Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 937 (as introduced 5-21-20)
Sponsor: Senator Curtis VanderWall
Committee: Finance

Date Completed: 6-3-20

CONTENT

The bill would amend Part 3 of the Income Tax Act to allow a qualified person required to withhold income taxes and remit them to the Department on and after March 31, 2020, and before December 31, 2020, to defer those payments until December 31, 2020.

Part 3 of the Act prescribes withholding requirements for flow-through entities (e.g., partnerships, S corporations, or limited liability companies), employers, and others.

Under the bill, a qualified person required under Part 3 to withhold taxes on income and remit those withholding tax payments that accrued to the Department on and after March 31, 2020, and before December 31, 2020, could defer payment of those taxes until December 31, 2020, without penalties and interest during the deferment period. Any payments deferred would have to be returned and paid to the Department before January 1, 2021, and any applicable penalties and interest would not begin to accrue until January 1, 2021, for any remaining unpaid balances that were deferred and due on December 31, 2020.

"Qualified person" would mean a person whose business has been negatively impacted as a result of a COVID-19 executive order. A person'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.

MCL 206.703 & 206.705 Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would reduce State General Fund and School Aid Fund in fiscal year (FY) 2019-20 by an unknown but likely substantial amount and increase revenue in FY 2020-21 by approximately the same amount. Assuming taxpayers who have already made payments did not seek refunds, and that 100% of remaining payments to which the bill would apply would be affected, the bill would shift approximately $3.4 billion of individual income 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 withholding 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 the payments that otherwise would be received and credited in FY 2019-20 into a new fiscal year. Because accounting rules only permit the State to accrue back revenue received within 60 days of the end of the fiscal year and the State's fiscal year ends September 30, 2020, except for payments deferred for October through December 2020 activity, the State would be unable to include the deferred payments in FY 2019-20 revenue. For payments reflecting October through December 2020 activity, the bill would shift the timing of receipts within the fiscal year, but would not affect total fiscal year 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 that would be eligible to defer payments under the bill would do so. 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.

The School Aid Fund receives approximately 23.8% of gross individual income tax collections, meaning the bill would shift roughly $808.0 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 from those funds to make payments, the bill would increase School Aid Fund borrowing costs in FY 2019-20, and would 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 withholding liability per month, the bill would allow the taxpayer to defer approximately $60,000 of withholding taxes until December 31, 2020. However, in December 2020, the taxpayer would have 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 these changes in cash flow demands would affect taxpayers, but the changes could reduce 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 935 and 936, the bill mirrors the changes those bills make to other taxes. If all three bills were adopted, they would shift approximately $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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