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BILL ANALYSIS



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Senate Bills 1302 through 1305 (as enrolled)
Sponsor: Senator Bruce Patterson (S.B. 1302)
Senator Jud Gilbert, II (S.B. 1303)
Senator Patricia L. Birkholz (S.B. 1304)
Senator Virg Bernero (S.B. 1305)

Senate Committee: Economic Development, Small Business and Regulatory Reform
House Committee: Tax Policy

Date Completed: 10-13-04

PUBLIC ACTS 321-324 of 2004**RATIONALE**

Michigan has experienced a substantial job loss over the last few years. Small business, which traditionally has been a vital part of the State's economy, often is identified as a potential area for job creation and economic recovery. In particular, small, high-technology firms have received much attention recently. It was suggested that these small research and development firms be offered tax incentives similar to those offered to businesses that locate in renaissance zones, in order to spur job creation and economic growth. Public Acts 126 and 146 of 2004 amended the Single Business Tax (SBT) Act the General Property Tax Act, respectively, to allow "qualified start-up businesses" to claim an SBT credit and a property tax exemption. It was suggested that these businesses also should be allowed to claim exemptions from specific taxes levied by local units of government.

CONTENT

The bills amended various acts to exempt a qualified start-up business, with local approval, from specific taxes levied under those acts, for up to five nonconsecutive years. The exemptions apply to the technology park facilities tax, the industrial facility tax, the city utility users tax, and the tax levied on lessees and users of tax-exempt property.

(Section 31a of the SBT Act, enacted by Public Act 126 of 2004, defines "qualified start-up business" as a business that has

fewer than 25 full-time equivalent employees; has sales under \$1 million in the tax year for which the credit is claimed; and is not publicly traded; also, research and development must make up at least 15% of the business's expenses in the tax year for which the credit is claimed.)

The bills took effect on August 27, 2004.

Senate Bills 1302 and 1304

Senate Bill 1302 amended the Technology Park Development Act to provide for an exemption from the technology park facilities tax, which is levied upon every owner and every user or occupant, if known, of a facility to which a certificate is issued under the Act. Senate Bill 1304 amended the plant rehabilitation and industrial development Act (commonly referred to as P.A. 198) to create an exemption from the industrial facility tax for a speculative building, new facility, or replacement facility owned or operated by a qualified start-up business.

Under the bills, upon application for an exemption by a qualified start-up business, the governing body of a local tax collecting unit may adopt a resolution to exempt a facility from the tax in the same manner and under the same terms and conditions as provided for the exemption in Section 7hh of the General Property Tax Act (which exempts a qualified start-up business from the property tax).

The clerk of the local tax collecting unit must give written notice to the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit must afford the assessor and a representative of the affected taxing units an opportunity for a hearing.

The tax exemptions do not apply to that portion of the tax attributable to a special assessment or a tax described in Section 7ff(2) of the General Property Tax Act. The taxes calculated under these provisions must be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in Section 7ff(2). (Under that section, real and personal property in a renaissance zone is not exempt from the collection of the following:

- A special assessment levied by the local tax collecting unit in which the property is located.
- Ad valorem property taxes specifically levied for the payment of the principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.
- A tax levied under certain sections of the Revised School Code providing for enhanced property taxes and a sinking fund levy.)

Senate Bill 1303

The bill amended the City Utility Users Tax Act to exempt a qualified start-up business from the tax imposed by the City of Detroit on intrastate telephone communication services, electrical energy, steam, and natural and artificial gas provided by a public utility or a resale customer, if the governing body of the city adopts a resolution approving the exemption.

For tax years beginning after December 31, 2004, a qualified start-up business is exempt for the 12-month period beginning November 1 for each tax year in which it applies for the exemption by filing an affidavit with the city treasurer. The affidavit must be on a form prescribed by the city and must be filed by September 1 of each year that a taxpayer claims the

exemption. The affidavit must include the following:

- A statement that the qualified start-up business is eligible for and claimed the credit allowed under Section 31a of the SBT Act in the tax year that ended immediately before the November 1 in which the exemption will be claimed.
- A copy of the business's annual return required under the SBT Act for the year in which the credit was claimed under Section 31a of the Act, upon which the exemption is based.
- A statement authorizing the Department of Treasury to release to the city information that is contained in the business's annual SBT return that pertains to the business's credit claimed under Section 31a, upon which the exemption is based.

An exemption from the city utility users tax is not allowed unless the governing body of the city adopts a resolution approving it. Exemptions must be approved at the last official meeting of the governing body in September of each year. The resolution may approve the exemption for one or more of the qualified start-up businesses that claim it by filing the required affidavit with the governing body by September 1.

