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BILL ANALYSIS

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House Bill 5131 (as passed by the House)
Sponsor: Representative Jeff Farrington
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 3-18-16

CONTENT

The bill would amend the Income Tax Act to discontinue requirements that flow-through entities withhold tax, by limiting the requirements to tax years beginning before July 1, 2016. The bill also would revise the description of income that must be withheld and, with respect to the individual income tax, would amend the definition of "income".

Part 3 of the Act prescribes withholding requirements for flow-through entities, employers, and others. Under Section 703, a flow-through entity (e.g., a partnership, S corporation, or limited liability company) is required to withhold a tax from members' distributive share of income, according to calculations set forth in the Act. For a nonresident member who is an individual, a flow-through entity must withhold a tax from the distributive share of taxable income. If a flow-through entity with business activity in Michigan has more than $200,000 of business income expected to accrue in the tax year after allocation or apportionment, it is required to withhold a tax from the distributive share of the business income of each member that is a corporation or a flow-through entity; a member of that flow-through entity that is a flow-through entity itself also must withhold a tax on the distributive share of business income of each of its members.

Under the bill, those withholding requirements would apply to tax years beginning before July 1, 2016.

Section 703 also prescribes withholding requirements for employers that are required by the Internal Revenue Code to withhold a tax on individuals' compensation; people who disburse pension or annuity payments; casino licensees, race meeting licensees, and track licensees; and eligible production companies.

A person required by Section 703 to deduct and withhold taxes on compensation or a share of income available for distribution, winnings, or a payoff price on which withholding is required, is liable for payment of the tax to the State (or, if applicable, to a community college). The bill would refer, instead, to a person required by Section 703 to deduct and withhold taxes on income under the section.

Currently, every person required by Part 3 to deduct and withhold taxes for a tax year on compensation, winnings, or payoff on a winning ticket must furnish to each employee, member, or person with winnings or a payoff subject to withholding, on or before January 31 of the following year, a statement of the total compensation, winnings, or payoff paid during the tax year and the amount deducted and withhold. Under the bill, instead, every person required by Part 3 to deduct and withhold taxes for a tax year on income other than distributive share of income from a flow-through entity, would have to furnish to the person who received the income, by January 31 of the following year, a statement of the total income paid during the tax year and the amount deducted or withheld.

Part 3 also requires a flow-through entity that has withheld taxes on distributive shares of business income to file an annual reconciliation return. Under the bill, this would be required for tax years beginning before July 1, 2016.

In addition, in various provisions, the bill would refer to a person who receives "income" rather than a pension or annuity payment, employee, member, or person with winnings or a payoff on a winning ticket.

Part 1 of the Act provides for the individual income tax and defines "taxpayer" as any person subject to taxes imposed by Part 1, any employer required to withhold taxes on salaries and wages, or any flow-through entity required to withhold taxes on a nonresident member's share of income available for distribution. The bill, instead, would define "taxpayer" as any person subject to the taxes imposed by Part 1 or subject to the withholding requirements under Part 3.

Part 1 also states that "tax" includes interest and penalties as well as the tax required to be withheld by a flow-through entity on nonresident members' share of income available for distribution. Under the bill, instead, "tax" would include interest and penalties as well as the tax required to be withhold on income under Part 3.

The bill would take effect on July 1, 2016.

MCL 206.22 et al. Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have little to no impact on State revenue. Because the bill would not affect the liabilities taxpayers face under the Act but would affect only the withholding requirements, any impact of the bill would reflect changes in when payments are received by the State. The bill would have no impact on local units of government.

Fiscal Analyst: David Zin

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