

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for December 4, 2010 Council Meeting

(Report as of November 25, 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 Act 124 of 2010. The Act amends section 17048 of the Public Health Code (MCL 333.17048) to require supervising physicians who organized a professional service corporation or a professional limited liability company (PLLC) with physician's assistants (PAs) to meet applicable requirements of the code; extends the requirements to physicians supervising PAs who, before the public act took effect, organized a professional service corporation or a PLLC that had only PAs as

shareholders or members; requires the Department of Community Health to include on the license renewal form a space for a PA to disclose whether he or she was a shareholder in a professional service corporation or a member in a PLLC organized before the bill took effect; and requires a PA who was a shareholder or member to disclose in the license renewal form whether any physicians were shareholders or members, the name and license number of the supervising physician, and whether the supervising physician was a shareholder or member in the same professional service corporation or PLLC as the PA. (SB 26; effective 7/19/10)

- D. Public Act 125 of 2010. The Act amends sections 2 and 4 of the Professional Service Corporation Act (MCL 450.222 and 450.224) to include services rendered by a physician's assistant (PA) in the definition of *professional service*; and allows physicians to organize a professional corporation with PAs and prohibit PAs from organizing a professional corporation that would have only PAs as shareholders. (SB 27; effective 7/19/10)

- E. Public Act 126 of 2010. The Act amends sections 902 and 904 of the Michigan Limited Liability Company Act (MCL 450.4902 and 450.4904) to include services rendered by a physician's assistant (PA) in the definition of *professional service*; allows physicians to organize a professional limited liability company (PLLC) with other physicians licensed under the Public Health Code; allows physicians to organize a PLLC with PAs; and prohibits PAs from organizing a PLLC that would have only PAs as members. (SB 28; effective 7/19/10)

- F. Public Act 138 of 2010. The Act amends 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: expand the Act's list of prohibited activities by a manufacturer; prohibit a manufacturer from imposing a property use agreement on a dealer, unless monetary consideration or separate and valuable consideration that could be calculated to a sum certain were offered and accepted for the agreement; prohibit a manufacturer from charging back to a dealer an approved and paid warranty claim, unless the manufacturer showed that the claim was fraudulent or false within two years after payment or showed it to be unsubstantiated, to lack proper documentation, or to be improperly diagnosed or repaired within 12 months after payment; allow a manufacturer to conduct an audit of a dealer's records relating to a warranty or promotion claim submitted by the dealer; and provide that a manufacturer that violated the Act "may" (rather than "shall") be liable for all court costs and attorney fees incurred by a dealer. (SB 1308; effective 8/4/10)

- G. Public Act 139 of 2010. The Act amends Public Act 118 to revise requirements for a manufacturer to compensate a dealer for certain items upon the termination of a dealer agreement, including, among other things: require the payment of fair and reasonable compensation for each vehicle that met certain criteria; require compensation for certain data processing programs, software, and equipment, the net cost of any upgrades or alterations to dealership facilities that the manufacturer required in the last two years, and the net cost of any furnishings the manufacturer required the dealer to purchase in the last two years, establish procedures for

determining compensation for a dealer's fair rental value; and require compensation for a dealer's goodwill under certain circumstances and specify procedures for determining the value of that goodwill. (SB 13089; effective 8/4/10)

