provided in subsection (4)(g). If the community foundation does not reach the required \$100,000.00 endowment value during that 18-month period, contributions to the community foundation made after the date on which the 18-month period expires shall not be used to calculate a credit under this section. At any time after the expiration of the 18-month period under subsection (4)(g) that the community foundation has an endowment value of \$100,000.00, the community foundation may apply to the department for certification under this section.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1046 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate.

*Ray E. Randall*

Clerk of the House of Representatives.

Approved .....

.....  
Governor.