

ALLOW WRITTEN SETTLEMENT OFFER WITH DEPARTMENT OF TREASURY

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House Bill 4976 as introduced
Sponsor: Rep. Jim Tedder
Committee: Tax Policy
Complete to 9-26-17

Analysis available at
<http://www.legislature.mi.gov>

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.

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

SUMMARY:

Under HB 4976, after the taxpayer request is made and 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 to

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

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 14 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 would be required to issue a decision and order of determination and, if necessary, a final assessment that reflects the agreement. The decision and order would not be subject to any challenge or appeal or review in any court. 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 those offers, and the disposition of a settlement offer or counter-offer could not be offered by any party in a proceeding 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, and reports of the informal conference referee, the administrator, or Treasury related to the written 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.

MCL 205.21 and 205.28

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.

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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.