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

BILL ANALYSIS

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

Senate Bill 1172 (as enacted) **PUBLIC ACT 390 of 2016**
Sponsor: Senator Ken Horn
Senate Committee: Michigan Competitiveness
House Committee: Appropriations

Date Completed: 1-5-17

CONTENT

The bill amended the Use Tax Act to direct that the Medicaid managed care Use Tax no longer be collected effective December 31, 2016. The tax will be effectively reinstated when the Health Insurance Claims Assessment (HICA) Act sunsets on July 1, 2020, when the HICA Act is repealed, or when the HICA rate is reduced to 0.0%, whichever occurs first.

MCL 205.93f

BACKGROUND

The State of Michigan first instituted a Medicaid managed care Use Tax in 2009 to replace a Medicaid managed care quality assurance assessment program that had been barred by the Federal Deficit Reduction Act. The Centers for Medicare and Medicaid Services (CMS) initially allowed the tax, but began to question the validity of the approach. Due to fears of new rules that could prevent the State from continuing the tax and concerns about potential retroactive disallowances, which could have cost the State hundreds of millions of dollars, the Legislature passed in 2011 and the Governor signed Senate Bills 347 and 348 (Public Acts 141 and 142 of 2011), which ended the Use Tax and implemented the Health Insurance Claims Assessment (HICA).

During 2013, the State of California received permission from the Federal government to reinstate, on a limited-term basis, its Medicaid managed care Use Tax through July 1, 2016. The State of Michigan sought and also received permission to reinstate the Medicaid managed care Use Tax, on an unspecified limited-term basis.

Senate Bills 893 and 913 (Public Acts 161 and 162 of 2014) reinstated the Use Tax and reduced the HICA rate from 1.0% to 0.75% for as long as the Federal government did not disallow the Use Tax.

Over the last two years, the Federal government has informed states with Medicaid managed care taxes (California, Michigan, Ohio, and Pennsylvania) that it would no longer consider use of such taxes as being acceptable after the end of the current legislative session, that is, after the end of calendar year 2016. The expectation is that the Federal government will reduce its Medicaid reimbursement to states that continue to collect the tax by the amount of state revenue benefit the states receive from the existence of the tax.

Michigan's FY 2016-17 Department of Health and Human Services budget reflected an assumed expiration of the Medicaid managed care Use Tax on January 1, 2017. The net impact of these changes on Use Tax and HICA revenue and payments to Medicaid managed care

organizations would make the State worse off by $123.6 million GF/GP and $155.4 million School Aid Fund (SAF) in FY 2016-17. These changes were fully accounted for in the budget.

Senate Bills 987, 988, 989, and 990

A package of bills was introduced and passed by the Legislature in the fall of 2016 to continue the Use Tax during calendar year 2017 and beyond in a way believed to be more acceptable to the Federal government. The proposed bills segregated and allocated the Use Tax funding to ensure that none of the Medicaid managed care Use Tax revenue would be used to support Medicaid programs. Governor Snyder vetoed the package, expressing concern that the Federal government would not find the approach taken acceptable.

Use Tax Act

The statute did not specify an expiration date for the Medicaid managed care Use Tax. As such, the administration believed that the tax would have to continue to be collected even though, assuming the Federal government makes clear its disapproval, there would be no net benefit to the State from the tax. Under Federal rules governing Medicaid managed care actuarial soundness, the State would have to reimburse the Medicaid managed care organizations for the cost of the tax.

In effect, assuming Federal disapproval, the most likely outcome would be as follows: the State would collect full-year Use Tax revenue of about $630.0 million ($420.0 million GF/GP and $210.0 million SAF), then would spend approximately $170.0 million GF/GP and $460.0 million in Federal Medicaid match to reimburse those managed care costs under actuarial soundness requirements, and then the Federal government would reduce Medicaid reimbursement by approximately $460.0 million (increasing GF/GP costs) to reflect its disapproval of the Medicaid managed care Use Tax.

While the net result of the above adjustments would lead to no net impact on the combined GF/GP and SAF budgets (although there would be a shift of $210.0 million between GF/GP and SAF), it would create a complex series of transactions and would appear to violate the spirit of previously stated Federal intentions.

Senate Bill 1172

The bill amended the Use Tax Act to end collection of the Medicaid managed care Use Tax on December 31, 2016. The bill reinstates the Medicaid managed care Use Tax when the HICA sunsets on July 1, 2020, or earlier if the HICA statute is repealed or the HICA rate is reduced to 0.0%.

The bill effectively allows the State to reinstate the Medicaid managed care Use Tax before July 1, 2020, by amending the HICA statute and without amending the Use Tax Act. If the HICA is not repealed or reduced to 0.0% before July 1, 2020, then the Medicaid managed care Use Tax will be reinstated on July 1, 2020.

If, as was the case in 2013, the Federal government gave the State permission to use a Medicaid managed care Use Tax, the State could implement such a tax by either repealing the HICA statute or reducing the rate to 0.0%. No changes to the Use Tax Act itself would be necessary.

FISCAL IMPACT

The FY 2016-17 budget already assumes expiration of the Medicaid managed care Use Tax, effective December 31, 2016. As such, the sunset of the Medicaid managed care Use Tax will have no fiscal impact relative to the current budget.

The bill's sunset on the tax will avoid a situation in which the State would continue to collect the Medicaid managed care Use Tax, then provide payments to cover the actuarial soundness costs of the tax for Medicaid managed care organizations (MCOs), and then suffer a likely Federal disallowance equal to the Federal match on the actuarial soundness costs. These revenue collections and costs would have no net fiscal impact on the State's combined GF/GP and School Aid Fund balance sheet but the adjustments would be complex for the State, the Federal government, and the Medicaid MCOs.

If the Federal government relented on its opposition to continued collection of the Medicaid managed care Use Tax, then repeal of the HICA Act or reduction of the HICA rate to 0.0% would lead to reinstatement of the tax. Using FY 2016-17 estimates, on a full-year basis, the State would gain $420.0 million in GF/GP revenue and $210.0 million in School Aid Fund revenue from the tax, the State would spend about $170.0 million GF/GP and $460.0 million Federal to cover actuarial soundness costs for Medicaid MCOs, and the State would see a reduction in HICA revenue of $330.0 million, which would increase GF/GP costs by an equal amount.

Overall, the State would be better off on the School Aid Fund balance sheet by $210.0 million and worse off on the GF/GP balance sheet by $80.0 million, with a net benefit to the combined balance sheets of $130.0 million per year. This $130.0 million amount would increase roughly at the inflation rate in subsequent years.

If no changes to HICA are made before the sunset date of July 1, 2020, then the Medicaid managed care Use Tax will be reinstated on that date. Without Federal permission to reinstate the Use Tax, there will be no net fiscal impact as the State will return to the situation noted above: the State collecting the Use Tax and making actuarial soundness payments using combined GF/GP and Federal revenue, and then the Federal government imposing a disallowance equal to the actuarial soundness Federal revenue.

Fiscal Analyst: Steve Angelotti

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