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SFA**BILL ANALYSIS**

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Senate Bills 1501 through 1504 (as introduced 11-12-02)
Sponsor: Senator Joanne G. Emmons
Committee: Finance

Date Completed: 11-12-02

CONTENT

The bills would amend various tax acts to allow the Department of Treasury to enter into agreements with Indian tribes regarding the applicability of certain taxes; allow tribal members who were subject to an agreement to claim income tax deductions for certain nonbusiness income; and exempt from the sales tax and use tax certain vehicles and mobile homes sold to tribal members who were subject to an agreement. Senate Bill 1501 would amend the revenue Act; Senate Bill 1502 would amend the Income Tax Act; Senate Bill 1503 would amend the General Sales Tax Act; and Senate Bill 1504 would amend the Use Tax Act.

Senate Bill 1501

The bill would allow the Department of Treasury to enter into a tribal agreement with a Federally recognized Indian tribe specifying the applicability of a tax administered under the Act to that tribe, its members, and any person conducting business with them. Those parties would remain fully subject to the State's tax statutes except as otherwise specifically provided by an agreement, in effect for the period at issue. A tribal agreement would have to contain provisions governing administration, collection, and enforcement, including the following:

- A waiver of tribal sovereign immunity sufficient to make the agreement enforceable against both parties.
- The collection of taxes levied under the General Sales Tax Act, or the Use Tax Act, on the sale of tangible personal property, or the storage, use, or consumption of tangible personal property, not exempt under the agreement.
- The collection of taxes levied on tobacco products under the Tobacco Products Tax Act, and taxes levied under the Motor Fuel Tax Act and the Motor Carrier Fuel Tax Act, on sales of tobacco or motor fuels not exempt under the agreement.
- The withholding and remittance of income taxes levied under the Income Tax Act from employees not exempt under the agreement.
- The reporting of gambling winnings to the same extent and in the same manner as reported to the Federal government.

A tribal agreement also would have to include a statement of its purpose, a provision ensuring that the members of the tribe would be bound by the agreement, and provisions governing the disclosure of information between the Department and the tribe necessary for the proper administration of the agreement. Further, a tribal agreement would have to include provisions governing duration and termination that made the agreement terminable by either party, if there were noncompliance, and terminable at-will after a period of two years or less.

A tribal agreement could include a provision for dispute resolution between the State and the tribe, which could include a nonjudicial forum; a provision for the sharing between the parties

of certain taxes collected by the tribe and its members; and any other provisions beneficial to the administration or enforcement of the tribal agreement.

A tribal agreement could not authorize the approval of a Class III gaming compact negotiated under the Indian Gaming Regulatory Act.

Senate Bill 1502

The bill would allow a resident tribal member to deduct from the income tax, to the extent included in Federal adjusted gross income, all nonbusiness income earned or received in a tax year, and during the period in which an agreement entered into between the taxpayer's tribe and the State pursuant to the revenue Act was in effect (as proposed by Senate Bill 1501).

A "resident tribal member" would be an individual who was an enrolled member of a Federally recognized tribe that had a tribal agreement with the State in effect; and whose principal place of residence was located within an agreement area as designated in the tribal agreement.

"Nonbusiness income" would mean income, to the extent not included in business income (as defined and apportioned under the Income Tax Act), and the following:

- All income derived from wages, whether earned within or outside of the agreement area.
- All interest and passive dividends.
- All rents and royalties derived from real property located within the agreement area and all rents and royalties derived from tangible personal property, to the extent the personal property was utilized within the agreement area.
- Capital gains from the sale or exchange of real property located within the agreement area.
- Capital gains from the sale or exchange of tangible personal property located within the agreement area at the time of sale, and capital gains from the sale or exchange of intangible personal property.
- All pension income and benefits, including distributions from a 401(k) plan, individual retirement accounts, a defined contribution plan, or payments from a defined benefit plan.
- All per capita payments by the tribe to resident tribal members, without regard to the source of payment.
- All gaming winnings.

Senate Bills 1503 & 1504

The bills would exempt from the sales tax and the use tax the sale of a motor vehicle, recreational watercraft, snowmobile, or all terrain vehicle, not for resale, to a resident tribal member if the vehicle, watercraft, snowmobile, or all terrain vehicle were for personal use and principally garaged, berthed, or stored within the member's tribe agreement area.

Further, the bills would exempt from the taxes the sale of a mobile home, not for resale, to a resident tribal member if the mobile home were to be used as that member's principal residence, and the mobile home were located within the member's tribe agreement area. (The term "resident tribal member" would be defined in the same manner as proposed in Senate Bill 1502.)

MCL 205.30c (S.B. 1501)
206.30 (S.B. 1502)

Legislative Analyst: George Towne

Proposed MCL 205.54aa (S.B. 1503)
Proposed MCL 205.94x (S.B. 1504)

FISCAL IMPACT

No estimate of the fiscal impact of these bills is possible at this time due to a lack of needed data and the fact that the tribal agreements to which these bills pertain, along with the definitions of some key terms, have not yet been finalized.

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.