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STATE TAX AGREEMENT WITH INDIAN TRIBES

House Bills 6478-6481 as introduced
First Analysis (11-13-02)

Sponsor: Rep. Charles LaSata
Committee: Tax Policy

THE APPARENT PROBLEM:

Legislation has been introduced that would authorize the Department of Treasury to enter into tax agreements with the 12 sovereign, federally recognized Indian tribes in the state. According to information from the sponsor of the legislation, negotiations between Michigan's tribes and representatives from the governor's office, the Department of Attorney General, and the Department of Treasury have been going on for the last four years. The parties are aiming to replace outmoded tax agreements from the 1980s that the governor terminated. According to information from the sponsor's office, "Tax agreements will allow the state to end a status quo in which state taxes go uncollected, tribes purchase when possible from out-of-state merchants, tribal retailers enjoy unfair competitive advantages, and the state lacks the ability to enforce state tax law. [The] successful conclusion of tax agreements will also avoid years of divisive litigation, largely on terms dictated by the tribes since their sovereign immunity prevents the state from suing them".

THE CONTENT OF THE BILLS:

House Bill 6480 would amend the Revenue Act (MCL 205.30c) to allow the Department of Treasury to enter into a tribal agreement with a federally recognized Indian tribe specifying the applicability of a state tax to that tribe, its members, and any person conducting business with them. The tribe, its members, and persons conducting business with them would remain fully subject to the state's tax acts except as otherwise specifically provided by an agreement in effect for the period at issue. A tribal agreement would have to include:

- A statement of its purpose.

- Provisions governing duration and termination making the agreement terminable by either party if there was noncompliance and terminable at-will after a period of up to two years.

- Provisions governing administration, collection, and enforcement. Those provisions would have to include the collection of taxes under the General Sales Tax Act and the Use Tax Act; under the Tobacco Products Act, the Motor Fuel Tax Act, and the Motor Carrier Fuel Tax Act for sales of tobacco and motor fuels not exempt under the agreement; withholding and remittance of income taxes under the state Income Tax Act from employees not exempt; the reporting of gambling winnings to the same extent and the same manner as reported to the federal government; and a waiver of tribal sovereign immunity sufficient to make the agreement enforceable against both parties.

- Provisions governing disclosure of information between the department and the tribe as necessary for the proper administration of the tribal agreement.

- A provision ensuring that the members of the tribe will be bound by the terms of the agreement.

Further, a tribal agreement could include a provision for dispute resolution between the state of Michigan and the tribe, which could include a nonjudicial forum; a provision for the sharing between the parties of certain taxes collected by the tribe and its members; and any other provisions beneficial to the administration or the enforcement of the tribal agreement.

A tribal agreement authorized under the bill could not authorize the approval of a Class 3 gaming compact negotiated under the federal Indian Gaming Regulatory Act. House Bill 6478 would amend the Use Tax Act (MCL 205.94x) and House Bill 6481 would amend the General Sales Tax Act (MCL 205.54aa) to provide an exemption for the sale of a motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle, not for resale, to a resident tribal member if it was for personal use and was principally garaged, berthed, or stored within the tribe agreement area. The bills would also exempt the sale of a mobile home, not for resale, if it was to be used as the resident tribal member's principal residence and the mobile home was located within the tribe agreement area. The term "resident tribal member" would mean an individual who was an enrolled member of a federally recognized tribe that had an agreement with the state under the Revenue Act in full force and effect and whose principal place of residence was within the agreement area as designated in the tribal agreement.

House Bill 6479 would amend the Income Tax Act (MCL 206.30) to allow a resident tribal member to deduct from taxable income all nonbusiness income earned or received in the tax year and during the period during which a tribal agreement was in full force and effect. The term "nonbusiness income" would refer to all income derived from wages, whether earned inside or outside the agreement area; all interest and passive dividends; all rents and royalties derived from real property within the agreement area; all rents and royalties derived from tangible personal property to the extent it was used within the agreement area; capital gains from the sale or exchange of real property within the agreement area; capital gains from the sale or exchange of tangible personal property located within the agreement area at the time of sale; capital gains from the sale or exchange of intangible personal property; all pension income and benefits, including distributions from 401(k) plans, individual retirement accounts, and defined contribution plans, and payments from defined benefit plans; all per capita payments by the tribe to resident tribal members, without regard to the source of payment; and all gaming winnings. The term "resident tribal member" would be defined as in House Bills 6478 and 6481.

FISCAL IMPLICATIONS:

There is no specific information at present. A representative of the Department of Treasury testified before the House Tax Policy Committee that while there were no precise figures available, the expectation was that over the long run the agreement would be at least revenue neutral. Increases in state tax revenue could result from the improvement in tax enforcement made possible by the tribal agreements. (Testimony from the Department of Treasury on 11-12-02)

ARGUMENTS:

For:

The bill would allow the Department of Treasury to enter into a negotiated tax agreement with the state's federally recognized Indian tribes. The agreement will, according to tax specialists, allow the state to enforce a number of taxable transactions that it cannot now enforce due to the sovereign status of the tribes. At the same time, the agreement will recognize in statute certain exemptions for the tribes and individual members of the tribes. For example, according to information provided to the House Tax Policy Committee, "Tribal members and some tribes sell vast quantities of untaxed cigarettes to nonmembers both at on-reservation stores and over the Internet. Sales often are made at prices below the wholesale price paid by non-member retailers. Given tribal immunity and jurisdictional bars, the state cannot enter tribal stores or sue them, even though the state tax is due according to U.S. Supreme Court decisions. Tribal sellers obtain their product from out-of-state wholesalers, leaving the state unable to stop untaxed sales except through blockades or seizures". The Michigan Distributors and Vendors Association, which represents tobacco wholesalers, claims that "one tribal store can sell over 3,000 cartons [of cigarettes] a week which represents over $4 million per year in lost sales to [in-state] wholesalers and retailers and almost $2 million per year in lost revenue to the state". Under the anticipated agreement tribes will agree to collect tax on sales of tobacco to non-tribe members, as well as on the sales of motor fuel and on other products. Tribes and member businesses will agree to withhold and report income of nonmembers working on reservations and to report casino winnings. At the same time, a number of exemptions for products sold and used on the "tribe agreement area" and exemptions from income taxes for tribe members, among other exemptions consistent with federal law, will be part of the agreement. The agreement will clarify the prerogatives and obligations of the sovereign governments that are party to it.

Response:

Some people remain concerned about the possible fiscal impact of the agreement, particularly since there is no specific information on the likely consequences for state revenue and for the School Aid Fund.

POSITIONS:

A representative of Governor Engler and a representative from the Department of Treasury testified in support of the bills. (11-12-02)

The Michigan Distributors and Vendors Association supports the bills. (11-12-02)

The Little River Band of Ottawa Indians supports the bills. (11-12-02)

Among those who have indicated support of the bills are the Michigan Chamber of Commerce; the Sault Ste. Marie Tribe of Chippewa Indians; the Bay Mills Indian Community; and the Pokagon Band of Potawatomi Indians. (11-12-02

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.