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Tax Newsletter

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TAXATION SECTION

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State Bar of Michigan
306 Townsend Street, Lansing, Mich. 48904

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SINGLE BUSINESS TAX QUESTIONS AND ANSWERS
VOLUME IV

1. How is leased equipment treated for the capital acquisition deduction in accordance with Section 23?
 - A. Section 23 refers only to the cost of assets paid or accrued in the taxable year. Therefore, leased equipment does not qualify for the capital acquisition deduction. The capital acquisition deduction is restricted to property owned by the taxpayer.
2. Are leasehold improvements eligible for the capital acquisition deduction?
 - A. Leasehold improvements that are eligible for depreciation and are improvements to real property located within Michigan would qualify for the capital acquisition deduction.
3. If a firm moves into Michigan and transfers assets from another state to Michigan, would these assets qualify for the capital acquisition deduction?
 - A. There would be no cost paid or accrued in the taxable year on assets transferred from another state to Michigan; therefore, the capital acquisition deduction would not be allowable.
4. If an affiliated group is denied permission to file combined or consolidated returns, will the members of the group qualify for the statutory exemption in accordance with Section 35 of the Act?
 - A. According to Section 37, an affiliated group will be eligible for only one statutory exemption. Therefore, even though an affiliated group is denied the authority to file consolidated returns, only one exemption can be used for the entire group. This exemption is allocated on Form C-8009.
5. What is the criteria to qualify for filing combined or consolidated returns? Must all taxpayers be subject to Michigan's jurisdiction or can an affiliated group form a Michigan affiliated group for the purpose of filing combined or consolidated returns?
 - A. It is our interpretation that all members of the affiliated group filing on the Federal Form 851 must be subject to Michigan's jurisdiction in order to qualify for consolidated filing. Example: If the affiliated group consists of twelve entities and nine entities are subject to Michigan's jurisdiction, the group is not eligible for combined or consolidated filing.
6. What salaries are required to be added to business income in computing the eligibility for the statutory exemption?
 - A. Salaries of qualified partners or shareholders must be added back. However, if there are partners or shareholders who do not qualify, those salaries are not required to be added to business income in calculating the statutory exemption.

7. In using the gross receipts method of computing the tax, can a taxpayer reduce the gross receipts by a business loss, a Michigan net operating loss carryforward, and the statutory exemption?
- A. No. However, these items are used in computing adjusted tax base, which is necessary to determine whether or not the gross receipts methods should be used.
8. Can a financial institution carry forward a Michigan net operating loss sustained under the financial institution income tax?
- A. No. The Single Business Tax Act only allows a net operating loss carryforward sustained from the Michigan corporation income tax.
9. Can a self-employed businessman filing as an individual pay himself a salary or wage, thereby reducing his federal taxable income to take advantage of the statutory exemption?
- A. No. There is no employer-employee relationship; therefore, an individual cannot use the payment of salaries and wages to reduce federal taxable income.
10. Is payroll paid from a federal grant to be included in compensation?
- A. Salaries and wages from any source paid to an employee must be included in compensation of the employer.
11. The Act allows alternative methods for computing the tax for taxpayers engaged in transportation and rental housing investments. If a taxpayer has more than one activity, how is the special alternative computed?
- A. It would be necessary to compute the alternative using only that portion of the activity that is covered by the special computation. For example, rental housing investments would be computed using that alternative just as if it were a separate business and the balance of the taxpayer's business activity would be used to compute the adjusted tax base. The two computations would then be combined to arrive at the total amount to be remitted. Therefore, the different activities would be separately computed to arrive at the applicable tax due.
12. Is a grantor trust subject to SBT?
- A. No. If a grantor trust is engaged in a trade or business activity, the grantor or owner is required to file SBT returns.
13. Are payments from condominium owners for administrative services and maintenance of common areas required to be included in gross receipts of the condominium association.
- A. Yes.
14. Are commissions paid by a real estate broker to an independent sales person required to be included in the gross receipts of the real estate broker or the independent sales person?

