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Senate Bill 1102 (as introduced 9-10-20)
Sponsor: Senator Aric Nesbitt
Committee: Finance

Date Completed: 11-10-20

CONTENT

The bill would amend the Income Tax Act to specify that certain conditions would apply for the purposes of applying a business interest expense limitation.

Except as otherwise provided, a unitary business group must file a combined return that includes each United States person that is included in the unitary business group. Each United States person included in a unitary business group or included in a combined return must be treated as a single person, and all transactions between those entities included in the unitary business group must be eliminated from the corporate income tax base, the apportionment formulas, and for purposes of determining exemptions, credits, and the filing threshold under Part 2.

Under the bill, for the purposes of applying the business interest expense limitation under Section 163(j) of the Internal Revenue Code (IRC) for a unitary business group, all of the following would apply:

- If the person included in the unitary business group did not have, or was part of a Federal consolidated group that did not have, a limitation under Section 163(j) of the IRC, then Section 163(j) would not apply under Part 2.
- Any limitation calculated for purposes of Part 2 would have to be calculated in the same manner as any Federal limitation was calculated under the IRC and any related Federal regulations promulgated under the IRC that provided that the limitation was calculated at the group level, and not separately for each person included in the Federal consolidated return group; for these purposes, when using the Federal regulations to determine any limitation under Part 2, any reference to a Federal consolidated return group would be considered a reference to a unitary business group.
- To the extent any person included in a unitary business group had excess business interest expense over that person's separately determined business interest expense limitation under Section 163(j) of the IRC, that person's excess business interest expense could be shared with other entities included in the group if they had unused current year business expense limitations.

The unitary business group could decide how to share any excess business interest expense; however, all current tax year unused business interest expense limitations would have to be used by the group before any person who was included in the group had a business interest expense carryforward. A person's separately determined business interest expense that was not allowed to be used in the current tax year by that person or by another person included in the group could be carried forward by that person.

(Section 163(j) of the IRC pertains to the limitations on business interest deduction, which may not exceed the sum of business interest income of a taxpayer for a taxable year, 30% of the adjusted taxable income of a taxpayer for a taxable year, and the floor plan financing interest of a taxpayer for a taxable year.)

MCL 206.691

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill likely would reduce State revenue by \$10.0 million to \$15.0 million per year, according to the Michigan Department of Treasury. The estimate is based on Federal data, but because there are differences between Federal and State rules and statute as to which members are included in unitary business groups, the estimate has a relatively large margin of error. The inclusion or exclusion of certain members relative to current law could reduce or increase tax liabilities, depending on the specific circumstances of the group members. The bill primarily would affect Corporate Income Tax revenue. For taxpayers who file under the Corporate Income Tax or the Michigan Business Tax, 100% of any impact would affect General Fund revenue.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.