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Senate Bill 69 (as introduced 1-27-09)
Sponsor: Senator Nancy Cassis
Committee: Finance

Date Completed: 2-18-09

CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to do the following:

- Increase the income limits affecting eligibility for a credit available to taxpayers whose gross receipts do not exceed \$20.0 million and whose adjusted business income does not exceed a specified amount.**
- Remove a restriction that allows a taxpayer to claim the entrepreneurial tax credit only for the 2008, 2009, and 2010 tax years.**
- Allow a taxpayer to claim the entrepreneurial credit in an amount equal to 100% of the taxpayer's MBT liability, instead of 100% of the taxpayer's MBT liability attributable to increased employment.**
- Reduce the number of new jobs that a taxpayer must create in or transfer into this State, and the capital investment the taxpayer must make, in order to claim the entrepreneurial credit.**

Alternate Tax

Calculation. The Act allows a credit against the MBT for any taxpayer with gross receipts that do not exceed \$20.0 million and with adjusted business income minus a loss adjustment that does not exceed \$1.3 million as adjusted annually for inflation using the Detroit consumer price index (CPI). The credit is the amount by which the MBT exceeds 1.8% of adjusted business income. This credit must be taken after the credits for assets and compensation and for research and development, and before any other credit under the Act.

As described below, the bill would revise this credit (sometimes referred to as the alternate tax or the small business credit).

Also, under the bill, adjusted business income minus the loss adjustment could not exceed \$1.5 million, rather than \$1.3 million, as adjusted annually for inflation using the Detroit CPI.

Disqualification. An individual, a partnership, a limited liability company (LLC), or a subchapter S corporation is disqualified if the individual, any one partner of the partnership, any one member of the LLC, or any one shareholder of the S corporation receives more than \$180,000 as a distributive share of the adjusted business income minus the loss adjustment of the individual, partnership, LLC, or S corporation.

A corporation other than an S corporation is disqualified if compensation and directors' fees of a shareholder or officer exceed \$180,000 or if the sum of the following amounts exceeds \$180,000 for the respective tax year:

- Compensation and directors' fees of a shareholder.
- The product of the percentage of outstanding ownership or of outstanding stock owned by that shareholder multiplied by the difference between the sum of business income and, to the extent deducted in determining Federal taxable income, a carry-back or a carry-over of a net operating loss or capital loss, minus the loss adjustment.

The bill would change the \$180,000 amounts to \$250,000.

Reduction. Subject to a reduction percentage (determined as described below), the credit must be reduced by the following percentages if 1) an individual, any one partner of a partnership, any one member of an LLC, or any one shareholder of a subchapter S corporation receives as a distributive share of adjusted business income minus the loss adjustment of the individual, partnership, LLC, or subchapter S corporation; 2) compensation and directors' fees of a shareholder or officer of a corporation other than a subchapter S corporation are; or 3) the sum used to determine disqualification for a corporation other than an S corporation is:

- More than \$160,000 but less than \$165,000: 20%.
- \$165,000 or more but less than \$170,000: 40%.
- \$170,000 or more but less than \$175,000: 60%.
- \$175,000 or more but not in excess of \$180,000: 80%.

Under the bill, each of the amounts described above would be increased by \$70,000.

(The reduction percentage for a partnership, LLC, or S corporation is based on the distributive share of adjusted business income minus loss adjustment of the partner, member, or shareholder with the greatest distributive share of adjusted business income minus loss adjustment.

The reduction percentage for a corporation other than an S corporation is the greater of the following:

- The reduction percentage based on the compensation and directors' fees of the shareholder or officer with the greatest amount of compensation and directors' fees.
- The reduction percentage based on the sum used to determine disqualification for a corporation other than an S corporation for the shareholder or officer with the greatest sum of those amounts.

If gross receipts exceed \$19.0 million, the credit will be reduced by a fraction, whose numerator is the amount of gross receipts over \$19.0 million and whose denominator is \$1.0 million. The credit may not exceed 100% of the MBT liability.)

