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BILL ANALYSIS

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Senate Bill 1337 (Substitute S-2 as reported) *(as enrolled)*
Sponsor: Senator Mark C. Jansen
Committee: Finance

Date Completed: 11-14-12

RATIONALE

The General Sales Tax Act provides an exemption for the sale of personal property to a nonprofit charitable organization. The exemption applies only if the property is "used primarily to carry out the purposes of the organization". Evidently, then, if a nonprofit organization purchases property for fund-raising purposes, the transaction is considered subject to the sales tax. For example, if a homeless shelter buys blankets for its temporary residents, that purchase is not taxed. If the shelter buys a tent for its annual donor picnic, however, the purchase may be taxed. It has been suggested that the exemption should apply to this type of sale, as well, since raising funds enables a nonprofit organization to carry out its mission.

CONTENT

The bill would amend the General Sales Tax Act to revise the exemption for the sale of personal property to a nonprofit, charitable organization, by extending the exemption to property used to raise funds or obtain resources for the organization's operation, subject to a limit of $5,000 on the sales price of any single item of property or vehicle.

Under the Act, the sale of tangible personal property is exempt from the sales tax if it is not for resale and the sale is to a nonprofit organization exempt from Federal income tax under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (described below), or a nonprofit health, welfare, educational, cultural arts, charitable, or benevolent organization that was issued an exemption ruling letter to purchase items exempt from tax before July 17, 1998.

The Act states that the tangible personal property is exempt only to the extent that it is used to carry out the purposes of the organization. Under the bill, the property would be exempt only to that extent *or* to the extent that it was used to raise funds or obtain resources necessary to carry out the organization's purposes. The exemption for any single item of tangible personal property or vehicle used to raise funds or obtain resources would be limited to a maximum sales price of $5,000.

When the exempt property is sold, the Act requires the organization either to present the exemption letter ruling or to present a signed statement that the property is to be used or consumed in connection with the operation of the organization and that the organization qualifies as an exempt organization. Under the bill, the statement would have to indicate that the property was to be used or consumed in connection with the organization's operation, to carry out its purpose or purposes, *or* to raise funds or obtain resources necessary for the organization's operation.

Currently, the organization also must give the seller a copy of the Federal exemption letter. Under the bill, this letter would not be required if the organization were exempt from filing an application for exempt status with the Internal Revenue Service.

The exemption does not apply to sales of personal property or vehicles that are not used primarily to carry out the purposes of the organization. The bill would add, "or to raise funds or obtain resources necessary to carry out the purposes of the organization". Also, the exemption would not apply to sales of tangible personal property or vehicles used for purposes of raising funds or obtaining resources if the sales price exceeded $5,000.

(Section 501(c)(3) of the Internal Revenue Code provides a Federal income tax exemption for a corporation, community chest, fund, or foundation that is organized and operated exclusively for religious, charitable, scientific, public safety testing, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to animals, if none of its net earnings benefits any private shareholder or individual, no substantial part of its activities is attempting to influence legislation, and it does not participate in any political campaign for or against any candidate for public office.

Section 501(c)(4) applies to nonprofit civic leagues or organizations operated exclusively for the promotion of social welfare, or local associations of employees, whose membership is limited to the employees of a designated person in a particular municipality, and whose net earnings are devoted exclusively to charitable, educational, or recreational purposes.)

MCL 205.54q

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

Michigan's nonprofit sector is highly diverse, addressing concerns and promoting causes that may affect virtually any resident of the State. The purpose of a nonprofit organization may relate to health, the environment, human services, education, culture, or economic development, for example. When a nonprofit purchases property that is used to carry out its purpose—such as groceries for a food pantry, instructional materials for an educational nonprofit, or lumber for a group that renovates houses—that transaction is not subject to the sales tax. On the other hand, when a nonprofit buys supplies for a fund-raising event, such as a marathon or an auction, the organization may be required to pay the sales tax on that purchase.

This different treatment is illogical because the reason a nonprofit engages in fund-raising is to generate resources that enable it to carry out its mission. In light of increasing pressures on nonprofits to do more with less, fund-raising activities are more necessary today than ever. According to the Michigan Nonprofit Association, the State's charities saw a 5% decline in giving by individuals from 2007 to 2010. At the same time, the provision of many community services shifted from the public sector to the private nonprofit sector. Although donations spiked in 2011 when the repeal of the charitable tax credit was proposed, the credit has now been repealed and the impetus it provided for charitable donations is gone. Nonprofits need to ramp-up their fund-raising efforts, and need the resources to do so.

Another problem is the ambiguity of the statutory language, which makes it difficult for a nonprofit organization, especially one that is newly formed, to know whether a purchase is tax exempt or not. The Act's distinction between exempt and nonexempt sales requires a nonprofit to determine whether every purchase is eligible for the exemption. This presents an administrative hurdle and results in uneven application of the law.

The straightforward language of the bill would clear up the ambiguity and allow nonprofit organizations to devote their resources to fulfilling their charitable purposes, instead of paying sales taxes. By setting a $5,000 cap on the sales price of any item or vehicle used to raise funds or obtain resources, in order for the exemption to apply, the bill would ensure that nonprofits did not abuse the exemption, and would help limit its cost to the State.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would reduce General Fund and School Aid Fund revenue by an unknown amount. The current exemption for sales to nonprofit organizations is estimated to have reduced sales tax revenue by approximately $166.8 million in FY 2010-11. Many of the sales that would be affected by the language of the bill are likely already exempt because property such as computers, vehicles, and stationary can serve multiple functions. If the bill increased the impact of the exemption by 5%, it would reduce revenue by approximately $8.3 million.

The bill would not affect local unit revenue or expenditure.

Fiscal Analyst: David Zin

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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.