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Senate Bill 1422 (Substitute S-1 as reported)  
Sponsor: Senator Jason E. Allen  
Committee: Commerce and Tourism

Date Completed: 9-23-08

### **RATIONALE**

Public Act 92 of 2008, which took effect on April 8, 2008, amended the Michigan Business Tax (MBT) Act to allow a qualified taxpayer (an anchor company that has influenced a new qualified supplier or customer to open, locate, or expand in Michigan) to claim an MBT credit for the income tax on payroll attributable to employees of a qualified supplier or customer who perform qualified new jobs, for up to five years, if the taxpayer received a certificate from the Michigan Economic Growth Authority (MEGA). (An anchor company is a qualified high-technology business that has the ability or potential ability to influence business decisions and site location of qualified suppliers and customers.) Evidently, some of those provisions might not reflect in practice what the State and potential qualified taxpayers envisioned in formulating the anchor company credit. For instance, it is unclear whether an anchor company may include in one credit the total of the amount of each qualified supplier's and qualified customer's employees' income tax on payroll attributable to new jobs. Also, the MBT Act prohibits a qualified taxpayer from claiming a credit for a tax year before certification as a qualified taxpayer is made, but some believe that the prohibition should refer to a tax year before the designation as an anchor company was made. It has been suggested that the anchor company MBT credit provisions be revised.

### **CONTENT**

**The bill would amend the Michigan Business Tax Act to do all of the following:**

- **Specify that a qualified taxpayer could claim an anchor company MBT credit equal to the sum of up to 100% of each qualified supplier's and qualified customer's payroll attributable to employees performing qualified new jobs, multiplied by the tax rate.**
- **Prohibit a qualified taxpayer from claiming the credit for a tax year before designation as an anchor company.**
- **Delete a provision that, if a qualified taxpayer is awarded an anchor company MBT credit, any subsequent credits awarded to that taxpayer are not included in determining the yearly limit of five new credits.**
- **Revise a provision excluding a qualified taxpayer's sales to a qualified supplier or customer from the MBT sales factor, and redefine "qualified sales to a qualified supplier or customer".**
- **Revise a requirement regarding a statement of qualified sales on a tax credit certificate.**
- **Specify that an anchor company MBT credit could be taken after all other nonrefundable credits allowed under the Act.**
- **Revise the definition of "qualified supplier or customer" and add a definition of "tax rate".**

**The bill also would refer to a "qualified supplier" and "qualified customer", rather than a "qualified supplier or customer", throughout the anchor company credit provisions.**

#### Anchor Company MBT Credit

Currently, a qualified taxpayer may claim a credit in an amount up to 100% of the qualified supplier's or customer's payroll attributable to employees who perform qualified new jobs as determined by MEGA, multiplied by the tax rate for the tax year for a period of up to five years. The bill instead would allow a qualified taxpayer to claim a credit equal to the sum of up to 100% of each qualified supplier's and qualified customer's payroll attributable to employees who perform qualified new jobs as determined by MEGA, multiplied by the tax rate for the tax year for up to five years. The bill specifies that the credit could include each of the qualified supplier's and qualified customer's payroll.

The bill states that an anchor company credit could be taken after all other allowable nonrefundable credits under the MBT Act.

#### Designation/Certification

Under the Act, MEGA may designate up to five taxpayers as an anchor company in each calendar year and may not approve more than five new credits in each calendar year. A taxpayer has five years from the date on which it is designated as an anchor company to seek certification from MEGA as a qualified taxpayer for each qualified supplier or customer for which a credit is sought. A credit may not be provided for a tax year before the tax year during which the *certification* is made. Under the bill, instead, MEGA could designate up to five new anchor companies each year and a credit could not be provided for a tax year before the tax year during which the *designation* as an anchor company was made.

The Act provides that, if a qualified taxpayer is awarded an anchor company MBT credit for a qualified supplier's or qualified customer's payroll attributable to qualified new jobs, any subsequent credits awarded to that qualified taxpayer are not included in

determining the yearly limit of five new credits. The bill would delete that provision.

