

Legislative Analysis



MBT CERTIFICATED CREDITS AFTER MERGER

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5557 as introduced
Sponsor: Rep. Jeff Farrington

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5558 as introduced
Sponsor: Rep. Robert L. Kosowski

Committee: Tax Policy
Complete to 4-19-16

SUMMARY:

Generally speaking, these bills address circumstances where a business firm acquires another firm through a merger, and the firm being acquired has been approved to receive, or has been assigned, a certificated credit under the Michigan Business Tax (MBT). In such cases, the acquiring firm could elect to file under and pay the MBT instead of the Corporate Income Tax (CIT). The bills allow an acquiring firm that had already filed under the CIT prior to the enactment of these bills to file an amended return under the CIT and an original return under the MBT.

House Bill 5557 would amend the Income Tax Act, which contains the CIT. (MCL 206.680). House Bill 5558 would amend the Michigan Business Tax Act (MCL 208.1117 et al.) The two bills are tie-barred, meaning neither could take effect unless both are enacted.

In 2011, the Michigan Business Tax was replaced by a new Corporate Income Tax. However, businesses that had been approved for, received, or assigned certain "certificated credits" under the MBT prior to January 1, 2012, (the start of the CIT) are allowed 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. Once the last credit or carryforward based on a credit has been claimed, the MBT will be fully repealed.

House Bills 5557 and 5558 each contain similar provisions, and specify the following:

- If a taxpayer under the CIT acquires by merger all rights, privileges, and liabilities of another firm or member of a unitary business group,
- And the firm being acquired has (1) been approved to receive, has received, or has been assigned a certificated credit under the MBT that has not been fully claimed or paid prior to the date of the merger, and (2) has filed a return or has been included in a combined return and paid the MBT in lieu of the CIT in order to claim the credit,
- Then the acquiring business could, for the first year ending after the acquisition and the assignment of the credit only, elect to pay the MBT in lieu of the CIT.

Such a taxpayer electing to file under the MBT for tax years ending prior to the enactment of these bills that had already filed under the CIT would file an amended CIT return for that tax year (and each tax year thereafter) and file an original return under the MBT. This election would continue until the certificated credit and any carryforward is used up. The taxpayer would have to notify the Department of Treasury of the election and file an annual return within four months after making the election and include a copy of the corresponding amended returns under the CIT that were made necessary by the MBT election.

A taxpayer electing to file also could claim any other certificated credit for which the firm was eligible but not any certificated credit that would have accrued in any year before the election allowed for in the bills. Once the certificated credit that was the basis for the election was extinguished, the taxpayer would no longer be eligible to pay the MBT and claim any other remaining certificated credit.

FISCAL IMPACT:

A fiscal impact cannot be determined because the necessary taxpayer information is unavailable due to confidentiality constraints. However, to the extent that the bills allow credits to be claimed that would have otherwise been foregone in the event of a merger, there will be a revenue loss to the state. In addition, the bills do not appear to exclude the possibility that previously dormant certificated MBT credits could again be claimed in the event of a merger.

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