

# Legislative Analysis



## CORPORATE INCOME TAX AMENDMENTS

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**House Bill 5008**  
**Public Act 13 of 2014**  
**Sponsor: Rep. Aric Nesbitt**

**House Bill 5010**  
**Public Act 15 of 2014**  
**Sponsor: Rep. Kevin Cotter**

**House Bill 5009**  
**Public Act 14 of 2014**  
**Sponsor: Rep. Jeff Farrington**

**House Bill 5011**  
**Public Act 16 of 2014**  
**Sponsor: Rep. Harold Haugh**

**House Committee: Tax Policy**  
**Senate Committee: Finance**  
**Complete to 7-22-14**

### A SUMMARY OF HOUSE BILLS 5008-5011 AS ENACTED 2-25-14

The package of bills, although not tie-barred to one another, made numerous clarifying amendments to the state's recently enacted corporate income tax (CIT). The CIT was added by Public Act 38 of 2011 (as Part 2 of the Income Tax Act of 1967, 1967 PA 281, MCL 206.601 et seq.), and became effective for tax years beginning after December 31, 2011.

Except for House Bill 5009, each of the bills includes an enacting section that says that the amendments made by the bills are retroactive, effective for tax years that begin after December 31, 2011. The enacting section for House Bill 5009 provides that the amendments made by the bill apply for tax years that begin after December 31, 2013.

#### **House Bill 5008 (2014 PA 13)**

##### **Corporate Income Tax Base – Business Loss Adjustment**

The Corporate Income Tax (CIT) is levied at a rate of 6.0% on the CIT base, after allocation and apportionment. The CIT base is the taxpayer's business income (i.e., federal taxable income), subject to numerous adjustments before and after allocation or apportionment. After allocation or apportionment, taxpayers may deduct any available "business loss," carrying forward any unused business loss in the nine subsequent years. House Bill 5008 specifies that a taxpayer that acquires assets of another corporation in a transaction described in Section 381(a)(1) and 381(a)(2) of the federal Internal Revenue Code – through liquidation and certain other reorganizations – could deduct any business loss attributable to that distributor or transferor corporation.

##### **Apportionment – Single Sales Factor**

To determine their tax liability, businesses that have business activity in Michigan and other states must calculate how much of their total business activity is apportioned to Michigan. The CIT uses a single sales factor, apportioning the tax base to Michigan

based on the total amount of sales made by the taxpayer in the state divided by the overall total amount of sales made by the taxpayer.

In determining the amount of sales in Michigan, the act provides that sales of tangible personal property are in the state if the property is shipped or delivered to any purchaser within the state regardless of the free on board point or other condition of sales.

House Bill 5008 adds that property stored in transit for 60 days or more prior to the receipt by the purchaser (or a designee), or in the case of a dock sale not picked up for 60 days or more, would be considered to have come to rest at that ultimate destination. Property stored in transit for fewer than 60 days prior to receipt by the purchaser (or designee), or in the case of a dock sale picked up before 60 days, would not be considered to have come to rest at that ultimate destination.<sup>1</sup>

### **Small Business Alternative Credit**

The CIT provides an alternate credit for small businesses (except insurance and financial firms subject to taxation under Chapters 12 and 13 of the CIT), which permits businesses to calculate their tax liability as 1.8% of adjusted business income (This is actually a credit equal to the amount by which the standard CIT exceeds 1.8% of adjusted business income). Businesses eligible to use the alternate rate must meet the following criteria: (1) have gross receipts not exceeding \$20.0 million; (2) have adjusted business income not exceeding \$1.3 million; and (3) have individual or officer-allocated income not exceeding \$180,000. (The credit phases out for income levels exceeding \$160,000.)<sup>2</sup>

The act defines "officer" as the chairperson of the board; the president, vice president, secretary, or treasurer of the corporation or board; and persons performing similar duties to those individuals. House Bill 5008 clarifies that the term "officer" includes other individuals performing similar duties *and responsibilities* as the listed individuals, including, at a minimum, major decision making.

