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BILL



ANALYSIS

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House Bill 4976 (Substitute H-2 as passed by the House)
Sponsor: Representative Jim Tedder
House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 11-1-17

CONTENT

The bill would amend the revenue Act to provide for a settlement process between the Department of Treasury and a taxpayer to solve a dispute that arose over the amount of taxes the taxpayer owed, before the Department made a decision after an informal conference. The bill also would require the Department to publish specific settlement information on its website.

Dispute Process & Settlements

The Act establishes the revenue collection duties of the Department of Treasury, among other things. Under the Act, if a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the Department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the Department may obtain information on which to base an assessment of the tax. Through its authorized agents, the Department may examine the books, records, and papers, and audit the accounts of, a person or any other records pertaining to the tax. A taxpayer who has been audited by the Department or its agent or a taxpayer whose books, records, and papers have been examined by the Department must, upon request, be given a complete copy in printed or electronic format of the complete audit work papers and the audit report of findings.

In carrying out these provisions, the Department must comply with the following:

- The Department must send to the taxpayer a letter of inquiry stating, among other things, the Department's opinion that the taxpayer needs to furnish further information or owes taxes to the State, and the reason for that opinion, except under certain circumstances.
- If the dispute is not resolved within 30 days after the Department sends the taxpayer a letter or if a letter is not required, the Department, after determining the amount of tax due from a taxpayer, must give notice to the taxpayer of its intent to assess the tax.
- If the taxpayer serves written notice upon the Department within 60 days after receiving a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.
- Upon receiving a taxpayer's written notice, the Department must set a mutually agreed upon or reasonable time and place for the informal conference and must give the taxpayer written notice at least 20 days before the informal conference, at which the taxpayer may present testimony and argument.

- After the informal conference, the Department must render a decision and order in writing, setting forth the reasons and authority, and must assess the tax, interest, and penalty found to be due and payable.

The bill would add that, after a timely request for an informal conference had been made, the taxpayer and the Department could seek to settle any or all issues in dispute by submitting a written settlement offer to the other party.

The taxpayer would have to submit a written settlement offer no later than 21 days after the informal conference. The settlement offer would have to identify the issues in dispute to be settled, the amount of the settlement offer, and the factual and legal bases supporting the taxpayer's settlement offer, and include any supporting documents. The State Treasurer or his or her designee or designees would have to determine whether to accept, reject, or counter the offer. The Department would have to notify the taxpayer in writing of its decision. If the Department did not accept the offer, the Department would have to include in its written notification the factual and legal bases for its rejection or counter-offer. The taxpayer could accept, reject, or counter the Department's counter-offer and proceed as provided below.

The informal conference referee or the administrator of the Department's Hearings Division or its successor unit could submit to the Treasurer or his or her designee or designees a written report that identified the relevant facts and issues involved in the dispute, the factual and legal bases supporting settlement of any or all of the issues, and a settlement recommendation. Doubt as to collectability could not be a reason for settlement. If the Treasurer or his or her designee or designees determined to pursue a settlement, the Department would have to notify the taxpayer in writing of the Department's settlement offer, to be determined by the Treasurer or his or her designee or designees. The Department's written settlement offer would have to include the factual and legal bases supporting the offer. The taxpayer, in writing, could accept, reject, or counter the offer and proceed as provided below.

If the Department rejected the taxpayer's settlement offer or counter-offered or the taxpayer rejected the Department's settlement offer or counter-offer, the informal conference process would have to proceed as provided under the Act unless the taxpayer filed a written notice to withdraw the request for an informal conference. If the Department accepted the taxpayer's settlement offer or counter-offer or the taxpayer accepted the Department's settlement offer or counter-offer, the Department and the taxpayer would have to execute a written agreement outlining all of the terms of the settlement. If the agreement settled all of the issues in dispute, then the written agreement also would be the taxpayer's written notice to withdraw its request for an informal conference. Then, as appropriate, the Department would have to issue a final assessment that reflected the agreement and the agreed-upon liability amount as to the settled issues. The Department's final assessment issued under these provisions would not be subject to challenge or appeal under the Act or reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

With respect to any issues in dispute that were not included in the settlement agreement, the informal conference process would have to proceed as provided under the Act unless the taxpayer filed a written notice to withdraw the request for the conference. Except for the issues that were settled under the bill's provisions, the Department would have to render a decision and order, and assess the tax after the informal conference, as currently required.

The taxpayer's and the Department's settlement offers, counter-offers, and responses to those offers and counter-offers, the disposition of a settlement offer or counter-offer under the bill, and settlement agreements could not be offered by any party in any proceeding before the Michigan Tax Tribunal, the Court of Claims, or any court of competent jurisdiction

as proof of the validity of the Department's decision, order, or assessment, or of the proper amount of the taxpayer's tax liability.

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

Requirement to Publish Settlement Information

The bill would require the Department to publish semiannually on its website a report containing the following information:

- The aggregate amount of the Department's original determinations of liability attributed to settlements entered into during the reporting period.
- The aggregate settled amount of liability attributed to the settlements entered into during the reporting period.
- The actual number of settlements, if the total number of settlements between taxpayers and the Department entered into during the reporting period were five or more.
- The statement "Less than 5", if the total number of settlements entered into during the reporting period were less than five.

Settlement Application

The settlement process would apply only to taxes subject to administration under the Act. The settlement process would not apply to matters arising under the General Property Tax Act, the State Real Estate Transfer Tax Act, the Tobacco Products Tax Act, the Health Insurance Claims Assessment Act, or the City Income Tax Act.

Settlement Exception to Current Law

The revenue Act prohibits the State Treasurer or an employee of the Department from compromising or reducing in any manner the taxes due to or claimed by the State or unpaid accounts or amounts due to any department, institution, or agency of State government, subject to certain exceptions.

Under the bill, the proposed settlement process also would be an exception to the prohibition.

MCL 205.21 & 205.28

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have an indeterminate, and likely negligible, impact on State revenue. By offering an alternative method of dispute settlement, the bill could ultimately alter the liabilities taxpayers face. In cases in which no resolution was reached under the alternative approach proposed by the bill, the bill would have no impact on revenue. To the extent that the parties accepted a different resolution than would be reached under current law, the bill could either increase or decrease revenue from individual settlements. The net impact of any such changes is unknown and impossible to determine.

It is expected that the bill would have a minimal or no overall impact on the Department of Treasury. The bill would affect the collection division within the Department. The division could incur additional costs from the process of settling unpaid tax disputes; however, these costs

would be minimal and within current appropriations, and could even be offset completely if the bill resulted in a decrease in the amount of litigation costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.