

Legislative Analysis



JOBS PROVIDER BILL OF RIGHTS

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House Bill 4244 (Substitute H-1)
Sponsor: Rep. Scott Hummel

House Bill 5360 (Substitute H-1)
Sponsor: Rep. Rick Jones

House Bill 5355 as introduced
Sponsor: Rep. Fulton Sheen

House Bill 5361 as introduced
Sponsor: Rep. James Marleau

House Bill 5356 as introduced
Sponsor: Rep. Lorence Wenke

House Bill 5362 as introduced
Sponsor: Rep. Leon Drolet

House Bill 5357 as introduced
Sponsor: Rep. Tom Meyer

House Bill 5363 as introduced
Sponsor: Rep. John Stakoe

House Bill 5358 (Substitute H-1)
Sponsor: Rep. Lorence Wenke

House Bill 5364 (Substitute H-1)
Sponsor: Rep. Kevin Green

House Bill 5359 (Substitute H-1)
Sponsor: Rep. Judy Emmons

House Bill 5386 as introduced
Sponsor: Rep. Roger Kahn

Committee: Tax Policy
First Analysis (12-6-05)

BRIEF SUMMARY: The package of legislation, known as the Jobs Provider Bill of Rights, would amend the Revenue Act to provide for informal conferences on certain tax matters, limit the retroactive application of departmental rules and bulletins, provide taxpayers with notice of potential refunds identified during an audit, allow the state treasurer to settle civil tax disputes, allow certain property tax assessments to be corrected at the July or December Board of Review, and exempt from the use tax property that is "subject to" the sales tax (rather than transactions where the sales tax has been paid).

FISCAL IMPACT: The bills would largely have no significant fiscal impact on the state or local governmental units. See the section below on "Fiscal Implications" for more detail.

THE APPARENT PROBLEM:

A state's business climate and its economic competitiveness with other states are driven by variety of factors, including the quality of the education system, infrastructure, "quality of life" issues, labor costs, market access, regulatory environment, and tax structure. A state's tax structure includes the larger tax policy issues of the type of tax, rates, credits, exemptions and the like, and also the lesser known issues of administration and compliance. For many businesses, the cost of complying with the state's tax laws is not immaterial, and often requires a significant amount of time, money, and other resources that could arguably be spent on more productive uses directly related to the

core functions of the business. Businesses realize these compliance costs through the hiring of additional staff or outside consultants (accountants and tax attorneys), litigation costs, and other related expenses and may, in part, base their decision to locate in a particular area on these costs. A number of reforms aimed at making it easier to comply with state tax laws have been suggested.

THE CONTENT OF THE BILL:

Most of the bills in this package of legislation, known as the Jobs Provider Bill of Rights, would amend the Revenue Act. One would amend the General Property Tax Act, and one the Use Tax Act. The bills are described below.

House Bill 4244

The bill would amend the Revenue Act (MCL 205.21a) to specify that if a taxpayer provides the Department of Treasury with written notice within 60 days of the issuance of a credit audit or a refund denial, the taxpayer would be entitled to an informal conference on the matter in the same manner as an informal conference regarding the liability of an assessment under Section 21 of the act.

House Bill 5355

The bill would amend the Revenue Act (MCL 205.3) to specify that a rule or bulletin issued by the Department of Treasury would apply beginning on the following date, whichever is earlier: (1) the date on which the rule or bulletin is filed with the Office of the Great Seal or (2) the date on which any notice substantially describing the expected contents of a rule or bulletin is issued to the public. (However, if a rule is issued within 18 months of the date of enactment of the statute to which the rule is related, then the first option would not apply.) Additionally, the state treasurer could specify that any rule or bulletin would apply retroactively to prevent abuse or to correct a procedural defect in the issuance of any prior rule or bulletin.

House Bill 5356

The bill would amend the Revenue Act (MCL 205.6) to require that a treasury department auditor notify a taxpayer subject to an audit of any refund opportunity identified during the course of the audit. The taxpayer could then claim the refund under the provisions of the act.

