

Act No. 296
Public Acts of 2005
Approved by the Governor
December 20, 2005
Filed with the Secretary of State
December 20, 2005
EFFECTIVE DATE: December 20, 2005

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

**Introduced by Senators Johnson, Sikkema, Kuipers, Garcia, Hammerstrom, Brown, Patterson, Toy, Bishop
and Birkholz**

ENROLLED SENATE BILL No. 203

AN ACT to amend 1975 PA 228, entitled "An act to provide for the imposition, levy, computation, collection, assessment and enforcement, by lien or otherwise, of taxes on certain commercial, business, and financial activities; to prescribe the manner and times of making certain reports and paying taxes; to prescribe the powers and duties of public officers and state departments; to permit the inspection of records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits, and refunds; to provide penalties; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to provide an appropriation," by amending section 54 (MCL 208.54), as added by 1999 PA 115.

The People of the State of Michigan enact:

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

(a) The spun off corporation was included in a combined or consolidated return under this act for the tax year immediately preceding the restructuring transaction.

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

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

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

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

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

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

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

(d) Prior to the end of the sixth year following the restructuring transaction and if the spun off corporation is not required to file amended returns under subsection (3), the spun off corporation shall request, in writing, approval from the state treasurer for the election of the 2 additional years under subsection (1). The state treasurer must approve the request under this subdivision by the spun off corporation. The request shall include all of the following:

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

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

(iii) A commitment by the spun off corporation to invest at least \$200,000,000.00 of capital investment in this state within the additional 2 years or a commitment by the spun off corporation to invest a total of \$700,000,000.00 of capital investment in this state within the 7-year period beginning with the year in which the restructuring transaction was completed. The 2 years under this subparagraph shall commence with the sixth tax year following the tax year in which the restructuring transaction was completed.

(e) Prior to the end of the eighth year following the restructuring transaction and if the spun off corporation is not required to file amended returns under subsection (5), the spun off corporation may request, in writing, approval from the state treasurer for the election of the 4 additional years under subsection (1). The state treasurer must approve the election under this subdivision. The request shall include all of the following:

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

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

(iii) A commitment by the spun off corporation to invest at least an additional \$200,000,000.00 of capital investment in this state within the additional 4 years and maintain at least 80% of the number of full-time equivalent employees in this state based on the number of full-time equivalent employees in this state at the beginning of the additional 4-year period for all of the additional 4 years; a commitment by the spun off corporation to invest an additional \$400,000,000.00 in this state within the additional 4 years; or a commitment by the spun off corporation to invest a total of \$1,300,000,000.00 in this state within the 11-year period commencing with the year in which the restructuring transaction was completed. The 4 years under this subparagraph shall commence with the eighth year following the tax year in which the restructuring transaction was completed. For purposes of this subparagraph, the number of full-time equivalent employees includes employees in all of the following circumstances:

(A) On temporary layoff.

(B) On strike.

(C) On a type of temporary leave other than the type under sub-subparagraphs (A) and (B).

(D) Transferred by the spun off corporation to a related entity or to its immediately preceding former parent corporation.

(E) Transferred by the spun off corporation to another employer because of the sale of the spun off corporation's location in this state that was the work site of the employees.

(2) Prior to the end of the eleventh year following the restructuring transaction, a taxpayer that is a buyer of a plant located in this state that was included in the initial restructuring transaction under subsection (1) may elect to calculate its sales factor under subsection (3) and disregard sales by the taxpayer attributable to that plant to a former parent of a spun off corporation and the sales attributable to the plant shall be treated as sales by a spun off corporation. This election shall extend for a period of 4 years following the date that the plant was purchased. On or before the due date for filing the buyer's first annual return following the purchase of the plant, the buyer shall request, in writing, approval from the state treasurer for the election provided under this section and shall attach a statement that the buyer qualifies for the election under this section.

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

(a) A purchaser in this state under section 52 does not include a person who purchases from a seller that was included in the purchaser's combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return under this act. For tax years that begin after December 31, 2005, for a taxpayer that has filed for bankruptcy protection under federal law in calendar year 2005 and for tax years that begin after December 31, 2006 for all other taxpayers, this subdivision applies only to sales that originate from a plant located in this state.

(b) Total sales under section 51 do not include sales to a purchaser that was a member of a Michigan affiliated group that had included the seller in the filing of a combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to include the seller. For tax years that begin after December 31, 2005, for a taxpayer that has filed for bankruptcy protection under federal law in calendar year 2005 and for tax years that begin after December 31, 2006 for all other taxpayers, this subdivision applies only to sales that originate from a plant located in this state to a location in this state.

(4) At the end of the fifth year following the restructuring transaction, if a spun off corporation that elected to calculate its sales factor under this section for the additional 2 years allowed under subsection (1) has failed to pay or accrue the amount of capital investment required under subsection (1)(c), the spun off corporation shall file amended annual returns under this act for each of the years the spun off corporation calculated its sales factor under this section regardless of the applicable statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

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

(6) At the end of the eleventh tax year following the restructuring transaction, if the spun off corporation that elected to calculate its sales factor under this section for the additional 2 years and the additional 4 years allowed under subsection (1) has failed to maintain the required number of employees or failed to pay or accrue the capital investment required under subsection (1)(e), the spun off corporation shall file amended annual returns under this act for the eighth through eleventh tax years following the restructuring transaction, regardless of the statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under sections 51 and 52. Interest shall be calculated from the due date of the original return.

(7) The amount of the spun off corporation's investment commitments required under this section shall not be reduced by the amount of any qualifying investments in Michigan plants that are sold.

(8) As used in this section:

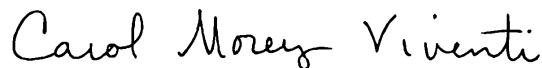
(a) "Spun off corporation" means an entity treated as a controlled corporation under section 355 of the internal revenue code. Controlled corporation includes a corporate subsidiary created for the purpose of a restructuring transaction, a limited liability company, or an operational unit or division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

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

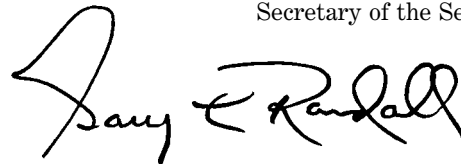
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) Senate Bill No. 909.
- (b) Senate Bill No. 910.
- (c) House Bill No. 4982.
- (d) House Bill No. 5459.
- (e) House Bill No. 5460.
- (f) House Bill No. 5461.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor