

# SENATE BILL No. 1191

March 23, 2006, Introduced by Senators CASSIS, GOSCHKA, KUIPERS, BISHOP, BARCIA, CROPSEY, GILBERT, GARCIA and ALLEN and referred to the Committee on Finance.

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.

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

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

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

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

8 (d) "Shareholder" means a person who owns outstanding stock in  
9 the business **OR, FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1,**  
10 **2006, A MEMBER OF A BUSINESS ENTITY THAT FILES AS A CORPORATION FOR**  
11 **FEDERAL TAX PURPOSES.** An individual is considered as the owner of  
12 the stock owned, directly or indirectly, by or for family members  
13 as defined by section 318(a)(1) of the internal revenue code.

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

1 section.

2 (f) "Subchapter S corporation" means a corporation electing  
3 taxation under subchapter S of chapter 1 of subtitle A of the  
4 internal revenue code, sections 1361 to 1379 of the internal  
5 revenue code.

6 (2) The credit provided in this section shall be taken before  
7 any other credit under this act, and is available to any person  
8 whose gross receipts do not exceed \$6,000,000.00 for tax years  
9 commencing on or after January 1, 1984 and before January 1, 1989;  
10 \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for  
11 tax years commencing in 1990; \$7,500,000.00 for tax years  
12 commencing in 1991; or \$10,000,000.00 for tax years commencing  
13 after 1991, and whose adjusted business income minus the loss  
14 adjustment does not exceed \$475,000.00 for tax years commencing on  
15 or after January 1, 1985 **AND BEFORE JANUARY 1, 2006 OR \$525,000.00**  
16 **FOR TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2006**, subject to  
17 the following:

18 (a) An individual, a partnership, or a subchapter S  
19 corporation is disqualified if the individual, any 1 partner of the  
20 partnership, or any 1 shareholder of the subchapter S corporation  
21 receives more than \$95,000.00 for tax years commencing on or after  
22 January 1, 1985 and before January 1, 1998, ~~or~~ more than  
23 \$115,000.00 for tax years commencing after December 31, 1997 **AND**  
24 **BEFORE JANUARY 1, 2006, OR MORE THAN \$125,000.00 FOR TAX YEARS**  
25 **COMMENCING AFTER DECEMBER 31, 2005** as a distributive share of the  
26 adjusted business income minus the loss adjustment of the  
27 individual, the partnership, or the subchapter S corporation.

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

(i) Compensation and director's fees of a shareholder or officer exceed \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998, ~~or~~ exceed \$115,000.00 for tax years commencing after December 31, 1997 **AND BEFORE JANUARY 1, 2006, OR EXCEED \$125,000.00 FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 2005.**

(ii) The sum of the following amounts exceeds \$95,000.00 for tax years commencing on or after January 1, 1985 and before January 1, 1998, ~~or~~ exceeds \$115,000.00 for tax years commencing after December 31, 1997 **AND BEFORE JANUARY 1, 2006, OR EXCEEDS \$125,000.00 FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 2005:**

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

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

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

(i) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted ~~gross~~ **BUSINESS** income minus the

1 loss adjustment of the individual, partnership, or subchapter S  
2 corporation; if compensation and directors' fees of a shareholder  
3 or officer of a corporation other than a subchapter S corporation  
4 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
5 is more than \$95,000.00 but less than \$100,000.00 **FOR TAX YEARS**  
6 **THAT BEGIN BEFORE JANUARY 1, 2006, OR MORE THAN \$105,000.00 BUT**  
7 **LESS THAN \$110,000.00 FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY**  
8 **1, 2006,** the credit is reduced by 20%.

9 (ii) If an individual, any 1 partner of the partnership, or any  
10 1 shareholder of the subchapter S corporation receives as a  
11 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the  
12 loss adjustment of the individual, partnership, or subchapter S  
13 corporation; if compensation and directors' fees of a shareholder  
14 or officer of a corporation other than a subchapter S corporation  
15 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
16 is \$100,000.00 or more but less than \$105,000.00 **FOR TAX YEARS THAT**  
17 **BEGIN BEFORE JANUARY 1, 2006, OR \$110,000.00 OR MORE BUT LESS THAN**  
18 **\$115,000.00 FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2006,**  
19 the credit is reduced by 40%.

