



HOUSE BILL No. 5614

June 2 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 and referred to the Committee on Taxation

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 98 of the Public Acts of 1992, 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 98 of the Public Acts of 1992, 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 subchapter S corporation including the chairperson of the board,
3 president, vice-president secretary, and treasurer, or persons
4 performing similar duties

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

7 (i) Add compensation and director s fees of active share-
8 holders of a corporation

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

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

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

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

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

6 (f) Subchapter S corporation means a corporation electing
 7 taxation under subchapter S of chapter 1 of subtitle A of the
 8 internal revenue code, sections 1361 to 1379 of the internal rev-
 9 enue code

10 (G) 'COMPENSATION' MEANS ALL WAGES, SALARIES, FEES, BONUSES,
 11 COMMISSIONS, OR OTHER PAYMENTS MADE IN THE TAXABLE YEAR ON BEHALF
 12 OF OR FOR THE BENEFIT OF EMPLOYEES, OFFICERS, OR DIRECTORS OF THE
 13 TAXPAYERS AND SUBJECT TO OR SPECIFICALLY EXEMPT FROM WITHHOLDING
 14 UNDER CHAPTER 24 SECTIONS 3401 TO 3406 OF THE INTERNAL REVENUE
 15 CODE COMPENSATION DOES NOT INCLUDE ANY OF THE FOLLOWING

16 (i) PAYMENTS TO STATE AND FEDERAL UNEMPLOYMENT COMPENSATION
 17 FUNDS

18 (ii) PAYMENTS UNDER THE FEDERAL INSURANCE CONTRIBUTION ACT
 19 AND SIMILAR SOCIAL INSURANCE PROGRAMS

20 (iii) PAYMENTS INCLUDING SELF-INSURANCE FOR WORKER S COM-
 21 PENSATION INSURANCE

22 (iv) PAYMENTS TO INDIVIDUALS NOT CURRENTLY WORKING

23 (v) PAYMENTS TO DEPENDENTS AND HEIRS OF INDIVIDUALS BECAUSE
 24 OF CURRENT OR FORMER LABOR SERVICES RENDERED BY THOSE
 25 INDIVIDUALS

26 (vi) PAYMENTS TO A PENSION, RETIREMENT OR PROFIT SHARING
 27 PLAN

1 (vii) PAYMENTS FOR INSURANCE FOR WHICH EMPLOYEES ARE THE
 2 BENEFICIARIES, INCLUDING PAYMENTS UNDER HEALTH AND WELFARE AND
 3 NONINSURED BENEFIT PLANS AND PAYMENTS OF FEES FOR THE ADMINISTRA-
 4 TION OF HEALTH AND WELFARE AND NONINSURED BENEFIT PLANS

5 (viii) DISCOUNTS ON THE PRICE OF THE TAXPAYER'S MERCHANDISE
 6 OR SERVICES SOLD TO THE TAXPAYER'S EMPLOYEES, OFFICERS, OR DIREC-
 7 TORS THAT ARE NOT AVAILABLE TO OTHER CUSTOMERS

8 (ix) PAYMENTS TO AN INDEPENDENT CONTRACTOR

9 (2) The credit provided in this section shall be taken
 10 before any other credit under this act, and is available to any
 11 person whose gross receipts do not exceed \$6,000,000 00 for tax
 12 years commencing on or after January 1 1984 and before January
 13 1, 1989 \$7,000,000 00 for tax years commencing in 1989
 14 \$7,250,000 00 for tax years commencing in 1990 \$7 500 000 00 for
 15 tax years commencing in 1991 or \$10 000 000 00 for tax years
 16 commencing after 1991, and whose adjusted business income minus
 17 the loss adjustment does not exceed \$475,000 00 for tax years
 18 commencing on or after January 1, 1985 subject to the
 19 following

20 (a) ~~An~~ SUBJECT TO SUBDIVISION (C) AN individual a part-
 21 nership, or a subchapter S corporation is disqualified if the
 22 individual, any 1 partner of the partnership, or any 1 share-
 23 holder of the subchapter S corporation receives more than
 24 \$95,000 00 for tax years commencing on or after January 1, 1985
 25 AND BEFORE JANUARY 1, 1995 OR MORE THAN \$155 000 00 FOR TAX YEARS
 26 COMMENCING AFTER DECEMBER 31, 1994 as a distributive share of the

1 adjusted business income minus the loss adjustment of the
 2 individual, the partnership or the subchapter S corporation

3 (b) ~~A~~ SUBJECT TO SUBDIVISION (C) A corporation other than
 4 a subchapter S corporation is disqualified if either of the fol-
 5 lowing occur for the respective tax year

6 (i) Compensation and director s fees of a shareholder or
 7 officer exceed \$95 000 00 for tax years commencing on or after
 8 January 1, 1985 AND BEFORE JANUARY 1, 1995 OR MORE THAN
 9 \$155 000 00 FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 1994

10 (ii) The sum of the following amounts exceeds \$95 000 00 for
 11 tax years commencing on or after January 1 1985 AND BEFORE
 12 JANUARY 1, 1995 OR MORE THAN \$155 000 00 FOR TAX YEARS COMMENCING
 13 AFTER DECEMBER 31, 1994

14 (A) Compensation and director s fees of a shareholder

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

19 (C) FOR A TAXPAYER THAT IS ELIGIBLE FOR THE CREDIT UNDER
 20 THIS SECTION FOR TAX YEARS BEGINNING AFTER DECEMBER 31 1994 THE
 21 CREDIT DETERMINED UNDER THIS SECTION SHALL BE REDUCED BY THE FOL-
 22 LOWING PERCENTAGES IN THE FOLLOWING CIRCUMSTANCES

