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BILL



ANALYSIS

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Senate Bill 461 through 464 (as reported without amendment)

Sponsor: Senator Patrick J. Colbeck (S.B. 461)  
Senator Tonya Schuitmaker (S.B. 462)  
Senator Goeff Hansen (S.B. 463 & 464)

Committee: Finance

Date Completed: 2-18-16

### **RATIONALE**

Legislation enacted in 2011 restructured business and personal income taxes by repealing the Michigan Business Tax and replacing it with the new Corporate Income Tax; eliminating a number of personal income tax deductions, exemptions, and credits, including credits for charitable contributions; and making various other changes. Apparently, many charitable organizations have suffered since the restructuring due to reduced contributions. Some believe that reinstating tax credits for charitable donations would provide the necessary incentive for individuals to give more to charitable organizations or other institutions that provide services that benefit the public.

### **CONTENT**

**Each bill would amend Part 1 of the Income Tax Act (which applies to individuals and noncorporate entities) to allow a taxpayer to claim a credit against the income tax for various contributions or expenses, for tax years beginning after December 31, 2015.**

**Senate Bill 461 would allow a credit of up to 50% of the aggregate amount of charitable contributions made by a taxpayer during the tax year for public art or an art institution; a public library; a public broadcast station; a college, university, or institution of higher education located in Michigan; or the State Museum.**

**Senate Bill 462 would allow a taxpayer to claim a credit for donations of cash and food to a homeless shelter, food bank, or food kitchen, and for contributions to a community foundation meeting certain criteria.**

**Senate Bill 463 would allow a taxpayer to claim a credit equal to the taxpayer's qualified adoption expenses in excess of the amount of credit for qualified adoption expenses the taxpayer claimed under the Internal Revenue Code, or \$1,200 per child, whichever was less.**

**Senate Bill 464 would allow a taxpayer to claim a credit in an amount equal to 50% of the fair market value of an automobile donated by the taxpayer to a qualified organization that intended to provide the automobile to a qualified recipient.**

The bills are described in further detail below.

#### **Senate Bill 461**

The bill would allow a taxpayer, subject to the applicable limitation, to claim a credit against the income tax for up to 50% of the aggregate amount of charitable contributions made by the taxpayer during the tax year to any of the following:

- The State under the Faxon-McNamee Art in Public Places Act, of an artwork created by the taxpayer, for display in a public place.
- The State Art in Public Places Fund created under the Art in Public Places Act.
- A municipality in Michigan of an artwork created by the personal effort of the taxpayer for display in a public place.
- Either a municipality in Michigan or a nonprofit corporation affiliated with both a municipality and an art institute located in the municipality, of money or artwork, whether or not created by the personal effort of the taxpayer, if for the purpose of benefiting an art institute located in that municipality.
- A public library.
- A public broadcast station as defined under Section 397 of the Federal Communications Act, that is not affiliated with an institution of higher learning and that is located within Michigan.
- An institution of higher learning located in Michigan.
- The Michigan Colleges Foundation.
- The State Museum.
- The Department of State for the purpose of preservation of the State Archives.
- A nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of institutions of higher learning located in Michigan.

A tax credit for a contribution described under the last item would be permitted only if the donee corporation, fund, foundation, trust, or association were controlled or approved and reviewed by the governing board of the institution benefiting from the charitable contribution. The nonprofit corporation, fund, foundation, trust, or association would be required to provide copies of its annual independently audited financial statements to the Auditor General and chairpersons of the Senate and House Appropriations Committees.

For a taxpayer other than a resident estate or trust, the amount allowable as a credit under the bill for a tax year could not exceed \$100, or for a joint return, \$200. For a resident estate or trust, the amount allowable as a credit for a tax year could not exceed 10% of the tax liability for the year as determined without regard to the bill or \$5,000, whichever was less, and could not have been deducted in arriving at Federal taxable income.

"Institution of higher learning" would mean only an educational institution located within Michigan that meets all of the following requirements:

- It maintains a regular faculty and curriculum and has a regularly enrolled student body in attendance at the place where its educational activities are carried on.
- It regularly offers education above the 12<sup>th</sup> grade.
- It awards associate, bachelor's, master's, or doctorate degrees or a combination of those degrees or higher education credits acceptable for those degrees granted by other institutions of higher learning.
- It is recognized by the State Board of Education as an institution of higher learning and appears as an institution of higher learning in the annual publication of the Department of Education entitled, "The Directory of Institutions of Higher Education".

"Public library" would mean the term as defined in Section 2 of the State Aid to Public Libraries Act. (That section defines "public library" as a library that is lawfully established for free public purposes by one or more counties, cities, townships, villages, school districts, or other local governments or a combination of them, or by a public or local act, whose entire interests belong to the general public. The term does not include a special library such as a professional, technical, or school library.)

