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 5924 (Substitute H-3 as passed by the House)
House Bill 6122 (Substitute H-3 as passed by the House)
Sponsor: Representative Steve Bieda
House Committee: Tax Policy
Senate Committee: Committee of the Whole

CONTENT

House Bill 5924 (H-3) would amend the Michigan Business Tax (MBT) Act to exempt from the modified gross receipts tax payments made by a taxpayer licensed under Article 25 (real estate brokers, associate brokers, or salespeople) or Article 26 (appraisers) of the Occupational Code to an independent contractor licensed under either article.

The MBT Act levies a modified gross receipts tax on every taxpayer with nexus in this State. This tax is imposed on the modified gross receipts tax base, after allocation or apportionment to the State at a rate of 0.8%. The modified gross receipts tax base is a taxpayer's gross receipts, less purchases from other firms before apportionment under the Act. Under the bill, for a taxpayer licensed under Article 25 or 26 of the Occupational Code, "purchases from other firms" would include payments to an independent contractor licensed under Article 25 or 26.

House Bill 6122 (H-3) would amend the State Real Estate Transfer Tax Act to extend the transfer tax to contracts for the transfer or acquisition of a controlling interest in any entity if the real property owned by that entity comprised 90% or more of the entity's fair market value. "Controlling interest" would mean more than 80% of the total value of all classes of stock of a corporation; more than 80% of the total interest in capital and profits of a partnership, association, limited liability company (LLC), or other unincorporated form of doing business; or more than 80% of the beneficial interest in a trust.

The bill would exempt from the tax a conveyance that was one of the following:

-- A transfer between any corporation and its stockholders or creditors, between any LLC and its members or creditors, between any partnership and its partners or creditors, or between a trust and its beneficiaries or creditors, when the transfer was to effectuate a dissolution of the corporation, LLC, partnership, or trust, and it was necessary to transfer the title of real property from the entity to the stockholders, members, partners, beneficiaries, or creditors.
-- A transfer between any LLC and its members, or between any partnership and its partners, if the ownership interests in the LLC or partnership were held by the same people and in the same proportion as in the LLC or partnership before the transfer.
-- A transfer of a controlling interest in an entity with an interest in real property if the transfer of the property would qualify for exemption if it had been accomplished by deed to the property between the people who were parties to the transfer.
-- A transfer in connection with the reorganization of an entity if the beneficial ownership were not changed.

The Act imposes a tax on certain written instruments executed within this State when the instruments are recorded, at a rate of $3.76 for each $500 of the total value of the property being transferred. Under the bill, "transfer", unless otherwise exempt under the Act, would mean the conveyance of title to or other transfer of a present interest or beneficial interest or any other interest in real property by any method, including the interest in real property acquired through the acquisition of a controlling interest in any entity with an interest in the property.

The Act defines "value" as the current or fair market worth in terms of legal monetary exchange at the time of the transfer. Under the bill, the tax would have to be based on the value of the real property transferred and would have to be collected at the time the instrument of conveyance was submitted for recording. In the case of a controlling interest in any entity that owned real property, "value" would mean the value of the real property or interest in it, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

The bills are tie-barred to each other.

MCL 208.1113 (H.B. 5924)
207.522 et al. (H.B. 6122)

Legislative Analyst: Craig Laurie

FISCAL IMPACT

House Bill 5924 (H-3) would reduce Michigan business tax revenue an estimated $5.0 million in FY 2008-09 and $6.5 million in FY 2009-10. All of this loss in revenue would reduce the General Fund. This bill would not have any direct impact on local governments.

House Bill 6122 (H-3) would increase School Aid Fund revenue by an unknown amount, depending upon the number of properties affected and their specific characteristics. The bill would have an impact on local transfer taxes only to the extent those taxes follow the State's transfer tax.

Date Completed: 12-17-08

Fiscal Analyst: Jay Wortley
David Zin