

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1009

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 207 (MCL 208.1207).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 207. (1) Except as otherwise provided in this section,
2 the following are exempt from the tax imposed by this act:

3 (a) The United States, this state, other states, and the
4 agencies, political subdivisions, and enterprises of the United
5 States, this state, and other states, including any grantor trust
6 established by a municipality with the municipality as the grantor
7 and exempt from federal income tax under the internal revenue code.

8 (b) A person who is exempt from federal income tax under the
9 internal revenue code, and a partnership, limited liability
10 company, joint venture, general partnership, limited partnership,

1 unincorporated association, or other group or combination of
2 entities acting as a unit if the activities of the entity are
3 exclusively related to the charitable, educational, or other
4 purpose or function that is the basis for the exemption under the
5 internal revenue code from federal income taxation of the partners
6 or members and if all of the partners or members of the entity are
7 exempt from federal income tax under the internal revenue code,
8 except the following:

9 (i) An organization included under section 501(c)(12) or
10 501(c)(16) of the internal revenue code.

11 (ii) An organization exempt under section 501(c)(4) of the
12 internal revenue code that would be exempt under section 501(c)(12)
13 of the internal revenue code except that it failed to meet the
14 requirements in section 501(c)(12) that 85% or more of its income
15 consist of amounts collected from members.

16 (iii) The tax base attributable to the activities giving rise to
17 the unrelated taxable business income of an exempt person.

18 (c) A nonprofit cooperative housing corporation. As used in
19 this subdivision, "nonprofit cooperative housing corporation" means
20 a cooperative housing corporation that is engaged in providing
21 housing services to its stockholders and members and that does not
22 pay dividends or interest on stock or membership investment but
23 that does distribute all earnings to its stockholders or members.
24 The exemption under this subdivision does not apply to a business
25 activity of a nonprofit cooperative housing corporation other than
26 providing housing services to its stockholders and members.

27 (d) That portion of the tax base attributable to the

1 production of agricultural goods by a person whose primary activity
2 is the production of agricultural goods. "Production of
3 agricultural goods" means commercial farming, including, but not
4 limited to, cultivation of the soil; growing and harvesting of an
5 agricultural, horticultural, or floricultural commodity; dairying;
6 raising of livestock, bees, fish, fur-bearing animals, or poultry;
7 or turf or tree farming, but does not include the marketing at
8 retail of agricultural goods except for sales of nursery stock
9 grown by the seller and sold to a nursery dealer licensed under
10 section 9 of the insect pest and plant disease act, 1931 PA 189,
11 MCL 286.209.

12 (e) Except as provided in subsection (2), a farmers'
13 cooperative corporation organized within the limitations of section
14 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under
15 subdivision (b) because the corporation was exempt from federal
16 income taxes under section 521 of the internal revenue code and
17 that would continue to be exempt under section 521 of the internal
18 revenue code except for either of the following activities:

19 (i) The corporation's repurchase from nonproducer customers of
20 portions or components of commodities the corporation markets to
21 those nonproducer customers and the corporation's subsequent
22 manufacturing or marketing of the repurchased portions or
23 components of the commodities.

24 (ii) The corporation's incidental or emergency purchases of
25 commodities from nonproducers to facilitate the manufacturing or
26 marketing of commodities purchased from producers.

27 (f) That portion of the tax base attributable to the direct

1 and indirect marketing activities of a farmers' cooperative
2 corporation organized within the limitations of section 98 of 1931
3 PA 327, MCL 450.98, if those marketing activities are provided on
4 behalf of the members of that corporation and are related to the
5 members' direct sales of their products to third parties or, for
6 livestock, are related to the members' direct or indirect sales of
7 that product to third parties. Marketing activities for a product
8 that is not livestock are not exempt under this subdivision if the
9 farmers' cooperative corporation takes physical possession of the
10 product. As used in this subdivision, "marketing activities" means
11 activities that include, but are not limited to, all of the
12 following:

13 (i) Activities under the agricultural commodities marketing
14 act, 1965 PA 232, MCL 290.651 to 290.674, and the agricultural
15 marketing and bargaining act, 1972 PA 344, MCL 290.701 to 290.726.