Section 397 of the Communications Act defines "public broadcast station" as a television or radio broadcast station that either 1) under the rules and regulations of the Corporation for Public Broadcasting in effect on November 2, 1978, is eligible to be licensed by the Corporation as a noncommercial educational radio or television broadcast station and is owned and operated by a public agency or nonprofit private foundation, corporation, or association; or 2) is owned and operated by a municipality and transmits only noncommercial programs for educational purposes.

"Contributions made by the taxpayer" would mean, but would not be limited to, the fair market value of artwork created by the personal effort of the taxpayer that is donated to and accepted as a donation by a qualified organization. The fair market value of a piece of artwork would have to be determined at the time of the donation by independent appraisal.

"Artwork" would mean an original, visual creation of quality executed in any size or shape, in any media, using any kind or type of materials.

### **Senate Bill 462**

The bill would allow a taxpayer to claim a credit for up to 50% of the sum of the cash amount and, if food items were contributed in conjunction with a program in which a vendor makes a matching contribution of similar items, the value of those food items the taxpayer contributed during the tax year to a shelter for homeless individuals, food kitchen, food bank, or other entity located in Michigan whose primary purpose is to provide overnight accommodation, food, or meals to indigent people if a contribution to that entity were tax deductible for the donor under the Internal Revenue Code.

For a taxpayer other than a resident estate or trust, the credit allowed for a contribution to a community foundation could not exceed \$100, or \$200 for a joint return. A taxpayer could claim an additional credit not to exceed \$100, or \$200 for a joint return, for total cash contributions made, including the value of food items contributed in the tax year to shelters for homeless individuals, food kitchens, food banks, and, except for community foundations, other entities described above.

A resident estate or trust could claim a credit not to exceed 10% of the taxpayer's tax liability for the tax year before claiming any credits allowed by the Act or \$5,000, whichever was less, for total cash contributions made, including the value of food items contributed as described above in the tax year to homeless shelters, food kitchens, food banks, and, except for community foundations, other entities described above. For a resident estate or trust, the amount used to calculate the proposed credits could not have been deducted in arriving at Federal taxable income.

When calculating the amount of the credit allowed under the bill, a taxpayer could include as a cash contribution an amount equal to the value of food items contributed as described above in the tax year to a homeless shelter, food kitchen, food bank, or other entity located in Michigan described above.

If the amount of the credits allowed under the bill exceeded the tax liability of the taxpayer for the tax year, the excess portion could not be refunded.

An entity other than a community foundation could request that the Department of Treasury determine if a contribution to that entity qualified for the proposed credit. The Department would be required to make a determination and respond to a request within 30 days after it received the request.

A taxpayer could claim a credit for contributions to a community foundation made within an 18-month period after a community foundation was incorporated or established; during that 18-month period, the community foundation would have to build an endowment value of \$100,000. If the community foundation did not reach the required endowment value during that period, contributions to it made after the date on which the 18-month period expired could not be used to calculate a credit under the bill. If the community foundation had an endowment value of \$100,000 at any time after the 18-month period expired, the foundation could apply to the Department of Treasury for certification.

By July 1 of each year, the Department would be required to report to the House Committee on Tax Policy and the Senate Finance Committee the total amount of tax credits claimed under the bill for the immediately preceding tax year.

"Community foundation" would mean an organization that applies for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit, and that the Department certifies for that tax year as meeting all of the following requirements:

- Qualifies for exemption from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code (which generally applies to nonprofit, charitable organizations).
- Supports a broad range of charitable activities within the specific geographic area of Michigan that it serves, such as a municipality or county.
- Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served.
- Is publicly supported as defined by the regulations of the U.S. Department of Treasury.
- Is not a supporting organization as an organization is described in Section 509(a)(3) of the Internal Revenue Code and U.S. Department of Treasury regulations (i.e., a charity that carries out its exempt purposes by supporting other exempt organizations, usually other public charities).
- Meets all of the requirements for treatment as a single entity contained in regulations of the U.S. Department of Treasury, 26 CFR 1.170A-9(F)(11).
- Except as provided under the bill, is incorporated or established as a trust at least six months before the beginning of the tax year for which the proposed credit is claimed and has an endowment value of at least \$100,000 within 18 months after the community foundation is incorporated or established.
- Has an independent governing body representing the general public's interest that is not appointed by a single outside entity.
- Gives the Michigan Department of Treasury evidence that the community foundation has, within six months after it is created, and maintains continually during the tax year for which the proposed credit is claimed, at least one part-time or full-time employee.

