

SUBSTITUTE FOR
SENATE BILL NO. 203

A bill to amend 1975 PA 228, entitled
"Single business tax act,"
by amending section 54 (MCL 208.54), as added by 1999 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 54. (1) Notwithstanding sections 51 and 52, a spun off
2 corporation may elect to calculate its sales factor under this
3 section for a period of 5 years if the following criteria under
4 subdivisions (a), (b), and (c) are met and for an additional 2
5 years following the 5 years **AND AN ADDITIONAL 4 YEARS FOLLOWING THE**
6 **ADDITIONAL 2 YEARS** if all of the following criteria under this
7 subsection are met:

8 (a) The spun off corporation was included in a combined or
9 consolidated return under this act for the tax year immediately

1 preceding the restructuring transaction.

2 (b) As a result of the restructuring transaction that occurred
3 on or after January 1, 1999, both of the following apply:

4 (i) The spun off corporation ceased to be included in the
5 combined or consolidated annual return under this act described in
6 subsection (1)(a).

7 (ii) Without regard to this section, the spun off corporation
8 would have had an increased tax liability under this act for the
9 tax year in which the election under this section is made.

10 (c) On or before the due date for filing the spun off
11 corporation's first annual return under this act following the
12 restructuring transaction, the spun off corporation shall request,
13 in writing, approval from the state treasurer for the election
14 provided under this section. The state treasurer must approve the
15 request under this subdivision by the spun off corporation. The
16 request shall include all of the following:

17 (i) A statement that the spun off corporation qualifies for the
18 election under this section.

19 (ii) A list of all corporations, limited liability companies,
20 and any other business entities that the spun off corporation
21 controlled at the time of the restructuring transaction.

22 (iii) A commitment by the spun off corporation to invest at
23 least \$500,000,000.00 of capital investment in this state within 5
24 years. The 5 years under this subparagraph shall commence with the
25 first tax year following the tax year in which the restructuring
26 transaction was completed.

27 (d) Prior to the end of the sixth year following the

1 restructuring transaction and if the spun off corporation is not
2 required to file amended returns under subsection (3), the spun off
3 corporation shall request, in writing, approval from the state
4 treasurer for the election ~~provided~~ **OF THE 2 ADDITIONAL YEARS**
5 under ~~this section~~ **SUBSECTION (1)**. The state treasurer must
6 approve the request under this subdivision by the spun off
7 corporation. The request shall include all of the following:

8 (i) A statement that the spun off corporation qualifies for the
9 election under this section.

10 (ii) A list of all corporations, limited liability companies,
11 and any other business entities that the spun off corporation
12 controlled at the time of the restructuring transaction.

13 (iii) A commitment by the spun off corporation to invest at
14 least \$200,000,000.00 of capital investment in this state within
15 the ~~next~~ **ADDITIONAL 2 years OR A COMMITMENT BY THE SPUN OFF**
16 **CORPORATION TO INVEST A TOTAL OF \$700,000,000.00 OF CAPITAL**
17 **INVESTMENT IN THIS STATE WITHIN THE 7-YEAR PERIOD COMMENCING WITH**
18 **THE YEAR IN WHICH THE RESTRUCTURING TRANSACTION WAS COMPLETED.** The
19 2 years under this subparagraph shall commence with the sixth tax
20 year following the tax year in which the restructuring transaction
21 was completed.

22 (E) **PRIOR TO THE END OF THE EIGHTH YEAR FOLLOWING THE**
23 **RESTRUCTURING TRANSACTION AND, IF THE SPUN OFF CORPORATION IS NOT**
24 **REQUIRED TO FILE AMENDED RETURNS UNDER SUBSECTION (4), THE SPUN OFF**
25 **CORPORATION MAY REQUEST, IN WRITING, APPROVAL FROM THE STATE**
26 **TREASURER FOR THE ELECTION OF THE 4 ADDITIONAL YEARS UNDER**
27 **SUBSECTION (1). THE STATE TREASURER MUST APPROVE THE ELECTION UNDER**

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1 THIS SUBDIVISION. THE REQUEST SHALL INCLUDE ALL OF THE FOLLOWING:

2 (i) A STATEMENT THAT THE SPUN OFF CORPORATION QUALIFIES FOR THE
3 ELECTION UNDER THIS SECTION.

4 (ii) A LIST OF ALL CORPORATIONS, LIMITED LIABILITY COMPANIES,
5 AND ANY OTHER BUSINESS ENTITIES THAT THE SPUN OFF CORPORATION
6 CONTROLLED AT THE TIME OF THE RESTRUCTURING TRANSACTION.

7 (iii) A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST AT
8 LEAST AN ADDITIONAL \$200,000,000.00 OF CAPITAL INVESTMENT IN THIS
9 STATE WITHIN THE ADDITIONAL 4 YEARS AND MAINTAIN AT LEAST 80% OF
10 THE NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES IN THIS STATE BASED ON
11 THE NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES IN THIS STATE AT THE
12 BEGINNING OF THE ADDITIONAL 4-YEAR PERIOD FOR ALL OF THE ADDITIONAL
13 4 YEARS; A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST AN
14 ADDITIONAL \$400,000,000.00 IN THIS STATE WITHIN THE ADDITIONAL 4
15 YEARS; OR A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST A
16 TOTAL OF \$1,300,000,000.00 <<IN THIS STATE>> WITHIN THE 11-YEAR PERIOD
17 COMMENCING
18 WITH THE YEAR IN WHICH THE RESTRUCTURING TRANSACTION WAS COMPLETED.
19 THE 4 YEARS UNDER THIS SUBPARAGRAPH SHALL COMMENCE WITH THE EIGHTH
20 YEAR FOLLOWING THE TAX YEAR IN WHICH THE RESTRUCTURING TRANSACTION
21 WAS COMPLETED. FOR PURPOSES OF THIS SUBPARAGRAPH, THE NUMBER OF
22 FULL-TIME EQUIVALENT EMPLOYEES INCLUDES EMPLOYEES IN ALL OF THE
23 FOLLOWING CIRCUMSTANCES:

