

MBT CERTIFICATED CREDITS AFTER MERGER

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House Bill 5557 as introduced
Sponsor: Rep. Jeff Farrington

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

House Bill 5558 (Substitute H-1 as adopted by committee)
Sponsor: Rep. Robert L. Kosowski

Committee: Tax Policy
Complete to 4-25-16

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 Once the last credit or carryforward based on a credit has been claimed, the MBT will be fully repealed.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 whose existence was terminated as a result of the merger was eligible, but not any certificated credit that would have accrued in any year before the election allowed for in the bills.

The taxpayer making the election to file the CIT (the acquiring company) would not be eligible to claim any other certificated credit for which an election could have been made for the first tax year ending after December 31, 2011.

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:

Based on information provided by the Department of Treasury and MEDC, the bills would permit an estimated \$50 million to \$60 million of existing certificated credits to be claimed over roughly the next 20 years that would have otherwise been ineligible under the CIT. Thus, although it may not be a direct loss of revenue, it reflects an implicit loss relative to current law. This estimate does not include the potential for any subsequent mergers that might occur in the future, in which case the implicit revenue loss would be larger.

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