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

BILL ANALYSIS

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

Senate Bills 369 and 370 (as enacted) **PUBLIC ACTS 204 & 205 of 2015**
Sponsor: Senator Wayne Schmidt (S.B. 369)
Senator Jack Brandenburg (S.B. 370)
Senate Committee: Commerce
House Committee: Tax Policy

Date Completed: 3-21-17

RATIONALE

Under the Use Tax Act and the General Sales Tax Act, the sale or purchase of certain property is eligible for an industrial processing exemption from the tax levied under the respective Acts. The types of property eligible for this exemption under either Act include, for example: a) machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity; b) property that is consumed or destroyed or that loses its identity in an industrial processing activity; and c) fuel or energy used or consumed for an industrial processing activity. Although liquor manufacturers can claim the exemption when they purchase equipment and supplies used to produce alcoholic liquor for wholesale, some people believed that the law was ambiguous as to whether the industrial processing exemption applied to property used to produce liquor sold at a manufacturer's own retail venue. They contended that it should have applied and if it did not, the result was double taxation because taxes were levied on the sale of the property used for manufacturing and on the sale of the liquor that was produced. To address those concerns, it was suggested that the industrial processing exemption should apply explicitly to property used to manufacture alcoholic liquor sold at retail through the manufacturer's own locations.

CONTENT

Senate Bills 369 and 370 amended the Use Tax Act and the General Sales Tax Act, respectively, to extend the industrial processing exemption under each Act to tangible personal property used or consumed in an industrial processing activity to produce alcoholic beverages that are sold at retail by that industrial processor through its own retail locations.

The industrial processing exemption under each Act does not apply to tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations. The bills made an exception to those provisions for the property described above.

Each bill took effect on November 30, 2015.

MCL 205.94o (S.B. 369)
205.54t (S.B. 370)

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

Liquor manufacturers are generally granted a sales or use tax exemption when they purchase processing equipment or material used to produce liquor for wholesale. It was not clear, however, whether the exemption applied when the property was used to produce liquor sold at retail by the manufacturer through its own location. This ambiguity evidently caused problems for some manufacturers, such as wine makers and breweries. The problems included, for example, audits and threats of legal action for taxes owed, the expenditure of a great amount of time and effort to keep books, and double taxation, with collections imposed both on the machinery and supplies used to manufacture the liquor and on the liquor. Consequently, many alcohol manufacturing businesses were discouraged from offering on-site tasting rooms or on-site retail sales. The bills explicitly grant liquor manufacturers the use and sales tax industrial processing exemptions for tangible personal property used to manufacture liquor sold at retail at the producer's venue. The exemptions eliminate the double taxation, promote growth of Michigan's $300.0 million liquor manufacturing industry, and give alcohol manufacturing businesses clear guidance on how much tax is owed.

Opposing Argument

The bills will have a negative effect on sales and use tax revenue, and will reduce available money for the School Aid Fund. While the impact of these bills is likely to be minimal, when aggregated with other recently passed bills, revenue to the School Aid Fund will be affected significantly.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills will reduce both General Fund and School Aid Fund (SAF) revenue by an unknown and likely negligible amount. According to the 2012 Economic Census, distilleries in Michigan made $168,000 in capital expenditures while wineries spent $2.7 million and breweries spent $16.6 million. The proportion of these expenditures affected by the bills is unknown, but if 20% is affected and the estimate is representative of the average annual capital expenditure, the bills will reduce General Fund revenue by approximately $156,000 and SAF revenue by approximately $78,000 per year if the exemption affects only use tax revenue. To the extent that sales tax revenue is reduced, 73.3% of the impact will reduce School Aid Fund revenue, 10% of the impact will lower local unit revenue from constitutional revenue sharing, and the remaining 16.7% will lower General Fund revenue.

Fiscal Analyst: David Zin

SAS\A1516\s369ea