House Legislative Analysis Section
Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

VOLUNTARY DISCLOSURE CHANGES

Senate Bill 872 (Substitute H-3)
First Analysis (12-8-98)

Sponsor: Sen. Joanne Emmons
House Committee: Tax Policy
Senate Committee: Finance

THE APPARENT PROBLEM:

Public Act 221 of 1998 created a "voluntary disclosure program" for firms that had not filed single business tax (SBT) returns with the state but should have under nexus standards issued by the Department of Treasury during 1998 and thereafter. (The term "nexus" is used by tax specialists to refer to the amount or level of presence in a state that is required before a firm is subject to taxation by that state.) Under the program created by Public Act 221 (House Bill 5580), a non-filer could come forward and enter into a voluntary disclosure agreement with the department over taxes and fees owed to the state. The act limited the so-called lookback period to four years and provided that no penalties could be assessed for that period, confidentiality would be provided to the taxpayer, and no criminal actions could be brought. Taxes and interest for the lookback period would be due by the firm. The bill was said to be part of a three-pronged approach to the issue of nexus and the single business tax. The other components were a Department of Treasury revenue bulletin issued in February on single business tax nexus standards (i.e., delineating who is subject to the tax) and legislation that eliminated the throwback rule, which said a sale into another state from Michigan by a company not subject to tax in that state would be considered a sale in (or would be "thrown back" to) Michigan for SBT purposes. Legislation has been proposed to modify somewhat Public Act 221 in ways beneficial to taxpayers.

THE CONTENT OF THE BILL:

The bill would amend the Single Business Tax Act to make changes to the voluntary disclosure program put in place by Public Act 221 of 1998. The changes include the following.

-- The act says the Department of Treasury "may" enter into a voluntary disclosure agreement with a person who is a nonfiler and who meets certain specified criteria. The bill would say the department "shall" enter such an agreement with a person who makes application, is a nonfiler, and meets those criteria.

-- The bill would specify that a voluntary disclosure agreement could only contain the terms and conditions provided in the act.

-- The act requires nonfilers who had received a letter of inquiry from the department to request to enter into an agreement within 180 days after the effective date of Public Act 221. (The effective date was July 1, 1998.) The bill would extend the deadline to December 31, 1999.

-- The bill would specify that a voluntary disclosure agreement does not have any effect on the tax liability of a taxpayer for tax periods following the tax period covered by an agreement.

MCL 205.30c

HOUSE COMMITTEE ACTION:

The Senate-passed version of Senate Bill 872 would have created the voluntary disclosure agreement program. That was accomplished by House Bill 5580. The substitute reported by the House Tax Policy Committee contains newly proposed amendments to that program.

BACKGROUND INFORMATION:

Further information on this subject can be found in the House Legislative Analysis Section's analyses of House Bill 5580 (dated 2-24-98) and House Bill 4910 (dated 10-21-97).

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:
The bill would make some modifications favorable to taxpayers in the SBT voluntary disclosure agreement program. It would extend the deadline for certain firms to apply to enter a voluntary disclosure agreement; limit the terms and conditions that could be included in such an agreement; ensure that an agreement would not affect the future tax liability of the taxpayer; and require (rather than permit) the department to enter into agreements with applicants meeting certain criteria already in statute. The bill would expand opportunities for companies to become aware of the program and enter into voluntary tax payment agreements.

Against:
The voluntary disclosure program is in operation and working well. The agreements need to be based on both the statute and contract law. There needs to be flexibility for both sides -- the Department of Treasury and companies -- to enter into contractual agreements on voluntary disclosure. Extending eligibility for certain companies for one year means additional lost revenue to the state.

POSITIONS:

The Department of Treasury is opposed to the bill. (12-7-98)

Analyst: C. Couch

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.