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**BILL ANALYSIS**

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House Bill 4288 (Substitute H-4 as reported without amendment)  
House Bill 4292 (Substitute H-4 as reported without amendment)  
Sponsor: Representative Frank Foster (H.B. 4288)  
Representative Peter MacGregor (H.B. 4292)  
House Committee: Tax Policy  
Senate Committee: Finance

**CONTENT**

House Bills 4288 (H-4) and 4292 (H-4) would amend the General Sales Tax Act and the Use Tax Act, respectively, to allow the Department of Treasury to assess sales or use tax based on an indirect audit procedure if a person failed to file a return or maintain sufficient records.

The Acts impose various record-keeping requirements on taxpayers. If the taxpayer fails to file a return or to maintain proper records, or if the Department believes the records or returns are inaccurate or incomplete, the Department may assess the amount due based on information that is available to it.

The bills would refer to "sufficient records", rather than "proper records", and would define "sufficient records" as "records that meet the department's need to determine the tax due under this act".

The bills would allow the Department to assess the amount due based either on available information or on an "indirect audit procedure", which would mean "an audit method that involves the determination of tax liabilities through an analysis of a taxpayer's business activities using information from a range of sources beyond the taxpayer's declaration and formal books and records".

An indirect audit would have to include a review of the taxpayer's books and records. The credibility of the evidence and the reasonableness of the conclusion would have to be evaluated before a determination of tax liability was made. The Department would have to investigate all reasonable evidence proffered by the taxpayer to refute the computation, and could use reasonable methods to reconstruct income, deductions, or expenses, including third-party records.

An indirect audit would have to be conducted in accordance with the Act and the standards published by the Department for informal conferences on the question of liability for a tax assessment.

The Department could not base a tax deficiency assessment on an indirect audit if the taxpayer had filed all of the required returns and maintained and preserved sufficient records, unless the Department had a documented reason to believe that the returns or records were inaccurate or incomplete and that additional taxes were due.

MCL 205.68 (H.B. 4288)  
205.104a (H.B. 4292)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bills would increase the operating costs of the Department of Treasury by an estimated \$125,000 annually. The Department has indicated that the additional documentation required by the bills before it could use an indirect audit method would increase audit hours and the time spent in litigation to defend audit results. This redirection of audit resources would possibly reduce the total number of audits performed, resulting in a reduction in State revenue of an unknown amount. Revenue from the sales tax is distributed primarily to the School Aid Fund and to constitutional revenue sharing. Use tax revenue is distributed two-thirds to the General Fund and one-third to the School Aid Fund.

Date Completed: 2-13-14

Fiscal Analyst: Elizabeth Pratt

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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.