Also, for community foundations having an endowment value of \$1.0 million or more only, the community foundation would be subject to an annual independent financial audit and would have to provide copies of that audit to the Department within three months after its completion. For community foundations with an endowment value of less than \$1.0 million, the community foundation would be subject to an annual review and an audit every third year.

In addition to all other criteria listed under the bill for a community foundation that was incorporated or established after June 22, 2000, it would have to be operated in a Michigan county that was not served by a community foundation when the community foundation was incorporated or established or operated as a geographic component of an existing certified community foundation.

To maintain certification, a community foundation would be required annually to submit to the Department documentation that demonstrated compliance under the bill.

### **Senate Bill 463**

The bill would allow an eligible taxpayer to claim a credit against the income tax for tax years beginning after December 31, 2015, equal to the taxpayer's qualified adoption expenses in excess of the amount of credit for qualified adoption expenses the taxpayer claimed under Section 23 of the Internal Revenue Code (IRC), or \$1,200 per child, whichever was less.

If the credit allowed under the bill for the tax year exceeded the taxpayer's tax liability for the year, the excess would be refunded.

"Eligible taxpayer" would mean a taxpayer who claimed a credit under Section 23 of the IRC for the same tax year as the taxpayer is claiming a credit under the bill.

"Qualified adoption expenses" would mean adoption expenses that are eligible to be used by an eligible taxpayer to claim a credit against the taxpayer's Federal tax liability under Section 23 of the IRS for the same tax year as the taxpayer is claiming a credit under the bill.

(Section 23 of the Internal Revenue Code allows a tax credit for qualified adoption expenses paid by a taxpayer, including an enhanced credit for the adoption of a child with special needs. The credit is subject to income and dollar limitations. "Qualified adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other related expenses that meet criteria outlined in the section.)

### **Senate Bill 464**

The bill would allow a taxpayer to claim a credit against the income tax in an amount equal to 50% of the fair market value of an automobile donated by the taxpayer to a qualified organization that intended to provide the automobile to a qualified recipient.

For a taxpayer other than a resident estate or trust, the amount allowable as a credit under the bill for a tax year could not exceed \$50, or for a joint return, \$100. If the credit exceeded the tax liability of the taxpayer for the tax year, the excess amount would not be refunded.

The value of a passenger vehicle would have to be determined by the qualified organization or by using the value of the automobile in the appropriate guide published by the National Automotive Dealers Association, whichever was less.

"Qualified organization" and "qualified recipient" would mean those same terms as defined in the Use Tax Act. Under that Act, "qualified organization" means an organization that applies for certification by July 1 of the year in which an exemption is claimed under the Act and is certified by the Department of Treasury as meeting several requirements, including exemption from taxation under Section 501(c)(3) of the Internal Revenue Code (which generally applies to a nonprofit, charitable organization).

The Use Tax Act defines "qualified recipient" as a person certified by a qualified organization as meeting all of the following requirements:

- The qualified recipient receives or, if he or she applied, would be eligible to receive public assistance through a program created and administered under the Social Welfare Act.
- The qualified recipient has a valid Michigan operator's or chauffeur's license.
- The qualified recipient is financially capable of meeting any loan payment, insurance payment, or other expenditure associated with the eligible vehicle.
- Public transportation is not reasonably available to the qualified recipient, the recipient has no other reliable means by which to commute to his or her place of employment, and the recipient will use the eligible vehicle as his or her primary means of transportation to commute to and from his or her place of employment.
- The qualified recipient has a demonstrated ability to maintain employment.
- If the qualified recipient is currently employed for not less than an average of 20 hours per week, he or she requires an automobile to retain his or her current employment or to accept a verified offer of employment in a position that is demonstrably superior to his or her current position of employment.

If the qualified recipient is not currently employed or is employed for less than an average of 20 hours per week, he or she requires an automobile to accept a verified offer of employment of not less than an average of 20 hours per week and cannot begin employment in that position without an automobile.

Proposed MCL 206.260 (S.B. 461)  
Proposed MCL 206.261 (S.B. 462)  
Proposed MCL 206.268 (S.B. 463)  
Proposed MCL 206.269 (S.B. 464)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Charitable organizations, public institutions, and other nonprofit groups are critical to providing necessary services to individuals in Michigan. Often, those services involve assisting individuals or communities that need help, and can be essential during crises. It is important to encourage taxpayers to support nonprofits, charitable organizations, and public institutions and to give those entities the resources necessary to fulfill their missions.

