



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



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

Senate Bill 100 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Jack Brandenburg
Committee: Finance

Date Completed: 3-23-15

RATIONALE

When a taxpayer in Michigan has a dispute over taxes, other than property taxes, he or she can appeal the decision of the Department of Treasury to either the Michigan Tax Tribunal or the Court of Claims. In either case, before an appeal can be brought, the taxpayer must pay the undisputed portion of the tax. Also, if he or she wishes to appeal to the Court of Claims, the taxpayer must pay the disputed portion of the tax along with any penalties and interest, before the Court can hear the case. It has been suggested that this disparity leads some taxpayers to file appeals with the Tax Tribunal even if they would be better served by the Court of Claims. Some believe that it would be fairer if the jurisdictional requirements for both forums were made comparable.

CONTENT

The bill would amend the revenue Act to delete a requirement that, in an appeal to the Court of Claims, a taxpayer first pay the disputed portion of a tax, including penalties and interest, under protest and claim a refund as part of the appeal.

The bill also would allow a taxpayer 60 days to appeal to the Tax Tribunal. Currently, a taxpayer may appeal an assessment, decision, or order of the Department of Treasury to the Tax Tribunal within 35 days, or to the Court of Claims within 90 days, after the assessment, decision, or order.

In addition, the bill would appropriate \$200,000 for fiscal year 2014-15 from the General Fund to the Court of Claims for operations due to the anticipated increased caseload from the changes made by the bill.

The bill would take effect 90 days after being signed into law.

MCL 205.22

BACKGROUND

The revenue Act requires the uncontested portion of an assessment, order, or decision to be paid before an appeal to the Tax Tribunal or the Court of Claims. The Tax Tribunal Act requires all taxes (including the contested portion) to be paid before the Tax Tribunal will make a decision on an appeal if the deadline for payment of the taxes has passed. This requirement applies only to taxes paid under the General Property Tax Act and does not apply to an appeal to the Residential Property and Small Claims Division of the Tribunal for the denial of a claim for exemption of a principal residence or of qualified agricultural property. The requirement also may be waived at the Tribunal's discretion.

The Tax Tribunal is an agency in the Department of Licensing and Regulatory Affairs that consists of seven members appointed by the Governor with the advice and consent of the Senate. The Tribunal has exclusive jurisdiction over proceedings for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special

assessments, or equalization under the property tax laws of the State, as well as proceedings for a refund or redetermination of a tax levied under those laws, and any other proceeding provided by law. The fee to file a non-property tax appeal with the Tribunal is \$250.

The Court of Claims is a court of statewide, limited jurisdiction to hear all civil actions filed against the State of Michigan and its agencies. The Court of Claims is located in the Court of Appeals and consists of four Court of Appeals judges who are assigned by the Michigan Supreme Court. The Court rules that govern civil procedure in the circuit court general apply to procedure in the Court of Claims. The fee to file in the Court of Claims is \$150.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The jurisdictional requirements to appeal to either the Tax Tribunal or the Court of Claims should be comparable. A taxpayer that is unable to prepay the taxes in dispute cannot currently file an appeal with the Court of Claims. That taxpayer's only recourse is to file with the Tax Tribunal, which is not a court of law and, unlike the Court of Claims, is not subject to the rules, procedures, and policies of Michigan circuit courts.

Since the Tax Tribunal is an administrative body and the Court of Claims is a judicial body, cases heard can lead to two different decisions on the same matter. This can cause confusion as the decisions of both bodies can be appealed to the Michigan Court of Appeals. Moreover, denying taxpayers the right to appeal to a court of law, without paying the contested tax, undermines principles of fairness, due process, and equal access to the courts. Making the requirements for each body comparable would allow a taxpayer to file with the forum better suited to hear the claim, without having to take into account which would be less expensive.

Response: The bill also would extend the deadline for filing an appeal with the Tax Tribunal from 35 to 60 days, but that is still less than the 90 days allowed to file with the Court of Claims. To make the requirements between the two bodies more equivalent, the deadline for the Tax Tribunal should be extended to 90 days.

Supporting Argument

Some taxpayers that have won their appeals are reportedly having trouble getting their refunds from the State. They claim that the State has an incentive to appeal cases or assess taxes improperly in order to temporarily raise revenue, even if it will eventually have to be refunded. By deleting the requirement that a taxpayer prepay the disputed tax, the bill would remove an incentive for the Department of Treasury to pursue this type of activity.

Opposing Argument

If taxpayers did not have to prepay the disputed portion of a tax before appealing to the Court of Claims, they could have an incentive to appeal tax assessments simply to delay paying those taxes. Some have expressed concern that this could lead to frivolous appeals to the Court.

Response: A taxpayer already may file an appeal with the Tax Tribunal without prepaying the taxes, so this change would just level the playing field between the two forums.

Legislative Analyst: Ryan M. Bergan

FISCAL IMPACT

The bill would have a small, but likely positive, fiscal impact on the Michigan Tax Tribunal within the Department of Licensing and Regulatory Affairs (LARA), and a small, but likely negative, fiscal impact on the Court of Claims. The bill would remove the requirement that an appellant first pay taxes and penalties before a case is heard by the Court of Claims. The removal of this requirement could create an incentive for appellants in non-property cases to file an appeal in the Court of Claims rather than with the Tax Tribunal. Any cases in which this potential incentive would cause an appellant to appeal to the Court of Claims rather than the Tax Tribunal would reduce the

Tribunal's costs and increase costs for the Court of Claims. According to LARA, the number of cases in which this sort of incentive could exist is very small relative to the entire number of cases heard by the Tribunal. The bill's \$200,000 appropriation to the Court of Claims should cover any additional costs incurred.

Fiscal Analyst: Josh Sefton

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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.