House Legislative Analysis Section

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COMMUNITY FOUNDATION ELIGIBILITY

House Bills 5526 and 5527 as enrolled
Second Analysis (7-19-90)

Sponsor: Rep. Donald Van Singel
House Committee: Taxation
Senate Committee: Finance

THE APPARENT PROBLEM:

Public Acts 514 and 515 of 1988 allow taxpayers for the 1989 through 1991 tax years to claim credits against the income tax and the single business tax for contributions to community foundations in the same way credits can be claimed for contributions to Michigan colleges and universities, public libraries, and public broadcasting. Up to certain limits, a taxpayer can claim a credit equal to 50 percent of contributions made. (The limit for an income tax credit is $100 for a single taxpayer and $200 for a joint return. The limit for the single business tax credit is $5,000 or five percent of tax liability, whichever is less. The credits are nonrefundable, which means they cannot reduce taxes owed to below zero.) There is also a limit on the total amount of credits: the credit cannot be claimed for a contribution to a community foundation in a tax year if at the end of the previous tax year the total of all such credits for all tax years exceeded $3 million.

A community foundation has been described as a special kind of umbrella charitable organization that raises capital in order to make contributions to a broad range of activities in a geographic area. It is said to differ from the typical charity in that it does not have a single focus and to differ from other umbrella organizations, such as the United Way, in that its funds go not to operating budgets but to specific projects. The acts allow a credit only for a contribution to a foundation certified by the Department of Treasury as meeting statutory requirements and they require a foundation to have been incorporated or established before January 1 of the year prior to the tax year for which a credit is claimed. This last requirement poses a hardship for at least one community foundation that is said to have been in the process of forming when the credit legislation was passed. It was incorporated in February of 1989 and thus would not be eligible for the credit until the 1991 tax year unless the legislature amends the tax credit acts. There may be other foundations in similar circumstances.

THE CONTENT OF THE BILLS:

The bills would require that a community foundation be incorporated or established before September 1 (rather than January 1) of the year prior to the tax year in order for a taxpayer to claim a credit for a contribution to the foundation. The bills would apply to tax years after 1989. House Bill 5526 would amend the Single Business Tax Act (MCL 208.38c). House Bill 5527 would amend the Income Tax Act (MCL 206.261).

FISCAL IMPLICATIONS:

The bills would make no change in the cap on total tax credits.

ARGUMENTS:

For:

The bills would simply allow contributors to a community foundation to receive a tax credit if the foundation was created four months before the beginning of the tax year instead of twelve months before the beginning of the tax year. This would help at least one community foundation that meets all other criteria for the tax credit. One would think that the community foundations that would most benefit from being able to promise contributors a tax credit would be the newly forming ones. These bills would help at least one such new community foundation and probably others as well.

Against:

While not opposing these bills, some people are upset at how the Department of Treasury is administering the tax credit, including its demand that a community foundation operate on an "endowment" basis, meaning that it can only spend interest on its capital to fund community projects. This discriminates against worthy foundations that are spending the money they are raising to address pressing needs, and it tends to work in favor of the established, old-line, foundations. This is not what the language of the law demands. The act needs to be revisited so that worthy community foundations are not denied certification for tax credit purposes.

Response: The definition of a community foundation, for the purpose of this credit, includes the requirement that it be "organized and operated to attract contributions primarily of a capital or endowment nature," and this is the basis for the treasury department's determination that a foundation should use the earnings from its capital and not spend the donations as they come in. This is one of the attributes that distinguishes a foundation from other charities.

Against:

Some people, who do not oppose this specific change in the tax credit program, remain opposed to the concept of allowing contributors to community foundations a tax credit on the grounds that there is no good reason to single out this one kind of charitable organization for special treatment. Why shouldn't the cancer society, lung association, scouting, or a hundred other groups be allowed such treatment?

Response: The tax credit for contributions to community foundations was authorized only for the 1989 through 1991 tax years and is capped roughly at $3 million. There will doubtless be opportunities for the legislature to discuss the subject in the future.