

HOUSE 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 FOR AN ADDITIONAL 4 YEARS**
6 **FOLLOWING THE ADDITIONAL 2 YEARS** if all of the following criteria
7 under this 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
10 preceding the restructuring transaction.

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

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

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

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

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

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

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

26 (d) Prior to the end of the sixth year following the
27 restructuring transaction and if the spun off corporation is not

1 required to file amended returns under subsection (3), the spun off
2 corporation shall request, in writing, approval from the state
3 treasurer for the election ~~provided~~ **OF THE 2 ADDITIONAL YEARS**
4 under ~~this section~~ **SUBSECTION (1)**. The state treasurer must
5 approve the request under this subdivision by the spun off
6 corporation. The request shall include all of the following:

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

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

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

21 **(E) PRIOR TO THE END OF THE EIGHTH YEAR FOLLOWING THE**
22 **RESTRUCTURING TRANSACTION AND IF THE SPUN OFF CORPORATION IS NOT**
23 **REQUIRED TO FILE AMENDED RETURNS UNDER SUBSECTION (5), THE SPUN OFF**
24 **CORPORATION MAY REQUEST, IN WRITING, APPROVAL FROM THE STATE**
25 **TREASURER FOR THE ELECTION OF THE 4 ADDITIONAL YEARS UNDER**
26 **SUBSECTION (1). THE STATE TREASURER MUST APPROVE THE ELECTION UNDER**
27 **THIS SUBDIVISION. THE REQUEST SHALL INCLUDE ALL OF THE FOLLOWING:**

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

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

6 (iii) A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST AT
7 LEAST AN ADDITIONAL \$200,000,000.00 OF CAPITAL INVESTMENT IN THIS
8 STATE WITHIN THE ADDITIONAL 4 YEARS AND MAINTAIN AT LEAST 80% OF
9 THE NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES IN THIS STATE BASED ON
10 THE NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES IN THIS STATE AT THE
11 BEGINNING OF THE ADDITIONAL 4-YEAR PERIOD FOR ALL OF THE ADDITIONAL
12 4 YEARS; A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST AN
13 ADDITIONAL \$400,000,000.00 IN THIS STATE WITHIN THE ADDITIONAL 4
14 YEARS; OR A COMMITMENT BY THE SPUN OFF CORPORATION TO INVEST A
15 TOTAL OF \$1,300,000,000.00 [IN THIS STATE] WITHIN THE 11-YEAR PERIOD
COMMENCING

16 WITH THE YEAR IN WHICH THE RESTRUCTURING TRANSACTION WAS COMPLETED.
17 THE 4 YEARS UNDER THIS SUBPARAGRAPH SHALL COMMENCE WITH THE EIGHTH
18 YEAR FOLLOWING THE TAX YEAR IN WHICH THE RESTRUCTURING TRANSACTION
19 WAS COMPLETED. FOR PURPOSES OF THIS SUBPARAGRAPH, THE NUMBER OF
20 FULL-TIME EQUIVALENT EMPLOYEES INCLUDES EMPLOYEES IN ALL OF THE
21 FOLLOWING CIRCUMSTANCES:

22 (A) ON TEMPORARY LAYOFF.

23 (B) ON STRIKE.

24 (C) ON A TYPE OF TEMPORARY LEAVE OTHER THAN THE TYPE UNDER
25 SUB-SUBPARAGRAPHS (A) AND (B).

26 (D) TRANSFERRED BY THE SPUN OFF CORPORATION TO A RELATED
27 ENTITY OR TO ITS IMMEDIATELY PRECEDING FORMER PARENT CORPORATION.

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

4 (2) PRIOR TO THE END OF THE ELEVENTH YEAR FOLLOWING THE
 5 RESTRUCTURING TRANSACTION, A TAXPAYER THAT IS A BUYER OF A PLANT [LOCATED
 IN THIS STATE]
 6 THAT WAS INCLUDED IN THE INITIAL RESTRUCTURING TRANSACTION UNDER
 7 SUBSECTION (1) MAY ELECT TO CALCULATE ITS SALES FACTOR UNDER
 8 SUBSECTION (3) AND DISREGARD SALES BY THE TAXPAYER ATTRIBUTABLE TO
 9 THAT PLANT TO A FORMER PARENT OF A SPUN OFF CORPORATION AND THE
 10 SALES ATTRIBUTABLE TO THE PLANT SHALL BE TREATED AS SALES BY A SPUN
 11 OFF CORPORATION. THIS ELECTION SHALL EXTEND FOR A PERIOD OF 4 YEARS
 12 FOLLOWING THE DATE THAT THE PLANT WAS PURCHASED. ON OR BEFORE THE
 13 DUE DATE FOR FILING THE BUYER'S FIRST ANNUAL RETURN FOLLOWING THE
 14 PURCHASE OF THE PLANT, THE BUYER SHALL REQUEST, IN WRITING,
 15 APPROVAL FROM THE STATE TREASURER FOR THE ELECTION PROVIDED UNDER
 16 THIS SECTION AND SHALL ATTACH A STATEMENT THAT THE BUYER QUALIFIES
 17 FOR THE ELECTION UNDER THIS SECTION.

