

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for September 20, 2012 Council Meeting

(Report as of September 13, 2012)

I. PUBLIC ACTS

- A. Public Act 15 of 2011. The "shopping reform and modernization act" includes a repeal of the consumer item pricing act and requires the price of an item to be displayed where the item is located. A person who suffers a loss as a result of a violation may bring an individual or class action to recover actual damages or \$250, whichever is greater, for each day a violation was found. (HB 4158; effective 9/1/2011)
- B. Public Act 38 of 2011. The Act provides for elimination of the modified gross receipts tax component of the Michigan Business Tax and changes the rate of the remaining corporate income tax portion to 6 percent. (HB 4361, effective 10/1/2011). This Act was subsequently amended as part of Public Act 204 (effective 12/27/2011).
- C. Public Act 39 of 2011. The Act provides "grandfather" status for a range of special business tax breaks and subsidies that were granted to particular firms under targeted exemptions and credits. The "grandfather" status would be available only for firms with already certified tax breaks or subsidies. This bill is part of the Governor's effort to convert the Michigan Business Tax into a 6 percent corporate income tax. (HB 4362; effective 10/1/2011)
- D. Public Act 77 of 2011. The Act amends the Michigan Business Tax Act to provide for the awarding of smaller film credits as part of tax restructuring. The MBT was repealed effective January 1, 2012. A \$25 million appropriation for film credit grants for FY 2011-12 will replace the tax credit as contained in the MBT. (SB 383; effective 7/12/2011)
- E. Public Act 125 of 2011. This Act provides for the licensing and regulation of professional employer organizations. It defines certain relationships between employers, co-employers and employees, and establishes the duties, which arise out of such relationships. The Act also gives the State the power to regulate professional employer organizations by imposing fees and security devices for the protection of client companies. The Act also imposes penalties and remedies against professional employer organizations in the event they fail to comply with the Act. (effective 01/01/2012).
- F. Public Act 170 through Act 194 and Act 209 of 2011. These Acts were described by the Department of Treasury as follow-up or clean-up bills to the recently enacted comprehensive changes to the state Income Tax Act. These Acts are aimed at "clarifying" certain existing provisions, including the definition of key terms. As such, these Acts are intended to aid in the implementation of newly enacted tax

legislation rather than make substantive changes. (HB 4946-4947, 4951-4958, 4964, 4966-4968 and SB 650, 654-655, 660, 669-672, 674, 677-680; effective 1/1/2012)

- G. Public Act 181 of 2011. The Act adds section 673 to the Income Tax Act so that the new Corporate Income Tax will contain a provision that allows the recapture of part or all of certain tax credits if the taxpayer that claimed the credit fails to satisfy the conditions of the credit. (HB 4967; effective 1/1/2012)

- H. Public Act 195 of 2011. This Act amends the Municipal Health Facilities Corporations Act to revise procedures for filling positions on the board of a municipal health facilities corporation or a subsidiary corporation. (SB 0374; effective 10/20/2011)

- I. Public Act 260 of 2011. The Act amends the Public Relations Employment Act to prohibit collective bargaining on a public employer's decision to enter into an interlocal agreement for the consolidation or joint performance of functions or services. (SB 493; effective 12/14/2011)

- J. Public Act 266 of 2011. This Act amends and updates the Michigan Worker's Disability Compensation Act to account for recent court opinions that are favorable to employers and take into consideration the technological advancements that have been made in medicine. (HB 5002; effective 12/19/2011)

- K. Public Act 270 of 2011. This Act prohibits state departments from promulgating rules more stringent than required by Federal standards, unless specifically required by state statute. The Act requires state agencies to consider exempting small businesses from adopted rules and identify and estimate the number of small businesses affected by the proposed rule if not exempted. (HB 4240, effective 12/28/2011)

- L. Public Act 281 of 2011. This Act amends the Michigan Employment Security Act to allow a continuing employer to request a redetermination of the weekly benefit amount and number of weeks that benefits are payable, if the base period of a claim includes multiple employers. (HB 4394; effective 12/20/2011)

- M. Public Act 292 of 2011. This Act amends the Michigan Business Tax Act to authorize the Michigan Economic Growth Authority to enter into an agreement providing a tax credit for the manufacture of certain battery and electronic products (instead of the manufacture of large-scale batteries), limits the total credit to \$50 million over four years, require the taxpayer to be located in a renaissance zone, and requires an agreement to provides for a reduction of the tax credit if the taxpayer fails to create at least 750 jobs. (SB 855; effective 1/1/2012)

- N. Public Act 304 of 2011. This Act amends the Revenue Act to prevent the Department of Treasury from assessing the former Single Business Tax on income or gains of an individual estate, or person organized for estate planning purposes, from activity,