- A. Both. Gross receipts of the real estate broker would include the total commission received without exclusion for the amount paid to the independent sales person. The independent sales person would be subject to SBT and required to file a return if his commissions exceed \$34,000.
15. Under Section 23, is a capital acquisition deduction available as a result of a statutory merger?
- A. No. The property transferred would not qualify for the capital acquisition deduction as the property was not paid or accrued in the taxable year by the surviving corporation.
16. Under Section 31(3), (6) and (7), deductions for certain types of businesses have expiration dates as of December 31, 1977. May a fiscal year taxpayer whose fiscal year ends after the expiration date prorate the special deduction?
- A. Yes. A fiscal year taxpayer will be required to compute the special deduction using the same method (actual or prorata) as used to compute the first year's SBT liability under Section 72.
17. Transportation services have an alternative method of computing the SBT. What kind of businesses are included in transportation services?
- A. We interpret the language in the statute to mean transportation activities which are regulated and required to charge only specific rates as dictated by the State or other regulatory bodies. Therefore, those transportation services who are "for hire" and who are regulated by State or local ordinances can take advantage of the transportation computation.
18. How will patronage dividends of cooperatives be handled for SBT purposes?
- A. Patronage dividends will be added back to the extent deducted in arriving at federal taxable income for the cooperative. The dividends will be deducted in arriving at the tax base for the patron.
19. Can an insurance agency exclude that portion of the payroll that constitutes insurance sales commissions paid to employees?
- A. No. The exemption provided in Section 35 (e) applies only to domestic insurers and their sales subsidiaries.
20. What will be the treatment of tips and gratuities both for compensation purposes and gross receipts purposes for SBT.
- A. Voluntary tips, whether cash or credit tips, will not be considered a part of gross receipts or a part of compensation for the employer. An automatic service charge will be considered both gross receipts and compensation when paid to the employee. The tips reported to the employee and considered in determining the employee's compensation under the minimum wage law will be considered a part of compensation. (This amends Question 22, Volume II.)

SINGLE BUSINESS TAX QUESTIONS AND ANSWERS
VOLUME V

1. How will short period returns for taxpayers starting or ending business within a tax year be treated with regard to the statutory exemption?
 - A. The short period is the taxpayer's "tax year"; therefore, the full statutory exemption will be allowable. This is true only for a taxpayer who may start business or discontinue business in a tax year and will not affect a taxpayer with a fiscal year ending in 1976 who will prorate based on the number of months in 1976.
2. Who is considered a full time employee of the taxpayer for the purpose of computing the additional exemption provided in Section 35(a)?
 - A. A full time employee would be someone who works 40 hours a week or a person who works at least 51% for that taxpayer. In no instance will a person be a full time employee for more than one taxpayer.
3. How will a Domestic International Sales Corporation be treated under the SBT Act?
 - A. The taxability of the DISC will be the same as any other corporation if the DISC has property or payroll.

If the DISC is considered a commission DISC without property and payroll, the business activity of the DISC will be considered the business activity of the parent company.
4. How will directors' fees be treated for both the company paying the fees and the director receiving the fees?
 - A. The directors' fees are included in the definition of compensation and, therefore, must be included in the compensation addition to the tax base for the firm paying the directors' fees. The director receiving the fees may exclude the fees from his SBT base and if he has no SBT liability, directors' fees in excess of \$34,000 would not subject the director to SBT. We conclude that the director is not engaged in a business activity in a capacity as a director.
5. Will the Department use the same criteria for interstate commerce that was used in determining nexus for Michigan income tax jurisdiction?
 - A. We conclude that as the SBT is not a net income tax or measured by net income, that P.L. 86-272 will not be used to determine nexus. The Department will follow the guidelines set forth in the Scripto vs. Carson Case wherein solicitation in the State by employees, brokers or independent representatives would subject the taxpayer to the SBT. We would be limited by the National Bellas-Hess Case in that out-of-state mail order activities would not be subject to the SBT.
6. If a taxpayer made a deposit on a tangible asset prior to 1-1-76 with delivery of the tangible asset after 1-1-76, must the deposit be deducted from the total cost of the asset in determining the capital acquisition deduction?

