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House Bill 5356 (Substitute H-1 as passed by the House)
House Bill 5357 (Substitute H-1 as passed by the House)
House Bill 5358 (Substitute H-1 as passed by the House)
House Bill 5359 (Substitute H-1 as passed by the House)
House Bill 5360 (Substitute H-1 as passed by the House)
House Bill 5361 (as passed by the House)
Sponsor: Representative Lorence Wenke (H.B. 5356 & 5358)
Representative Tom Meyer (H.B. 5357)
Representative Judy Emmons (H.B. 5359)
Representative Rick Jones (H.B. 5360)
Representative James Marleau (H.B. 5361)

House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 1-18-06

CONTENT

House Bills 5356 (H-1) through 5361 would amend the revenue Act to do the following:

- Require a Department of Treasury auditor to notify a taxpayer about a refund opportunity, if one were discovered in the course of an audit.**
- Entitle taxpayers to claim credits as an offset against debits during the course of an audit.**
- Require the Department to notify a taxpayer as to the amount of a refund believed to be owed as the result of an audit.**
- Allow a taxpayer to convert his or her contest of an assessment to a claim for a refund during the course of an informal conference with the Department.**
- Allow a taxpayer to consider his or her notice of a contested assessment to have been denied if the Department failed to issue an order or determination within 180 days after the taxpayer served notice.**
- Give taxpayers 60 days, rather than the current 30 days, to request an informal conference after receiving a notice of the Department's intent to assess.**

House Bill 5356 (H-1)

Under the bill, if during the course of an audit authorized under the Act, an auditor identified a refund opportunity for the taxpayer, the auditor would have to notify the taxpayer of that refund opportunity in a timely manner. The taxpayer then could claim a refund under the provisions of the Act.

Neither the auditor nor any other Department employee would be required to provide detailed transactional support for refund claims or perform a review beyond that necessary to carry out the intended audit scope.

House Bill 5357 (H-1)

The bill specifies that, in the course of an audit conducted under the authority of Section 21 of the Act, a taxpayer would have the right to claim credit amounts as an offset against debit amounts determined in the audit. A taxpayer that was the subject of a use tax audit of its purchases would be entitled to offset the use tax liability determined in that audit by the amount of sales tax paid annually under the General Sales Tax Act, by it to a Michigan vendor, or use tax paid annually by it to a vendor located outside the State, on an amount of up to \$5,000 in purchases.

(Under Section 21, if a taxpayer fails or refuses to make a return or payment as required, or if the Department of Treasury believes that a return or payment does not supply enough information for an accurate determination of the amount of tax due, the Department may obtain information on which to base an assessment of the tax. The Department may examine the records and audit the accounts of a person or any other records pertaining to the tax.)

House Bill 5358 (H-1)

Under the bill, if as a result of an audit it were determined that a taxpayer was owed a refund, the Department of Treasury would have to send a notice to the taxpayer stating the amount of the refund the Department believed was owed to the taxpayer as a result of the audit. The notice would have to inform the taxpayer of his or her appeal rights.

If the taxpayer disputed the findings of the audit, the taxpayer could serve written notice upon the Department in the same manner as provided for in Section 21(2)(c) and the taxpayer would be entitled to the same informal conference and subsequent appeals as provided for in Section 21.

(In carrying out the provisions of Section 21, the Department must send the taxpayer a letter of inquiry, except under certain circumstances. If the dispute is not resolved after the Department sends the letter of inquiry, or if a letter of inquiry is not required, the Department must give the taxpayer a notice of its intent to assess the tax, after determining the amount due. Under Section 21(2)(c), if a taxpayer serves written notice upon the Department after receiving a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.)

House Bill 5359 (H-1)

Under the bill, during the course of the informal conference under Section 21(2)(d), the taxpayer by written notice could convert his or her contest of the assessment to a claim for a refund. The written notice would have to be accompanied by payment of the contested amount. The informal conference would have to continue and the Department would have to render a decision and issue an order regarding the claim for refund.

(Section 21(2)(d) requires the Department of Treasury to schedule an informal conference upon receiving a taxpayer's written notice of a contested assessment).

House Bill 5360 (H-1)

Under the bill, at the taxpayer's option, if the Department of Treasury failed to issue an order and determination within 180 days after the taxpayer served notice of a contested assessment, the informal conference could be considered denied. If so denied, the taxpayer could appeal the issues contested as provided under Section 22 (which allows a taxpayer

aggrieved by an assessment, decision, or order of the Department to appeal to the Tax Tribunal within 35 days or to the Court of Claims within 90 days after the assessment, decision, or order).

House Bill 5361

As noted above, Section 21 requires the Department of Treasury to send notice to a taxpayer of its intent to assess a disputed tax. The notice must include the amount the Department believes the taxpayer owes, the reason for that deficiency, and a statement advising the taxpayer of a right to an informal conference, the requirement of a written request by the taxpayer for the informal conference, and the 30-day time limit for that request.

If the taxpayer serves written notice upon the Department within 30 days after receiving a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.

The bill would extend the 30-day time frame to 60 days.

Proposed MCL 205.6 (H.B. 5356)
Proposed MCL 205.21a (H.B. 5357)
MCL 205.21 (H.B. 5358-5361)

Legislative Analyst: J.P. Finet

FISCAL IMPACT

House Bill 5356 (H-1)

The bill would have an indeterminate fiscal impact on State and local government. To the extent that more refunds might be claimed by taxpayers, the bill could affect State and local government revenue. It is difficult to determine how many taxpayers this could affect and the amount of those refunds.

House Bill 5357 (H-1)

The bill would have a minimal fiscal impact on State and local government. The Department's current practices generally allow credits to offset debits, so the bill would not create a significant change.

House Bill 5358 (H-1)

The bill would have an indeterminate impact on State and local government. To the extent that it could facilitate taxpayer appeals of the results of an audit and make taxpayers aware of refunds owed, the bill could increase the number and amounts of refunds distributed. The bill also could increase the number of informal conferences the Department holds, and would therefore increase administrative costs. In tax year 2004, the Department accepted 112 requests for hearings, and currently has a backlog of cases.

House Bill 5359 (H-1)

The bill would have a minimal fiscal impact on State and local government. To the extent that it could facilitate claims for refunds, the bill could save administrative costs while causing an increase in refunds distributed. It is difficult to determine how many taxpayers this could affect.

House Bill 5360 (H-1)

The bill would have a minimal fiscal impact on State and local government. To the extent that the bill would facilitate the denial of informal conferences, it could prompt additional taxpayer appeals, so the savings could be offset by the costs of the appeals.

House Bill 5361

The bill would have a minimal fiscal impact on State and local government. To the extent that the longer time limit could facilitate taxpayers' requests for informal conferences, the bill could lead to an increase in those requests and therefore the administrative costs to the Department. In tax year 2004, the Department accepted 112 requests for hearings, and currently has a backlog of cases.

Fiscal Analyst: Stephanie Yu

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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.