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**SFA**



**BILL ANALYSIS**

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Senate Bill 1300 (as enrolled)  
Sponsor: Senator Joanne G. Emmons  
Senate Committee: Finance  
House Committee: Tax Policy

**PUBLIC ACT 477 of 2000**

Date Completed: 1-31-01

**CONTENT**

**The bill amended the Single Business Tax (SBT) Act to revise the Act's definitions of "gross receipts" and "sale".** Under the Act, a firm must determine its annual gross receipts in order to calculate its adjusted tax base, upon which the SBT is levied. Previously, "gross receipts" meant the sum of "sales" and rental or lease receipts, but did not include amounts received in an agency or other representative capacity, solely on behalf of another or others (not including amounts received by persons having the power or authority to spend or otherwise appropriate the amounts in payment for, or in consideration of, sales or services made or rendered by themselves or by others acting under their direction and control, or by guardians, executors, administrators, receivers, conservators, or trustees other than trustees of taxes received or collected from others under direction of Federal, State, or local laws). The bill eliminated this provision and redefined "gross receipts" as the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or others, excluding the following:

- Proceeds from sales by a principal that the taxpayer collects in an agency capacity, solely on behalf of the principal, and delivers to the principal.
- Amounts that are excluded from gross income of a foreign corporation engaged in the international operation of aircraft under Section 883(a) of the Internal Revenue Code. (Section 883(a) exempts from gross income, for purposes of calculating Federal income tax liability, gross income derived by a corporation organized in a foreign country from the international operation of aircraft, if the country grants an equivalent exemption to corporations organized in the United States.)
- Amounts received by an advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person.
- Amounts received by a taxpayer that manages real property owned by the taxpayer's client, that are deposited into a separate account kept in the

name of the taxpayer's client, that are not reimbursements to the taxpayer, and that are not indirect payments for management services the taxpayer provides to the client.

Further, the bill excludes from gross receipts amounts received by the taxpayer as an agent solely on behalf of the principal, that are spent by the taxpayer for any of the following:

- The performance of a service by a third party for the benefit of the principal that is required by law to be performed by a licensed person; or that the taxpayer has not undertaken a contractual duty to perform.
- Principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal.
- A capital asset of a type that is, or under the Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated cost recovery by the principal for Federal income tax purposes, or for real property owned or leased by the principal.
- Property not described in the preceding provision that is purchased by the taxpayer on behalf of the principal, and that the taxpayer does not take title to or use in the course of performing its contractual business activities.
- Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity, and that are the legal obligation of the principal.

Previously, "sale" or "sales" meant gross receipts arising from a transaction(s) in which gross receipts constituted consideration for the transfer of property that was stock in trade or of a type that would be included in the taxpayer's inventory and/or for the performance of services that constituted business activities. The bill removed reference to gross receipts, and refers instead to "amounts received by the taxpayer as consideration" from the same

sources. Further, the bill includes amounts received from the rental, lease, licensing, or use of tangible or intangible property that constitutes business activity. The bill specifies that "sale" does not include dividends, interest, and royalties received by the taxpayer to the extent deducted from the taxpayer's tax base under Section 9(7) of the Act.

The bill applies to tax years that begin after December 31, 2000.

MCL 208.7 Legislative Analyst: G. Towne

### **FISCAL IMPACT**

The bill will reduce State General Fund revenues by an unknown amount. The bill will affect single business tax (SBT) revenues primarily through the exclusion of two items from the definition of gross receipts: 1) amounts relating to duties in an agency capacity, and 2) amounts used by advertising agencies to acquire media time, space, or talent on behalf of another person. The magnitude of the revenue reduction related to the first provision is unknown, while the second provision is estimated to reduce General Fund revenues by \$1.2 million in FY 2000-01, and by \$1.0 million per year in subsequent fiscal years.

The first provision reflects the March 2000 ruling from the Michigan Court of Appeals in *PM One, Limited v. Department of Treasury*. The Court held that certain amounts received by a taxpayer for certain agency-related responsibilities could not be included in a taxpayer's gross receipts. The fiscal impact of this decision is unknown, primarily because no information is available on how many taxpayers will exhibit the business characteristics prescribed by the Court's decision or how many taxpayers will find it in their interest to alter business activities and/or accounting practices to take advantage of the exclusion afforded by the Court. Similarly, although the Michigan Supreme Court declined to hear the Department of Treasury's appeal, the dissent in the Court of Appeals indicated that the majority decision may conflict with previous judicial decisions (which suggests that further litigation might have occurred absent the bill). The provisions in the bill relating to amounts received while acting in an agency capacity attempt to create greater conformity between the *PM One* decision and the statute. The fiscal impact of the bill relative to the Court decision is also unknown. Both the provisions of the bill and the Court decision could have a substantial impact on revenues if large taxpayers, or large numbers of taxpayers, were to restructure their operations to take advantage of the exclusions identified in the decision. Taxpayers performing such restructuring could eliminate all or a majority of their SBT liability. Given the unique requirements for taking advantage of the exclusions

identified in the bill and the Court decision, however, the bill is expected to affect only a minimal number of taxpayers.

The second provision in the bill will reduce SBT revenue by an estimated \$1.2 million FY 2000-01. In subsequent years, this provision will reduce SBT revenue about \$1.0 million per year. All of this loss in revenue will affect the General Fund/General Purpose budget. This estimate is preliminary and will be revised when more information is received from the Department of Treasury.

The bill will have no fiscal impact on local units.

Fiscal Analyst: D. Zin

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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.