Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5151 (Substitute H-1 as reported without amendment)
Sponsor: Representative Steve Bieda
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 1-16-08

RATIONALE

Although the Single Business Tax (SBT) Act has been repealed for tax years beginning after December 31, 2007, an issue raised before that date pertains to SBT liability for the sale of mortgages during 2006 and 2007. As a rule, tax liability for the sale of goods or services is determined, or sourced, by the location where costs of making the sale were incurred or the location of the goods when they were sold or where the services were performed.

In many states, according to Quicken Loans, sourcing for mortgage sales made by the company is based on the location of the property for which a mortgage is sold. For the purpose of determining SBT liability, however, sales were sourced based on costs of performance. This approach generally sources sales at a business's location, where the business incurs transaction costs.

Because of the high number of sales of mortgages on property outside of Michigan that were sourced inside the State under the SBT Act, Quicken Loans successfully petitioned the State of Michigan for relief from a portion of its SBT liability. Reportedly, the terms of the settlement reached with the State are similar to the sourcing requirements for mortgage company receipts under the Michigan Business Tax (MBT) Act, which took effect on January 1, 2008. According to Quicken Loans, there remains a gap of two years and two months during which the company is liable for tax under the sourcing rules of the SBT Act and before the effective date of the MBT Act.

Some people have suggested that the State and the company would save money if Quicken Loans were granted tax relief by an amendment to the sourcing requirements in the SBT Act, instead of through a settlement process that likely would achieve the same results.

CONTENT

The bill would amend the Single Business Tax Act to specify that for tax years beginning on and after November 1, 2005, receipts derived by a mortgage company from the origination or sale of a loan secured by residential real property would be deemed a sale in this State only if one or more of the following applied:

-- The real property was located in this State.
-- The real property was located both within this State and one or more other states and more than 50% of its fair market value was located within this State.
-- More than 50% of the property's fair market value was not located in any one state and the borrower was located in this State.

For purposes of these provisions, a borrower would be considered located in this State if the borrower's billing address were in Michigan. "Mortgage company" would mean a person that had greater than 70% of its revenue, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.

The bill would apply notwithstanding a provision of the Act stating that sales, other than sales of tangible personal property, are in this State if:

-- The business activity is performed in this State.
-- The business activity is performed both in and outside this State and, based on costs of performance, a greater proportion of the business activity is performed in this State than is performed outside the State.
-- Receipts derived from services performed for planning, design, or construction activities within this State must be deemed Michigan receipts.

MCL 208.53

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 would prevent the State from incurring the cost of settling a dispute with Quicken Loans over liability under the SBT Act. Because Quicken Loans already has received relief from SBT liability for different tax years, and because the proposed changes would match the requirements of the MBT Act, the outcome of a dispute reportedly would be the same as that under the bill. Also, the bill would simplify the transition to the MBT for businesses as the sourcing requirements under the bill are the same as those under the MBT Act.

Supporting Argument

It is unfair to tax a company only because its headquarters are in Michigan. Businesses such as Quicken Loans are taxed in Michigan for transactions involving property located outside of the State and may be taxed again by the state in which the real property for which a mortgage is sold is located. The bill would allow mortgage companies to source sales based on the location of the residential real property for which a mortgage is sold instead of based on the costs of performance.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bill would reduce State General Fund revenue in FY 2007-08 by approximately $0.5 million. The fiscal year reduction reflects the impact on more than one tax year because the bill would apply to tax years beginning on or after November 1, 2005.

The bill would have no effect on local revenue or expenditure.

Fiscal Analyst: David Zin