

Legislative Analysis



MICHIGAN BUSINESS TAX CERTIFICATED CREDITS

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<http://www.house.mi.gov/hfa>

House Bill 4189 as introduced
Sponsor: Rep. Jason M. Sheppard

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4190 as introduced
Sponsor: Rep. Michael Webber

House Bill 4191 as introduced
Sponsor: Rep. Kevin Coleman

Committee: Tax Policy
Complete to 3-6-19

SUMMARY:

House Bills 4189, 4190, and 4191 would amend the Michigan Business Tax Act, the Michigan Economic Growth Authority Act, and the Income Tax Act, respectively, to allow eligible business entities to transfer certain tax credits as authorized by the Michigan Strategic Fund or Michigan Economic Development Corporation (MSF/MEDC) and to require that, aside from technical changes, any modification, amendment, transfer, or assignment of a credit must reduce the net amount of the credit.

In 2011, the Michigan Business Tax (MBT) was replaced by a new Corporate Income Tax (CIT). However, businesses that had been approved for, received, or assigned certain “certificated credits” under the MBT prior to January 1, 2012 (the start of the CIT), are allowed elect to continue to file and pay the MBT rather than the CIT in order to continue claiming those certificated credits, until the credits (and any carryforwards) are fully exhausted. (Once the last credit or carryforward based on a credit has been claimed, the MBT will be fully repealed.)

Generally speaking, the bills address circumstances where a business firm acquires another firm, and the firm being acquired has been approved to receive, or has been assigned, a certificated credit under the MBT. In such cases, the acquiring firm could elect to file under and pay the MBT instead of the CIT. The bills allow an acquiring firm that had already filed under the CIT prior to the enactment of these bills to file an amended return under the CIT and an original return under the MBT. The bills are described in greater detail below.

House Bill 4189 would amend the Michigan Business Tax Act, and **House Bill 4191** would amend the Income Tax Act, which contains the CIT. The bills contain similar provisions, and specify the following:

- If a taxpayer under the CIT acquires all rights, privileges, and liabilities of another firm or member of a unitary business group,
- And the firm being acquired has (1) been approved to receive, has received, or has been assigned a certificated credit under the MBT that has not been fully claimed or paid prior to the date of the transaction, and (2) has filed a return or has been included in a combined return and paid the MBT in lieu of the CIT in order to claim the credit,
- Then the acquiring business could, for the first year ending after the acquisition and the assignment of the credit only, elect to pay the MBT in lieu of the CIT.

Such a taxpayer electing to file under the MBT for tax years ending prior to the enactment of these bills that had already filed under the CIT would file an amended CIT return for that tax year (and each tax year thereafter) and file an original return under the MBT. This election would continue until the certificated credit and any carryforward are used up. The taxpayer would have to notify the Department of Treasury of the election and file an annual return within four months after making the election and include a copy of the corresponding amended returns under the CIT. The Department of Treasury could also require documentation from the taxpayer to support the transaction (the acquisition of the other business), the acquisition of the certificated credit that is the basis for the election, and a determination by the MSF/MEDC that the election will reduce the net liability to this state.

The terms, conditions, and amount of a certificated credit attributable to the entity whose existence was terminated by the transaction would continue and could not be expanded in any manner that would increase the net amount of the credit as a result of an election made under the bills.

A taxpayer electing to file also could claim any other certificated credit for which the firm whose existence was terminated as a result of the transaction was eligible, but not any certificated credit that would have accrued in any year before the election allowed for in the bills. The taxpayer electing to file would not be eligible to claim any other certificated credit for which an election could have been made for the first tax year ending after December 31, 2011. Once the certificated credit that was the basis for the election was extinguished, the taxpayer would no longer be eligible to pay the MBT and claim any other remaining certificated credit.

House Bill 4189 would provide that, beginning January 1, 2020, a taxpayer could not claim more than one certificated credit per tax year.

House Bill 4189 would also provide for the repeal of the Michigan Business Tax Act effective for tax years beginning after December 31, 2031.

House Bill 4189 and **House Bill 4190** (which amends the Michigan Economic Growth Authority Act) would also prohibit the MSF/MEDC from entering a new written tax credit agreement with an eligible business, modifying or amending an existing agreement with an authorized business, or transferring or assigning an existing agreement to another legal entity unless the modification, amendment, transfer, or assignment would reduce the net amount of tax credits authorized to businesses. However, the MSF/MEDC could modify, amend, transfer or assign an existing agreement for technical changes as long as the change does not increase the net amount of the credit. The bills would also prohibit MSF/MEDC from modifying an existing agreement to provide the authorized business with a longer term to claim that credit. House Bill 4190 would further require the MSF/MEDC to determine the guidelines for modifying and amending existing written agreements and to publish them on its website.

Each bill would take effect 90 days after its enactment. House Bill 4191 is tie-barred to HBs 4189 and 4190, which means that it could not take effect unless the other two bills were enacted.

HB 4189: MCL 208.1117, 208.1500, and 208.1505 and proposed MCL 208.1402

HB 4190: MCL 207.808

HB 4191: MCL 206.680

FISCAL IMPACT:

The fiscal impact of the bills would depend on the assumptions made about the state's liability with respect to affected certificated credits. The bills would require a modification, amendment, transfer, or assignment of a certificated credit to reduce the net amount of the certificated credit unless the modification, amendment, transfer, or assignment was a technical change. The net amount of the certificated credit represents the state's potential liability over the term of the credit and not a guaranteed loss of revenue in future years since qualifying for a credit is dependent on meeting certain benchmarks stipulated in the certificated credit contract. Therefore, reducing the net amount of the certificated credit (the potential liability) would not necessarily result in an increase of state revenues over the term of the original certificated credit. The state would only realize a net increase in revenues if the amount of the potential liability ultimately claimed by the taxpayer was assumed to exceed the actual value of the newly modified, amended, assigned, or transferred certificated credit. Modifications, amendments, transfers, or assignments that allow an entity to claim a credit it would not have otherwise been able to claim but for the modification, amendment, transfer, or assignment would reduce state revenues.

The bills likely would result in a change to the timing of the state revenue impact from affected certificated credits due to any modifications, amendments, transfers, or assignments. The magnitude of the revenue and timing changes cannot be estimated due to the inability to forecast future modifications, amendments, transfers, or assignments. Any revenue impact would affect the general fund.

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