72 (Rev. 3-99), Formerly A-1155

STATE OF MICHIGAN

JOHN ENGLER, Governor

DEPARTMENT OF TREASURY

TREASURY BUILDING, LANSING, MICHIGAN 48922

MARK A. MURRAY, State Treasurer

REVENUE ADMINISTRATIVE BULLETIN 1999-11

Approved: December 1, 1999

INDUSTRIAL RESTRUCTURING ALTERNATIVE SALES FACTOR APPORTIONMENT

RAB 99-11. This Revenue Administrative Bulletin (RAB) describes how corporations undergoing a qualifying § 355 transaction (26 USC 355) may elect to calculate their sales factor under MCL 208.54; MSA 7.558(54). Further, it clarifies terms used in Single Business Tax Act (SBTA) regarding the eligibility for using the alternative sales factor which requires certain capital investments.

ISSUES

I. Under MCL 208.54; MSA 7.558(54), what constitutes "capital investment"?

II. Under MCL 208.54(1)(c)(iii); MSA 7.558(54)(1)(c)(iii), when does the "first tax year following the tax year in which the restructuring transaction was completed" commence?

III. Who qualifies as a "purchaser" under MCL 208.54(2)(a); MSA 7.558(54)(2)(a)?

IV. Which sales made to a qualified purchaser may be excluded from the spun off corporation's sales apportionment factor?

V. When and how do taxpayers get approval for the industrial restructuring alternative sales apportionment and how do they document that they have obtained approval when filing their Single Business Tax (SBT) return?

CONCLUSIONS

I. The reference to "capital investment" in MCL 208.54; MSA 7.558 (54), is the net amount of tangible property eligible for the Investment Tax Credit (ITC) defined in MCL 208.35a(1); MSA 7.558(35a)(1), or, the net amount of tangible property that would have been eligible had the ITC been in effect in the year the qualifying investment was made. This includes the amount of all tangible property eligible for ITC, net of recapture for property acquired during the 5-year or 2-year periods which is sold or moved outside of Michigan plus the adjusted basis of property that is relocated into Michigan and the amount of mobile property after apportionment.

II. The "first tax year following the tax year in which the restructuring transaction was completed" commences on the day after the corporation undergoes the qualifying § 355 (26 USC 355) transaction. The first tax year may be a short tax year.

III. A "purchaser" in MCL 208.54(2)(a); MSA 7.558(54)(2)(a) is the immediately preceding former parent of the "spun off corporation". A "spun off corporation" is a controlled corporation under §355. A "controlled corporation" under MCL 208.54(5)(a); MSA 7.558(5)(a) 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". For purposes of determining the "purchaser", the immediately preceding former parent and the distributing corporation should be the same entity.

IV. Sales that may be excluded from the numerator and denominator of the sales apportionment factor are those sales made by the spun off corporation and the entities under its control at the time of the restructuring transaction to its immediately preceding former parent (the distributing corporation). MCL 208.54(1)(c)(ii), (1)(d)(ii); MSA 7.558(54)(1)(c)(ii),(1)(d)(ii).

V. The corporation requesting approval for either the five-year or the additional two-year industrial restructuring alternative sales apportionment must request the Treasurer's approval in writing on or before the due date for filing the spun off corporation's single business tax return for its first tax year following the restructuring transaction. The request must be submitted on or before the due date for filing the controlled corporation's single business tax return for its first tax year, and, in the case of a request for an additional two years, before the end of the sixth year following the restructuring transaction. The request(s) must meet all the requirements detailed under MCL 208.54(1)(c); MSA 7.558(54)(1)(c) for the five-year request and MCL 208.54(1)(d); MSA 7.558(54)(1)(d) for the additional two-year request.

The request itself (for the first or sixth year) or a copy of the approved request (for any year) must be attached to each SBT return in which the industrial restructuring alternative sales apportionment is claimed.

LAW AND ANALYSIS

Capital Investment. "Capital investment", as used in MCL 208.54; MSA 7.558(54), means the net amount of tangible property eligible for ITC, as defined by MCL 208.35a(1)(a) through (f); MSA 7.558(35a)(1)(a) through (f), or the net amount of tangible property that would have been eligible had ITC been in effect in the year the qualifying investment was made. This includes the amount of all tangible property eligible for ITC, net of recapture for property acquired during the 5-year or 2-year periods which is sold or moved outside of Michigan plus the adjusted basis of property that is relocated into Michigan and the amount of mobile property after apportionment.

If capital investment is made in 1999 or in any other year during the five or two-year periods where ITC is not statutorily available, the net amount of tangible property that would have been eligible had ITC been in effect in the year the qualifying investment was made will be the same as if ITC had been in effect for that year.

