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TAX LIABILITY OF OFFICERS

House Bill 4567 as enrolled
Public Act 23 of 2003
Sponsor: Rep. Paul Condino

House Bill 4568 as enrolled
Public Act 25 of 2003
Sponsor: Rep. Paula K. Zelenko

House Bill 4569 as enrolled
Public Act 24 of 2003
Sponsor: Rep. Barbara Farrah

House Committee: Tax Policy
Senate Committee: Finance

Second Analysis (7-10-03)

THE APPARENT PROBLEM:

Under the Revenue Act (MCL 205.27a), if a corporation is required to file a return or pay taxes and fails to do so, certain officers of that corporation are personally liable for that failure. The Department of Treasury points out that this provision has never been updated to include new forms of business entities, such as limited liability partnerships and limited liability companies. Legislation has been introduced to impose liability on those officers who have a responsibility for paying taxes, no matter how the business is organized.

THE CONTENT OF THE BILL:

Under the Revenue Act (MCL 205.27a), if a corporation is required to file a return or pay taxes and fails to do so, certain officers of that corporation are personally liable for that failure. The act also specifies that the presence of a signature of an officer on a tax return or on negotiable instruments used to pay taxes is prima facie evidence of the responsibility of the officer for making the return and payment, and that the dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to file a return or pay the tax due. House Bill 4567 would extend these provisions to limited liability companies, limited liability partnerships, partnerships, and limited partnerships and, likewise, to their individual members, managers, and partners. The bill would specify that the liability applies to those who the department determined after either an audit or an investigation have control or supervision of, or are charged with the responsibility for, making the returns or payments.

House Bill 4568 would delete language in the General Sales Tax Act (MCL 205.65) that is substantially similar to the provision in the Revenue Act that is being amended by House Bill 4567.
House Bill 4569 would delete language in the Use Tax Act (MCL 205.96) that is substantially similar to the provision in the Revenue Act that is being amended by House Bill 4567.

All three bills would apply to returns and for remittances for those returns due or filed on or after the effective date of the bills (June 24, 2003).

BACKGROUND INFORMATION:

This is part of a package of bills advanced by the Granholm Administration as part of the budget proposal for fiscal year 2003-2004.

The Department of Treasury issued a Revenue Administrative Bulletin (1989-38) to clarify the procedures involved in assessing liability against officers of corporations having a sales or use tax deficiency. According to RAB-89-38, prior to assessing personal liability on a corporation's officers, the department must determine (1) the corporation that is liable, (2) the failure on the part of the part of the corporation to file the required returns or pay the taxes due, and (3) that the individuals are officers of the corporation and have control over making returns or payment of taxes, or supervise making returns or payment of taxes, or are charged with the responsibility for making returns or payment of taxes. Further, RAB-89-38 states that the department must support a proposed officer liability assessment with documentary or testimonial proof that may include any of the following: application for registration; returns filed by the corporation during the period noted on the proposed assessment; Michigan Annual Reports that include the period assessed; audit or collection reports that identify an individual officer as being responsible for payment or reporting of taxes; correspondence from the taxpayer that identifies an officer as responsible for payment and reporting of taxes; collector reports establishing regular contract with a corporate officer regarding unpaid taxes; sales, use, and withholding returns that identify corporate officers; payment plan agreements signed by corporate officers; checks in payment of taxes signed by an officer, or subpoenaed bank signature cards for the periods in questions; or any other documents that would tend to prove or disprove corporate officer liability.

FISCAL IMPLICATIONS:

The Department of Treasury has estimated that the bill will increase state revenues by about $2 million annually. (5-7-03)

ARGUMENTS:

For:

These bills seek to update current tax law to make it conform with current business practices, and provide the department with the necessary tools and resources to properly collect all taxes due to the state. As written, with regard to the failure to pay and file the required tax, the three acts only concern corporations, but not other types of business entities. The problem with this is that it (1) does not treat all officers of these business entities equally under the law, (2) potentially allows officers of certain business entities to escape responsibility for taxes owed to the state, and (3) hinders the ability of the Department of Treasury to properly administer and enforce the several tax acts of the state.

For:

The bills delete duplicative provisions in the sales tax and use tax acts, and, instead, place the provisions in the Revenue Act. This brings about greater uniformity and consistency among the several tax laws. If these duplicative statutes were simply amended to comport with the Revenue act and remained in statute, future amendments to the provision in the Revenue act would require identical amendments to the other acts. This becomes problematic in those instances when the Revenue Act is amended, and not the other acts.

Analyst: C. Couch/M. Wolf

■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.