### **House Bill 5009 (2014 PA 14)**

#### **Unitary Business Group – Combined Return**

The act generally requires that unitary business groups file a combined return that includes each U.S. person included in the group, treating each as a single person, and excluding transactions between those persons from the CIT base and the apportionment formula. House Bill 5009 clarifies that the transactions between persons included in a

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<sup>1</sup> This language is similar to that included in the sales apportionment formula described in the Michigan Business Tax Act (MCL 208.1305), which the CIT replaces. A "dock sale" is defined in the bill to mean a sale in which the purchaser picks up the property at the seller's location. "Stored in transit" would be defined to mean storing, forwarding, or consolidating activities undertaken for further shipment or transfer of the property to the purchaser (or designee).

<sup>2</sup> A similar credit was available to qualifying businesses under both the Single Business Tax (former MCL 208.36) and Michigan Business Tax (MCL 208.1417). See, [http://www.michigan.gov/documents/taxes/4893\\_406039\\_7.pdf](http://www.michigan.gov/documents/taxes/4893_406039_7.pdf).

unitary business group would also be excluded for the purposes of determining any exemptions, credits, and the filing threshold.<sup>3</sup>

### **House Bill 5010 (2014 PA 15)**

#### **CIT Exemption – Domestic International Sales Corporation**

The act generally exempts other governments (and enterprises of other governments), persons exempt from federal income tax (with some exceptions), and certain foreign persons domiciled in a NAFTA-member country from the state's corporate income taxes. House Bill 5010 provides an exemption for firms that qualify under the Internal Revenue Code as a "domestic international sales corporation" (DISC).

Under the provisions of the Internal Revenue Code, firms may elect to be treated as a DISC for U.S. income tax purposes, which generally exempts the firm from income taxes, subjecting distributions (profits) to shareholders to the lower qualified dividend tax rate rather than the rate applied to ordinary taxable income. Among other requirements, a firm electing to be treated as a DISC must have at least 95% of its gross receipts and assets be related to the export of property (1) that is produced by a person other than the DISC and (2) that contains at least 50% of materials produced in the U.S.<sup>4</sup>

### **House Bill 5011 (2014 PA 16)**

#### **Recapture of SBT/MBT Credits**

The CIT provides that taxpayers that claimed a credit under the Single Business Tax or the Michigan Business Tax that had a recapture provision will have that credit recaptured under the CIT if the taxpayer fails to comply with the terms and conditions of the credit, or sells or moves the property subject to the credit within five years after the credit was originally claimed under the MBT/GBT.

For taxpayers with a recaptured investment credit under the SBT (former MCL 208.35a) or the MBT (MCL 208.1403) due to the sale, transfer, or disposal of a tangible asset for which the credit was originally claimed, the amount recaptured is generally the amount of the proceeds, less any gain or plus any loss reflected in federal taxable income, multiplied by the appropriate apportionment factor (in the case of non-mobile assets), *minus the gain from the sale or other disposition added to the CIT base*. House Bill 5011 deletes this last provision (in italics). The bill also clarifies the language regarding the recapture due to the transfer of depreciable tangible assets other than mobile tangible assets. Here, the bill provides that the "transfer" means the removal from Michigan of tangible assets (other than mobile tangible assets), by means other than sale or other disposition.

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<sup>3</sup> MCL 206.685 provides that taxpayers other than financial or insurance institutions with annual gross receipts of less than \$350,000 do not need to file or pay CIT taxes. Taxpayers (including financial and insurance institutions) with a liability of \$100 or less do not need to file or pay CIT taxes.

<sup>4</sup> See, David Holik, *Interest-Charge Domestic International Sales Corporations, Tax Year 2008*, Internal Revenue Service, Statistics of Income Bulletin, Summer 2011, <http://www.irs.gov/pub/irs-soi/11cosumbulinterestcharge.pdf>

## **FISCAL IMPACT:**

Because taxpayer confidentiality provisions of the Revenue Act limit the information the Department of Treasury can provide, it's not possible to estimate the potential impact of the bills. For example, it appears as if the provisions of HB 5009 and HB 5010 regarding unitary filing groups would likely reduce state revenues, but the lack of taxpayer-specific information prevents a quantitative assessment. To the extent that revenues are affected, all CIT revenue accrues to the General Fund.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.