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

BILL ANALYSIS

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

Senate Bills 82 and 83 (as introduced 2-9-15)
Sponsor: Senator Peter MacGregor (S.B. 82)
Senator John Proos (S.B. 83)
Committee: Finance

Date Completed: 3-10-15

CONTENT

Senate Bills 82 and 83 would amend the Use Tax Act and the General Sales Tax Act, respectively, to exclude from the definition of "prewritten computer software" granting the right to use prewritten software installed on another person's server.

The Acts impose a 6% tax on the sale or consumption of tangible personal property, and each Act's definition of "tangible personal property" includes prewritten computer software. The Acts define "prewritten computer software" as computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Under the bills, the term would not include granting the right to use prewritten computer software installed on another person's server.

Each bill states that the amendment "is curative and is intended to express the original intent of the legislature concerning the taxation of prewritten computer software" under the Act.

MCL 205.92b (S.B. 82)
205.51a (S.B. 83)

Legislative Analyst: Ryan M. Bergan

FISCAL IMPACT

The bills would reduce State revenue by an unknown amount that would likely increase over time. According to the Michigan Department of Treasury, the annual revenue loss in FY 2015-16 would total approximately $70.0 million, although it is unknown what portion of this would represent actual revenue losses from tax that is currently being paid or would represent foregone revenue that the State is not currently collecting because taxpayers believe the transactions are not taxable. If the bills became effective during FY 2014-15, revenue would decline by some portion of the annual estimate. To the extent that the industry activity increases and/or would increase as a result of the bills, the revenue impact would be larger.

As currently written, the bills would exempt a wide array of software-related activity. IBM's website defines "cloud computing" as "the delivery of on-demand computer resources--everything from applications to data centers--over the internet on a pay-for-use basis". While most of the terms in this definition are not defined in current law or in the bills, the bills would exempt a broader spectrum of activity than what would be included in IBM's definition. For example, if a taxpayer purchased and owned software and installed it on a server owner by another person (perhaps a leased server), the bills would appear to exempt the software from taxation. Similarly, the bills would appear to exempt sales and use no matter how essential or incidental the access was to the service or goods being purchased. For example, the bills would not distinguish between accessing a word processing program to compose documents essential to a taxpayer or merely accessing software on a website to enter data for a later service such as billing or analysis.

The 2012 Economic Census reports that software publishers nationally had total receipts of approximately $170.0 billion. The share of that total derived from Michigan sales is unknown, as is the portion that would be affected by the bills; however, if Michigan's share equaled the Michigan share of Gross Domestic Product and 25% of the sales were affected by the bills, the potential sales and use tax revenue from this activity could total approximately $66.0 million.

It is estimated that the enacting sections of the bills, expressing legislative intent that the legislation "is curative", would reduce revenue by an unknown amount depending on the degree to which taxpayers have paid tax on transactions affected by the bills. The Department of Treasury estimates that the loss could be between $30.0 million and $100.0 million. Any loss of revenue attributable to the enacting provisions would likely affect only the first fiscal year in which the bills would be effective.

Any revenue loss would affect General Fund revenue, School Aid Fund revenue, and revenue sharing to local units of government, with the relative impact across the funds depending on the relative magnitude of reduction in sales tax revenue compared to the reduction in use tax revenue.

Fiscal Analyst: David Zin

S1516\s82sa