House Bill 5357

The bill would amend the Revenue Act (MCL 205.21a) to specify that a taxpayer has a right to claim credit amounts to offset debit amounts determined in an audit. A taxpayer, other than a taxpayer engaged in the business of making retail sales, could not claim an offset for a credit for sales taxes paid in excess of \$5,000.

House Bill 5358

The bill would amend the Revenue Act (MCL 205.21) to require the Department of Treasury to notify a taxpayer subject to an audit the amount of any refund identified during the audit and owed to the taxpayer, as well as the taxpayer's right to an appeal. If the taxpayer disputes the findings of the audit, the taxpayer would have to notify the department within 30 days of the department's notice, and would be entitled to an informal conference.

House Bill 5359

The bill would amend the Revenue Act (MCL 205.21) to specify that during the course of an informal conference a taxpayer could convert a contest of an assessment into a claim for a refund, by providing the Department of Treasury with written notice and paying the contested amount. The informal conference would continue, and the department would make a decision and issue an order regarding the claim for a refund.

House Bill 5360

The bill would amend the Revenue Act (MCL 205.21) to consider an informal conference denied, and allow the taxpayer further appeals of the issues in dispute, if the Department of Treasury fails to issue an order and determination within 180 days after a taxpayer serves the notice that is required to trigger an informal conference.

House Bill 5361

The Revenue Act (MCL 205.21) provides that taxpayers may request an informal conference with the Department of Treasury within 30 days of receiving a notice of intent to assess. The bill would increase the time limit to 60 days.

House Bill 5362

The bill would amend the Revenue Act (MCL 205.6) to specify that a taxpayer could rely on a bulletin or private letter ruling issued by the department, and would not be penalized "in any way" for relying on that bulletin or ruling until it is revoked in writing by the department.

House Bill 5363

The bill would amend the Revenue Act (MCL 205.30c) to permit the state treasurer (or a designee) to settle a civil tax matter that is in dispute by reducing the tax and/or penalties by an amount up to \$50,000. The state treasurer could settle a civil tax matter by reducing the tax and/or penalties by an amount exceeding \$50,000 if the treasurer submits the proposed settlement to the attorney general for review. The attorney general would have to review the settlement and submit a written reply to the treasurer within 30 days, indicated whether the settlement is reasonable.

If a settlement is made, a copy of the settlement would have to be maintained as a public record within the office of the state treasurer. The record would have to contain the names of the parties to the settlement, the total amount in dispute, the amount of the settlement, the reasons for the settlement, and the attorney general's opinion (if required), but would not include information that would, if disclosed, adversely affect the taxpayer or national defense. All settlements would be final and could not be appealed, unless there is a showing of fraud or misrepresentation of a material fact.

House Bill 5364

The bill would amend the General Property Tax Act (MCL 211.53a et al.) to specify that if the local assessor and the owner of property subject to taxation under the General Property Tax Act, the Plant Rehabilitation and Industrial Development Act (P.A. 198), the Lessee-Users Tax Act, the Commercial Redevelopment Act, and Public Act 282 of 1905 (Utility Property Tax) agree that the property was incorrectly assessed for the current year and the one year immediately before date the incorrect assessment was discovered, the assessor would execute an affidavit verifying that "mutual mistake of fact" to the July or December Board of Review. The board of review would approve that mutual mistake of fact, and a taxpayer would receive a rebate for any overpayment or would be billed for any underpayment.

In addition, the bill would also specify that a taxpayer who is assessed and pays taxes in excess of the correct amount because of an error made by the taxpayer in preparing the personal property tax statement could recover the excess amount paid, without interest, within three years from the payment date. The error could be corrected by the July or December Board of Review. The act currently provides that a taxpayer who is assessed and pays taxes in excess of the correct amount because of a "clerical error" or "mutual mistake of fact" by the assessing officer and the taxpayer recover the excess within three years of the payment date.

