Legislative Analysis

ALLOW WRITTEN SETTLEMENT AGREEMENT WITH DEPARTMENT OF TREASURY

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House Bill 4976 reported from committee as (H-2)
Sponsor: Rep. Jim Tedder
Committee: Tax Policy
Complete to 10-9-17

(Enacted as Public Act 215 of 2017)

BRIEF SUMMARY:

HB 4976 would amend 1941 PA 122 (the Revenue Act) to introduce a new, permissive manner for a taxpayer and the Department of Treasury (Treasury) to settle certain tax payment disputes. The option would allow the taxpayer and Treasury to settle any or all issues in dispute by submitting a written settlement offer to the other party.

FISCAL IMPACT:

As written, the bill would not be expected to have a significant impact on state revenues, although it is not possible to calculate a precise amount due to many unknown factors. First, there is no information to suggest how often or under what conditions a taxpayer or the department would avail themselves of the new alternative dispute/resolution process. In addition, it is unlikely that an offer to settle that is vastly different from the amount in dispute would be accepted by either party simply for the sake of expediency. Therefore, it's likely that the optional alternative mechanism would result in similar outcomes to current law.

The bill would increase administrative costs due to the review of and response to proposals under the program. However, the department believes that cost savings from reduced litigation would allow them to administer the program under current appropriation levels.

THE APPARENT PROBLEM:

Currently under the Revenue Act, Treasury is allowed to settle tax disputes only in certain circumstances or through specific processes. As a result, the final settlement for many disputes often ends in the court system, where both Treasury and taxpayers spend a significant amount of time and resources.

THE CONTENT OF THE BILL:

Under HB 4976, after the informal conference is held, but before Treasury's final decision and order, Treasury and the taxpayer would have an alternative, optional settlement process to resolve the dispute. This process would apply only to taxes subject to administration under the Revenue Act, and would specifically exclude property taxes, real estate transfer taxes, tobacco taxes, health insurance claims taxes, and city income taxes.

If the written settlement offer is initiated by the taxpayer: The taxpayer would be required to submit a written settlement offer within 21 days after the informal conference, and include in the offer the issues in dispute, the amount of settlement offer, and the factual and legal bases supporting the offer. The state treasurer or treasurer's designee would review the offer and Treasury's recommendation regarding the offer. Treasury would then notify the taxpayer in writing of an acceptance, rejection, or counter-offer. If the taxpayer's offer is not accepted, Treasury would have to provide the bases for the rejection or counter-offer. The taxpayer could then accept, reject, or counter Treasury's counter-offer.

If the written settlement offer is initiated by Treasury: The informal conference referee or administrator of Treasury's Hearings Division could submit a report to the state treasurer or treasurer's designee that identifies the facts and issues involved in the dispute, the factual and legal bases supporting settlement of any of the issues, and a settlement recommendation. Doubt regarding collectability would not be a reason for settlement. If the treasurer or designee decided to pursue a settlement, Treasury would notify the taxpayer in writing of the settlement offer, determined by the state treasurer or designee. The written settlement offer would be required to include the actual and legal bases supporting Treasury's offer. The taxpayer, in writing, would be able to accept, reject, or counter Treasury's settlement offer.

If Treasury rejected the taxpayer's settlement offer or counter-offer, **or** the taxpayer rejected Treasury's settlement offer or counter-offer, the informal conference process would continue under current statute. If the settlement offer or counter-offer were accepted, either by Treasury or taxpayer, Treasury and the taxpayer would be required to enter into a written agreement outlining the terms of the settlement. If the agreement settled all issues in dispute, the agreement would serve as the end of the taxpayer's informal conference. Treasury would then issue a final assessment that reflects the agreement, which would not subject to challenge or appeal in any way. If any issues were in dispute that were not included in the settlement, the informal conference process would also continue under current statute.

The offers, counter-offers, and responses to them, and the disposition of a settlement offer or counter-offer and settlement agreement could not be offered by any party in a preceding before the Michigan Tax Tribunal, Court of Claims, or any other court as proof of Treasury's decisions, order, or assessment, or of the proper amount of the taxpayer's tax liability.

