

BUSINESS LAW SECTION

LEGISLATIVE REVIEW DIRECTORSHIP REPORT

Prepared for December 5, 2015 Council Meeting

(Report as of November 22, 2015)

I. PUBLIC ACTS

- A. Public Act 4 of 2013. The Act amends the "Nonprofit Health Care Corporation Reform Act" (MCL 550.1218, 550.1401e, and 550.1414b), which governs Blue Cross and Blue Shield of Michigan (BCBSM). It allows BCBSM to establish, own, operate and merge with a nonprofit mutual disability insurer. After the merger, the surviving nonprofit mutual insurer would assume performance of all contracts and policies of the merged entity. The Act further provides that the incorporation of non-profit health care corporations under the Act shall not be allowed on or after January 1, 2014. The Act also provides procedures and requirements for contracting provisions and rates, such as the prohibited use or enforcement of a most favored nation clause in any provider contract beginning February 1, 2013, without prior approval by the commission. The Act also includes establishment procedures and requirements for a health endowment fund corporation. (SB 061; effective 3/18/2013).
- B. Public Act 5 of 2013. The Act is tie-barred with PA 4 and amends the Insurance Code (MCL 500.2213b et seq.) to allow the new mutual insurance company to be regulated and formed with nonprofit status through a merger with BCBSM. (SB 062; effective 3/18/2013).
- C. Public Act 14 of 2013. This Act creates the "Mortgage Industry Advisory Board" to define and regulate mortgage brokers, lenders, and services. It includes the procedures and requirements for appointment to the board, and board member terms and duties. The Act requires the board to communicate to the commissioner any issues of concern or recommendations for the residential mortgage industry. (SB 019; effective 4/16/2013).
- D. Public Act 15 of 2013. This Act amends the tax withholding requirements for flow-through entities and certain of their members. It requires a flow-through entity to withhold a tax from each member's distributive share of income. It also includes regulations for certain entities such as casino licensees, race licensees, track licensees, eligible production companies, and publicly traded partnerships that have registered equity securities. It also provides the conditions in which flow-through entities may not withhold tax on members with exemption certificates. These conditions include member certification that they will pay the tax. (SB 065; effective 4/16/2013).
- E. Public Act 123 of 2013. This Act amends the Business Corporation Act, by amending section 778 (MCL 450.1778). It provides an additional factor for determining whether a person is an interested shareholder for the purposes of a shareholder vote on a business combination. It provides an additional standard for calculating voting shares. The voting shares acquired by the person from the corporation or in a public offering

by or on behalf of the corporation would not be considered to be outstanding or beneficially owned by that person unless the corporation determines otherwise before the person acquired those voting shares. (SB 357; effective 10/2/2013).

- F. Public Acts 131 and 132 of 2013. The two Acts amend the Michigan Limited Liability Company Act and the Business Corporation Act, respectively, to permit a professional limited liability company (PLLC) or a professional corporation (PC), respectively, to practice public accounting if more than 50% of the PLLC's or the PC's equity and voting rights are held directly or beneficially by individuals licensed or otherwise authorized to practice public accounting under Article 7 of the Occupational Code. (HB 4334, HB 4654; effective 10/16/2013).
- G. Public Act 160 of 2013. This Act amends the General Sales Tax Act. It exempts from the sales tax beginning December 15, 2013, up to \$2,000 of the agreed-on value of a trade-in when used as part payment of the purchase price of a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle. It also provides that beginning January 1, 2015, and each January 1 thereafter, the exemption limit would be increased by an additional \$500 unless the Medicaid expansion legislation enacted in 2013 is repealed. It also provides that beginning in January 1 in the year in which the exemption exceeds \$14,000, and each January 1 thereafter, there would be no limitation on the agreed upon value used as part payment. It further provides that the agreed upon value must be separately stated on the invoice, bill of sale, or similar document given to the purchaser. (SB 089; effective 11/6/2013).
- H. Public Act 204 of 2013. This Act amends the General Property Tax Act to discontinue a three-year exemption from school operating taxes for new construction on development property, and replaces it with an exemption that would apply to the real property as well as to the residential structures on it. The Act exempts from school operating taxes, between November 1, 2013, and December 30, 2015, development property on which exempt new construction is located, for up to two years, to the extent provided for a principal residence. The Act also exempts eligible development property from school operating taxes, for up to three years, to the extent provided for a principal residence beginning December 31, 2013.(HB 5017; effective 12/18/2013).
- I. Public Act 233 of 2013. The Act amends the Michigan Business Tax (MBT) Act to specify that in the case of a flow-through entity (FTE) that has made an election to pay MBT taxes, each member of that FTE that does not file as a member of a unitary business group; that is, each non-unitary owner of the FTE, would disregard all items attributable to its ownership interest in the FTE for corporate income tax (CIT) purposes. The FTE would also not be subject to the CIT's withholding requirements for its members that are corporations. The Act would be retroactive and effective for tax years that begin after December 31, 2011. (HB 5041; effective 12/26/2013).
- J. Public Act 13 of 2014. The Act amends the Corporate Income Tax (CIT) of the Income Tax Act to allow a taxpayer that acquired the assets of another corporation in a transaction described in Section 381(a)(1) or (2) of the Internal Revenue Code

