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SFA

BILL ANALYSIS

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Senate Bill 872 (as introduced 2-10-98)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 2-17-98

CONTENT

The bill would amend the revenue Act to allow the Revenue Commissioner or an authorized representative of the Commissioner, on behalf of the Department of Treasury, to enter into a voluntary disclosure agreement with a person to bring nonfilers into compliance for taxes due or claimed by the State. (A “nonfiler” for a particular tax would be a person who had never filed a return for the particular tax being disclosed.) All taxes and fees administered under the Act would be eligible for inclusion in a voluntary disclosure agreement. A person would have to meet specific eligibility requirements, including agreeing to pay all taxes for a “lookback period” and after the lookback period. The Department of Treasury could not assess any tax, penalty, or interest covered under an agreement for any period before the lookback period.

“Lookback period” would mean one or more of the following:

- The most recent 48-month period as determined by the Department or the first date the person subject to an agreement began doing business in the State if less than 48 months.
- For single business taxes, the four most recent completed fiscal or calendar years over a 48-month period or the first date the person subject to an agreement began doing business in this State if less than 48 months.
- If there were doubt as to liability for the tax during the lookback period, another period as determined by the Commissioner to be in the best interest of the State and to preserve equitable and fair administration of taxes.

Eligibility Criteria

To be eligible for a voluntary disclosure agreement, a person could not have had any previous contact by the Department or its agents, including the Multistate Tax Commission, regarding a tax covered by the agreement. (“Previous contact” would mean any notification of an impending audit, review, or any type of notice of assessment. Previous contact would include letters of inquiry (stating the Department’s opinion that the taxpayer needed to furnish further information or owed taxes to the State), other written inquiries or a subpoena from the Department, and any prior registration for or the filing of returns for any tax for which a person was seeking a voluntary disclosure agreement.)

The person could not have had any notification of an impending audit by the Department or its agents, and could not currently be under audit by the Treasury Department or under investigation by the Department of State Police, the Department of Attorney General, or any local law enforcement agency regarding a tax covered by the agreement. The person also could not currently be the subject of a civil action or a criminal prosecution involving any covered tax.

In addition, the person would have to agree to do the following:

- Register, file returns, and pay all taxes due in accordance with all applicable laws of this State for all taxes administered under the Act for all periods after the lookback period.
- Pay all taxes due for each tax covered under the agreement for the lookback period, plus statutory interest as stated in the Act, within the time and in the manner specified in the agreement.
- File returns and worksheets for the lookback period as specified in the agreement.

The person also would have to agree to all other terms and conditions specified by the Commissioner or his or her authorized representative, on behalf of the Treasury Department, in the agreement.

Relief

If a person satisfied all of the eligibility requirements, the Department could enter into a voluntary disclosure agreement providing the relief described below.

The Department could not assess any tax, delinquency for a tax, penalty, or interest covered under the agreement for any period before the lookback period identified in the agreement. (The bill would make an exception to the current provision that the Commissioner or a Department employee may not compromise or reduce the taxes due to or claimed by the State or unpaid revenue or amounts due to any department, institution, or agency of State government.) The Department also could not assess any applicable discretionary or nondiscretionary penalties for the lookback period.

The Department would have to provide complete confidentiality of the agreement, as well as enter into an agreement not to disclose, in accordance with Section 28(1)(f), any of the terms or conditions of the agreement to any tax authorities of any state or governmental authority or to any person except as required by exchange of information agreements authorized by Section 28(1)(f), including the International Fuel Tax Agreement. The Department could not exchange information obtained under the bill with other states regarding the person unless specifically requested by other states. (Section 28(1)(f) generally prohibits Department employees and authorized representatives from divulging information obtained in connection with the administration of a tax. The Commissioner may enter into reciprocal agreements with other departments, the U.S. Department of Treasury, local units of government of this State, or taxing officials of other states for the enforcement, collection, and exchange of data.)

The bill also would prohibit the Treasury Department from bringing a criminal action against a person for failure to report or to remit any tax covered by the agreement before or during the lookback period if the facts established by the Department were not materially different from the facts disclosed by the person.

A voluntary disclosure agreement would be effective when signed by the person subject to it, or the person's lawful representative, and returned to the Department within the time period specified in the agreement. The Department could provide only the relief specified in the agreement. Any verbal or written communication by the Department before the agreement's effective date would not afford any penalty waiver, limited lookback period, or other benefit otherwise available under the bill.

Other Provisions

An applicant's material misrepresentation of fact relating to the applicant's current activity in this State would render an agreement null and void and of no effect. A change in a person's activities or operations after an agreement's effective date would not be a material misrepresentation of fact and could not affect the agreement's validity.

The Department could audit any of the taxes covered by an agreement within the lookback period or in any prior period if, in the Department's opinion, an audit of a prior period were necessary to determine the person's tax liability for the tax periods within the lookback period or to determine another person's tax liability.

The bill specifies that nothing in it could be interpreted to allow unjust enrichment. Any tax collected or withheld from another person by an applicant would have to be remitted to the Department without respect to whether it was collected during or before the lookback period. ("Unjust enrichment" would include the withholding of income tax and the collection of any other tax administered by the Act that had not been remitted to the Department.)

MCL 205.28 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

This bill is designed to help businesses comply with the Department of Treasury's new guidelines and standards for determining nexus for single business tax purposes. These new nexus guidelines and standards are contained in Revenue Administrative Bulletin (RAB) 98-1 and are retroactive to January 1, 1989. Some out-of-state businesses could incur substantial penalties for any single business taxes they may owe for past years due to these new nexus standards. This bill would help encourage businesses to voluntarily disclose their prior-year tax liabilities under these new standards by eliminating the penalties that otherwise would be assessed for late payment of taxes. In addition, in some cases, the number of back years for which businesses would be liable under these new standards would be limited. It is not possible to estimate the fiscal impact of this bill because there is no way to identify how many businesses will become liable for the single business tax under these new nexus standards, or how many of these businesses would voluntarily agree to pay these liabilities due to the provisions in this bill.

Fiscal Analyst: J. Wortley
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.