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BILL ANALYSIS

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Senate Bill 1037 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 605 of 2012

Date Completed: 3-19-13

CONTENT

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

-- **Revise an adjustment to the business income tax base for earnings from self-employment of the taxpayer or a partner.**
-- **Revise an adjustment to the business income tax base concerning a business loss attributable to another corporation.**
-- **Specify when property stored in transit or a dock sale is considered to be at its ultimate destination, for purposes of apportionment.**
-- **Revise the definition of "officer".**
-- **Allow a historic preservation credit to be assigned within 12 months after the tax year in which a certificate of completed rehabilitation was issued.**

The bill states, "This amendatory act is curative and intended to clarify the original intent of 2007 PA 36 [the MBT Act] and shall be retroactively applied."

Business Income Tax Base

The Act imposes a business income tax on taxpayers with business activity in the State at the rate of 4.95% of the business income tax base. The tax base is a taxpayer's business income subject to a number of adjustments.

One of the adjustments previously allowed the taxpayer to deduct, to the extent included in Federal taxable income, any earnings that were net earnings from self-employment, as defined in the Internal Revenue Code (IRC), of the taxpayer or a partner or limited liability company member of the taxpayer, except to the extent that those net earnings represented a reasonable return on capital.

The bill, instead, allows a taxpayer to deduct, to the extent included in Federal taxable income, any earnings that are net earnings from self-employment as defined in the IRC of the taxpayer or a partner of the taxpayer. For purposes of a partner, it must be the amount properly reported on a Schedule K-1-Form 1065 as self-employment earnings for Federal income tax purposes for the tax year.

The Act also allows a taxpayer to deduct any available business loss incurred after December 31, 2007. The bill provides that, for this purpose, a taxpayer that acquires the assets of another corporation in a transaction described in Section 381(a)(1) or (2) of the IRC may deduct any business loss attributable to that distributor or transferor corporation. (That section of the IRC pertains to carryovers in certain corporate transactions, and contains a general rule when the assets of one corporation are acquired by another in certain distributions or transfers.)

Apportionment: Sales in this State

The Act requires the apportionment of a taxpayer's tax base based on the sales factor, which is the total sales of the taxpayer in this State divided by the total sales of the taxpayer everywhere during the tax year. Sales of the taxpayer in this State include sales of tangible personal property that is shipped or delivered to any purchaser within this State based on the ultimate destination at the point that the property comes to rest, regardless of the free on board point or other conditions of the sales.

The bill provides that property stored in transit for 60 days or more before receipt by the purchaser or the purchaser's designee, or in the case of a dock sale not picked up for 60 days or more, must be deemed to have come to rest at this ultimate destination. Property stored in transit for fewer than 60 days before receipt by the purchaser or the purchaser's designee, or in the case of a dock sale not picked up before 60 days, is not deemed to have come to rest at this ultimate destination for purposes of this provision.

The bill defines "stored in transit" as storing, staging, forwarding, or consolidating activities undertaken for further shipment or transfer of the property to the purchaser or the purchaser's designee. "Dock sale" means a sale in which the purchaser uses its own or rented vehicles, or makes arrangements with a carrier, to pick up the property at the seller's location.

"Officer"

The Act defines "officer" as an officer of a corporation other than a subchapter S corporation, including all of the following:

-- The chairperson of the board.
-- The president, vice president, secretary, or treasurer of the corporation or board.
-- People performing similar duties (and responsibilities, under the bill) to those described above.

Under the bill, the similar duties and responsibilities must include, at a minimum, major decision-making.

Historic Preservation Credit

Under Section 435 of the Act, a qualified taxpayer that owns and rehabilitates a historic resource may claim a credit against the Michigan Business Tax for a percentage of the taxpayer's qualified expenditures, if the taxpayer receives a preapproval letter and a certificate of completed rehabilitation, and other criteria are met.

The Act allows a qualified taxpayer to assign all or a portion of the credit. A credit assignment must be made in the tax year in which a certificate of completed rehabilitation is issued.

Under the bill, notwithstanding this requirement, for projects for which a certificate of completed rehabilitation was issued for a tax year beginning after December 31, 2007, and ending before January 1, 2012, an assignment by a qualified taxpayer of all or any portion of a credit made within the 12 months immediately after the tax year in which the certificate was issued, will qualify as an assignment.

(Although the bill includes this amendment to Section 435, the same amendment was enacted by Public Act 475 of 2012.)

MCL 208.1111 et al.

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 $14.0 million in FY 2012-13 and approximately $5.0 million per year in future years until the provisions of the historic preservation credit are no longer effective. The bill will have no impact on local government.

To the extent the bill is retroactive, the revenue loss will be greater during FY 2012-13, as taxpayers file amended returns as a result of the bill.

Fiscal Analyst: David Zin