The settlement offers, counter-offers, responses, settlement agreements, and reports of the informal conference referee, the administrator, or Treasury related to the settlements would be exempt from disclosure under the Freedom of Information Act and could not be obtained through discovery in any proceeding.

Finally, the bill would require Treasury to publish semiannually on its website a report with the following information:

- The aggregate amount of Treasury's original determinations of liability attributed to settlements entered into during the reporting period.

- The aggregate settled amount of liability attributed to the settlements during the same time period.
- The total number of settlements between taxpayers and Treasury during the same time period (with a requirement to report the actual number only if it is above 5).

MCL 205.21 and 205.28

BACKGROUND:

Currently under the act, if a taxpayer fails or refuses to make a payment as required, or Treasury believes that a return made or payment does not supply sufficient information for an accurate determination of the amount due, Treasury may audit the taxpayer. In doing so, Treasury is required to send a letter of inquiry asking for further information or stating that the taxpayer owes taxes to the state.

If the dispute is not resolved within 30 days of this letter, or in circumstances where the letter is not required, Treasury must determine the amount of tax due and give notice to the taxpayer of its intent to assess the tax. The notice must include, among other details, a statement advising the taxpayer of the right to an informal conference, with a 60-day window to make a request for such a conference.

Upon receipt of a notice from the taxpayer requesting the conference, Treasury must set a reasonable time and place for the informal conference, and specify the intent to assess, type of tax, and tax year to be the subject of the conference. After the informal conference, Treasury must render a decision and order in writing, giving reasons, and assessing the tax, interest, and penalty due. The assessment issued is final, but a taxpayer can appeal to the Tax Tribunal or Court of Claims, as provided for in Section 22 of the Act.[1]

ARGUMENTS:

For:

Proponents say that the settlement process the bill creates is a "win-win" for taxpayers and Treasury. Currently, Treasury is only allowed to compromise tax disputes in a limited number of circumstances; as a result, tax disputes often involve expensive and lengthy litigation. Litigation is burdensome to both parties, and might often provide no different outcome than one that could have been achieved earlier in the process. The proposed settlement agreements will allow both parties to settle tax disputes in a timely and efficient manner, rather than using financial resources to contest a dispute in court. Finally, the process is permissive in nature, and can be initiated by either side; if the settlement offer is not accepted in any way, the taxpayer and Treasury still have the informal conference process and ultimately the court system.

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[1] For more information, see Michigan Department of Treasury, "Information about Informal Conferences." Available online: http://www.michigan.gov/taxes/0,4676,7-238-74531_47057-171610--,00.html

Against:

The bill, while well intentioned, should initially be limited in scope if the goal is to create an effective and efficient written agreement settlement process. The bill could lead to a situation in which the settlement agreements are arbitrary or unfair; and the lack of transparency about the agreements could lead to differential treatment among taxpayers. In effect, by allowing for a settlement agreement, the department is taking on what is currently, and should continue to be, the court system's responsibility. The bill could limit the length of the program (sunset) to reevaluate it in the future, or impose a dollar-value threshold above which no tax liability can be settled in this manner. For example, a tax liability dispute involving tens of millions of dollars should be settled in a public manner, not through the private negotiations and the settlement process the bill proposes.

Reply:

The Department of Treasury's job is to do just this: enforce tax laws and collect taxes in a fair and efficient manner. The Department currently argues its case, enters into settlements, and collects disputed tax liabilities, but can only do so at the court level. The Department will bring the same level of attention and focus to written agreement offers that it currently brings to litigation. Finally, any settlement entered into must be agreed to by both parties.

POSITIONS:

Representatives of the following organizations testified in support of the bill:

- Michigan Manufacturers Association (9-27-17; and indicated support 10-4-17)
- Michigan Department of Treasury (9-27-17; and indicated support 10-4-17)
- Michigan Chamber of Commerce (9-27-17)

Representatives of the following organizations indicated support of the bill:

- Michigan Association of CPAs (9-27-17, 10-4-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.