Legislative Analysis

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TAX CREDIT FOR CERTAIN BUSINESSES

Senate Bill 393 (S-1) as passed by the Senate
Sponsor: Sen. Kevin Daley
House Committee: Tax Policy
Senate Committee: Finance
Complete to 10-12-21

SUMMARY:

Senate Bill 393 would amend the Income Tax Act to provide a property tax–based credit to businesses adversely affected by COVID-19 pandemic orders issued by the governor or the Michigan Department of Health and Human Services (MDHHS). The bill would add two sections to the act—one to Part 1, which deals with the individual income tax, and one to Part 2, which addresses the corporate income tax.

Under the bill, for the 2020 and 2021 tax years, a ***qualified taxpayer*** who owns and operates an ***afflicted business*** that was negatively impacted during the tax year due to a COVID-19 order and that has a certified loss in gross receipts revenue of 25% or more during the tax year could claim a credit for the total amount of property taxes levied and collected on the taxpayer's property used in connection with operating that business during that calendar year.

> ***Qualified taxpayer*** would mean a taxpayer who owns and operates an afflicted business or a taxpayer who is a member of a flow-through entity that owns and operates an afflicted business. (Note that the bill's corporate income tax provisions refer simply to taxpayers meeting the specified criteria.)
>
> ***Afflicted business*** would mean a business whose primary operation is any of the following:
> - Entertainment venue.
> - Food service establishment.
> - Hotel or bed and breakfast.
> - Recreation facility or place of public amusement (including a nightclub, casino, arcade, bingo hall, bowling alley, skating rink, trampoline park, water park, or amusement park).
> - Cosmetology shop or barber shop.
> - Exercise facility.
> - Body art facility.
> - Athletic trainer.
> - Nursery dealer or nursery grower.

A qualified taxpayer's afflicted business would be considered negatively impacted by a COVID-19 order if either of the following applied:
- As a result of an order, the business was closed to ingress, egress, use, and occupancy by members of the public.
- The business involves assemblages of people that were prohibited by a COVID-19 order.

A qualified taxpayer who rents or leases property used in connection with operating an afflicted business could claim a similar tax credit based on 23% of gross rent paid during the tax year if the afflicted business was negatively impacted during the tax year due to a COVID-19 order and has a certified loss in gross receipts revenue of 25% or more during the tax year.

A qualified taxpayer who is a member of a flow-through entity that owns and operates an afflicted business that qualifies under the bill could claim a credit against the member's tax liability based on the member's distributive share of business income reported from the flow-through entity or an alternative method approved by the Department of Treasury.

The Department of Treasury would have to prescribe the form and manner for claiming the credit and could require reasonable proof from the taxpayer to verify the negative impact and reported revenue loss.

If the amount of credit allowed under the proposed credit exceeded the tax liability of the qualified taxpayer for the tax year, the excess would be refunded to the taxpayer.

The bill would be retroactive and would apply retroactively to tax years beginning on and after January 1, 2020.

MCL 206.279 and 206.679

FISCAL IMPACT:

As written, the bill would reduce individual income tax and corporate income tax revenues by an unknown amount because the number of affected businesses and their corresponding property tax liabilities cannot be determined.

For 2020, the State Tax Commission reports the taxable value of commercial real property at just under $56.0 billion along with roughly $9.4 billion in taxable value of commercial personal property. Based on statewide average millage rates for commercial real and commercial personal property, the resulting property tax liability would be just over $3.5 billion. Purely as an example, if affected businesses constituted 10% of this amount, the total refundable credits would be just over $350.0 million, although the split between the individual income tax and the corporate income tax cannot be estimated.

All corporate income tax revenue accrues to the general fund (GF/GP), so any refundable credits would reduce GF/GP revenue. To the extent that individual income tax credits result in refunds, general fund revenue would decline. If the availability of a credit reduces gross income tax revenue, roughly 23.8% of the loss would accrue to the School Aid Fund, with the general fund absorbing the remaining reduction.

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