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BILL



ANALYSIS

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Senate Bill 1298 (as introduced 9-20-12)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 10-16-12

CONTENT

The bill would amend Part 3 of the Income Tax Act, which prescribes withholding requirements for flow-through entities and others, to revise provisions under which a flow-through entity that receives an exemption certificate from a corporation may not withhold a tax on the distributive share of that corporation. The bill would do the following:

- Refer to a "member", rather than a "corporation".**
- Authorize the Department of Treasury to require the flow-through entity to attach a copy of the exemption certificate to its annual return.**

The Act requires a flow-through entity (e.g., a partnership, S corporation, or limited liability company) to withhold a tax from each member's distributive share of business income. If a flow-through entity receives an exemption certificate from a corporation, however, the entity may not withhold a tax on the distributive share of the business income of that corporation, if certain conditions are met.

Under the bill, this would apply to a flow-through entity that received an exemption certificate from a member other than a nonresident individual, rather than from a corporation. The entity could not withhold a tax on the distributive share of the business income of that member, if the required conditions were met.

Under one of these conditions, the exemption certificate must certify that the corporation will pay the tax required under Part 2 of the Act (which governs the Corporate Income Tax) on the distributive share of the business income received from any flow-through entity in which the corporation is a member or in which it has an ownership or beneficial interest.

The bill, instead, would require certification that the member would pay or withhold the tax required under the Act on the distributive share of the business income received from any flow-through entity in which the member had an ownership or beneficial interest.

Currently, a flow-through entity that receives an exemption certificate must attach a copy of the certificate to its annual reconciliation return. A flow-through entity that is entirely exempt from the withholding requirements must furnish a copy of the exemption certificate in a manner prescribed by the Department.

The bill, instead, would allow the Department to require a flow-through entity to attach a copy of the certificate to its return or furnish a copy in another manner.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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