Entrepreneurial Credit

For the 2008, 2009, and 2010 tax years, except as otherwise provided, a taxpayer may claim the Michigan entrepreneurial credit equal to 100% of the eligible taxpayer's MBT liability attributable to increased employment (the creation or transfer of new jobs, as described below) for three years if the taxpayer meets all of the following conditions:

- Had less than \$25.0 million in gross receipts in the immediately preceding tax year, annually adjusted for inflation using the Detroit CPI.

- Has created in this State or transferred into this State at least 20 new jobs in the immediately preceding tax year.
- Has made a capital investment in this State of at least \$1.25 million in the immediately preceding tax year (not including the purchase of an existing plant or the purchase of existing equipment).
- Is not a retail establishment as described in Major Groups 52 through 59 and 70 under the Standard Industrial Classification Code as compiled by the U.S. Department of Labor, subject to an exception for a restaurant that did not exist in this State in the immediately preceding year before which the credit is claimed.

The bill would delete reference to the 2008, 2009, and 2010 tax years. Under the bill, a taxpayer would be eligible to claim the entrepreneurial credit equal to 100% of the taxpayer's MBT liability instead of 100% of the taxpayer's MBT liability attributable to increased employment.

The bill also would reduce the number of new jobs that a taxpayer is required to create or transfer into the State from 20 to eight and would lower the minimum capital investment from \$1.25 million to \$500,000.

("New jobs" means jobs that meet all of the following criteria:

- Did not exist in this State in the immediately preceding tax year.
- Represent an overall increase in full-time equivalent jobs of the taxpayer in this State in the immediately preceding tax year.
- Are not jobs into which employees transfer if the employees worked in this State for the taxpayer in other jobs before beginning the new jobs.

Major Groups 52 through 59 and 70 describe building materials, hardware, garden supply, and mobile home dealers; general merchandise stores; goods stores; automotive dealers and gasoline service stations; apparel and accessory stores; home furniture, furnishings, and equipment stores; eating and drinking places; and hotels, rooming houses, camps, and other lodging places.)

In addition, a taxpayer that is an eligible business as defined in Section 407 and that received an eligible contribution as defined in that section for which a credit was claimed by another taxpayer may claim the Michigan entrepreneurial credit for three years if the taxpayer had less than \$25.0 million in gross receipts in the immediately preceding tax year, and has increased the number of new jobs in this State by at least 20.0% from the immediately preceding tax year. The taxpayer may claim the credit equal to 100% of the taxpayer's MBT liability attributable to the increased employment.

Under the bill, the taxpayer could claim the entrepreneurial credit equal to 100% of the taxpayer's MBT liability, instead of 100% of the taxpayer's MBT liability attributable to the increased employment.

(Section 407 provides for a MBT credit for a qualified taxpayer that makes an eligible contribution in an eligible business. "Eligible business" means a taxpayer engaged in research and development that together with any affiliates employs fewer than 50 full-time employees or has gross receipts of less than \$10.0 million and has no prior financial interest in the qualified taxpayer and in which the qualified taxpayer has no prior financial interest. "Eligible contribution" means the transfer of pecuniary interest in the form of cash of not less than \$350,000, for the purposes of research and development and technology innovation. An eligible contribution does not include contract research.)

The Act provides that a taxpayer's liability attributable to the increased employment is the total liability of the taxpayer multiplied by a fraction whose numerator is the payroll of the

increased jobs of the facility meeting the requirements and whose denominator is the taxpayer's total payroll in the State. The bill would delete this provision.

The Act defines "payroll" for this purpose as total salaries and wages before deducting any personal or dependency exemptions. The bill would delete this definition.

MCL 208.1417 & 208.1441

Legislative Analyst: Craig Laurie

FISCAL IMPACT

This bill would expand the Michigan Business Tax small business and entrepreneurial credits. Based on information from the Department of Treasury, the bill's proposed changes to the small business credit would increase the cost of the credit (reduce Michigan Business Tax revenue) an estimated \$186.0 million in FY 2008-09. Given these proposed changes in the small business credit, the proposed changes to the entrepreneurial credit would increase the cost of the credit (decrease Michigan Business Tax revenue) an estimated \$65.0 million in FY 2008-09. As a result, this bill would reduce Michigan Business Tax revenue an estimated \$251.0 million in FY 2008-09. The General Fund/General Purpose budget would incur all of this loss in Michigan Business Tax revenue. The bill would not directly affect local governments.

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.