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BILL ANALYSIS

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Senate Bill 383 (as enacted)
Sponsor: Senator Mike Kowall
Senate Committee: Economic Development
House Committee: Tax Policy

PUBLIC ACT 77 of 2011

Date Completed: 4-9-13

CONTENT**The bill amended the Michigan Business Tax (MBT) Act to do the following:**

- **Specify that agreements for certain film industry tax credits may provide for credits up to a certain percentage of expenditures or investments, rather than for a specific percentage of those expenditures and investments.**
- **Require a postproduction certificate of completion or an expenditure certificate for a film credit to include the amount of the credit.**
- **Revise a provision pertaining to an MBT credit for the owner-operator of a motorsports entertainment complex for capital expenditures, and add a refundable credit for traffic control expenditures.**
- **Revise provisions pertaining to MBT credits for brownfield projects and historic rehabilitation projects.**
- **Add an adjustment to the modified gross receipts tax base for certain trucking firms.**

direct production expenditures or qualified personnel expenditures. Under the bill, the agreement may provide for the company to claim a tax credit of *up to* 42% of direct production expenditures for a State certified qualified production in a core community (a qualified local governmental unit as defined by the Obsolete Property Rehabilitation Act), *up to* 40% of direct production expenditures for a production in another part of the State, and *up to* 30% for qualified personnel expenditures.

Previously, the tax credits were for those exact percentages, rather than up to them.

In addition, the bill specifies that a taxpayer may not claim a credit for a direct expenditure or qualified personnel expenditure for which the company or another taxpayer claims a credit under Section 367 of the Income Tax Act. (That section, which was repealed effective January 1, 2012, allowed for income tax credits for an eligible production company.)

Film & Digital Media Infrastructure Projects

Until September 30, 2015, the Act allows the Film Office, with the concurrence of the State Treasurer, to enter into an agreement with a taxpayer providing the taxpayer with an MBT credit for an investment in a qualified film and digital media infrastructure project. Under the bill, for investment expenditures made by a taxpayer for all qualified film and digital media infrastructure projects in Michigan, an agreement may provide for the taxpayer to claim a tax credit of *up to* 25% of the taxpayer's base

The bill provides for the retroactivity of certain provisions and specifies that those provisions are "curative". The bill took effect on July 12, 2011.

Direct Production or Qualified Personnel Expenditures

The Act allows the Michigan Film Office, with the concurrence of the State Treasurer, to enter into an agreement with an eligible production company providing the company with an MBT credit or income tax credit for

investment, as determined by the Film Office with the concurrence of the State Treasurer.

Previously, the tax credit was for that exact percentage.

Job Training Expenditures

Until September 30, 2015, the Act allows the Film Office, with the concurrence of the State Treasurer, to enter into an agreement with an eligible production company for an MBT credit for qualified job training expenditures. Under the bill, for a qualified job training expenditure made by a company, the company may claim a tax credit of up to 50% of the qualified job training expenditure, as determined by the Film Office with the concurrence of the State Treasurer.

Previously, the tax credit was for that exact percentage.

Credit Amount in Certificate

If the Film Office determines that an eligible production company or a taxpayer has complied with the terms of an agreement, the Film Office must issue to the company or the taxpayer a postproduction certificate of completion, an investment expenditure certificate, or a qualified job training expenditure certificate, as applicable. Each certificate must be signed by the Michigan Film Commissioner and include certain information. Under the bill, the certificate also must include the company's or taxpayer's credit amount.

Motorsports Entertainment Complex Credit

The Act provides for certain tax credits for the owner-operator of a motorsports entertainment complex. Under one of those credits, for tax years that begin on or after December 1, 2012, and end before January 1, 2017, an eligible taxpayer may claim an MBT credit equal to the amount of capital expenditures in Michigan on infield renovation, grandstand and infrastructure upgrades, and any other construction and upgrades. The credit may not exceed \$1.58 million or the taxpayer's MBT liability. The bill specifies "whichever is less".

Also, under the bill, for the 2009 tax year, an eligible taxpayer may claim an MBT credit

equal to 50% of the amount of necessary expenditures in Michigan incurred, including any professional fees, additional police officers, and any traffic management devices, to ensure traffic and pedestrian safety while hosting the requisite motorsports events each calendar year. For the 2010 and 2011 tax years, an eligible taxpayer may claim an MBT credit equal to all of those expenditures. If the amount of the credit exceeds the taxpayer's tax liability for the tax year, the excess must be refunded.

Brownfield & Historic Rehabilitation Credits

The Act provides that, if a certificate of completion, assignment certificate, or component completion certificate is issued to a taxpayer for a brownfield project, or if a certificate of completed rehabilitation, assignment certificate, or reassignment certificate is issued to a taxpayer for a historic rehabilitation project, the taxpayer may elect to claim a refundable credit for 90% of the amount of that certificate. Under the bill, those provisions apply with respect to a certificate issued for a tax year beginning after 2011, and the taxpayer may elect to claim the credit beginning on and after January 1, 2012.

Previously, the taxpayer could claim a refundable credit for 90% of the amount of the certificate or any carryforward remaining from that certificate, whichever was less.

Gross Receipts Tax Base

The Act imposes a modified gross receipts tax on taxpayers with nexus. The modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms before apportionment.

Under the bill, for a person classified under the 2002 North American Industrial Classification System (NAICS) number 484 (truck transportation) that does not qualify for the credit under Section 417 (the small business credit), "purchases from other firms" includes payments to subcontractors to transport freight by motor vehicle under a contract specific to that freight to be transported by motor vehicle.

Retroactivity & Curative Provisions

The bill specifies that the amendments

pertaining to the motorsports entertainment credit, direct production and qualified personnel expenditures, and brownfield and historic rehabilitation credits "are retroactive and effective May 26, 2011". The bill also states that the retroactivity provision "is curative and is intended to express the original intent of the legislature concerning the application of 2011 PA 39". (Public Act 39 of 2011 amended the MBT Act to allow certain taxpayers that wish to claim select credits allowed under the law to continue claiming those credits if they continue to file returns under the MBT Act.)

MCL 208.1113 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill's effect on General Fund revenue is indeterminate, with some provisions increasing revenue by an unknown amount and other provisions decreasing General Fund revenue. The net impact of the different provisions is unknown.

The provisions regarding payment to subcontractors by taxpayers classified under NAICS code 484 reduced FY 2011-12 revenue by approximately \$6.9 million. Those changes were not retroactive and thus reduced FY 2011-12 tax revenue only. The provisions regarding credits for a motorsports entertainment complex were expected to reduce General Fund revenue by approximately \$6.2 million in FY 2011-12.

The bill also allows credits granted under the Michigan Business Tax's media incentives to be granted at lower levels. These credits are refundable and the bill will increase General Fund revenue only to the extent that any expenditures will be subsidized at rates lower than specified under prior law. The actual amount of any increase will depend on the magnitude of any reduced rates.

Because the MBT was repealed effective January 1, 2012, for all taxpayers not holding on that date an unpaid credit under various MBT provisions, the impact of the bill is expected to decline significantly beginning in FY 2012-13.

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.