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BILL ANALYSIS

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Senate Bill 428 (Substitute S-2 as reported)
House Bill 4346 (Substitute S-1 as reported)
Sponsor: Senator Dave Hildenbrand (S.B. 428)
Representative John Walsh (H.B. 4346)
Senate Committee: Finance
House Committee: Tax Policy (H.B. 4346)

Date Completed: 2-29-12

RATIONALE

The General Sales Tax Act and the Use Tax Act require certain large taxpayers to make accelerated payments. Some people believe that the way taxpayers must comply with these requirements is overly burdensome and time-consuming, and can result in excessively inaccurate payments. Typically, the Acts require taxpayers, by the 20th day of each month, to file a tax return with the Department of Treasury and remit the amount due. A taxpayer is required to make accelerated payments, however, if the taxpayer's total sales or use tax liability in the previous year was $720,000 or more, after certain amounts have been subtracted. By the 20th day and the last day of the month, the taxpayer must pay amounts equal to 50% of its liability for the same month in the prior year or 50% of the actual liability for the month being reported, whichever is less. The taxpayer also must make a reconciliation payment by the 20th day of the month, if its prior month's payment was insufficient.

It has been pointed out that these provisions require a taxpayer to make nine separate transmissions a month: three each for the sales tax, the use tax on purchases, and the use tax on sales and rentals. In addition, if a taxpayer uses prior tax year data as its baseline (rather than calculating the amount actually owed), and its business volume has declined, the taxpayer is likely to make an overpayment. Ultimately, the taxpayer can receive a refund from the State after filing its annual return. To address these issues, some people have suggested that the accelerated payment schedule should be revised, payments should be based on a taxpayer's liability in the prior month, and taxpayers should be allowed to make a consolidated payment for sales and use tax liabilities.

CONTENT

Senate Bill 428 (S-2) would amend the General Sales Tax Act and House Bill 4346 (S-1) would amend the Use Tax Act to revise the accelerated payment requirements for taxpayers whose sales or use liability in the previous year was $720,000 or more. The bills would require such a taxpayer to pay, by the 20th day of each month, 75% of its liability in the previous month plus a reconciliation payment, and would allow a taxpayer to make a consolidated payment.

Currently, a taxpayer is subject to an accelerated payment schedule if its total tax liability in the previous year was $720,000 or more, after subtracting tax payments made to the Secretary of State under either Act or after subtracting tax credits available under Section 6a of the General Sales Tax Act (which requires taxpayers that purchase gasoline from a refiner or a terminal operator to prepay a portion of their sales tax to the refiner or the terminal operator, and allows them to claim an estimated prepayment credit). A taxpayer that meets the $720,000 threshold, by the 20th day of the month and by the last day of the month, must remit an amount equal to 50% of the taxpayer's liability for the same month in the prior year or 50% of the actual liability for the month being reported, whichever is less. Also, by the 20th day of the month, the taxpayer must make a reconciliation payment equal to the difference between the tax liability determined for the preceding month and the amount of tax previously paid for that month.

Under the bills, these accelerated payment requirements would apply through June 30, 2013. Beginning July 1, 2013, a taxpayer that had a total sales or use tax liability in the previous year of $720,000 or more (after the same subtractions) would have to remit, by the 20th day of the month, an amount equal to 75% of the taxpayer's sales or use tax liability in the preceding month, plus a reconciliation payment equal to the difference between the tax liability determined for that month minus the amount previously paid for that month. A taxpayer could make a single payment for the tax due under both Acts.

As currently required, the monthly payments would have to be made by an electronic funds transfer method approved by the Department.

MCL 205.56 (S.B. 428)
205.96 (H.B. 4346)

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

Accelerated sales and use tax payment requirements were first enacted in 1993 to help address a State cash-flow problem. Originally, taxpayers with a sales or use tax liability of $480,000 or more in the previous year had to remit, by the 18th day of the month, an amount equal to 95% of their liability for the same month in the prior year. Subsequent amendments increased the liability threshold to $720,000 and revised the payment schedule and calculation. According to testimony before the Senate Finance Committee, Michigan's system for remitting sales and use tax payments is the most cumbersome, time-consuming, and inaccurate in the nation. This testimony described the experience of one global company, International Paper. For years, this taxpayer evidently has made overpayments to the State in the range of $200,000 to $300,000 due to the inaccuracy of the reporting method. After filing an annual return in February, the company then has usually had to wait six to nine months to receive a refund. For one annual return, the company reportedly had to wait 18 months. While these overpayments might have a negligible impact on a taxpayer the size of International Paper, the cash flow of smaller companies may suffer if they are continually making overpayments and waiting for refunds.

Also, regardless of the relative size of the taxpayer subject to the accelerated payment schedule, the requirement to make nine payments each month can be burdensome. For the sales tax, the use tax on purchases, and the use tax on sales and rentals, a taxpayer must make two 50% payments and a separate reconciliation payment. (Even if no reconciliation payment is owed, the taxpayer still must make a "zero transmission".) While other taxpayers have the option of sending in a return and a single check to cover all tax liability, taxpayers subject to the accelerated payment schedule must pay electronically, which requires a separate transmission for each payment.

Under the bills, a taxpayer could make a single monthly transmission that would cover its accelerated sales tax and use tax liabilities and reconciliation amounts, and each accelerated payment would be based on the liability for the previous month. These changes would relieve the administrative burden on both the taxpayer and the State and would result in more accurate payments. Increased accuracy would reduce the need for the State to make, and the taxpayer to wait for, a refund.

Response: The Department of Treasury is not currently set up to process consolidated use and sales tax payments that are transmitted electronically, and would have to upgrade its system in order to accommodate this legislation. The State Constitution prescribes complex requirements for the distribution of sales and use tax revenue, which must be taken into account.

Also, taxpayers currently have the option to calculate the amount they actually owe for a month, rather than basing their payment on the amount owed a year earlier, and a taxpayer that does make an overpayment can use it as a credit against the following month's liability.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would alter the timing of sales and use tax receipts. The bills would require taxpayers with an annual sales or use tax liability, after subtracting sales and use taxes on motor vehicles, of $720,000 or more, to remit their monthly tax payments according to a different formula. Currently, such taxpayers are required to remit 50% of either the liability in the same month one year ago, or the liability for the current month, plus a reconciliation amount for the prior month's liability by the 20th of each month; with the remaining 50% of either the liability in the same month one year ago, or the liability for the current month, due at the end of the month. The bills would require taxpayers to remit 75% of the prior month's liability, plus a reconciliation payment for the prior month, by the 20th of the month. The bills would eliminate the subsequent payment due at the end of the month.

While the bills would not affect the total liability, they would affect the timing of payments. Approximately 25% of collections from affected taxpayers would be received 10 days earlier, while the remaining portion would be received 20 days later. The State earns interests on its cash balances and the bills would increase the interest earnings on the accelerated portion, and reduce interest earnings on the reconciliation portion. The net impact would roughly equate to 10 days' interest on 25% of collections from affected taxpayers in the initial month the bills were effective. (If all taxpayers were affected, 25% of sales tax collections would total approximately $125.0 million to $140.0 million per month, and 25% of use tax collections would total approximately $25.0 million per month.) The impact is unknown, but given current interest rates, would likely be minimal or negligible.

Fiscal Analyst: David Zin

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