Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 64 (as introduced 1-23-13)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 5-8-13

CONTENT

The bill would amend provisions of the revenue Act that make an officer, manager, or partner personally liable for unpaid taxes of a business, to do the following:

- **Limit personal liability to situations in which a business failed to pay tax collected from another person.**
- **Limit personal liability to a person who had been responsible for collecting the tax or filing returns during the time period of default, and willfully failed to pay the collected tax.**
- **Limit the liability of a responsible person to his or her proportionate share of the tax assessed, if there were more than one responsible person.**
- **Allow a responsible person to recover the excess from another person, if the responsible person paid more than his or her share of tax assessed.**
- **Require the Department of Treasury to assess a purchaser of a business before assessing a responsible person, if both were liable.**
- **Require the Department to disclose the name of any other liable person or purchaser, and other information, upon the request of a responsible person who was assessed for a business's unpaid collected taxes.**
- **Prohibit the Department from assessing a responsible person more than four years after an assessment was issued to the business.**
- **Delete a provision under which the dissolution of a business does not discharge personal liability.**

Liability of Responsible Person

Currently, if a business (a corporation, limited liability company, limited liability partnership, partnership, or limited partnership) is liable for taxes administered under the Act and fails, for any reason, to file required returns or pay a tax due, any of its officers, members, managers, or partners is personally liable for the failure, if the Department of Treasury determines, based on an audit or investigation, that he or she has control or supervision of, or responsibility for, making the returns or payments.

Under the bill, instead, if a business collected a tax from another person but failed, after assessment, to pay the collected tax due to the State, any of its officers, members, managers of a manager-managed limited liability company (LLC), or partners would be personally liable to the State for the amount of taxes collected and unpaid, if the Department determined, based on an audit or investigation, that he or she was the responsible person.

The bill would define "responsible person" as the person who was legally designated or appointed for the business as an officer, member, manager of a manager-managed LLC, or partner during the time period of the default by the business and who controlled or supervised the collection, accounting, or filing of tax returns for the collected taxes during the time period of default and willfully failed to pay the collected taxes for the business. ("Time period of default" would mean the time period on which date the return was due to be filed and the collected tax was due to be paid to the State.)

Currently, the signature of any corporate officer, member, manager, or partner on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of his or her responsibility for making the returns and payments. The bill generally would retain this provision but would refer to the signature on returns or negotiable instruments submitted in payment of the collected taxes during the time period of default. A signature on an installment agreement, on a collection statement, or on an amended return prepared after the period of default could not be used as evidence of the person's responsibility for making the returns and payments during the time period of default by the business. (Prima facie evidence is evidence sufficient to establish a given fact or raise a presumption unless disproved or rebutted.)

Assessment of Responsible Person

The bill would prohibit the Department from assessing a responsible person more than four years after the date of the assessment issued to his or her business.

If the responsible person and a purchaser of the business were both liable for the tax assessed to the business, the Department would have to assess the purchaser first. If there were more than one responsible person, the Department could not collect more than the amount of the collected tax that was not remitted by the business. The Department would have to report all payments of the collected tax made by the responsible person or purchaser on the monthly billing statement issued to each of them, and would have to correct the total amount of unpaid collected taxes that remained due and owing.

(The Act requires the purchaser of a going or closed business, or its stock, to escrow enough money to cover the amount of taxes, interest, and penalties that may be due and unpaid, until the former owner produces a receipt from the State Treasurer showing that the taxes are paid, or a certificate stating that the taxes are not due. A purchaser that fails to comply with this escrow requirement is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by the business of the former owner.)

At any conference, contested case hearing, or trial, the Department would have the burden to first produce prima facie evidence or establish a prima facie case that a person was a responsible person and that the Department notified the business and the responsible person of the assessment as required by the Act.

A responsible person could challenge the validity of the assessment to the same extent that the business could have done under Sections 21 and 22 of the Act when originally issued. (Section 21 provides for an informal conference with the Department. Section 22 allows an appeal to the Tax Tribunal or the Court of Claims, provides for the right to appeal the Tribunal's or Court's decision to the Court of Appeals, and permits an appeal to the Supreme Court.)

The Act states that the dissolution of a corporation, LLC, limited liability partnership, partnership, or limited partnership does not discharge an officer's, member's, manager's, or partner's liability for a prior failure of the business to make a return or remit the tax due. The bill would delete this provision.

Responsible Person's Remedies

Under the bill, if more than one responsible person were liable for the tax assessed to the business, each responsible person would be entitled to the remedies described below.

After an informal conference requested by the responsible person, the Department would be required, based on the information available, to determine and apportion liability to an amount equal to the person's proportionate share of the tax assessed.

In a proceeding in which the responsible person's liability was to be adjudicated, the tribunal or court would have to limit the amount of tax assessed to the person to an amount equal to his or her proportionate share of the tax assessed.

In a separate proceeding in circuit court, the responsible person could recover from any other person, whether or not that person was assessed by the Department, an amount equal to the excess of the amount paid by the responsible person over his or her proportionate share of the tax assessed.

Information Disclosure

Upon the request of a responsible person assessed for a business's unpaid collected taxes, the bill would require the Department to disclose the name of any other person and any purchaser determined to be liable, a description of its collection activities attempted against each responsible person and purchaser, and the assessments issued to each of them.

The Department also would have to disclose all background file documents considered in its audit or investigation, including all tax returns, negotiable instruments, and correspondence made by the business and assessments issued to it for the same taxes and periods assessed to the responsible person, and any other documents that the tribunal or court determined were necessary for a fair adjudication of a person's liability.

MCL 205.27a Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce State revenue by an unknown and potentially significant amount that would depend on the specific characteristics of affected taxpayers. The most significant source of revenue reduction would likely be the provisions that would limit the assessment of a responsible person to cases in which a business collects tax from another person. Under current law, such assessments may be made against an officer, manager, or partner of any business liable for taxes under the Act, not just one that collects a tax from another person.

The bill would have no effect on local revenue or expenditure.

Fiscal Analyst: David Zin