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

BILL ANALYSIS

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

House Bill 5010 (Substitute H-1 as passed by the House)
Sponsor: Representative Kevin Cotter
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 1-15-14

CONTENT

The bill would amend Part 2 (Corporate Income Tax) of the Income Tax Act to do the following:

-- **Exempt from the Corporate Income Tax a person that qualified as a domestic international sales corporation and elected to be treated as one.**
-- **Revise provisions under which sales between a taxpayer and flow-through entities unitary with the taxpayer, or between flow-through entities unitary with a taxpayer, must be eliminated in calculating the sales factor.**

The bill states, "This amendatory act is retroactive and effective for tax years that begin after December 31, 2011."

Domestic International Sales Corporation

The bill would exempt from the tax imposed under Part 2 a person that qualified as a domestic international sales corporation as defined in Section 992 of the Internal Revenue Code for the portion of the year that it had in effect a valid election to be treated as a domestic international sales corporation.

(Section 992 of the Code defines "DISC" (domestic international sales corporation), with respect to any taxable year, as a corporation that is incorporated under the laws of any state and satisfies all of the following conditions for the tax year:

-- At least 95% of its gross receipts consist of qualified export receipts (as defined in the Code).
-- The adjusted basis of the corporation's qualified export assets (as defined in the Code) at the close of the taxable year equals or exceeds 95% of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year.
-- The corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year.
-- The corporation has made an election to be treated as a DISC and the election is in effect for the taxable year.)

Apportionment: Flow-Through Entities

The Act requires a multistate taxpayer to apportion its tax base to this State by multiplying the tax base by the sales factor. As a rule, 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.

Sales between a taxpayer and flow-through entities unitary with that taxpayer, or between flow-through entities unitary with a taxpayer, must be eliminated in calculating the sales factor.

Under the bill, instead, sales between a taxpayer and a flow-through entity unitary with that taxpayer, to the extent of the taxpayer's interest in the flow-through entity, would have to be eliminated in calculating the sales factor. Sales between a flow-through entity unitary with a taxpayer and another flow-through entity unitary with the same taxpayer, to the extent of the taxpayer's interest in the selling flow-through entity, would have to be eliminated in calculating the sales factor.

(A flow-through is an entity that, for the applicable tax year, is treated as a subchapter S corporation under the Internal Revenue Code, a general partnership, a trust, a limited partnership, a limited liability partnership, or a limited liability company, that for the tax year is not treated as a corporation for Federal income tax purposes.)

MCL 206.625 & 206.663 Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce General Fund revenue by an indeterminate amount. No estimates are available regarding the number of taxpayers affected or the magnitude of the changes. Because the bill would be retroactive, any fiscal impact would be larger in FY 2013-14 than in later years, as taxpayers filed amended returns to reflect the changes in the bill.

Fiscal Analyst: David Zin

S1314\s5010sa