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BILL ANALYSIS

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Senate Bill 156 (as introduced 2-6-13)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 3-19-13

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to do the following:

-- **Allow an adjustment to the modified gross receipts tax base for amounts attributable to the taxpayer pursuant to a discharge of indebtedness.**
-- **Revise the calculation of the investment credit with respect to the recapture of revenue when property previously subject to the credit is sold.**
-- **Revise the calculation of the credit for a taxpayer located and conducting business in a renaissance zone before December 1, 2002.**
-- **Revise a provision concerning a dock sale, for purposes of apportionment.**

The bill states, "This amendatory act is curative and intended to clarify the original intent of 2007 PA 36" (the MBT Act).

Modified Gross Receipts Tax

The Act imposes a modified gross receipts tax on taxpayers with nexus. The modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms before apportionment.

The bill would exclude from the definition of "gross receipts" amounts attributable to the taxpayer pursuant to a discharge of indebtedness as described in Section 61(a)(12) of the IRC, including forgiveness of a nonrecourse debt. (That section of the IRC includes in the gross definition of "gross receipts" income from discharge of indebtedness.)

Investment Credit

Section 403 of the Act allows a taxpayer to claim a credit for a percentage of compensation paid in this State, and for a percentage of the cost of tangible assets in which the taxpayer invested (the investment credit), and imposes a limit on the total combined credit under this section.

The calculation of the investment credit involves the recapture of tax revenue when property that was previously subject to the credit is sold. Currently, when this occurs, the recapture does not take into account whether the credit had actually reduced the taxpayer's liability. (The investment credit might not reduce the taxpayer's liability, for example, because the taxpayer claimed the alternate tax credit or because compensation eligible for the compensation credit amounted to the maximum combined credit amount under Section 403.)

Under the bill, revenue from the sale of property previously subject to the investment credit would be recaptured only to the extent that the taxpayer's liability had been reduced when the credit was claimed.

Renaissance Zone Credit

The bill would revise the calculation of the renaissance zone credit for a taxpayer located and conducting business activity in a renaissance zone before December 1, 2002. Under the bill, the credit would be based on either the current calculation for those taxpayers, or the calculation allowed for other business taxpayers in a renaissance zone, whichever was greater.

Currently, except for a taxpayer located and conducting business activity in a renaissance zone before December 31, 2002, the credit is equal to the lesser of the following (referred to below as the first calculation):

-- The tax liability attributable to business activity conducted within a renaissance zone in the tax year.
-- 10% of the adjusted services performed in a designated renaissance zone.

For a taxpayer located and conducting business activity in a renaissance zone before December 31, 2002, the credit is equal to the product of the following (referred to below as the second calculation):

-- The renaissance zone credit claimed under the former Single Business Tax (SBT) Act for the tax year ending in 2007.
-- The ratio of the taxpayer's payroll in this State in the tax year divided by the taxpayer's payroll in the State in its tax year ending in 2007 under the SBT Act.
-- The ratio of the taxpayer's renaissance zone business activity factor for the tax year divided by that factor for the taxpayer's tax year ending in 2007 under the SBT Act.

Under the bill, the first calculation would apply to a taxpayer located and conducting business in a renaissance zone after November 30, 2002. For a taxpayer located and conducting business in a renaissance zone before December 1, 2002, the greater of the first calculation or the second calculation would apply.

Apportionment: Dock Sale

The Act requires the apportionment of a taxpayer's tax base based on the sales factor, which is the total sales of the taxpayer in this State divided by the total sales of the taxpayer everywhere during the tax year. Sales of the taxpayer in this State include sales of tangible personal property that is shipped or delivered to any purchaser within this State based on the ultimate destination at the point that the property comes to rest, regardless of the free on board point or other conditions of the sales.

The Act provides that property stored in transit for 60 days or more before receipt by the purchaser or the purchaser's designee, or in the case of a dock sale not picked up for 60 days or more, must be deemed to have come to rest at this ultimate destination. Property stored in transit for fewer than 60 days before receipt by the purchaser or the purchaser's designee, or in the case of a dock sale not picked up before 60 days, is not deemed to have come to rest at this ultimate destination for purposes of this provision.

In the last provision, concerning a dock sale, the bill would refer to "picked up before 60 days" (rather than *not* picked up before 60 days).

MCL 208.1111 et al. Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Based on estimates from the Department of Treasury, the bill would reduce General Fund revenue by an unknown and likely significant amount that could exceed $54 million in the first year after the bill was enacted and substantially less in later years. The provisions of the bill generally would: 1) exclude certain income and receipts from the tax base, 2) reduce the tax base by increasing the value of certain deductions, and 3) alter the calculation for computing or applying certain credits. While the impact of some of the changes is unknown, all of the changes would reduce State General Fund revenue.

The intent language indicating the changes are curative suggests the bill is intended to be retroactive. To the extent the bill was retroactive, the loss of revenue would be increased by an unknown amount that would likely be substantially greater than if the bill were not retroactive. The Department of Treasury estimates that excluding amounts attributed to a taxpayer pursuant to a discharge of indebtedness would lower revenue by approximately $2.5 million per year over the 2008 to 2011 tax years ($10.0 million over the four-year retroactive period), and affect between $10.0 million and $20.0 million of assessments that have been made against taxpayers. Altering the calculation of the renaissance zone credit could reduce revenue by approximately $5.5 million per year ($22.0 million over the four-year retroactive period). The Department of Treasury estimates that the changes in the calculation for recapturing investment tax credits when property for which the credits were previously claimed is sold would reduce General Fund revenue by approximately another $5.5 million per year ($22.0 million over the four-year retroactive period).

The change concerning a dock sale is not expected to have a fiscal impact.

Most of the revenue loss from any retroactivity would likely occur in either FY 2012-13 or FY 2013-14, as taxpayers filed amended returns as a result of the bill. The bill's changes would also reduce future revenue, but by a significantly smaller magnitude than the impact from the retroactivity of the bill.

The bill would not affect local unit revenue or expenditure.

Fiscal Analyst: David Zin

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