- A. The delivery of tangible personal property would determine the year in which the acquisition took place. Therefore, a deposit on any property other than real property would not be deducted in arriving at the capital acquisition deduction if the title to the property was transferred after 1-1-76.
7. Section 35(a) gives a person other than a corporation an election to average business income for the current year and the previous 4 taxable years. What is meant by previous 4 taxable years?
- A. It is our conclusion that the reference to "previous 4 taxable years" means 4 previous taxable years under the SBT Act.
- "Taxable year" is defined in Section 10(1) of the Statute as:
- "'Tax year' or 'taxable year' means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base is computed under this act..."
- The reference to "under this act" is interpreted as meaning the first income averaging under SBT will be for the tax year 1980 rather than the tax year 1977 as previously indicated. This amends Volume I, Question 11.
8. The statutory exemption under Section 35(a) refers to \$34,000 for the 1976 tax year and \$36,000 for the 1977 tax year and each year thereafter. How will this effect taxpayers on a fiscal year basis?
- A. As tax year is defined in Section 10(1) as the calendar year or the fiscal year ending during the calendar year, it is our conclusion that the 1976 tax year as indicated by Section 35(a) will mean that all taxpayers with a year ending in 1976 will be allowed the \$34,000 exemption (or prorated exemption) and all taxpayers with years ending in 1977 and thereafter will be allowed the \$36,000 statutory exemption.
9. If a husband and wife file joint federal income tax returns and have two separately identifiable businesses, will the husband and wife be required to file a joint return for SBT?
- A. A husband and wife who have separate businesses with separate records and file separate federal schedules will be eligible to file separately for SBT purposes.
10. What amount paid by a real estate broker to an independent salesperson may be excluded from the broker's gross receipts?
- A. Question 14 of Volume IV outlines the Department's position regarding such payments. However, we find that there are real estate brokers who have entered into an agency agreement not only with the seller of the home but also the salesperson. In those instances where the principal agency relationship can be clearly established by a written agreement to indicate that the broker is acting as agent for both the seller of the home and the salesperson, it is the Department's position that the broker can exclude the amount paid to the previous owner of the real estate and also the independent salesperson.

11. Under Section 35(f) of the SBT Statute a taxpayer claiming exemption for the 50% of compensation directly related to the completion of construction contracts is required to file a copy of the bid or contract with the annual return. Is it necessary to file the entire contract or is just the specific information required?
 - A. The Department has developed a form to be used when claiming the exemption (Form C-8010), which will require specific information. The taxpayer must retain the contracts for a period of six years.
12. According to Volume IV, Question 12, a grantor trust engaged in a trade or business will not be subject to SBT as the grantor or owner will be required to file the SBT return. How will other trust be handled for SBT purposes?
 - A. A "simple" or "complex" trust engaged in a trade or business will be subject to SBT and will be required to file a return. Trade or business would include rental of property but would not include passive income.
13. Will the beneficiaries of an estate or trust be eligible for a credit against their personal income tax return for SBT paid by the estate or trust?
 - A. The credit for SBT paid is allocated between the fiduciary and the beneficiary according to their share of the distributable net business income.
14. Will a brother-sister controlled corporate group be eligible for filing combined or consolidated returns?
 - A. Section 3(1) of the SBT Statute defines affiliated group as two or more corporations, one of which owns or controls directly or indirectly 80% or more of the capital stock with voting rights to the other corporation or corporations. It would be, therefore, our conclusion that a brother-sister corporation would not meet the definition of affiliated group.
15. What is considered business income of a partnership?
 - A. Business income for SBT purposes would be ordinary income from line 26 of Form US 1065 and payments to partners including salaries and interest from line 14 of the US 1065 plus or minus any items separately reported to the partners derived from the business activity. The SBT forms erroneously indicate that partners' salaries are added to business income as a separate computation.
16. Is a nonprofit entity with unrelated taxable business income required to file a SBT return?
 - A. We will follow the federal guidelines for unrelated taxable business income. To the extent the gross receipts from unrelated taxable business income exceed \$34,000, the exempt entity would be required to file a SBT return.
17. What interest would be considered in the gross receipts?
 - A. Interest and finance charges are gross receipts to the extent they are generated from the sale of inventory items or the performance of service.
18. Are deposits included in gross receipts?

