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BILL



ANALYSIS

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Senate Bill 1162 (as introduced 11-10-16)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 11-29-16

CONTENT

The bill would amend Part 2 of the Income Tax Act, which provides for the Corporate Income Tax (CIT), to allow a taxpayer that acquired by merger all rights, privileges, and liabilities of another person or member of another unitary business group that met certain conditions, for the first tax year ending after the effective date of the acquisition of a certificated credit or credits resulting from the merger, to elect to pay the tax imposed by the Michigan Business Tax (MBT) Act in lieu of the CIT.

Under Part 2 of the Income Tax Act, a taxpayer that has been approved to receive, has received, or has been assigned a certificated credit that was not fully claimed or paid before January 1, 2012, may, for the taxpayer's first tax year ending after December 31, 2011, only, elect to file a return and pay the tax imposed under the MBT Act in lieu of the CIT. An election under this provision must continue for the period described in the MBT Act.

(Under the MBT Act, a taxpayer that elects for its first year ending after December 31, 2011, to file a return and pay the tax imposed under the Act in order to claim a certificated credit or any unused carryforward for that tax year must continue to file a return and pay the tax imposed under the Act for each subsequent tax year until that certificated credit and any carryforward from it is used up. If a person awarded a certificated credit is a member of a unitary business group, the group, and not the member, must file a return and pay the tax, if any, under the MBT Act and claim the certificated credit.)

Under the bill, if a taxpayer acquired by merger all rights, privileges, and liabilities of another person or member of another unitary business group that had been approved to receive, had received, or had been assigned a certificated credit under the MBT Act that had not been fully claimed or paid before the effective date of the merger, and that person had filed a return or had been included in a combined return filed by another unitary business group and paid the tax imposed by the MBT Act for a tax year ending after December 31, 2011, in lieu of the CIT, in order to claim that certificated credit, then the acquiring taxpayer could, only for the first tax year ending after the effective date of the acquisition of the certificated credit or credits resulting from the merger, elect to pay the tax imposed under the MBT Act in lieu of the CIT.

A taxpayer that elected to pay the tax imposed under the MBT Act for a tax year ending before the enactment date of the bill and for which the taxpayer had already filed a return under Part 2 of the Income Tax Act would have to file an amended return for that tax year and each subsequent tax year, if applicable, and file an original return as provided in the MBT Act. The election would have to continue for the period described under the MBT Act.

The bill would apply to certificated credits under the following sections of the MBT Act: Section 431 (which allows an authorized business, under an agreement with the Michigan Economic

Development Authority, to claim a credit for a portion of its payroll and, in some cases, health care benefits for qualified jobs); Section 435 (which allows a historic preservation credit); and Section 437 (which provides for brownfield credits).

(Certificated credits are MBT credits that were preserved when the Corporate Income Tax was enacted and the MBT Act was repealed for most taxpayers as part of tax restructuring legislation enacted in 2011. In general, certificated credits include credits that were awarded as a result of a taxpayer's obtaining a voucher or credit certificate under an agreement with the State, for agreements entered into before January 1, 2012. The MBT Act will be fully repealed when all certificated credits have been exhausted.)

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

The bill is tie-barred to House Bill 5558.

(Generally, House Bill 5558 would enact similar provisions in the MBT Act regarding the merger of one person or unitary business group and another person or member of a unitary business group that had been approved to receive, had received, or had been assigned a certificated credit under the Act, and allow the person or unitary business group acquiring the other person or member of a unitary business group to elect to file a return and pay the tax imposed under the Act.)

MCL 206.680

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill, together with the tie-barred bill, would reduce State General Fund revenue by an unknown amount that would depend on both the specific characteristics of affected taxpayers and the number of taxpayers that would make the election provided for under the bill. Under current law, if a business that has currently elected to file under the Corporate Income Tax acquires a firm that, as a result of certificated credits held by the firm, elects to file under the Michigan Business Tax Act, the acquiring business will not be able to claim the certificated credits. A taxpayer would presumably make the election under the bill to file the MBT only if, as a result of acquiring the business with the certificated credits, the taxpayer could lower its tax liability by filing under the MBT. Certificated credits reduce General Fund revenue and can vary significantly in value from taxpayer to taxpayer. For example, during FY 2015-16, individual Michigan Economic Growth Authority (MEGA) certificated credits that were approved ranged in value from approximately \$13,000 to more than \$150.0 million.

Fiscal Analyst: David Zin

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