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SFA



BILL ANALYSIS

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Senate Bill 1046 (as enrolled)

Senate Bill 1345 (as enrolled)

Sponsor: Senator Ken Sikkema (S.B. 1046)

Senator Joanne G. Emmons (S.B. 1345)

Senate Committee: Economic Development, International Trade and Regulatory Affairs (S.B. 1046)
Finance (S.B. 1345)

House Committee: Economic Development (S.B. 1046)
Tax Policy (S.B. 1345)

PUBLIC ACT 428 of 2000

PUBLIC ACT 429 of 2000

Date Completed: 1-16-01

CONTENT

Senate Bills 1046 and 1345 amended the Michigan Economic Growth Authority (MEGA) Act and the Single Business Tax (SBT) Act, respectively, to expand the Acts' definitions of "qualified new job" for purposes of claiming an SBT credit as certified by MEGA. Senate Bill 1345 also requires a taxpayer that claimed an SBT credit based on qualified new jobs to pay to the State all credits claimed if 51% or more of the jobs are removed from the State. Further, the bill exempts from the tax a portion of a taxpayer's tax base regarding services provided by an attorney-in-fact to a reciprocal insurer; prohibits an insurance company from claiming an investment tax credit; and places additional requirements on a community foundation in order for it to remain eligible to receive contributions for which a taxpayer may claim a partial credit against the tax.

The bills are tie-barred to each other, and are described in more detail below.

Senate Bill 1046

The bill adds to the MEGA Act's definition of "qualified new job", for jobs created after July 1, 2000, a full-time job at a facility created by an eligible business that is in excess of the number of full-time jobs maintained by that eligible business in the State 120 days before the business becomes an authorized business, as determined by MEGA. Currently, "qualified new job" means a full-time job created by an authorized business at a facility that is in excess of the number of full-time jobs the authorized business maintained in the State prior to the expansion or location, as determined by the Authority.

(The Act created MEGA and prescribes its powers and duties. Under the Act, an eligible business (a business that proposes to create qualified new jobs in Michigan in manufacturing, mining, research and development, wholesale and trade, or office operations) may apply to MEGA, to enter into an agreement with it, that allows the business to claim tax credits under the SBT Act for payroll attributable to the new jobs. The Authority may determine the amount and duration of the tax credits.)

Senate Bill 1345

MEGA Credit

Currently, under the SBT Act, for tax years beginning after December 31, 1994, and for a period of up to 20 years as determined by MEGA, a taxpayer that is an authorized business may claim an SBT credit for the amount certified each year by MEGA, up to the amount of its payroll attributable to employees who perform "qualified new jobs" multiplied by the tax rate. Further, for the same tax years plus any carryforward years allowed, an authorized business may claim an SBT credit equal to the tax liability attributable to authorized business activity. "Qualified new jobs" means the average number of full-time jobs at a facility of an authorized business for a tax year, in excess of the average number of full-time jobs the authorized business maintained in the State prior to the expansion or location as that is determined under the MEGA Act. The bill further provides that "qualified new jobs" include, after July 1, 2000, the average number of full-time jobs at a facility created by an eligible business within 120 days before becoming an authorized business, that are in excess of the average number of full-time jobs that the business maintained in the State 120 days before becoming an authorized business, as determined under the MEGA Act.

The bill also provides that a taxpayer claiming an authorized business credit under the SBT Act that has an agreement with MEGA based on “qualified new jobs” as defined in the MEGA Act (pursuant to Senate Bill 1046), that removes from the State 51% or more of those jobs within three years after the first year in which the taxpayer claimed the credit, must pay to the Department of Treasury an amount equal to the total of the credits that were claimed by the taxpayer. The payment must be made within 12 months after the jobs are removed from the State.

Insurers

The bill exempts from the tax that portion of the tax base attributable to the services provided to a reciprocal insurer, pursuant to Chapter 72 of the Insurance Code, by an attorney-in-fact (a person authorized to act for the reciprocal insurer). (Chapter 72 of the Insurance Code provides for reciprocal insurance exchanges. Subscribers (individuals, partnerships, and public and private corporations) are authorized to exchange reciprocal or interinsurance contracts with each other to provide indemnity among themselves and from any loss that may be insured against, except life and health insurance. The contracts may be executed by an attorney, agent, or other representative designated as attorney who is an individual, firm, or corporation.)

Further, the bill specifies that a taxpayer that calculates its tax base as an insurance company is not eligible to claim the investment tax credit under the Act. (Under the Act, a taxpayer may claim the investment tax credit for a percentage of the costs paid or accrued in a tax year for tangible assets physically located in Michigan.)

