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Senate Bill 393 (as introduced 4-27-21)  
Sponsor: Senator Kevin Daley  
Committee: Finance

Date Completed: 5-13-21

## **CONTENT**

**The bill would amend the Income Tax Act to specify that, for the 2020 and 2021 tax years, a qualified taxpayer that was forced to close its afflicted business for at least six weeks during the tax year would receive a tax credit against the income tax equal to the business's total property tax collected during that calendar year or a portion of the business's rent if it leases property subject to property tax, or against a the taxpayer's liability as a member of a flow-through entity if it is a member of a flow-through entity.**

The bill would apply retroactively to tax years that begin on and after January 1, 2020.

### Corporate Tax Credit for Taxpayers with Afflicted Businesses

Generally, the Income Tax Act levies the State income tax on net income or certain commercial, business, and financial activities. Part 1 of the Act governs the individual income tax and Part 2 of the Act governs the corporate income tax. The bill would add the following language to Part 1 and Part 2 of the Act.

For the 2020 and 2021 tax years, a qualified taxpayer that was forced to close its afflicted business for at least six weeks during the tax year because of an executive order issued by the Governor or by the Department of Health and Human Services and whose afflicted business had a certified loss in gross receipt revenue of 25% or more during the tax year could claim a credit against the tax imposed by the Parts 1 or 2 of the Act. "Qualified taxpayer" would mean a taxpayer that owns and operates an afflicted business or a taxpayer that is a member of a flow-through entity that owns and operates an afflicted business. "Afflicted business" would mean any of the following businesses whose primary operation is any of the following: an entertainment venue; an exercise facility; a food service establishment; a recreation facility or place of public amusement; a cosmetology shop or barber shop; a nursery dealer or nursery grower; an athletic trainer; a body art facility; or a hotel or bed and breakfast.

The credit would be equal to the total property taxes levied and collected for that same calendar year on the qualified taxpayer's property used in connection with the operation of the taxpayer's afflicted business. ("Gross receipts" would mean that term as defined in Section 607 of the Income Tax Act: the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others except as otherwise provided.) If the taxpayer rents or leases property used in connection with the operation of its afflicted business and said property is subject to property tax, the taxpayer could claim a similar credit to the one above based on 23% of the gross rent paid during the tax year.

Concerning the tax imposed under Part 1 of the Act only, if the taxpayer were a member of a flow-through entity that owned and operated an afflicted business that qualified for this credit, the taxpayer could claim a credit against the member's tax liability under the Act based on the member's distributive share of business income reported from that flow-through entity or an alternative method approved by the Department of Treasury.

### Collection

The Department would have to prescribe the form and manner in which a qualified taxpayer could claim the credit described above. The Department could require reasonable proof from the taxpayer in order to verify the length and closure and reported revenue loss claimed to qualify for the credit. If the amount of the credit were to exceed the tax liability of the qualified taxpayer for the tax year, the excess would have to be refunded.

### Definitions of Specific Types of Afflicted Businesses

"Entertainment venue" would include an auditorium, arena, banquet hall, cinema, concert hall, conference center, performance venue, sporting venue, stadium, or theater.

"Exercise facility" would mean a facility in which individuals participate in individual or group physical activity, including a gymnasium, fitness center, or exercise studio.

"Food service establishment" would mean that term as defined by Section 1107 of the Food Law: an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. Food establishment includes, but is not limited to, a food processor, a food warehouse, a food service establishment, and a retail grocery.

"Recreation facility or place of public amusement" would include an amusement park, arcade, bingo hall, bowling alley, casino, nightclub, skating rink, water park or trampoline park.

"Hotel" would mean a building or structure kept, used, maintained as, or held out to the public to be an inn, hotel, or public lodging house. The term would not include a bed and breakfast. "Bed and breakfast" would mean, as defined in Section 4b of the Single State Construction Code Act: a single family residential structure that meets all of the following criteria: 1) has 10 or fewer sleeping rooms, including sleeping rooms occupied by the innkeeper, one or more of which are available for rent to transient tenants, 2) serves meals at no extra cost to its transient tenants, and 3) has a smoke detector in proper working order in each sleeping room and a fire extinguisher in proper working order on each floor.

Proposed MCL 206.279 & 206.713

Legislative Analyst: Christian Schmidt

### **FISCAL IMPACT**

The bill would reduce State corporate and individual income tax revenue to the General Fund and School Aid Fund by an unknown and potentially significant amount that would depend on the number of eligible taxpayers affected, as well as the property taxes and rent paid by those taxpayers. Any revenue reduction would occur during fiscal years (FYs) 2020-21 and 2021-22, with the relative impact between the two years depending on when firms filed returns or amended returns and any growth in taxable value of affected property.

It is impossible to estimate the number of taxpayers forced (or who could be forced) to close for at least six weeks because of an executive order or emergency order and who experienced a reduction in gross receipts revenue of 25% or more. The bill would not require the 25% loss

of revenue to occur only during the time period for which a business was closed. Many taxpayers could meet the 25% threshold whether or not they were closed (either under the terms identified in the bill or from other circumstances).

Furthermore, the bill does not define what "forced to close...due to an executive order...or emergency order" would mean. Potentially, firms may exist that closed because of reduced customer traffic (which may have reflected restrictions associated with executive orders or emergency orders) even though the no order specifically required the firm to close. The bill does reference "afflicted business" entities that were not directly closed because of an emergency order or executive order, such as hotels. As a result, it is unclear if any hotel in the State would qualify for the credit. Data indicate most hotels experienced revenue reduction in excess of 25% during 2020, but that reduction would have reflected a reduction in the number of travelers, not that an executive or emergency order required the business to close.

The 2020 taxable value for all commercial real property (all of the firm categories listed in the definition of afflicted businesses would represent commercial property) in Michigan is \$54.4 billion, plus another \$9.5 billion in commercial personal property. The average millage rate on commercial real property is about 53.5 mills, while personal property pays 12 mills less (assuming it is not exempt because of personal property tax reform provisions). If the bill affected 10% of commercial real property, at the average millage rate, the bill would reduce revenue \$290.9 million. If the bill also affected 10% of commercial personal property, the provisions would exempt an additional \$39.5 million, bringing the total revenue loss per year to \$330.4 million for commercial property, excluding any credits based on gross rent. If 1% of commercial real and personal property were affected, the credit would reduce revenue by approximately \$33.0 million per year, excluding the impact of credits based on gross rent.

Between the impact of rising taxable values and the likely timing of any filings of amended returns for tax year 2020 (generally due either April 30, 2021, or May 15, 2021), the bill likely would reduce revenue in FY 2021-22 by more than in FY 2020-21. As a result, the bill would reduce the growth rate of General Fund revenue between the two fiscal years and potentially reduce or eliminate the currently forecasted rate reduction in the individual income tax rate in FY 2022-23 under the provisions of Michigan Compiled Laws (MCL) 206.51. A final determination of whether the income tax rate will be reduced under the provisions of MCL 206.51 will not be made until January 2023. As of the January 2021 Consensus Revenue Estimating Conference, the triggered rate reduction under MCL 206.51 is forecasted to lower revenue by \$193.0 million in FY 2022-23, \$439.0 million in FY 2023-24 and \$524.0 million in FY 2024-25.

Credits claimed under the corporate income tax would reduce General Fund revenue. The distribution across funds for any credits claimed under the individual income tax would depend on whether the credit lowered annual payments or increased a refund. If annual payments are lowered, 23.8% of any revenue reduction would lower School Aid Fund revenue, with the remaining amount lowering General Fund revenue. Credits, or the portion of credits, paid as refunds would lower only General Fund revenue.

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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.