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BILL ANALYSIS

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Senate Bill 361 (as reported without amendment) *(as passed by the Senate)*
Sponsor: Senator Jud Gilbert, II
Committee: Finance

Date Completed: 4-27-09

RATIONALE

Under Section 203 of the Michigan Business Tax (MBT) Act, a business must pay tax on amounts defined in the Act as "gross receipts", including certain taxes collected by businesses on behalf of the State. Public Act 433 of 2008 amended the Act to phase out the MBT on certain amounts, including amounts collected by a business to pay the State and Federal excise taxes on cigarettes and other tobacco products. Under Public Act 433, a percentage of the amount collected by a business for certain taxes is excluded from the definition of "gross receipts" and is therefore no longer taxed under the MBT Act. The amount excluded is being phased in over a three-year period starting at a rate of 60% of that amount in the 2008 tax year, and increasing to 75% in the 2009 tax year, and 100% in the 2010 tax year and each subsequent tax year.

Some people believe that it is unfair to tax businesses on the taxes they collect on behalf of the State and Federal government. In order to eliminate this taxation, it has been suggested that the excise taxes paid by a person on or for cigarettes or tobacco products be excluded completely from the calculation of gross receipts.

CONTENT

The bill would amend the Michigan Business Tax Act to exclude from gross receipts 100% of the excise taxes paid by a person on or for cigarettes or tobacco products.

The bill would be retroactive and effective for tax years beginning after December 31, 2007.

Section 203 of the MBT Act imposes a modified gross receipts tax on every taxpayer with nexus as determined under the Act. The tax is imposed on the modified gross receipts tax base, after allocation or apportionment to the State at a rate of 0.8%.

The Act defines "gross receipts" as the entire amount received by the taxpayer as determined by using the taxpayer's method of accounting used for Federal income tax purposes, less an amount deducted as bad debt for Federal income tax purposes as provided in the Act, from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others, subject to certain exclusions.

In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, to the extent not deducted as purchases from other firms under Section 203, "gross receipts" excludes an amount equal to the Federal and State excise taxes paid by any person on or for the cigarettes or tobacco products under Subtitle E of the Internal Revenue Code (IRC) or other applicable State law.

The amount excluded is phased in over a three-year period starting with 60% of that amount in the 2008 tax year, 75% in the 2009 tax year, and 100% in the 2010 tax year and each subsequent tax year. The bill would delete the phase-in.

(Subtitle E of the IRC imposes an excise tax at various rates on cigars, cigarettes, cigarette papers, cigarette tubes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco.)

MCL 208.1111

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
Businesses in the State are performing a service for the State and Federal governments by collecting and forwarding taxes and should not be taxed on the amounts they collect. Currently, cigarette and tobacco wholesalers must include in their gross receipts, the basis of a portion of their MBT liability, 40% of the amount of taxes they collect for State and Federal cigarette and tobacco taxes. While this amount will be reduced over the next few years, any amount is a difficult and unfair burden for businesses and should be eliminated immediately and retroactively.

Opposing Argument
Although the tax on collected taxes is potentially burdensome for some businesses, it is not a new burden: The inclusion of the cigarette and other taxes in the definition of "gross receipts" was part of business taxation in the State under the former Single Business Tax Act and was included in the MBT Act from its effective date. Public Act 433 of 2008 was carefully constructed to allow the State to replace money lost due to the exclusion of certain collected amounts from the gross receipts tax base. The bill would decrease tax revenue without a plan for replacing it or for reducing spending.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

The bill would reduce Michigan Business Tax revenue an estimated $5.0 million in FY 2008-09 and $0.5 million in FY 2009-10. This loss in revenue would reduce the General Fund. The bill would have no direct fiscal impact on local governments.

Fiscal Analyst: Jay Wortley

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