

Legislative Analysis



PREWRITTEN COMPUTER SOFTWARE

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Senate Bill 335

Sponsor: Sen. John Pappageorge

Senate Bill 336

Sponsor: Sen. John Proos

House Committee: Tax Policy

Senate Committee: Finance

Complete to 10-25-11

A SUMMARY OF SENATE BILLS 335 & 336 AS PASSED BY THE SENATE 6-16-11

The bills would say that the term "prewritten computer software" for the purpose of applying the sales tax and use tax does not include granting the right to use prewritten software installed on another person's server.

Prewritten computer software is subject to tax under both the General Sales Tax Act and the Use Tax Act as tangible personal property. The bills would make granting the right to use prewritten software installed on another person's server exempt from sales and use tax by excluding that activity from the definition of prewritten computer software.

Each of the bills contains an enacting section that says it is curative and intended to express the original intent of the Legislature concerning the taxation of prewritten computer software.

The term "prewritten computer software" is defined in both acts, generally, as "computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser."

Senate Bill 335 would amend the General Sales Tax Act (MCL 205.51a). Senate Bill 336 would amend the Use Tax Act (MCL 205.92b).

FISCAL IMPACT:

As written, the bills would reduce sales and use tax revenue. The Department of Treasury has estimated the revenue reduction of between \$5.0 million and \$8.0 million for FY2011-12, and in subsequent years the amount would be expected to increase. Roughly 73% of sales tax revenue and 33.3% of use tax revenue is earmarked to the School Aid Fund. About 10% of sales tax revenue is dedicated to Constitutional revenue sharing, and the remaining sales and use tax reductions would affect the General Fund.

BACKGROUND INFORMATION:

According to information from the Senate Fiscal Agency, the bills address the issue of "cloud computing." That term, the SFA says in its analysis dated 8-24-11,

generally refers to a practice in which the infrastructure or servers of a company such as Amazon, Apple, or Google, are used to remotely store and manage the data of its clients, such as private companies, governmental agencies, and individuals. Cloud computing is considered advantageous because clients can increase or change computing capabilities or capacity without purchasing new equipment, training personnel, or investing in licensed software. Customers may receive cloud computing services by subscription or on a pay-per-use basis Reportedly, the Department of Treasury in the past issued private letter rulings indicating that such a transaction was not subject to the sales or use tax, but the Department presently believes that the taxes apply.

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