

SENATE BILL No. 740

February 19, 1992, Introduced by Senators N. SMITH, HONIGMAN, DUNASKISS, WELBORN, DINGELL, BOUCHARD, GEAKE, CARL, SCHWARZ, CISKY, EHLERS, ARTHURHULTZ and PRIDNIA and referred to the Committee on Finance.

A bill to amend section 36 of Act No. 228 of the Public Acts of 1975, entitled
"Single business tax act,"
as amended by Act No. 257 of the Public Acts of 1990, being section 208.36 of the Michigan Compiled Laws; and to add section 38d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Section 36 of Act No. 228 of the Public Acts of
2 1975, as amended by Act No. 257 of the Public Acts of 1990, being
3 section 208.36 of the Michigan Compiled Laws, is amended and sec-
4 tion 38d is added to read as follows:
- 5 Sec. 36. (1) As used in this section:
- 6 (a) "Active shareholder" means a shareholder who receives at
7 least \$10,000.00 in compensation, director's fees, or dividends

1 from the business, and who owns at least 5% of the outstanding
2 stock.

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

9 (c) "Adjusted business income" means business income as
10 defined in section 3 with all of the following adjustments:

11 (i) Add compensation and director's fees of active share-
12 holders of a corporation.

13 (ii) Make the adjustments provided in section 9(4)(a) and
14 (b).

15 (iii) Add compensation and director's fees of officers of a
16 corporation.

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

21 (e) "Loss adjustment" means the amount by which adjusted
22 business income was less than zero in any of the 5 tax years
23 immediately preceding the tax year for which eligibility for the
24 credit provided by this section is being determined. In deter-
25 mining the loss adjustment for a tax year, a taxpayer is not
26 required to use more of the taxpayer's total negative adjusted
27 business income than the amount needed to qualify the taxpayer

1 for the credit under this section. A taxpayer shall not be
2 considered to have used any portion of the taxpayer's negative
3 adjusted business income amount unless the portion used is neces-
4 sary to qualify for the credit under this section. A taxpayer
5 shall not reuse a negative adjusted business income amount used
6 as a loss adjustment in a previous tax year or use a negative
7 adjusted business income amount from a year in which the taxpayer
8 did not receive the credit under this section.

9 (F) "SUBCHAPTER S CORPORATION" MEANS A CORPORATION ELECTING
10 TAXATION UNDER SUBCHAPTER S OF CHAPTER 1 OF SUBTITLE A OF THE
11 INTERNAL REVENUE CODE, SECTIONS 1361 TO 1379 OF THE INTERNAL REV-
12 ENUE CODE.

13 (2) The credit provided in this section shall be taken
14 before any other credit under this act, and is available to any
15 person whose gross receipts do not exceed \$6,000,000.00 for tax
16 years commencing on or after January 1, 1984 and before January
17 1, 1989; \$7,000,000.00 for tax years commencing in 1989;
18 \$7,250,000.00 for tax years commencing in 1990; ~~or~~
19 \$7,500,000.00 for tax years commencing ~~after 1990~~ IN 1991; OR
20 \$10,000,000.00 FOR TAX YEARS COMMENCING AFTER 1991, and whose
21 adjusted business income minus the loss adjustment does not
22 exceed \$475,000.00 for tax years commencing on or after January
23 1, 1985, subject to the following:

24 (a) An individual, a partnership, or a subchapter S corpora-
25 tion is disqualified if the individual, any 1 partner of the
26 partnership, or any 1 shareholder of the subchapter S corporation
27 receives more than \$95,000.00 for tax years commencing on or

1 after January 1, 1985 as a distributive share of the adjusted
2 business income minus the loss adjustment of the individual, the
3 partnership, or the subchapter S corporation.

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

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

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

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

13 (B) The product of the percentage of outstanding stock owned
14 by that shareholder multiplied by the difference of the sum of
15 business income and the adjustments provided in section 9(4)(a)
16 and (b) minus the loss adjustment.

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

20 (4) A person who qualifies pursuant to subsection (2) is
21 allowed a credit against the tax imposed by section 31. For tax
22 years commencing before January 1, 1989, the credit is a percen-
23 tage reduction in tax liability. For tax years commencing on and
24 after January 1, 1989, the credit is the greater of the amount by
25 which the tax imposed by section 31 exceeds 4% of adjusted busi-
26 ness income or a percentage reduction in tax liability.

