

# HOUSE BILL No. 5323

December 2, 2003, Introduced by Rep. Wenke and referred to the Committee on Tax Policy.

A bill to amend 1975 PA 228, entitled  
"Single business tax act,"  
by amending section 36 (MCL 208.36), as amended by 1995 PA 284.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 36. (1) As used in this section:

2       (a) "Active shareholder" means a shareholder who receives at  
3       least \$10,000.00 in compensation, director's fees, or dividends  
4       from the business, and who owns at least 5% of the outstanding  
5       stock.

6       (b) "Officer" means an officer of a corporation other than a  
7       subchapter S corporation including the chairperson of the board,  
8       president, vice-president, secretary, and treasurer, or persons  
9       performing similar duties.

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

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

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

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

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

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

26          (f) "Subchapter S corporation" means a corporation electing  
27 taxation under subchapter S of chapter 1 of subtitle A of the

1 internal revenue code, sections 1361 to 1379 of the internal  
2 revenue code.

3 (2) The credit provided in this section shall be taken before  
4 any other credit under this act, and is available to any person  
5 whose gross receipts do not exceed \$6,000,000.00 for tax years  
6 commencing on or after January 1, 1984 and before January 1,  
7 1989; \$7,000,000.00 for tax years commencing in 1989;  
8 \$7,250,000.00 for tax years commencing in 1990; \$7,500,000.00 for  
9 tax years commencing in 1991; or \$10,000,000.00 for tax years  
10 commencing after 1991, and whose adjusted business income minus  
11 the loss adjustment does not exceed \$475,000.00 for tax years  
12 commencing on or after January 1, 1985, subject to the  
13 following:

14 (a) An individual, a partnership, or a subchapter S  
15 corporation is disqualified if the individual, any 1 partner of  
16 the partnership, or any 1 shareholder of the subchapter S  
17 corporation receives more than \$95,000.00 for tax years  
18 commencing on or after January 1, 1985 and before January 1, 1998  
19 or more than \$115,000.00 for tax years commencing after December  
20 31, 1997 as a distributive share of the adjusted business income  
21 minus the loss adjustment of the individual, the partnership, or  
22 the subchapter S corporation.

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

26 (i) Compensation and director's fees of a shareholder or  
27 officer exceed \$95,000.00 for tax years commencing on or after

1 January 1, 1985 and before January 1, 1998 or exceed \$115,000.00  
2 for tax years commencing after December 31, 1997.

3 (ii) The sum of the following amounts exceeds \$95,000.00 for  
4 tax years commencing on or after January 1, 1985 and before  
5 January 1, 1998 or exceeds \$115,000.00 for tax years commencing  
6 after December 31, 1997:

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

8 (B) The product of the percentage of outstanding stock owned  
9 by that shareholder multiplied by the difference between the sum  
10 of business income and the adjustments provided in section  
11 9(4)(a) and (b) minus the loss adjustment.

12 (c) Subject to section 36d, for a taxpayer that is eligible  
13 for the credit under this subsection for tax years beginning  
14 after December 31, 1997, the credit determined under this  
15 subsection shall be reduced by the following percentages in the  
16 following circumstances:

17 (i) If an individual, any 1 partner of the partnership, or  
18 any 1 shareholder of the subchapter S corporation receives as a  
19 distributive share of adjusted gross income minus the loss  
20 adjustment of the individual, partnership, or subchapter S  
21 corporation; if compensation and directors' fees of a shareholder  
22 or officer of a corporation other than a subchapter S corporation  
23 are; or if the sum of the amounts in subdivision (b)(ii)(A) and  
24 (B) is more than \$95,000.00 but less than \$100,000.00, the credit  
25 is reduced by 20%.

26 (ii) If an individual, any 1 partner of the partnership, or  
27 any 1 shareholder of the subchapter S corporation receives as a

1 distributive share of adjusted gross income minus the loss  
2 adjustment of the individual, partnership, or subchapter S  
3 corporation; if compensation and directors' fees of a shareholder  
4 or officer of a corporation other than a subchapter S corporation  
5 are; or if the sum of the amounts in subdivision (b)(ii)(A) and  
6 (B) is \$100,000.00 or more but less than \$105,000.00, the credit  
7 is reduced by 40%.

8       (iii) If an individual, any 1 partner of the partnership, or  
9 any 1 shareholder of the subchapter S corporation receives as a  
10 distributive share of adjusted gross income minus the loss  
11 adjustment of the individual, partnership, or subchapter S  
12 corporation; if compensation and directors' fees of a shareholder  
13 or officer of a corporation other than a subchapter S corporation  
14 are; or if the sum of the amounts in subdivision (b)(ii)(A) and  
15 (B) is \$105,000.00 or more but less than \$110,000.00, the credit  
16 is reduced by 60%.

