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House Bill 5008 (Substitute H-1 as passed by the House)
Sponsor: Representative Aric Nesbitt
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 1-15-14

CONTENT

The bill would amend Part 2 (Corporate Income Tax) of the Income Tax Act to do the following:

- **Allow a taxpayer that acquired the assets of another corporation in a particular type of transaction to deduct a business loss attributable to that corporation.**
- **For the purpose of apportionment, specify that property stored in transit for 60 days or more, or a dock sale not picked up for at least 60 days, would be considered to have come to rest at that ultimate destination.**
- **Revise the definition of "officer" for purposes of the small business alternative credit.**

The bill states, "This amendatory act is retroactive and effective for tax years that begin after December 31, 2011."

Business Loss

The Corporate Income Tax base is a taxpayer's business income subject to various adjustments. A taxpayer may deduct from its tax base any available business loss incurred after December 31, 2011. "Business loss" means a negative business income taxable amount after allocation or apportionment.

Under the bill, for this purpose, a taxpayer that acquired the assets of another corporation in a transaction described under Section 381(a)(1) or (2) of the Internal Revenue Code could deduct any business loss attributable to that distributor or transferor corporation.

(Section 381 of the Code pertains to the carryover of tax attributes, including net operating losses, in situations in which the assets of one corporation are acquired by another. Subsection (a) contains a general carryover rule applicable to (1) distributions involving liquidations of subsidiaries and (2) transfers subject to the nonrecognition of gain or loss, if the transfers are in connection with eligible reorganizations.)

Apportionment Sales Factor

The Act requires a multistate taxpayer to apportion its tax base to this State by multiplying the tax base by the sales factor. The sales factor is a fraction whose numerator is the total sales of the taxpayer in this State during the tax year and whose denominator is the total sales of the taxpayer everywhere during the tax year. For this purpose, the Act identifies how sales of a taxpayer in this State are determined.

In particular, sales of tangible personal property are in this State if the property is shipped or delivered to any purchaser in Michigan based on the ultimate destination at the point that the property comes to rest, regardless of the free on board point or other conditions of the sales.

Under the bill, property stored in transit for 60 days or more before receipt by the purchaser or the purchaser's designee, or in the case of a dock sale not picked up for 60 days or more, would be deemed to have come to rest at that ultimate destination. Property stored in transit for fewer than 60 days before receipt by the purchaser or the purchaser's designee, or in the case of a dock sale picked up before 60 days, would not be deemed to have come to rest at that ultimate destination.

The bill would define "stored in transit" as storing, staging, forwarding, or consolidating activities undertaken for further shipment or transfer of the property to the purchaser or the purchaser's designee. "Dock sale" would mean a sale in which the purchaser uses its own or rented vehicles, or makes arrangements with a carrier, to pick up the property at the seller's location.

Small Business Alternative Credit

The Act allows certain small businesses to take what is called the alternative tax credit. Firms eligible for this credit must have gross receipts of \$20.0 million or less and adjusted business income of \$1.3 million or less. Criteria for the credit also place limits on the total amount of compensation and directors' fees to individual shareholders and officers. A taxpayer that qualifies will receive a credit for the difference between the CIT liability and 1.8% of adjusted business income.

For this purpose, the Act defines "officer" as an officer of a corporation, including the following:

- The chairperson of the board.
- The president, vice president, secretary, or treasurer of the corporation or board.
- Persons performing similar duties to those described above.

In the third item, the bill would refer to persons performing similar duties and responsibilities to those described in the first two categories, including, at a minimum, major decision making.

MCL 206.623 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would likely reduce General Fund revenue by an indeterminate amount. The provisions in the bill affecting business losses would reduce General Fund revenue, as would the provisions affecting the small business credit. The provisions regarding property stored in transit could either increase or reduce revenue depending on the particular circumstances affecting each taxpayer. No estimates are available regarding the magnitude of any of these changes. Because the bill would be retroactive, any fiscal impact would be larger in FY 2013-14 than in later years, as taxpayers filed amended returns to reflect the changes in the bill.

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.