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BILL



ANALYSIS

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Senate Bill 493 (as enacted)
House Bill 4674 (as enacted)
Sponsor: Senator Jason E. Allen (S.B. 493)
Representative Jeff Mayes (H.B. 4674)
Senate Committee: Commerce and Tourism
House Committee: New Economy and Quality of Life

PUBLIC ACT 160 of 2009
PUBLIC ACT 159 of 2009

Date Completed: 4-11-11

CONTENT

The bills amended the Michigan Business Tax (MBT) Act to do all of the following in regard to the MBT credits that an "anchor company" may claim for a percentage of a qualified supplier's or qualified customer's property tax or industrial facility tax, or for a qualified supplier's or customer's payroll:

- **Allow an anchor company to claim the credit for property tax or industrial facility tax if the taxable property is located in an existing industrial site in the same county or an adjacent county.**
- **Allow the credits to be based on each qualified supplier's and qualified customer's taxable value or payroll.**
- **Allow the credits to be taken after all other allowable nonrefundable MBT credits.**
- **Allow the Michigan Economic Growth Authority (MEGA) to exclude an anchor company's qualified sales to a qualified customer from the calculation of the sales factor under the Act.**
- **Require MEGA annually to disclose to certain legislators information about qualified customers whose sales are not considered in the sales factor.**
- **Revise the definitions of "qualified supplier or customer" and define "qualified sales to a qualified customer".**

The bills specify that they are retroactive and effective for tax years that begin after December 31, 2008.

The bills were tie-barred to each other and to Senate Bills 358 and 428 (Public Acts 161 and 162 of 2009). (Senate Bill 358 amended the Local Development Financing Act to allow the Michigan Economic Development Corporation (MEDC) to designate two additional certified technology parks (also known as SmartZones) between June 1, 2009, and April 1, 2010. Senate Bill 428 amended that Act to allow the designation of all or part of an authority district as a certified alternative energy park, and authorize the MEDC to designate up to 10 certified alternative energy parks.)

"Anchor company" means a qualified high-technology business that is an integral part of a high-technology activity and that has the ability or potential ability to influence business decisions and site location of qualified suppliers and qualified customers.

Senate Bill 493

Anchor Company Credit

Public Act 88 of 2008 added Section 431c to the MBT Act to allow a qualified taxpayer (an anchor company that has influenced a new qualified supplier or customer to open, locate, or expand in Michigan) to claim an MBT credit equal to a percentage of the taxable value of each qualified supplier's or customer's taxable property that is located

within the qualified taxpayer's 10-mile radius, for a period of up to five years as determined by MEGA. The percentage is 5% if the taxable property is subject to collection of general ad valorem taxes under the General Property Tax Act. If the taxable property is subject to the industrial facility tax levied under the plant rehabilitation and industrial development Act (commonly referred to as P.A. 198), the percentage is 2.5%.

Under the bill, the MBT credit is based on the taxable value of each qualified supplier's or qualified customer's taxable property that is located within the 10-mile radius of the qualified taxpayer, *or* in the same county as or a county adjacent to the qualified taxpayer and within an existing industrial site approved by MEGA. Also, the credit may be based upon *each* of the qualified supplier's and qualified customer's taxable value.

The bill specifies that a credit under Section 431c may be taken after all other allowable nonrefundable credits under the MBT Act.

Qualified Sales to Qualified Customer

The bill authorizes MEGA to provide that qualified sales to a qualified customer may not be considered in calculating the sales factor under the MBT Act for the tax year for which a credit under Section 431c is provided. The bill defines "qualified sales to a qualified customer" as sales to a qualified customer that are in excess of the Michigan sales to the customer before the year of expansion or location within Michigan, as determined by MEGA, and that otherwise would be included in the calculation of the sales factor under the Act.

