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BILL ANALYSIS

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Senate Bill 855 (as enacted)
Sponsor: Senator Mike Kowall
Senate Committee: Economic Development
House Committee: Commerce

PUBLIC ACT 292 of 2011

Date Completed: 7-23-12

CONTENT

The bill amended the Michigan Business Tax (MBT) Act to do the following:

- **Authorize the Michigan Economic Growth Authority (MEGA) to enter into an agreement providing a tax credit for the manufacture of certain battery and electronic products, instead of the manufacture of large-scale batteries.**
- **Limit the total credit to $50.0 million over four years.**
- **Designate the tax credit as a certificated credit.**
- **Require the agreement to provide for a reduction of the tax credit if the taxpayer fails to create at least 750 jobs.**
- **Require the Michigan Strategic Fund (MSF) to report annually to certain legislative committees.**
- **Provide that a taxpayer with certain certificated credits is not required to file a combined return as a unitary business group and may file a separate return and claim one certificated credit.**
- **Express legislative intent that savings realized in reduced credits be used to replace revenue lost due to personal property tax reform.**

The bill took effect on January 1, 2012.

Battery Production Credit

The Act previously allowed a taxpayer that had entered into an agreement with MEGA to claim a credit equal to 25% of the capital investment expenses for any tax year for the construction of a facility that would produce large-scale batteries and manufacture integrated power management, smart control, and storage systems from 500 kilowatts to 100 megawatts. The taxpayer could have claimed the credit if it created 500 new jobs in Michigan and received conventional financing, recovery zone facility bonds, or Federal loan guarantees from the U.S. Department of Energy for a project that employed innovative energy efficiency, renewable energy, and advanced transmission and distribution technologies under the Federal Energy Policy Act (42 USC 16513).

The bill, instead, allows a taxpayer to claim the credit for the construction of a facility that will produce at least one or more of the following:

- Batteries.
- Battery components.
- Storage systems.
- Battery thermal and management components or systems.
- AC or DC power supplies.
- Power electronics.
- Battery formation and test equipment.
- Energy conversion devices including components related to such products of various sizes and capacities.

The taxpayer must agree to create at least 750 new jobs in Michigan.

Only one agreement may be entered into under this provision, and the maximum allowable credit may not exceed $50.0 million over four years, with a maximum allowable credit of $25.0 million in any one year.

Previously, the Act allowed one agreement to be entered into for a maximum allowable credit of $25.0 million per year for up to four years.

The Authority may not adopt a resolution authorizing an agreement to provide a credit under the bill after June 30, 2012.

Certificated Credit

A battery production credit allowed by the bill for which a taxpayer enters into an agreement with MEGA before July 1, 2012, is a "certificated credit". (Under the Act, for the taxpayer's first tax year ending after December 31, 2011, a taxpayer may voluntarily elect to file a return and pay the MBT in order to claim a certificated credit or any unused carryforward for the tax year (in lieu of paying the Corporate Income Tax); the taxpayer then must continue to file a return and pay the MBT for each tax year until the certificated credit and any carryforward from it are used up.)

Credit Reduction

An agreement entered into for a battery production tax credit under the bill must include a provision that if the taxpayer fails to create 750 new jobs, the taxpayer's credit will be reduced by $65,000 for each job less than 750 that was not created. If the taxpayer fails to create at least 500 new jobs, the agreement must include a provision regarding an additional "clawback" of any credit or benefit received pursuant to the agreement.

Unitary Business Group

The Act requires a unitary business group to file a combined return that includes each U.S. person that is included in the unitary business group. Each must be treated as a single person and all transactions between them must be eliminated from the business income tax base, modified gross receipts tax base, and the apportionment formula under the Act.

Under the bill, however, a taxpayer that is a member of a unitary business group and that has a certificated credit for all of the following is not required to file a combined return as a unitary business group and may elect to file a separate return and pay the MBT, if any, and claim the certificated credit for construction of an integrative cell manufacturing facility.:

-- An MBT credit under the MEGA Act.
-- Tax credits for manufacturing plug-in traction battery packs.
-- Tax credits for construction of an integrative cell manufacturing facility.

If the taxpayer elects to file a separate return under this provision and redeem a voucher certificate under an agreement for the construction of an integrative cell manufacturing facility for an amount equal to the employment expenses and related engineering product development and administrative costs for the support of integrated battery cells, anodes and cathodes, and cell assembly, the taxpayer must create an additional 100 new jobs in Michigan, for a total of 400 new jobs, and the maximum allowable amount redeemed may not exceed $25.0 million per year for up to three years. The taxpayer may not claim a credit for any agreement entered for either of the following:

-- An MBT credit under the MEGA Act.
-- Tax credits for manufacturing plug-in traction battery packs.

MSF Annual Report to the Legislature

The MSF must report on project agreements for an MBT credit for the construction of a battery-production facility, entered into under the bill before July 1, 2012. The MSF also must report on project agreements for an MBT credit for the construction of an integrative cell manufacturing facility that were amended after December 1, 2011, but before July 1, 2012. The report must be submitted to the chair and minority vice-chair of the Senate and House Subcommittees on General Government, the Senate Economic Development Committee, and the House Commerce Committee, annually on January 1 beginning in 2014, and ending with a final report on January 1, 2020.

The report must detail each of the projects individually. It must list, separately, direct jobs created, direct revenue created, indirect jobs created, and indirect revenue created for each of those projects.

Legislative Intent

The bill states, "It is the intent of the legislature that the $75,000,000.00 savings realized in reduced credits…as a result of this amendatory act shall be passed on and utilized to replace any revenue lost due to any personal property tax reform."

MCL 208.1107 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will reduce Michigan Business Tax (MBT) revenue by $50.0 million in regard to the large-scale battery manufacturing credit. The provisions for this credit were originally estimated to reduce MBT revenue by up to $100.0 million over four years (with a maximum of $25.0 million per year) beginning after 2012. Since no taxpayer ultimately qualified for the credit as originally enacted, the revenue loss would have been zero. Under the revised criteria, the bill allows a taxpayer to claim not more than $50.0 million in credits over four years (with a maximum of $25.0 million per year).

To the extent that the business activity associated with the credit would not otherwise occur, any revenue loss under the bill will be offset, either partially or completely, by increased revenue from other taxes, particularly individual income taxes. Both the amount of the credit and the magnitude of any offsetting revenue will depend on the actual level of activity from the affected taxpayer, including whether other eligibility criteria are satisfied. For example, the taxpayer will not receive a credit unless the required minimum number of jobs has been created and the amount of the credit will depend on the actual number of jobs created.

The bill also allows a taxpayer, under certain circumstances, to alter its business tax filing and not file as a unitary business group. If the taxpayer makes this election, the bill increases the required minimum jobs and reduces the maximum credit for which the taxpayer is eligible from $25.0 million per year for four years to $25.0 million per year for three years. As a result, if the taxpayer makes this election, the bill will increase MBT revenue by $25.0 million, likely in tax year 2015.

Fiscal Analyst: David Zin

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