- transactions, or sources other than those in the regular course of the person's trade or business, or on income or gains from personal investment activity. (SB 368; effective 12/27/2011)
- O. Public Act 305 of 2011. This Act amends the Michigan Business Tax Act to exclude from "business income" and from "gross receipts" certain income or receipts derived from investment activity, except activity in the regular course of the person's trade or business, and requires a person to be classified as a disregarded entity under the Act if the person is a disregarded entity for Federal income tax purposes. (SB 369; effective 12/27/2011)
- P. Public Act 306 and 309 of 2011. The Acts amend Part 2 of the Income Tax Act, which defines "flow-through entity" as an entity that is treated as a subchapter S corporation under the IRC, a general or limited partnership, a trust, or a limited liability partnership or company that for the tax year is not taxed as a corporation for Federal income tax purposes. (SB 653 and SB 678; effective 1/1/2012)
- Q. Public Act 307 of 2011. This Act deleted the definition of "disregarded entity," which referred to a qualified subchapter S subsidiary under a specific section of the IRC or a single member limited liability company that has not elected to be classified as a corporation under a particular Federal regulation. (SB 666; effective 1/1/2012)
- R. Public Act 308 and 310 of 2011. The Acts amend sections 661 and 663 of the Income Tax Act to require that certain factors be included or eliminated in calculating the sales factor when apportioning the tax base of a multistate taxpayer. (SB 673 and SB 807; effective 1/1/2012)
- S. Public Act 311 of 2011. This Act amends the definition of "flow-through entity" in Part 2 of the Income Tax Act to exclude an entity disregarded under Section 699. (HB 4940; effective 01/01/2012)
- T. Public Act 312 of 2011. This Act amends Part 2 of the Income Tax Act to delete language that limits the carry-forward of a business loss to 10 taxable years after the loss year (but retains language that limits the carry-forward to the year following the loss year and the next nine taxable years). (HB 4949; effective 1/1/2012)
- U. Public Act 313 of 2011. This Act amends Part 2 of the Income Tax Act to delete a requirement that the Department of Treasury allow a taxpayer that is eligible for the small business credit to file and pay the tax under Part 2 without calculating the Corporate Income Tax. (HB 4950; effective 1/1/2012)
- V. Public Act 314 and 315 of 2011. The Acts amend both the Income Tax Act and the Renaissance Zone Act to allow a taxpayer who meets certain requirements to deduct income, dividends, capital gains, and lottery winnings, and to be eligible to receive an exemption, deduction, or credit, if the taxpayer is a resident of a renaissance zone that was designated before January 1, 2012 for 183 consecutive days. (SB 748 and HB 5157; effective 01/01/2012 and 12/27/2011)

- W. Public Act 316 through 319 of 2011. These Acts specify that gas, steam, or coal-fired turbines used in the generation of electricity are not considered industrial personal property for the purposes of receiving certain exemptions and credits that are available only for eligible industrial personal property. (HB 5066-5069; effective 12/21/2011)

- X. Public Act 321 of 2011. This Act added Section 110 to the General Property Tax Act to establish procedures for the cancelation of rejected taxes if the taxes were rejected or charged back because the property was tax exempt, the taxes had been paid, or the taxes had been assessed twice; and requires rejected taxes to be reassessed if they were not rejected or changed back for any of those reasons. (SB 453; effective 12/27/2011)

- Y. Public Act 57 of 2012. This Act amends 1893 PA 206, entitled The General Property Tax Act, by amending section 51 (MCL 211.51), as amended by 2009 PA 189, to permit a partnership to defer summer property taxes on agricultural property it owns if income criteria are met and the individual partners qualify for a deferment before they formed the partnership. (SB 0364; effective 03/22/2012)

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. Senate Bill 0359 of 2011. The Bill would amend the Business Corporation Act (MCL 450.1101, et. seq.) by adding a chapter 9A authorizing Benefit Corporations containing articles that include "creating general public benefit". The Bill was introduced on May 4, 2011 and referred to the Committee on Economic Development. The Bill was sponsored by Mark Jansen (primary). The Committee approved the Bill on October 4, 2011 and it was referred to the Committee on Reforms, Restructuring and Reinventing.

- B. Senate Bill 0360 of 2011. In conjunction with SB 0359, the Bill would amend 1972 PA 284, entitled Business Corporation Act, by amending sections 105, 106, 202, 211, and 911 (MCL 450.1105, 450.1106, 450.1202, 450.1211, and 450.1911), to include, among other things, a definition of "Benefit Corporation" as a domestic corporation that meets the requirements for being a benefit corporation under chapter 9A and has not terminated its status as a benefit corporation under that chapter. The Bill was introduced on May 4, 2011 and referred to the Committee on Economic Development. The Bill was sponsored by Mark Jansen (primary). The Committee approved the Bill on October 4, 2011 and it was referred to the Committee on Reforms, Restructuring and Reinventing.

