

SENATE BILL No. 1009

January 9, 2008, Introduced by Senators CASSIS, JANSEN and McMANUS and referred to the Committee on Finance.

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 THAT DOES NOT HAVE A PERMANENT
2 ESTABLISHMENT IN THE UNITED STATES DURING THE TAX YEAR OR A FOREIGN
3 PERSON THAT IS EXEMPT FROM TAXATION UNDER THE INTERNAL REVENUE CODE
4 EITHER AS THE RESULT OF AN INCOME TAX TREATY OR OTHERWISE.

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

10 (3) Except as otherwise provided in this section, a farmers'
11 cooperative corporation that is structured to allocate net earnings
12 in the form of patronage dividends as defined in section 1388 of
13 the internal revenue code to its farmer or farmer cooperative
14 corporation patrons shall exclude from its adjusted tax base the
15 revenue and expenses attributable to business transacted with its
16 farmer or farmer cooperative corporation patrons.

17 (4) As used in ~~subsection (1)(b), "exclusively"~~ **THIS SECTION:**

18 (A) **"EXCLUSIVELY"** means that term as applied for purposes of
19 section 501(c)(3) of the internal revenue code.

20 (B) **"FOREIGN PERSON" MEANS EITHER OF THE FOLLOWING:**

21 (i) **AN INDIVIDUAL WHO IS NOT A UNITED STATES RESIDENT, WHETHER**
22 **OR NOT THE INDIVIDUAL IS SUBJECT TO TAXATION UNDER THE INTERNAL**
23 **REVENUE CODE.**

24 (ii) **A PERSON FORMED UNDER THE LAWS OF A FOREIGN COUNTRY OR A**
25 **POLITICAL SUBDIVISION OF A FOREIGN COUNTRY, WHETHER OR NOT THE**
26 **PERSON IS SUBJECT TO TAXATION UNDER THE INTERNAL REVENUE CODE.**

27 (C) **"PERMANENT ESTABLISHMENT" MEANS EITHER OF THE FOLLOWING:**

1 (i) IF AN INCOME TAX TREATY APPLIES TO THE FOREIGN PERSON, THAT
2 TERM AS DEFINED IN THAT INCOME TAX TREATY IN EFFECT BETWEEN THE
3 UNITED STATES AND ANOTHER NATION.

4 (ii) IF NO INCOME TAX TREATY APPLIES TO THE FOREIGN PERSON,
5 THAT TERM AS DEFINED IN THE UNITED STATES MODEL INCOME TAX
6 CONVENTION.

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