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BILL ANALYSIS



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Senate Bill 1163 (as introduced 11-10-16)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 11-29-16

CONTENT

The bill would amend the Michigan Business Tax (MBT) 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 bill would be retroactive and effective for tax years beginning after December 31, 2011.

The bill is tie-barred to House Bill 5557.

(Generally, House Bill 5557 would enact similar provisions in the Income Tax Act 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, and allow 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.

The MBT Act allows taxpayers to elect to continue filing under the Act in order to claim certificated credits, rather than filing under Part 2 of the Income Tax Act, which provides for the Corporate Income Tax.

Certificated credits are MBT credits that were preserved when the Corporate Income Tax was enacted and the MBT Act was repealed for most taxpayers as part of tax restructuring legislation enacted in 2011. In general, certificated credits include credits that were awarded as a result of a taxpayer's obtaining a voucher or credit certificate under an agreement with the State, for agreements entered into before January 1, 2012. The MBT Act will be fully repealed when all certificated credits have been exhausted.)

Senate Bill 1163 would apply to certificated credits under the following sections of the MBT Act: Section 431 (which allows an authorized business, under an agreement with the Michigan Economic Growth Authority, to claim a credit for a portion of its payroll and, in some cases, health care benefits for qualified jobs); Section 435 (which allows a historic preservation credit); and Section 437 (which provides for brownfield credits).

Taxpayer Definition

The MBT Act defines "taxpayer" as 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 Corporate Income Tax and that elects under the MBT Act to file a return and pay the tax imposed under the Act, 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 the Income Tax Act to file a return and pay the tax under the MBT Act, if any.

If a person or unitary business group that elects under the Income Tax Act to file a return and pay the tax imposed under the MBT Act is part of a unitary business group, the group must file the return and pay the tax, if any, under the Act.

The bill would add to the definition 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 been approved to receive, has received, or has been assigned a certificated credit under Section 431, 435, or 437 of the Act and the surviving person or the unitary business group of which the surviving person is a member elected under Section 680(5) of the Income Tax Act to file a return and pay the tax imposed under the MBT Act, if any. (Section 680(5) contains the provisions that House Bill 5557 would enact.)

MBT Election

The MBT Act provides that a taxpayer that elects for its first tax year ending after December 31, 2011, to file a return and pay the tax imposed by the Act in order to claim a certificated credit or any unused carryforward for that tax year must continue to file a return and pay the MBT for each tax year thereafter until that certificated credit and any carryforward from that credit are used up. Except as otherwise provided, if a person awarded a certificated credit is a member of a unitary business group, the unitary business group, and not the member, must file a return and pay the tax, if any, under the Act and claim the certificated credit.

Under the bill, a taxpayer (meaning a person or unitary business group merging with another under the proposed definition described above), only for the first tax year ending after the effective date of the acquisition of a certificated credit or particular credits under the Act resulting from a merger, could elect to pay the MBT in lieu of Corporate Income Tax. A taxpayer that made this election would have to continue to file a return and pay the MBT for each subsequent tax year until that certificated credit and any carryforward from that credit were used up.

The terms, conditions, and amount of a certificated credit that were attributable to the person or member of a unitary business group whose existence was terminated by merger would

have to continue and could not be expanded in any manner that would increase the net amount of that certificated credit as a result of an election made under these provisions. A taxpayer that elected to pay the MBT could claim any other certificated credit that the former taxpayer whose existence was terminated by the merger would have been eligible to claim in the tax year in which the taxpayer claimed a certificated credit under Section 431, 435, or 437, but not any certificated credit that would have accrued in any tax year before the election.

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. When the taxpayer's certificated credit under Section 431, 435, or 437 that was the basis for the taxpayer's election was extinguished, the taxpayer would no longer be eligible to pay the MBT and could no longer claim any other remaining certificated credits.

Filing & Notification

Under the Act, an annual or final return must be filed with the Department, and any final liability must be remitted, by the last day of the fourth month after the end of the taxpayer's tax year. A taxpayer, other than an insurance company or a financial institution, whose apportioned or allocated gross receipts are less than \$350,000 is not required to file a return or pay the tax imposed under the Act.

The bill would add that a taxpayer that elected to file a return under the Act as provided in Section 680(5) of the Income Tax Act for a tax year ending before the enactment date of the bill would have to notify the Department of its election and file an annual return for that tax year and each subsequent tax year, if applicable, within four months after making the election and would have to include a copy of the corresponding amended return or returns filed under Part 2 of the Income Tax Act. The Department could require documentation from the taxpayer to support the merger and the acquisition of the certificated credit or credits that were the basis for the election.

MCL 208.117 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill, together with the tie-barred bill, 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 bill. 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 bill 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.

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.