

SENATE BILL No. 423

April 29, 2003, Introduced by Senator EMERSON and referred to the Committee on Finance.

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending sections 3, 36, and 71 (MCL 208.3, 208.36, and
208.71), sections 3 and 71 as amended by 1999 PA 115 and section
36 as amended by 1995 PA 284.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) "Affiliated group" means 2 or more United
2 States corporations, 1 of which owns or controls, directly or
3 indirectly, 80% or more of the capital stock with voting rights
4 of the other United States corporation or United States
5 corporations. As used in this subsection, "United States
6 corporation" means a domestic corporation as those terms are
7 defined in section 7701(a)(3) and (4) of the internal revenue
8 code.

9 (2) "Business activity" means a transfer of legal or

1 equitable title to or rental of property, whether real, personal,
2 or mixed, tangible or intangible, or the performance of services,
3 or a combination thereof, made or engaged in, or caused to be
4 made or engaged in, ~~within this state,~~ whether in intrastate,
5 interstate, or foreign commerce, with the object of gain,
6 benefit, or advantage, whether direct or indirect, to the
7 taxpayer or to others, but shall not include the services
8 rendered by an employee to his **or her** employer, services as a
9 director of a corporation, or a casual transaction. Although an
10 activity of a taxpayer may be incidental to another or other of
11 his **or her** business activities, each activity shall be considered
12 to be business engaged in within the meaning of this act.

13 (3) "Business income" means federal taxable income, except
14 that for a person other than a corporation it means that part of
15 federal taxable income derived from business activity. For a
16 partnership, business income includes payments and items of
17 income and expense ~~which~~ **that** are attributable to business
18 activity of the partnership and separately reported to the
19 partners.

20 Sec. 36. (1) As used in this section:

21 (a) "Active shareholder" means a shareholder who receives at
22 least \$10,000.00 in compensation, director's fees, or dividends
23 from the business, and who owns at least 5% of the outstanding
24 stock.

25 (b) "Officer" means an officer of a corporation other than a
26 subchapter S corporation including the chairperson of the board,
27 president, vice-president, secretary, and treasurer, or persons

1 performing similar duties.

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

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

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

8 (iii) Add compensation and director's fees of officers of a
9 corporation. **For tax years that begin on and after January 1,**
10 **2004, for purposes of this subparagraph, compensation includes**
11 **payments made by a professional employer organization to an**
12 **officer or shareholder of a corporation that are attributable to**
13 **that corporation. As used in this subparagraph and subsection**
14 **(2)(b)(i), "professional employer organization" means that term**
15 **as defined in section 4(4).**

16 (d) "Shareholder" means a person who owns outstanding stock
17 in the business **or a member of a business entity that files as a**
18 **corporation for federal tax purposes.** An individual is
19 considered as the owner of the stock owned, directly or
20 indirectly, by or for family members as defined by section
21 318(a)(1) of the internal revenue code.

22 (e) "Loss adjustment" means the amount by which adjusted
23 business income was less than zero in any of the 5 tax years
24 immediately preceding the tax year for which eligibility for the
25 credit provided by this section is being determined. In
26 determining the loss adjustment for a tax year, a taxpayer is not
27 required to use more of the taxpayer's total negative adjusted

1 business income than the amount needed to qualify the taxpayer
2 for the credit under this section. A taxpayer shall not be
3 considered to have used any portion of the taxpayer's negative
4 adjusted business income amount unless the portion used is
5 necessary to qualify for the credit under this section. A
6 taxpayer shall not reuse a negative adjusted business income
7 amount used as a loss adjustment in a previous tax year or use a
8 negative adjusted business income amount from a year in which the
9 taxpayer did not receive the credit under this section.

10 (f) "Subchapter S corporation" means a corporation electing
11 taxation under subchapter S of chapter 1 of subtitle A of the
12 internal revenue code, sections 1361 to 1379 of the internal
13 revenue code.

14 (2) The credit provided in this section shall be taken before
15 any other credit under this act, and is available to any person
16 whose gross receipts do not exceed \$6,000,000.00 for tax years
17 commencing on or after January 1, 1984 and before January 1,
18 1989; \$7,000,000.00 for tax years commencing in 1989;
19 \$7,250,000.00 for tax years commencing in 1990; \$7,500,000.00 for
20 tax years commencing in 1991; or \$10,000,000.00 for tax years
21 commencing after 1991, and whose adjusted business income minus
22 the loss adjustment does not exceed \$475,000.00 for tax years
23 commencing on or after January 1, 1985, subject to the
24 following:

25 (a) An individual, a partnership, **a business entity that**
26 **files as a partnership for federal tax purposes,** or a
27 subchapter S corporation is disqualified if the individual, any 1

1 partner of the partnership, **any member of the business entity**
2 **that files as a partnership for federal tax purposes**, or any 1
3 shareholder of the subchapter S corporation receives more than
4 \$95,000.00 for tax years commencing on or after January 1, 1985
5 and before January 1, 1998 or more than \$115,000.00 for tax years
6 commencing after December 31, 1997 as a distributive share of the
7 adjusted business income minus the loss adjustment of the
8 individual, the partnership, or the subchapter S corporation.

