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## TAX AMNESTY

### House Bill 5036 (Substitute H-1) First Analysis (9-20-01)

**Sponsor: Rep. Marc Shulman**  
**Committee: Appropriations**

#### ***THE APPARENT PROBLEM:***

As of 1998, at least 34 states, including Michigan, had held at least one tax amnesty period. A tax amnesty program generally involves a period of time in which citizens and firms that have failed to pay taxes (or have underpaid or claimed excessive refunds) may come forward voluntarily, pay back taxes and interest, and receive amnesty from civil and criminal penalties. In essence, errant taxpayers can “come clean” on their taxes.

The state of Michigan has had one tax amnesty program, in 1986. According to Department of Treasury reports issued in 1988, the 1986 amnesty program resulted in the collection of \$109.8 million. The amnesty applied to all state taxes administered by the revenue division of the treasury department, including individual income and withholding taxes, sales and use taxes, the single business tax, intangibles tax, inheritance tax, various state excise taxes, the severance tax, and public utility property taxes. Individual income tax filers accounted for 75 percent (20,496) of the amnesty filers, and 12.3 percent (\$13.6 million) of the total collected. The second largest group of amnesty filers, nearly 2,500, were single business taxpayers, and accounted for about \$12.4 million in back taxes and interest.

In a related program, in 1998 the state began a “voluntary tax disclosure” program for single business taxpayers that had not filed SBT returns with the state but that should have under nexus standards issued by the Department of Treasury after December 31, 1997. (“Nexus” refers to the amount or level of presence in a state that is required before a company is subject to taxation by that state given the restrictions of the Commerce Clause of the U.S. Constitution.) The new nexus standards were issued in February of 1998, and were made retroactive to 1989. Those standards, along with the voluntary disclosure legislation and other related SBT legislation, were described as a three-pronged approach to the issue of nexus and the single business tax, which had been extensively litigated, culminating in a 1992 U.S. Supreme Court decision and Michigan Court of Appeals cases in 1993 and

1997. Though not technically an amnesty program, voluntary disclosure provides for relief from penalties and criminal action for taxpayers who enter into agreements with the treasury department to register with the department, file returns, and pay all taxes and interest due for the four year “lookback” period and thereafter. (For further information on voluntary tax disclosure, see the House Legislative Analysis Section’s analysis of House Bill 5580, dated 2-24-98.)

Typically, state and local governmental entities offer tax amnesty programs with several aims in mind. First and foremost, amnesty programs generate a one-time source of revenue, and as such, they are most often instituted during times of budgetary uncertainty. In addition, amnesty programs, when coupled with increased enforcement activity, have the effect of improving tax collections on a continuing basis, as nonfilers are identified and are more apt to continue to file and stay in compliance.

Legislation has been proposed to offer a new tax amnesty program to Michigan taxpayers, and to extend the voluntary tax disclosure program for SBT taxpayers.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the revenue act to provide for a tax amnesty period of from 30 to 60 days ending before September 30, 2002, as designated by the state treasurer, and provide for an additional penalty for those who failed to participate in the amnesty program. It would also extend the period for voluntary tax disclosure agreements for certain single business taxpayers.

Voluntary tax disclosure. The bill would remove the December 31, 2003 expiration date of provisions added by Public Act 221 of 1998, which provided for voluntary disclosure agreements between single business taxpayers and the treasury department in cases in which companies had not filed SBT returns

House Bill 5036 (9-20-01)

but should have according to nexus standards issued by the department after December 31, 1997. Under a voluntary disclosure agreement, eligible persons may file returns and pay taxes and interested for a limited “lookback” period of four years without imposition of penalties. Further, the bill would change the definition of “nonfiler”. The 1998 legislation defines that term to mean “. . . a person that has *never* filed a return for the particular tax being disclosed” (emphasis added). Under the bill, that term would mean “beginning, July 1, 1998, a person that has not filed a return for the particular tax being disclosed for periods beginning after December 31, 1988 . . . [and also would include] a person whose only filing was a single business tax estimated tax return filed before January 1, 1999”.

Tax amnesty. Under the bill, the state treasurer would designate an amnesty period during which the revenue commissioner would be required to waive all criminal and civil penalties for failing or refusing to file a return, for failing to pay a tax, or for making an excessive claim for a refund. A taxpayer would have to make a written request for a waiver, file a return or an amended return, and make full payment of the tax and interest due (either in a lump sum or in installments). An individual taxpayer could pay amounts due in installments only if he or she submitted \$10,000 or 50 percent of the tax and interest due, whichever were greater, with the request for the waiver, and paid the remaining amounts in two equal installments, with the first installment due no later than August 15, 2002, and the second due no later than September 15, 2002. A taxpayer that was not an individual would have to pay \$100,000 or 50 percent of the tax and interest due, whichever were greater, at the time of the request for the waiver, and pay the remaining amounts in two installments by August, 15, 2002 and September 15, 2002.

The tax amnesty program would apply only to taxes due on or before June 1, 2001. It would apply to the nonreporting and underreporting of tax liabilities, and to the nonpayment of taxes previously determined to be due, but only to the extent of the penalties attributable to the taxes that were previously due and that are paid during the amnesty period.

