

# SENATE BILL No. 741

February 19, 1992, Introduced by Senators N. SMITH, EMMONS, BOUCHARD, WARTNER, HONIGMAN, PRIDNIA, SCHWARZ, GAST, EHLERS, VAN REGENMORTER and MC MANUS 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.

## 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 to read  
4 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  
8 from the business, and who owns at least 5% of the outstanding  
9 stock.

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

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

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

11 (ii) Make the adjustments provided in section 9(4)(a) and  
12 (b).

13 (iii) Add compensation and director's fees of officers of a  
14 corporation.

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

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

1 adjusted business income amount unless the portion used is  
2 necessary to qualify for the credit under this section. A tax-  
3 payer shall not reuse a negative adjusted business income amount  
4 used as a loss adjustment in a previous tax year or use a nega-  
5 tive adjusted business income amount from a year in which the  
6 taxpayer did not receive the credit under this section.

7       (2) The credit provided in this section shall be taken  
8 before any other credit under this act, and is available to any  
9 person whose gross receipts do not exceed \$6,000,000.00 for tax  
10 years commencing on or after January 1, 1984 and before January  
11 1, 1989; \$7,000,000.00 for tax years commencing in 1989;  
12 \$7,250,000.00 for tax years commencing in 1990; ~~or~~  
13 \$7,500,000.00 for tax years commencing ~~after 1990~~ IN 1991; OR  
14 \$15,000,000.00 FOR TAX YEARS COMMENCING AFTER 1991, and whose  
15 adjusted business income minus the loss adjustment does not  
16 exceed \$475,000.00 for tax years commencing on or after January  
17 1, 1985, subject to the following:

18       (a) An individual, a partnership, or a subchapter S corpora-  
19 tion is disqualified if the individual, any 1 partner of the  
20 partnership, or any 1 shareholder of the subchapter S corporation  
21 receives more than \$95,000.00 for tax years commencing on or  
22 after January 1, 1985 as a distributive share of the adjusted  
23 business income minus the loss adjustment of the individual, the  
24 partnership, or the subchapter S corporation.

25       (b) A corporation other than a subchapter S corporation is  
26 disqualified if either of the following occur for the respective  
27 tax year:

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

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

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

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

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

14 (4) A person who qualifies pursuant to subsection (2) is  
15 allowed a credit against the tax imposed by section 31. For tax  
16 years commencing before January 1, 1989, the credit is a percen-  
17 tage reduction in tax liability. For tax years commencing on and  
18 after January 1, 1989, the credit is the greater of the amount by  
19 which the tax imposed by section 31 exceeds 4% of adjusted busi-  
20 ness income FOR A TAX YEAR COMMENCING BEFORE 1992 OR 5% OF  
21 ADJUSTED BUSINESS INCOME FOR THE 1992 TAX YEAR OR A TAX YEAR COM-  
22 MENCING AFTER 1992 or a percentage reduction in tax liability.

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

26 (6) If gross receipts exceed \$5,000,000.00 for tax years  
27 commencing on or after January 1, 1984 and before January 1,

1 1989; \$6,000,000.00 for tax years commencing in 1989;  
 2 \$6,250,000.00 for tax years commencing in 1990; ~~or~~  
 3 \$6,500,000.00 for tax years commencing ~~after 1990~~ IN 1991; OR  
 4 \$14,000,000.00 FOR TAX YEARS COMMENCING AFTER 1991, the credit  
 5 shall be reduced by a fraction, the numerator of which is the  
 6 amount of gross receipts over \$5,000,000.00 for tax years com-  
 7 mencing on or after January 1, 1984 and before January 1, 1989;  
 8 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for  
 9 tax years commencing in 1990; ~~or~~ \$6,500,000.00 for tax years  
 10 commencing ~~after 1990~~ IN 1991; OR \$14,000,000.00 FOR TAX YEARS  
 11 COMMENCING AFTER 1991, and the denominator of which is  
 12 \$1,000,000.00. The credit shall not exceed 50% for tax years  
 13 commencing before January 1, 1984; 90% for tax years commencing  
 14 on or after January 1, 1984 and before January 1, 1988; or 100%  
 15 for tax years commencing on and after January 1, 1988 of the tax  
 16 liability imposed by section 31.

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

22 (8) The department shall permit a taxpayer who elects to  
 23 claim the credit allowed by this section based on the amount by  
 24 which the tax imposed by section 31 exceeds 4% of adjusted busi-  
 25 ness income FOR A TAX YEAR COMMENCING BEFORE 1992 OR 5% OF  
 26 ADJUSTED BUSINESS INCOME FOR THE 1992 TAX YEAR OR A TAX YEAR  
 27 COMMENCING AFTER 1992, and who is not required to reduce the

1 credit pursuant to subsection (6), to file and pay the tax  
2 imposed by this act without computing the tax imposed under  
3 section 31.