1 (5) The percentage reduction provided in subsection (4) is
2 calculated by subtracting from 100% the percentage computed by
3 dividing adjusted business income by 45% of tax base.

4 (6) If gross receipts exceed \$5,000,000.00 for tax years
5 commencing on or after January 1, 1984 and before January 1,
6 1989; \$6,000,000.00 for tax years commencing in 1989;
7 \$6,250,000.00 for tax years commencing in 1990; ~~or~~
8 \$6,500,000.00 for tax years commencing ~~after 1990~~ IN 1991; OR
9 \$9,000,000.00 FOR TAX YEARS COMMENCING AFTER 1991, the credit
10 shall be reduced by a fraction, the numerator of which is the
11 amount of gross receipts over \$5,000,000.00 for tax years com-
12 mencing on or after January 1, 1984 and before January 1, 1989;
13 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for
14 tax years commencing in 1990; ~~or~~ \$6,500,000.00 for tax years
15 commencing ~~after 1990~~ IN 1991; OR \$9,000,000.00 FOR TAX YEARS
16 COMMENCING AFTER 1991, and the denominator of which is
17 \$1,000,000.00. The credit shall not exceed 50% for tax years
18 commencing before January 1, 1984; 90% for tax years commencing
19 on or after January 1, 1984 and before January 1, 1988; or 100%
20 for tax years commencing on and after January 1, 1988 of the tax
21 liability imposed by section 31.

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

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

7 SEC. 38D. (1) A TAXPAYER MAY CLAIM A CREDIT OF \$1,000.00
8 FOR EACH EMPLOYEE WHO IS A LONG-TERM UNEMPLOYED PERSON HIRED BY
9 THE TAXPAYER AFTER JANUARY 22, 1992 AND BEFORE JULY 1, 1992 IF
10 ALL OF THE FOLLOWING CRITERIA ARE MET:

11 (A) THE LONG-TERM UNEMPLOYED PERSON IS EMPLOYED BY THE TAX-
12 PAYER FOR NOT LESS THAN 6 CONSECUTIVE MONTHS AFTER THE DATE OF
13 HIRE AND FOR NOT LESS THAN 780 HOURS FOR THAT 6-MONTH PERIOD.

14 (B) THE TAXPAYER SHALL REQUEST IN WRITING BEFORE CLAIMING
15 THE CREDIT VERIFICATION FROM THE MICHIGAN EMPLOYMENT SECURITY
16 COMMISSION THAT THE EMPLOYEE IS A LONG-TERM UNEMPLOYED PERSON.

17 (2) A TAXPAYER SHALL CLAIM THE CREDIT ALLOWED UNDER THIS
18 SECTION IN THE TAX YEAR IN WHICH THE EMPLOYEE HAS COMPLETED 6
19 CONSECUTIVE MONTHS OF EMPLOYMENT.

20 (3) IF THE CREDIT ALLOWED UNDER THIS SECTION FOR THE TAX
21 YEAR AND ANY UNUSED CARRYFORWARD OF THE CREDIT ALLOWED BY THIS
22 SECTION EXCEED THE TAXPAYER'S TAX LIABILITY FOR THE TAXABLE YEAR,
23 THAT PORTION THAT EXCEEDS THE TAX LIABILITY FOR THE TAXABLE YEAR
24 SHALL NOT BE REFUNDED BUT MAY BE CARRIED FORWARD TO OFFSET TAX
25 LIABILITY IN SUBSEQUENT TAX YEARS FOR 10 YEARS OR UNTIL USED UP,
26 WHICHEVER OCCURS FIRST.

1 (4) AS USED IN THIS SECTION, "LONG-TERM UNEMPLOYED PERSON"
2 MEANS A PERSON WHO HAS NOT BEEN EMPLOYED AND WHO HAS NOT BEEN A
3 FULL-TIME STUDENT FOR THE 6 MONTHS IMMEDIATELY PRECEDING HIS OR
4 HER DATE OF HIRE BY THE TAXPAYER CLAIMING A CREDIT UNDER THIS
5 SECTION.