



HOUSE BILL No. 4358

February 8, 1995, Introduced by Reps. Profit and Bullard and referred to the Committee on Tax Policy.

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 (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 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 (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)(ii)(A) AND
3 (B) IS MORE THAN \$95,000.00 BUT LESS THAN \$115,000.00, THE CREDIT
4 IS REDUCED BY 20%.

5 (ii) 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)(ii)(A) AND
12 (B) IS \$115,000.00 OR MORE BUT LESS THAN \$135,000.00, THE CREDIT
13 IS REDUCED BY 40%.

14 (iii) 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)(ii)(A) AND
21 (B) IS \$135,000.00 OR MORE BUT LESS THAN \$155,000.00, THE CREDIT
22 IS REDUCED BY 60%.

23 (iv) 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)(ii)(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 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. 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.