

Act No. 390
Public Act of 1988
Approved by the Governor
Decemr 21, 1988
Filed by the Secretary of State
December 21, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Senators Shinkle, Engler, Schwarz, Ehlers, Arthurhultz, Dillingham, Carl, Nichols, DeGrow, Geake, Cruce, Faust, Vaughn, Conroy, Posthumus, Irwin, Dingell, Welborn, Cropsey, DiNello, Fessler, Fredricks, Faxon, Mack, Sederburg, Cherry, J. Hart, Barcia, Gast, Binsfeld, O'Brien and N. Smith

ENROLLED SENATE BILL No. 878

AN ACT to amend sections 35 and 36 of Act No. 228 of the Public Acts of 1975, 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," section 35 as amended by Act No. 262 of the Public Acts of 1987 and section 36 as amended by Act No. 216 of the Public Acts of 1982, being sections 208.35 and 208.36 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 35 and 36 of Act No. 228 of the Public Acts of 1975, section 35 as amended by Act No. 262 of the Public Acts of 1987 and section 36 as amended by Act No. 216 of the Public Acts of 1982, being sections 208.35 and 208.36 of the Michigan Compiled Laws, are amended to read as follows:

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

(a) For the 1977 tax year and tax years beginning 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 carryforward 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 section 23. 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 pursuant to the provisions of 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 Act No. 218 of the Public Acts of 1956, as amended, being sections 500.440 to 500.446 of the Michigan Compiled Laws. This exemption shall 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 before being apportioned under section 62, the first \$130,000,000.00 of disability insurance premiums, 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.

(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.

(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 shall be entitled to only 1 exemption allowed by subsection (1)(a) whether or not a combined or consolidated return is filed.

Sec. 36. (1) As used in this section:

(a) "Active shareholder" means a shareholder who receives at least \$10,000.00 in compensation, director's fees, or dividends from the business, and who owns at least 5% of the outstanding stock.

(b) "Officer" means an officer of a corporation other than a corporation electing taxation under subchapter S of chapter 1 of subtitle A of the internal revenue code, sections 1361 to 1379 of the internal revenue code, including the chairperson of the board, president, vice-president, secretary, and treasurer, or persons performing similar duties.

(c) "Adjusted business income" means business income as defined in section 3 plus all of the following:

(i) Compensation and director's fees of active shareholders of a corporation.

(ii) The adjustments provided in section 9(4)(a) and (b).

(iii) Compensation and director's fees of officers of a corporation.

(d) "Shareholder" means a person who owns outstanding stock in the business. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the internal revenue code.

(2) The credit provided in this section shall be taken before any other credit under this act, and is available to any person whose gross receipts do not exceed \$6,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for tax years commencing in 1990; or \$7,500,000.00 for tax years commencing after 1990, and whose adjusted business income does not exceed \$475,000.00 for tax years commencing on or after January 1, 1985, subject to the following:

(a) An individual, a partnership, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives more than \$95,000.00

for tax years commencing on or after January 1, 1985 as a distributive share of the adjusted business income of the individual, the partnership, or the subchapter S corporation.

(b) A corporation other than a subchapter S corporation is disqualified if either of the following occur for the respective tax year:

(i) Compensation and director's fees of a shareholder or officer exceed \$95,000.00 for tax years commencing on or after January 1, 1985.

(ii) The sum of the following amounts exceeds \$95,000.00 for tax years commencing on or after January 1, 1985:

(A) Compensation and director's fees of a shareholder.

(B) The sum of business income and the adjustments provided in section 9(4)(a) and (b) times the percentage of outstanding stock owned by that shareholder.

(3) For the purposes of determining disqualification under subsection (2), an active shareholder's share of business income shall not be attributed to another active shareholder.

(4) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by section 31. For tax years commencing before January 1, 1989, the credit is a percentage reduction in tax liability. For tax years commencing on and after January 1, 1989, the credit is the greater of the amount by which the tax imposed by section 31 exceeds 4% of adjusted business income or a percentage reduction in tax liability.

(5) The percentage reduction provided in subsection (3) is calculated by subtracting from 100% the percentage computed by dividing adjusted business income by 45% of tax base.

(6) If gross receipts exceed \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; or \$6,500,000.00 for tax years commencing after 1990, the credit shall be reduced by a fraction, the numerator of which is the amount of gross receipts over \$5,000,000.00 for tax years commencing on or after January 1, 1984 and before January 1, 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for tax years commencing in 1990; or \$6,500,000.00 for tax years commencing after 1990, and the denominator of which is \$1,000,000.00. The credit shall not exceed 50% for tax years commencing before January 1, 1984; 90% for tax years commencing on or after January 1, 1984 and before January 1, 1988; or 100% for tax years commencing on and after January 1, 1988 of the tax liability imposed by section 31.

(7) An affiliated group as defined in this act and a controlled group of corporations or an entity under common control as defined by the internal revenue code shall not take the credit allowed by this section unless the business activities of the entities are consolidated.

(8) The department shall permit a taxpayer who elects to claim the credit allowed by this section based on the amount by which the tax imposed by section 31 exceeds 4% of adjusted business income, and who is not required to reduce the credit pursuant to subsection (6), to file and pay the tax imposed by this act without computing the tax imposed under section 31.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.

