

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for May 21, 2010 Council Meeting

(Report as of May 13, 2010)

I. PUBLIC ACTS

- A. Public Act 38 of 2010. Amends section 27a of the Revenue Act (MCL 205.27a) to give direction to the Department of Treasury regarding treatment of a taxpayer that filed a Single Business Tax (SBT) return that included an entity disregarded for federal income tax purposes. Specifically, for a taxpayer that filed a tax return under the former SBT Act that included an entity disregarded for federal income tax purposes under the Internal Revenue Code, both of the following would apply: (i) the Department of Treasury could not assess the taxpayer an additional tax or reduce an overpayment because the taxpayer included the disregarded entity on its SBT return; and (ii) the Department of Treasury could not require the disregarded entity to file a separate tax return. In addition, if a taxpayer filed a SBT return that included an entity disregarded for federal income tax purposes, the taxpayer could not claim a refund based on the disregarded entity's filing a separate return as a distinct taxpayer. The Act is curative, will be retroactively applied, and is intended to correct any misinterpretation concerning treatment of an entity disregarded for federal income tax purposes that may have been caused by the court of appeals decision in *Kmart Michigan Prop Servs v Michigan Dep't of Treasury*, 283 Mich App 647 (2009). In that case, the court of appeals held that a taxpayer that elected to be classified as a disregarded entity for federal tax purposes nevertheless could file a return separate from its owner under the SBT Act. (HB 5937; effective 3/31/10)
- B. Public Act 61 of 2010. Amends section 1311 of the Insurance Code (MCL 500.1311) to address the takeover of a domestic property and casualty insurer having 200 or fewer employees directly or indirectly through an affiliate transacting the insurer's business. Under the Act, if a proposal made by an outside entity to merge with or acquire control of the insurer is not supported by a majority of the insurer's board of directors, then 66.67% of the outstanding voting securities must approve (i) any proposal to enter into an agreement to merge with or otherwise acquire control of the insurer or any person controlling the insurer, or (ii) for the purpose of obtaining control, a proposal seeking the election of two or more members of the board of directors of the insurer or any person controlling the insurer. (SB 1174; effective 4/30/10)
- C. Public Acts 5 and 6 of 2009. Amend the Michigan Business Tax Act to allow the Michigan Economic Growth Authority (MEGA) to enter into up to three tax credit agreements, rather than one agreement, for the construction of an integrative cell manufacturing facility; allow MEGA to adopt a resolution authorizing such an agreement until October 1, 2009, rather than August 1, 2009; and increase from \$70.0

million to \$90.0 million the total MBT credits allowed for expenses for certain vehicle engineering activities. (HB 4515 and SB 319; effective 4/06/09)

- D. Public Acts 8 and 9 of 2009. Amend the Michigan Business Tax (MBT) Act to allow a taxpayer that calculates and pays estimated payments for Federal income tax purposes pursuant to Section 6655(E) of the Internal Revenue Code, to calculate the estimated payments required each quarter under the Act by using the same methodology as used to calculate the annualized income installment or the adjusted seasonal installment, whichever was used as the basis for the Federal estimated payment. A penalty for underpayment of an estimated tax cannot be assessed for a tax year that ends before December 1, 2009, if the taxpayer paid 75% of the tax due for the tax year. The Acts are retroactive and effective for tax years beginning after December 31, 2007. Under the MBT Act, a taxpayer that reasonably expects liability for the tax year to exceed \$800 must file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year. (HB 4496 and SB 98; effective 1/01/08)
- E. Public Act 26 of 2009. Amends the section of the Michigan Business Tax Act (MCL 208.1434) which provides tax credits related to the development and application of advanced battery technology. The amendments allow for one additional credit to be awarded for the construction of integrated battery cell manufacturing facilities. This brings the number of credits available from three to four credits and increases the maximum amount of credits available over four years from \$300 million to \$400 million. The amendments also increase from \$90 million to \$135 million the maximum dollar amount of credits for firms engaged in vehicle engineering to support battery integration, prototyping, and launch expenses. The current limits on credits were recently added by Public Act 6 of 2009 (SB 319). Prior to that, only one credit was available for a facility with a maximum of \$100 million and the limit on vehicle engineering credits was \$70 million. (SB 0466; effective 5/12/09)
- F. Public Acts 32 and 33 of 2009. Public Act 33 creates the Recreational Vehicle Franchise Act to do the following: prohibit a manufacturer or a dealer from selling a recreational vehicle (RV) in Michigan without a dealer agreement; prohibit a manufacturer or dealer from terminating or declining to renew a dealer agreement without good cause; prescribe procedures for the termination or nonrenewal of an agreement; require a dealer to notify a manufacturer of a proposed transaction that will result in a change of ownership, and give the manufacturer an opportunity to object; prescribe a warrantor's obligations to a dealer; prohibit specified actions by a warrantor or dealer; prescribe procedures a dealer and manufacturer must follow if a dealer receives damaged RVs; prohibit coercive actions by a manufacturer; allow a dealer, manufacturer, or warrantor to bring a civil action for a violation of the Act; require the parties to a dispute to attempt mediation before bringing a civil action; and allow a party to apply for an injunction or other equitable relief for specified violations. Public Act 32 amends the Michigan Vehicle Code to include park model trailers in provisions regarding the transport of mobile homes. (HB 4781 and SB 363; effective 12/1/2009)