House Bill 5386

The Use Tax Act (MCL 205.4) exempts property sold in Michigan "on which transaction a tax is paid" under the General Sales Tax Act. The bill would instead provide the exemption to property sold when "the transaction was subject to tax" under the General Sales Tax Act.

BACKGROUND INFORMATION:

Revenue Administrative Bulletins

Section 3 of the Revenue Act provides that the Department of Treasury may periodically issue bulletins that index and explain current department interpretations of current state tax laws. A revenue administration bulletin (RAB) is a directive issued by the department that is intended to promote a uniform application of state tax laws by the treasury officials and to provide information and guidance to taxpayers. Revenue

Administrative Bulletin 1989-43 provides that "a [RAB] states the official position of the Department, has the status of precedent in the disposition of cases unless and until revoked or modified, and may be relied on by taxpayers in situations where the facts, circumstances, and issues presented are substantially similar to those set forth in the Bulletin." The bulletin cautions that a taxpayer must also consider the effects of subsequent legislation, regulations, court decisions, and bulletins when relying on a RAB. It should be further noted that the state Court of Appeals has held that RABs are only the department's stated interpretations of the state tax statutes, and do not carry the force of law. Moreover, the department has noted that it may not, through the issuance of an RAB, create a new law or adopt rules conflicting with applicable statutes or binding court decisions.

Letter Rulings

Periodically the Department of Treasury may also issue a letter ruling, which states the department's position on a specific tax matter, and is issued to a taxpayer in response to a particular tax issue. Revenue Administrative Bulletin 1989-43 states, "Letter Rulings help to promote uniform application of tax laws throughout the State by [treasury officials] and to provide guidance to tax payers. A Letter Ruling is prospective in nature. It provides a taxpayer with assurance regarding the tax ramifications of a future transaction. The Department is bound by a Letter Ruling only for the specific transaction and only for the tax period indicated."

Obsolescence of Letter Rulings and Administrative Bulletins

Revenue Administrative Bulletin 1989-34 provides that a letter ruling or RAB may become or be declared obsolete or revoked under the following conditions:

- The statutory provision supporting the ruling or RAB is amended or repealed or authoritatively construed by an appellate court decision having precedential effect.
- The substance of the letter ruling or RAB is incorporated in state or treasury department administrative rules.
- A court decision having precedential value renders the letter ruling or RAB invalid.

The bulletin further notes that subject to statutory authority, the state treasurer "is empowered to determine the retrospective application of rules and the effective date for applying changes, modification or nullification of Letter Rulings."

Retroactivity

The issue of whether the Department of Treasury is legally bound to follow its stated positions in a RAB and whether it may retroactively apply new tax standards is somewhat confusing, as different panels of the state Court of Appeals have reached different conclusions on these questions.

Earlier this year, the Court of Appeals issued separate opinions in *J.W. Hobbs v. Department of Treasury* and *International Home Foods v. Department of Treasury*. The issue at the heart of both decisions was whether the department could retroactively apply the Court of Appeals' 1993 decision in *Gillette v. Michigan Department of Treasury*, 198 Mich App 303, which held that federal Public Law 86-272 did not apply to the Single Business Tax, and whether the department was bound by prior guidance that said that P.L. 86-272 did apply to the SBT.

In 1980, the Department of Treasury issued a bulletin setting forth business activity nexus standards that subjected out-of-state taxpayers to the SBT. That standard was altered by RAB 1989-46 and, subsequent to the *Gillette* decision, the department issued RAB 1998-1 that reinterpreted the SBT nexus standard in the light of the *Gillette* decision and applied retroactively to 1989.