(IRC), to deduct business losses attributable to that distributor or transferor corporation. For the purpose of apportionment, the Act specifies that property stored in transit for 60 days or more, or a dock sale not picked up for at least 60 days, would be considered to have come to rest at that ultimate destination. For purposes of the small business alternative credit, the Act defines "officer" as persons performing similar duties and responsibilities to those of the chairperson of the board, or the president, vice president, secretary, or treasurer of the corporation or board, including, at a minimum, major decision making. (HB 5008; effective 2/26/2014).

- K. Public Act 14 of 2014. The Act amends the Corporate Income Tax (CIT) of the Income Tax Act to exclude transactions between members of a unitary business group for purposes of determining exemptions, credits, and the filing threshold. The Act requires a unitary business group to file a combined return that includes each United States person that is included in the group. (A unitary business group consists of two or more corporations, financial institutions, or insurance companies that satisfy both a "control test" and one of two "relationship tests".) Each United States person included in a unitary business group or included in a combined return must be treated as a single person, and all transactions between those included in the group must be eliminated from the CIT base and the apportionment formulas. The Act also requires that all transactions between people included in a unitary business group be eliminated for purposes of determining exemptions, credits, and the filing threshold. (HB 5009; effective 2/26/2014).

- L. Public Act 15 of 2014. The Act amends the Corporate Income Tax (CIT) of the Income Tax Act to exempt from the tax a person that qualified as a domestic international sales corporation (DISC) as defined in Section 992 of the Internal Revenue Code (IRC), for the portion of the tax year it had elected to be treated as a DISC. The Act revises provisions eliminating sales between a taxpayer and flow-through entities unitary with the taxpayer, from the sales factor for the purpose of apportionment. Under the Act, sales between a taxpayer and a flow-through entity unitary with that taxpayer, to the extent of the taxpayer's interest in the flow-through entity, would have to be eliminated in calculating the sales factor. Sales between a flow-through entity unitary with a taxpayer and another flow-through entity unitary with the same taxpayer, to the extent of the taxpayer's interest in the selling flow-through entity, also would have to be eliminated from the calculation. (HB 5010; effective 2/26/2014).

- M. Public Act 16 of 2014. The Act amends the Income Tax Act to revise the calculation of the amount that must be added back to the Corporate Income Tax (CIT) liability of a taxpayer that claimed an investment tax credit under the former Single Business Tax Act, or a compensation and depreciation credit under the Michigan Business Tax Act, for tangible assets the taxpayer has sold, transferred out of State, or otherwise disposed of. The amount to be added back includes the gross proceeds or benefit derived from the sale or other disposition of tangible assets, minus the gain and plus the loss from the sale or disposition reflected in Federal taxable income, and minus the gain from the sale or other disposition added to the CIT base (calculated separately for tangible assets other than mobile tangible assets, and for mobile

tangible assets). The Act eliminates the last component of that calculation (the subtraction of the gain added to the CIT base). The add-back requirement also includes calculation of the Federal basis used for determining gain or loss as of the date of the transfer of tangible assets, other than mobile tangible assets. The Act specifies that transfer would mean removal from this State of tangible assets, other than mobile tangible assets, by means other than sale or other disposition. (HB 5011; effective 2/26/2014).

- N. Public Act 282 of 2014. The Act amends the Michigan Business Tax (MBT) Act to do the following: allow an adjustment to the modified gross receipts tax base for amounts attributable to the taxpayer pursuant to a discharge of indebtedness; revise the calculation of the investment tax credit with respect to the recapture of revenue when assets eligible for the credit are sold; revise the calculation of the renaissance zone credit for a taxpayer located and conducting business in a renaissance zone before December 1, 2002; revise a provision concerning a dock sale, for purposes of apportionment.