16 (ii) Dissemination of market information.

17 (iii) Establishment of price and other terms of trade.

18 (iv) Promotion.

19 (v) Research relating to members' products.

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

24 (h) That portion of the tax base attributable to a multiple
25 employer welfare arrangement that provides dental benefits only and
26 that has a certificate of authority under chapter 70 of the
27 insurance code of 1956, 1956 PA 218, MCL 500.7001 to 500.7090.

1 (I) A FOREIGN PERSON IS NOT SUBJECT TO TAXATION UNDER THIS ACT
2 IF THE FOREIGN PERSON IS DOMICILED IN A SUBNATIONAL JURISDICTION
3 THAT DOES NOT IMPOSE AN INCOME TAX ON A SIMILARLY SITUATED PERSON
4 DOMICILED IN THIS STATE WHOSE PRESENCE IN THE FOREIGN COUNTRY IS
5 THE SAME AS THE FOREIGN PERSON'S PRESENCE IN THE UNITED STATES. IF
6 A FOREIGN PERSON IS DOMICILED IN A SUBNATIONAL JURISDICTION THAT
7 DOES NOT IMPOSE AN INCOME TAX ON BUSINESSES, BUT INSTEAD IMPOSES
8 SOME OTHER TYPE OF SUBNATIONAL BUSINESS TAX, THAT FOREIGN PERSON IS
9 NOT SUBJECT TO TAXATION UNDER THIS ACT IF THAT SUBNATIONAL BUSINESS
10 TAX IS NOT IMPOSED ON A SIMILARLY SITUATED PERSON DOMICILED IN THIS
11 STATE WHOSE PRESENCE IN THE FOREIGN COUNTRY IS THE SAME AS THE
12 FOREIGN PERSON'S PRESENCE IN THE UNITED STATES.

13 (2) Subsection (1)(e) does not exempt a farmers' cooperative
14 corporation if the total dollar value of the farmers' cooperative
15 corporation's incidental and emergency purchases described in
16 subsection (1)(e)(ii) are equal to or greater than 5% of the
17 corporation's total purchases.

18 (3) Except as otherwise provided in this section, a farmers'
19 cooperative corporation that is structured to allocate net earnings
20 in the form of patronage dividends as defined in section 1388 of
21 the internal revenue code to its farmer or farmer cooperative
22 corporation patrons shall exclude from its adjusted tax base the
23 revenue and expenses attributable to business transacted with its
24 farmer or farmer cooperative corporation patrons.

25 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT TO THE
26 CONTRARY, A FOREIGN PERSON SUBJECT TO TAX UNDER THIS ACT SHALL
27 CALCULATE ITS BUSINESS INCOME TAX BASE AND MODIFIED GROSS RECEIPTS

1 TAX BASE UNDER THIS SECTION. EXCEPT AS OTHERWISE PROVIDED IN THIS
2 SECTION, THE BUSINESS INCOME TAX BASE AND MODIFIED GROSS RECEIPTS
3 TAX BASE OF A FOREIGN PERSON IS SUBJECT TO ALL ADJUSTMENTS AND
4 OTHER PROVISIONS OF THIS ACT. HOWEVER, NEITHER THE BUSINESS INCOME
5 TAX BASE NOR THE MODIFIED GROSS RECEIPTS TAX BASE SHALL INCLUDE
6 PROCEEDS FROM SALES WHERE TITLE PASSES OUTSIDE THE UNITED STATES.

7 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE MODIFIED
8 GROSS RECEIPTS TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF
9 GROSS RECEIPTS AND THE ADJUSTMENTS UNDER SECTION 203 THAT ARE
10 RELATED TO UNITED STATES BUSINESS ACTIVITY.

11 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE BUSINESS
12 INCOME TAX BASE OF A FOREIGN PERSON INCLUDES THE SUM OF BUSINESS
13 INCOME AND THE ADJUSTMENTS UNDER SECTION 201 THAT ARE RELATED TO
14 UNITED STATES BUSINESS ACTIVITY.

