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BILL ANALYSIS

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House Bill 5554 (as discharged)
House Bill 5555 (Substitute H-1 as discharged)
House Bill 5556 (Substitute H-4 as discharged)
Sponsor: Representative Steve Bieda (H.B. 5554 & 5556)
Representative Paul Condino (H.B. 5555)
House Committee: Tax Policy
Senate Committee: Finance

CONTENT

House Bill 5554 would amend the Streamlined Sales and Use Tax Administration Act to provide relief from sales and use tax liability for a certified service provider or a seller that used a certified automated system if it relied on the Department of Treasury's determination that the software program submitted to the governing board under the streamlined sales and use tax agreement for certification as a certified automated system accurately reflected the taxability of the product categories included in the software program. The relief from liability would not apply if a certified service provider or a seller that used a certified automated system had incorrectly classified an item or transaction into a product category of the certified automated system. As provided in the General Sales Tax Act (under House Bill 5555 (H-1)), a certified service provider would be considered a seller and would be eligible for relief from sales tax liability as provided in that Act.

(A "certified automated system" means computer software certified under the streamlined sales and use tax agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction. A "certified service provider" is an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.)

House Bill 5555 (H-1) would amend the General Sales Tax Act to include in the definition of "sales price" consideration received by a seller from third parties, if all of the following conditions were met:

- The seller actually received consideration from a party other than the purchaser and the consideration was directly related to a price reduction or discount on the sale.
- The seller had an obligation to pass the price reduction or discount through to the purchaser.
- The amount of the consideration attributable to the sale was fixed and determinable by the seller at the time of the sale of the item to the purchaser.
- The purchaser presented documentation to the seller to claim a price reduction or discount granted by a third party with the understanding that the third party would reimburse any seller to whom the documentation was presented; the purchaser identified himself or herself as a member of a group or organization entitled to a reduction or discount; or the price reduction or discount was identified as a third party price reduction

or discount on the invoice received by the purchaser or on documentation presented by the purchaser.

The bill also would do the following:

- Exclude from "sales price", beginning January 1, 2000, employee discounts that were reimbursed by a third party on sales of motor vehicles.
- Provide fractions for calculating delivery charges on a shipment that included both exempt property and taxable property.
- Include an agreement covering motor vehicles or trailers in the definition of "lease or rental" if the amount of consideration could be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in the Internal Revenue Code (IRC).
- Include in the definition of "prescription", an order, instruction, or direction of a hearing aid dealer or salesperson.
- Refer to "exemption" forms, rather than "direct mail" forms.

Under the Act, a purchaser who improperly claims an exemption is liable for the tax unless the seller fraudulently fails to collect the tax or solicits a purchaser to make an improper claim for exemption. Under the bill, a seller also would be liable for the tax if it accepted an exemption form when the purchaser claimed an entity-based exemption, if the purchaser actually received the subject of the transaction sought to be covered by the exemption form at a location operated by the seller in a state that provided an exemption form clearly and affirmatively indicating that the claimed exemption was not available in that state.

A seller that obtained a fully completed exemption form or captured the relevant data elements described in the Act within 120 days after the date of sale would not be liable for the tax. If the seller had not obtained an exemption form or all relevant data elements, the seller could either prove that the transaction was not subject to the tax by other means or obtain a full completed exemption form from the purchaser by the date described in the bill or at the Department's discretion. A seller would not be liable for the tax if it obtained a blanket exemption form for a purchaser with which the seller had a recurring business relationship.

The bill would repeal Sections 17 and 20 of the Act, which pertain to maintaining inventory and purchase records and registration for exemptions or deductions, and "multiple points of use" exemption forms.

House Bill 5556 (H-4) would amend the Use Tax Act to include in the definition of "purchase price" consideration received by a seller from third parties under certain conditions (which would be the same as those in the definition of "sales price" under House Bill 5555 (H-1)).

Beginning January 1, 2009, a consumer would be relieved from liability, including liability for tax, penalty, and interest, for having failed to pay the correct amount of use tax if the consumer, the consumer's seller, or the seller's certified service provider relied on erroneous data contained in the taxability matrix. The relief would be limited to the erroneous classification in the matrix of terms included in the streamlined sales and use tax agreement's library of definitions as taxable or exempt, included in sales price, excluded from sales price, or excluded from the definition.

In the case of a bundled transaction that included telecommunications service, ancillary service, internet access, or audio or video programming, unless otherwise provided by Federal law, if the purchase price were attributable to products that were taxable and products that were nontaxable, the portion of the purchase price attributable to the nontaxable products could be subject to tax unless the provider could identify by reasonable and verifiable standards that portion from its books and records that were kept in the

regular course of business for other purposes, including nontax purposes. In regard to mobile wireless services, if the purchase price were attributable to products that were subject to tax at different tax rates, the total purchase price could be treated as attributable to the products subject to tax at the highest tax rate unless the provider could identify by reasonable and verifiable standards the portion of the purchase price attributable to the products subject to tax at the lower rate from its books and records kept in the regular course of business for other purposes, including nontax purposes.

"Bundled transaction" would mean the purchase of two or more distinct and identifiable products, except real property and services to real property, where the products are sold for a single nonitemized price. The bill specifies transactions and products not included in this definition.

The bill also would do the following:

- Provide fractions for calculating delivery charges on a shipment that included both exempt property and taxable property.
- Include an agreement covering motor vehicles or trailers in the definition of "lease or rental" if the amount of consideration could be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in the IRC.
- Include in the definition of "prescription" an order, instruction, or direction of a hearing aid dealer or salesperson.
- Provide that a seller would be liable for the tax if it accepted an exemption form when the purchaser claimed an entity-based exemption under certain conditions were met (which would be the same as those proposed by House Bill 5555 (H-1)).
- Provide that a seller would not be liable for the use tax if it obtained a blanket exemption form for a purchaser with which the seller had a recurring business relationship.
- Refer to "exemption" forms, rather than "direct mail" forms.
- Define terms and change several definitions pertaining to telecommunication and wireless services.

The bill would repeal Sections 12 and 14 of the Act, which pertain to "multiple points of use" exemption forms, and maintaining inventory and purchase records.

MCL 205.825 (H.B. 5554)
205.51 et al. (H.B. 5555)
205.92 et al. (H.B. 5556)

Legislative Analyst: Craig Laurie

FISCAL IMPACT

According to the Department of Treasury, the bills are designed to bring Michigan into compliance with the Streamlined Sales and Use Tax Agreement and it is estimated that they would have very little, if any, fiscal impact on State or local government.

Date Completed: 12-17-08

Fiscal Analyst: Jay Wortley

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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.