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BILL ANALYSIS

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Senate Bill 1284 (as reported without amendment)
Sponsor: Senator Mark C. Jansen
Committee: Finance

Date Completed: 8-5-08

RATIONALE

Because owners of rent-restricted units and some other types of affordable housing are unable to raise rent in order to increase profits, they frequently operate with small profit margins. When there are changes in the rental market or increases in taxes, these property owners are often unable to adapt and quickly lose their profits. Reportedly, the Michigan business tax (MBT) eliminated the small profits made by owners of affordable housing in the State and in some instances affordable housing projects now are operating with losses. Some people believe that, because the continued existence of affordable housing is important to the welfare of low-income Michigan citizens and affordable housing projects often operate on limited budgets, MBT deductions should be allowed for gains from the sale of rental property to qualified affordable housing projects, and for their income from rent-restricted units.

CONTENT

The bill would amend the Michigan Business Tax Act to do the following:

- **Allow a taxpayer to deduct from its business income tax base any gain from the sale of residential rental units in this State to a qualified affordable housing project that entered into an agreement to operate them as rent-restricted units for at least 15 years.**
- **Require the Department of Treasury to record a lien against the property subject to the operation agreement for the amount of the deduction; and provide that the lien would become payable if the housing project failed to operate as provided in the agreement within 15 years after the sale.**
- **Allow a qualified affordable housing project to deduct from its business income tax base a portion of taxable income that was attributable to new restricted units.**
- **Allow a qualified affordable housing project to deduct from its gross receipts a portion attributable to rent-restricted units.**

Business Income Tax Deductions

The Act levies a business income tax on taxpayers having business activity within this State. This tax is imposed on the business income tax base after allocation or apportionment to this State at a rate of 4.95%. The business income tax base is a taxpayer's business income subject to certain adjustments before and after allocation or apportionment.

Gain from Sale Deduction. Under the bill, a taxpayer could deduct from its base any gain from the sale of any residential rental units in this State to a qualified affordable housing project that entered into an agreement to operate the residential rental units as rent-restricted units for at least 15 years.

If the qualified affordable housing project did not agree to operate all of the residential rental units as rent-restricted units, the deduction would be limited to an amount equal to the gain from the sale multiplied by a fraction, the numerator of which would be the number of those residential rental units purchased that were to be operated as a rent-restricted unit and the denominator of which would be the number of all rent-restricted units purchased.

For a taxpayer to claim this deduction, the Department of Treasury could require the taxpayer and the qualified affordable housing project to report the amount of the deduction on a form as prescribed by the Department that was signed by both the taxpayer and the housing project and filed with the taxpayer's annual return.

The Department would have to record a lien against the property subject to the operation agreement for the total amount of the deduction. The Department would have to notify the qualified affordable housing project of the maximum amount of the lien that it could be liable for if it failed to qualify and operate as provided in the operation agreement within 15 years after the purchase. The lien would become payable to the State by the qualified affordable housing project if the project failed to qualify and failed to operate all or some of the residential rental units as rent-restricted units in accordance with the operation agreement within 15 years after the taxpayer claimed the deduction.

An amount equal to the product of 100% of the amount of the deduction multiplied by a fraction, the numerator of which was the difference between 15 and the number of years the affordable housing project qualified and operated rent-restricted units in accordance with the agreement and the denominator of which was 15, would have to be added back to the tax liability of the qualified affordable housing project for the tax year that it failed to comply with the agreement.

("Qualified affordable housing project" would mean a person that is organized, qualified, and operated as a limited dividend housing association that has a limitation on the amount of dividends or other distributions that may be distributed to its owners in any given year and has received funding, subsidies, grants, operating support, or construction or permanent funding through one or more of the following sources and programs:

-- Mortgage or other financing provided by the Michigan State Housing Development Authority, the United States Department of Housing and Urban Development (HUD), the U.S. Department of Agriculture (USDA) for Rural Housing Service, the Michigan Interfaith Housing Trust Fund, Michigan Housing and Community Development Fund, Federal home loan bank, housing commission loan, community development financial institution, or mortgage or other funding or guaranteed by Fannie, Ginnie, Federal Housing Association, USDA, or Federal Home Loan Mortgage Corporation.
-- A tax-exempt bond issued by a nonprofit organization, local governmental unit, or other authority.
-- A payment in lieu of tax agreement or other tax abatement.
-- Funding from the State or a local governmental unit through a home investments partnership program authorized under Federal law.
-- A grant or other funding from a Federal home loan bank's affordable housing program.
-- Financing or funding under the new markets tax credit program under the Internal Revenue Code (IRC).
-- Financed in whole or in part under HUD's Hope VI program authorized by the National Affordable Housing Act.
-- Financed in whole or in part under HUD's Section 202 program authorized by the National Housing Act.
-- Financing or funding under the low-income housing tax credit program under the IRC.
-- Financing or other subsidies from any new programs similar to any of the above.