20 (iii) If an individual, any 1 partner of the partnership, or any  
21 1 shareholder of the subchapter S corporation receives as a  
22 distributive share of adjusted ~~gross~~ **BUSINESS** income minus the  
23 loss adjustment of the individual, partnership, or subchapter S  
24 corporation; if compensation and directors' fees of a shareholder  
25 or officer of a corporation other than a subchapter S corporation  
26 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)  
27 is \$105,000.00 or more but less than \$110,000.00 **FOR TAX YEARS THAT**

BEGIN BEFORE JANUARY 1, 2006, OR \$115,000.00 OR MORE BUT LESS THAN \$120,000.00 FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2006, the credit is reduced by 60%.

(iv) If an individual, any 1 partner of the partnership, or any 1 shareholder of the subchapter S corporation receives as a distributive share of adjusted ~~gross~~ **BUSINESS** income minus the loss adjustment of the individual, partnership, or subchapter S corporation; if compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B) is \$110,000.00 or more but less than \$115,000.00 **FOR TAX YEARS THAT BEGIN BEFORE JANUARY 1, 2006, OR \$120,000.00 OR MORE BUT LESS THAN OR EQUAL TO \$125,000.00 FOR TAX YEARS THAT BEGIN ON AND AFTER JANUARY 1, 2006,** the credit is reduced by 80%.

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

(4) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by section 31. For tax years commencing before January 1, 1989, the credit is a percentage reduction in tax liability. ~~For tax years commencing on and after January 1, 1989 and through tax years commencing in 1991, the credit is the greater of the amount by which the tax imposed by section 31 exceeds 4% of adjusted business income or 3% of adjusted business income for tax years commencing after 1991 or a percentage reduction in tax liability. However, beginning October 1, 1994, the percentage of adjusted business income shall be 2%. The department~~

1 shall annualize the rates provided under this subsection as  
2 necessary for tax years that end after September 30, 1994 and the  
3 applicable annualized rate shall be imposed for those tax years.

4 **THE CREDIT UNDER THIS SUBSECTION IS THE GREATER OF THE AMOUNT BY**  
5 **WHICH THE TAX IMPOSED BY SECTION 31 EXCEEDS THE FOLLOWING**  
6 **PERCENTAGE OF ADJUSTED BUSINESS INCOME FOR THE SPECIFIED TAX YEARS**  
7 **OR A PERCENTAGE REDUCTION IN TAX LIABILITY:**

8 (A) FOR TAX YEARS COMMENCING ON AND AFTER JANUARY 1, 1989 AND  
9 THROUGH TAX YEARS COMMENCING IN 1991, 4%.

10 (B) FOR TAX YEARS COMMENCING AFTER 1991 AND BEFORE OCTOBER 1,  
11 1994, 3%.

12 (C) BEGINNING OCTOBER 1, 1994 AND BEFORE JANUARY 1, 2006, 2%.

13 (D) BEGINNING JANUARY 1, 2006, 1.0%.

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

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

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

6 (7) An affiliated group as defined in this act, a controlled  
7 group of corporations as defined in section 1563 of the internal  
8 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1  
9 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as  
10 defined by the internal revenue code shall not take the credit  
11 allowed by this section unless the business activities of the  
12 entities are consolidated. **FOR PURPOSES OF THIS SUBSECTION,**  
13 **BUSINESS ACTIVITIES INCLUDE ALL ACTIVITIES WITHIN AND OUTSIDE OF**  
14 **THIS STATE.**

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

22 (9) **FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2007, THE**  
23 **MAXIMUM AMOUNT UNDER SUBSECTION (2) (A), (B) (i), (B) (ii), AND (C) (iv)**  
24 **SHALL BE ADJUSTED BY THE PERCENTAGE INCREASE IN THE RATE OF**  
25 **PERSONAL INCOME GROWTH AS REPORTED BY THE FEDERAL GOVERNMENT FOR**  
26 **THE IMMEDIATELY PRECEDING CALENDAR YEAR.**

27 (10) **AS USED IN THIS SECTION, THE TERM "CORPORATION" INCLUDES**



1 A BUSINESS ENTITY THAT FILES AS A CORPORATION FOR FEDERAL TAX  
2 PURPOSES.