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BILL ANALYSIS

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Senate Bill 168 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Michelle A. McManus
Committee: Finance

Date Completed: 5-24-05

RATIONALE

Apparently, bidders at charitable auctions often bid significantly more than an auctioned item's fair market value because they consider the additional money they pay to be a contribution to the charity the auction is benefiting. The General Sales Tax Act, however, does not treat sales at auction differently from other sales; thus, the tax is levied on the auctioned item's selling price, rather than its actual value. Reportedly, it is not uncommon for the sales tax on an item sold at a charitable auction to be substantially more than the tax would have been had the item been sold at retail. Some people believe that the charitable nature of the auctions should be recognized and that the sales tax should be levied only on the actual value of the item at auction or the winning bid, whichever is less.

CONTENT

The bill would amend the General Sales Tax Act to provide that beginning January 1, 2006, through December 31, 2008, for the purpose of a charitable auction held by certain nonprofit taxpayers, "gross proceeds" would mean the winning bid price for the auction item or, at the option of the taxpayer, the fair market value of the auction item if it were less than the winning bid price. Presently, "gross proceeds" means sales price. (The tax is levied on people making retail sales in Michigan at a rate of 6% of their gross proceeds.)

If the taxpayer chose to pay the tax on the fair market value of the auction item, the taxpayer would have to provide a certification of fair market value supplied by the donor on a form prescribed by the Department of Treasury.

The change would apply to charitable auctions held by taxpayers with tax-exempt status under Section 4q(1)(b) of the Act. The section refers to organizations exempt from the Federal income tax under Sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. (Under Section 4q(1) of the Act, a person subject to the sales tax may exclude from gross proceeds the sale of personal property to those organizations.)

MCL 205.51

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

For buyers who bid up the price of an item at auction to more than its fair market value because they see their bid as a donation to a charity, the Act often imposes a tax on what was intended to be a gift. The issue is exacerbated by the fact that at some charitable events, such as 4-H livestock auctions, the winning bid often can be several times the market value of the item being auctioned. Reportedly, most charities holding auctions pay the sales tax levied on the winning bid out of a concern that they not be perceived as asking for additional money from the person who has been generous enough to have put in the winning bid. The result is usually that the charity, in effect, ends up paying the sales tax on the difference between the market price and the winning bid—an amount the bidder usually intended to be a donation. Under the bill, the taxpayer could pay the sales tax only on the market value of an item, if that amount were lower than the winning bid.

Additionally, a taxpayer could continue to use the winning bid to determine the amount of sales tax that would be levied if the winning bid were *less* than the market value of the auction item. As a result, charities would avoid situations in which the taxpayer is required to pay the sales tax on the market value of the item even though the winning bid is a fraction of that value.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would reduce sales tax revenue by well less than $1 million each year from FY 2005-06 through FY 2008-09. Most of this loss in revenue would have an impact on the School Aid Fund.

Fiscal Analyst: Jay Wortley