- H. Public Acts 140 and 141 of 2010. The Acts amend various sections of Public Act 118 of 1981 (MCL 445.1561 et seq.), which regulates automobile dealer franchises, and add provisions concerning compensation to dealers upon termination of a dealership agreement, determining compensation for goodwill and the relevant market area of dealerships. The Acts also revise requirements for a manufacturer to compensate a dealer for certain items on the termination of a dealer agreement; requires the payment of fair and reasonable compensation for each vehicle that meets certain criteria; requires compensation for certain data processing programs, software, and equipment, the net cost of any upgrades or alterations to dealership facilities that the manufacturer required in the last two years, and the net cost of any furnishings the manufacturer required the dealer to purchase in the last two years; establishes procedures for determining compensation for a dealer's fair rental value; and requires compensation for a dealer's goodwill under certain circumstances and specifies procedures for determining the value of that goodwill. (HB 6099 and HB 6100; effective 8/4/10)
- I. Public Act 156 of 2010. The Act amends the Michigan Business Tax Act definition of financial institutions to include federally chartered farm credit system institutions. The bill would amend Chapter 2B of the Michigan Business Tax Act to include a federally chartered Farm Credit System institution in the definition of "financial institution". The present definition includes a bank holding company, national bank, State-chartered bank, thrift institution, and savings and loan holding company. Under Chapter 2B, every financial institution with nexus to the State is subject to a franchise tax in lieu of the business income tax and the modified gross receipts tax. The franchise tax is imposed upon the financial institution's tax base (net capital) after allocation or apportionment to the State, at a rate of 0.235%. (HB 5295; effective 1/1/08)
- J. Public Act 157 of 2010. The Act amends Chapter 77 of the Insurance Code (the Michigan Life and Health Insurance Guaranty Association Act) to do the following: (1) Exclude from coverage under the chapter any policy or contract that provided benefits under Medicare Part C or D, and exclude from coverage a portion of a policy or contract to the extent that assessments required under Chapter 77 were preempted by State or Federal law and (2) Increase the maximum amount of certain benefits that the Life and Health Insurance Guaranty Association is obligated to cover from \$100,000 to \$250,000. (HB 6097; effective 9/2/10)
- K. Public Acts 195 and 196 of 2010. The Acts amend the Michigan Consumer Protection Act, specifically MCL 445.903, by adding a section 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. (HB 5716 and HB 5717 of 2009; effective 10/5/10)

- L. Public Act 198 of 2010. The Act provides for an amnesty by amending the revenue Act to do the following: (1) Create a tax amnesty period between May 15, 2011, and June 30, 2011, for taxes due before January 1, 2010; (2) Require a taxpayer requesting amnesty to make a full payment of the tax and interest due for any prior period by the last day of the amnesty period; (3) Of the revenue generated by the amnesty program, appropriate \$6.8 million to the Department of Treasury for administration and public awareness of the program; (4) Specify that this would be a work project appropriation and any unencumbered or unallotted funds would be carried forward into the following fiscal year. The amnesty period begins on May 15, 2011, and ends on June 30, 2011. During the amnesty period, the State Treasurer will waive all criminal and civil penalties for failing or refusing to file a return, failing to pay a tax, or making an excessive claim for a refund of a tax for a tax administered under the Act (e.g., the State income tax, the Michigan Business Tax, and the sales tax) if a taxpayer complied with the bill's requirements. (SB 884; effective 10/5/10)

- M. Public Act 200 of 2010. The Act amends the Michigan Business Tax Act to exclude from gross receipts 100% of the excise taxes paid by a person on or for cigarettes or tobacco products. Under Section 203 of the Michigan Business Tax (MBT) Act, a business must pay tax on amounts defined in the Act as "gross receipts", including certain taxes collected by businesses on behalf of the State. Public Act 433 of 2008 amended the Act to phase out the MBT on certain amounts, including amounts collected by a business to pay the State and Federal excise taxes on cigarettes and other tobacco products. Under Public Act 433, a percentage of the amount collected by a business for certain taxes is excluded from the definition of "gross receipts" and is therefore no longer taxed under the MBT Act. The amount excluded is being phased in over a three-year period starting at a rate of 60% of that amount in the 2008 tax year, and increasing to 75% in the 2009 tax year, and 100% in the 2010 tax year and each subsequent tax year. (SB 361; effective 10/5/10)

- N. 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)

- O. 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)

- P. 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)
- Q. 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)
- R. 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)

- S. 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)

- T. 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)

- U. 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)

- V. 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)
- W. 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)
- X. 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)
- Y. 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)
- Z. 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)

- AA. 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)
- BB. 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)
- CC. 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 was spun off from General Motors, when Cerberus Capital Management, L.P., acquired a controlling stake in GMAC. In December 2008, GMAC restructured as a bank holding company and became a financial institution for purposes of the MBT Act. (SB 671; effective 12/10/09)
- DD. Public Act 159 and 160 of 2009. The Acts amend provisions of the Michigan Business Tax (MBT) Act governing the credits for an "anchor company" (a qualified high-technology business that is an integral part of a high-technology activity and that has the ability or potential ability to influence business decisions and site location of qualified suppliers and customers). Public Act 160 allows an anchor company to claim an MBT credit of up to 5% of the taxable value of each qualified supplier's or

customer's taxable property, or up to 2.5% of the taxable value of property subject to the industrial facility tax, that is located within the qualified taxpayer's 10-mile radius, for a period of up to five years, as determined by MEGA. Public Act 159 allows an anchor company to claim an MBT credit in amount up to 100% of the qualified supplier's or customer's payroll attributable to employees who perform qualified new jobs as determined by MEGA, multiplied by the tax rate for the tax year, for up to five years, if the taxpayer receives a certificate from MEGA. (SB 493 and HB 4674; effective 12/31/08)