23 (i) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, OR
 24 ANY 1 SHAREHOLDER OF THE SUBCHAPTER S CORPORATION RECEIVES AS A
 25 DISTRIBUTIVE SHARE OF ADJUSTED GROSS INCOME MINUS THE LOSS
 26 ADJUSTMENT OF THE INDIVIDUAL PARTNERSHIP OR SUBCHAPTER S
 27 CORPORATION IF COMPENSATION AND DIRECTORS FEES OF A SHAREHOLDER

1 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
 2 ARE OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B)(11)(A) AND
 3 (B) IS MORE THAN \$95,000 00 BUT LESS THAN \$110 000 00 THE CREDIT
 4 IS REDUCED BY 20%

5 (11) IF AN INDIVIDUAL ANY 1 PARTNER OF THE PARTNERSHIP OR
 6 ANY 1 SHAREHOLDER OF THE SUBCHAPTER S CORPORATION RECEIVES AS A
 7 DISTRIBUTIVE SHARE OF ADJUSTED GROSS INCOME MINUS THE LOSS
 8 ADJUSTMENT OF THE INDIVIDUAL, PARTNERSHIP, OR SUBCHAPTER S CORPO-
 9 RATION IF COMPENSATION AND DIRECTORS FEES OF A SHAREHOLDER OR
 10 OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
 11 ARE OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B)(11)(A) AND
 12 (B) IS MORE THAN \$110 000 00 BUT LESS THAN \$125,000 00, THE
 13 CREDIT IS REDUCED BY 40%

14 (111) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, OR
 15 ANY 1 SHAREHOLDER OF THE SUBCHAPTER S CORPORATION RECEIVES AS A
 16 DISTRIBUTIVE SHARE OF ADJUSTED GROSS INCOME MINUS THE LOSS
 17 ADJUSTMENT OF THE INDIVIDUAL PARTNERSHIP OR SUBCHAPTER S CORPO-
 18 RATION IF COMPENSATION AND DIRECTORS FEES OF A SHAREHOLDER OR
 19 OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
 20 ARE OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B)(11)(A) AND
 21 (B) IS \$125 000 00 OR MORE BUT LESS THAN \$140,000 00 THE CREDIT
 22 IS REDUCED BY 60%

23 (111) IF AN INDIVIDUAL ANY 1 PARTNER OF THE PARTNERSHIP OR
 24 ANY 1 SHAREHOLDER OF THE SUBCHAPTER S CORPORATION RECEIVES AS A
 25 DISTRIBUTIVE SHARE OF ADJUSTED GROSS INCOME MINUS THE LOSS
 26 ADJUSTMENT OF THE INDIVIDUAL PARTNERSHIP, OR SUBCHAPTER S
 27 CORPORATION IF COMPENSATION AND DIRECTORS FEELS OF A SHAREHOLDER

1 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
 2 ARE OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (B)(11)(A) AND
 3 (B) IS \$140 000 00 OR LESS THAN OR EQUAL TO \$155,000 00, THE
 4 CREDIT IS REDUCED BY 80%

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

8 (4) A person who qualifies pursuant to subsection (2) is
 9 allowed a credit against the tax imposed by section 31 For tax
 10 years commencing before January 1, 1989, the credit is a percent-
 11 tage reduction in tax liability For tax years commencing on and
 12 after January 1, 1989 and through tax years commencing in 1991,
 13 the credit is the greater of the amount by which the tax imposed
 14 by section 31 exceeds 4% of adjusted business income or 3% of
 15 adjusted business income for tax years commencing after 1991 or a
 16 percentage reduction in tax liability

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

20 (6) If gross receipts exceed \$5 000 000 00 for tax years
 21 commencing on or after January 1, 1984 and before January 1,
 22 1989 \$6 000,000 00 for tax years commencing in 1989
 23 \$6,250,000 00 for tax years commencing in 1990 \$6,500,000 00 for
 24 tax years commencing in 1991 or \$9,000,000 00 for tax years com-
 25 mencing after 1991, the credit shall be reduced by a fraction,
 26 the numerator of which is the amount of gross receipts over
 27 \$5,000,000 00 for tax years commencing on or after January 1,

1 1984 and before January 1, 1989 \$6 000 000 00 for tax years
2 commencing in 1989 \$6 250,000 00 for tax years commencing in
3 1990 \$6,500,000 00 for tax years commencing in 1991 or
4 \$9 000,000 00 for tax years commencing after 1991 and the denom-
5 inator of which is \$1,000,000 00 The credit shall not exceed
6 50% for tax years commencing before January 1, 1984 90% for tax
7 years commencing on or after January 1, 1984 and before
8 January 1, 1988 or 100% for tax years commencing on and after
9 January 1, 1988 of the tax liability imposed by section 31

10 (7) An affiliated group as defined in this act and a con-
11 trolled group of corporations or an entity under common control
12 as defined by the internal revenue code shall not take the credit
13 allowed by this section unless the business activities of the
14 entities are consolidated

15 (8) The department shall permit a taxpayer who elects to
16 claim the credit allowed by this section based on the amount by
17 which the tax imposed by section 31 exceeds the percentage of
18 adjusted business income for the tax year as determined under
19 subsection (4) and who is not required to reduce the credit pur-
20 suant to subsection (6), to file and pay the tax imposed by this
21 act without computing the tax imposed under section 31