18 (3) ~~—(2)—~~ A spun off corporation qualified under subsection
 19 (1) OR (2) and that makes an election and is approved under
 20 subsection (1) OR (2) calculates its sales factor under sections 51
 21 and 52 subject to both of the following:

22 (a) A purchaser in this state under section 52 does not
 23 include a person who purchases from a seller that was included in
 24 the purchaser's combined or consolidated annual return under this
 25 act but, as a result of the restructuring transaction, ceased to be
 26 included in the purchaser's combined or consolidated annual return
 27 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.]

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1 (b) Total sales under section 51 do not include sales to a
 2 purchaser that was a member of a Michigan affiliated group that had
 3 included the seller in the filing of a combined or consolidated
 4 annual return under this act but, as a result of the restructuring
 5 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.]**

6 (4) ~~—(3)—~~ At the end of the fifth year following the
 7 restructuring transaction, if a spun off corporation that elected
 8 to calculate its sales factor under this section **FOR THE ADDITIONAL**
 9 **2 YEARS ALLOWED UNDER SUBSECTION (1)** has failed to pay or accrue
 10 the amount of capital investment required under subsection (1)(c),
 11 the spun off corporation shall ~~be required to~~ file amended annual
 12 returns under this act for each of the years the spun off
 13 corporation calculated its sales factor under this section
 14 regardless of the applicable statute of limitations under section
 15 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus
 16 interest based on the sales factor as calculated under sections 51
 17 and 52. Interest shall be calculated from the due date of the
 18 original return.

19 (5) ~~—(4)—~~ At the end of the seventh tax year following the
 20 restructuring transaction, if a spun off corporation that elected
 21 to calculate its sales factor under this section has failed to pay
 22 or accrue the capital investment required under subsection (1)(d),
 23 the spun off corporation shall be required to file amended annual
 24 returns under this act for the sixth and seventh tax years
 25 following the restructuring transaction and pay any additional tax
 26 plus interest based on the sales factor as calculated under
 27 sections 51 and 52. Interest shall be calculated from the due date

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1 of the original return.

2 (6) AT THE END OF THE ELEVENTH TAX YEAR FOLLOWING THE
3 RESTRUCTURING TRANSACTION, IF THE SPUN OFF CORPORATION THAT ELECTED
4 TO CALCULATE ITS SALES FACTOR UNDER THIS SECTION FOR THE ADDITIONAL
5 2 YEARS AND THE ADDITIONAL 4 YEARS ALLOWED UNDER SUBSECTION (1) HAS
6 FAILED [TO MAINTAIN THE REQUIRED NUMBER OF EMPLOYEES OR FAILED] TO PAY OR
7 ACCRUE THE CAPITAL INVESTMENT REQUIRED UNDER
8 SUBSECTION (1) (E), THE SPUN OFF CORPORATION SHALL FILE AMENDED
9 ANNUAL RETURNS UNDER THIS ACT FOR THE EIGHTH THROUGH ELEVENTH TAX
10 YEARS FOLLOWING THE RESTRUCTURING TRANSACTION, REGARDLESS OF THE
11 STATUTE OF LIMITATIONS UNDER SECTION 27A OF 1941 PA 122, MCL
12 205.27A, AND PAY ANY ADDITIONAL TAX PLUS INTEREST BASED ON THE
13 SALES FACTOR AS CALCULATED UNDER SECTIONS 51 AND 52. INTEREST SHALL
14 BE CALCULATED FROM THE DUE DATE OF THE ORIGINAL RETURN.

15 (7) THE AMOUNT OF THE SPUN OFF CORPORATION'S INVESTMENT
16 COMMITMENTS REQUIRED UNDER THIS SECTION SHALL NOT BE REDUCED BY THE
17 AMOUNT OF ANY QUALIFYING INVESTMENTS IN MICHIGAN PLANTS THAT ARE
18 SOLD.

19 (8) ~~—(5)—~~ As used in this section:

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

27 (b) "Restructuring transaction" means a tax free distribution
under section 355 of the internal revenue code and includes tax

1 free transactions under section 355 that are commonly referred to
2 as spin offs, split ups, split offs, or type D reorganizations.

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

6 (a) Senate Bill No. 909.

7 (b) Senate Bill No. 910.

8 (c) House Bill No. 4982.

9 (d) House Bill No. 5459.

10 (e) House Bill No. 5460.

11 (f) House Bill No. 5461.