- G. Public Acts 80, 81, 82, 83, 84, and 85 of 2009. These Acts each amend a separate act to update references in order to make them apply to the new Uniform Securities Act. The following describes the acts being amended by this set of Acts: Public Act 80 would amend the Professional Service Corporation Act (MCL 450.228); Public Act 81 would amend the Michigan Export Development Act (MCL 447.160); Public Act 82 would amend the Michigan Penal Code (MCL 750.159g and 411j) to include certain violations of the securities law in the definition of “racketeering”; Public Act 83 would amend the Revised Judicature Act of 1961 (600.4701) to amend the definition of “crime” to update the securities act reference; Public Act 84 would amend the Public Employee Retirement System Investment Act (MCL 38.1133), under which investment fiduciaries have to be registered under state securities law; and Public Act 85 would amend the Michigan Strategic Fund Act (MCL 125.2023), which exempts the fund’s bonds and notes from filing requirements in the state securities law. (HB 4683, 4684, 4686, 4687, 4695, and 4696; effective 8/31/2009)
- H. Public Act 86 of 2009. The Act amends the Highway Advertising Act to allow the Michigan Department of Transportation (MDOT) to issue a permit for a new sign structure for a religious organization sign or a service club sign measuring less than eight square feet; delete the current \$100 penalty for delinquent payment of an annual permit renewal fee and provides for a \$20 penalty if the renewal fee is not paid at least 30 days before the permit's expiration date; provide that, for permits having the same expiration date, the maximum amount of increased renewal fees for late payments that could be assessed against one permit holder would be \$10,000; requires MDOT to notify a permit holder by certified mail, within 30 days after the permit's expiration date, if the annual renewal fee is not paid; and allow MDOT to cancel a permit if the fee is not paid within 60 days after the permit expires. (HB 5122; effective 9/3/09)
- I. Public Act 87 and 88 of 2009. Public Act 87 enacts the Uniform Prudent Management of Institutional Funds Act to require an institution managing and investing an institutional fund to consider the institution’s charitable purposes and the purposes of the fund; establish a good faith and prudent person standard for each person responsible for managing and investing an institutional fund; specify factors that would have to be considered, and rules that would apply, in the management and investment of an institutional fund; allow an institution to appropriate for expenditure or accumulate amounts of an endowment fund that were prudent for its uses, benefits, purposes, and duration; require an institution to consider specific factors in determining to appropriate or accumulate amounts in an endowment fund; specify circumstances under which an institution could delegate the management and investment of an institution fund to an external agent; specify conditions under which an institution could release or modify a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund; require the Attorney General to be notified and given an opportunity to be heard on the matter of releasing or modifying a restriction in a gift instrument; and outline provisions regarding compliance with, and the scope of, the Act. Under the proposed Act, “institution” would mean: a person, other than an individual, organized and operated exclusively for charitable purposes; a government or governmental subdivision, agency, or

instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or a trust that had both charitable and noncharitable interest, after all noncharitable interests have terminated. The Act repeals the Uniform Management of Institutional Funds Act. Public Act 88 amends the Nonprofit Corporation Act, MCL 450.2124 et al., to refer to the proposed Uniform Prudent Management of Institutions Funds Act rather than the current Uniform Management of Institutional Funds Act. (SB 411 and 412; effective 9/10/2009)

