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BILL ANALYSIS

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Senate Bill 156 (Substitute S-2 as reported by the Committee of the Whole)
Sponsor: Senator Jack Brandenburg
Committee: Finance

CONTENT

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

-- Delete from the definition of "gross receipts", for purposes of the modified gross receipts tax, amounts attributable to the taxpayer pursuant to a discharge of indebtedness.
-- Revise the adjustment to the modified gross receipts tax for purchases from other firms.
-- Revise calculation of the cost of tangible assets for purposes of the investment credit.
-- Revise the credit for a taxpayer located and conducting business in a renaissance zone before December 1, 2002, by providing for the credit to be based either on the current calculation for those taxpayers, or on the calculation allowed for other business taxpayers in a renaissance zone, whichever was greater.
-- 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.
-- Provide that, in the case of a dock sale, property picked up (rather than not picked up) before 60 days is not deemed to have come to rest at this ultimate destination.
-- Allow a taxpayer to claim a refund if, as a result of the bill's amendments, the taxpayer had an overpayment of tax.

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

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. "Purchases from other firms" means inventory acquired during the tax year; assets acquired during the tax year of a type that are or will become eligible for depreciation, amortization, or accelerated capital cost recovery for Federal income tax purposes; and, to the extent not included in inventory or depreciable property, materials and supplies. Under the bill, purchases from other firms would mean those items to the extent included in gross receipts. Assets would include those that were self-constructed, as well as acquired, during the tax year. Materials and supplies would be included without regard to whether they were related to inventory or depreciable property.

The Act allows a taxpayer to claim a credit for a percentage of compensation paid in this State, and for a percentage of the cost of tangible assets in which the taxpayer invested (the investment credit), and imposes a limit on this total combined credit. The bill would require this credit to be taken before any allowed unused carryforward from the former Single Business Tax. The calculation of the cost of tangible assets requires the taxpayer to subtract the gain from the sale or other disposition added to the business income tax base. The bill would delete that requirement.

If a taxpayer had an overpayment of tax as a result of the bill, the taxpayer could file an amended return claiming a refund. If the Department of Treasury agreed that the taxpayer's claim was valid, the Department would have to certify the amount of the overpayment. The Department would have to first apply the overpayment and interest to any known liability of the taxpayer, as required by the revenue Act. Any excess would have to be refunded, or claimed as a credit against other taxes, in equal installments over 15 years or, at the taxpayer's request, it could be credited against any current or subsequent tax liability under 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 $432.0 million. Most of the loss in revenue would likely be experienced over a 15-year period. 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, almost all of the changes would reduce State General Fund revenue.

The intent language indicating the changes are curative suggests that 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 description of materials and supplies could reduce revenue by as much as $68.2 million per year for tax years 2008 through 2011. If the bill were retroactive, it would affect five years of returns, and the change in the description of materials and supplies could reduce revenue by as much as $341.0 million.

The Department also estimates that excluding amounts attributed to a taxpayer pursuant to a discharge of indebtedness would lower revenue by approximately $2.0 million per year over the same period ($10.0 million over the five-year retroactivity 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 $22.0 million per year. Because taxpayers currently may claim Single Business Tax credit carry-forwards only in the 2008 and 2009 tax years, these changes in the bill would have an impact only if it were retroactive.

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. The Department indicates that these reductions could be significant.

Altering the calculation of the renaissance zone credit is estimated to reduce revenue by approximately $4.4 million per year ($22.0 million over the five-year retroactivity period). The impact of the changes to the calculation for recapturing investment tax credits when property for which the credits were previously claimed is sold, is indeterminate and could possibly increase revenue.

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. To the extent that many taxpayers no longer file MBT returns, most of the bill's impact would be paid as refunds over 15 years, reducing revenue by an average of $27.5 million per year, assuming the bill's provisions were retroactive.

The bill would not affect local unit revenue or expenditure.

Date Completed: 9-25-13 Fiscal Analyst: David Zin