

Legislative Analysis



TAX CREDITS FOR MERGED AND ACQUIRED ENTITIES

Phone: (517) 373-8080
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House Bill 4189 (H-2) as referred to second committee
Sponsor: Rep. Jason M. Sheppard

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

House Bill 4190 (H-4) as referred
Sponsor: Rep. Michael Webber

House Bill 4191 (H-2) as referred
Sponsor: Rep. Kevin Coleman

1st Committee: Tax Policy
2nd Committee: Ways and Means
Revised 5-14-19

SUMMARY:

House Bills 4189, 4190, and 4191 would amend the Michigan Business Tax Act, the Michigan Economic Growth Authority Act, and the Income Tax Act, respectively, to make changes to the authorization of business tax credits and to allow eligible business entities to transfer certain tax credits to other business entities as authorized by the Michigan Strategic Fund.

House Bill 4189 would modify the definition of “taxpayer” used in the Michigan Business Tax Act to include a person that acquired, through merger or acquisition, on October 1, 2018, a certified credit authorized by the Michigan Economic Growth Authority (MEGA) in 2004 and previously received by another entity that was terminated due to the merger or acquisition, provided that the surviving/acquiring person or the unitary business group of which it is a member elected to file a return and pay taxes under the Michigan Business Tax Act in lieu of the corporate income tax under the Income Tax Act.

The bill would then provide that such a taxpayer could, for the first tax year ending after October 1, 2018, only, elect to pay the tax imposed by the Michigan Business Tax Act instead of the corporate income tax imposed by the Income Tax Act. If the first tax year ending after October 1, 2018, ended before the bill took effect, and the taxpayer had already filed its tax returns for that year under the corporate income tax, then the taxpayer could choose to refile its tax return under the Michigan Business Tax Act instead. The Department of Treasury could require documentation to show that the taxpayer is receiving the MEGA tax credit. The terms, conditions, and amount of the credit attributable to the person whose existence was terminated by the merger or acquisition would continue and would not be expanded in any manner that would increase the total amount of that credit because of the taxpayer’s election under these provisions. A taxpayer that elected under these provisions to pay tax under the Michigan Business Tax Act could claim any other certificated credit that the former taxpayer whose assets were transferred in the merger or acquisition would have been eligible for in the same tax year, but not a credit that would have accrued in tax years before the election under these provisions. The acquiring taxpayer would also not be able to claim any other certificated credit for which an election could have been made by the acquiring taxpayer under section 500(1) for the acquiring taxpayer’s first tax year ending after December 31, 2011. When the tax credit that was the basis for the election under these provisions is extinguished, the taxpayer would no longer be eligible to pay the tax under the Michigan Business Tax Act and could no longer claim any other remaining certificated credits.

The bill would repeal the Michigan Business Tax Act effective for tax years that begin after December 31, 2031.

The bill would be retroactive and effective for tax years beginning after December 31, 2017.

MCL 208.117 and 208.500

House Bill 4190 would amend the Michigan Economic Growth Authority Act to prohibit, beginning January 1, 2018, MEGA or its successor from entering into a new written tax credit agreement with an eligible business, modifying or amending an existing agreement with an authorized business, or transferring or assigning an existing agreement to another business, unless the modification, amendment, transfer, or assignment would reduce the total amount of the credit to the authorized business. MEGA or its successor could, however, modify, amend, transfer, or assign an existing agreement for technical changes as long as doing so did not increase the total amount of the credit to the authorized business. The bill would prohibit MEGA or its successor from modifying, amending, transferring, or assigning an existing agreement to provide the authorized business with a longer term to claim that credit.

The bill would require MEGA or its successor to establish guidelines for modifying and amending existing written agreements and to publish them on its website. MEGA or its successor could also modify and transfer an existing agreement if the modification was approved by a resolution of the Michigan Strategic Fund Board on November 27, 2018, and the value of the credit taken by the transferee did not exceed \$12.0 million.

The bill is tie-barred to House Bills 4189 and 4191, which means that it could not take effect unless they were also enacted.

MCL 207.808

House Bill 4191 would amend the Income Tax Act to allow a taxpayer who acquired a MEGA tax credit from an entity that was terminated in a merger or acquisition to file and pay the tax under the Michigan Business Tax Act instead of the Income Tax Act for the first tax year ending after October 1, 2018, as long as:

- The credit was acquired on October 1, 2018.
- The credit was not fully claimed or paid prior to October 1, 2018.
- MEGA or its successor determined that the transfer of the credit reduced the total amount of the credit.

Under the bill, if a taxpayer chose to pay the tax imposed by the Michigan Business Tax Act for a tax year ending before the bill's effective date for which the taxpayer had already filed a return under the Income Tax Act, the taxpayer could file an amended return for that tax year under the Income Tax Act and file an original return as provided under section 505 of the Michigan Business Tax Act.

The bill is tie-barred to House Bills 4189 and 4190, which means that it could not take effect unless they were also enacted.

The bill would be retroactive and effective for tax years beginning after December 31, 2017.

MCL 206.680

BACKGROUND:

The bills are understood to address the status of MEGA tax credits awarded to the company Federal-Mogul in 2004. Federal-Mogul was acquired by Tenneco on October 1, 2018, leaving the exact status of the MEGA tax credits up in the air, as current law does not clarify what happens to them in the case of a merger or whether they could be transferred to begin with.

FISCAL IMPACT:

Under current law, the certificated credit awarded to Federal-Mogul in 2004 ceased to exist as of October 1, 2018, when Federal-Mogul was acquired by Tenneco. Because the credit was assigned to Federal-Mogul's employer identification number (EIN) and Federal-Mogul was no longer an independent entity after being acquired, the credit was not transferrable and any remaining liability to the state beyond tax year (TY) 2018 fell to \$0. Thus, Federal-Mogul could claim a portion of the credit for the period in TY 2018 that it engaged in business activity under its EIN (up through September 30, 2018). Although the exact amount of the credit is not known, public testimony indicated that the value would be between \$4.0 million to \$5.0 million.

On November 27, 2018, the Michigan Strategic Fund board voted to amend the job retention credit awarded to Federal-Mogul in 2004 to include Tenneco's EIN so that Tenneco could claim the credit and use its existing employment toward determining the TY 2018 value of the credit. The agreement specifies that the duration of the credit would be reduced from 17 years to 13 years (effectively ending the credit after TY 2018), and that the value could not exceed \$12.0 million in TY 2018.

As written, the bills would allow the credit to be awarded under Tenneco's EIN and would allow Tenneco to file under the Michigan Business Tax to claim the credit.

POSITIONS:

A representative of Tenneco testified in support of the bills. (3-14-19)

The following organizations indicated support for the bills:

City of Southfield (5-1-19)

Michigan Manufacturers Association (5-1-19)

Michigan Chamber of Commerce (5-1-19)

Oakland County Economic Development Corporation (5-1-19)

A representative of the Department of Treasury testified to a neutral position. (3-13-19)

The Michigan Bankers Association indicated a neutral position on the bills. (5-1-19)

The Michigan Environmental Council testified in opposition to the bills. (3-13-19)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.