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Senate Bill 671 (as introduced 6-25-09)
Sponsor: Senator Nancy Cassis
Committee: Finance

Date Completed: 9-17-09

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to allow a taxpayer that restructured as a financial institution on or after January 1, 2008, and previously qualified to apportion its tax base based on its sales factor calculated under Section 307 (which applies to spun off corporations), to continue to have its multistate business activities apportioned to Michigan as calculated under that section.

Under the Act, if a financial institution's business activities are subject to tax both within and outside the State, the financial institution must apportion its tax base to Michigan by multiplying the tax base by the "gross business factor". In most cases, the gross business factor 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.

Under the bill, 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 could elect to continue to have 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, instead of apportioning its tax base by the gross business factor. (As described below, Section 307 allows particular corporations to exclude certain sales from the calculation of their tax base.)

MCL 208.1267

BACKGROUND

Under the MBT Act, except as otherwise provided, 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, however, 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.

Section 54 of the SBT Act applied to a corporation that, as a result of a restructuring transaction, was no longer part of an affiliated group and that committed to make certain capital investments in the State. The calculation of the sales factor under Section 54 essentially allowed a parent corporation 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, which was enacted in 1999, originally allowed this calculation for five years and an additional two years. Amendments to the section in 2005 allowed an additional four years for a spun off corporation that committed to invest in the State at least \$200.0 million within the additional four years and maintain for the four-year period at least 80% of the number of full-time equivalent employees in Michigan based on the number at the beginning of the period; to invest an additional \$400.0 million within the four-year period; or to invest a total of \$1.3 billion within the 11-year period beginning with the year in which the restructuring transaction was completed.

When the SBT Act was repealed, Section 307 of the MBT Act recodified the calculation of the sales factor under former Section 54 as well as the provisions added in 2005. A spun off corporation that qualified to calculate its sales factor for seven years under Section 54 may elect to calculate its sales factor under Section 307 for an additional four years, or for three years if the taxpayer qualified under the provisions added in 2005.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Fiscal Analyst: Jay Wortley

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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.