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House Bill 6183 (as enrolled)
Sponsor: Representative Glenn Steil, Jr.
House Committee: Tax Policy
Senate Committee: Finance

PUBLIC ACT 240 of 2006

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RATIONALE

Michigan's Single Business Tax (SBT) Act, which was enacted in the mid-1970s, has received considerable criticism in recent years. Although the Act is scheduled to be repealed for tax years beginning after December 31, 2009, many believe that the repeal should be accelerated. Efforts to accomplish this are under way. In particular, an initiative petition to repeal the Act for tax years beginning after December 31, 2007, has been submitted to the Secretary of State. If the Board of State Canvassers certifies the petition, the Legislature will have 40 session days to enact or reject the proposed law. If the Legislature rejects the proposal, it will appear on the November 2006 general election ballot. These circumstances have raised concerns about the viability of several tax credits that some firms are eligible to receive but will not be able to claim before the potential repeal of the SBT.

Specifically, qualified taxpayers may claim credits against the SBT for a certain percentage of investment in brownfield redevelopment or historic rehabilitation projects. A taxpayer first must receive preapproval of a brownfield project from the Michigan Economic Growth Authority (MEGA), or certification of a rehabilitation plan for a historic resource from the Michigan Historical Center. The taxpayer then may not claim the SBT credit until the brownfield project or the rehabilitation has been completed. In some cases, businesses have received the necessary preapproval or certification but will not complete their projects before the end of 2007. This meant that if the repeal of the SBT Act is accelerated, the businesses would not be

able to claim the credit that they otherwise would have taken for the 2008 or 2009 tax year. Evidently, this possibility has been impairing some firms' ability to obtain financing for their preapproved projects. Since a business may assign all or part of its credit to another taxpayer, financial institutions may consider the credit to be part of the business's equity or collateral. Also, some businesses that plan to claim their own credits have been concerned that, if the Act is repealed ahead of schedule, the SBT will be replaced with a tax against which the credits cannot be used.

To address this situation, it was suggested that qualified taxpayers whose brownfield or rehabilitation projects have been approved for an SBT credit before the end of 2007 and are completed in 2008 or 2009, should be able to claim the credit against the taxpayers' liability for the 2007 tax year, if the Act is repealed at the end of that year.

CONTENT

The bill amended the Single Business Tax Act to allow a taxpayer eligible to claim a credit for a brownfield redevelopment or historic rehabilitation project that is preapproved or certified before December 31, 2007, and completed before 2010, to claim the credit on its return for its last tax year if the Act is repealed for tax years beginning after December 31, 2007.

The Act establishes criteria under which eligible and qualified taxpayers may claim credits against the SBT of up to 10% of the cost of eligible investment in brownfield

property. To claim a credit, a taxpayer must obtain approval of the project from the Michigan Economic Growth Authority.

A qualified taxpayer with a certified rehabilitation plan may credit against the SBT a percentage of the qualified expenditures for the rehabilitation of a historic resource pursuant to the rehabilitation plan in the year in which a certification of completed rehabilitation of the historic resource is issued, provided the certification was issued within five years after the rehabilitation plan was certified by the Michigan Historical Center. (In general, the credit is 25% of qualified expenditures.)

If either the brownfield redevelopment credit or the historic rehabilitation credit exceeds the taxpayer's tax liability, the amount that is in excess of the tax liability may not be refunded.

The bill's provisions regarding brownfield and historic rehabilitation credits apply if the Act is repealed for tax years beginning after December 31, 2007.

Under the bill, except as otherwise provided, if a qualified taxpayer has a preapproval letter issued before January 1, 2007, for a brownfield credit for a project that is completed after the end of the taxpayer's last tax year but before January 1, 2010, the taxpayer may claim the brownfield credit amount that could be claimed for the project for 2008 and 2009 against the taxpayer's SBT liability, on the taxpayer's timely filed original or amended annual SBT return for the taxpayer's last tax year. Also, except as otherwise provided, if a qualified taxpayer has a rehabilitation plan certified before January 1, 2007, for the rehabilitation of a historic resource for which a certification of completed rehabilitation has been issued after the end of the taxpayer's last tax year but before January 1, 2010, the taxpayer may claim the historic rehabilitation credit amount for the year in which the certification is issued against the taxpayer's SBT liability on the taxpayer's timely filed original or amended annual return for the taxpayer's last tax year. (These provisions, as well as those described below, apply to a credit claimed by a taxpayer or by an assignee of all or a portion of a credit.)

The brownfield credit or historic rehabilitation credit must be taken after all

other credits the taxpayer claims for the tax year under the Act, and all of the following apply:

- The credit amount that the taxpayer would have been allowed to claim for projects or historic rehabilitation completed in 2008 after the end of the taxpayer's last tax year or for projects or rehabilitation completed in 2009 is in addition to the credit amount that the taxpayer may claim for projects or rehabilitation completed before the end of the taxpayer's last tax year.
- The credit amount that the taxpayer may claim for projects or rehabilitation completed in 2008 after the end of the taxpayer's last tax year or for projects or rehabilitation completed in 2009 on the taxpayer's annual return for its last tax year or the sum of both brownfield credit amounts or both historic rehabilitation credit amounts may not exceed the taxpayer's tax liability for its last tax year after all other credits for that tax year except the taxpayer's brownfield or historic rehabilitation credit for its last tax year have been taken.
- The credit amount that the taxpayer may claim for its last tax year may not exceed the sum of the amount that the taxpayer would have been allowed to claim for projects or rehabilitation completed in 2008 after the end of the taxpayer's last tax year plus the amount the taxpayer would have been allowed to claim for projects or rehabilitation completed in 2009.

If the amount of the total of all brownfield credit amounts or historic rehabilitation credit amounts that the taxpayer may claim under the bill exceeds the taxpayer's tax liability for its last tax year, the excess amount must be refunded.

As used in the bill, "last tax year" means the taxpayer's tax year under the Act beginning after December 31, 2006, and before January 1, 2008.

A brownfield credit or historic rehabilitation credit may not be claimed before a certificate of completion or certification of completed rehabilitation is issued for the project on which the credit is based.

The brownfield credit allowed under the bill must be taken before the credit allowed for historic rehabilitation.

The bill's credit provisions do not apply to any amount the taxpayer or assignee may claim for the same project or rehabilitation plan for a tax year that begins after December 31, 2007, under any other tax act.

Under the Act, a taxpayer that reasonably expects its SBT liability for the tax year to exceed \$600 or adjustments to its tax base to exceed \$100,000 must file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year. The bill requires a taxpayer to calculate its liability for these purposes before applying either the brownfield credit or the historic rehabilitation tax credit as provided under the bill.

MCL 208.38g et al.

BACKGROUND

Single Business Tax Act

When Michigan began collecting the single business tax in fiscal year 1975-76, the SBT replaced the State's corporate income tax, six other State taxes, and a local tax. The SBT is called a "value-added tax" because it is a tax on the value a business adds to its product or service. The difference between the cost of a business's inputs and the amount the firm receives from selling its product or service represents the amount of value the business has added. Over the years, many deductions, credits, and exemptions have been eliminated, replaced, or added to the SBT, reducing its value-added nature.

Public Act 115 of 1999 amended the SBT Act to reduce the SBT from its then-current 2.3% rate by 0.1% for each year in which the Budget Stabilization Fund has an ending balance over \$250 million, and to repeal the Act on the January 1 of the year in which the tax rate was reduced to 0.0%. (Under these provisions, the tax has been reduced to its present rate of 1.9%.) Subsequently, Public Act 531 of 2002 amended the Act to repeal it effective for tax years that begin after December 31, 2009. (Both amendatory Acts made additional changes to the SBT, as well.)

Legislation has been proposed to accelerate the repeal of the SBT Act. House Bill 5743 would have repealed the Act effective for tax years beginning after December 31, 2007; required the Legislature to replace the SBT with a tax or taxes that were "more conducive to job creation, investment, and economic growth"; prohibited the Legislature from replacing the lost revenue with an increase in certain taxes; and required the Governor's Council of Economic Advisors to develop a plan to replace all or part of the revenue lost by the repeal. The bill was passed by the House of Representatives and the Senate but vetoed by the Governor on April 18, 2006. In her veto message, the Governor stated that the bill "would result in either a significant tax increase for Michigan families or massive cuts in the things most important to Michigan families - education, health care, and public safety". The Governor also stated that the bill "would cast a cloud of uncertainty over Michigan's business climate", and businesses considering investing or expanding in Michigan would be unable to estimate what their tax obligations might be without a replacement tax or a substantially modified SBT in place.

Initiative Petition

Article II, Section 9 of the State Constitution reserves to the people the power to propose laws, called the "initiative". The initiative process requires the submission of petitions containing a sufficient number of signatures (at least 8% of the total vote cast for all candidates for Governor at the last general election at which a Governor was elected). If approved, an initiated law is not subject to the veto power of the Governor.

Under the Michigan Election Law, once petitions have been submitted to the Secretary of State, the Board of State Canvassers is notified and must determine if the petitions have been signed by the required number of qualified and registered electors. (For the November 2006 general election, 254,206 valid signatures are needed.) Any law proposed by initiative petition and certified by the Board of State Canvassers must be either enacted or rejected by the Legislature without change or amendment within 40 session days from the time the petition is received in the office of the Secretary of the Senate and the Clerk of the House.

If the Legislature rejects an initiative petition, it may propose a different measure on the same subject. Both measures then are submitted to the electors for approval or rejection at the next general election. If two or more measures approved by the electors at the same election conflict, the measure receiving the highest affirmative vote prevails.

Pursuant to the initiative process, in May 2006, Oakland County Executive L. Brooks Patterson submitted to the Secretary of State petitions containing a reported 372,604 signatures in support of an initiative that would repeal the SBT Act effective for tax years beginning after December 31, 2007. The initiative also would "[e]ncourage the legislature to adopt a tax that is less burdensome and less costly to employers, more equitable, and more conducive to job creation and investment". The Board of State Canvassers is expected to decide whether to certify the petition toward the end of July.

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 bill is necessary to preserve the ability of businesses to claim credits that have, in effect, been promised to them. Because the brownfield and historic rehabilitation credits cannot be claimed until the projects are completed, there is an inevitable delay between the time a firm is preapproved for a credit and the tax year in which the firm may claim the credit. If the SBT Act is repealed in the meantime, the credit could never be claimed, without the bill. Although businesses will have no SBT liability in future years if the Act is repealed, they might be liable for a new tax but unable to claim the credit against it. Thus, absent the bill, their promised reduction in tax liability would not take place. In other cases, a business might have reached an agreement to assign its credit to an investor in exchange for funding, or a financial institution might be relying on the credit assignment as collateral for a loan. If SBT Act is repealed, however, and the credit became worthless, the investor or the bank could withdraw from the deal.

Numerous businesses have been preapproved or certified for brownfield or historic rehabilitation credits but will be unable to complete the projects before 2008 or 2009. Although this is the case throughout the State, two prominent projects involve the restoration of historic hotels in downtown Detroit. The Book Cadillac and Fort Shelby hotels have been purchased by developers who have received commitments from the State for brownfield and historic rehabilitation credits, and are in the process of securing construction financing. Evidently, the developers have investors who will purchase their SBT credits, and the banks involved are treating the credits as equity and using them as collateral. Apparently, however, the closing on the Book Cadillac loan was postponed due to questions about the viability of the credits, and there was concern that the Fort Shelby financing would be delayed as well. Since these projects reportedly will require over 900,000 hours of labor during construction, and produce over 1,000 jobs upon completion, the failure of the projects to go forward would represent a severe economic loss to the region and, indirectly, the State. On a smaller scale, similar situations exist municipalities across the State, including Alpena, Flint, Grand Rapids, Lansing, Muskegon, Saginaw, and Traverse City.

By allowing firms to claim brownfield and historic rehabilitation credits on amended SBT returns for the 2007 tax year, if they complete projects during 2008 or 2009, the bill enables the State to uphold its commitments to these taxpayers if the SBT Act is repealed ahead of schedule. This will prevent financial hardship to individual businesses that might find themselves facing new tax liability under a replacement for the SBT. The bill also prevents the negative economic consequences to communities that could have lost brownfield or historic rehabilitation projects if investors and banks pulled out of financing deals due to uncertainty about the worth of the credits.

In addition, with the assurance that the credits may be claimed for projects completed in 2008 or 2009, MEGA can continue preapproving brownfield projects and the Michigan Historical Center can continue certifying rehabilitation plans through the end of 2007. The development of brownfield sites and the preservation of

historic resources are important to the revitalization of many communities throughout the State, particularly urban areas that are struggling economically.

Response: Legislation also should preserve the SBT credits that MEGA grants to businesses that meet job creation and retention or investment criteria under the Michigan Economic Growth Authority Act. Michigan faces heavy competition from other states for job growth and economic development, and these credits are vital to this State's efforts to retain businesses and attract new enterprises. With the potential early repeal of the SBT Act, firms are questioning the value of the credits and may decide to locate elsewhere unless they are confident that the credits can continue to be claimed against the SBT or a replacement tax.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The brownfield and historic preservation tax credits that businesses will be able to claim in 2008 and 2009 under this bill, if the single business tax is repealed for tax years beginning after December 31, 2007, will reduce General Fund/General Purpose revenue by about \$120 million. These tax credits will be claimed directly by businesses that receive these credits or by other businesses that are assigned these credits, or portions of these credits, by businesses that are not able to claim the full amount of the credit for which they qualify. These credits will be claimed on a business's original 2007 single business tax annual return or on an amended return for 2007. Most of this loss in revenue will be realized in FY 2007-08 and FY 2008-09, but it is possible that some of these credits will not be claimed until FY 2009-10. The bill will have no direct impact on local government.

Fiscal Analyst: Jay Wortley

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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.