J.W. Hobbs v. Department of Treasury

In *J.W. Hobbs*, the plaintiff was an out of state firm that relied on the 1980 and 1989 bulletins and did not file an SBT return or pay the tax. The department, however, determined during the course of an audit that the plaintiff was subject to the SBT under RAB 1998-1, and assessed the plaintiff nearly \$346,000 in taxes, interest, and penalties for the period between January 1, 1990 and March 31, 2000. The plaintiff asserted, among other things, that it was not liable for any taxes before the 1998 bulletin.

The court upheld the retroactive application of the nexus standards and found that the department was not legally bound to adhere to its stated interpretation in earlier RABs. Quoting its 2004 decision in *Rayovac Corp v. Department of Treasury*, 264 Mich App 441, the court stated that the department "is not estopped from retroactively applying the new rule created by case law simply because it had issued revenue administrative rulings advising taxpayers of what the then-applicable rule was."

International Home Foods v. Department of Treasury

In *International Home Foods*, a case similar to *J.W. Hobbs*, a panel of the Court of Appeals held that the Department of Treasury "may not retroactively apply a court decision favorable to defendant to a tax year before the release of that decision if defendant had in place an interpretive ruling favorable to the taxpayer's position." In relying on the state Supreme Court's decision in *In re D'Amico estate*, 435 Mich 551 (1990), the court stated that "[i]t has been held that an administrative agency have interpretive authority may reverse its interpretation of a statute, but that its new interpretation applies only prospectively." The court concluded that the department was bound by the position stated in its RAB, and cannot apply a different position to the detriment of the taxpayer for activity prior to the date of the *Gillette* opinion.

FISCAL INFORMATION:

House Bill 4244 would have a minimal fiscal impact on the State of Michigan, and no fiscal impact for local government. The bill adds additional administrative duties to the Department of Treasury, but the fiscal implications are indeterminate since it is unknown how many additional informal hearings might be granted.

House Bill 5355 would have an indeterminate fiscal impact. The bill precludes the department's rules or bulletins from being applied retroactively. It is unknown how many taxpayers might be affected or what the fiscal impact would be on state collection efforts.

House Bill 5356 would have minimal fiscal impact on state and local government. The bill's requirements for auditors to notify taxpayers of refund opportunities could result in additional refunds to taxpayers. The fiscal implications are indeterminate since it is unknown how many additional refunds might be identified by auditors and then claimed by taxpayers.

House Bill 5357 would have no fiscal impact on state and local government.

House Bill 5358 would have a minimal fiscal impact on the State of Michigan and no fiscal impact on local government. The bill adds administrative duties to the Department of Treasury, but this has an indeterminate cost since it is unknown how many additional refunds or informal hearings might be granted.

House Bill 5359 would have a minimal fiscal impact on state and local government. The fiscal implications are indeterminate since it is unknown how many additional refunds taxpayers might qualify for through the informal hearing process.

House Bill 5360 would have no significant fiscal impact on state and local government since it provides procedural clarification.

House Bill 5361 would have no fiscal impact on state and local government.

House Bill 5362 would have an indeterminate fiscal impact. It is unknown how many taxpayers might be affected or what the fiscal impact would be on state collection efforts.

The fiscal impact of House Bill 5363 is indeterminate at this time. An insufficient amount of information is available.

House Bill 5364 would have a no fiscal impact on the state and a potentially minimal fiscal impact on local units of government.

House Bill 5386 would have a minimal fiscal impact on the state and no direct fiscal impact on local units of government.

ARGUMENTS:

For:

Overall, the package of bills is designed to ease the administration and reduce the costs of complying with the state's tax laws by streamlining the process, avoiding litigation where possible, and providing taxpayers with a fairer rule book. For many businesses, the costs of complying with the state's tax laws are very real. To the extent that the legislation reduces such costs and improves the administration of the tax laws, the state's business climate, and its competitiveness with other states, improves.

