

SENATE BILL NO. 1102

September 10, 2020, Introduced by Senator NESBITT and referred to the Committee on Finance.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 691 (MCL 206.691), as amended by 2014 PA 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 691. (1) Except as otherwise provided under section
2 680(3), a unitary business group shall file a combined return that
3 includes each United States person that is included in the unitary
4 business group. ~~Each~~**Subject to subsection (3), each** United States
5 person included in a unitary business group or included in a
6 combined return shall be treated as a single person, and all

1 transactions between those persons included in the unitary business
2 group shall be eliminated from the corporate income tax base, the
3 apportionment formulas, and for purposes of determining exemptions,
4 credits, and the filing threshold under this part. If a United
5 States person included in a unitary business group or included in a
6 combined return is subject to the tax under chapter 12 or 13, any
7 corporate income attributable to that person shall be eliminated
8 from the corporate income tax base and any sales attributable to
9 that person shall be eliminated from the apportionment formula
10 under this part.

11 (2) A person that is part of an affiliated group may elect
12 without the consent of the department to have all of the persons
13 that are included in that affiliated group to be treated as a
14 unitary business group. A taxpayer that elects to file as a unitary
15 business group pursuant to this subsection shall compute its tax
16 under this part in accordance with all other provisions of this
17 part that apply to a unitary business group. The taxpayer shall
18 make the election under this subsection on a form or in a format as
19 prescribed by the department that is to be filed in a timely manner
20 with the taxpayer's annual return. Each person included in the
21 affiliated group is deemed to have agreed to be bound by the
22 election made under this subsection and any renewal of that
23 election and to have waived any objection to its inclusion in the
24 affiliated group and treatment as a unitary business group. Each
25 person that subsequently enters the affiliated group after the tax
26 year for which the election is made is deemed to have consented to
27 the application of and is bound by the election and to have waived
28 any objection to its inclusion in the affiliated group and
29 treatment as a unitary business group. An election made pursuant to

1 this subsection is irrevocable and binding for and applicable to
2 the tax year for which it is made and for the next 9 tax years. The
3 election shall remain in effect for the time period in which the
4 ownership requirements under this section are met irrespective of
5 whether a federal consolidated group to which the unitary business
6 group belongs discontinues the filing of a federal consolidated
7 return or whether the common parent changes due to a reverse
8 acquisition or acquisition by a related person. Upon the expiration
9 of the election after it has been in effect for 10 tax years, an
10 election may be renewed for another 10 tax years, without the
11 consent of the department; provided however, that in the case of a
12 nonrenewal a new election under this subsection is not permitted in
13 any of the immediately following 3 tax years. The renewal shall be
14 made on a form or in a format as prescribed by the department that
15 is to be filed in a timely manner with the taxpayer's annual return
16 after the completion of a 10-year period for which an election
17 under this subsection was in place.

18 **(3) For purposes of applying the business interest expense**
19 **limitation under section 163(j) of the internal revenue code for a**
20 **unitary business group, all of the following apply:**

21 **(a) If the person included in the unitary business group does**
22 **not have, or is part of a federal consolidated group that does not**
23 **have, a limitation under section 163(j) of the internal revenue**
24 **code, then section 163(j) of the internal revenue code does not**
25 **apply under this part.**

26 **(b) Any limitation calculated for purposes of this part shall**
27 **be calculated in the same manner as any federal limitation is**
28 **calculated under the internal revenue code and any related federal**
29 **regulations promulgated under the internal revenue code that**

1 provide that the limitation is calculated at the group level, and
2 not separately for each person included in the federal consolidated
3 return group. For purposes of this subdivision, when using the
4 federal regulations to determine any limitation under this part,
5 any reference to a federal consolidated return group is considered
6 a reference to a unitary business group.

7 (c) To the extent any person included in a unitary business
8 group has excess business interest expense over that person's
9 separately determined business interest expense limitation under
10 section 163(j) of the internal revenue code, that person's excess
11 business interest expense is allowed to be shared with other
12 persons included in the unitary business group if those other
13 persons have unused current year business interest expense
14 limitations. The unitary business group may decide how to share any
15 excess business interest expense. However, all current tax year
16 unused business interest expense limitations must be used by the
17 unitary business group before any person who is included in the
18 unitary business group has a business interest expense
19 carryforward. A person's separately determined business interest
20 expense that is not allowed to be used in the current tax year by
21 that person or by any other person included in the unitary business
22 group pursuant to this subdivision may be carried forward by that
23 person.