

# Legislative Analysis



## MBT/CIT TREATMENT OF TAXPAYERS CLAIMING CERTIFICATED CREDITS

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5041 (Substitute H-1)**  
**Sponsor: Rep. Jeff Farrington**  
**Committee: Tax Policy**

*(Enrolled as PA 233 of 2013)*

**Complete to 10-30-13**

### A SUMMARY OF HOUSE BILL 5041 AS REPORTED FROM COMMITTEE

Generally speaking, the Michigan Business Tax (MBT) and the successor Corporate Income Tax (CIT) each provide that taxpayers that had been approved for, received, or assigned certain "certificated credits" under the MBT prior to January 1, 2012, (the start of the CIT) may elect to continue to file and pay the MBT rather than the CIT in order to continue claiming those certificated credits until the credits (and any carryforwards) are fully exhausted.

Under the CIT, distributable income of a flow-through entity (FTE) to a C-corporation member is subject to the CIT. The two acts, therefore, seem to allow for situations where the distributable income of a non-unitary FTE electing to continue filing MBT returns in order to claim any certificated credits is subject to both the MBT and the CIT. (Generally speaking, the term "flow-through entities" refers to S-corporations, partnerships, limited partnerships, limited liability partnerships, or limited liability companies.)

House Bill 5041 (H-1) would amend the Michigan Business Tax Act to specify that in the case of a flow-through entity (FTE) that has made an election to pay MBT taxes, each member of that FTE that does not file as a member of a unitary business group— that is, each non-unitary owner of the FTE—would disregard all items attributable to their ownership interest in the FTE for CIT purposes. That FTE would also not be subject to the CIT's withholding requirements for its members that are corporations.<sup>1</sup>

The bill would be retroactive and effective for tax years that begin after December 31, 2011.

### FISCAL IMPACT:

As written, the bill would reduce state revenues relative to current law. This reduction in revenue will affect the General Fund. Information on individual taxpayers is not available; therefore we are unable to provide estimates of the magnitude of the reduction at this time.

### POSITIONS:

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<sup>1</sup> Part 3 of the Income Tax Act (MCL 206.703) requires flow-through entities with business activity in Michigan that have more than \$200,000 of business income in the tax year after allocation or apportionment to withhold a tax on the distributive share of business income of each corporation or flow-through member of the flow-through entity.

The Department of Treasury supports the bill. (10-23-13)

The Michigan Manufacturers Association supports the bill. (10-16-13)

The Michigan Chamber of Commerce supports the bill. (10-23-13)

Legislative Analyst: Mark Wolf  
Fiscal Analyst: Jim Stansell  
Adam Desrosiers

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