House Bill 4244

For:

House Bill 4244 would allow for an informal conference between a taxpayer and the department concerning a credit audit or a refund denial. The Revenue Act currently allows for informal conferences on numerous tax matters, as a means of resolving the dispute informally before a referee, and hopefully resolving quickly and without costly litigation. According to committee testimony, many taxpayers are unaware of their right to an informal conference concerning a credit audit or a refund denial. This bill clarifies that an informal conference may be available for those matters.

House Bill 5355

For:

The bill generally provides that a rule or bulletin issued by the Department of Treasury would be prospective in nature. Of the issues included in this package of bills, limiting the retroactive application of new tax standards is, perhaps, the most important. Quite simply, taxpayers cannot comply with tax standards that do not presently exist, and it is patently unfair to subject them to new standards applied retroactively and higher taxes when, at the time they filed their taxes, they complied with the law as they, and the department, understood it to mean.

While the Court of Appeals has reached differing conclusions on this issue, the court's opinions in *J.W. Hobbs* and *International Home Foods* recognize the particularly insidious nature of retroactive application. In *J.W. Hobbs*, the court reluctantly agreed that the department could retroactively apply a new taxing standard, but strongly disapproved of the practice, stating "[t]hrough we are bound to uphold defendant's retroactive application of the SBT, we note that it is unfortunate that plaintiff and other similarly situated businesses are not able to trust the published bulletins of defendant. Defendant's decision to retroactively apply the new standard has blindsided plaintiff, which had correctly complied with previous taxing standards and planned its business accordingly." The dissenting opinion further notes that permitting retroactive application allows the department to "bait and switch" taxation policies, increasing business transactions in the immediate future and setting the stage for a surprise tax on those transactions after they are completed and irreversible." This, the opinion noted, leads to an untenable situation that creates "a dark cloud over the state's credibility, [and] forces

out of state-businesses to think twice about doing business in this state...Trust is the cornerstone to a good business foundation, and if an outside business cannot trust this state's interpretation of its own tax laws, how can it trust the state enough to build and grow here?"

In *International Home Foods*, the court noted that "the rationale behind binding defendant to its interpretive positions is that taxpayers reasonably rely upon those interpretations. A taxpayer will have made any number of decisions based upon its view of the tax laws, such as the determination of profits and whether to reinvest those profits or pay dividends upon them, its pricing structure, how it reports income on tax returns in other jurisdictions, and potentially even whether to do business in this state. While a taxpayer's interpretation of tax law is always subject to a determination that that interpretation is incorrect, *D'Amico* recognizes that a taxpayer should be able to proceed in reasonable reliance on defendant's official positions."

Against:

Revenue Administrative Bulletins issued by the Department of Treasury are merely the department's interpretation of current state tax law and do not carry the force of law. When a court interprets a law, that interpretation of the law has been existence the entire time the law has been in effect. The department has noted that it has little choice but to apply a case retroactively because of Section 28 of the Revenue Act, which provides, in part, that the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state or unpaid accounts or amounts due to any department, institution, or agency of state government."

The department has noted that in instances where its interpretations of the law, as expressed in a RAB, has changed, and the underlying law has not changed, the new interpretations has only applied prospectively. In *J.W. Hobbs* and *International Home Foods*, the department changed its interpretation only because of a prior court decision. It did not, however, change its interpretation on its own volition. As noted earlier, while the department's interpretation may have changed, the law itself did not, and retroactive application was appropriate.

Against:

The Revenue Act currently provides that taxpayers may go back, up to four years, and seek a refund. The taxpayer may, then, retroactively apply a decision, whereas the department could not. In the interest of fairness and the desire to ensure that taxpayers are paying the correct amount due, the department should have the authority to apply a case retroactively.

House Bill 5356

For:

The bill would require the department to notify taxpayers of any potential refunds identified during the course of an audit. The purpose of an audit is to ensure that the taxpayer pays the correct amount. The department does not hesitate to point out an issue

that may raise the taxpayer's tax liability, and it's a matter of fairness that taxpayers also should be notified of potential refunds. Reportedly, many department auditors currently notify taxpayers, but not all of them do. This bill just sets a uniform policy.