15 (7) THE SALES FACTOR FOR A FOREIGN PERSON IS A FRACTION, THE
16 NUMERATOR OF WHICH IS THE TAXPAYER'S TOTAL SALES IN THIS STATE
17 WHERE TITLE PASSES INSIDE THE UNITED STATES DURING THE TAX YEAR AND
18 THE DENOMINATOR OF WHICH IS THE TAXPAYER'S TOTAL SALES IN THE
19 UNITED STATES WHERE TITLE PASSES INSIDE THE UNITED STATES DURING
20 THE TAX YEAR.

21 (8) ~~(4) As used in subsection (1) (b), "exclusively" THIS~~
22 SECTION:

23 (A) "BUSINESS INCOME" MEANS, FOR A FOREIGN PERSON, GROSS
24 INCOME ATTRIBUTABLE TO THE TAXPAYER'S UNITED STATES BUSINESS
25 ACTIVITY AND GROSS INCOME DERIVED FROM SOURCES WITHIN THE UNITED
26 STATES MINUS THE DEDUCTIONS ALLOWED UNDER THE INTERNAL REVENUE CODE
27 THAT ARE RELATED TO THAT GROSS INCOME. GROSS INCOME INCLUDES THE

1 PROCEEDS FROM SALES SHIPPED OR DELIVERED TO ANY PURCHASER WITHIN
2 THE UNITED STATES AND FOR WHICH TITLE TRANSFERS WITHIN THE UNITED
3 STATES; PROCEEDS FROM SERVICES PERFORMED WITHIN THE UNITED STATES;
4 AND A PRO RATA PROPORTION OF THE PROCEEDS FROM SERVICES PERFORMED
5 BOTH WITHIN AND OUTSIDE THE UNITED STATES TO THE EXTENT THE
6 RECIPIENT RECEIVES BENEFIT OF THE SERVICES WITHIN THE UNITED
7 STATES.

8 (B) "DOMICILED" MEANS THE LOCATION OF THE HEADQUARTERS OF THE
9 TRADE OR BUSINESS FROM WHICH THE TRADE OR BUSINESS OF THE FOREIGN
10 PERSON IS PRINCIPALLY MANAGED AND DIRECTED.

11 (C) FOR SUBSECTION (1) (B), "EXCLUSIVELY" means that term as
12 applied for purposes of section 501(c) (3) of the internal revenue
13 code.

14 (D) "FOREIGN PERSON" MEANS EITHER OF THE FOLLOWING:

15 (i) AN INDIVIDUAL WHO IS NOT A UNITED STATES RESIDENT, WHETHER
16 OR NOT THE INDIVIDUAL IS SUBJECT TO TAXATION UNDER THE INTERNAL
17 REVENUE CODE.

18 (ii) A PERSON FORMED UNDER THE LAWS OF A FOREIGN COUNTRY OR A
19 POLITICAL SUBDIVISION OF A FOREIGN COUNTRY, WHETHER OR NOT THE
20 PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE.

21 (E) "GROSS RECEIPTS" MEANS, FOR A FOREIGN PERSON, GROSS
22 RECEIPTS AS DEFINED IN SECTION 111(1) FROM UNITED STATES BUSINESS
23 ACTIVITY OR FROM SOURCES WITHIN THE UNITED STATES. GROSS RECEIPTS
24 INCLUDE ALL SALES FOR WHICH TITLE TRANSFERS WITHIN THE UNITED
25 STATES; PROCEEDS FROM ALL SERVICES PERFORMED WITHIN THE UNITED
26 STATES; AND A PRO RATA PORTION OF PROCEEDS FROM SERVICES PERFORMED
27 BOTH WITHIN AND OUTSIDE OF THE UNITED STATES TO THE EXTENT THE

Senate Bill No. 1009 (H-3) as amended December 18, 2008

1 **RECIPIENT RECEIVES BENEFIT OF THE SERVICES WITHIN THE UNITED**
2 **STATES.**

3 Enacting section 1. This amendatory act is retroactive and
4 effective January 1, 2008 and applies to all business activity
5 occurring after December 31, 2007.

[Enacting section 2. This amendatory act does not take effect
unless Senate Bill No. 1038 of the 94th Legislature is enacted into
law.]