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Senate Bill 973 (as introduced 12-6-07)
Sponsor: Senator Cameron S. Brown
Committee: Commerce and Tourism

Date Completed: 6-10-08

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to do all of the following:

- **Allow a qualified taxpayer to claim a historic preservation tax credit of 25% of qualified expenditures without reducing the credit by the amount of a Federal tax credit, as currently required.**
- **Authorize the assignment of a historic preservation tax credit by any qualified taxpayer to anyone, rather than just by a partnership, limited liability company, or subchapter S corporation to a partner, member, or shareholder.**
- **Allow an assignee subsequently to assign a credit or any portion of a credit.**
- **Delete a requirement that a taxpayer add back a percentage of a historic preservation credit to the taxpayer's tax liability if the taxpayer sells the historic resource within five years.**
- **Exclude an assignee from a requirement that a percentage of a credit be added back to the tax liability if a historic preservation credit is revoked within five years.**

The Act allows a qualified taxpayer with a rehabilitation plan certified under the Act after December 1, 2007, or certified under the former Single Business Tax Act before January 1, 2008, 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, to credit against the MBT an amount determined under the Act for the qualified expenditures for the historic resource's rehabilitation. The credit may be claimed if the certification of completed rehabilitation was issued within five years after the Michigan Historical Center certified the rehabilitation plan.

"Historic resource" means a publicly or privately owned historic building, structure, site, object, feature, or open space that is located within a historic district designated by the National Register of Historic Places, the State Register of Historic Sites, or a local unit acting under the Local Historic Districts Act, or that is individually listed on the State Register of Historic Sites or National Register of Historic Places. "Michigan historical center" means the State Historic Preservation Office of the Michigan Historical Center of the Department of History, Arts, and Libraries.

Amount of MBT Credit

The amount of the historic preservation credit is 25% of the qualified expenditures that are eligible for the credit under Section 47(a)(2) of the Internal Revenue Code (IRC) or, if the taxpayer is not eligible for the IRC credit, 25% of the qualified expenditures that would qualify under the IRC except that the expenditures are made to a historic resource that is not eligible for the IRC credit, subject to both of the following:

-- A taxpayer with qualified expenditures that are eligible for the IRC credit may not claim a credit under the MBT Act for the same expenditures unless the taxpayer has claimed and received the IRC credit.
-- An MBT credit must be reduced by the amount of the IRC credit the taxpayer received for the same qualified expenditures.

Under the bill, instead, the amount of the credit would be 25% of the qualified expenditures.

"Qualified expenditures" means capital expenditures that qualify for a rehabilitation credit under Section 47(a)(2) of the IRC if the taxpayer is eligible for the IRC credit or, if the taxpayer is not eligible for the IRC credit, the qualified expenditures that would qualify under the IRC except that the expenditures are made to a historic resource that is not eligible for the IRC credit that were paid within five years after the certification of the rehabilitation plan that included those expenditures was approved by the Michigan Historical Center, and that were paid after December 31, 1998, for the rehabilitation of a historic resource. Qualified expenditures do not include capital expenditures for nonhistoric additions to a historic resource except an addition that is required by State or Federal regulations that relate to historic preservation, safety, or accessibility.

"Qualified taxpayer" means a person that is an assignee under the Act or either owns the resource to be rehabilitated or has a long-term lease agreement with the owner of the historic resource and that has qualified expenditures for the rehabilitation of the historic resource equal to or greater than 10% of the State equalized valuation of the property. The bill would delete the reference to an assignee in that definition.

(Section 47(a)(2) of the IRC allows a rehabilitation credit of 20% of qualified rehabilitation expenditures with respect to any certified historic structure (26 USC 47). "Certified historic structure" means any building (and its structural components) that is listed in the National Register, or is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district.)

Assignment of Credit

The Act provides that, if a qualified taxpayer is a partnership, limited liability company, or subchapter S corporation, the qualified taxpayer may assign all or any portion of a historic preservation credit to its partners, members, or shareholders, based on the partner's, member's, or shareholder's proportionate share of the ownership or based on an alternative method approved by the Department of Treasury. A partner, member, or shareholder that is an assignee may not subsequently assign a credit or any portion of a credit that is assigned to him or her. The bill would delete those provisions.

Under the bill, for projects for which a certificate of completed rehabilitation was issued on or after January 1, 2008, a qualified taxpayer could assign all or a portion of a historic preservation credit. If a qualified taxpayer both claimed and assigned portions of the credit, the qualified taxpayer would have to claim its portion in the tax year in which a certificate of completed rehabilitation was issued. An assignee could subsequently assign a credit or any portion of a credit assigned to one or more assignees.

Credit Added Back to Liability

The bill would delete a provision under which a percentage of a historic preservation tax credit previously claimed must be added back to the taxpayer's tax liability if the taxpayer sells the historic resource for which the credit was claimed less than five years after the year in which the credit was claimed. The percentage ranges from 20% if the sale is at least four years after the year in which the credit was claimed, to 100% if the sale is less than one year after the year in which the credit was claimed.

The Act also includes a requirement that 20% to 100% of a historic preservation tax credit previously claimed be added back to the taxpayer's tax liability if a certification of completed rehabilitation is revoked less than five years after the year in which a credit was claimed. Under the bill, this provision would apply to the tax liability of the qualified taxpayer that received the certificate of completed rehabilitation but not an assignee.

MCL 208.1435 Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would increase the cost of the historic preservation credit by an estimated $10 million to $12 million annually; however, as under the existing credit, the amount by which the cost of this credit would increase under the bill probably would vary significantly from year to year. The number of taxpayers claiming the credit against the single business tax ranged from 12 to 25 from tax years 2003 to 2006 and the total annual value of the credits used by these taxpayers to help offset their single business tax liabilities ranged from $1.7 million to $2.7 million. This bill would increase the cost of the State historic preservation tax credit for three major reasons: 1) It would increase the State credit from 5% to 25% (because taxpayers would not have to reduce it by the amount of the Federal credit), 2) because of this increase in the State credit, in combination with the existing Federal 20% credit, it would make some current marginal historic preservation projects more viable and therefore would increase the number of taxpayers that would claim this credit, and 3) the changes in this bill to broaden the ability of taxpayers to assign these credits to other taxpayers also would help expand the financial viability of current marginal projects and likely would accelerate the timing of when all of the credits ultimately would be used to offset a Michigan business tax liability. The loss of revenue under this bill would reduce the General Fund/General Purpose budget.

Fiscal Analyst: Jay Wortley