The Act also requires a taxpayer to claim a refund in 2015 if, as a result of the Act's amendments, the taxpayer had an overpayment of the tax for a tax year between 2010 and 2014. The Act also allows the Department of Treasury to assess the taxpayer for an amount claimed that exceeded the overpayment.

Further, the Act repeals Public Act 343 of 1969, which enacted the Multistate Tax Compact, retroactive to January 1, 2008, and expresses legislative intent regarding Section 301 of the MBT Act (which specifies how a multistate taxpayer must apportion its tax base to this State) and the intended effect of that section to eliminate the election provision in Section 1 of Public Act 343. In addition, the Act makes the amendments to the MBT Act retroactive for tax years beginning on and after January 1, 2010. (SB 0156; effective 09/12/2014).

- O. Public Act 557 of 2014. The Act amends the Nonprofit Corporation Act to (1) allow voting on corporate matters by mail, electronically, or at polling places; (2) revise voting requirements for the merger or dissolution of a corporation; (3) allow a corporation's board, or an individual the board designated, to appoint one or more nonexecutive committees to assist in conducting the board's affairs; (4) allow a nonprofit corporation to provide "services in a learned profession"; (5) limit members' and shareholders' ability to obtain certain corporate information; (6) revise a provision that allows a corporation's articles of incorporation to limit a volunteer's liability to the corporation for money damages, and extend this provision to a director; (7) revise and expand upon provisions concerning the indemnification of a director, officer, employee, nondirector volunteer, or agent, who is or is threatened to be made a party to a civil, administrative, or criminal suit, action, or proceeding; and (8) delete a filing fee applicable to foreign corporations and add other filing fees that would apply to foreign corporations. (SB 0623; effective 1/15/2015).

- P. Public Act 558 of 2014. The Act amends Public Act 169 of 1965, which regulates the dissolution of charitable purpose corporations, to prohibit a nonprofit corporation or

other entity organized for charitable purposes from merging, converting, or dissolving without the consent of the Attorney General. It prohibits the Department of Licensing and Regulatory Affairs (LARA) from accepting certificates of dissolution or merger, or restated articles of incorporation, from a charitable purpose corporation without the consent of the Attorney General. It also establishes procedures for securing the Attorney General's consent for a charitable purpose corporation's dissolution, merger, or conversion. The Act also names Public Act 169 the "Dissolution of Charitable Purpose Corporation Act." (SB 0624; effective 1/15/2015).

- Q. Public Act 559 of 2014. The Act amends the Michigan Limited Liability Company Act to authorize the merger of a domestic limited liability company with a nonprofit corporation. Section 705a of the Michigan Limited Liability Act allows one or more domestic LLCs to merge with one or more business organizations under certain circumstances. The Act includes a domestic or foreign nonprofit corporation in the definition of "business organization." The Act also defines "nonprofit corporation" as a corporation that is incorporated to carry out any lawful purpose or purposes that do not involve pecuniary profit or gain for its directors, officers, shareholders or members, including a corporation formed under or subject to the Nonprofit Corporation Act. (SB 0929; effective 1/15/2015).
- R. Public Acts 65, 66 and 68 of 2015. These Acts amend several public acts to delay the sunset on corporate filing fees paid by nonprofit corporations, for-profit corporations, and limited liability companies, respectively. These fees were last increased in 2003, and, after September 30, 2015, current law would roll back the amounts to the 2003 level. The Acts delay that sunset until September 30, 2019. (HB 4384, HB 4397 and HB 4399; effective 10/1/2015).
- S. Public Act 79 of 2015. The Act amends the Revenue Act to (1) delete a requirement that, in an appeal to the court of claims, a taxpayer must first pay the disputed portion of a tax, including penalties and interest, under protest and claim a refund as part of the appeal; and (2) allow a taxpayer 60 days to appeal an assessment, decision, or order of the Department of Treasury to the Tax Tribunal. In addition, the Act appropriates \$200,000 for fiscal year 2015-16 from the general fund to the Court of Claims for operations due to the anticipated increased caseload from the changes in the Act (SB 0100; effective 91st day after final adjournment).
- T. Public Acts 157 and 158 of 2015. These Acts amend the Michigan Limited Liability Company Act and the Michigan Business Corporation Act, respectively, to specify that "services in a learned profession" would not include services provided to residents of a nursing home by an osteopathic physician, physician, or surgeon who was an employee or independent contractor of the nursing home. (SB 66 and SB 67; effective 10/1/2015).

