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BILL ANALYSIS

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Senate Bill 1009 (Substitute S-1 as reported)
Sponsor: Senator Nancy Cassis
Committee: Finance

Date Completed: 1-23-08

RATIONALE

Some people believe that the Michigan Business Tax (MBT) Act, which went into effect on January 1, 2008, does not honor the relationship that Michigan has had with Canada regarding reciprocal taxation. Because Michigan and Canada are connected geographically and economically, taxes that cross international borders have consequences for businesses located on both sides. It has been suggested that, in order to conform to traditional practices for taxing foreign-based companies and to eliminate the new tax burden on Canadian companies, the Act should exempt foreign persons from the MBT.

CONTENT

The bill would amend the Michigan Business Tax Act to exempt from the tax a foreign person that did not have a permanent establishment in the United States during the tax year, and a foreign person that was exempt from or not subject to Federal income taxation under the Internal Revenue Code, an income tax treaty, or otherwise.

Under the bill, "foreign person" would mean either an individual who is not a U.S. resident, whether or not the individual is subject to taxation under the Internal Revenue Code, or a person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the Internal Revenue Code.

"Permanent establishment" would mean either of the following:

-- If an income tax treaty applies to the foreign person, that term as defined in that income tax treaty in effect between the U.S. and another nation.
-- If no income tax treaty applies to the foreign person, that term as defined in the U.S. Model Income Tax Convention (a fixed place of business through which the business of an enterprise is wholly or partly carried on, except as otherwise provided).

The bill states that it would be retroactive and effective January 1, 2008, and would apply to all business activity occurring after December 31, 2007.

MCL 208.1207

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
Because Michigan and Canada are not economic competitors but are part of an economic unit, when Michigan raises taxes on Canadian businesses, citizens and businesses on both sides are affected. For example, products and manufactured parts often cross between Canada and Michigan multiple times during the manufacturing process and are frequently sold across international borders. If Michigan does not exempt Canadian businesses from taxation under the MBT Act, there is a possibility that Canada will tax Michigan businesses for the purpose of parity or retaliation, stifling trade and economic cooperation between the two and damaging Michigan's economy.

Canadian businesses still would be subject to other applicable Michigan taxes, including the fuel tax and sales tax, and businesses with permanent establishments in Michigan would be subject to the MBT.

Opposing Argument

While special considerations should be made under the MBT Act for Canadian businesses, the bill would exempt all foreign persons from the Act without regard to the type of business or country of origin. In order to prevent unforeseen consequences, the bill should specify the countries and types of businesses that would be exempt.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bill would reduce General Fund revenue in FY 2007-08 and FY 2008-09 by an unknown and potentially significant amount. The types of foreign persons affected by the bill were generally taxed under the single business tax, but the tax base computations were modified to reflect certain circumstances. The bill would exempt these entities from the Michigan Business Tax Act. The number of taxpayers affected and their liability is unknown, but could be significant because the bill would appear to exempt any foreign business that does not have property in Michigan, regardless of its level of nexus.

The bill would have no fiscal impact on local government.

Fiscal Analyst: David Zin