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BILL ANALYSIS

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Senate Bill 1440 (as introduced 6-27-08)
Sponsor: Senator Nancy Cassis
Committee: Finance

Date Completed: 12-3-08

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to eliminate from the definition of "federal taxable income" a depreciation deduction for certain property.

The bill is tie-barred to Senate Bill 1038 which would amend the MBT Act to exclude from the definition of "gross receipts" certain proceeds, interest income, royalties, dividends, taxes, fees, and surcharges.

Except as otherwise provided, the MBT is a business income tax on taxpayers with business activity in this State. The tax is imposed on the business income tax base, after allocation or apportionment to this State, at the rate of 4.95%. "Business income" means that part of federal taxable income derived from business activity. "Federal taxable income" means taxable income as defined in Section 63 of the Internal Revenue Code (IRC).

Under the bill, "federal taxable income" would mean taxable income as defined in Section 63 of the IRC except that depreciation deductions and the adjusted basis of property would be determined as provided under the IRC without considering the additional allowance under Section 168k of the Code.

(Under Section 63 of the IRC, taxable income means gross income minus Federal deductions allowed under the Code. Section 168k allows an additional depreciation deduction for the taxable year in which qualified property, including certain computer software, water utility property, transportation property, and other property described in the Code, is placed in service, equal to 30% of the adjusted basis of the property.)

MCL 208.1109

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bill is tie-barred to Senate Bill 1038 and would have no effect on State or local revenue if that bill is not enacted. If Senate Bill 1038 is enacted, Senate Bill 1440 would have no effect on local revenue or expenditures but would increase or decrease State General Fund revenue in fiscal year (FY) 2008-09, depending on when the bill took effect, and would reduce revenue in future fiscal years. The bill would "decouple" the computation of taxable income from changes enacted at the Federal level that allow business to take accelerated depreciation for certain capital expenditures made during calendar year 2008. At the May 2008 Consensus Revenue Estimating Conference, the acceleration in depreciation was estimated to reduce Michigan business tax revenue by approximately $28.0 million in FY 2007-08 and $92.0 million in FY 2008-09.

The bill would have no effect on FY 2007-08 MBT revenue. If the bill were interpreted to affect all of tax year 2008 and later tax years, it could increase FY 2008-09 revenue by as much as $120.0 million, but would reduce revenue in later fiscal years. However, the bill does not include a retroactivity provision and many, if not all, of the relevant expenditures have already been made. As a result, if the bill were interpreted to affect only transactions made after its enactment, the bill could potentially reduce tax revenue in FY 2008-09 and later fiscal years because it would increase the depreciation claimed in future fiscal years compared to current law. Under this interpretation, the bill could reduce FY 2008-09 revenue by approximately $7.5 million and FY 2009-10 revenue by $12.1 million.

Fiscal Analyst: David Zin

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