



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 673 (Substitute S-1 as reported)
Senate Bill 807 (as reported without amendment)
Sponsor: Senator Dave Robertson
Committee: Finance

CONTENT

The bills would amend Part 2 of the Income Tax Act, which governs the Corporate Income Tax, to provide for the apportionment of income of a flow-through entity that is unitary with a taxpayer.

Under the Act, the tax base of a multistate taxpayer must be apportioned to this State by multiplying the tax base by the sales factor calculated under Section 663. That section provides that the sales factor is a fraction whose numerator is the total sales of the taxpayer in this State during the tax year and whose denominator is the total sales of the taxpayer everywhere during the tax year.

Senate Bill 673 (S-1) would amend Section 663 to require a taxpayer's numerator to include the taxpayer's proportionate share of the total sales in this State of a flow-through entity that is unitary with the taxpayer. The denominator would have to include the taxpayer's proportionate share of the total sales everywhere of a flow-through entity that is unitary with the taxpayer.

A flow-through entity would be unitary with a taxpayer when the taxpayer owned or controlled, directly or indirectly, more than 50% of the ownership interests with voting rights or ownership interests that confer comparable rights to voting rights of the flow-through entity, and that has business activities or operations that result in a flow of value between the taxpayer and the flow-through entity, or between the flow-through entity and another flow-through entity with the taxpayer, or has business activities or operations that are integrated with, are dependent on, or contribute to each other.

Section 663 also provides that, for a taxpayer that is a unitary business group, sales include sales in this State of every person included in the unitary business group without regard to whether the person has nexus in this State. Sales between people included in a unitary business group must be eliminated in calculating the sales factor.

Under the bill, sales between a taxpayer and flow-through entities unitary with the taxpayer, or between flow-through entities unitary with a taxpayer, would have to be eliminated in calculating the sales factor.

Senate Bill 807 would amend Section 661, which provides that, for a taxpayer that has an ownership or beneficial interest in a flow-through entity that is unitary with the taxpayer, the taxpayer's business income that is directly attributable to the business activity of the flow-through entity must be apportioned to Michigan using an apportionment factor determined under Section 663 based on the business activity of the flow-through entity.

Under the bill, this would not apply if the flow-through entity were unitary with the taxpayer for apportionment purposes as provided under Section 663.

The bills would take effect on January 1, 2012.

MCL 206.663 (S.B. 673)
206.661 (S.B. 807)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have an indeterminate impact of unknown magnitude on General Fund revenue, and the effect on specific taxpayers would vary based on the particular characteristics of each taxpayer. For some taxpayers, particularly where a flow-through entity may be located in another state and have little or no sales, the bill could result in a tax increase—given certain assumptions on the relative magnitudes of sales and income between the flow-through entity and other members of the group. Conversely, for a Michigan-only flow-through entity, the bill could result in a tax decrease given similar assumptions on the relationship between the entity and other members of the group.

Date Completed: 11-15-11

Fiscal Analyst: David Zin

Floorsb673.

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.