



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4189 (Substitute H-3 as passed by the House)
House Bill 4190 (Substitute H-4 as passed by the House)
House Bill 4191 (Substitute H-3 as passed by the House)
Sponsor: Representative Jason Sheppard (H.B. 4189)
Representative Michael Webber (H.B. 4190)
Representative Kevin Coleman (H.B. 4191)

House Committee: Tax Policy
Ways and Means
Senate Committee: Finance

Date Completed: 6-19-19

CONTENT

House Bill 4189 (H-3) would amend the Michigan Business Tax Act to do the following:

- Allow a taxpayer, for the first tax year ending after October 1, 2018, only, to elect to file a return and pay the Michigan Business Tax (MBT) in lieu of the Corporate Income Tax (CIT).
- Specify that, if the first tax year ending after October 1, 2018, ended before the bill's effective date and the taxpayer had already filed a return for that tax year under the CIT, that the taxpayer could elect to file the return and pay the MBT, instead, if within a statute of limitations period.
- Specify that the terms, conditions, and amount of a certificated credit that was the basis for the election under the bill would have to continue and could not be expanded in any manner that would increase the total amount of the credit.
- Allow the Department of Treasury to require documentation from the taxpayer that elected to file a return under the bill to support the acquisition of the certificated credit that was the basis for the election.
- Modify the definition of "taxpayer" to reflect the proposed changes in the bill.

House Bill 4190 (H-4) would amend the Michigan Economic Growth Authority Act to do the following:

- Prohibit the Michigan Economic Growth Authority (MEGA) or its successor organization, beginning on January 1, 2018, from entering into a new written agreement with an eligible business, modify or amend an existing written agreement with an authorized business, or modify, amend, transfer, or assign an existing agreement to another business for specified certified credits under the Michigan Business Tax Act unless certain conditions were met.
- Require the Authority or its successor to establish guidelines for modification and amendment of existing written agreements and publish those guidelines on its website.
- Allow the Authority or its successor to modify and transfer an existing written agreement to a transferee if that modification were approved by a resolution of

the Michigan Strategic Fund (MSF) Board on November 27, 2018, and subsequently transferred as long as the value of the credit taken did not exceed \$12.0 million.

- Specify that a provision prohibiting the Authority from executing new written agreements that in total provide for more than 300 yearly credits over the terms of those agreements, plus up to 85 additional yearly credits taken from previously issued credits, would be in effect through calendar year 2014.**

House Bill 4191 (H-3) would amend the Part 2 (Corporate Income Tax) of the Income Tax Act to specify that a taxpayer that acquired a specified certificated credit authorized by the Authority in 2004 under the Michigan Business Tax Act could, for the first tax year ending after October 1, 2018, only, elect to file the return and pay the MBT in lieu of the CIT if certain conditions were met.

House Bill 4189 (H-3) would repeal the Michigan Business Tax Act effective for tax years beginning after December 31, 2031. House Bills 4189 (H-3) and 4191 (H-3) also would be retroactive and effective for tax years beginning after December 31, 2017. The bills are tie-barred.

House Bill 4189 (H-3)

Under the Michigan Business Tax Act, "taxpayer" means, through December 31, 2011, a person or unitary business group liable for a tax, interest, or penalty under the Act. Beginning January 1, 2012, the term means either of the following:

- A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under Part 2 of the Income Tax Act and that elects under Section 500 to file a return and pay the Michigan Business Tax, if any.
- A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit and that elected under Section 680 of the Income Tax Act (which House Bill 4191 (H-3) would amend; see below) to file a return and pay the Michigan Business Tax, if any.

In addition, if a person or unitary business group elects under Section 680 of the Income Tax Act to file a return and pay the MBT and is part of a unitary business group, it must file the return and pay the tax, if any.