- A. Deposits (e.g. security deposits) will not be considered gross receipts at the time withheld. The deposit returned to the customer would not be considered gross receipts; however, deposits retained by the taxpayer for payment of loss or damages would be a part of gross receipts.
19. Will a taxpayer using the 50% of gross receipts method be allowed the \$34,000 statutory exemption?
- A. A taxpayer using the 50% of gross receipts method would have already used the statutory exemption in arriving at adjusted tax base. The difference between adjusted tax base and 50% of gross receipts is used to further reduce the adjusted tax base to arrive at the amount on which to compute the tax rate. Therefore, in arriving at adjusted tax base, the \$34,000 statutory exemption, the business loss and the net operating loss carryover from corporation income tax would be used prior to determining if 50% of gross receipts was less than adjusted tax base.
20. How does a fiscal year taxpayer on a 52-53 week taxable year prorate his SBT for the first taxable year?
- A. The tax base is prorated by a fraction, the numerator of which is the number of days from January 1, 1976 to the end of the taxable year, and the denominator is the number of days in the accounting year.
21. How are premiums for malpractice insurance handled for SBT purposes?
- A. Premiums paid by an employer for the benefit of an employee would be added back to the tax base as compensation. A practitioner paying his own malpractice premium would not be required to add the premium to his tax base.
22. Is a fiscal year taxpayer required to add back the SBT on his final return due for corporation income tax?
- A. The SBT is not a tax on or measured by net income; the tax is not a required addback in the computation of the final corporation income tax return.

SINGLE BUSINESS TAX QUESTIONS AND ANSWERS
VOLUME VI

1. Does business income include ordinary income and capital gains or losses from the sale of depreciable property acquired prior to 1-1-76?
 - A. Yes, ordinary income and capital gains or losses attributable from the sale of capital assets are included to the extent included in federal taxable income. Any excluded gain reported on Federal Schedule D related to the sale of a business asset must be added to the tax base in accordance with Sec. 9(7) of the SBT Act. [SBTA 3(3)]
2. Is the employer's cost of training programs included as part of compensation?
 - A. Training programs or continuing education programs determined to be compensation for the purpose of federal income tax withholding would be considered compensation for SBT purposes. [SBTA 4(3)]
3. Real estate is owned jointly by two individuals who have not treated their relationship as a partnership for federal income tax purposes but rather report one half of all income on their individual returns. Are they subject to SBT individually or as a group?
 - A. The combination would be subject to SBT as a group. All activity conducted by the joint ownership would be subject to SBT and would be reported as the combination. [SBTA 6(1)]
4. Can two corporations filing combined returns and using the 50% gross receipts method eliminate intercompany sales in computing gross receipts?
 - A. No, there is no authority for eliminating intercompany transactions under the definition of gross receipts in Sec. 7 of the SBT Act. [SBTA 7(3)]
5. Are client reimbursed expenses required to be included in gross receipts of an attorney?
 - A. Court costs, filing fees, revenue stamps, witness fees and similar fees and expenses can be excluded from the gross receipts as being obtained in a representative capacity solely on behalf of another. However, reimbursed expenses such as corporate record books, postage, copy expense, telephone calls and travel expenses cannot be excluded as received in a representative capacity. [SBTA 7(3)]
6. What amount is required to be added on SBT annual return (C-8000), line 47, for a net operating loss carryover or carryback?
 - A. The total net operating loss carryover or carryback deducted in arriving at federal taxable income must be reported on C-8000, line 47 (e.g. Corporations enter the amount from US 1120, line 29a). This corrects the instructions in the fiscal year SBT booklet, page 10. [SBTA 9(4)(a)]