House Bill 5357

For:

The bill generally provides that a taxpayer may claim a credit amount as an offset against a debit amount determined in an audit. This may reduce the amount of any fines and interest resulting from an audit. Apparently, some, but not all, auditors allow this practice. The bill promotes uniformity in the audit process. Taxpayers should be able to use a tax credit to lessen a debt, thereby reducing fines or interest that may result from an audit.

House Bill 5358

For:

The bill provides taxpayers with notice of the taxpayer's rights to appeal an audit determination. Currently, when an audit is completed, the auditor makes a determination, finding that the taxpayer correctly filed the return, overpaid, or underpaid. If the taxpayer disputes the findings of the audit, the taxpayer may appeal that determination within 30 days of receiving a notice of intent to assess the determination. Apparently, the statute is not clear as to when an appeal may be filed. The bill clears up any confusion.

House Bill 5359

For:

The bill provides that during the course of an informal conference a taxpayer could convert a contest of an assessment into a claim for a refund, by providing the Department of Treasury with written notice and paying the contested amount. Many taxpayers are hesitant about paying a contested amount out of concern that it changes the nature of the informal conference from a contest of an assessment to a refund claim, which may then restart the entire dispute process, further delaying a resolution to that matter.

House Bill 5360

For:

The bill essentially provides that if the department fails to make a determination in an informal conference within a timely manner, the taxpayer may then go to the Michigan Tax Tribunal or Court of Claims to resolve the matter. If, during the course of an informal conference it becomes clear that the taxpayer and department are not any closer at resolving the matter, the taxpayer should be afforded the opportunity to appeal to the MTT or Court of Claims, as any delay in reaching a resolution leads to uncertainty, which may cause the delay of important business decisions.

House Bill 5361

For:

The bill extends the deadline by which a taxpayer may request an informal conference. Business interests contend that the current 30-day limit is too short.

House Bill 5362

For:

The bill provides that taxpayers may rely on a bulletin or private letter ruling issued by the department, and would not be penalized "in any way" for relying on that bulletin or ruling until it is revoked in writing by the department. This provision is consistent with Revenue Administrative Bulletin 1989-34, which provides, in part, that taxpayers may rely on a RAB "where the facts, circumstances and issues presented are substantially similar to those set forth in the Bulletin."

Response:

The bill is vaguely written, as it is not all clear what "would not be penalized in any way" means. It would seem that the department could not impose a penalty, but would be permitted to assess additional taxes and interest when warranted. Taxpayers would, however, probably characterize an increase in tax liability and the assessment of interest as being a penalty, even though they are not penalties per se.

Further, the Department of Treasury does not issue "private letter rulings." Rather, the department issues "letter rulings" (described above). If the intent of the bill is to affect "letter rulings," a clarification is necessary.

Against:

While RABs are the department's stated interpretations of current tax law, RAB 1989-34 further cautions that when relying on a RAB, taxpayers must also consider subsequent bulletins, legislation, regulations, and court decisions. When the court overturns a provision in a RAB, that particular provision has no effect, and the court's determination essentially replaces that provision in a RAB. (While the department is not specifically required to rescind a RAB overruled by the courts, from time to time it will rescind or revise a RAB to reflect changes in the law.) If a court decision substantially impacts a RAB, the taxpayer should be mindful of that decision when relying on the RAB.

Additionally, taxpayers are currently permitted to rely on a RAB when filing a return. Taxpayers are not required to follow a RAB, and many challenge the department's interpretations, as expressed in a RAB, in court. The bill, then, seems to prevent the department from penalizing a taxpayer for erroneously relying on a RAB.

House Bill 5363

For:

The bill would provide the state treasurer with authority to settle civil tax disputes. Many disputes are resolved through the courts. Allowing the state treasurer to settle certain

disputes increases efficiency and speeds up the dispute resolution process. This reduces litigation costs incurred by the taxpayer and the department and, from the standpoint of the taxpayer, brings about a greater sense of certainty. According to committee testimony, the IRS, the District of Columbia, and 41 other states allow for a similar dispute resolution process.

