

**REPRINT**

**SUBSTITUTE FOR**

**HOUSE BILL NO. 5403**

(As passed the House, May 2, 2002)

(As amended by the Senate, December 11, 2002)

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 4 (MCL 208.4), as amended by 1999 PA 115.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 4. (1) "Casual transaction" means a transaction made  
2 or engaged in other than in the ordinary course of repeated and  
3 successive transactions of a like character, except that a trans-  
4 action made or engaged in by a person that is incidental to that  
5 person's regular business activity is a business activity within  
6 the meaning of this act.

7       (2) "Commissioner" means the state commissioner of revenue.

8       (3) Except as otherwise provided in ~~this section~~  
9 SUBSECTION (4), "compensation" means all wages, salaries, fees,  
10 bonuses, commissions, or other payments made in the taxable year  
11 on behalf of or for the benefit of employees, officers, or

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1 directors of the taxpayers. Compensation includes, but is not  
2 limited to, payments that are subject to or specifically exempt  
3 or excepted from withholding under sections 3401 to 3406 of the  
4 internal revenue code. Compensation also includes, on a cash or  
5 accrual basis consistent with the taxpayer's method of accounting  
6 for federal income tax purposes, payments to state and federal  
7 unemployment compensation funds, payments under the federal  
8 insurance contribution act and similar social insurance programs,  
9 payments, including self-insurance, for worker's compensation  
10 insurance, payments to individuals not currently working, pay-  
11 ments to dependents and heirs of individuals because of current  
12 or former labor services rendered by those individuals, payments  
13 to a pension, retirement, or profit sharing plan, and payments  
14 for insurance for which employees are the beneficiaries, includ-  
15 ing payments under health and welfare and noninsured benefit  
16 plans and payments of fees for the administration of health and  
17 welfare and noninsured benefit plans. Compensation does not  
18 include any of the following:

19 (a) Discounts on the price of the taxpayer's merchandise or  
20 services sold to the taxpayer's employees, officers, or directors  
21 that are not available to other customers.

22 (b) Payments to an independent contractor.

23 (c) For tax years beginning after December 31, 1994, pay-  
24 ments to state and federal unemployment compensation funds.

25 (d) For tax years beginning after December 31, 1994, the  
26 employer's portion of payments under the federal insurance  
27 contributions act, chapter 21 of subtitle C of the internal

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1 revenue code, 26 U.S.C. 3101 to 3128, the railroad retirement tax  
2 act, chapter 22 of subtitle C of the internal revenue code, 26  
3 U.S.C. 3201 to 3233, and similar social insurance programs.

4 (e) For tax years beginning after December 31, 1994, pay-  
5 ments, including self-insurance payments, for worker's compensa-  
6 tion insurance or federal employers' liability act insurance pur-  
7 suant to chapter 149, 35 Stat. 65, 45 U.S.C. 51 to 60.

8 (4) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2003, FOR  
9 PURPOSES OF DETERMINING COMPENSATION OF A PROFESSIONAL EMPLOYER  
10 ORGANIZATION, COMPENSATION INCLUDES PAYMENTS BY THE PROFESSIONAL  
11 EMPLOYER ORGANIZATION TO THE OFFICERS AND EMPLOYEES OF AN ENTITY  
12 WHOSE EMPLOYMENT OPERATIONS ARE MANAGED BY THE PROFESSIONAL  
13 EMPLOYER ORGANIZATION. COMPENSATION OF THE ENTITY WHOSE EMPLOY-  
14 MENT OPERATIONS ARE MANAGED BY A PROFESSIONAL EMPLOYER ORGANIZA-  
15 TION DOES NOT INCLUDE COMPENSATION PAID BY THE PROFESSIONAL  
16 EMPLOYER ORGANIZATION TO THE OFFICERS AND EMPLOYEES OF THE ENTITY  
17 WHOSE EMPLOYMENT OPERATIONS ARE MANAGED BY THE PROFESSIONAL  
18 EMPLOYER ORGANIZATION. AS USED IN THIS SUBSECTION, "PROFESSIONAL  
19 EMPLOYER ORGANIZATION" MEANS AN ORGANIZATION THAT PROVIDES THE  
20 MANAGEMENT AND ADMINISTRATION OF THE HUMAN RESOURCES AND EMPLOYER  
21 RISK OF ANOTHER ENTITY BY CONTRACTUALLY ASSUMING SUBSTANTIAL  
22 EMPLOYER RIGHTS, RESPONSIBILITIES, AND RISK THROUGH A PROFES-  
23 SIONAL EMPLOYER AGREEMENT THAT ESTABLISHES AN EMPLOYER RELATION-  
24 SHIP WITH THE LEASED OFFICERS OR EMPLOYEES ASSIGNED TO THE OTHER  
25 ENTITY BY DOING ALL OF THE FOLLOWING:

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1 (A) MAINTAINING THE RIGHT OF DIRECTION AND CONTROL OF  
2 EMPLOYEES' WORK, ALTHOUGH THIS RESPONSIBILITY MAY BE SHARED WITH  
3 THE OTHER ENTITY.

4 (B) PAYING WAGES AND EMPLOYMENT TAXES OF THE EMPLOYEES OUT  
5 OF ITS OWN ACCOUNTS.

6 (C) REPORTING, COLLECTING, AND DEPOSITING STATE AND FEDERAL  
7 EMPLOYMENT TAXES FOR THE EMPLOYEES.

8 (D) RETAINING THE RIGHT TO HIRE AND FIRE EMPLOYEES.

9 (5) ~~(4)~~ "Department" means the revenue bureau of the  
10 department of treasury.