

HOUSE BILL NO. 4056

February 01, 2023, Introduced by Reps. Kuhn and Tisdell and referred to the Committee on Tax Policy.

A bill to amend 1967 PA 281, entitled
"Income tax act of 1967,"
by amending section 691 (MCL 206.691), as amended by 2014 PA 14.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 691. (1) Except as otherwise provided under section
2 680(3), a unitary business group shall file a combined return that
3 includes each United States person that is included in the unitary
4 business group. ~~Each~~ **Subject to subsection (3), each** United States
5 person included in a unitary business group or included in a
6 combined return shall be treated as a single person, and all

1 transactions between those persons included in the unitary business
2 group shall be eliminated from the corporate income tax base, the
3 apportionment formulas, and for purposes of determining exemptions,
4 credits, and the filing threshold under this part. If a United
5 States person included in a unitary business group or included in a
6 combined return is subject to the tax under chapter 12 or 13, any
7 corporate income attributable to that person shall be eliminated
8 from the corporate income tax base and any sales attributable to
9 that person shall be eliminated from the apportionment formula
10 under this part.

11 (2) A person that is part of an affiliated group may elect
12 without the consent of the department to have all of the persons
13 that are included in that affiliated group to be treated as a
14 unitary business group. A taxpayer that elects to file as a unitary
15 business group pursuant to this subsection shall compute its tax
16 under this part in accordance with all other provisions of this
17 part that apply to a unitary business group. The taxpayer shall
18 make the election under this subsection on a form or in a format as
19 prescribed by the department that is to be filed in a timely manner
20 with the taxpayer's annual return. Each person included in the
21 affiliated group is deemed to have agreed to be bound by the
22 election made under this subsection and any renewal of that
23 election and to have waived any objection to its inclusion in the
24 affiliated group and treatment as a unitary business group. Each
25 person that subsequently enters the affiliated group after the tax
26 year for which the election is made is deemed to have consented to
27 the application of and is bound by the election and to have waived
28 any objection to its inclusion in the affiliated group and
29 treatment as a unitary business group. An election made pursuant to

1 this subsection is irrevocable and binding for and applicable to
2 the tax year for which it is made and for the next 9 tax years. The
3 election shall remain in effect for the time period in which the
4 ownership requirements under this section are met irrespective of
5 whether a federal consolidated group to which the unitary business
6 group belongs discontinues the filing of a federal consolidated
7 return or whether the common parent changes due to a reverse
8 acquisition or acquisition by a related person. Upon the expiration
9 of the election after it has been in effect for 10 tax years, an
10 election may be renewed for another 10 tax years, without the
11 consent of the department; provided however, that in the case of a
12 nonrenewal a new election under this subsection is not permitted in
13 any of the immediately following 3 tax years. The renewal shall be
14 made on a form or in a format as prescribed by the department that
15 is to be filed in a timely manner with the taxpayer's annual return
16 after the completion of a 10-year period for which an election
17 under this subsection was in place.

18 **(3) For tax years beginning on and after January 1, 2022, for**
19 **purposes of determining a person's federal taxable income under**
20 **this part and applying the business interest limitation under**
21 **section 163(j) of the internal revenue code, if that person is**
22 **included in a unitary business group then the following apply:**

23 **(a) If the person meets any 1 of the following conditions,**
24 **that person is not subject to the business interest limitation for**
25 **the tax year:**

26 **(i) The person's business interest deduction is not limited**
27 **under section 163(j) (1) of the internal revenue code for that tax**
28 **year.**

29 **(ii) The person is exempt from the business interest limitation**

1 under section 163(j) (3) of the internal revenue code for that tax
2 year.

3 (iii) The person is engaged or treated as engaged in an excepted
4 trade or business under section 163(j) (7) of the internal revenue
5 code for that tax year.

6 (iv) The person is included in an affiliated group that makes a
7 federal consolidated return under chapter 6 of the internal revenue
8 code for that tax year and that meets at least 1 of the conditions
9 under subparagraph (i), (ii), or (iii).

10 (b) To the extent a person has excess business interest, that
11 person's excess business interest must be deducted by other persons
12 included in the unitary business group to the extent those other
13 persons have unused business interest limitation. In accordance
14 with this subsection, the taxpayer may decide how to share any
15 excess business interest among the persons included in the unitary
16 business group.

17 (c) After application of subdivision (b) and except as
18 otherwise provided in subdivision (f), the following apply:

19 (i) Any excess business interest remaining becomes business
20 interest carryforward of the person.

21 (ii) If a person departs a unitary business group, any business
22 interest carryforward attributable to that person remains with that
23 person and not with the unitary business group. If that person is
24 subsequently included in another unitary business group, that
25 business interest carryforward must be shared in accordance with
26 subdivision (b).

27 (d) Business interest paid or accrued in the current tax year
28 must be deducted before business interest carryforwards. Business
29 interest carryforwards must be used in the order of the tax year in

1 which they arose, beginning with the earliest year.

2 (e) For purposes of eliminating transactions under subsection
3 (1) and section 623(3), if a person's separately determined
4 business interest or business interest carryforward is limited and
5 any portion of that business interest is paid or accrued to another
6 person included in the unitary business group, the interest paid or
7 accrued to persons within the unitary business group must be
8 deducted before interest paid or accrued to persons outside the
9 unitary business group.

10 (f) A person that departs a unitary business group is not
11 entitled to any business interest carryforward attributable to
12 business interest paid or accrued to persons within that unitary
13 business group.

14 (4) As used in this section:

15 (a) "Business interest" means that term as defined in section
16 163(j) of the internal revenue code.

17 (b) "Business interest carryforward" means the amount of a
18 person's excess business interest not deducted for the tax year by
19 any person included in a unitary business group and is treated as
20 business interest paid or accrued in the succeeding tax year.

21 (c) "Business interest limitation" or "limitation" means the
22 limitation imposed under section 163(j) of the internal revenue
23 code.

24 (d) "Excess business interest" means the amount of a person's
25 separately determined business interest not deducted by that person
26 for the tax year due to the separately determined limitation
27 calculated under section 163(j) (1) of the internal revenue code.

28 (e) "Separately determined" means determined under the
29 internal revenue code as if the person is treated as a single

1 person and not as a member of an affiliated group making a federal
2 consolidated return under chapter 6 of the internal revenue code.

3 (f) "Unused business interest limitation" means the excess of
4 a person's separately determined limitation over that person's
5 separately determined business interest.

6 Enacting section 1. This amendatory act is intended to be
7 retroactive and applies retroactively effective for tax years
8 beginning on and after January 1, 2022.