Community Foundation Credit

The bill requires a community foundation to meet additional criteria in order to maintain its certification and remain eligible to receive contributions for which a taxpayer may claim a partial credit against the tax.

Under the Act, a taxpayer with SBT liability may claim as a credit against the tax 50% of the amount the taxpayer contributes to an endowment fund of a community foundation. The credit may not exceed \$5,000 or 5% of the taxpayer’s tax liability, whichever is less. A community foundation must meet a list of requirements to be certified by the Department of Treasury. Previously, a community foundation had to apply for certification by April 1 each year. The bill provides that a community foundation must apply by May 15.

Previously, a community foundation had to be incorporated or established as a trust before September 1 of the year immediately preceding the tax year for which a credit were claimed. The bill, instead, requires a community foundation to be incorporated or established as a trust at least six months before the beginning of the tax year for which the credit is claimed, and have an endowment value of at least \$100,000 within 18 months after it is incorporated or established. A taxpayer may claim a credit for contributions to a community foundation made before the 18-month period expires. If the community foundation does not reach the required \$100,000 endowment value during that period, contributions made after the period expires may not be used to calculate the credit. At any time after the 18-month period expires that the community foundation has an endowment value of \$100,000, it may apply to the Department for certification.

A community foundation that has an endowment value of \$1 million or must demonstrate that it is subject to an annual independent financial audit, and provide copies of the audit to the Department within three months after the audit is completed. A community foundation that has an endowment value of less than \$1 million will be subject to an annual review and an audit every third year.

The Act requires a community foundation to be publicly supported, as defined by regulations of the U.S. Department of Treasury. Under the bill, to maintain certification, a community foundation must submit to the Michigan Department of Treasury each year documentation demonstrating that the community foundation is publicly supported, as defined by U.S. Treasury regulations.

The bill requires a community foundation to have an independent governing body representing the general public’s interest, that is not appointed by a single outside entity. A community foundation also

will have to give the Department evidence that the community foundation has, within six months after it is incorporated or established, and maintained continually during the tax year for which the credit is claimed, at least one part-time or full-time employee.

In addition, a community foundation that is incorporated or established after the bill's effective date must operate in a county that is not served by a community foundation when it is incorporated or established, or operate as a geographic component of an existing certified community foundation.

MCL 207.803 (S.B. 1046)
208.35 et al. (S.B. 1345)

Legislative Analyst: G. Towne
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FISCAL IMPACT

The bills will minimally reduce single business tax revenues. Senate Bills 1046 and 1345 will affect taxpayers receiving credits through the Michigan Economic Growth Authority. Senate Bill 1345 also will have an impact on taxes paid by insurance companies, and taxpayers making contributions to community foundations.

In regard to taxpayers receiving credits through MEGA, 1) both bills alter the definition of qualified new jobs to allow taxpayers who have not had a presence in Michigan for a full tax year also to qualify for the credit; and 2) Senate Bill 1345 provides for a recapture of certain MEGA-related credits for taxpayers that fail to maintain a sufficient number of qualified new jobs for at least three years after earning the initial credit. The first provision will allow credits that would not otherwise be claimed, although very few taxpayers are expected to be affected by this provision. The second provision also will have little to no impact on SBT revenues, although any impact will be positive. Very few taxpayers are expected to be affected by the provision, and those taxpayers affected also might choose to maintain the requisite number of jobs, implying that certain unexpected revenue declines will not occur.

In regard to the provisions in Senate Bill 1345 affecting insurance companies, premiums comprise the overwhelming majority of adjusted receipts under the SBT insurance company retaliatory tax. The bill exempts from an insurance company's tax base the amount attributable to services performed by an attorney-in-fact to a reciprocal insurer. Given the likely frequency of such compensation, as well as the negligible portion that nonpremium receipts contribute to an insurance company's tax base, the bill is expected minimally to reduce State General Fund revenues. Other revenues will be unaffected by this provision.

The bill also will prevent insurance companies from claiming an investment tax credit under the SBT insurance company retaliatory tax. Currently, insurance companies are not allowed to claim a capital acquisition deduction under the SBT. As a result of Public Act 115 of 1999, beginning tax year 2000, the capital acquisition deduction will be replaced by an investment tax credit. The revenue estimates for the new investment tax credit did not account for insurance companies' claiming the credit. Consequently, prohibiting insurance companies from claiming the credit will have no fiscal impact on the State.

The bill's changes to the community foundations credit are not expected to affect SBT revenues. The bill likely will reduce the number of new community foundations to which a taxpayer's contributions may generate a credit. Very few taxpayers are expected to be affected by this provision, and the bill is not expected to have a significant impact on contributions to community foundations as a whole.

The bills will have no fiscal impact on local government.

Fiscal Analyst: D. 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.