"Rent restricted unit" would mean any residential rental unit's rental income is restricted in accordance with Section 42(G)(1) of the IRC (based on the percentage of rent-restricted residential units and tenants with incomes below the area median income) as if it were a qualified low-income housing project, or receives rental assistance in the form of HUD Section 8 subsidies or HUD housing assistance program subsidies, or rental assistance from the USDA rural housing programs, or from any other program described in the definition of "qualified affordable housing project". "Limited dividend housing association" would mean a limited dividend housing association, corporation, or cooperative organized and qualified pursuant to Chapter 7 of the State Housing Development Authority Act.)

Taxable Income Deduction. A person that was a qualified affordable housing project could deduct an amount equal to the product of that person's taxable income that was attributable to residential rental units in this State owned by the housing project multiplied by a fraction, the numerator of which was the number of rent-restricted units in this State it owned and the denominator of which was the number of all residential rental units it owned in this State. The amount of this deduction would have to be reduced by the amount of limited dividends or other distributions made to the partners, members, or shareholders of the qualified affordable housing project. Taxable income that was attributable to residential rental units would not include income received by the management, construction, or development company for completion and operation of the project and those rental units.

Modified Gross Receipts Tax Deduction

The MBT Act levies a modified gross receipts tax on every taxpayer with nexus in this State. This tax is imposed on the modified gross receipts tax base, after allocation or apportionment to the State at a rate of 0.8%. The modified gross receipts tax base is a taxpayer's gross receipts, less purchases from other firms before apportionment under the Act.

Under the bill, a person that was a qualified affordable housing project could deduct from its gross receipts an amount equal to that person's total gross receipts attributable to residential rental units in this State owned by the housing project multiplied by a fraction, the numerator of which was the number of rent-restricted units in this State it owned and the denominator of which was the number of all rental units it owned in this State. The amount of the deduction would have to be reduced by the amount of limited dividends or other distributions made to the partners, members, or shareholders of the qualified affordable housing project. Gross receipts attributable to residential rental units would not include amounts received by the management, construction, or development company for completion and operation of the project and those rental units.

Failure to Operate in Accordance with Agreement

If a qualified affordable housing project no longer met the criteria for a "qualified affordable housing project" under the bill, or failed to operate residential rental units as rent-restricted units in accordance with an operation agreement and the definition of "rent restricted units", the taxpayer or qualified affordable housing project would be entitled to the deductions under the bill as long as the housing project continued to offer some of the residential units purchased as rent restricted units in accordance with the operation agreement.

MCL 208.1201 & 208.1203

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would allow an affordable housing project to deduct from its MBT tax base a portion of income and gross receipts from rent-restricted units. The deductions would decrease MBT liability for the project, increasing profits and reducing losses. Because rent-restricted and affordable housing projects may not increase rent in order to adapt to changing markets and are otherwise restricted by State and Federal laws, it is important to minimize their tax burdens and allow them to make some profit in order to stay in business. The bill would enable the owners of affordable housing to continue to provide housing for low-income people in Michigan. The bill also would help ensure the availability of affordable housing by allowing taxpayers to claim an MBT deduction for the sale of rental property to qualified affordable housing projects that entered into a rent-restricted operation agreement.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

Based on data and information from the U.S. Department of Housing and Urban Development, as well as information from financial experts involved in Michigan's affordable housing activity, it is estimated that this bill would reduce Michigan business tax revenue in the range of $2.0 million to $5.0 million on a full-year basis. The reason for this range is that the loss in revenue under the bill would likely be somewhat erratic from year-to-year due to the deduction from the business income tax it would provide for the gains realized from the sale of affordable housing projects that remained as affordable housing under the new owner. The number of such sales and the value of the gains would likely be erratic from year to year. This loss in revenue would reduce the General Fund/General Purpose budget. There would be no direct impact on local units of government.

Fiscal Analyst: Jay Wortley

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