- J. Public Act 90 of 2009. Amends the Michigan Business Tax Act (MCL 208.1430) to revise, and delay the sunset for granting, an MBT credit to a qualified taxpayer for the construction and operation of a new facility for the development and manufacture of photovoltaic energy (solar energy), photovoltaic systems, or other photovoltaic technology; allow the Michigan Economic Growth Authority (MEGA) to enter into one agreement with an “eligible taxpayer” for such a credit; and increase the total of all such credits from \$25.0 million to \$75.0 million. (HB 4523; effective 9/15/09)
- K. Public Acts 92, 93, 94, 95, 96, 97, and 98 of 2009. These Acts each amend a separate act to update references in order to make them apply to the new Uniform Securities Act. The following describes the acts being amended by this set of Acts: Public Act 92 would amend the Michigan Consumer Protection Act (MCL 445.920); Public Act 93 would amend Public Act 227 of 1971 (MCL 445.111), which deals with home solicitation sales; Public Act 94 would amend the Nonprofit Corporation Act (MCL 450.3137) to address cooperative nonvoting investment certificates and bonds; Public Act 95 would amend the Savings and Loan Act of 1980 (MCL 491.515) to update the definition of “securities”; Public Act 96 would amend the Michigan Education Trust Act (MCL 390.1439), which exempts advance tuition payment contracts from the Uniform Securities Act; Public Act 97 would amend the Credit Services Protection Act (MCL 445.1822); and Public Act 98 would amend the Natural Resources and Environmental Protection Act (MCL 324.21528 and 50510), which exempts certain bonds and notes from having to be filed under the state securities law. (SB 700, 701, 703, 706, 707, 710, and 712; effective 9/24/09)
- L. Public Act 105 of 2009. Amends the Michigan Business Tax Act section 201 (MCL 208.1201) to exclude from the business income tax base royalty and interest payments to a person organized under the laws of a foreign nation having a comprehensive tax treaty with the United States. (SB 219; effective 10/1/09)
- M. Public Act 106 of 2009. Amends the Michigan Business Tax Act section 515 (MCL 208.1515) to reduce the amount of MBT revenue earmarked to the School Aid Fund. This applies for each fiscal year beginning after the 2007-08 fiscal year. This means that some MBT revenue that otherwise would go to the School Aid Fund would instead go the General Fund. (SB 480; effective 10/1/09)
- N. Public Act 110 of 2009. Amends the Michigan Business Tax Act section 434 (MCL 208.1434) that provides tax credits related to the development and application of advanced battery technology. It would allow for an additional credit to be awarded by the Michigan Economic Growth Authority for the construction of a facility that

- will produce large scale batteries and manufacture integrated power management, smart control, and storage systems from 500 kilowatts to 100 megawatts. The credit would be equal to 25 percent of the capital investment expenses for any tax year. The bill applies to a firm that will create at least 500 new jobs in Michigan and that receives federal loan guarantees from the U.S. Department of Energy. There could be only one such credit agreement; the credit could be for up to \$25 million per year for four years, and no credit could be claimed before 2012. (SB 777; effective 10/6/09)
- O. Public Act 126 of 2009. Amends the Michigan Business Tax Act section 431 (MCL 208.1431), which allows the Michigan Economic Growth Authority (MEGA) to award multi-year refundable tax credits to firms that meet statutory criteria. Under the Act, there would be a new limit imposed on the number of credits that could be claimed each year. For the 2010 calendar year and each subsequent year, the total amount of credits allowed to be claimed in the first year of all agreements could not exceed the sum of the total amount of credits claimed during the immediately preceding calendar year plus \$95 million. (SB 774; effective 10/27/09)
- P. Public Act 141 of 2009. Amends the Michigan Business Tax Act section 435 (MCL 208.1435) to allow an unused carryforward of a taxpayer's historic preservation credit to be reduced by the amount that otherwise would be added to the taxpayer's tax liability. Under the Act, a taxpayer that owns and rehabilitates a historic resource may claim an MBT credit for a percentage of the taxpayer's qualified expenditures, if the taxpayer receives a certificate of completed rehabilitation and other criteria are met. If the credit for a tax year exceeds the taxpayer's MBT liability, the excess may not be refunded but may be carried forward to offset tax liability for up to 10 subsequent tax years. For certain levels of the credit, a taxpayer must obtain a preapproval letter from the State. If a taxpayer's preapproval letter is revoked, between 20% and 100% of the credit must be added back to the taxpayer's MBT liability. (HB 4264; effective 12/31/07)
- Q. Public Act 142 of 2009. Amends the Michigan Business Tax Act section 117 (MCL 208.1117) to provide that if the term "tax year" in the Act were used in reference to one or more previous or preceding tax years that were before January 1, 2008, those tax years would be deemed the same tax years during which the former Single Business Tax Act was in effect. (HB 4709; effective 12/31/07)
- R. Public Act 157 of 2009. The Act amends the Michigan Business Tax Act (MCL 208.1267) to provide that, if a taxpayer restructured as a financial institution on or after January 1, 2008, and before the restructuring qualified to apportion its tax base based on its sales factor calculated under Section 307, the taxpayer could elect to continue to have its business activities that are subject to the MBT both within and outside the State apportioned to the State by multiplying its tax base by its sales factor calculated in accordance with Section 307. The Act would make an exception to the requirement that a financial institution apportion its tax base to Michigan by multiplying the tax base by the gross business factor. The purpose of the Act is to allow GMAC to continue to use the apportionment percentage of General Motors because it would be more advantageous to GMAC. On November 30, 2006, GMAC

