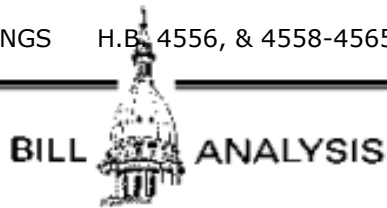




Senate Fiscal Agency
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House Bill 4556 (as passed by the House)
House Bills 4558, 4559, and 4560 (as passed by the House)
House Bills 4561, 4562, and 4563 (Substitutes H-1 as passed by the House)
House Bill 4564 (as passed by the House)
House Bill 4565 (Substitute H-1 as passed by the House)
Sponsor: Representative Steve Bieda (H.B. 4556)
Representative Paul Condino (H.B. 4558 & 4559)
Representative Paula K. Zelenko (H.B. 4560 & 4562)
Representative William J. O'Neil (H.B. 4561)
Representative Barbara Farrah (H.B. 4563 & 4565)
Representative Jack Minore (H.B. 4564)

House Committee: Tax Policy
Senate Committee: Finance

Date Completed: 5-28-03

CONTENT

The bills would amend the Income Tax Act to do the following:

- Apply income tax deduction and withholding requirements to a flow-through entity, casino licensee, race meeting licensee, and track licensee.**
- Include in the taxable income of a nonresident individual, estate, or trust winnings from a Michigan casino or pari-mutuel wagering from a licensed race meeting in Michigan.**
- Allow a nonresident member who had income in the State from a flow-through entity to elect to be included in a composite income tax return of the entity.**

All of the bills, except House Bill 4556, are tie-barred to House Bill 4561. All of the bills, except House Bill 4556, would take effect October 1, 2003.

House Bill 4565 (H-1)

The bill would define "flow-through entity" as an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. A flow-through entity would not include a publicly traded partnership (as that term is defined in the Internal Revenue Code) that has equity securities registered with the Securities and Exchange Commission. "Member of a flow-through entity" would mean a shareholder of an S corporation, a partner in a partnership or limited partnership, or a member of a limited liability company.

"Nonresident member" would mean any of the following who was a member of a flow-through entity: an individual who was not domiciled in the State; a nonresident estate or trust; or a flow-through entity with a member who was an individual not domiciled in the State or was a nonresident estate or trust.

House Bill 4561 (H-1)

Section 351 of the Act prescribes the responsibilities of employers regarding the deduction and withholding of income tax from individuals. The bill would extend these requirements to a flow-through entity, casino licensee, race meeting licensee, or track licensee. Further, the bill would require every flow-through entity in the State to withhold a tax in an

amount computed by applying the tax rate prescribed in Section 51 to the share of taxable income available for distribution of each nonresident member, after deducting from that distributive income the same proportion of the total amount of the individual's personal and dependency exemptions that the period of time covered by the distributive income was of one year. If a flow-through entity were a nonresident member of a separate flow-through entity in the State, the flow-through entity in the State would have to withhold this tax on behalf of the nonresident member and all of its nonresident members. (Section 51 prescribes the tax rate on taxable income of a person other than a corporation.)

Every casino licensee would have to withhold a tax in an amount computed by applying the prescribed tax rate to the winnings of a nonresident reportable by the casino licensee under the Internal Revenue Code (IRC).

Every race meeting licensee or track licensee would have to withhold a tax in an amount computed by applying the prescribed tax rate to a payoff price on a winning ticket of a nonresident, reportable by the race meeting licensee or track licensee under the IRC, that was the result of pari-mutuel wagering at a licensed race meeting.

Every casino licensee, race meeting licensee, or track licensee also would have to report winnings of a resident reportable by the licensee under the IRC to the Department of Treasury in the same manner and format as required under the Code.

Under the bill, "casino" would mean that term as defined in Section 110 (proposed by House Bill 4556). "Casino licensee" would be a person licensed to operate a casino under the Michigan Gaming Control and Revenue Act. "Race meeting license" and "track licensee" would mean a person to whom a race meeting license or track license was issued under the Horse Racing Law. (The Racing Commissioner may issue annual race meeting licenses to a person to conduct live horse racing, simulcasting, and pari-mutuel wagering on the results of live and simulcast horse races at a licensed race meeting. The Commissioner may issue track licenses to a person to maintain or operate a racetrack at which one or more race meeting licensees conduct licensed race meetings.)

Currently, if an employer is a corporation and does not for any reason file the returns or pay the tax due under the Act, any of the officers of the corporation having control, supervision of, or responsibility for making the returns or payments is personally liable for a failure to file or pay. The dissolution of a corporation does not discharge a corporate officer's liability for the failure of the corporation to file a return or remit the tax that was due before dissolution. The sum due for any liability imposed upon a corporate officer may be assessed and collected as provided in the Act. The bill would delete these provisions.

House Bill 4556

The bill provides that for a nonresident individual, estate, or trust, taxable income would include winnings paid on or after October 1, 2003, from a Michigan casino or pari-mutuel wagering from a licensed race meeting located in Michigan.