7. For a multi-state taxpayer, what is the required addback of depreciation claimed on an asset required in 1976 but received only a 50% capital acquisition deduction due to the two factor formula?
- A. Since the total asset was claimed as a capital acquisition deduction subject to apportionment, 100% of the depreciation must be added back in accordance with Sec. 9(4)(c) of the SBT Act. [SBTA 9(4)(c)]
8. Since the business activity of a commission Domestic International Sales Corporation (DISC) is required to be included in the parent's SBT return, how will the activity of a DISC be reported by the parent when the accounting period of the parent is different from that of the DISC?
- A. The business activity of the DISC to be included in the parent's return shall be based on the business activity of the DISC for any taxable year of the DISC ending within or with the taxable year of the parent. [SBTA 9(4)(e)]
9. In calculating the amount of capital acquisition deduction, is the value of a trade-in included as part of the capital acquisition deduction?
- A. Yes, the trade-in is included as a part of the cost paid or accrued for the asset. The amount realized for the trade-in of the asset acquired on or after 1-1-76 is subject to the recapture provision under Sec. 23(b) and 23(d). [SBTA 23(a)]
10. A manufacturer has self-constructed machinery and equipment. He purchased the parts for the machinery and equipment in 1975 with completion of the asset in 1976. Does the equipment qualify for the capital acquisition deduction?
- A. The purchase of parts in 1975 and any labor expended in 1975 to construct the asset would not be eligible for the capital acquisition deduction. This portion of the capital acquisition is considered a pre-1976 asset and depreciation will be allowable in accordance with Section 9(4)(c) of the SBT Act. The cost of labor paid or accrued in 1976 and any purchase of parts in 1976 for the completion of the asset would be eligible for the capital acquisition deduction. [SBTA 23(a)]
11. Are deposits on depreciable real property prior to 1-1-76 with acquisition of the property after 1-1-76 deducted from the total cost of the asset in determining the capital acquisition deduction? (Volume V, Question 6, refers only to tangible personal property.)
- A. No, if a bonafide deposit is made only to hold the property, the deposit would not reduce the purchase price for the purpose of the capital acquisition deduction. [SBTA 23(c)]

12. Is the tax base adjusted first by the Michigan corporate net operating loss carryover or the statutory exemption?
- A. Tax base for purpose of the statutory exemption is the allocated or apportioned tax base after Sec. 23 adjustments. Therefore, the net operating loss carryover must be used first before applying the statutory exemption. [SBTA 23(f)]
13. If gross receipts method is used for 1976 and a Michigan net operating loss exists, can this net operating loss be carried forward to 1977 since it was not used in 1976?
- A. No, the Michigan net operating loss must be used in 1976 to arrive at adjusted tax base. In arriving at the adjusted tax base the net operating loss carryover, the business loss, the statutory exemption and the capital acquisition deduction must be used. After these reductions in the tax base and if the adjusted tax base still exceeds 50% of gross receipts, the taxpayer may elect to reduce the adjusted tax base by the excess. [SBTA 23(f)]
14. According to Volume V, Question 15, partnership business income includes partners' salaries. Schedule C-8000K (SBT annual), line 9, seems to require adding salaries again in calculating the reductions to statutory exemption. Is the schedule in error?
- A. Yes, partners' salaries are included in business income, C-8000, line 7. These salaries are not included a second time on Schedule C-8000K. The calendar year return and schedules will correct this inconsistency. Any taxpayer who has overpaid his tax because of this error may request a refund by filing an amended return. [SBTA 35(a)]
15. In computing the statutory exemption for a partnership, must a partner have a salary in order to qualify for the increased exemption of \$10,000?
- A. No. For the purpose of computing the increased exemption, a qualified partner is one: a) Who owns at least 10% of the business, b) Who devotes at least 51% of his time to the business and c) Whose share of partnership distributive income plus any payments of salaries or interest is at least \$10,000. [SBTA 35(a)]
16. Is a professional corporation with a sole shareholder required to increase business income by salaries paid to its shareholder in computing the two for one reduction for the statutory exemption?
- A. Yes, salaries paid to all qualified shareholders as defined in Sec. 35(a) of the SBT Act must be added to business income in computing the reduction factor. This reduction is required whether or not benefit is gained by an additional exemption for the shareholder. [SBTA 35(a)]