(Section 500 of the Michigan Business Tax Act requires certain taxpayers that voluntarily elect for the taxpayer's first tax year ending after December 31, 2011, to file a return and pay the MBT in order to claim a certificated credit or any unused carryforward for that tax year to continue to file a return and pay the MBT for each tax year thereafter until that certificated credit and any carryforward from that credit is used up.)

In addition, the bill specifies that, beginning January 1, 2012, the term also would mean a person that acquires, under the modification of an existing written agreement approved by a resolution of the MSF Board on November 27, 2018, and the subsequent transfer of that written agreement, a certified credit authorized by MEGA in 2004 under the Michigan Business Tax Act, or the unitary business group of which the acquiring person is a member, elected under Section 680 of the Income Tax Act to file a return and pay the tax imposed under the Michigan Business Tax Act in lieu of the CIT.

Under the bill, a taxpayer described above could, for the first tax year ending after October 1, 2018, only, elect to file the return and pay the MBT instead of the CIT. However, if the first

tax year ending after October 1, 2018, ended before the bill's effective date and the taxpayer had already filed a return for that tax year under the CIT then the taxpayer could, if within the statute of limitations period prescribed under Section 27a of the revenue Act, elect to file the return and pay the MBT instead of the CIT for that tax year by filing an original return and the necessary amended return.

(Section 27a of the revenue Act generally prohibits a deficiency, interest, or penalty from being assessed after the expiration of four years after the date set for the filing of a required return or after the date the return was filed, whichever is later. However, the statute of limitations must be extended under certain circumstances listed in the Act.)

The Department of Treasury could require documentation from the taxpayer that elected to file a return as described above to support the acquisition of the certificated credit that was the basis for the election. The terms, conditions, and amount of the credit would have to continue and could not be expanded in any manner that would increase the total amount of that credit as a result of an election made under the bill. A taxpayer that elected under the bill to pay the MBT could claim any other certificated credit that the person from whom the credit that was the basis for the election was transferred would have been eligible to claim in the same tax year in which the taxpayer claimed a specified certificated credit that was the basis for the election, but could not claim any certificated credit that the acquiring taxpayer would have accrued in any tax year before the election under the bill or any other certificated credit for which an election could have been made by the acquiring taxpayer as described above for the acquiring taxpayer's first tax year ending after December 31, 2011. When the taxpayer's described certificated credit was extinguished, the taxpayer would no longer be eligible to pay the MBT and could no longer claim any other remaining certificated credits.

House Bill 4190 (H-4)

The Michigan Economic Growth Authority Act allows MEGA to enter into an agreement with an eligible business for a credit against the MBT. "Eligible business" means a distressed business or business that proposes to maintain retained jobs or create qualified new jobs in Michigan in manufacturing, mining, research and development, wholesale and trade, film and digital media production, or office operations or a business that is a qualified high-technology business, a tourism attraction facility, or a qualified lodging facility.

For calendar year 2010 and each year thereafter, the Authority is prohibited from executing new written agreements that in total provide for more than 300 yearly credits over the terms of those agreements entered into that year, plus up to 85 additional yearly credits taken from previously issued credits by the Authority. Under the bill, this provision would apply through calendar year 2014.

Notwithstanding any other provision of the Act, except as otherwise provided, beginning on January 1, 2018, the Authority or its successor could not enter into a new written agreement with an eligible business, modify or amend an existing written agreement with an authorized business, or modify, amend, transfer, or assign an existing agreement to another business, for specified certified credits under the Michigan Business Tax Act, unless the modification, amendment, transfer, or assignment reduced the total amount of the credit to the authorized business. However, the Authority or its successor could modify, amend, transfer, or assign an existing agreement with an authorized business for technical changes as long as it did not increase the total amount of the credit as determined by the MSF to the authorized business. Under no circumstances could the Authority or its successor modify, amend, transfer, or assign an existing agreement to provide the authorized business with a longer term to claim that credit. The Authority or its successor would have the authority to transfer or assign an existing written agreement as provided in the Michigan Economic Growth Authority Act.