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

12 (i) Compensation and director's fees of a shareholder or
13 officer exceed \$95,000.00 for tax years commencing on or after
14 January 1, 1985 and before January 1, 1998 or exceed \$115,000.00
15 for tax years commencing after December 31, 1997. **For tax years**
16 **that begin on and after January 1, 2004, for purposes of this**
17 **subparagraph, compensation includes payments made by a**
18 **professional employer organization to an officer or shareholder**
19 **of a corporation that are attributable to that corporation.**

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

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

25 (B) The product of the percentage of outstanding stock owned
26 by that shareholder multiplied by the difference between the sum
27 of business income and the adjustments provided in section

1 9(4)(a) and (b) minus the loss adjustment.

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

7 (i) If an individual, any 1 partner of the partnership, **any 1**
8 **member of the business entity that files as a partnership for**
9 **federal tax purposes**, or any 1 shareholder of the subchapter S
10 corporation receives as a distributive share of adjusted ~~gross~~
11 **business** income minus the loss adjustment of the individual,
12 partnership, **business entity that files as a partnership for**
13 **federal tax purposes**, or subchapter S corporation; if
14 compensation and directors' fees of a shareholder or officer of a
15 corporation other than a subchapter S corporation are; or if the
16 sum of the amounts in subdivision (b)(ii)(A) and (B) is more than
17 \$95,000.00 but less than \$100,000.00, the credit is reduced by
18 20%.

19 (ii) If an individual, any 1 partner of the partnership, **any**
20 **1 member of the business entity that files as a partnership for**
21 **federal tax purposes**, or any 1 shareholder of the subchapter S
22 corporation receives as a distributive share of adjusted ~~gross~~
23 **business** income minus the loss adjustment of the individual,
24 partnership, **business entity that files as a partnership for**
25 **federal tax purposes**, or subchapter S corporation; if
26 compensation and directors' fees of a shareholder or officer of a
27 corporation other than a subchapter S corporation are; or if the

1 sum of the amounts in subdivision (b)(ii)(A) and (B) is
2 \$100,000.00 or more but less than \$105,000.00, the credit is
3 reduced by 40%.

4 (iii) If an individual, any 1 partner of the partnership, **any**
5 **1 member of the business entity that files as a partnership for**
6 **federal tax purposes**, or any 1 shareholder of the subchapter S
7 corporation receives as a distributive share of adjusted ~~gross~~
8 **business** income minus the loss adjustment of the individual,
9 partnership, **business entity that files as a partnership for**
10 **federal tax purposes**, or subchapter S corporation; if
11 compensation and directors' fees of a shareholder or officer of a
12 corporation other than a subchapter S corporation are; or if the
13 sum of the amounts in subdivision (b)(ii)(A) and (B) is
14 \$105,000.00 or more but less than \$110,000.00, the credit is
15 reduced by 60%.

16 (iv) If an individual, any 1 partner of the partnership, **any**
17 **1 member of the business entity that files as a partnership for**
18 **federal tax purposes**, or any 1 shareholder of the subchapter S
19 corporation receives as a distributive share of adjusted ~~gross~~
20 **business** income minus the loss adjustment of the individual,
21 partnership, **business entity that files as a partnership for**
22 **federal tax purposes**, or subchapter S corporation; if
23 compensation and directors' fees of a shareholder or officer of a
24 corporation other than a subchapter S corporation are; or if the
25 sum of the amounts in subdivision (b)(ii)(A) and (B) is
26 \$110,000.00 or more but less than \$115,000.00, the credit is
27 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
7 percentage reduction in tax liability. For tax years commencing
8 on and after January 1, 1989 and through tax years commencing in
9 1991, the credit is the greater of the amount by which the tax
10 imposed by section 31 exceeds 4% of adjusted business income or
11 3% of adjusted business income for tax years commencing after
12 1991 or a percentage reduction in tax liability. However,
13 beginning October 1, 1994, the percentage of adjusted business
14 income shall be 2%. The department shall annualize the rates
15 provided under this subsection as necessary for tax years that
16 end after September 30, 1994 and the applicable annualized rate
17 shall 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
26 commencing 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
3 commencing in 1989; \$6,250,000.00 for tax years commencing in
4 1990; \$6,500,000.00 for tax years commencing in 1991; or
5 \$9,000,000.00 for tax years commencing after 1991, and the
6 denominator of which is \$1,000,000.00. The credit shall not
7 exceed 50% for tax years commencing before January 1, 1984; 90%
8 for tax years commencing on or after January 1, 1984 and before
9 January 1, 1988; or 100% for tax years commencing on and after
10 January 1, 1988 of the tax 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. **For purposes of this subsection,**
18 **business activities include all activities within and outside of**
19 **this state.**

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

1 (9) As used in this section, the term corporation includes a
2 business entity that files as a corporation for federal tax
3 purposes.

