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BILL ANALYSIS

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Senate Bill 1037 (Substitute S-1 as reported)
Sponsor: Senator Jack Brandenburg
Committee: Finance

CONTENT

The bill would amend the Michigan Business Tax Act to do the following:

-- Specify that materials and supplies (in the definition of "purchases from other firms") would mean tangible personal property expensed by the taxpayer and not capitalized for Federal income tax purposes (which would allow the purchase of this property to be deducted from the taxpayer's modified gross receipts base).
-- Include self-constructed assets in the definition of "purchases from other firms".
-- Exclude from the definition of "gross receipts" amounts attributable to the taxpayer pursuant to a discharge of indebtedness, including forgiveness of a nonrecourse debt.
-- Provide for the business income tax base deduction for net earnings from self-employment of the taxpayer or a partner or limited liability company member of the taxpayer, to be the amount reported in a Schedule K-1.
-- Indicate that, for purposes of the business loss deduction from the income tax base, a taxpayer that acquired assets of another corporation in a certain kind of transaction could deduct the business loss attributable to that distributor or transferor corporation.
-- Specify that, if a buyer of tangible personal property did not identify the ultimate destination, property would be considered temporarily stored at a destination if it were stored for fewer than 30 days (for purposes of determining sales of a taxpayer in this State).
-- Require transactions between people in a unitary business group or included in a combined return, to be eliminated for purposes of determining the exemptions, deductions, subtractions, credits, and filing threshold under the Act.
-- Require credits under Section 403 (which allows a compensation credit and a credit for investments in tangible assets) and under Section 405 (which allows a research and development credit) to be claimed before carryovers of former Single Business Tax credits.
-- In the calculation of the investment tax credit, revise language that provides for the recapture of certain amounts to the extent the credit is used.
-- Revise the calculation of the renaissance zone credit for taxpayers located and conducting business activity in a zone before December 1, 2002, by providing for the credit to be either the amount currently allowed or the amount allowed for taxpayers located in a zone after that date, whichever was greater.
-- In the definition of "officer", add "such as major decision making" to describe duties similar to those performed by the chairperson of the board, or the president, vice president, secretary, or treasurer of the corporation or the board; and refer to responsibilities as well as duties.

The bill states, "This amendatory act is curative and intended to clarify the original intent of 2007 PA 36" (the MBT Act).

MCL 208.1111 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce General Fund revenue by an unknown and likely significant amount. The provisions of the bill generally would: 1) exclude certain income and receipts from the tax base, 2) reduce the tax base by increasing the value of certain deductions, and 3) alter the calculation for computing or applying certain credits. While the impact of many of the changes is unknown, the Department of Treasury estimates that the changes in the definition of materials and supplies could reduce revenue by as much as $110 million per year, while the changes in the renaissance zone credit would lower revenue by approximately $11 million per year.

The intent language indicating the changes are curative suggests the bill is intended to be retroactive. To the extent the bill was retroactive, the loss of revenue would be increased by an unknown amount that would likely be substantially greater than if the bill were not retroactive. For example, because it would affect four years of returns, the change in the definition of materials and supplies could reduce revenue by as much as $440 million.

Because taxpayers could claim Single Business Tax (SBT) credit carry-forwards only in the 2008 and 2009 tax years, these changes in the bill would have an impact only if the bill were retroactive. The changes in the application of SBT credit carry-forwards could reduce revenue by as much as $20 million.

Most of the revenue loss from any retroactivity would likely occur in FY 2012-13, as taxpayers filed amended returns as a result of the bill.

The bill would not affect local unit revenue or expenditure.

Date Completed: 5-24-12 Fiscal Analyst: David Zin