(Under the Act, "authorized business" means a single eligible business with a unique Federal employer identification number that has met certain requirements in the Act and with which the Authority has entered into a written agreement for a tax credit under the Act. The term also means a single eligible business that meets the above criteria with the following exception: an eligible business is not required to create qualified new jobs or maintain retained jobs if the jobs are maintained by an associated business, subsidiary business, affiliated business, or an employee leasing company or professional employer organization that has entered into a contractual service agreement with the authorized business in which the employee leasing company or professional employer organization withholds income and social security taxes on behalf of the authorized business.)

The Authority or its successor also would have to establish guidelines for modification and amendment of existing written agreements and publish them on its website.

The Authority or its successor could modify and transfer an existing written agreement to a transferee if that modification were approved by a resolution of the MSF Board on November 27, 2018, and subsequently transferred as long as the value of the credit taken by the transferee did not exceed \$12.0 million.

House Bill 4191 (H-3)

Under Section 680 of the Income Tax Act, notwithstanding any other provision of Part 2 (Corporate Income Tax) of the Act, and except as otherwise provided for a specified certificated credit under the Michigan Business Tax Act, a taxpayer that has been approved to receive, has received, or has been assigned a certificated credit that has not been 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 Michigan Business Tax, in lieu of the Corporate Income Tax. The bill would create an additional exception to this provision for a certificated credit under Section 431 of the Michigan Business Tax Act.

(Section 431 of the Act specifies that, for a period of time not to exceed 20 years as determined by the MEGA, a taxpayer that is an authorized business may claim a credit against the MBT equal to specified amounts certified each year by the Authority. A taxpayer must have a certificate issued to it by the Authority before it can claim the credit.)

A taxpayer that acquired, under the modification of an existing written agreement approved by a resolution of the MSF Board on November 27, 2018, and the subsequent transfer of that written agreement, a certificated credit authorized by MEGA in 2004 under Section 431 of the Michigan Business Tax Act could, for the first tax year ending after October 1, 2018, only, elect to file the return and pay the MBT instead of the CIT as long as the Authority or its successor organization determined that the modification and transfer of that credit reduced the total amount of the credit. However, if the first tax year ending after October 1, 2018, ended before the bill's effective date and the taxpayer had already filed a return for that tax year under the CIT, then the taxpayer could, if within the statute of limitations period prescribed under Section 27a of the revenue Act, elect to file the return and pay the MBT for that tax year by filing the necessary amended return under the Act and filing an original return as provided under the Michigan Business Tax. An election under the bill would have to continue for period described under Section 500 of the Michigan Business Tax Act.

MCL 208.1117 & 208.1500 (H.B. 4189)
207.808 (H.B. 4190)
206.680 (H.B. 4191)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills would decrease General Fund revenue in some fiscal years by approximately \$12.0 million, but would increase revenue in fiscal years beginning after 2031 by approximately \$2.0 million per year.

By allowing certain taxpayers to claim Michigan Business Tax (MBT) credits they otherwise would be unable to claim, the bills likely would reduce revenue by \$12.0 million. Depending on the effective date of the bills and when the returns were filed, the reduction could occur sometime between fiscal year (FY) 2018-19 and FY 2021-22, and likely would occur in FY 2019-20.

However, the bill would amend the repealing section of the MBT. Under current law, the Michigan Business Tax Act is repealed "effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed." The bill instead would repeal the Act for tax years that begin after December 31, 2031. The new repealing language would eliminate the Farmland Preservation Credit that is awarded under the MBT, which is a certificated credit. However, unlike most other certificated credits, the Farmland Preservation Credit has no sunset and new credits continue to be awarded. Currently, Farmland Preservation credits under the MBT average about \$2.0 million per year.

The bills would have no impact on local unit revenue.

Fiscal Analyst: Cory Savino
David Zin

SAS\S1920\sa4189sa

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.