Start of Taxable Year. The first year following the tax year in which the restructuring transaction is completed is defined to commence on the day following the day the corporation undergoes the qualifying § 355 transaction.

> **Example 1:** Assume that a § 355 transaction took place on June 30, 1999 and the new corporation elects a calendar year for tax filing purposes. The spun off corporation's first tax year would begin July 1, 1999 and end on December 31, 1999.

Tax year does not necessarily mean "calendar year" and can, depending on when the restructuring transaction occurs, mean shorter periods than a 12-month period. An election to file single business tax returns on a fiscal basis may ensure that the controlled corporation receives a full 60 or 84 month time period in which to fulfill its 5-year and 2-year investment commitments.

The SBTA at MCL 208.10; MSA 7.558(10) states that the taxpayer's tax year is for the same period covered by the federal income tax return. The requirement to file "annual or final returns" in MCL 208.73; MSAZ 7.558(73) includes returns for tax periods less than 12 months. Similarly, the reference in MCL 208.54(1)(c); MSA 7558(54)(1)(c) to "the spun off corporation's first annual return" does not refer exclusively to full year returns. Rather, it refers to the spun off corporation's single business tax return for its first tax year. The return may, depending on the spun off corporation's election, be based on calendar or fiscal years and may include periods of less than 12 months.

Alternative Sales Apportionment Factor. Sales that may be excluded from the numerator and denominator of the sales apportionment factor are those sales made by the spun off corporation and the entities under its control at the time of the restructuring transaction to its immediately preceding former parent (the distributing corporation). See MCL 208.54(1)(c)(ii) and (1)(d)(ii); MSA 7.558(54)(1)(c)(ii).

> **Example 2:** Corporation A spins off Corporation X on June 30, 1999. X submits a written request for industrial restructuring alternative sales apportionment and identifies all business entities that it controlled on June 30, 1999. X elects to file on a calendar year basis. The Treasurer approves X's written request.
>
> For the initial five-year period, sales by X (and the entities X controlled at the time of the spin off and identified to the Treasurer in its written request) to A would be excluded from X's sales apportionment factor numerator and denominator. The sales would be similarly excluded from the sales factor numerator and denominator of X's controlled and identified business entities. Assuming X had no intervening short-tax years, this industrial restructuring alternative sales apportionment would exist for the tax years ending December 31, 1999 through December 31, 2003.

> **Example 3:** Assume the same facts described in Example 2. In its written request to the Treasurer for industrial restructuring alternative sales apportionment, X identified two controlled corporations, S1 and S2. One year following the restructuring transaction, S1 and S2 merge with Corporation B, transferring all of their assets and liabilities to Corporation B in exchange for Corporation B stock. Corporation X has never had an ownership interest in Corporation B.
>
> Even though the subsequent merger is a tax-free reorganization under the Internal Revenue Code, the Single Business Tax Act's industrial restructuring alternative sales apportionment does not extend to tax-free reorganizations that occur after the restructuring transaction and

involve business entities that were not controlled nor identified at the time of the initial restructuring transaction.

Example 4: Assume the same facts described in Example 2. In its written request to the Treasurer for industrial restructuring alternative sales apportionment, X identified two controlled corporations, S1 and S2. One year following the restructuring transaction, X purchases Corporation B. Corporation X did not previously own or control Corporation B. Corporation B will not receive the industrial restructuring alternative sales apportionment; its sales to Corporation A will be subject to the standard sales apportionment under MCL 208.51; MSA 7.558(51).

Example 5: Assume the same facts described in Example 2. One year following the restructuring transaction, X acquires all of Corporation B's assets solely in exchange for X's voting stock. Corporation B distributes the X stock to its stockholders and completely liquidates. The entire transaction qualifies as a Type C reorganization, 26 USC. 368 (a) (1) (C). The industrial restructuring alternative sales apportionment does not extend to X's effective merger with Corporation B because X did not control Corporation B at the time of the initial restructuring transaction (X's spin off from Corporation A). Because of the change in ownership caused by the distribution of voting stock, any sales to A that were related to the purchased assets from Corporation B will be subject to the standard sales apportionment under MCL 208.51 and 52; MSA 7.558(51) and (52). Separate accounting will, therefore, be required.

Example 6: Assume the same facts described in Example 2. One year following the restructuring transaction, X purchases all of Corporation B's assets for cash. X's purchase of assets does not affect X's use of industrial restructuring alternative sales apportionment. X has not acquired a new corporate identity nor has X added a new business entity that it did not control at the time of the restructuring transaction. X has simply purchased additional assets. Therefore, sales by X to A would still be excluded from the numerator and denominator of X's sales apportionment factor.