

SENATE BILL No. 203

February 16, 2005, Introduced by Senators JOHNSON, SIKKEMA, KUIPERS, GARCIA, HAMMERSTROM, BROWN, PATTERSON, TOY, BISHOP and BIRKHOLZ and referred to the Committee on Finance.

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
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~~ **ADDITIONAL 2 years OR A COMMITMENT BY THE SPUN OFF**
15 **CORPORATION TO INVEST A TOTAL OF \$700,000,000.00 OF CAPITAL**
16 **INVESTMENT IN THIS STATE WITHIN THE 7-YEAR PERIOD COMMENCING 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 (4), 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:**

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 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.

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

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

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

19 (3) At the end of the fifth year following the restructuring
20 transaction, if a spun off corporation that elected to calculate
21 its sales factor under this section **FOR THE ADDITIONAL 2 YEARS**
22 **ALLOWED UNDER SUBSECTION (1)** has failed to pay or accrue the amount
23 of capital investment required under subsection (1)(c), the spun
24 off corporation shall ~~be required to~~ file amended annual returns
25 under this act for each of the years the spun off corporation
26 calculated its sales factor under this section regardless of the
27 applicable statute of limitations under section 27a of 1941 PA 122,

1 MCL 205.27a, and pay any additional tax plus interest based on the
2 sales factor as calculated under sections 51 and 52. Interest shall
3 be calculated from the due date of the original return.

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

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

26 (6) ~~(5)~~ As used in this section:

27 (a) "Spun off corporation" means an entity treated as a

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

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