23 <<

24 >>

25 <<(A)>> ON A TYPE OF TEMPORARY LEAVE << THAT IS NOT A TEMPORARY
26 LAYOFF OR DUE TO A STRIKE.>>

27 <<(B)>> TRANSFERRED BY THE SPUN OFF CORPORATION TO A RELATED

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1 ENTITY OR TO ITS IMMEDIATELY PRECEDING FORMER PARENT CORPORATION.

2 <<(C)>> TRANSFERRED BY THE SPUN OFF CORPORATION TO ANOTHER
3 EMPLOYER BECAUSE OF THE SALE OF THE SPUN OFF CORPORATION'S LOCATION
4 IN THIS STATE THAT WAS THE WORK SITE OF THE EMPLOYEES.

5 (2) A spun off corporation qualified under subsection (1) and
6 that makes an election and is approved under subsection (1)
7 calculates its sales factor under sections 51 and 52 subject to
8 both of the following:

9 (a) A purchaser in this state under section 52 does not
10 include a person who purchases from a seller that was included in
11 the purchaser's combined or consolidated annual return under this
12 act but, as a result of the restructuring transaction, ceased to be
13 included in the purchaser's combined or consolidated annual return
14 under this act.

15 (b) Total sales under section 51 do not include sales to a
16 purchaser that was a member of a Michigan affiliated group that had
17 included the seller in the filing of a combined or consolidated
18 annual return under this act but, as a result of the restructuring
19 transaction, ceased to include the seller.

20 (3) At the end of the fifth year following the restructuring
21 transaction, if a spun off corporation that elected to calculate
22 its sales factor under this section **FOR THE ADDITIONAL 2 YEARS**
23 **ALLOWED UNDER SUBSECTION (1)** has failed to pay or accrue the amount
24 of capital investment required under subsection (1)(c), the spun
25 off corporation shall ~~be required to~~ file amended annual returns
26 under this act for each of the years the spun off corporation
27 calculated its sales factor under this section regardless of the

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1 applicable statute of limitations under section 27a of 1941 PA 122,
 2 MCL 205.27a, and pay any additional tax plus interest based on the
 3 sales factor as calculated under sections 51 and 52. Interest shall
 4 be calculated from the due date of the original return.

5 (4) At the end of the seventh tax year following the
 6 restructuring transaction, if a spun off corporation that elected
 7 to calculate its sales factor under this section has failed to pay
 8 or accrue the capital investment required under subsection (1)(d),
 9 the spun off corporation shall be required to file amended annual
 10 returns under this act for the sixth and seventh tax years
 11 following the restructuring transaction and pay any additional tax
 12 plus interest based on the sales factor as calculated under
 13 sections 51 and 52. Interest shall be calculated from the due date
 14 of the original return.

15 (5) AT THE END OF THE ELEVENTH TAX YEAR FOLLOWING THE
 16 RESTRUCTURING TRANSACTION, IF THE SPUN OFF CORPORATION THAT ELECTED
 17 TO CALCULATE ITS SALES FACTOR UNDER THIS SECTION FOR THE ADDITIONAL
 18 2 YEARS AND THE ADDITIONAL 4 YEARS ALLOWED UNDER SUBSECTION (1) HAS
 19 FAILED <<TO RETAIN THE REQUIRED NUMBER OF EMPLOYEES OR FAILED>> TO PAY OR
 ACCRUE THE CAPITAL INVESTMENT REQUIRED UNDER
 20 SUBSECTION (1)(E), THE SPUN OFF CORPORATION SHALL FILE AMENDED
 21 ANNUAL RETURNS UNDER THIS ACT FOR THE EIGHTH THROUGH ELEVENTH TAX
 22 YEARS FOLLOWING THE RESTRUCTURING TRANSACTION, REGARDLESS OF THE
 23 STATUTE OF LIMITATIONS UNDER SECTION 27A OF 1941 PA 122, MCL
 24 205.27A, AND PAY ANY ADDITIONAL TAX PLUS INTEREST BASED ON THE
 25 SALES FACTOR AS CALCULATED UNDER SECTIONS 51 AND 52. INTEREST SHALL
 26 BE CALCULATED FROM THE DUE DATE OF THE ORIGINAL RETURN.

27 (6) ~~(5)~~ As used in this section:

1 (a) "Spun off corporation" means an entity treated as a
2 controlled corporation under section 355 of the internal revenue
3 code. Controlled corporation includes a corporate subsidiary
4 created for the purpose of a restructuring transaction, a limited
5 liability company, or an operational unit or division with business
6 activities that were previously carried out as a part of the
7 distributing corporation.

8 (b) "Restructuring transaction" means a tax free distribution
9 under section 355 of the internal revenue code and includes tax
10 free transactions under section 355 that are commonly referred to
11 as spin offs, split ups, split offs, or type D reorganizations.

12 Enacting section 1. This amendatory act does not take effect
13 unless all of the following bills of the 93rd Legislature are
14 enacted into law:

15 (a) Senate Bill No. 909.

16 (b) Senate Bill No. 910.

17 (c) House Bill No. 4982.

18 (d) House Bill No. 5459.

19 (e) House Bill No. 5460.

20 (f) House Bill No. 5461.