

SENATE BILL No. 659

June 29, 2005, Introduced by Senators GILBERT, SANBORN, BISHOP, TOY, CROPSEY, VAN WOERKOM, ALLEN, HARDIMAN, JELINEK, STAMAS, KUIPERS, SIKKEMA, HAMMERSTROM, McMANUS, GARCIA, BIRKHOLZ, BROWN and GOSCHKA and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

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. An individual is considered as the owner of the stock
10 owned, directly or indirectly, by or for family members as defined
11 by section 318(a)(1) of the internal revenue code.

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

27 (f) "Subchapter S corporation" means a corporation electing

1 taxation under subchapter S of chapter 1 of subtitle A of the
2 internal revenue code, sections 1361 to 1379 of the internal
3 revenue code.

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

14 (a) An individual, a partnership, or a subchapter S
15 corporation is disqualified if the individual, any 1 partner of the
16 partnership, or any 1 shareholder of the subchapter S corporation
17 receives more than \$95,000.00 for tax years commencing on or after
18 January 1, 1985 and before January 1, 1998, ~~or~~ more than
19 \$115,000.00 for tax years commencing after December 31, 1997 **AND**
20 **BEFORE JANUARY 1, 2006, OR MORE THAN \$187,500.00 AS ADJUSTED UNDER**
21 **SUBSECTION (9) FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 2005** as
22 a distributive share of the adjusted business income minus the loss
23 adjustment of the individual, the partnership, or the subchapter S
24 corporation.

25 (b) A corporation other than a subchapter S corporation is
26 disqualified if either of the following occur for the respective
27 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 \$187,500.00 AS ADJUSTED UNDER SUBSECTION (9) 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 \$187,500.00 AS ADJUSTED UNDER SUBSECTION (9) 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 income minus the loss adjustment of the individual, partnership, or subchapter S 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 (B)
3 is more than \$95,000.00 but less than \$100,000.00, the credit is
4 reduced by 20%.

5 (ii) If an individual, any 1 partner of the partnership, or any
6 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
9 corporation; if compensation and directors' fees of a shareholder
10 or 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 (B)
12 is \$100,000.00 or more but less than \$105,000.00, the credit is
13 reduced by 40%.

14 (iii) If an individual, any 1 partner of the partnership, or any
15 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
18 corporation; if compensation and directors' fees of a shareholder
19 or 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 (B)
21 is \$105,000.00 or more but less than \$110,000.00, the credit is
22 reduced by 60%.

23 (iv) If an individual, any 1 partner of the partnership, or any
24 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 (B)
3 is \$110,000.00 or more but less than \$115,000.00 **FOR TAX YEARS**
4 **COMMENCING BEFORE JANUARY 1, 2006, OR MORE THAN \$187,500.00 AS**
5 **ADJUSTED UNDER SUBSECTION (9) FOR TAX YEARS COMMENCING AFTER**
6 **DECEMBER 31, 2005,** the credit is reduced by 80%.

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

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

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

26 (6) If gross receipts exceed \$5,000,000.00 for tax years
27 commencing on or after January 1, 1984 and before January 1, 1989;

1 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for
2 tax years commencing in 1990; \$6,500,000.00 for tax years
3 commencing in 1991; or \$9,000,000.00 for tax years commencing after
4 1991, the credit shall be reduced by a fraction, the numerator of
5 which is the amount of gross receipts over \$5,000,000.00 for tax
6 years commencing on or after January 1, 1984 and before January 1,
7 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00
8 for tax years commencing in 1990; \$6,500,000.00 for tax years
9 commencing in 1991; or \$9,000,000.00 for tax years commencing after
10 1991, and the denominator of which is \$1,000,000.00. The credit
11 shall not exceed 50% for tax years commencing before January 1,
12 1984; 90% for tax years commencing on or after January 1, 1984 and
13 before January 1, 1988; or 100% for tax years commencing on and
14 after January 1, 1988 of the tax liability imposed by section 31.

15 (7) An affiliated group as defined in this act, a controlled
16 group of corporations as defined in section 1563 of the internal
17 revenue code and further described in 26 ~~C.F.R.~~ **CFR** 1.414(b)-1
18 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as
19 defined by the internal revenue code shall not take the credit
20 allowed by this section unless the business activities of the
21 entities are consolidated.

22 (8) The department shall permit a taxpayer who elects to claim
23 the credit allowed by this section based on the amount by which the
24 tax imposed by section 31 exceeds the percentage of adjusted
25 business income for the tax year as determined under subsection
26 (4), and who is not required to reduce the credit pursuant to
27 subsection (2) or (6), to file and pay the tax imposed by this act

1 without computing the tax imposed under section 31.

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