II. NEW BILLS AND STATUS OF PENDING BILLS

- A. House Bill 4079 of 2015. The Bill would amend the Michigan Business Tax Act to allow revocation of an assignment of all or a portion of a historic preservation credit by adding Section 435. The Bill was sponsored by Representative Tom Cochran and the printed bill was filed on 1/28/2015.
- B. House Bill 4198 of 2015. The Bill would amend the Michigan Antitrust Reform Act to provide more instructions regarding the enforceability of a non-compete agreement in connection with the sale of a business. Under the proposed language, a non-compete agreement ancillary to the sale of a business is only enforceable if it is in writing, it is entered into in connection with the sale of the business, and it is entered into at the time of the sale of business by an individual who is an owner, principal, or officer of that business. Any term in an agreement an employer obtains from an employee, contract laborer, or other individual that prohibits or limits the individual from engaging in employment is void. The Bill was sponsored by Representative Peter Lucido and the printed Bill was filed on 2/13/2015.
- C. House Bills 4472 and 4473 of 2015. The Bills would amend the Michigan Business Tax Act to make certain amendments and modifications to agreements for certificated credits, the time frame to claim the credits and a cap on the amount allowed to be claimed. The Bills were sponsored by Representative Jim Townsend and the printed Bills were filed on 04/17/2015.
- D. House Bill 4645 of 2015. The Bill would amend the General Property Tax Act to exempt a transfer of residential real property from the re-setting of taxable value (the "pop-up") in cases where residential property is being transferred between a limited liability company and another party closely related to at least one member of the limited liability company, as long as the residential real property is not used for any commercial purpose following the transfer. The Bill was introduced by Representative Kelly and referred to second reading on 10/28/2015.
- E. House Bill 4730 of 2015. The Bill would repeal the Michigan business tax act for tax years that begin after December 31, 2015. The Bill was introduced by Representatives Gamrat and Courser and referred to the Committee on Tax Policy on 6/17/2015.
- F. House Bill 4901 of 2015. This Bill is the same as Senate Bill 0492. The Bill would amend the Franchise Investment Law to specify that, to the extent allocation of employer responsibilities between the franchisor and franchisee is permitted by law, the franchisee would be considered the sole employer of workers for whom it provided a benefit plan or paid wages except as otherwise specifically provided in the franchise agreement. The Bill was sponsored by Representative Graves and referred to Committee on Commerce and Trade on 9/22/2015.
- G. Senate Bills 0079 and 0155 of 2015. Senate Bill 0079 would amend the Income Tax Act of 1967 to provide corporate income tax credits for certain taxpayers that provide employment to unemployed individuals by adding Section 672. The Bill was

sponsored by Senator Coleman Young and referred to the Committee on Finance on 2/4/2015.

Senate Bill 0155 would amend the Income Tax of 1967 to provide corporate income tax credits for certain employers that provide employment for certain veterans by adding Section 672. The Bill was sponsored by Senator Vincent Gregory and referred to the Committee of the Whole on 10/15/2015.

- H. Senate Bill 0106 of 2015. The Bill would amend the General Sales Tax Act to provide a tax exemption for the sale of personal property by a veterans organization for the purpose of raising funds for the benefit of an active duty service member or a veteran. The exemption would be limited to \$25,000 in aggregate sales of tangible personal property for each individual fund-raising event. The veterans organization would have to be exempt from Federal income tax under Section 501(c) (19) of the Internal Revenue Code. The Bill was sponsored by Senator Michael Green and referred to the Committee on Tax Policy on 3/19/2015.
- I. Senate Bill 0492 of 2015. The Bill would amend the Franchise Investment Law to specify that, to the extent allocation of employer responsibilities between the franchisor and franchisee is permitted by law, the franchisee would be considered the sole employer of workers for whom it provided a benefit plan or paid wages except as otherwise specifically provided in the franchise agreement. The Bill was sponsored by Senator Brandenburg and referred to Committee on Commerce and Trade on 11/10/2015.

Respectfully submitted,

Eric I. Lark
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