Under the bill, a "casino" would include casinos regulated by the Michigan Gaming Control and Revenue Act (the three Detroit casinos), or a building on Native American land or land held in trust by the United States for a Federally recognized Indian tribe on which gaming is conducted under the Federal Indian Gaming Regulatory Act.

"Pari-mutuel wagering" and "licensed race meeting" would mean those terms as used in the Horse Racing Law.

House Bill 4558

The bill would redefine the term "tax" to include the tax required to be withheld by a flow-through entity on nonresident members' share of income available for distribution.

House Bill 4559

The bill would redefine the term "taxpayer" to include any flow-through entity required to withhold taxes on a nonresident member's share of income available for distribution.

House Bill 4560

The bill would allow a nonresident member who had income in the State from one or more flow-through entities to elect to be included in the composite income tax return of a flow-through entity. A flow-through entity could file a composite income tax return on behalf of electing nonresident members and report and pay the tax due based on their shares of income available for distribution from the flow-through entity for doing business in, or deriving income from, sources within the State.

A nonresident member that had been included in a composite income tax return, and also filed an individual income tax return for the same taxable period, could claim a credit against the income tax on the individual return, for the amount of taxes paid on the member's behalf by the flow-through entity on the composite return.

A composite income tax return would be due on or before each April 15 and would have to report the information required by the Department for the immediately preceding calendar year.

House Bill 4562 (H-1)

Section 355 of the Act specifies that all provisions relating to the administration, collection, and enforcement of the Act apply to an employer required to withhold taxes. This section also allows the Department, under certain circumstances, to require an employer to make a return and pay tax deducted and withheld, at other than monthly periods, or to deposit the tax in a bank. The bill would extend these provisions to a flow-through entity, casino licensee, race meeting licensee, and track licensee required to withhold taxes.

The bill also would require every publicly traded partnership (as that term is defined in the Internal Revenue Code) that had equity securities registered with the Securities and Exchange Commission to file on or before each April 30 all unitholder information from the publicly traded partnership's schedule K-1 for the immediately preceding calendar year, on a form prescribed by the Department.

House Bill 4563 (H-1)

Section 365 of the Act requires an employer to furnish to each employee every year a statement of total compensation paid and amounts deducted or withheld; requires the statements to be filed with the Department; and requires an employer to make certain returns and reports. The bill would extend these requirements to a flow-through entity, casino licensee, race meeting licensee, and track licensee regarding a share of income available for distribution, winnings, or payoff on a winning ticket provided to a nonresident member or a person with winnings or a payoff on a winning ticket subject to withholding under the Act.

The bill provides that if, before the close of a calendar year, a flow-through entity, casino licensee, race meeting licensee, or track licensee went out of business or permanently ceased to be a flow-through entity, casino licensee, race meeting licensee, or track licensee, then the employee statement required by Section 365 would have to be issued within 30 days after the last share of income available for distribution, winnings, or payoff of a winning ticket was paid.

Currently, an employee must furnish to his or her employer information required by the employer to make an accurate withholding. The bill also would require a nonresident member or a person with winnings or a payoff on a winning ticket subject to withholding to furnish to a flow-through entity, casino licensee, race meeting licensee, and track licensee information required for the entity or licensee to make an accurate withholding.

If a nonresident member or a person with winnings or a payoff on a winning ticket subject to withholding failed or refused to furnish information, the flow-through entity, casino licensee, race meeting licensee, and track licensee would have to withhold the full rate of tax from the nonresident member's share of income available for distribution, or the winnings of the person with winnings or a payoff on a winning ticket.

House Bill 4564

Section 451 of the Act provides that a domestic or foreign corporation authorized to transact business in Michigan, that submits a certificate of dissolution or requests a certificate of withdrawal from the State, must request from the Department a certificate stating that taxes are not due, as provided in Section 27a of the revenue Act. The corporation must request the certificate within 60 days after submitting a certificate of dissolution or withdrawal. A corporation that does not request a certificate is subject to the same penalties that a taxpayer would be subject to for failure to file a return, as provided in the revenue Act. The bill would extend these provisions to other business entities.

MCL 206.110 (H.B. 4556)
206.22 (H.B. 4558)
206.26 (H.B. 4559)
206.315 (H.B. 4560)
206.351 (H.B. 4561)
206.355 (H.B. 4562)
206.365 (H.B. 4563)
206.451 (H.B. 4564)
206.12 (H.B. 4565)

Legislative Analyst: George Towne

FISCAL IMPACT

House Bill 4556

Based on information from the Department of Treasury, this bill would generate an estimated \$8.8 million in additional income tax revenue in FY 2003-04, of which \$6.5 million would go to the General Fund/General Purpose budget and \$2.3 million would go to the School Aid Fund.

House Bills 4558 through 4565 (H-1)

Based on information from the Department of Treasury, these bills would generate an estimated \$2 million in additional income tax revenue in FY 2003-04, of which \$1.5 million would go to the General Fund/General Purpose budget and \$0.5 million would go to the School Aid Fund.

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.