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SFA

BILL ANALYSIS

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Senate Bill 1446 (as enrolled)
Sponsor: Senator Joanne G. Emmons
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 657 of 2002

Date Completed: 2-7-03

RATIONALE

The revenue Act, enacted in 1941, established a department of revenue, prescribed its powers and duties as the revenue collection agency of the State, and created the position of State commissioner of revenue as the head of the department. Over time, the powers and duties of the department of revenue and the commissioner of revenue have been transferred to the Department of Treasury and the State Treasurer.

Public Act 380 of 1965 transferred the department of revenue to the Department of Treasury by a type I transfer, and made the commissioner a member of the classified civil service. (In a type I transfer, an existing State agency, board, or department is transferred intact to a principal department. The transferred entity is administered under the supervision of the principal department.) Public Act 188 of 1970 amended the revenue Act to establish a Revenue Division of the Department of Treasury, defined the powers and duties of the Revenue Commissioner, and removed references to the department of revenue from the Act's title. After that, various amendments to the revenue Act modified the powers and duties of the Revenue Division and Revenue Commissioner.

Subsequently, Executive Order 19 of 1991 transferred, by a type III transfer, all of the statutory authority, powers, duties, and functions of the Revenue Division and the Revenue Commissioner to the State Treasurer as head of the Department of Treasury. (In a type III transfer, an existing department, agency, or board and all of its statutory authority, powers, and duties are abolished, and those powers and duties are transferred to a principal department.) Executive Order 1991-19 also provided that the State Treasurer "...may appoint a State Commissioner of Revenue or may administer the assigned functions in other ways to

promote efficient administration", and "...shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order." The State Treasurer has moved various functions of the former Revenue Division to other areas of the Department. The position of Revenue Commissioner remained filled until July 1, 2002, when it was vacated and the State Treasurer assumed the powers of the Commissioner.

It was pointed out that while the Revenue Division and the position of Revenue Commissioner no longer exist, the revenue Act, which prescribes certain powers and duties of the State Treasurer and provides for the administration and collection of taxes, contained numerous references to the Revenue Commissioner and the Revenue Division. It was suggested that these references be removed from the Act. Additionally, it was suggested that a penalty for failing to file during the tax amnesty period be eliminated, since the tax amnesty program has ended, and that other taxpayer penalties be revised.

CONTENT

The bill amended the revenue Act to do the following:

- **Eliminate the Revenue Division and the position of Revenue Commissioner in the Department of Treasury, and specify that the Department of Treasury is the agency of the State responsible for the collection of taxes and all of the responsibilities previously assigned to the Revenue Division in the Act.**
- **Replace references throughout the Act to the "revenue division" and "revenue Commissioner" with "State Treasurer"**

and "the Department", as appropriate.
-- Revise certain taxpayer penalties.

Revenue Division & Commissioner

The Act provided that any reference to the Department of Revenue in the Act or any other statute meant the Revenue Division of the Department of Treasury. The bill provides instead that any reference to the Department of Revenue or the Revenue Commissioner in the Act or any other statute means the State Treasurer.

The bill repealed Section 2 of the revenue Act, which created the position of Revenue Commissioner; allowed the State Treasurer to appoint the Commissioner and all employees of the Revenue Division; and allowed the Commissioner to appoint up to three deputies with the approval of the State Treasurer.

Penalties

The bill made several revisions to various taxpayer penalties. The revised penalties apply for notices of intent to assess that are issued after February 28, 2003. (Under the Act, if a taxpayer fails or refuses to make a return or payment as required, or if the Department believes that a return or payment does not supply sufficient information to determine the amount due, the Department must send a letter of inquiry to the taxpayer, except in certain cases. If the dispute is not resolved, the Department then must give the taxpayer a notice of its intent to assess the tax, and comply with other procedural requirements.)

Under the bill, the penalty for failure to remit a tax with a negotiable remittance is changed from 25% of the tax due to \$50. The current penalty for failure or refusal to file a return or pay a tax within the time specified is \$10 or 5% of the tax, whichever is greater, for a failure of up to one month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues, to a maximum of 50%. The revised penalty for this violation is 5% of the tax for a failure of up to two months, with an additional 5% penalty for each additional month or fraction of a month, to a maximum of 25%.

Section 19(2) of the Act states that a taxpayer other than a city or county who paid an average of \$40,000 or more per month in income tax withholding in the immediately

preceding calendar year must deposit Michigan income tax withholding either in the same manner and according to the same schedule as deposits of Federal income tax withholding or in another manner that has been approved by the Department. Currently, failure to comply with Section 19(2) results in a penalty of 0.167% of the tax due for each day during which the failure continues, to a maximum of 50% of the tax. The bill reduces the maximum penalty to 25% of the tax.

Additionally, the bill eliminated a penalty for failing to file during a tax amnesty period.

MCL 205.1 et al.

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 revenue Act is an important statute for the administration of State government; while the Act does not levy any tax, it provides for the administration and collection of State taxes levied under other statutes. The Act was not amended sufficiently through the years to keep pace with changes that occurred in the administration of taxes. The Act continued to refer to the duties and powers of the Revenue Commissioner and the Revenue Division, though the position of Revenue Commissioner and the Revenue Division no longer exist pursuant to Executive Order 1991-19. By removing and replacing references to the Revenue Commissioner and Revenue Division, the bill reflects in the Act the present organization of the Department of Treasury.

Legislative Analyst: George Towne
Julie Koval

FISCAL IMPACT

By lowering some of the penalties, the bill will reduce General Fund/General Purpose revenue an estimated \$21 million in FY 2003-04. The bill will have no direct fiscal impact on the Department of Treasury or local government.

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.