

HOUSE BILL No. 6065

September 16, 1998, Introduced by Reps. London, Rhead, Gernaat, Perricone, Birkholz, Schauer, McBryde, Bodem, DeHart, Cassis, Voorhees, Hammerstrom, Lowe, Goschka, Middaugh, Richner and Raczkowski 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 deter-
15 mining 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 con-
19 sidered to have used any portion of the taxpayer's negative
20 adjusted business income amount unless the portion used is neces-
21 sary to qualify for the credit under this section. A taxpayer
22 shall not reuse a negative adjusted business income amount used
23 as a loss adjustment in a previous tax year or use a negative
24 adjusted business income amount from a year in which the taxpayer
25 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~~ 26 U.S.C. 1361 to 1379. ~~of the~~
2 ~~internal revenue code.~~

3 (2) The credit provided in this section shall be taken
4 before any other credit under this act, and is available to any
5 person whose gross receipts do not exceed \$6,000,000.00 for tax
6 years commencing on or after January 1, 1984 and before January
7 1, 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~~ ON OR AFTER JANUARY 1, 1991 AND BEFORE
11 JANUARY 1, 1999; AND \$12,000,000.00 FOR TAX YEARS COMMENCING ON
12 OR AFTER JANUARY 1, 1999, and whose adjusted business income
13 minus the loss adjustment does not exceed \$475,000.00 for tax
14 years commencing on or after January 1, 1985, subject to the
15 following:

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

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

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

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

10 (B) The product of the percentage of outstanding stock owned
11 by that shareholder multiplied by the difference between the sum
12 of business income and the adjustments provided in section
13 9(4)(a) and (b) minus the loss adjustment.

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

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

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

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

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

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

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

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

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

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

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

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