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BILL ANALYSIS

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Senate Bill 935 (as introduced 5-21-20)
Sponsor: Senator Kevin Daley
Committee: Finance

Date Completed: 6-3-20

CONTENT

The bill would amend the Use Tax Act to allow a qualified taxpayer to defer payment of qualified taxes until December 31, 2020.

The Act requires every person storing, using, or consuming tangible personal property or services, the storage, use, or consumption of which is subject to the use tax when the tax was not paid to a seller, and every seller collecting the tax from the purchaser, unless otherwise prescribed, to file with the Department of Treasury a return for the preceding calendar month showing, among other things, the price of each purchase of tangible personal property or services during the preceding month.

At the same time, each person must pay to the Department the amount of use tax owed with respect to purchases covered by the return. A seller that had a total tax liability in the amount of $720,000 after subtracting applicable tax credits is subject to an accelerated payment schedule as specified in the Act. If considered necessary to ensure payment of the tax or to provide a more efficient administration, the Department may require the filing of returns and the payment of tax for other than monthly periods. Under the bill, these provisions would be subject to the deferment described below.

Under the bill, a qualified taxpayer could defer payment of qualified taxes until December 31, 2020. Penalties and interest could not be added to qualified taxes remitted before January 1, 2021, and for the purposes of determining penalties and interest on qualified taxes remitted after December 31, 2020, the due date of the qualified taxes would be December 31, 2020. "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 reduce State General Fund and School Aid Fund revenue in fiscal year (FY) 2019-20 by an unknown but likely substantial amount and would increase revenue in FY 2020-21 by approximately the same amount. The bill also could reduce local unit revenue in FY

2019-20 and it is unclear if those reductions would be offset by higher payments in FY 2020-21. Assuming taxpayers who have already 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 revenue from FY 2019-20 to FY 2020-21, 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.

By shifting the due date until December 31, 2020, the bill would move affected payments into a new fiscal year. Because accounting rules only 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, the State would be unable to include deferred payments in FY 2019-20 revenue.

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, both the revenue loss in FY 2019-20 and the revenue increase in FY 2020-21 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 revenue from FY 2019-20 into FY 2020-21. 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 would increase School Aid Fund borrowing costs in FY 2019-20, and lower borrowing costs in FY 2020-21, by an unknown amount. The current FY 2019-20 appropriation for School Aid Fund borrowing costs totals $66.0 million.

The bill could create secondary revenue effects not included above. For example, if a taxpayer averaged $10,000 of use tax liability per month, the bill would allow the taxpayer to defer approximately $60,000 of use taxes until December 31, 2020. However, in December 2020, the taxpayer would be required to pay the State approximately $70,000: the $10,000 payment due in December plus the $60,000 in deferred taxes. It is unclear how such changes in cash flow demands would affect taxpayers, but the changes could reduce both economic activity and tax collections from these and other taxes during FY 2020-21 by an unknown amount.

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, they would shift more than $5.7 billion of tax payments from FY 2019-20 to FY 2020-21, including approximately $2.3 billion of School Aid Fund revenue and approximately $3.2 billion of General Fund revenue.

Fiscal Analyst: David Zin

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