MICHIGAN CHAMBER
of Commerce
S I N C E 1 9 5 9

MEMORANDUM

To:	Members of the House Tax Policy Committee
From:	Dan Papineau – Director of Tax Policy and Regulatory Affairs
Date:	March 13, 2019
Subject:	Please support HB 4189-91 – Tax Credit Transfer Legislation

HB 4189 through HB 4191 put fiscally responsible boundaries on previously issued tax credits and clarify how these assets are to be treated in a rapidly growing and positively evolving business merger and acquisition market. The Michigan Chamber hopes you can support this legislative package.

History

In 2011 Governor Snyder and the Michigan Legislature adopted sweeping reforms to the way our state taxes businesses. At the heart of this reform was a proposal to eliminate the Michigan Business Tax (MBT) and enact the Corporate Income Tax (CIT). One problem with this proposal was that significant tax credits had been issued to various businesses under the MBT and there was no simple way to address these legally binding agreements between taxpayers and the State of Michigan. To rectify this problem, the State provided taxpayers with the choice of either converting to the CIT or remaining on the MBT. Many companies that had outstanding tax credits ultimately stayed on the MBT and a few remain so today.

What was never thought about at the time this proposal was enacted was how to treat a tax credit in the case of a business merger or acquisition. How does a credit transfer between a predecessor and successor? HB 4189-91 gives the statutory guidance needed to provide the business community with the surety they need when it comes to the treatment of tax credit transfers in a merger or acquisition situation. Additionally, it requires that any transfer entail a reduction in the overall value of the credit thereby lessening the outstanding liability for the State.

Business Deals Becoming More Prevalent Increasing the Need for Clarity

A lot of discussion has been had on the Tenneco / Federal mogul deal announced last year, but I want to provide a little broader perspective to explain why this legislation is vitally important to the business community as a whole beyond just this one transaction.

In 2018 Michigan saw merger and acquisition deals collectively double in value. There is a lot of action in the market on this front. It is important to note however, that a lot of this activity is being driven by *strategic buyers* as opposed to *financial buyers*. This is a good thing. Strategic buyers are motivated by growth while financial buyers like hedge funds and private equity are more commonly acquiring businesses for the opposite reason: to strip them down, divide them up, etc. Strategic buyers are in positions to preserve and expand jobs.

The mergers and acquisitions that are taking place are truly about job growth and business success for Michigan and sometimes these deals include previously issued tax credits. The Michigan Chamber supports this package of bills because they provide clarity to an otherwise gray part of the law on the treatment of these assets in a merger or acquisition.

Luckily, we are not talking about a merger and acquisition market being driven by financial buyers as we fear the conversation would be much different and instead of talking about the opportunities to reduce these outstanding liabilities, we quite possibly could be talking about expanding them.

Action Needed

There is no getting away from the fact that Michigan issued significant tax credits to businesses in a period of economic desperation. We cannot change the fact that credits were issued, contracts were signed, and agreements were made. HB 4189 through HB 4191 put some very beneficial boundaries on previously issued credits and clarify how these assets are to be treated in a rapidly growing and positively evolving business merger and acquisition market.

Please support this legislation and feel free to contact me with questions.

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