17       (iv) If an individual, any 1 partner of the partnership, or  
18 any 1 shareholder of the subchapter S corporation receives as a  
19 distributive share of adjusted gross income minus the loss  
20 adjustment of the individual, partnership, or subchapter S  
21 corporation; if compensation and directors' fees of a shareholder  
22 or officer of a corporation other than a subchapter S corporation  
23 are; or if the sum of the amounts in subdivision (b)(ii)(A) and  
24 (B) is \$110,000.00 or more but less than \$115,000.00, the credit  
25 is reduced by 80%.

26       (3) For the purposes of determining disqualification under  
27 subsection (2), an active shareholder's share of business income

1 shall not be attributed to another active shareholder.

2       (4) A person who qualifies pursuant to subsection (2) is  
3 allowed a credit against the tax imposed by section 31. For tax  
4 years commencing before January 1, 1989, the credit is a  
5 percentage reduction in tax liability. For tax years commencing  
6 on and after January 1, 1989 and through tax years commencing in  
7 1991, the credit is the greater of the amount by which the tax  
8 imposed by section 31 exceeds 4% of adjusted business income or  
9 3% of adjusted business income for tax years commencing after  
10 1991 or a percentage reduction in tax liability. However,  
11 beginning October 1, 1994, the percentage of adjusted business  
12 income shall be 2%. The department shall annualize the rates  
13 provided under this subsection as necessary for tax years that  
14 end after September 30, 1994 and the applicable annualized rate  
15 shall be imposed for those tax years.

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

19       (6) If gross receipts exceed \$5,000,000.00 for tax years  
20 commencing on or after January 1, 1984 and before January 1,  
21 1989; \$6,000,000.00 for tax years commencing in 1989;  
22 \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for  
23 tax years commencing in 1991; or \$9,000,000.00 for tax years  
24 commencing after 1991, the credit shall be reduced by a fraction,  
25 the numerator of which is the amount of gross receipts over  
26 \$5,000,000.00 for tax years commencing on or after January 1,  
27 1984 and before January 1, 1989; \$6,000,000.00 for tax years

1 commencing in 1989; \$6,250,000.00 for tax years commencing in  
2 1990; \$6,500,000.00 for tax years commencing in 1991; or  
3 \$9,000,000.00 for tax years commencing after 1991, and the  
4 denominator of which is \$1,000,000.00. The credit shall not  
5 exceed 50% for tax years commencing before January 1, 1984; 90%  
6 for tax years commencing on or after January 1, 1984 and before  
7 January 1, 1988; or 100% for tax years commencing on and after  
8 January 1, 1988 of the tax liability imposed by section 31.

9 (7) An affiliated group as defined in this act, a controlled  
10 group of corporations as defined in section 1563 of the internal  
11 revenue code and further described in 26 C.F.R. 1.414(b)-1 and  
12 1.414(c)-1 to 1.414(c)-5, or an entity under common control as  
13 defined by the internal revenue code shall not take the credit  
14 allowed by this section unless the business activities of the  
15 entities are consolidated.

16 (8) The department shall permit a taxpayer who elects to  
17 claim the credit allowed by this section based on the amount by  
18 which the tax imposed by section 31 exceeds the percentage of  
19 adjusted business income for the tax year as determined under  
20 subsection (4), and who is not required to reduce the credit  
21 pursuant to subsection (2) or (6), to file and pay the tax  
22 imposed by this act without computing the tax imposed under  
23 section 31.

24 (9) For tax years that begin after the effective date of the  
25 amendatory act that added this subsection, a professional  
26 employer organization that is not a captive provider shall not  
27 claim the credit allowed under this section. As used in this

1 subsection:

2 (a) "Captive provider" means a professional employer  
3 organization that limits itself to providing services and  
4 employees to only 1 client entity and the entity's subsidiaries  
5 and affiliates and that does not hold itself out as available to  
6 provide its services to other client entities that do not share  
7 an ownership relationship with the professional employer  
8 organization.

9 (b) "Professional employer organization" means an  
10 organization that provides the management and administration of  
11 the human resources and employer risk of another entity by  
12 contractually assuming substantial employer rights,  
13 responsibilities, and risk through a professional employer  
14 agreement that establishes an employer relationship with the  
15 leased officers or employees assigned to the other entity by  
16 doing all of the following:

17 (i) Maintaining the right of direction and control of  
18 employees' work, although this responsibility may be shared with  
19 the other entity.

20 (ii) Paying wages and employment taxes of the employees out  
21 of its own accounts.

22 (iii) Reporting, collecting, and depositing state and federal  
23 employment taxes for the employees.

24 (iv) Retaining the right to hire and fire employees.