

MICHIGAN BUSINESS TAX ACT (EXCERPT)
Act 36 of 2007

***** 208.1307.new THIS NEW SECTION IS EFFECTIVE JANUARY 1, 2008 *****

208.1307.new Spun off corporation; calculation of sales factor; election; definitions.

Sec. 307. (1) Notwithstanding sections 303 and 305, a spun off corporation that qualified to calculate its sales factor for 7 years under section 54 of former 1975 PA 228 may elect to calculate its sales factor under this section for an additional 4 years following those 7 years or 3 years if a taxpayer had an election approved under section 54(1)(e) of former 1975 PA 228. Prior to the end of the first year following the 7 years for which the taxpayer qualified under section 54 of former 1975 PA 228 and if the spun off corporation is not required to file amended returns under section 54(5) of former 1975 PA 228, the spun off corporation may request, in writing, approval from the state treasurer for the election of the 4 additional years under this section. If the taxpayer had an election approved under section 54(1)(e) of former 1975 PA 228, the taxpayer is not required to seek approval under this section. The department shall approve the election under this subsection if the requirements of this section are met. The request shall include all of the following:

- (a) A statement that the spun off corporation qualifies for the election under this section.
- (b) A list of all corporations, limited liability companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.
- (c) A commitment by the spun off corporation to invest at least an additional \$200,000,000.00 of capital investment in this state within the additional 4 years and maintain at least 80% of the number of full-time equivalent employees in this state based on the number of full-time equivalent employees in this state at the beginning of the additional 4-year period for all of the additional 4 years; a commitment by the spun off corporation to invest an additional \$400,000,000.00 in this state within the additional 4 years; or a commitment by the spun off corporation to invest a total of \$1,300,000,000.00 in this state within the 11-year period beginning with the year in which the restructuring transaction under which a spun off corporation qualified under this subsection was completed. The 4-year period under this subdivision begins with the eighth year following the tax year in which the restructuring transaction under which a spun off corporation qualified under this subsection was completed. For purposes of this subdivision, the number of full-time equivalent employees includes employees in all of the following circumstances:
 - (i) On temporary layoff.
 - (ii) On strike.
 - (iii) On a type of temporary leave other than the type under subparagraphs (i) and (ii).
 - (iv) Transferred by the spun off corporation to a related entity or to its immediately preceding former parent corporation.
 - (v) Transferred by the spun off corporation to another employer because of the sale of the spun off corporation's location in this state that was the work site of the employees.

(2) Prior to the end of the eleventh year following the restructuring transaction under which a spun off corporation qualified under subsection (1), a taxpayer that is a buyer of a plant located in this state that was included in the initial restructuring transaction under subsection (1) may elect to calculate its sales factor under subsection (3) and disregard sales by the taxpayer attributable to that plant to a former parent of a spun off corporation and the sales attributable to the plant shall be treated as sales by a spun off corporation. This election shall extend for a period of 4 years following the date that the plant was purchased reduced by the number of years for which the taxpayer calculated its sales factor pursuant to section 54(2) of former 1975 PA 228. On or before the due date for filing the buyer's first annual return under this act following the purchase of the plant, the buyer shall request, in writing, approval from the department for the election provided under this section and shall attach a statement that the buyer qualifies for the election under this section.

(3) A spun off corporation qualified under subsection (1) or (2) that makes an election and is approved under subsection (1) or (2) calculates its sales factor under section 54 of former 1975 PA 228 subject to both of the following:

(a) A purchaser in this state under section 52 of former 1975 PA 228 does not include a person that purchases from a seller that was included in the purchaser's combined or consolidated annual return under this act but, as a result of the restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return under this act. This subdivision applies only to sales that originate from a plant located in this state.

(b) Total sales under section 51 of former 1975 PA 228 do not include sales to a purchaser that was a member of a Michigan affiliated business group that had included the seller in the filing of a combined annual return under this act but, as a result of the restructuring transaction, ceased to include the seller. This

subdivision applies only to sales that originate from a plant located in this state to a location in this state.

(4) At the end of the fourth tax year following an election under this section, if the spun off corporation that elected to calculate its sales factor under this section for the additional 4 years allowed under subsection (1) has failed to maintain the required number of employees or failed to pay or accrue the capital investment required under subsection (1)(c), the spun off corporation shall file amended annual returns under this act for the first through fourth tax years following the election under this section, regardless of the statute of limitations under section 27a of 1941 PA 122, MCL 205.27a, and pay any additional tax plus interest based on the sales factor as calculated under section 303. Interest shall be calculated from the due date of the annual return under this act or former 1975 PA 228 on which an exemption under this section was first claimed.

(5) The amount of the spun off corporation's investment commitments required under this section shall not be reduced by the amount of any qualifying investments in Michigan plants that are sold.

(6) A taxpayer whose assets were wholly owned either directly or indirectly by a taxpayer from whom a spun off corporation qualifies to apportion its tax base under this section and that ceased to be wholly owned on November 30, 2006 may annually elect on its originally filed tax return to apportion its tax base to this state using the same receipts factor reported on the combined tax return filed by its former parent company for the same taxable year.

(7) As used in this section:

(a) "Restructuring transaction" means a tax free distribution under section 355 of the internal revenue code and includes tax free transactions under section 355 of the internal revenue code that are commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

(b) "Spun off corporation" means an entity treated as a controlled corporation under section 355 of the internal revenue code. Controlled corporation includes a corporate subsidiary created for the purpose of a restructuring transaction, a limited liability company, or an operational unit or division with business activities that were previously carried out as a part of the distributing corporation.

History: 2007, Act 36, Eff. Jan. 1, 2008.

Compiler's note: Enacting section 1 of Act 36 of 2007 provides:

"Enacting section 1. This act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007."

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