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

BILL ANALYSIS

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

House Bill 4586 (as passed by the House)
Sponsor: Representative Pat Somerville
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 9-25-13

CONTENT

The bill would amend the revenue Act to do the following with respect to voluntary disclosure agreements (VDAs):

- **Include the Corporate Income Tax among the taxes covered by the lookback period of a VDA.**
- **Provide for a combined 48-month lookback period for the former Single Business Tax, the Michigan Business Tax, and the Corporate Income Tax.**
- **Require the refund of taxes to a taxpayer who entered into a VDA after October 1, 2012, and before May 1, 2013, if the combined lookback period under that agreement exceeded the combined 48-month period.**

The Act allows a person who is a "nonfiler" for a particular tax to enter into a voluntary disclosure agreement with the State Treasurer. The person must agree, among other things, to pay all taxes due for each tax covered by the VDA for the lookback period, plus interest, within the time specified in the agreement. If the person satisfies the Act's requirements, the Department of Treasury may not assess any tax, delinquency for a tax, penalty, or interest covered under the VDA for any period before the lookback period.

Eligibility for VDA

To be eligible for a VDA, a nonfiler must meet one or both of the following criteria, as well as other requirements:

- Have a filing requirement under nexus standards issued by the Department after December 31, 1997.
- Have a reasonable basis to contest liability, as determined by the State Treasurer, for a tax or fee administered under the Act.

Under the bill, the first criteria would require the person to have a filing requirement under nexus standards issued by the Department *or* enacted into law after December 31, 1997.

Lookback Period

Currently, for business taxes levied under the former Single Business Tax (SBT) Act or the Michigan Business Tax (MBT) Act, the lookback period must be the four most recent completed fiscal or calendar years over a 48-month period or the first date the person subject to a VDA began doing business in this State if less than 48 months. Under the bill, this also would apply to taxes levied under Part 2 of the Income Tax Act (the Corporate Income Tax), and the period described in current law would be the *combined* lookback period for all taxes covered by the agreement

The revenue Act also provides for an alternative 36-month lookback period for a taxpayer that filed returns in another state for a tax based on net income that included sales in the numerator of the apportionment formula, that now must be included in the numerator of the apportionment formula under the former SBT Act or the MBT Act. The bill also would refer to Part 2 of the Income Tax Act.

<u>Refund</u>

Under the bill, if a taxpayer entered into a VDA after October 1, 2012, and before May 1, 2013, for business taxes levied under the former SBT Act, the MBT Act, or Part 2 of the Income Tax Act, and the combined lookback period under the agreement exceeded the 48-month lookback period specified in the revenue Act, the Department of Treasury would have to refund amounts paid attributable to the periods outside of period specified in the Act.

MCL 205.30c

BACKGROUND

According to a letter ruling issued by the Department of Treasury in March 2002 (LR 2002-03), "Michigan's voluntary disclosure legislation…was enacted to address the difficulties that arose when appellate decisions…apply a new standard of law retroactively and create filing responsibilities where none had previously existed… In these situations, the court decision could result in making a taxpayer a nonfiler with potentially unlimited liability for back years. The voluntary disclosure legislation provides narrow, targeted relief only to certain nonfilers that meet the eligibility requirements of [the statute]…".

Based on the Department's revenue bulletins, the letter ruling stated that Michigan residents do not have a basis for obtaining voluntary disclosure relief under this law, which limits its application to out-of-State nonfilers.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would likely reduce, by an indeterminate amount, State General Fund revenue. The actual amount would depend on the specific characteristics of affected returns and the amount of any potential refunds provided under the bill.

Fiscal Analyst: David Zin

S1314\s4586sa
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.