Each bill would serve an important public good by promoting charitable donations for organizations that serve Michigan's population. For example, Senate Bill 462 would support organizations that combat hunger problems in Michigan. According to the Michigan League for Public Policy, data from the U.S. Department of Agriculture's Economic Research Service show that, between 2012 and 2014, 14.7% of Michigan residents were food insecure, with 6.3% of Michigan residents having very low food security; both of these percentages are slightly higher than the national average. Senate Bill 463 would provide tax credit incentives for someone who wished to adopt a child. More individuals might consider adoption if the financial barrier were lowered, potentially providing more children with stable families and homes while reducing the burden on the Children's Services Agency within the Department of Health and Human Services, among other State agencies.

Senate Bill 464 would provide a financial incentive for individuals to support organizations that provide the essential resource of transportation. According to Committee testimony, the lack of transportation is one of the largest barriers to obtaining work. Reliable transportation allows an individual more flexibility in finding work and getting to his or her job without having to rely on bus schedules or other methods of public transportation that are often outside of the employee's control. By helping to make transportation available, a tax credit for donated autos could allow individuals to support themselves and not depend on the government or charitable organizations for assistance.

### **Supporting Argument**

Nonprofit organizations make significant and direct contributions to Michigan's economy. According to Michigan Nonprofit Association data, there are more than 42,000 nonprofits throughout Michigan, which employed more than 438,000 people in 2013 (almost 11% of the Michigan workforce). Nonprofits pay these employees over \$4.9 billion per quarter while holding nearly \$217.0 billion in assets, and spend more than \$80.0 billion each year.

Because nonprofits rely on charitable donations for a majority of their funding, providing a tax credit incentive to taxpayers would encourage donations that enable the nonprofits to help many individuals throughout Michigan, and contribute to the Michigan economy as a whole.

### **Opposing Argument**

In 2011, tax reform legislation was enacted to simplify the tax code and remove unnecessary complexity. That goal was accomplished and it remains good policy. Furthermore, there is nothing precluding taxpayers from contributing to charitable foundations or nonprofits.

**Response:** Although making charitable contributions can become a habit among taxpayers, the legislation that removed the tax credits seriously damaged the "pipeline" of charitable donations. This claim is supported by data from the Johnson Center at Grand Valley State University, which completed a survey on donations to Michigan community foundations. The survey examined changes in the number of \$200 and \$400 donations—the amount that would trigger the maximum credit before it was repealed. The data show an 84% decline in first-time donors at the \$400 level from 2010 to 2013, and a 37.5% decline in first-time donors at the \$200 level from 2010 to 2013. Additionally, the data show a 76% decline in \$400 donations from 2011 to 2013, and a 44% decline in \$200 donations from 2011 to 2013 as a whole.

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

### **Senate Bill 461**

The bill would reduce General Fund revenue by approximately \$24.3 million per year. Between tax year 2006 and 2011, the number of returns claiming the credit each year declined from approximately 290,800 to 257,700 and the total amount claimed each year declined from \$26.0 million to \$23.8 million. Although the School Aid Fund receives revenue from the income tax under Part 1 of the Act, credits are applied against the portion received by the General Fund. As a result, all of the reduction in revenue under the bill would lower General Fund revenue.

### **Senate Bill 462**

The bill would reduce General Fund revenue by approximately \$22.0 million per year. Between tax years 2006 and 2011, the number of returns claiming the credit for contributions to homeless shelters and food banks remained relative stable, at approximately 234,500 each year, as did the number of returns claiming the community foundation credit, at approximately 38,900. Similarly, the total amount claimed each year under each credit remained stable, at approximately \$18.7 million for the homeless shelter/food bank credit and approximately \$3.3 million for the community foundation credit. Although the School Aid Fund receives revenue from the income tax under Part 1 of the Act, credits are applied against the portion received by the General Fund. As a result, all of the reduction in revenue under the bill would lower General Fund revenue.

### **Senate Bill 463**

The bill would reduce General Fund revenue by approximately \$0.8 million per year. Between tax years 2006 and 2011, the number of individuals claiming a previous credit for adoption expenses declined each year from approximately 800 to 400 and the total amount claimed each year declined from \$1.0 million to \$0.4 million. Although the School Aid Fund receives revenue from the income tax under Part 1 of the Act, credits are applied against the portion received by the General Fund. As a result, all of the reduction in revenue under the bill would lower General Fund revenue.

### **Senate Bill 464**

The bill would reduce General Fund revenue by approximately \$100,000 per year. Between tax years 2007 and 2011, the number of individuals claiming a previous credit for donating an automobile declined each year from approximately 3,000 to 1,000 and the total amount claimed each year declined from \$150,000 to \$70,000. Although the School Aid Fund receives revenue from the income tax under Part 1 of the Act, credits are applied against the portion received by the General Fund. As a result, all of the reduction in revenue under the bill would lower General Fund revenue.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.