



HOUSE BILL No. 5917

November 10, 1994, Introduced by Rep Profit 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~~ 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 \$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~~ 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 \$175,000 00 FOR TAX
 9 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 \$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 TAX YEARS BEGINNING AFTER DECEMBER 31 1994 IF AN
 20 INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, OR ANY 1 SHARE-
 21 HOLDER OF THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE
 22 SHARE OF ADJUSTED GROSS INCOME MINUS THE LOSS ADJUSTMENT OF THE
 23 INDIVIDUAL, PARTNERSHIP, OR SUBCHAPTER S CORPORATION IF COMPEN-
 24 SATION AND DIRECTORS FEES OF A SHAREHOLDER OR OFFICER OF A COR-
 25 PORATION OTHER THAN A SUBCHAPTER S CORPORATION ARE OR IF THE SUM
 26 OF THE AMOUNTS IN SUBDIVISION (B)(ii)(A) AND (B) IS MORE THAN
 27 \$95,000 00 BUT LESS THAN \$175,000 00, THE CREDIT AVAILABLE UNDER

1 THIS SUBSECTION SHALL BE REDUCED BY THE FOLLOWING PERCENTAGES IN
2 THE FOLLOWING CIRCUMSTANCES

3 (i) IF THE AMOUNT IS MORE THAN \$95,000 00 BUT LESS THAN
4 \$115,000 00, THE CREDIT IS REDUCED BY 20%

5 (ii) IF THE AMOUNT IS \$115,000 00 OR MORE BUT LESS THAN
6 \$135,000 00, THE CREDIT IS REDUCED BY 40%

7 (iii) IF THE AMOUNT IS \$135,000 00 OR MORE BUT LESS THAN
8 \$155,000 00, THE CREDIT IS REDUCED BY 60%

9 (iv) IF THE AMOUNT IS \$155,000 00 OR MORE BUT LESS THAN
10 \$175,000 00, THE CREDIT IS REDUCED BY 80%

11 (3) ~~For the purposes of~~ IN determining disqualification
12 under subsection (2), an active shareholder s share of business
13 income 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 and through tax years commencing in 1991,
19 the credit is the greater of the amount by which the tax imposed
20 by section 31 exceeds 4% of adjusted business income or FOR TAX
21 YEARS COMMENCING AFTER 1991 EXCEEDS 3% of adjusted business
22 income ~~for tax years commencing after 1991~~ or a percentage
23 reduction in tax liability However, beginning October 1, 1994,
24 the percentage of adjusted business income shall be 2% The
25 department shall annualize the rates provided under this subsec-
26 tion as necessary for tax years that end after September 30, 1994

1 and the applicable annualized rate shall be imposed for those tax
2 years

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

6 (6) If gross receipts exceed \$5 000,000 00 for tax years
7 commencing on or after January 1, 1984 and before January 1,
8 1989 \$6 000,000 00 for tax years commencing in 1989
9 \$6,250 000 00 for tax years commencing in 1990 \$6 500,000 00 for
10 tax years commencing in 1991 or \$9,000 000 00 for tax years com-
11 mencing after 1991 the credit shall be reduced by a fraction
12 the numerator of which is the amount of gross receipts over
13 \$5,000,000 00 for tax years commencing on or after January 1,
14 1984 and before January 1 1989 \$6 000 000 00 for tax years com-
15 mencing in 1989 \$6,250 000 00 for tax years commencing in 1990
16 \$6,500 000 00 for tax years commencing in 1991 or \$9,000,000 00
17 for tax years commencing after 1991 and the denominator of which
18 is \$1 000 000 00 The credit shall not exceed 50% for tax years
19 commencing before January 1 1984 90% for tax years commencing
20 on or after January 1 1984 and before January 1 1988 or 100%
21 for tax years commencing on and after January 1, 1988 of the tax
22 liability imposed by section 31

23 (7) An affiliated group as defined in this act and a con-
24 trolled group of corporations or an entity under common control
25 as defined by the internal revenue code shall not take the credit
26 allowed by this section unless the business activities of the
27 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 the percentage of
4 adjusted business income for the tax year as determined under
5 subsection (4), and who is not required to reduce the credit pur-
6 suant to subsection (6), to file and pay the tax imposed by this
7 act without computing the tax imposed under section 31