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SFA BILL ANALYSIS

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Senate Bill 1396 (as introduced 8-13-02)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 9-17-02

CONTENT

The bill would amend the Tobacco Products Tax Act to allow a licensee to deduct bad debts from the tax levied on tobacco products under the Act, beginning January 1, 2003.

(The Act prohibits a person from purchasing, possessing, acquiring for resale, or selling a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in the State unless licensed to do so. Tobacco products are cigarettes, cigars, noncigarette smoking tobacco, and smokeless tobacco. The Act requires licensees to pay to the Department of Treasury the tax levied on tobacco products sold, minus a percentage for expenses of administration. The Act states an intent to impose the tax upon the consumer of the tobacco products, and allows a licensee liable for the tax to reimburse itself by adding to the price of the tobacco products an amount equal to the tax levied.)

Under the bill, if a licensee deducted bad debts from the tax, the amount deducted would have to be charged off as uncollectible on the books of the licensee. If a person paid all or part of a bad debt with respect to which a licensee claimed a deduction, the licensee would be liable for the amount of taxes deducted in connection with that portion of the debt for which payment was received, and would have to remit the taxes in his or her next payment to the Department of Treasury.

Any claim for a bad debt deduction would have to be supported by a copy of the original invoice; evidence that the tobacco products described in the invoice were delivered to the person who ordered them; and evidence that the person who ordered and received the tobacco products had not paid the licensee, and that the licensee used reasonable collection practices in attempting to collect the debt.

If the licensee complied with the bill and the Department did not object to the claim for bad debt within 90 days of submission, the claim would be considered approved.

Under the bill, "bad debt" would mean the taxes attributable to any portion of a debt that was related to a sale of tobacco products subject to the tax that was not otherwise deductible or excludable; that had become worthless or uncollectible in the time period between the date when taxes accrued to the State for the licensee's preceding tax return and the date when taxes accrued to the State for the present return; and that was eligible to be claimed, or could be eligible to be claimed if the licensee kept accounts on an accrual basis, as a deduction pursuant to a section of the Internal Revenue Code. A bad debt would not include any interest on the wholesale price of a tobacco product, uncollectible amounts on property that remained in the possession of the licensee until the full purchase price was paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, any accounts receivable that had been sold to a third party for collection, or repossessed property.

Proposed MCL 205.427b Legislative Analyst: George Towne

FISCAL IMPACT

It is estimated this bill would reduce cigarette and other tobacco tax revenue by less than $1 million for a typical year; however, in any given year, the loss in revenue could be much larger if one or more large retailers were to go out of business. This loss in revenue would be distributed as follows: 54% to the School Aid Fund, 33% to the General Fund, 6% to the Healthy Michigan Fund, 3% to the Medicaid Trust Fund, and 4% to local governments.

Fiscal Analyst: Jay Wortley

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.