

SUBSTITUTE FOR
SENATE BILL NO. 195

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
7 transactions between those persons included in the unitary business
8 group shall be eliminated from the corporate income tax base, the
9 apportionment formulas, and for purposes of determining exemptions,

1 credits, and the filing threshold under this part. If a United
2 States person included in a unitary business group or included in a
3 combined return is subject to the tax under chapter 12 or 13, any
4 corporate income attributable to that person shall be eliminated
5 from the corporate income tax base and any sales attributable to
6 that person shall be eliminated from the apportionment formula
7 under this part.

8 (2) A person that is part of an affiliated group may elect
9 without the consent of the department to have all of the persons
10 that are included in that affiliated group to be treated as a
11 unitary business group. A taxpayer that elects to file as a unitary
12 business group pursuant to this subsection shall compute its tax
13 under this part in accordance with all other provisions of this
14 part that apply to a unitary business group. The taxpayer shall
15 make the election under this subsection on a form or in a format as
16 prescribed by the department that is to be filed in a timely manner
17 with the taxpayer's annual return. Each person included in the
18 affiliated group is deemed to have agreed to be bound by the
19 election made under this subsection and any renewal of that
20 election and to have waived any objection to its inclusion in the
21 affiliated group and treatment as a unitary business group. Each
22 person that subsequently enters the affiliated group after the tax
23 year for which the election is made is deemed to have consented to
24 the application of and is bound by the election and to have waived
25 any objection to its inclusion in the affiliated group and
26 treatment as a unitary business group. An election made pursuant to
27 this subsection is irrevocable and binding for and applicable to
28 the tax year for which it is made and for the next 9 tax years. The
29 election shall remain in effect for the time period in which the

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

(3) For tax years beginning on and after January 1, 2021, for purposes of determining a person's federal taxable income under this part and applying the business interest limitation under section 163(j) of the internal revenue code, if that person is included in a unitary business group then the following apply:

(a) If the person meets any 1 of the following conditions, that person is not subject to the business interest limitation for the tax year:

(i) The person's business interest deduction is not limited under section 163(j) (1) of the internal revenue code for that tax year.

(ii) The person is exempt from the business interest limitation under section 163(j) (3) of the internal revenue code for that tax year.

(iii) The person is engaged or treated as engaged in an excepted

1 trade or business under section 163(j) (7) of the internal revenue
2 code for that tax year.

3 (iv) The person is included in an affiliated group that makes a
4 federal consolidated return under chapter 6 of the internal revenue
5 code, 26 USC 1501 to 1564, for that tax year and that meets at
6 least 1 of the conditions under subparagraph (i), (ii), or (iii).

7 (b) To the extent a person has excess business interest, that
8 person's excess business interest must be deducted by other persons
9 included in the unitary business group to the extent those other
10 persons have unused business interest limitation. In accordance
11 with this subsection, the taxpayer may decide how to share any
12 excess business interest among the persons included in the unitary
13 business group.

14 (c) After application of subdivision (b) and except as
15 otherwise provided in subdivision (f), the following apply:

16 (i) Any excess business interest remaining becomes business
17 interest carryforward of the person.

18 (ii) If a person departs a unitary business group, any business
19 interest carryforward attributable to that person remains with that
20 person and not with the unitary business group. If that person is
21 subsequently included in another unitary business group, that
22 business interest carryforward must be shared in accordance with
23 subdivision (b).

24 (d) Business interest paid or accrued in the current tax year
25 must be deducted before business interest carryforwards. Business
26 interest carryforwards must be used in the order of the tax year in
27 which they arose, beginning with the earliest year.

28 (e) For purposes of eliminating transactions under subsection
29 (1) and section 623(3), if a person's separately determined

1 business interest or business interest carryforward is limited and
2 any portion of that business interest is paid or accrued to another
3 person included in the unitary business group, the interest paid or
4 accrued to persons within the unitary business group must be
5 deducted before interest paid or accrued to persons outside the
6 unitary business group.

7 (f) A person that departs a unitary business group is not
8 entitled to any business interest carryforward attributable to
9 business interest paid or accrued to persons within that unitary
10 business group.

11 (4) As used in this section:

12 (a) "Business interest" means that term as defined in section
13 163(j) of the internal revenue code.

14 (b) "Business interest carryforward" means the amount of a
15 person's excess business interest not deducted for the tax year by
16 any person included in a unitary business group and is treated as
17 business interest paid or accrued in the succeeding tax year.

18 (c) "Business interest limitation" or "limitation" means the
19 limitation imposed under section 163(j) of the internal revenue
20 code.

21 (d) "Excess business interest" means the amount of a person's
22 separately determined business interest not deducted by that person
23 for the tax year due to the separately determined limitation
24 calculated under section 163(j)(1) of the internal revenue code.

25 (e) "Separately determined" means determined under the
26 internal revenue code as if the person is treated as a single
27 person and not as a member of an affiliated group making a federal
28 consolidated return under chapter 6 of the internal revenue code,
29 26 USC 1501 to 1564.

1 (f) "Unused business interest limitation" means the excess of
2 a person's separately determined limitation over that person's
3 separately determined business interest.

4 Enacting section 1. This amendatory act is intended to be
5 retroactive and applies retroactively effective for tax years
6 beginning on and after January 1, 2021.