Fund and the State Treasurer, an addition credit of up to 15% of the qualified taxpayer's qualified expenditures for 2009 and 2010. (HB 5479; effective 12/22/09)

- X. Public Act 240 of 2009. The Act amends section 434 of the Michigan Business Tax Act (MCL 208.1434) that provides tax credits related to the development and application of advanced battery technology. It allows for one additional credit to be awarded by the Michigan Economic Growth Authority for the construction of integrated battery cell manufacturing facilities. (HB 5469; effective 1/8/10)

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. Senate Bill 2 of 2009. The Bill would create a small business ombudsman's office and a small business compliance advisory panel to investigate and review the actions of regulatory agencies of this state, and monitor and ensure compliance with relevant laws and policies and recommend appropriate changes in policy, procedure, and legislation; and provide for certain powers and duties of certain state officers and agencies. The Bill was referred to the Committee on Economic Development and Regulatory Reform on January 14, 2009. The Bill reported favorably with substitute S-2 and was referred to the Committee of the Whole on August 27, 2009. The Bill was passed by the Senate and transmitted to the House on September 15, 2009. The Bill was referred to the Committee on New Economy and Quality of Life. The Bill was sponsored by Alan Sanborn.
- B. Senate Bills 26, 27 and 28 of 2009. The Bills would amend section 17048 of the Public Health Code (MCL 333.17048), sections 2 and 4 of the Professional Service Corporation Act (MCL 450.222 and 450.224) and sections 902 and 904 of the Michigan Limited Liability Company Act (MCL 450.4902 and 450.4904) to allow the ability to form a limited liability company or professional corporation by physicians or physician's assistant groups. The Bills were referred to the Committee on Health Policy on January 27, 2009. On March 9, 2010, the Bills reported favorably with substitute S-1, the Committee recommended immediate effect and the Bills were referred to the Committee of the Whole. On March 11, 2010, the Bills reported favorably with substitute S-2, which was concurred in. On March 16, 2010, the Bills were received by the House and referred to the Committee on Health Policy. On May 11, 2010, the Bills were reported with recommendation without amendment. The Bills were sponsored by Tony Stamas.
- C. Senate Bill 44 of 2009. The Bill would create the Adult Entertainment Tax Act to create and impose a state excise tax on persons engaged in the business of operating an adult entertainment facility. The Bill was referred to the Committee on Local, Urban and State Affairs on January 27, 2009. The Bill was sponsored by Raymond Basham.
- D. Senate Bill 94 of 2009. The Bill would amend 1989 PA 88 (MCL 445.541-547) and create the Watercraft Manufacturer and Dealer Act, which would revise the regulation of new watercraft manufacturers, wholesalers, and dealers. The Bill was referred to

the Committee on Economic Development and Regulatory Reform on January 28, 2009. The Bill was sponsored by Randy Richardville.

- E. Senate Bill 558 of 2009. The Bill would amend sections 207a & 803 of the Limited Liability Company Act (MCL 450.4207a & 450.4803) to modify the filing deadline for annual reports and certain low-profit LLC amendment certificates from 60 to 90 days. The Bill was referred to the Committee on Commerce and Tourism on May 7, 2009. The Bill was sponsored by Jason Allen.