The amnesty provisions would not apply to a taxpayer if the taxpayer were eligible to enter into a voluntary disclosure agreement. Further, they would not apply if the tax in question was attributable to income derived from a criminal act, if the taxpayer was under criminal investigation or involved in a civil action or criminal prosecution for that tax, or if

the taxpayer had been convicted of a felony under the revenue act or the federal Internal Revenue Code.

The Department of Treasury would be required to provide reasonable notice to taxpayers that may be eligible for the amnesty program at least 30 days before the start of the designated amnesty period. The notification would have to include a description of the amnesty program on appropriate tax instruction forms and on the Internet.

In addition, the bill would appropriate \$1.5 million from the revenues generated by taxes collected due to the amnesty program to the Department of Treasury for administrative expenses.

Additional penalties. The bill would impose a penalty of 25 percent of the amount of tax due on a taxpayer who failed to file a return or pay a tax that was due before June 1, 2001, during a period for which amnesty was available. This penalty would be in addition to any other interest or penalty prescribed under the act.

MCL 205.24, 205.30c, and 205.31

### ***BACKGROUND INFORMATION:***

The Congressional Joint Committee on Taxation issued a staff report on January 30, 1998, entitled “Tax Amnesty”. The report was prepared as members of Congress considered (and rejected) the option of offering a tax amnesty program at the federal level. The report concluded that a federal tax amnesty program would likely result in a net revenue loss to the federal government, primarily because such a program was estimated to have the long run effect of reducing overall taxpayer compliance with federal tax laws. However, the report noted that the experience of states with tax amnesty would not necessarily parallel the expected effect at the federal level, and that some provisions of current federal tax law are similar to elements of many amnesty provisions, including the ability of taxpayers to make installment payment agreements, to make “offers in compromise” in the amount of tax liability, and, in some cases, to avoid criminal penalties by making voluntary disclosure of underpayment of taxes.

The Congressional staff report contains a discussion on the economics of tax amnesty programs, and notes that an important complication in the economics of any tax amnesty proposal is the degree to which the amnesty will affect future tax compliance. On the one hand, actual offers of amnesty, and even serious discussions on amnesty proposals, may cause the

taxpayer to perceive that the likelihood of future amnesties has increased, thus creating an incentive to evade current taxes in anticipation of future amnesties. However, the report also notes that a well-designed amnesty program – one forgiving only criminal penalties and requiring all back taxes, interest, and civil penalties to be paid – is unlikely to have a significant negative effect on future compliance.

The report summarizes several academic studies on the long term impact of state tax amnesties, and concludes that evidence to support an increase in future tax compliance is “spotty”. It notes that increased future tax compliance was most often linked to increased enforcement efforts that often accompany tax amnesty programs.

The report also notes that “one needs . . . to examine with some skepticism the claims of success of the state tax amnesties” with respect to the amount of revenue raised. It notes that many state tax amnesties included accounts receivable in their amnesties [as did Michigan’s 1986 program], and thus the amnesty revenues include taxes that would have been paid anyway, merely accelerating their collection. Further, estimates of revenue collected due to amnesty should also include the “loss” of civil penalties and greater amounts of interest foregone in the case of those who would have been caught in future enforcement efforts.

The report summarizes in detail several state, local, and foreign tax amnesty programs and discusses their characteristics and outcomes. The report is available online at [www.access.gpo.gov](http://www.access.gpo.gov).

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the tax amnesty program is expected to generate additional revenue of from \$15 million to \$50 million. (9-10-01)

### ***ARGUMENTS:***

#### ***For:***

A new tax amnesty for Michigan taxpayers is a well-timed idea. It has been fifteen years since the last amnesty; enough time has passed so as to discourage the idea that amnesty will be an “everyday” occurrence. And, the state’s budget could certainly use the infusion of cash. Amnesty is estimated to raise anywhere from \$15 million to \$50 million in one-time revenue, which could help to ease the painful cuts that are being made in the budget

process. The new proposal is not expected to raise as much money as the 1986 program, due in large part to the ongoing “voluntary disclosure” program that is already bringing in new SBT revenue. However, it would be worthwhile to offer amnesty to individual income taxpayers and payers of other state taxes who may be relieved to “come clean” with the state and pay their tax obligations without fear of criminal prosecution. The treasury department will then be able to track the compliance of these taxpayers in the future, making future enforcement efforts more effective. The state, after all, relies on voluntary compliance by taxpayers; without such voluntary compliance, enforcement can be difficult. Further, as an incentive to participate, the bill provides for an additional 25 percent penalty for those who fail to come forward during the amnesty period.

#### ***Against:***

Tax amnesty programs tend to reward scofflaws at the expense of law abiding citizens who pay their taxes on time, and also provide differential treatment between those who are ‘caught’ by tax enforcement efforts and are subject to civil and criminal penalties, and those who come in under an amnesty program. Why should those who are lucky enough to escape detection be rewarded over others? And, according to research, it is certainly unclear whether amnesty programs result in any increased enforcement efforts over the long term. Some scofflaws will simply gamble that another amnesty program will be come along in the future, and be encouraged to continue to evade paying their taxes.

### ***POSITIONS:***

The Department of Treasury supports the bill. (9-13-01)

Analyst: D. Martens

■ 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.