



**House  
Legislative  
Analysis  
Section**

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**HOLD TAXPAYERS HARMLESS  
FROM SBT COURT DECISIONS**

**House Bill 5857 as passed by the House  
First Analysis (1-27-03)**

**Sponsor: Rep. James Koetje  
House Committee: Tax Policy**

***THE APPARENT PROBLEM:***

Business leaders believe that firms should not suffer increased tax liability in the event that a court finds some aspect of the state's unique single business tax unconstitutional. This could occur, for example, if a court found that the act unfairly favors in-state businesses over out-of-state businesses regarding investment tax credits. In 1999, the Michigan Court of Claims made such a ruling in the case of Jefferson Smurfit v the Michigan Department of Treasury, but that ruling was overturned in November 2001 by the Michigan Court of Appeals. (In December 2002, the company's application to appeal was denied by the Michigan Supreme Court.) In that case, the Illinois-based company challenged the constitutionality of the capital acquisition deduction (CAD) in place for the 1997 and 1998 tax years. (It has since been replaced by a different kind of investment credit.) The act that put that version of the CAD in place had said that if its provisions were found unconstitutional, then the previous form of the credit -- from prior to 1997 -- would be effective instead. Had the company's lawsuit been successful, or if a similar lawsuit proved so, the court decision could force firms to recalculate tax liability for previous years. Legislation has been introduced to prevent such retroactive increases in single business tax liability.

***THE CONTENT OF THE BILL:***

The bill would amend the Single Business Tax Act to specify that if any provision of the act was determined unconstitutional by a final appellate court after December 31, 2001, the following would apply:

- The Department of Treasury could not assess any liability for any tax owed by a firm for any tax year as a result of a recalculation of liability based on the determination that a provision is unconstitutional; and
- If the taxpayer's liability would be reduced, the taxpayer could recalculate the tax liability for any year as if the unconstitutional provision had not been

in effect. This recalculation would be subject to the limitations of the Revenue Act.

MCL 208.81

***FISCAL IMPLICATIONS:***

The House Fiscal Agency reports that the fiscal impact cannot be determined at present, but that any reduction in SBT revenue would affect general fund/general purpose revenue. The HFA notes that the fiscal impact depends on the number of cases where an SBT provision is found unconstitutional, as well as the SBT liability in each case. (HFA fiscal analysis dated 4-30-02)

***ARGUMENTS:***

***For:***

The bill represents simple taxpayer fairness. If, for example, a business makes capital investment decisions based on what is then understood to be the state law regarding the tax treatment of such investments, it is not fair or just to increase tax liability retroactively because a court finds the tax law unconstitutional. If a taxpayer misunderstands a law or applies it improperly, it can be held liable for additional taxes when audited. But a firm should not incur additional taxes due to unanticipated court-mandated changes in tax law. The state wants to encourage investment. This requires predictability in tax treatment for those investments. Otherwise firms will not want to take the risk of losing tax benefits.

***Response:***

This appears to be a "heads I win, tails you lose" proposition for SBT taxpayers: they gain from favorable court decisions but do not lose from unfavorable decisions. The state treasury, however, always bears the risk. Is this fair? Further, if this is such a good concept, it is reasonable to wonder why it should not apply to all taxes (perhaps by amending the Revenue Act) rather than just the SBT and why it

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should not apply to all kinds of taxpayers, not just business taxpayers.

***POSITIONS:***

The Michigan Chamber of Commerce supported this bill in testimony before the House Tax Policy Committee. (5-1-02)

Steelcase, Inc. provided written testimony in support of the bill. (4-30-02)

The Department of Treasury indicated its opposition to the bill to the House Tax Policy Committee. (5-8-02)

Analyst: C. Couch

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