

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



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1300 (Substitute S-1 as reported)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

CONTENT

The bill would amend the Single Business Tax (SBT) Act to revise the Act's definitions of "sale" and "gross receipts"; and provide a statement of legislative intent in regard to a dispute between an advertising agency and the Department of Treasury.

Currently, a firm must determine its annual gross receipts, in order to calculate its adjusted tax base, upon which the SBT is levied. "Gross receipts" means the sum of "sales" and rental or lease receipts, and does not include various amounts received, as specified in the Act. The bill would redefine "gross receipts" as the entire amount received by the taxpayer from any activity whether intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or others. The bill prescribes amounts, proceeds, and fees that would be excluded from gross receipts, including amounts excluded from the gross income of a foreign corporation engaged in the international operation of aircraft; and amounts received by an advertising agency used to acquire media time, space, or talent on behalf of another person. (The bill specifies that the provision excluding amounts received by an advertising agency would be retroactive, and apply to all disputes pending in any court on the bill's effective date.)

Currently, "sale" or "sales" means gross receipts arising from a transaction(s) in which gross receipts constitute consideration for the transfer of certain property and/or the performance of services as specified. The bill would remove reference to gross receipts, and retain the balance of the definition. Further, the bill would include as a sale the rental, lease, licensing, or use of tangible or intangible property that constituted business activity; and exclude from a sale dividends, interest, and royalties received by the taxpayer to the extent deducted from the taxpayer's tax base.

The bill contains a statement that it would be "...curative and intended to correct any misinterpretation by the department of treasury of legislative intent that an advertising agency's collection and remittance of amounts for advertising media time, space, and talent on behalf of another person are not a sale and should not be included in gross receipts...".

MCL 208.7

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would reduce State General Fund revenues by an unknown amount. The bill would affect single business tax 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 \$6.3 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 the majority decision may conflict with previous judicial decisions,

suggesting further litigation might occur absent the bill. The provisions in the bill relating to amounts received while acting in an agency capacity would 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 affect revenues substantially 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.

The second provision in the bill would reduce SBT revenue by an estimated \$6.3 million in FY 2000-01. Of this amount, approximately \$5.1 million would be refunded to taxpayers due to the retroactive provisions of the bill, and \$1.2 million would be due to reduced liabilities based on business activity in FY 2000-01. In subsequent years, this bill would reduce SBT revenue about \$1.0 million per year. All of this loss in revenue would 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 would have no fiscal impact on local units.

Date Completed: 10-2-00

Fiscal Analyst: D. Zin