#### Exclusion of Qualified Sales

Currently, MEGA may provide that qualified sales to a qualified supplier or customer are not sales in this State for purposes of calculating the sales factor under the Act for the tax year for which a credit is provided to an anchor company. Under the bill, instead, MEGA could provide that qualified sales to a qualified supplier or customer could not be considered in calculating the sales factor under the Act for the tax year.

Under the Act, qualified sales to a qualified supplier or customer are the total sales in Michigan to a qualified supplier or customer multiplied by a fraction, the numerator of which is the compensation on which the credit is calculated and the denominator of which is the total compensation of the qualified supplier or customer in Michigan. The bill would delete that provision and instead would define "qualified sales to a qualified supplier or customer" as sales to a qualified supplier or customer that exceed the Michigan sales to the supplier or customer before the year of expansion or location within Michigan, as determined by MEGA, and that otherwise would be included in the calculation of the sales factor under the Act.

#### Certificate

The Act prohibits a taxpayer from claiming an anchor company MBT credit unless MEGA has issued a certificate to the taxpayer. The certificate must state certain things, including the amount of the qualified sales calculated in accordance with the formula specified in the Act (the formula that the bill would delete). Under the bill, the certificate instead would have to state the amount of the qualified sales to a qualified supplier or customer.

#### Other Definitions

Under the Act, "qualified supplier or customer" means a business that opens a new location in Michigan, a business that locates in this State, or an existing business located in Michigan that expands its business within the last year as a result of an anchor company and satisfies certain other requirements, as certified by MEGA.

Under the bill, those requirements would have to be satisfied before the issuance of a certificate and at the time specified in the agreement with the qualified taxpayer. In addition, one of the requirements is that the qualified supplier or customer sells a critical or unique component or technology necessary for the anchor company to market a finished product or buys a critical or unique component from the anchor company. Under the bill, the sale of a critical or unique component or technology would have to be as the result of a commercial relationship with the anchor company.

The bill would define "tax rate" as the rate imposed under Section 51 of the Income Tax Act for the tax year in which the tax year of the taxpayer for which the credit is being computed begins. (Under that section, the income tax rate is 4.35% on and after October 1, 2007, and before October 1, 2011. Beginning on October 1, 2011, and each October 1 after 2011, the maximum rate must be reduced by 0.1 each year until the rate is 3.95%. On and after October 1, 2015, the rate is 3.9%.)

MCL 208.1431a

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Clusters of strong and competitive industrial companies are a critical component of a healthy economic environment. Providing incentives to an anchor company at the center of such a cluster should help to strengthen and diversify Michigan's economy. That was the idea behind legislation passed earlier in 2008 that offered MBT credits to anchor companies that influence suppliers or customers to locate near their operations. The bill would build upon Public Acts 88 and 92, which amended the MBT Act to provide credits based on taxable property owned, and income earned in new jobs created, by an anchor company's suppliers and customers. The bill's revisions would implement the concept of anchor company MBT credits enacted by Public Act 92.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

Not enough information is available to be able to provide a meaningful estimate of the fiscal impact of this bill. In fact, it is not clear if this bill would have a net positive or negative impact on Michigan business tax revenue. The proposed change in how an anchor company would calculate its sales factor and the proposal to tighten the current limit on the number of credits that may be issued each year would have a positive impact on Michigan business tax revenue; however, the proposed change that would allow a business to claim the anchor company compensation credit after it had claimed all nonrefundable credits for which the business qualified and the proposal to expand the credit up to 100% of the sum of each supplier's *and* customer's payroll paid to qualified new jobs, rather than up to 100% of the supplier's *or* customer's payroll paid to qualified new jobs, would have a negative impact on Michigan business tax revenue. Any change in MBT revenue would have a direct impact on General Fund revenue. This bill would not have any direct impact on local government.

Fiscal Analyst: Jay Wortley

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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.