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Senate Bill 671 (as enacted)
Sponsor: Senator Nancy Cassis
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 157 of 2009

Date Completed: 4-19-10

RATIONALE

Under the Michigan Business Tax (MBT) Act, if a taxpayer's business activities are subject to tax both within and outside the State, the taxpayer must apportion its tax base to Michigan by multiplying the tax base by the "sales factor". As a rule, the sales factor equals sales in Michigan divided by total sales everywhere. Section 307 of the Act, however, allows a separate calculation of the sales factor for certain "spun off corporations". In addition, under Section 307, if a corporation ceased to be wholly owned by its parent corporation on November 30, 2006, the spun off corporation may choose to use the apportionment percentage of its former parent corporation. This language applies to GMAC, which was spun off from General Motors on that date, when Cerberus Capital Management, L.P., acquired a controlling stake in GMAC. In December 2008, however, GMAC restructured as a bank holding company and became a financial institution for purposes of the MBT Act. As a result, it no longer qualified for apportionment under Section 307. Under the MBT Act, a financial institution must apportion its tax base to Michigan by multiplying the tax base by the "gross business factor" (which usually is the total gross business of the financial institution in this State during the tax year, divided by its total gross business everywhere during the tax year). Since continuing to use the apportionment percentage of General Motors would be more advantageous to GMAC, it was suggested that the company be allowed to do so.

CONTENT

The bill amended the Michigan Business Tax Act to provide that, if a taxpayer restructured as a financial institution on or after January 1, 2008, and before the restructuring qualified to apportion its tax base based on its sales factor calculated under Section 307, the taxpayer may elect to continue to have the tax base from its business activities that are subject to the MBT both within and outside the State apportioned to the State by multiplying its tax base by its sales factor calculated in accordance with Section 307.

In this case, the bill makes an exception to the requirement that a financial institution apportion its tax base to Michigan by multiplying the tax base by the gross business factor.

The bill took effect on December 10, 2009.

MCL 208.1267

BACKGROUND

Section 307 of the MBT Act allows a separate calculation of the sales factor for certain spun off corporations that previously qualified to calculate their sales factor under Section 54 of the former Single Business Tax (SBT) Act. That section was enacted in 1999 as part of a package of legislation making business tax reductions, including the phase-out of the SBT. The tax base apportionment formula under Section 54 applied to a corporation that was no longer part of an affiliated group as a result of a restructuring transaction, and that committed to make certain capital

investments in the State. The calculation of the sales factor under Section 54 essentially allowed a parent company and another corporation from which it split to be held harmless for sales between the entities for a period of time after the separation. Section 54 originally was designed to benefit Delphi Corporation when it separated from General Motors, and Visteon Corporation when it separated from Ford Motor Company.

When the SBT Act was repealed and the MBT Act was enacted in 2007, Section 307 of the new Act recodified provisions of former Section 54. In addition, Section 307(6) states, "A taxpayer whose assets were wholly owned either directly or indirectly by a taxpayer from whom a spun off corporation qualifies to apportion its tax base under this section and that ceased to be wholly owned on November 30, 2006 may annually elect on its originally filed tax return to apportion its tax base to this state using the same receipts factor reported on the combined tax return filed by its former parent company for the same taxable year."

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

GMAC has been a Michigan presence since 1919, when it was founded as a wholly owned subsidiary of General Motors Corporation. Originally, GMAC was established to provide GM dealers with the financing necessary to acquire and maintain vehicle inventories, and to give customers a means to finance vehicle purchases. Over the years, the company's products and services expanded to include insurance, mortgages, on-line banking, and commercial finance. In 2006, GM reached an agreement to sell a controlling stake in GMAC to Cerberus, and GMAC began a new era as an independent global financial services company. When it was significantly affected by the worldwide financial credit crisis that most companies experienced in 2008, GMAC explored avenues to secure a profitable and productive future. It was concluded that the most viable plan was for its parent entity to apply for regulatory approval from the Federal Reserve Board to restructure as a bank holding company. That approval was granted on December 24, 2008.

As discussed above, when the MBT Act was enacted in 2007, language was included in Section 307 to allow GMAC to apportion its tax base using GM's apportionment percentage, which tends to be lower than GMAC's. Since GMAC has restructured as a bank holding company, however, it was required to apportion its tax base as a financial institution. By allowing GMAC to continue using GM's apportionment percentage, the bill will help this Detroit-headquartered business to remain competitive and profitable.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill allows GMAC to apportion its Michigan Business Tax base using the sales factor, instead of the gross business factor used by financial institutions. The fiscal impact of this change is not known, but any fiscal impact will affect the General Fund. The bill will have no direct impact on local units of government.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.