

HOUSE BILL No. 4969

June 16, 2005, Introduced by Reps. Sheen and Drolet 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

1 defined in section 3 with all of the following adjustments:

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

4 (ii) Make the adjustments provided in section 9(4)(a) and (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 in
8 the business. An individual is considered as the owner of the stock
9 owned, directly or indirectly, by or for family members as defined
10 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 determining
15 the loss adjustment for a tax year, a taxpayer is not required to
16 use more of the taxpayer's total negative adjusted business income
17 than the amount needed to qualify the taxpayer for the credit under
18 this section. A taxpayer shall not be considered to have used any
19 portion of the taxpayer's negative adjusted business income amount
20 unless the portion used is necessary to qualify for the credit
21 under this section. A taxpayer shall not reuse a negative adjusted
22 business income amount used as a loss adjustment in a previous tax
23 year or use a negative adjusted business income amount from a year
24 in which the taxpayer did not receive the credit under this
25 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, 1989;
7 \$7,000,000.00 for tax years commencing in 1989; \$7,250,000.00 for
8 tax years commencing in 1990; \$7,500,000.00 for tax years
9 commencing in 1991; or \$10,000,000.00 for tax years commencing
10 after 1991, and whose adjusted business income minus the loss
11 adjustment does not exceed \$475,000.00 for tax years commencing on
12 or after January 1, 1985, subject to the following:

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

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

24 (i) Compensation and director's fees of a shareholder or
25 officer exceed \$95,000.00 for tax years commencing on or after
26 January 1, 1985 and before January 1, 1998 or exceed \$115,000.00
27 for tax years commencing after December 31, 1997.

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

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

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

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

15 (i) If an individual, any 1 partner of the partnership, or any
16 1 shareholder of the subchapter S corporation receives as a
17 distributive share of adjusted gross income minus the loss
18 adjustment of the individual, partnership, or subchapter S
19 corporation; if compensation and directors' fees of a shareholder
20 or officer of a corporation other than a subchapter S corporation
21 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
22 is more than \$95,000.00 but less than \$100,000.00, the credit is
23 reduced by 20%.

24 (ii) If an individual, any 1 partner of the partnership, or any
25 1 shareholder of the subchapter S corporation receives as a
26 distributive share of adjusted gross income minus the loss
27 adjustment of the individual, partnership, or subchapter S

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

6 (iii) If an individual, any 1 partner of the partnership, or any
7 1 shareholder of the subchapter S corporation receives as a
8 distributive share of adjusted gross income minus the loss
9 adjustment of the individual, partnership, or subchapter S
10 corporation; if compensation and directors' fees of a shareholder
11 or officer of a corporation other than a subchapter S corporation
12 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
13 is \$105,000.00 or more but less than \$110,000.00, the credit is
14 reduced by 60%.

15 (iv) If an individual, any 1 partner of the partnership, or any
16 1 shareholder of the subchapter S corporation receives as a
17 distributive share of adjusted gross income minus the loss
18 adjustment of the individual, partnership, or subchapter S
19 corporation; if compensation and directors' fees of a shareholder
20 or officer of a corporation other than a subchapter S corporation
21 are; or if the sum of the amounts in subdivision (b)(ii)(A) and (B)
22 is \$110,000.00 or more but less than \$115,000.00, the credit is
23 reduced by 80%.

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

27 (4) A person who qualifies pursuant to subsection (2) is

1 allowed a credit against the tax imposed by section 31. For tax
 2 years commencing before January 1, 1989, the credit is a percentage
 3 reduction in tax liability. For tax years commencing on and after
 4 January 1, 1989 and through tax years commencing in 1991, the
 5 credit is the greater of the amount by which the tax imposed by
 6 section 31 exceeds 4% of adjusted business income; ~~or~~ 3% of
 7 adjusted business income for tax years commencing after 1991 **AND**
 8 **BEFORE OCTOBER 1, 1994; 2% BEGINNING OCTOBER 1, 1994 AND BEFORE**
 9 **JANUARY 1, 2006; AND 1.2% BEGINNING JANUARY 1, 2006** or a percentage
 10 reduction in tax liability. ~~However, beginning October 1, 1994,~~
 11 ~~the percentage of adjusted business income shall be 2%.~~ The
 12 department shall annualize the rates provided under this subsection
 13 as necessary for tax years that end after September 30, 1994 and
 14 the applicable annualized rate shall be imposed for those tax
 15 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, 1989;
 21 \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00 for
 22 tax years commencing in 1990; \$6,500,000.00 for tax years
 23 commencing in 1991; or \$9,000,000.00 for tax years commencing after
 24 1991, the credit shall be reduced by a fraction, the numerator of
 25 which is the amount of gross receipts over \$5,000,000.00 for tax
 26 years commencing on or after January 1, 1984 and before January 1,
 27 1989; \$6,000,000.00 for tax years commencing in 1989; \$6,250,000.00

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

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

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.