

Legislative Analysis



SBT: NO SMALL BUSINESS CREDIT FOR CERTAIN PROFESSIONAL EMPLOYER ORGANIZATIONS

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House Bill 5323

Sponsor: Rep. Lorence Wenke

Committee: Tax Policy

Complete to 4-20-04

A SUMMARY OF HOUSE BILL 5323 AS INTRODUCED 12-2-03

The Single Business Tax allows firms meeting certain criteria to claim a small business credit against the SBT. The bill would not allow a “professional employer organization” that is not a “captive provider” to claim the small business credit. In other words, only a PEO that was a captive provider could claim the credit. A “captive provider” would be defined to mean a professional employer organization that limits itself to providing services and employees to only one client and its subsidiaries and affiliates, and does not provide its services to other clients that do not share an ownership relationship with it.

The bill would define “professional employer organization” to mean an organization that provides management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity in certain specified ways, including maintaining the right of direction and control of employee’s work (although this can be shared with the other entity); paying wages and employment taxes out of its own accounts; reporting, collecting, and depositing state and federal employment taxes; and retaining the right to hire and fire employees.

The small business credit is available to firms whose gross receipts do not exceed \$10 million and whose adjusted business income does not exceed \$475,000, provided that no officer or owner receives more than \$115,000 as compensation or as a share of business income. Businesses that qualify for the small business credit can use one of two methods of computing their SBT liability: (1) by using the standard small business credit calculation of dividing adjusted business income by 45 percent of the tax base; or (2) by using two percent of adjusted business income.

The small business credit, which is limited to 100 percent of the tax liability, is based on the ratio of “adjusted business income” to 45 percent of the tax base, so that the credit equals $[1 - (\text{ABI} / 45\% \text{ of tax base})] \times \text{tax liability before the credit}$. In essence, the tax liability after application of the small business credit is the product of (1) the tax liability before the credit, and (2) the quotient of adjusted business income and 45 percent of the tax base.

MCL 280.36

FISCAL IMPACT:

The bill would increase SBT revenue, all of which accrues to the General Fund/General Purpose, by a minimal amount.

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