



# HOUSE BILL No. 5752

September 14, 1994, Introduced by Reps Profit Bullard Dobb and Alley 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 245 of the Public Acts of 1994, 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 245 of the Public Acts of 1994 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 by section 318(a)(1) of the internal revenue code

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

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

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

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~~ EXCEPT AS PROVIDED IN SUBDIVISION (C) AN individu-  
21 al a partnership, or a subchapter S corporation is disqualified  
22 if the individual any 1 partner of the partnership or any 1  
23 shareholder 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 \$175 000 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~~ EXCEPT AS PROVIDED IN SUBDIVISION (C) A corporation  
 4 other than a subchapter S corporation is disqualified if either  
 5 of the following occur for the respective tax year

6 (1) 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 \$175,000 00 FOR TAX  
 9 YEARS COMMENCING AFTER DECEMBER 31 1994

10 (2) 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 \$175,000 00 FOR TAX YEARS COMMENCING AFTER  
 13 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 SUBSECTION FOR TAX YEARS BEGINNING AFTER DECEMBER 31 1994,  
 21 THE CREDIT DETERMINED UNDER THIS SUBSECTION SHALL BE REDUCED BY  
 22 THE FOLLOWING PERCENTAGES IN THE FOLLOWING CIRCUMSTANCES

23 (1) 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 \$115 000 00 THE CREDIT  
 4 IS REDUCED BY 20-

5 (12) 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 \$115 000 00 OR MORE BUT LESS THAN \$135 000 00 THE CREDIT  
 13 IS REDUCED BY 40

14 (122) 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 \$135 000 00 OR MORE BUT LESS THAN \$155 000 00 THE CREDIT  
 22 IS REDUCED BY 60

23 (123) 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 \$155 000 00 OR MORE BUT LESS THAN \$175 000 00 THE CREDIT  
 4 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 percen-  
 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 However, beginning  
 17 October 1 1994 the percentage of adjusted business income shall  
 18 be 2 The department shall annualize the rates provided under  
 19 this subsection as necessary for tax years that end after  
 20 September 30 1994 and the applicable annualized rate shall be  
 21 imposed for those tax years

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

25 (6) If gross receipts exceed \$5,000 000 00 for tax years  
 26 commencing on or after January 1 1984 and before January 1  
 27 1989 \$6,000 000 00 for tax years commencing in 1989

1 \$6 250 000 00 for tax years commencing in 1990 \$6 500 000 00 for  
 2 tax years commencing in 1991 or \$9 000,000 00 for tax years com-  
 3 mencing after 1991 the credit shall be reduced by a fraction  
 4 the numerator of which is the amount of gross receipts over  
 5 \$5 000 000 00 for tax years commencing on or after January 1  
 6 1984 and before January 1, 1989 \$6 000 000 00 for tax years com-  
 7 mencing in 1989 \$6 250 000 00 for tax years commencing in 1990  
 8 \$6 500 000 00 for tax years commencing in 1991 or \$9 000 000 00  
 9 for tax years commencing after 1991 and the denominator of which  
 10 is \$1 000 000 00 The credit shall not exceed 50 for tax years  
 11 commencing before January 1 1984 90- for tax years commencing  
 12 on or after January 1 1984 and before January 1 1988 or 100-  
 13 for tax years commencing on and after January 1 1988 of the tax  
 14 liability imposed by section 31

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

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