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BILL ANALYSIS

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Senate Bill 1006 (as enacted)
Sponsor: Senator Mark C. Jansen
Senate Committee: Finance
House Committee Tax Policy

PUBLIC ACT 601 of 2012

Date Completed: 4-3-13

CONTENT

The bill amended the Michigan Business Tax Act to revise the definition of "purchases from other firms" as it pertains to payments to subcontractors for a construction contract and payments for certain materials, by limiting the deduction to taxpayers that do not claim the small business credit for a tax year, rather than those that do not qualify for the credit. The bill also indicates that a deduction concerning truck transportation firms applies for the 2011 tax year and each subsequent tax year.

The Act imposes a modified gross receipts tax on taxpayers with nexus. The modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms before apportionment.

Under the bill, for a person included in major group 15, 16, or 17 under the Standard Industrial Classification Code that does not claim a credit under Section 417 (called the small business credit) for the same tax year, "purchases from other firms" includes the following:

-- Payments to subcontractors for a construction project under a contract specific to that project.
-- To the extent not deducted as inventory or assets acquired during the tax year, payments for materials deducted as purchases in determining the cost of goods sold for the purpose of calculating total income on the taxpayer's Federal income tax return.

Previously, this applied to a person included in major group 15, 16, or 17 that did not qualify for the credit under Section 417 (rather than such a taxpayer that does not claim the credit for the tax year).

(Major group 15 includes general contractors and operative builders. Major group 16 includes infrastructure construction contractors and heavy builders. Major group 17 includes special trade contractors, such as carpenters and plumbers.)

The bill states a legislative intent that "this amendatory act clarify that a person described under section 113(6)(e) [the section described above] of the Michigan business tax act…is only prohibited from deducting those purchases from other firms if that person actually claimed a credit under section 417...". The bill requires the amendment to be retroactively applied and effective for taxes levied after December 31, 2007.

In addition, for a person classified under the 2002 North American Industrial Classification System number 484 (truck transportation) that does not qualify for the credit under Section 417, "purchases from other firms" includes payments to subcontractors to transport freight by motor vehicle under a contract specific to that freight to be transported by motor vehicle. Under the bill, this applies for the 2011 tax year and each tax year after 2011.

The bill took effect on January 9, 2013.

MCL 208.1113

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Based on estimates from the Department of Treasury, the bill will reduce the State's General Fund revenue by approximately $2.0 million in FY 2012-13 and will have no impact on local government.

The bill will affect firms that may qualify for the small business credit but do not claim the credit. To qualify for the small business credit, a firm must have gross receipts of less than $20.0 million, and meet other requirements, including certain maximums on shareholder and officer income. A firm near the maximums allowed for the credit will exhibit a maximum Michigan Business Tax liability of approximately $300,000. Most firms that qualify for the credit claim it because it allows the taxpayer to avoid the gross receipts portion of the tax, pay a modified income tax that is approximately 70% less than the firm would pay absent the credit, and avoid the impact of the surcharge. As a result, few taxpayers are expected to be affected by the bill and the per-taxpayer impact of the bill will likely be less than $300,000.

Due to the retroactivity provisions, the bill's impact could amount to several millions of dollars even if only a dozen taxpayers are affected. Most of the impact will affect FY 2012-13 revenue, as taxpayers file amended returns as a result of the bill.

Fiscal Analyst: David Zin