4 Sec. 71. (1) A taxpayer that reasonably expects liability
5 for the tax year to exceed \$600.00 or adjustments under section
6 23 to exceed \$100,000.00 shall file an estimated return and pay
7 an estimated tax for each quarter of the taxpayer's tax year.

8 (2) For taxpayers on a calendar year basis the quarterly
9 returns and estimated payments shall be made by April 30,
10 July 31, October 31, and January 31. Taxpayers not on a calendar
11 year basis shall file quarterly returns and make estimated
12 payments on the appropriate due date which in the taxpayer's
13 fiscal year corresponds to the calendar year.

14 (3) The estimated payment made with each quarterly return of
15 each tax year shall be for the estimated tax base for the quarter
16 or 25% of the estimated annual liability. The second, third, and
17 fourth estimated payments in each tax year shall include
18 adjustments, if necessary, to correct underpayments or
19 overpayments from previous quarterly payments in the tax year to
20 a revised estimate of the annual tax liability.

21 (4) The interest **and penalty** provided by this act shall not
22 be assessed if any of the following occur:

23 (a) If the sum of the estimated payments equals at least 85%
24 of the liability or 1% of the gross receipts for the tax year and
25 the amount of each estimated payment reasonably approximates the
26 tax liability incurred during the quarter for which the estimated
27 payment was made.

1 (b) If the preceding year's tax liability was \$20,000.00 or
2 less and if the taxpayer submitted 4 equal installments the sum
3 of which equals the previous year's tax liability.

4 (c) **Effective for the 1 tax year of the taxpayer during which**
5 **the amendatory act that added this subdivision became effective,**
6 **if the underpayment is due to section 79a or to the changes made**
7 **to sections 3 and 36 by the amendatory act that added this**
8 **subdivision.**

9 (5) Each estimated return shall be made on a form prescribed
10 by the department and shall include an estimate of the annual tax
11 liability and other information required by the commissioner.
12 This form may be combined with any other tax reporting form
13 prescribed by the department.

14 (6) With respect to a taxpayer filing an estimated tax return
15 for the taxpayer's first tax year of less than 12 months, the
16 amounts paid with each return shall be proportional to the number
17 of payments made in the first tax year.

18 (7) Payments made under this section shall be a credit
19 against the payment required with the annual tax return required
20 in section 73.

21 (8) When the commissioner considers it necessary to insure
22 payment of the tax or to provide a more efficient administration
23 of the tax, the commissioner may require filing of the returns
24 and payment of the tax for other than quarterly or annual
25 periods.

26 (9) A taxpayer that elects under the internal revenue code to
27 file an annual federal income tax return by March 1 in the year

1 following the taxpayer's tax year and does not make a quarterly
2 estimate or payment, or does not make a quarterly estimate or
3 payment and files a tentative annual return with a tentative
4 payment by January 15, in the year following the taxpayer's tax
5 year and a final return by April 15 in the year following the
6 taxpayer's tax year, shall have the same option in filing the
7 estimated and annual returns required by this act.

8 (10) Instead of the quarterly return prescribed in
9 subsections (1) and (2) the taxpayer may elect either of the
10 following options:

11 (a) To file and pay before the sixteenth day of each month an
12 estimated return computed at the rate of 1% of the gross receipts
13 for the preceding month.

14 (b) To file and pay before the sixteenth day of the months
15 specified in subsection (2) an estimated return computed at the
16 rate of 1% of the gross receipts for the preceding quarter.

17 (11) A penalty for underpayment of an estimated tax under
18 this act shall not be assessed for the taxpayer's first tax year
19 beginning after December 31, 1999 if the taxpayer claimed a
20 credit under section 35a for the first time on the taxpayer's
21 annual return for that tax year and a penalty would not have
22 applied if the taxpayer had made adjustments under section 23 or
23 23b on that return.

24 Enacting section 1. Except as provided in enacting section
25 2, this amendatory act takes effect for tax years that begin on
26 and after January 1, 2003.

27 Enacting section 2. The amendments to section 36(2)(a) and

1 (c) of this amendatory act are intended to clarify that existing
2 law as originally intended by the legislature was meant to
3 require that a member of a business entity that files as a
4 partnership for federal tax purposes is subject to the same
5 limitations under section 36(2)(a) and (c) as a partner of a
6 partnership.