Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 155 (as reported without amendment)
Sponsor: Senator Jack Brandenburg
Committee: Finance

CONTENT

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

-- Revise the adjustment to the modified gross receipts tax base for purchases from other firms with respect to materials and supplies (as described below).
-- Allow an adjustment to the modified gross receipts tax base for amounts attributable to the taxpayer pursuant to a discharge of indebtedness.
-- Require transactions between people in a unitary business group to be eliminated for purposes of determining the exemptions, deductions, subtractions, credits, and filing threshold under the Act.
-- Require the compensation and investment credit and the research and development credit to be claimed before the unused carryforward of a Single Business Tax credit.

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. The definition of "purchases from other firms" includes materials and supplies, to the extent not included in inventory or depreciable property. The bill specifies that, for this purpose, materials and supplies would mean tangible personal property expensed by the taxpayer and not capitalized for Federal income tax purposes.

"Purchases from other firms" also includes assets acquired during the tax year of a type that are, or under the Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for Federal income tax purposes. The bill would refer to assets acquired "or self-constructed" during the tax year of the specified type.

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

Based on estimates from the Department of Treasury, the bill would reduce General Fund revenue by an unknown and likely significant amount that could exceed $500 million in the first year after the bill was enacted and substantially less in later years. 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 some of the changes is unknown, all of the changes would reduce State General Fund revenue.

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. 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 for tax years 2008 through 2011. By being retroactive, the bill would affect four years of returns, and the change in the definition of materials and supplies could reduce revenue by as much as $440 million.

The Department of Treasury also estimates that excluding amounts attributed to a taxpayer pursuant to a discharge of indebtedness would lower revenue by approximately $2.5 million per year over the same period ($10.0 million over the four-year retroactive period), and affect between $10.0 and $20.0 million of assessments that have been made against taxpayers. Altering the order in which credits and carry-forwards are applied would reduce revenue by approximately $5.0 million per year. 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 $20.0 million.

The impact of excluding self-constructed assets is unknown, as is the impact of changing the calculation of exemptions, deductions, credits, and the filing threshold for members of unified business groups.

Most of the revenue loss from any retroactivity would likely occur in either FY 2012-13 or FY 2013-14, as taxpayers filed amended returns as a result of the bill. The bill's changes would also reduce future revenue, but by a significantly smaller magnitude than the impact from the retroactivity of the bill.

The bill would not affect local unit revenue or expenditure.

Date Completed: 3-29-13 Fiscal Analyst: David Zin