

Legislative Analysis



LEAD ABATEMENT TAX CREDIT

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House Bills 4443 and 5126 as passed by the House

Sponsor: Rep. Jerry O. Kooiman

1st Committee: Tax Policy

2nd Committee: Health Policy

First Analysis (10-22-04)

BRIEF SUMMARY: For tax years beginning after December 31, 2004, the bills would allow taxpayers to claim income tax and single business tax credits equal to one-quarter of the cost of lead abatement to a residential dwelling.

FISCAL IMPACT: The fiscal impact of the bills is indeterminate. The fiscal impact depends on the number of residential properties that have lead, the cost of any lead abatement measures, the number of taxpayers that would carry out lead abatement work on their homestead or residential property, and the number of taxpayers that would claim the credit. The fiscal impact of House Bill 4443 would primarily affect General Fund/General Purpose (GF/GP) revenue, while House Bill 5126 would entirely affect GF/GP revenue.

THE APPARENT PROBLEM:

According to a July 2003 State of Michigan report entitled *Childhood Lead Poisoning Prevention: A Call to Action*, lead poisoning affects an estimated 20,000 Michigan children under the age of six. A multi-bill, bi-cameral package of legislation addressing various issues related to childhood lead poisoning has been working its way through the legislature since the beginning of the year. Two of the bills, House Bills 5117 and 5119 have already been signed into law (Public Acts 54 and 55, respectively).

One area of significant concern is the number of children who reside in rental units constructed before lead-based paint was banned in 1978. Lawmakers, health professionals, and community leaders have long debated policies that would be effective in protecting those at risk for lead poisoning without being unduly burdensome to property owners of older rental units. One suggestion is to provide a tax credit to a property owner who permanently eliminated the hazards presented by the presence of lead-based paint and lead-contaminated dust in either the taxpayer's homestead or residential rental property.

THE CONTENT OF THE BILLS:

The bills would, for tax years beginning after December 31, 2004, provide a credit equal to one-quarter of the costs of any lead abatement measures, but only for lead abatement costs not paid for by, or reimbursed from, any state or federal funds.

The term “lead abatement” would refer to a measure or set of measures designed to permanently eliminate lead-based paint hazards by the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, the removal or covering of lead-contaminated soil, and all preparations, cleanup, disposal, and post-abatement clearance testing associated with those measures.

The term would not include renovation, remodeling, landscaping, or other activity not designed to permanently eliminate lead-based paint hazards but instead designed to repair, restore, or remodel a structure, even though the activity could incidentally result in a reduction or elimination of a lead-based paint hazard. The term also would not include an interim control, operation, or maintenance activity, or other measure or activity designed to temporarily, but not permanently, reduce a lead-based paint hazard.

To claim a credit under either of the bills, the taxpayer would have to retain all of the following records and make the documentation available to the Department of Treasury upon request:

- Receipts for all costs used as a basis for the credit.
- a lead hazard risk assessment performed by a certified risk assessor demonstrating the existence of a lead hazard to the property.
- A lead hazard risk assessment performed by a certified risk assessor after the abatement by the taxpayer demonstrating that the lead hazard had been remediated or abated.

House Bill 4443 would amend the Income Tax Act (MCL 206.269) to provide the credit to the taxpayer’s owner-occupied principal residence or to residential rental property owned by the taxpayer. The credit would be refundable; that is, if the amount of the credit exceeded the tax liability of the taxpayer for the tax year, the portion of the credit exceeding the tax liability would be refunded.

House Bill 5126 would amend the Single Business Tax Act (MCL 208.37f) to provide the credit against the tax for a residential dwelling located in the state and owned by the taxpayer.

If the credit allowed for the tax year and any unused carryforward exceeded the tax liability for that year, the excess would not be refunded but could be carried forward for 10 years or until the excess credit was used up, whichever occurred first.

BACKGROUND INFORMATION:

For additional information, see the analysis of House Bills 5116-5119 dated 1-21-04. It contains background information on lead poisoning and on the state's Lead Abatement Act, which became part of the Public Health Code in 1998. As mentioned earlier, two of the bills described in that analysis, House Bills 5117 and 5118 were enacted as Public Acts 54 and 55 of 2004. See also the analysis of Senate Bill 757 dated 8-4-04.

ARGUMENTS:

For:

It is estimated that almost two million homes within Michigan were constructed before 1950; almost 400,000 of those dwellings are rental properties. Since about 90 percent of homes built before 1950 used lead-based paint, and lead-based paint wasn't banned until 1978, it is reasonable to assume that many rental properties are potential lead-based paint hazards. Federal law already requires the seller or lessor of each home built before 1978 to provide a buyer or renter with a lead hazard information pamphlet and to disclose the presence of any known lead-based paint hazard (along with a copy of any lead hazard evaluation report the seller or lessor may have). Violators are subject to civil money penalties and civilly liable for up to three times the amount of damage incurred by an individual. In addition, Senate Bill 757, which has been passed by both legislative chambers and is waiting enrollment, would prohibit, and establish penalties for, renting a residential housing unit to a family with a minor child who was found to be lead poisoned.

However, rather than waiting for a child to be harmed, many agree that the preferred course is to eliminate the lead hazard all together. Unfortunately, the cost to do so is prohibitive in many cases. In urban areas where rents are low but where the hazards of lead-based paint and soil contamination by lead dust are high, it may be cheaper in the short term to raze the building instead of abate the lead problem. Because demolition, with the resulting reduction in low-cost housing, is not always a desirable option, some believe that providing a tax break for the permanent removal of lead hazards would be a significant starting point.

The bills would amend two different tax acts to allow property owners to receive tax credits to defray 25 percent of the property owner's costs in permanently eliminating the hazards presented by the presence of lead-based paint and lead-contaminated dust; the bills would not apply to costs associated with interim control methods, such as encapsulating the lead-based paint with a new coat of lead-free paint. The credit would be available for property owned by the taxpayer and would include the taxpayer's own home as well as any rental property.

The tax credit would be a strong encouragement for property owners to permanently eradicate lead hazards. Because lead poisoning affects society at large due to the physical, mental, and behavioral effects on children and adults, it can increase tax dollars spent on education, health care, and corrections (some believe there is a connection between high blood lead levels and the risk for criminal activity). Therefore, tax credits today could result in decreases in public spending tomorrow for special education, medical care, and incarceration.

Against:

Opponents say that, while the bills address a worthy goal, the state's budget cannot afford a tax cut of this magnitude. Some have estimated the cost in the tens of millions to encourage landlords to make their building safe. That could damage existing needing

state programs. It would be better to take a more comprehensive approach to the problem. Pending legislation would create a special commission to address the prevention and control of lead poisoning. Measures like special tax benefits perhaps ought to wait for the findings of such a commission.

POSITIONS:

Among those who indicated support for the bills to the House Committee on Health Policy were representatives of the Michigan Environmental Council, the Rental Property Owners Association of Michigan, and the Michigan Association of Realtors. (2-3-04)

A representative of the Department of Treasurer indicated opposition to the bills. (2-3-04)

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