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Senate Bill 935 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Senator Kevin Daley
Committee: Finance

CONTENT

The bill would amend the Use Tax Act to allow a qualified taxpayer who filed a monthly return to defer payment of qualified taxes by remitting them in monthly installments as prescribed under by the bill. A taxpayer who filed a quarterly return could defer payment by remitting them in installments as prescribed under the bill. If a qualified taxpayer intended to defer payment of qualified taxes otherwise due under the Act for August 2020, the taxpayer would have to submit an estimate of the taxes to be deferred for that month to the Department of Treasury by July 31, 2020, on a form prescribed by the Department. Penalties and interest could not be added to qualified taxes remitted as specified in the bill.

"Qualified taxpayer" would mean a taxpayer whose business has been negatively impacted as a result of a COVID-19 executive order. A taxpayer's business would be considered negatively impacted by a COVID-19 executive order if one or more of the following applied: a) as a result of a COVID-19 executive order, the taxpayer's place of business was closed or restricted to ingress, egress, use, and occupancy by members of the public; or b) the taxpayer's business involved assemblages of people that were prohibited by a COVID-19 executive order. "Qualified taxes" would mean the taxes due under the Use Tax Act from a qualified taxpayer for March, April, May, June, July, and August 2020.

MCL 205.96 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would shift the timing of revenue received by the State General Fund and School Aid Fund revenue in fiscal year (FY) 2019-20 by an unknown but likely substantial amount by shifting collections that otherwise would have been due in March through June of 2020 to June through November of 2020. Assuming taxpayers who already have made payments affected by the bill did not seek refunds, and that 100% of remaining payments to which the bill would apply would be affected, the bill would shift approximately \$398.6 million of use tax collections into different months, based on the May 15, 2020, Consensus Revenue Estimates.

Currently, for taxpayers not required to file returns on an accelerated basis, the Michigan Department of Treasury has deferred all use tax payments due in March, April, and May until June 20, 2020. Taxpayers required to file accelerated returns are those with sales or use tax liabilities of \$720,000 or more, or withholding liability of \$480,000 or more, in the preceding calendar year. The requirements to file on an accelerated basis are narrower than the bill's requirements to be a qualified business. As a result, the bill would affect more taxpayers than Treasury's existing deferral rules.

Because the final due date under the bill would be November 20, 2020, the shift would not move affected payments into a new fiscal year. Accounting rules permit the State to accrue revenue received within 60 days of the end of the fiscal year and the State's fiscal year ends September 30, 2020.

Because the Department of Treasury deferred March, April, and May payments, but the State still received payments from taxpayers, it is unclear if all taxpayers eligible to defer payments under the bill would defer their payments. To the extent that taxpayers did not elect to defer payments, any shifts in revenue would be less.

The bill also would reduce General Fund revenue from penalties and interest by an unknown amount. Most of the revenue loss from reduced penalties and interest would affect FY 2019-20 revenue.

Because the Local Community Stabilization Authority (LCSA) receives a portion of use tax revenue in order to reimburse local units for revenue losses associated with personal property tax reform, the bill could affect local unit revenue. Transfers of use tax revenue to the LCSA occur at discrete intervals based on the payment schedule for the LCSA and the amount of calculated payments. If a sufficient number of taxpayers elected to defer payments under the bill, the State could have insufficient revenue available to transfer to the LCSA to fund reimbursement payments. The statutes regarding LCSA payments presume the LCSA will have enough revenue to make payments to reimburse losses reimbursed at a 100% rate and contain provisions to make lower payments for other losses if revenue is insufficient to fully reimburse all losses. The statutes do not address a situation in which the State may lack sufficient revenue at the time one payment is made but would have sufficient revenue at a later time. As a result, it is unclear if local units would experience lower total payments or if lower payments at one date would be offset by larger payments at a later date. Similarly, depending on the dates for any LCSA payments affected by the bill, the dates of local units' fiscal years, and accounting rules employed by local units, the bill could shift revenue from one fiscal year into another for an unknown number of local units.

The School Aid Fund receives all use tax revenue collected at a 2.0% rate, meaning the bill would shift roughly \$133.0 million of collections into different months. Because the School Aid Fund frequently runs a negative balance and must reimburse other funds for the money it must borrow to make payments, the bill could increase School Aid Fund borrowing costs in FY 2019-20 by an unknown amount. The current FY 2019-20 appropriation for School Aid Fund borrowing costs totals \$66.0 million.

While the bill is not tie-barred to Senate Bills 936 and 937, the bill mirrors the changes those bills make to other taxes. If all three bills were adopted, the impact on cash flow to both the General Fund and the School Aid Fund could be significant as the combined impact would potentially shift more than \$5.7 billion of tax payments into different months, including approximately \$2.3 billion of School Aid Fund revenue and approximately \$3.2 billion of General Fund revenue.

Date Completed: 6-18-20

Fiscal Analyst: David Zin

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Bill Analysis @ www.senate.michigan.gov/sfa

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