- F. Senate Bills 1115 and 1116 of 2010. Bill 1115 would amend the Municipal Health Facilities Corporations Act by amending MCL 331.1306, and by adding section 308 to do the following: (i) allow a board of trustees or a subsidiary board to convert its municipal health facilities corporation into a nonprofit corporation, organized on a stock basis; (ii) prescribe factors that a board could consider in evaluating whether to pursue such a conversion; and (iii) require the approval of the governing body of the local unit of government for a conversion, under certain circumstances. Bill 1116 would amend the Michigan Nonprofit Corporation Act by amending MCL 450.2123 and 450.2217, and by adding section 746 to do the following: (i) apply the Michigan Nonprofit Corporation Act to a domestic corporation formed by the conversion of a municipal health facilities corporation to a nonprofit corporation under Section 308 of the Municipal Health Facilities Corporations Act (MCL 15331.1308); (ii) allow a nonprofit organization (including a municipal health facilities corporation) to convert to a domestic corporation; and (iii) require a nonprofit organization proposing to convert to a domestic corporation to adopt a plan of conversion and file a certificate of conversion with DELEG. The Bills are tie-barred. The Bills were introduced on February 9, 2010, and referred to the Committee on Health Policy. On March 11, 2010, the Bills reported favorably without amendment, the Committee recommended immediate effect, and the Bills were referred to Committee of the Whole. On March 24, 2010, Bill 1115 reported favorably with substitute S-1, which was concurred in and adopted. On March 25, 2010, Bill 1115 was received by the House and referred to the Committee on Health Policy. On April 20, 2010, Bill 1116 was referred to the Senate Committee on Health Policy. On May 5, 2010, Bill 1115 was reported with recommendation without amendment. The Bills were sponsored by Bill Hardiman (primary).

- G. Senate Bills 1308 and 1309 of 2010. The Bills would amend various sections of Public Act 118 of 1981 (MCL 445.1561 et seq.) (which regulates automobile dealer franchises) and add sections 14a and 14b to do all of the following: (i) add to the Act's list of prohibited activities by a manufacturer; (ii) prohibit a successor manufacturer, for five years, from entering into a dealer agreement in a former dealer's relevant market area; (iii) prohibit a manufacturer from imposing a property use agreement on a dealer; (iv) allow a manufacturer and a dealer to conduct certain audits of the other; (v) revise a manufacturer's liability for costs, for a violation of the Act; (vi) revise requirements for a manufacturer's compensation of a dealer upon the termination of a dealer agreement; (vii) require compensation for a dealer's goodwill and specify procedures for determining the value of that goodwill; and (viii) redefine relevant market area. The Bills are tie-barred. On April 29, 2001, the Bills were

referred to the Committee on Economic Development and Regulatory Reform. The Bills were sponsored by Judson Gilbert and Samuel Thomas (primary).

- H. House Bill 5069 of 2009. The Bill would add Section 5705 to the Revised Judicature Act to allow employees, partners, officers and members of partnerships, corporations and limited liability companies with personal knowledge to commence summary proceedings on behalf of the business entity. The Bill was introduced on June 9, 2009, and referred to the Committee on Judiciary. The Bill was sponsored by Dudley Spade (primary).
- I. House Bill 5583 of 2009. The Bill would amend the Michigan Business Tax Act, specifically MCL 208.1111, by adding to section (1) a new subsection (ee), which would exclude certain membership income for cooperative or condominium associations from the definition of "gross receipts." The Bill was introduced on November 10, 2009, and referred to the Committee on Tax Policy. The Bill was sponsored by Tom McMillin (primary).
- J. House Bills 5716 and 5717 of 2009. The Bills would amend the Michigan Consumer Protection Act, specifically MCL 445.903, by adding a new Section 3I to regulate the use of charitable donation boxes, which would prohibit, among other things, marking a clothing donation box or any sign near a clothing donation box in any manner that represents or implies that any personal property placed in the clothing donation box, or the proceeds of that personal property, is donated to 1 or more charitable organizations if it is not. The Bills were introduced on December 17, 2009, and referred to the Committee on Commerce. On May 12, 2010, the Bills reported with recommendation without amendment. The Bills were sponsored by Geoff Hansen and Ed Clemente.
- K. House Bills 6099 and 6100 of 2009. The Bills would amend various sections of Public Act 118 of 1981 (MCL 445.1561 et seq.) (which regulates automobile dealer franchises) and add sections 14a and 14b to the Act to update and modernize the regulation of new motor vehicle manufacturers, distributors, and dealers and their relationships and dealings, and to prohibit certain actions by manufacturer and make other general revisions. The Bills are tie-barred. The Bills were introduced on April 29, 2010 and referred to the Committee on Regulatory Reform. The Bills were sponsored by John Walsh and Roy Schmidt (primary).

Respectfully submitted,

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