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BILL ANALYSIS

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House Bill 5041 (Substitute H-1 as passed by the House)
Sponsor: Representative Jeff Farrington
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 12-9-13

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to require a member of a flow-through entity that elected to file under the Act, to disregard all items attributable to the member's ownership interest in the flow-through entity, if the member did not file as a member of a unitary business group with the flow-through entity, and exempt the flow-through entity from certain withholding requirements of the Income Tax Act, with respect to its corporate members.

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

The MBT Act allows taxpayers to elect to continuing filing under that Act in order to claim "certificated credits", rather than filing under Part 2 of the Income Tax Act, which provides for the Corporate Income Tax. Except as otherwise allowed for taxpayers who are unitary business group (UBG) members with particular certificated credits, if the taxpayer that elects to file an MBT return in order to claim a certificated credit is a unitary business group, the return filed by the UBG must include all people included in the group regardless of whether they are incorporated.

Under the bill, in the case of a flow-through entity that elected to file under the MBT Act, each member of the entity that did not file as a member of a unitary business group with the flow-through entity would have to disregard all items attributable to that member's ownership interest in the flow-through entity for all purposes of Part 2 of the Income Tax Act, and the flow-through entity would not be subject to the tax withholding provisions of Section 703(4) of the Income Tax Act with respect to its members that are corporations.

(Flow-through entities include S corporations, partnerships, and limited liability companies. Under Section 703(4) of the Income Tax Act, every flow-through entity with business activity in the State that has more than $200,000 of business income reasonably expected to accrue in the tax year after allocation or apportionment, must withhold a tax computed by applying the Corporate Income Tax rate to the distributive share of the business income of each member that is a corporation or a flow-through entity.)

MCL 208.1500

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce State General Fund revenue by an unknown amount that would depend on the specific characteristics of the affected taxpayers. In some cases, the reduction could be significant. Flow-through entities, including those that are members of a unitary group that is taxed as a corporation, are not taxed under the Corporate Income Tax. Affected taxpayers would be taxpayers claiming certificated credits and thus still required to file a Michigan Business Tax return. However, because of the nature of the unitary business operations and the tax structure under current law, income from the flow-through entities would be included in the tax base under both the MBT (for the flow-through entity) and the Corporate Income Tax (for the corporate unitary "parent").

Fiscal Analyst: David Zin