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BILL ANALYSIS

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Senate Bill 369 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 305 of 2011

Date Completed: 1-23-12

CONTENT

The bill amended the Michigan Business Tax (MBT) Act to exclude from "business income" and from "gross receipts" income or receipts derived from investment activity except activity in the regular course of the person's trade or business, for a person that is organized exclusively to conduct investment activity, and does not do so for anyone other than an individual or a person related to the individual and a common trust fund.

The bill also requires a person to be classified as a disregarded entity under the Act if the person is a disregarded entity for Federal income tax purposes.

In addition, the bill revised the following:

- **The income that is considered business income for an individual, estate, or person organized for estate or gift planning purposes.**
- **The deadline for submitting final liability.**
- **The definition of "research and development expenses".**

The bill states that it is retroactive and effective for taxes levied on and after January 1, 2008. The bill also states, "This amendatory act is curative and intended to clarify the original intent of 2007 PA 36" (the MBT Act).

Business Income

The Act defines "business income" as that part of Federal taxable income derived from business activity, and includes specific provisions for various kinds of taxpayers.

Under the bill, for a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual and for a common trust fund established under the Collective Investments Funds Act, business income excludes income derived from investment activity unless the activity is in the regular course of the person's trade or business. For this purpose, a person is related to an individual if the person is a spouse, whole or half brother or sister, ancestor, lineal descendant of the individual or related person, or a trust benefiting the individual or one or more people related to that individual.

Also, under the bill, for an individual, estate, or person organized for estate or gift planning purposes, business income is that part of Federal taxable income derived from transactions, activities, and sources in the regular course of the taxpayer's trade or business, including specific categories of income and gains or losses. Previously, the Act contained this provision but referred to a partnership organized exclusively for estate or gift planning purposes (rather than a person organized for such purposes), and included a trust. The bill deleted this reference to a trust and the reference to a partnership in this and related provisions.

The Act previously excluded from the business income of these taxpayers personal investment activity, including interest, dividends, and gains from a personal investment portfolio or retirement account. The bill, instead, excludes income from investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the person's trade or business.

The business income for these taxpayers previously included income derived from the sale of a business. The bill includes income derived from the sale of an interest in a business that constitutes an integral part of the person's regular trade or business. The bill also includes income derived from the lease or rental of real property.

Gross Receipts

The Act's definition of "gross receipts" refers to the entire amount received by the taxpayer from any activity in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others, except for specified amounts, proceeds, and receipts.

The Act previously excluded receipts derived from investment activity by a person that is organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related to that individual or by a common cash fund. Under the bill, this exclusion applies to receipts derived from investment activity other than receipts from transactions, activities, and sources in the regular course of the person's trade or business.

Disregarded Entity

The bill requires a person to be classified as a disregarded entity for purposes of the MBT Act if the person is a disregarded entity for Federal income tax purposes under the Internal Revenue Code (IRC).

Such a person is not required to file an amended return with its owner as a disregarded entity, however, if, before January 1, 2012, the person was treated as a person separate from its owner in an originally filed return, or, before December 1, 2011, the person was treated as a person separate from its owner in an amended return under the Act for a tax year beginning after December 31, 2007.

Also, a person that is a disregarded entity for Federal income tax purposes under the IRC may be treated as a person separate from its owner under the Act for its tax year that began after December 31, 2010, and ended before January 1, 2012, if the person, before January 1, 2012, in an originally filed return was treated as a person separate from its owner, or, before December 1, 2011, in an amended return was treated as a person separate from its owner under the Act for its first tax year beginning after December 31, 2009.

Other Provisions

The Act requires an annual or final return to be filed by the last day of the fourth month after the end of the taxpayer's tax year. Previously, any final liability had to be remitted with this return. The bill, instead, requires any final liability to be remitted by the last day of the fourth month after the end of the taxpayer's tax year.

Previously, for purposes of an MBT credit, the Act defined "research and development expenses" as that term as defined in a section of the Internal Revenue Code. The bill defines "research and development expenses" as qualified research expenses as that term is defined in the IRC.

MCL 208.1105 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will reduce General Fund revenue by an unknown amount. The provisions of the bill generally exclude certain income and receipts from the tax base. The magnitude of the exclusions is unknown and, for some taxpayers, will be partially offset by the reduction of some credits that are limited by or based on the tax liability before the application of credits.

The bill will not affect local unit revenue or expenditures.

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.