7. Can a construction contractor exclude 50% of the compensation paid toward the completion of a construction contract signed prior to September 1, 1975 and also use that same compensation for the excess compensation adjustment?

A. The compensation used for the excess compensation adjustment provided in Sec. 31(5) must be reduced by the amount of the exempt compensation allowable under Sec. 35(e) and 35(f). The fiscal year return prescribed by the department does not support this interpretation and will be corrected for calendar year 1976. Schedule C-8000S will be revised as shown below:

COMPENSATION--PERCENT OF TOTAL TAX BASE

3. Tax base (from C-8000, page 1, line 12a)	3.	00
4. Depreciation, and other write-off (from C-8000, page 2, lines 54(a) and 55(a)	4.	00
5. Total Tax Base--Add lines 3 and 4	5.	00
6. Compensation (from C-8000, page 1, line 8)	6.	00
6a. Exempt compensation (from C-8000, page 2, line 56)	6a.	00
7. Compensation--Subtract line 6a from line 6	7.	00
8. Percentage--Divide line 7 by line 6	8.	%

This revision must be used in calculating the fiscal year return. The department will bill additional tax due for those taxpayers using the exempt compensation in computing the excess compensation reduction factor.
[SBTA 35(e) & (f)]

3. Sec. 73(3) requires the filing of a copy of the federal extension to extend the due date for the SBT return. When must a copy of the federal extension be filed?

A. A copy of the federal extension must be filed on or before the due date of the annual or final return as set forth in Sec. 73(1). Upon receipt of a copy of the federal extension, the commissioner of revenue will automatically extend the due date for the same period as the federal extension plus 60 days.
[SBTA 73(3)]

3. For a fiscal year taxpayer electing the annual method, should the amount reflected in Schedule C-8000K (SBT annual), column 19, be the business income for the full year or only the prorated business income?

A. The partner's prorate share of the prorated business income. [IIT 269(1)]

3. In calculating the SBT credit on the individual income tax return, must income from a rental activity not subject to SBT because gross receipts are less than \$34,000 be combined with business income from a partnership interest?

A. Rental of property is a business activity and any income or (loss) from this activity must be included in determining the SBT credit. [IIT 269(1)]

.. Is a business with gross receipts less than \$34,000 subject to intangibles tax on its intangible property?

A. Yes, as the taxpayer is exempt from payment of SBT. [INTG 3(b)(12)]

ANNOUNCEMENTS

Tax Information At State Law Library

The Taxation Section has supplied the State Law Library at Lansing, with a subscription to the Tax Management Portfolios published by the Bureau of National Affairs. A list of the current portfolios is given below. These will be available for use by lawyers at the State Law Library. You may also have any portfolio sent to you on a temporary basis by writing or phoning the State Law Library, Law Building, P.O. Box 30012, Lansing, Michigan 48909, telephone 373-0630, Area 517.

Other commonly used tax texts which are available at or from the State Law Library include the multi-volume sets of Mertens - Federal Income Taxation; Mertens - Federal Gift and Estate Taxation; Rabkin and Johnson - Federal Income, Gift and Estate Taxation; Rabkin and Johnson - Current Legal Forms with Tax Analysis; Weithorn - Tax Techniques for Foundations and other Exempt Organizations; Casey - Federal Tax Practice, as well as some single volume texts. Also available are the annual volumes of the New York University's Institute on Federal Taxation, 1946 to date; and of the University of Southern California's Major Tax Planning, 1952 to date. Tax periodicals available are the Tax Law Review, Taxes, Journal of Taxation, and the Tax Lawyer.

