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BILL ANALYSIS

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Senate Bills 1162 and 1163 (as reported without amendment)
Sponsor: Senator Jack Brandenburg
Committee: Finance

CONTENT

Senate Bill 1162 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.

Senate Bill 1163 would amend the Michigan Business Tax Act to do the following:

- Allow a person or unitary business group who acquired by merger all rights, privileges, and liabilities of 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 to elect to pay the MBT instead of the Corporate Income Tax.
- Require the terms, conditions, and amount of a certificated credit that were attributable to the person or member of a unitary business group that was acquired to continue, and prohibit them from being expanded in any manner that would increase the net amount of that certificated credit.
- State that a taxpayer that elected to pay the MBT would not be eligible to claim any other certificated credit for which the taxpayer could have made an election for the taxpayer's first tax year ending after December 31, 2011.
- Specify that a taxpayer would no longer be eligible to pay the MBT and could no longer claim any other remaining certificated credits when the certificated credit that was the basis for the taxpayer's election was exhausted.
- Require a taxpayer that elected to file an MBT return for a tax year ending before the bill's enactment date to notify the Department of Treasury of its election and file an annual return for that tax year and each subsequent tax year within a certain time frame.
- Include in the definition of "taxpayer" a person or unitary business group that acquires by merger all rights, privileges, and liabilities of another person or member of another unitary business group that has received, been approved to receive, or been assigned certificated credits under the MBT Act, and continues to file a return and pay the tax imposed under the Act.

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

Senate Bill 1162 is tie-barred to House Bill 5558, and Senate Bill 1163 is tie-barred to House Bill 5557.

(Generally, House Bills 5557 and 5558 would enact similar provisions in the MBT Act and the Income Tax Act, respectively, 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 MBT Act, allowing 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 that Act.)

MCL 206.680 (S.B. 1162)
208.117 et al. (S.B. 1163)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills, together with their respective tie-barred bills, 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 bills. 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 bills 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.

Date Completed: 12-1-16

Fiscal Analyst: David Zin

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