By July 1 of each year, MEGA must disclose the name and address of each qualified customer whose sales are not considered in the sales factor of the MBT, to the Senate Majority Leader or his or her designee, the Speaker of the House or his or her designee, and the chairpersons of the legislative standing committees that address and have jurisdiction over issues pertaining to taxation, finance, and economic development.

Previously, "qualified supplier or customer" meant a business that opened a new location in Michigan, a business that located

in Michigan, or an existing business located in Michigan that expanded its business within the previous year as a result of an anchor company and satisfied certain criteria, as certified by MEGA. Under the bill, that is the definition of "qualified supplier" and "qualified customer" except that the business's location or expansion in Michigan does not have to occur within the last year, and the criteria must be satisfied before the issuance of a certificate and at the time specified in an agreement with the qualified taxpayer.

One of the criteria to be certified by MEGA is that the qualified supplier or qualified customer sells a critical or unique component or technology necessary for the anchor company to market a finished product, or buys a critical or unique component from the anchor company. Under the bill, the sale of a critical or unique component or technology must be as the result of a commercial relationship with the anchor company.

House Bill 4674

Anchor Company Credit

Public Act 92 of 2008 added Section 431a to the MBT Act to allow a qualified taxpayer to claim an MBT credit in an amount up to 100% of the qualified supplier's or customer's payroll attributable to employees who perform qualified new jobs as determined by MEGA, multiplied by the tax rate for the tax year, for up to five years, if the taxpayer receives a certificate from MEGA. Under the bill, the credit is equal to the sum of up to 100% of *each* qualified supplier's and qualified customer's payroll attributable to those employees, and the credit may include each of the qualified supplier's and qualified customer's payroll.

Under the bill, an anchor company has five years from the date of designation as an anchor company to seek certification for each qualified supplier *and* qualified customer included in the credit that the anchor company is seeking. Previously, the Act referred to each qualified supplier or customer.

The bill specifies that the credit under Section 431a may be taken after all other allowable nonrefundable credits under the Act.

Maximum Annual Number of Anchor Companies

The Act prohibits MEGA from designating more than five taxpayers as an anchor company in each calendar year or approving more than five new credits each year. Previously, if a qualified taxpayer was awarded a credit, any subsequent credits awarded to that taxpayer could not be included in determining the yearly limit of five new credits. The bill deleted that provision.

Qualified Sales to Qualified Customer

Previously, MEGA could provide that qualified sales to a qualified supplier or customer were not sales in Michigan for purposes of calculating the sales factor under the Act for the tax year for which a credit under Section 431a was provided. The bill specifies, instead, that MEGA may provide that qualified sales to a qualified customer are not to be considered in calculating the sales factor for the tax year.

The bill contains the same disclosure requirement as in Senate Bill 493.

Previously, qualified sales to a qualified supplier or customer were the total sales in Michigan to a qualified supplier or customer multiplied by a fraction, the numerator of which was the compensation on which the credit was calculated and the denominator of which was the total compensation of the qualified supplier or customer. House Bill 4674, instead, defines "qualified sales to a qualified customer" the same as it is defined in the Senate bill.

House Bill 4674 also makes the same changes regarding the definition of "qualified supplier" and "qualified customer", and the criteria to be certified by MEGA, as in Senate Bill 493.

MCL 208.1431c (S.B. 493)
208.1431a (H.B. 4674)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 493

The bill's changes to the MBT anchor company taxable property refundable credit,

for the most part, clarify and make technical changes to various provisions and components of the credit, and will have no fiscal impact. The bill also expands the area in which the taxable property of a qualified supplier or customer may be located to be eligible for calculating the anchor company credit. There is no way to know what impact this change will have on the cost of the credit. Any additional loss in MBT revenue due to this change will reduce General Fund revenue.

House Bill 4674

The bill's changes to the MBT anchor company payroll refundable credit will not change the basic credit, but instead clarify and make technical changes to various provisions and components of the credit. Therefore, this bill will have no fiscal impact.

Fiscal Analyst: David Zin

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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.