The State Law Library is also well stocked with other legal materials. Stop in when you are in Lansing, and Miss Charlotte Dunnebacke, the State Law Librarian, or one of her staff, will be glad to show you what they have.

Rules of the Michigan Tax Tribunal

The Michigan Tax Tribunal has issued its rules of practice and procedure to replace its emergency rules. The rules have been published in the Michigan State Bar Journal, Volume 55, No. 2, Feb., 1976. Copies may also be obtained by telephoning the Clerk of the Tribunal, R.E. Erickson, at 517/373-8850.

Symposium On Michigan Single Business Tax

The Wayne State Law Review has announced the publication of a Symposium on the Michigan Single Business Tax. Included among the authors of the Symposium are members of the Taxation Section Council, Louis W. Kasischke, Jack E. Mitchell and Ernest Getz. Members of the Taxation Section will receive a \$1.00 discount upon ordering the Symposium before publication. If you haven't received an order form, write to the Wayne State Law Review and be sure to take advantage of the \$1.00 discount.

Employee Benefits Committee

As announced in the April/June, 1976 issue of the Tax Newsletter, the Council of the Taxation Section of the State Bar of Michigan approved on April 29, 1976 the formation of an Employee Benefits Committee and appointed George L. Whitfield chairman of the committee with authority to appoint its members. Mr. Whitfield requests that those members of the State Bar of Michigan desiring to serve on the committee promptly notify him of their interests and include any suggestion for committee objectives and functions in their letters. Those persons appointed to the committee will be advised by Mr. Whitfield of the proposed date and place for an organizational meeting of the committee. Communications should be addressed to: George L. Whitfield, Esq., 900 Old Kent Building, Grand Rapids, Michigan 49503.

COOK v DEPARTMENT OF TREASURY

Decided April 1, 1976 (396 Mich. 176).

Wendell J. Cook and Lucille K. Cook brought an action for refund of state income taxes when the Department of Treasury disallowed a tax exclusion for a lump-sum payment received by Wendell Cook on February 1, 1968, from an employees' profit-sharing trust. Ingham Circuit Court, Ray C. Hotchkiss, J., denied the refund and the Court of Appeals, McGregor, P.J., and R.B. Burns and R.L. Smith, JJ., affirmed (Docket No. 17579). Plaintiffs appeal. Held:

1. When the lump sum was paid to Wendell Cook, income was realized and taxable. Under the terms of the trust agreement, Cook had provided all the services necessary for 100% vesting of his interest in the profit-sharing fund and retirement or refraining from committing various felonies, such as theft and embezzlement, are not valuable services as yet unrendered to Cook's employer such that the trust interest was not vested.

2. The part of Cook's interest in the profit-sharing trust which was 100% vested prior to October 1, 1967, is an "asset acquired" before that date for purposes of an exclusion under the former provision of § 271 of the Income Tax Act, MCLA 206.271; MSA 7.557(1271). The exchange of Cook's vested interest in the trust for the lump sum satisfies the disposition requirement for the exclusion.

3. The taxable portion of the proceeds from disposition of the asset is computed from the ratio of the number of months from the effective date of the Income Tax Act until the date of disposition of the asset to the number of months from the date of acquisition of the asset to the date of disposition. The interest is "acquired" when the employee's interest cannot be defeated by the sole action of the employer (e.g. discharge), in this case at the rate of 4% per year. The interest in the profit sharing plan was acquired over the 25-year vesting period and acquisition was not deferred until the interest was 100% vested in 1966. The proportion of gain or loss should be separately determined as to each 4% segment from the date that 4% segment was vested. Plaintiffs are entitled to a refund for taxes paid on the balance of the proceeds.

53 Mich App 228; 218 NW2d 861 (1974) reversed.