- C. House Bill 4091 of 2011. The Bill would provide, for the 2011 tax year, for the elimination of the modified gross receipts tax component of the Michigan Business Tax and change the rate of the remaining corporate income tax portion to 6 percent. The Bill was sponsored by Ken Horn (primary). The Bill was referred to the Committee on Tax Policy on January 18, 2011.

- D. House Bill 4377 of 2011. The Bill would amend the Michigan Consumer Protection Act by adding section 3J to preclude the sale of window blinds in this state without "all of the following: (a) cleats, hardware, and instructions for installation that would allow the window blind cord to be secured [and] (b) a warning about the danger of accidental hanging or strangulation from a window blind cord that is not secured." The Bill was sponsored by Lisa Brown and referred to the Committee on Regulatory Reform.
- E. House Bills 4615 and 4616 of 2011. The Bills are tie barred to amend the Business Corporation Act to permit the formation of "Benefit Corporations" for any specific public benefit purpose set forth in the articles. Bill 4615 was sponsored by Wayne A. Schmidt (primary) and Bill 4616 was sponsored by Vicki Barnett (primary). See Senate Bills 0359 and 0360. This Bill was referred to the Committee on Judiciary on May 4, 2011.
- F. House Bill 4637 of 2011. The Bill would create certain offices in the executive branch, and impose certain duties and responsibilities on a small business office and officers and on certain state employees and public employees. The Bill was sponsored by Judson Gilbert. This Bill was referred to the Committee on Commerce on May 12, 2011.
- G. House Bill 4823 of 2011. The Bill would amend MCL 445.772 to require certain motor fuel terminal operators and wholesalers to make gasoline without ethanol available to watercraft fuel dealers. The Bill was sponsored by Richard LeBlanc. This Bill was referred to the Committee on Energy and Technology on June 24, 2011.
- H. House Bill 5054 of 2011. The Bill would amend 1984 PA 270, entitled Michigan Strategic Fund Act (MCL 125.2001 to 125.2094), by adding chapter 5A to create and operate a program called "The Michigan Business Corps." to assist small businesses located within the state. The Bill was sponsored by Jim Townsend (primary). This Bill was referred to the Committee on Commerce on October 12, 2011.
- I. House Bill 5168 of 2011. The Bill would create the "Endowment Funds Investment Act" and authorize the investment of certain endowment funds and other state funds, and authorize certain investments and programs, and prescribe the powers and duties of certain state officials. The Bill was sponsored by Vicki Barnett (primary) and referred to the Committee on Banking and Financial Services.
- J. House Bill 5169 of 2011. The Bill would provide for the organization, regulation, and certification of business development corporations, provide for the powers and duties of business development corporations and their stockholders, directors, and loan participants, and prescribe the powers and duties of certain state governmental officers and entities. The Bill was sponsored by Vickie Barnett (primary) and referred to the Committee on Banking and Financial Services.

- K. Senate Bill 1108 of 2012. This Bill would amend MCL 487.1104 *et seq* and is known as the Michigan BIDCO Act. The Bill would promote economic development by providing for the licensing and regulation of business and industrial development corporations (BIDCO). The Bill was introduced on May 1, 2012 by Senators Booher, Hunter, Pappageorge, and Smith. On May 31, 2012 the Bill was referred to the Committee on Banking and Financial Services.
- L. House Bill 5290 of 2012. The Bill would amend sections 217 and 1060 (MCL 450.1217 and 450.2060) of 1972 PA 284, entitled of the Business Corporation Act, by adding subsection (7) to section 217 (and reference thereto in section 1060) which clarifies the Administrator's options in the event a corporation delivers a certificate to extend a certificate of assumed name before the Administrator is authorized to file the certificate. The Bill was sponsored by Thomas Hooker (primary) and referred to the Committee on Commerce.
- M. House Bill 5348, 5352 and 5354 of 2012. These Bills would amend 1976 PA 388, entitled the Michigan Campaign Finance Act (MCL 169.201 to 169.282), by adding section 55G which would make the Act, under certain circumstances, specifically applicable to a corporation, joint stock company, domestic dependent sovereign, or labor organization, and by adding Section 55D which would provide limits on the independent expenditures of corporations or joint stock companies. These Bills were sponsored by Ellen Cogen Lipton, Charles Brunner and Joan Bauer (primary to each Bill, respectively) and referred to the Committee on Redistricting and Elections. The Bills were re-referred to the Committee on Redistricting and Elections on March 29, 2012.

Respectfully submitted,

Eric I. Lark
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