



# HOUSE BILL No. 4934

June 6, 1995, Introduced by Reps. Bullard, Profit, DeMars, Perricone, Ryan, London, Bodem, Horton, Green, Kukuk, Walberg, Goschka, Gernaat, Voorhees, Dalman, Dobb, Pitoniak, Bush, Galloway and Jamian 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 individual, a partnership, or a subchapter S corpora-  
21 tion is disqualified if the individual, any 1 partner of the  
22 partnership, or any 1 shareholder of the subchapter S corporation  
23 receives more than \$95,000.00 for tax years commencing on or  
24 after January 1, 1985 AND BEFORE JANUARY 1, 1996 OR MORE THAN  
25 \$175,000.00 FOR TAX YEARS COMMENCING AFTER DECEMBER 31, 1995 as a  
26 distributive share of the adjusted business income minus the loss

1 adjustment of the individual, the partnership, or the subchapter  
2 S corporation.

3 (b) A corporation other than a subchapter S corporation is  
4 disqualified if either of the following occur for the respective  
5 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, 1996 OR \$175,000.00 FOR TAX  
9 YEARS COMMENCING AFTER DECEMBER 31, 1995.

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, 1996 OR \$175,000.00 FOR TAX YEARS COMMENCING AFTER  
13 DECEMBER 31, 1995:

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

22 (4) A person who qualifies pursuant to subsection (2) is  
23 allowed a credit against the tax imposed by section 31. For tax  
24 years commencing before January 1, 1989, the credit is a percen-  
25 tage reduction in tax liability. For tax years commencing on and  
26 after January 1, 1989 and through tax years commencing in 1991,  
27 the credit is the greater of the amount by which the tax imposed

1 by section 31 exceeds 4% of adjusted business income or, FOR TAX  
2 YEARS COMMENCING AFTER 1991, EXCEEDS 3% of adjusted business  
3 income ~~for tax years commencing after 1991~~ or THE AMOUNT OF a  
4 percentage reduction in tax liability. However, beginning  
5 October 1, 1994, the percentage of adjusted business income shall  
6 be 2%. The department shall annualize the rates provided under  
7 this subsection as necessary for tax years that end after  
8 September 30, 1994 and the applicable annualized rate shall be  
9 imposed for those tax years.

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

13 (6) If gross receipts exceed \$5,000,000.00 for tax years  
14 commencing on or after January 1, 1984 and before January 1,  
15 1989; \$6,000,000.00 for tax years commencing in 1989;  
16 \$6,250,000.00 for tax years commencing in 1990; \$6,500,000.00 for  
17 tax years commencing in 1991; or \$9,000,000.00 for tax years com-  
18 mencing after 1991, the credit shall be reduced by a fraction,  
19 the numerator of which is the amount of gross receipts over  
20 \$5,000,000.00 for tax years commencing on or after January 1,  
21 1984 and before January 1, 1989; \$6,000,000.00 for tax years com-  
22 mencing in 1989; \$6,250,000.00 for tax years commencing in 1990;  
23 \$6,500,000.00 for tax years commencing in 1991; or \$9,000,000.00  
24 for tax years commencing after 1991, and the denominator of which  
25 is \$1,000,000.00. The credit shall not exceed 50% for tax years  
26 commencing before January 1, 1984; 90% for tax years commencing  
27 on or after January 1, 1984 and before January 1, 1988; or 100%

1 for tax years commencing on and after January 1, 1988 of the tax  
2 liability imposed by section 31.

3       (7) An affiliated group as defined in this act and a con-  
4 trolled group of corporations or an entity under common control  
5 as defined by the internal revenue code shall not take the credit  
6 allowed by this section unless the business activities of the  
7 entities are consolidated.

8       (8) The department shall permit a taxpayer who elects to  
9 claim the credit allowed by this section based on the amount by  
10 which the tax imposed by section 31 exceeds the percentage of  
11 adjusted business income for the tax year as determined under  
12 subsection (4), and who is not required to reduce the credit pur-  
13 suant to subsection (6), to file and pay the tax imposed by this  
14 act without computing the tax imposed under section 31.