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BILL ANALYSIS

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House Bill 4906 (as passed by the House)
Sponsor: Representative Kate Ebli
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 9-17-09

CONTENT

The bill would amend the Streamlined Sales and Use Tax Administration Act to establish a process for addressing the incorrect classification of an item or transaction as to its taxability.

Under the Act, if a seller registers to participate in the streamlined sales and use tax system, the seller may use a certified service provider (CSP) to perform all of the seller's sales and use tax collection functions (other than its obligation to remit sales or use tax on its own purchases). A registered seller also may use a certified automated system to perform a portion of its sales and use tax collection functions, but the seller remains responsible for remitting taxes.

Under the bill, if the Department of Treasury determined that an item or transaction was incorrectly classified as to its taxability by a certified service provider or by a seller using a certified automated system, the Department would have to notify that CSP or seller of the incorrect classification. The CSP or seller would have to revise the classification within 10 days after receiving the notice. If the classification were not changed within that time frame, the CSP or seller would be liable for the failure to collect the correct amount of sales or use tax due to the State.

(As explained below, these requirements are contained in the Streamlined Sales and Use Tax Agreement.)

MCL 205.825

BACKGROUND

The Streamlined Sales Tax Project began in March 2000 as a multistate effort to simplify and modernize sales and use tax collection and administration, by minimizing the differences between the states' sales tax laws and practices. The Project is designed to encourage "remote sellers"--businesses that sell over the internet, by mail order, and over the telephone--to collect and remit tax on sales to customers living in participating states. In November 2002, delegates from 30 states and the District of Columbia approved the Streamlined Sales and Use Tax Agreement, which provides for state-level administration of sales and use taxes, uniform definitions, rate administration, and uniform audit and registration.

In Michigan, Public Act 174 of 2004 enacted the Streamlined Sales and Use Tax Administration Act to authorize the State Treasurer to enter into the Agreement, and to prescribe the manner in which Michigan will participate. Public Acts 172 and 173 of 2004 amended the Use Tax Act and the General Sales Tax Act, respectively, to define new terms and revise existing definitions, provide for the sourcing of sales, eliminate certain exemptions, add provisions relating to bad debt deductions, and make a number of other changes. Public Act 175 enacted the Streamlined Sales and Use Tax Revenue Equalization Act to impose specific taxes and provide credits, in order to modify the impact of the changes made to the Use Tax Act and the General Sales Tax Act.

On July 31, 2009, Governor Jennifer Granholm wrote to the Streamlined Sales Tax Governing Board to recertify that Michigan is in substantial compliance with the Agreement, which each member state is required to do annually. In the letter, the Governor noted that "statutory amendment in response to requirements of Sec. 502(E) has not yet occurred".

Under Section 502(E) of the Agreement, if a member state determines that an item or transaction is incorrectly classified as to its taxability, the state must notify the certified service provider or the seller, if the seller uses a certified automated system, of the incorrect classification. The CSP or seller has 10 days to revise the classification and, if it fails to do so, the CSP or seller is liable for the failure to collect the correct amount of tax due.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would make a technical change to the Streamlined Sales and Use Tax Administration Act needed to bring Michigan into compliance with the Streamlined Sales and Use Tax Agreement. It is estimated that any negative revenue repercussions that would result due to this bill would be very minimal. In FY 2007-08, Michigan collected \$12.2 million from registered businesses under the Streamlined Sales and Use Tax Agreement and early indications are that these collections will be higher in FY 2008-09.

The bill would have no fiscal impact on the Department of Treasury.

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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.