Against:

The Department of Treasury has testified in opposition to this bill. It noted that the current process, where the department works in conjunction with the Attorney General to settle disputes, works quite well. Moreover, the bill places the state treasurer in a rather awkward position, as there would be little oversight of many of those settlements. The state treasurer may, for example, be asked to settle a dispute concerning a client represented by the treasurer's old law firm, which raises the specter of a conflict of interest.

In addition, the bill seems to directly conflict with Section 28 of the Revenue Act, which provides, in part, "the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state or unpaid accounts or amounts due to any department, institution, or agency of state government."

House Bill 5364

For:

The bill provides that errors made by a taxpayer in a personal property statement resulting in the excess payment of taxes may be corrected by the July or December Board of Review. Generally speaking, the July or December Board of Review meets to correct clerical errors or mutual mistakes of fact related to assessment figures, tax rates, and mathematical computations. A "mutual mistake of fact" is a shared or common error, misconception, misunderstanding, or erroneous belief about a material fact, which in the context of the General Property Tax Act requires both the assessing officer and the taxpayer to have the same erroneous belief regarding the same material fact thereby causing both the excess assessment and the excess payment of taxes.

However, the state Court of Appeals decision in *Ford Motor Company v. Bruce Township*, 264 Mich App 1 (2004) held that an error made in a personal property tax statement is not a "mutual mistake of fact" that may be corrected by the July or December Board of Review. In that case, Ford had filed a personal property tax statement that inadvertently double reported certain assets, leading it to pay taxes twice on the same property. Ford's mistake of fact was that that it erroneously believed certain property it owned was taxable. The local assessor's mistake of fact was that it erroneously believed that Ford's personal property tax statement was accurate. Thus, there was not a "mutual mistake of fact."

Against:

The General Property Tax Act (MCL 211.154) currently provides that the remedy for incorrectly reported personal property is through the State Tax Commission. The bill

does not remove this authority from the commission, but rather allows local boards of review to hear these matters. This provision is unnecessary and, if anything, complicates the administration of the property tax.

For:

The bill provides that if the local assessor and the property owner agree that the property was incorrectly assessed for the current year and the one year immediately before the date the incorrect assessment was discovered, the assessor would execute an affidavit verifying that "mutual mistake of fact" to the July or December Board of Review. In instances like this, both the assessor and the property owner agree that there is a mistake, and the bill clarifies that such a mistake is a "mutual mistake of fact" correctable by the July or December Board of Review.

Against:

The bill allows taxpayers to appeal assessments for the purposes of the State Utility Property Tax to local boards of review. However, assessments for that tax are made by the State Tax Commission, not local assessors. The State Tax Commission has the authority to correct assessments under the act. Local assessors and boards of review have no jurisdiction over the utility property tax. Further, no property is currently taxed under the Commercial Redevelopment Act.

Also, the scope of the bill is much broader than simply the correction of mistakes of fact, and allows for issues of greater significance to be heard before the July or December board of review. This fundamentally changes the nature of these meetings. Currently, taxpayers protesting an assessment must first file a petition with the March board of review, which is necessary before the taxpayer may file an appeal with the Michigan Tax Tribunal (MTT).

POSITIONS:

The Michigan Chamber of Commerce supports the bills. (11-30-05)

The Detroit Regional Chamber supports the bills. (11-30-05)

The Small Business Association of Michigan supports the bills. (11-30-05)

The State Bar of Michigan – Taxation Section supports the bills. (11-30-05)

The Department of Treasury supports HB 4244, HB 5356, HB 5358, HB 5359, HB 5360, and HB 5361. The Department of Treasury opposes HB 5355, HB 5357, HB 5362, HB 5363, HB 5364, and HB 5386. (11-30-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.