

Act No. 245
Public Acts of 1994
Approved by the Governor
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Reps Profit Bullard Baade Palamara Martin Harder Olshove Curtis Dobronski Willard Agee Yokich Freeman Tesanovich, Owen Griffin Brackenridge Wallace Porreca Schroer, Anthony Pitoniak Wetters Gagliardi Byrum Gire Weeks Rivers DeMars Dobb Munsell Shugars Kaza, Kukuk Walberg Bryant Hill Alley O'Neill and Llewellyn
Reps Allen Bandstra Banks Berman Cropsey Dolan Galloway Gernaat Gnodtke Goschka Gubow Gustafson Hammerstrom Hood Horton Jaye Jersevic Kilpatrick Leland, LeTarte London Lowe, Martinez Mathieu McBryde McManus, McNutt, Middaugh Middleton Murphy Oxender, Points Price Rhead Rocca Sikkema Stille Varga Voorhees and Whyman named co sponsors

ENROLLED HOUSE BILL No. 5614

AN ACT to amend section 36 of Act No 228 of the Public Acts of 1975 entitled An act to provide for the imposition levy computation collection assessment and enforcement by lien or otherwise of taxes on certain commercial business and financial activities to prescribe the manner and times of making certain reports and paying taxes to prescribe the powers and duties of public officers and state departments to permit the inspection of records of taxpayers to provide for interest and penalties on unpaid taxes to provide exemptions credits and refunds to provide penalties to provide for the disposition of funds to provide for the interrelation of this act with other acts and to provide an appropriation as amended by Act No 98 of the Public Acts of 1992 being section 208 36 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 36 of Act No 228 of the Public Acts of 1975 as amended by Act No 98 of the Public Acts of 1992 being section 208 36 of the Michigan Compiled Laws is amended to read as follows

Sec 36 (1) As used in this section

(a) Active shareholder means a shareholder who receives at least \$10 000 00 in compensation director's fees or dividends from the business and who owns at least 5% of the outstanding stock

(b) Officer means an officer of a corporation other than a subchapter S corporation including the chairperson of the board president vice president secretary and treasurer or persons performing similar duties

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

(i) Add compensation and director's fees of active shareholders of a corporation

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

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

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

(e) Loss adjustment means the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit provided by this section is being determined. In determining the loss adjustment for a tax year, a taxpayer is not required to use more of the taxpayer's total negative adjusted business income than the amount needed to qualify the taxpayer for the credit under this section. A taxpayer shall not be considered to have used any portion of the taxpayer's negative adjusted business income amount unless the portion used is necessary to qualify for the credit under this section. A taxpayer shall not reuse a negative adjusted business income amount used as a loss adjustment in a previous tax year or use a negative adjusted business income amount from a year in which the taxpayer did not receive the credit under this section.

(f) Subchapter S corporation means a corporation electing taxation under subchapter S of chapter 1 of subtitle A of the internal revenue code sections 1361 to 1379 of the internal revenue code.

(2) The credit provided in this section shall be taken before any other credit under this act and is available to any person whose gross receipts do not exceed \$6 000 000 00 for tax years commencing on or after January 1 1984 and before January 1 1989 \$7 000 000 00 for tax years commencing in 1989 \$7 250 000 00 for tax years commencing in 1990 \$7 500 000 00 for tax years commencing in 1991 or \$10 000 000 00 for tax years commencing after 1991 and whose adjusted business income minus the loss adjustment does not exceed \$475 000 00 for tax years commencing on or after January 1 1985 subject to the following:

(a) An individual, a partnership, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives more than \$95 000 00 for tax years commencing on or after January 1 1985 as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, or the subchapter S corporation.

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

(i) Compensation and director's fees of a shareholder or officer exceed \$95 000 00 for tax years commencing on or after January 1 1985.

(ii) The sum of the following amounts exceeds \$95 000 00 for tax years commencing on or after January 1 1985:

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

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

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

(4) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by section 31. For tax years commencing before January 1 1989, the credit is a percentage reduction in tax liability. For tax years commencing on and after January 1 1989 and through tax years commencing in 1991, the credit is the greater of the amount by which the tax imposed by section 31 exceeds 4% of adjusted business income or 3% of adjusted business income for tax years commencing after 1991 or a percentage reduction in tax liability. However, beginning October 1 1994, the percentage of adjusted business income shall be 2%. The department shall annualize the rates provided under this subsection as necessary for tax years that end after September 30 1994 and the applicable annualized rate shall be imposed for those tax years.

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

(6) If gross receipts exceed \$5 000 000 00 for tax years commencing on or after January 1 1984 and before January 1 1989 \$6 000 000 00 for tax years commencing in 1989 \$6 250 000 00 for tax years commencing in 1990 \$6 500 000 00 for tax years commencing in 1991 or \$9 000 000 00 for tax years commencing after 1991, the credit shall be reduced by a fraction, the numerator of which is the amount of gross receipts over \$5 000 000 00 for tax years commencing on or after January 1 1984 and before January 1 1989 \$6 000 000 00 for tax years commencing in 1989 \$6 250 000 00 for tax years commencing in 1990 \$6 500 000 00 for tax years commencing in 1991 or \$9 000 000 00 for tax years commencing after 1991 and the denominator of which is \$1 000 000 00. The credit shall not exceed 50% for tax years commencing before January 1 1984 90% for tax years commencing on or after January 1 1984 and before January 1 1988 or 100% for tax years commencing on and after January 1 1988 of the tax liability imposed by section 31.

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

(8) The department shall permit a taxpayer who elects to claim the credit allowed by this section based on the amount by which the tax imposed by section 31 exceeds the percentage of adjusted business income for the tax year as determined under subsection (4) and who is not required to reduce the credit pursuant to subsection (6) to file and pay the tax imposed by this act without computing the tax imposed under section 31.

Section 2 This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law

- (a) Senate Bill No 145
- (b) Senate Bill No 1145
- (c) House Bill No 4801
- (d) House Bill No 4958
- (e) House Bill No 5090
- (f) House Bill No 5278

This act is ordered to take immediate effect

Co Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor