

Legislative Analysis



MBT: MEDIA PROPERTY

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5460

Sponsor: Rep. Steve Bieda

House Bill 5461

Sponsor: Rep. Kathy Angerer

House Bill 5462

Sponsor: Rep. Tim Melton

Committee: Tax Policy

Complete to 12-4-07

A SUMMARY OF HOUSE BILLS 5460-5462 AS INTRODUCED 11-26-07

The bills would amend the Michigan Business Tax Act (MCL 208.1101-1601) to address the taxation of certain media property. They are tie-barred to one another, meaning none could take effect unless all were enacted. The newly enacted Michigan Business Tax takes effect on January 1, 2008, as would these bills.

The term "media property" in the bills would be defined to mean films, sound recordings, videotapes, live and pre-recorded television, radio, and Internet programs, books, video games, interactive games, interactive websites, interactive content, and other similar property embodying words, ideas, concepts, images, or sound without regard to the means or methods of distribution or the medium in which the property is embodied.

Under the MBT, among other things, firms are subject to a tax of 0.8% on a firm's gross receipts, *less its purchases from other firms*, and a tax at a rate of 4.95% on business income *after allocation and apportionment*. Each tax base of a taxpayer whose business activities are subject to tax both within and outside of this state are to be apportioned to this state by multiplying the tax base by the sales factor, which is a fraction, the numerator of which is the total sales of the taxpayer in Michigan during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

HB 5460 would specify when receipts from the sale, license, broadcast, transmission, distribution, exhibition, or other use of media property and receipts from the sale of services where the use of the media property is integral to the performance of those services are considered to be in Michigan and attributable to Michigan.

They would be so considered if the commercial domicile of the customer is in this state, the customer has a direct connection or relationship with the taxpayer pursuant to a contract under which the receipts are derived, and the customer receives all of the benefit of the services in this state. If the recipient receives some of the benefit of the services in

this state, the receipts would be included in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the services in this state. If the recipient of services is a television or radio broadcaster, the benefit of services would be proportioned based on the ratio that the broadcaster's viewing or listening audience in the state bears to its total viewing or listening ordinance.

House Bill 5461 would amend the MBT to exclude from "gross receipts" proceeds from the sale or other disposition of media property and amounts received by the taxpayer from any transaction involving media property as long as the sale, transaction, or other disposition is treated as a loan or lease for federal income tax purposes and is intended to finance or share the risk related to the production of media property.

House Bill 5462 would amend the definition of "purchases from other firms" in the MBT. Under the bill, such purchases would include assets that are media property for which the taxpayer incurred costs to acquire, produce, or use that media property, including without limitation, costs incurred for the right to broadcast live or delayed coverage of events such as concerts, plays, sporting events, and other performances without regard to the method of depreciation, amortization, or other form of cost recovery applicable to that media property. This would apply, generally speaking, to firms in the following industry groups: periodicals and publishing, books, radio and television stations, cable and pay television, computer programming and data processing, motion picture distribution, theatrical production (other than movies), and physical fitness facilities.

FISCAL IMPACT:

The bills are still being examined. A fiscal impact will be determined as more information becomes available.

Legislative Analyst: Chris Couch
Fiscal Analyst: Rebecca Ross
Jim Stansell

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