- EE. Public Act 177 of 2009. The Act amends the Self-Service Storage Facility Act to specify that if an owner receives a notice that a tenant who was a service member was transferred or deployed overseas on active duty for at least 180 days, the owner may not enforce an owner's lien until 90 days after the end of the tenant's overseas service; also requires an owner to deliver notice of intent to enforce a lien by first-class mail (rather than certified mail) or by e-mail; and allows the sale of property to be advertised electronically. (SB 204; effective 12/15/09)
- FF. Public Act 184 and 185 of 2009. The Acts each amend the Michigan Business Tax Act (MCL 208.1101 et seq.) to provide technical, non-substantive, "clean-up" amendments. Public Act 184 amends the definition of "tax rate" in Section 429 (alternative energy tax credits) to correct a reference to a section in the Income Tax Act. Senate Bill 91 amends Section 503 to provide a formula for calculating the tax for the 2008 tax year (the first year of MBT implementation) for partial-year taxpayers. (SB 89 and SB 91; effective 1/1/08)
- GG. Public Act 188 of 2009. The Act amends the Michigan Public Health Code to prohibit smoking in public places, in places of employment, and in food service establishments (such as restaurants, cafeterias, food courts in shopping malls, and bars), with exceptions for cigar bars, tobacco specialty retail stores, and gambling areas of casinos. (HB 4377; effective 5/1/10)
- HH. Public Act 192 of 2009. The Act amends the Michigan Business Tax (MBT) Act to raise the \$3 million-per-tax-year cap imposed on the credit available under the Michigan Business Tax for expenditures on the renovation of a "high community impact" historic resource to provide, subject to the approval of the Michigan Strategic 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)
- II. 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 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.
- C. 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.
- D. 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.
- E. 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).

- F. Senate Bill 1455 of 2010. The Bill would amend various sections of the Michigan Limited Liability Company Act (MCL 450.4101, et. seq) to do all of the following: authorize the conversion of a limited liability company (LLC) into another business organization, and the conversion of a business organization into an LLC; allow an LLC to indemnify or insure an LLC member or manager or another person, and repeal the current authorization to indemnify or insure a manager; specify that a transaction could not be enjoined, set aside, or give rise to damages or other sanctions because of a manager's interest in the transaction if certain conditions were established; revise provisions regarding a judgment creditor of an LLC member; revise a provision pertaining to a person's admission as a member of an LLC; and provide for the dissolution of an LLC that had not yet commenced business. The Bill was introduced on August 17, 2010 and referred to the Committee on Commerce and Tourism. The Bill was sponsored by Tupac Hunter (primary).
- G. House Bill 6166 of 2010. The office of small business and entrepreneurship services would be created in the Department of Energy, Labor and Economic Growth. (2) The office shall do all of the following: (a) Facilitate the creation and retention of small business jobs in this state;(b) Create and operate a 1-stop internet website for small businesses and entrepreneurship services; (c) Coordinate programs across state government to create and retain small business jobs in this state; (d) Aid and assist small business and entrepreneurs in this state; (e) Work to create a business environment that encourages and sustains entrepreneurship in this state; (f) Work to empower entrepreneurs to take advantage of the opportunities the market offers in this state; and (g) Facilitate the promotion of a positive customer service culture of state employees who interact with the public. The Bill was sponsored by John Proos (primary).
- H. House Bill 6273 of 2010. The Bill would provide for the 2010 and 2011 tax years, a qualified taxpayer may claim a credit against the tax imposed by this act equal to the total compensation paid by the qualified taxpayer to all qualified employees during the tax year for which the credit is claimed or \$10,000.00 for each qualified employee, whichever is less. The credit allowed under this section shall be taken after all other credits provided under this act. The Bill was sponsored by Jim Slezak (primary).

- I. 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).

- J. 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).

Respectfully submitted,

Eric I. Lark / William C. Lentine
Kerr, Russell and Weber, PLC
November 30, 2010