Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 593 (Substitute S-1 as enrolled)
Senate Bill 594 (Substitute S-1 as enrolled)
Senate Bill 595 (Substitute S-1 as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Committee: Finance

Date Completed: 8-12-02

RATIONALE

The Business Corporation Act and the Nonprofit Corporation Act regulate corporations in Michigan, and include provisions by which corporations authorized to do business in the State may dissolve or withdraw. In general, a corporation may dissolve by action of its board and shareholders, and the filing of a certificate of dissolution (on behalf of the corporation) with the Department of Consumer and Industry Services (DCIS).

Three tax statutes also address the issue of corporate dissolution. Essentially, when a corporation submits a certificate of dissolution to the DCIS for approval, the DCIS may not issue approval until the Department of Treasury has determined that the corporation does not owe any income, sales, or use tax. This requires the DCIS to forward certificates of dissolution to the Department of Treasury, and then wait for Treasury to make its determination. Reportedly, this process sometimes causes long delays for a corporation to obtain its certificate of dissolution. It has been suggested that the tax statutes be amended to remove the requirement that the Department of Treasury act before a certificate of dissolution may be issued.

CONTENT

The bills would amend three statutes to delete provisions that prevent the dissolution of a corporation until the Department of Treasury determines that the corporation does not owe any sales, use, or income tax, and instead would require a corporation to request the Department of Treasury to certify that the corporation did not owe taxes. Senate Bill 593 (S-1) would amend the General Sales Tax Act; Senate Bill 594 (S-1) would amend the Use Tax Act; and Senate Bill 595 (S-1) would amend the Income Tax Act. Senate Bill 593 (S-1) is tie-barred to Senate Bill 595.

Under the Income Tax Act, the DCIS must withhold issuance of a certificate of dissolution until the Department of Treasury notifies the DCIS that a corporation has paid, or does not owe, any State income tax. Both the General Sales Tax Act and the Use Tax Act require the Department of Treasury to withhold a certificate of dissolution or withdrawal until all sales and use tax liabilities of a corporation have been paid. The bills would delete these provisions. Under the bills, a domestic or foreign corporation authorized to transact business in Michigan, that submitted a certificate of dissolution or requested a certificate of withdrawal from the State, would have to request from the Treasury Department a certificate stating that taxes were not due, as provided in Section 27a of the revenue Act. The corporation would have to request the certificate within 60 days after submitting a certificate of dissolution or withdrawal. A corporation that did not request a certificate would be subject to the same penalties that a taxpayer would be subject to for failure to file a return, as provided in the revenue Act. (Section 27a of that Act requires a person to file a final tax return within 15 days after selling or quitting a business, and further requires the purchaser of a going or closed business to escrow sufficient money to cover taxes, interest, and penalties that may be due until the former owner produces a receipt from the Department showing that taxes are paid, or a certificate stating that taxes are not due.)

MCL 205.65 (S.B. 593)
205.95 (S.B. 594)
206.451 (S.B. 595)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Because of the interaction between the requirements of the statutes that regulate corporations, and the statutes that levy income, sales, and use taxes, long delays can occur when a domestic corporation seeks to dissolve, or a foreign corporation seeks to withdraw from the State. In effect, a corporation that files a certificate of dissolution with the DCIS for approval must wait for the DCIS to obtain a determination from the Department of Treasury that the corporation has paid its sales, use, and income taxes. Delays caused by this process may cause harm to corporations seeking to dissolve, particularly when a corporation wishes to distribute its assets to shareholders in a timely manner, or when a corporation may be subjected to Federal tax consequences if it is not dissolved by the end of a tax year. The bills would remove the requirement that the Department of Treasury determine that a corporation has no tax liability, as a condition of obtaining a certificate of dissolution, but would retain the requirement that a corporation, upon dissolution, show evidence of no tax liability. This would remove an administrative burden for the Department and the DCIS, allow corporations to dissolve without delays, and protect the State's ability to collect taxes that are owed.

Supporting Argument

The changes proposed by the bills are long overdue, as the requirements of the tax statutes for determination of tax liability, as a condition of corporate dissolution, are obsolete. Both the Business Corporation Act and the Nonprofit Corporation Act, in addition to prescribing the dissolution method described above, provide for a corporation to be dissolved automatically for failing to file an annual report and pay a filing fee. Further, a corporation may "commit suicide" by amending its articles of incorporation to declare its end at a certain date. (Articles of incorporation must include the duration of the corporation, if other than perpetual.) This means that a corporation, if its directors desire, simply may not file an annual report, or may amend the articles of incorporation, and the corporation will be dissolved.

The bills would ease the burden on corporations that wish to dissolve by obtaining an approved certificate from the DCIS, but would not affect corporations that dissolve using these other methods.

Legislative Analyst: George Towne

FISCAL IMPACT

The bills would tend to simplify the procedures for dissolving a corporation, with some reduction in workload for the Department of Consumer and Industry Services. Department of Treasury staff indicate that the bills would have no impact on Treasury workload or revenue collections.

The bills would have no fiscal impact on local government.

Fiscal Analyst: Maria Tyszkiewicz
Jessica Runnels

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