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Senate Bill 367 (as introduced 5-21-13)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 6-12-13

CONTENT

The bill would amend Part 2 (Corporate Income Tax) of the Income Tax Act to allow a member of an affiliated group to elect to have all members of that group treated as a unitary business group, without the consent of the Department of Treasury, for a renewable 10-year period.

The Act requires a unitary business group to file a combined return that includes each U.S. person that is included in the unitary business group. Each U.S. person included in a unitary business group or included in a combined return is treated as a single person, and all transactions between the people included in the group must be eliminated from the Corporate Income Tax base and apportionment formulas under the Act.

Under the bill, a taxpayer that was part of an affiliated group could elect to have all of the members of that group treated as a unitary business group, without the consent of the Department. The taxpayer would have to compute its tax under Part 2 in accordance with all other provisions of the part that apply to a unitary business group.

Any member included in the affiliated group would be considered to have waived any objection to its inclusion in that group and treatment as a unitary business group.

The election would be binding for and applicable to the tax year for which it was made and for the next nine tax years. When the election expired after having been in effect for 10 tax years, it could be renewed for another 10 tax years, without the Department's consent. If an election were not renewed, however, a new election could not be made in any of the following three tax years.

A taxpayer would have to make the election or renewal on a form or in a format as prescribed by the Department, to be filed in a timely manner with the taxpayer's annual return. A renewal would have to be filed with the annual return after the completion of a 10-year period for which an election was in place.

The Act defines "unitary business group" as a group of U.S. persons that are corporations, insurance companies, or financial institutions, other than a foreign operating entity, one of which owns or controls more than 50% of the ownership interests with voting rights or comparable rights of the other members, and that has business activities or operations that result in a flow of value between or among members included in the group or that are integrated with, are dependent upon, or contribute to each other. The bill also would

include in the definition an affiliated group that made the election to be treated, and to file, as a unitary business group, as provided above.

"Affiliated group" would mean that term as defined in Section 1504 of the Internal Revenue Code, except that it would include all persons, other than a foreign operating entity, incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the U.S., that are commonly owned, directly or indirectly, by any member of the affiliated group and other members of the group of which more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights is directly or indirectly owned by a common owner or owners.

(Section 1504 of the Internal Revenue Code defines "affiliated group" as follows:

- (A) One or more chains of includible corporations connected through stock ownership with a common parent corporation that is an includible corporation, but only if –
- (B) (i) the common parent directly owns stock meeting the requirements of an "80-percent voting and value test" in at least one of the other includible corporations, and
(ii) stock meeting the requirements of the 80-percent voting and value test in each of the includible corporations (except the common parent) is owned directly by one or more of the other includible corporations.)

MCL 206.603 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce State General Fund revenue by an unknown amount. The actual amount of the reduction would depend on how many taxpayers made the election and the specific characteristics of those taxpayers. Depending on the taxpayers, the reduction in revenue could be significant. Taxpayers that would experience higher liabilities would not be expected to elect to file under the provisions of the bill.

Fiscal Analyst: David Zin