

BUSINESS INTEREST LIMITATIONS FOR UNITARY FILERS

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Senate Bill 195 as enrolled
Sponsor: Sen. Aric Nesbitt
House Committee: Tax Policy
Senate Committee: Finance
Complete to 2-2-23

Analysis available at
<http://www.legislature.mi.gov>

(Vetoed by the Governor 12-22-22)

SUMMARY:

Senate Bill 195 would amend Part 2 (corporate income tax) of the Income Tax Act to modify the application of the federal business interest limitation¹ to persons in a unitary business group. The bill would apply retroactively for tax years beginning on and after January 1, 2022.

Specifically, the bill would provide that, for tax years beginning on and after January 1, 2022, all of the following apply to a person included in a unitary business group for purposes of determining the person's federal taxable income under Part 2 and applying the **business interest limitation** under section 163(j) of the federal Internal Revenue Code:²

- A person that meets any of the following conditions is not subject to the business interest limitation for the tax year:
 - The person's business interest deduction is not limited under section 163(j)(1) of the Internal Revenue Code for that tax year.
 - The person is exempt from the business interest limitation under section 163(j)(3) of the Internal Revenue Code for that tax year.
 - The person is engaged or treated as engaged in an excepted trade or business under section 163(j)(7) of the Internal Revenue Code for that tax year.
 - The person is included in an affiliated group that makes a federal consolidated return under Chapter 6 of the Internal Revenue Code for that tax year and that meets at least one of the above conditions.
- To the extent that a person has **excess business interest**, the person's excess business interest must be deducted by other persons included in the unitary business group to the extent that those other persons have **unused business interest limitation**. The taxpayer may decide how to share any excess business interest among the persons included in the unitary business group in accordance with this provision.
- After application of the provision immediately above (and except as otherwise provided in the last bulleted provision below), the following apply:
 - Any excess business interest remaining becomes **business interest carryforward** of the person.
 - If a person departs a unitary business group, any business interest carryforward attributable to that person remains with that person and not with the unitary business group. If that person is subsequently included in another unitary business group, that business interest carryforward must be shared as described in the provision above.

¹ <https://www.irs.gov/newsroom/basic-questions-and-answers-about-the-limitation-on-the-deduction-for-business-interest-expense>

² <https://www.law.cornell.edu/uscode/text/26/163>

- Business interest paid or accrued in the current tax year must be deducted before business interest carryforwards. Business interest carryforwards must be used in the order of the tax year in which they arose, beginning with the earliest year.
- For purposes of eliminating transactions under sections 691(1) and 623(3) of the act, if a person's *separately determined* business interest or business interest carryforward is limited and any portion of that business interest is paid or accrued to another person included in the unitary business group, the interest paid or accrued to persons within the unitary business group must be deducted before interest paid or accrued to persons outside the unitary business group.
- A person that departs a unitary business group is not entitled to any business interest carryforward attributable to business interest paid or accrued to persons within that unitary business group.

Business interest would mean that term as defined in section 163(j) of the Internal Revenue Code.

Business interest limitation or ***limitation*** would mean the limitation imposed under section 163(j) of the Internal Revenue Code.

Excess business interest would mean the amount of a person's separately determined business interest not deducted by that person for the tax year due to the separately determined limitation calculated under section 163(j)(1) of the Internal Revenue Code.

Unused business interest limitation would mean the excess of a person's separately determined limitation over that person's separately determined business interest.

Business interest carryforward would mean the amount of a person's excess business interest not deducted for the tax year by any person included in a unitary business group and is treated as business interest paid or accrued in the succeeding tax year.

Separately determined would mean determined under the Internal Revenue Code as if the person is treated as a single person and not as a member of an affiliated group making a consolidated return under Chapter 6 of the Internal Revenue Code.

As noted above, the bill states that it is intended to be retroactive and would apply retroactively effective for tax years beginning on and after January 1, 2022.

MCL 206.691

FISCAL IMPACT:

Based on information provided by the Michigan Department of Treasury using federal corporate income tax return data, the bill would be expected to reduce Corporate Income Tax (CIT) revenue by about \$10.0 million per year. However, that estimate could vary substantially since federal and state statutes differ as to which members can be included in unitary groups.

All CIT revenue accrues to the general fund.

Vetoed 12-22-22:

The bill was among several that Governor Whitmer said she was vetoing because they “were rushed through a lame duck session and need closer examination.”

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.