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Senate Bill 219 (as introduced 2-12-09)
Sponsor: Senator John Pappagorge
Committee: Finance

Date Completed: 6-4-09

CONTENT

The bill would amend the Michigan Business Tax Act to exclude from the business tax base royalty payments to a person organized under the laws of a foreign nation having a comprehensive tax treaty with the United States.

The Act imposes a business income tax on every taxpayer with business activity in this State. The tax is imposed on the business income tax base, after allocation or apportionment to the State, at a rate of 4.95%. The business income tax base is a taxpayer's business income subject to various adjustments. "Business income" means that part of Federal taxable income derived from business activity, as defined in the Act.

Under the current adjustments, to the extent deducted in arriving at Federal taxable income, a taxpayer must add any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset, if the person is not included in the taxpayer's unitary business group. The addition of a royalty, interest, or other expense is not required, however, if the taxpayer can demonstrate that the transaction has a nontax business purpose other than tax avoidance, is conducted with arm's-length pricing and rates and terms as applied in accordance with the Internal Revenue Code, and satisfies one of the following criteria:

- It is a pass through of another transaction between a third party and the related person with comparable rates and terms.
- It results in double taxation.
- It is unreasonable as determined by the State Treasurer, and the taxpayer agrees that the addition would be unreasonable based on its facts and circumstances.

The bill would add a fourth criterion: The related person recipient of the transaction is organized under the laws of a foreign nation that has in force a comprehensive income tax treaty with the United States.

MCL 208.1201

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill's proposed changes to the MBT would clarify and make technical changes to business income involving royalty, interest, and other expenses incurred in certain foreign transactions. As a result, this bill would have no fiscal impact.

Fiscal Analyst: Jay Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.