Senate Bill 1305

The bill amended Public Act 189 of 1953, which provides for the taxation of lessees and users of tax-exempt property that is used in connection with a for-profit business, to exempt the real and personal property of a qualified start-up business from the tax, if the governing body of the local tax collecting unit adopts a resolution approving the exemption.

A qualified start-up business may claim the exemption by filing an affidavit on or before May 1 in each tax year with the assessor of the local tax collecting unit. The affidavit must state that the business was eligible for and claimed the qualified start-up business credit under Section 31a of the SBT Act. The affidavit must include both a copy of the business's annual SBT return, in which the business claimed the SBT credit, and a statement authorizing the Department of Treasury to release information contained in the annual SBT return that pertains to that credit.

If a qualified start-up business applies for an extension for filing its annual SBT return under Section 73 of the SBT Act (which allows the Department of Treasury to grant extensions), the business may claim the exemption under the bill after May 1 if the governing body of the local tax collecting unit adopts a resolution approving the exemption and the business submits a copy of its application for an extension for filing its annual SBT return, along with the affidavit filed with the local assessor, to the December board of review provided for in Section 53b of the General Property Tax Act. For the purposes of that section, an exemption granted under this provision is considered to be granted as the correction of a clerical error.

On or before its last meeting in May in each tax year, the governing body of a local tax collecting unit may adopt a resolution approving the exemption. The clerk of the local tax collecting unit must give written notice to the assessor of the local tax collecting unit and the legislative body of each taxing unit that levies ad valorem property taxes in the local tax collecting unit. Before acting on the resolution, the governing body of the local tax collecting unit must give the assessor and a representative of the affected taxing units an opportunity for a hearing. A resolution approving the exemption may be for either or both of the following: one or more of the individual qualified start-up businesses that claim the exemption by filing an affidavit on or before May 1; and/or all qualified start-up businesses that claim the exemption after May 1.

If an exemption is erroneously granted, the tax rolls must be corrected for the current tax year and the three immediately preceding tax years. The property that had been subject to the exemption must be immediately placed on the tax roll by the local tax collecting unit, if it has possession of the tax roll, or by the county treasurer, if the county has possession of the tax roll, as though the exemption had not been granted. A corrected tax bill must be issued for the tax year being adjusted by the local tax collecting unit or by the county treasurer, depending on which has possession of the tax roll. If an owner pays the corrected tax bill within 60 days after it has been issued, the owner is not liable for any penalty or interest on the additional tax.

If the owner pays the corrected bill more than 60 days after it is issued, the owner is liable for the penalties and interest that would have accrued if the exemption had not been granted from the date the taxes were originally levied.

The real and personal property of a qualified start-up business is not exempt from the collection of the following:

- A special assessment levied by the local tax collecting unit in which the property is located.
- Ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit.
- A tax levied under certain sections of the Revised School Code providing for enhanced property taxes and a sinking fund levy.

MCL 207.712 (S.B. 1302)
141.1155 (S.B. 1303)
207.561 (S.B. 1304)
211.181a (S.B. 1305)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The State must consider new industries and new ways of creating jobs to address the substantial job loss that has occurred in Michigan over the past few years. Small, fast-growing, high-tech firms present promising opportunities for economic recovery. It is critical that the State offer a business environment that attracts new companies and retains those already here. Together with Public Acts 126 and 146, the bills will help keep Michigan competitive with surrounding states by offering tax incentives similar to those available to facilities located in renaissance zones.

Many of Michigan's leading companies began with an entrepreneur purchasing the rights to university research using Federal grant money. In fact, 75% of United States patents are based on public research. In the 1990s, Michigan was seventh in the nation for businesses securing Federal grants in

order to purchase the rights to university research for commercialization. Over the last few years, however, the State has failed to turn much of the technological development at its universities into a marketable commodity, and now ranks 18th. The tax incentives offered by these measures will enable fast-growing, private firms to capture the significant research and development done in public institutions and turn it into profitable enterprises, which, in turn, benefit the State economically and promote Michigan as a place to do business.

Opposing Argument

Businesses can take advantage of the incentives to get started and then leave without contributing to the economic development that was promised.

Response: If a company is first established in Michigan, and the business environment remains favorable, the company will likely want to stay in this State.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

Senate Bills 1302, 1304, and 1305

The bills will decrease State School Aid Fund and local revenue by an unknown amount, depending on the number of exemptions issued under the conditions established in the bills and the specific characteristics of the property for which exemptions are granted.

The bills also will increase School Aid Fund expenditures by an unknown amount. Any reduction in school property taxes or other revenue to schools under the bills will require greater School Aid Fund expenditures to bring affected school districts up to the guaranteed level of per-pupil revenue.

Senate Bill 1303

The bill will decrease State School Aid Fund and local revenue by an unknown amount, depending on whether the City of Detroit adopts the necessary resolution, the number of businesses affected by the resolution, and the specific characteristics of the businesses for which exemptions are granted.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.