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Senate Bill 368 (as enacted)
Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 304 of 2011

Date Completed: 4-4-12

CONTENT

The bill amended the revenue Act to prohibit the Department of Treasury from assessing the former Single Business Tax (SBT), and require the Department to refund any SBT paid, on income or gains of an individual, estate, or person organized for estate planning purposes, from activity, transactions, or sources other than those in the regular course of the person's trade or business, or on income or gains from personal investment activity.

The bill took effect on December 27, 2011, and must be applied retroactively.

Specifically, the bill prohibits the Department of Treasury from assessing a tax or reducing an overpayment under the former Single Business Tax Act, and requires the Department to approve a claim for a refund of any tax paid under that Act, subject to the statute of limitations, for an individual, estate, or person organized for estate or gift planning purposes, for amounts received, income, or gain other than from transactions, activities, and sources in the regular course of the person's trade or business.

Receipts, income, and gain from transactions, activities, and sources in the regular course of the person's business include amounts derived from the following:

- Tangible and intangible property if the acquisition, rental, lease, management, or disposition of the property constitutes

integral parts of the person's regular trade or business operations.

- Transactions in the course of the person's trade or business from stock and securities of any foreign or domestic corporation and dividend and interest income.
- Isolated sales, leases, assignments, licenses, divisions, or other infrequently occurring dispositions, transfers, or transactions involving tangible, intangible, or real property used in the person's trade or business.
- The sale of an interest in a business that constitutes an integral part of the person's regular trade or business.
- The lease or rental of real property.

Receipts, income, and gain that are not from transactions, activities, and sources in the regular course of the person's trade or business include the following:

- Investment income, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the person's trade or business.
- The disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets.

In addition, the bill prohibits the Department from assessing a tax or reducing an overpayment under the SBT Act, and requires the Department to approve a claim for a refund of any tax paid under the SBT Act, subject to the statute of limitations, for

receipts, income, or gain derived from investment activity other than receipts, income, or gain from transactions, activities, and sources in the regular course of the person's trade or business by a person that is organized exclusively to conduct investment activity and does not conduct investment activity for anyone other than an individual or a person related to that individual or by a common trust fund established under the Collective Investment Funds Act.

For this purpose, a person is related to an individual if he or she is a spouse, whole or half brother or sister, ancestor, lineal descendant of that individual or related person, or a trust benefiting that individual or one or more people related to that individual.

MCL 205.27a

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will reduce General Fund revenue by an unknown, and likely minimal, amount (approximately \$2.0 million or more). The bill will prevent the Department of Treasury from assessing additional taxes or reducing overpayments on income affected by the bill. It also authorizes the payment of certain refunds that otherwise would not be paid.

The bill will not affect local unit revenue or expenditures.

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.