

TAX ADMINISTRATION DEADLINES

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 337 (Substitute H-2)
Sponsor: Sen. Jack Brandenburg
House Committee: Tax Policy
Senate Committee: Finance

Complete to 12-12-13

A SUMMARY OF SENATE BILL 337 AS REPORTED FROM COMMITTEE 12-11-13

Senate Bill 337 (H-2) would amend several provisions within the Revenue Act (1941 PA 122) in order to establish deadlines regarding the Department of Treasury's processing of tax clearance requests and claims for refunds, and for conducting examinations (audits) of taxpayer records.

Tax Clearance Requests

Generally speaking, a successor in a business must withhold sufficient money in the purchase of a business in order to cover any business tax debts incurred by the previous owner. Those funds are typically released when the previous owner provides a receipt showing the taxes have been paid or provides a Tax Clearance Certificate from the Department of Treasury stating that no taxes are due.

The Revenue Act (MCL 205.27a) currently provides that upon the business owner's written waiver of confidentiality, the department may (permissive) release to a purchaser a business's known tax liability for the purposes of establishing an escrow account for the payment of taxes.

Senate Bill 337 would say, instead, that the department shall (mandatory) provide the business's known or estimated tax liability to the purchaser within 60 days from a request by the business owner. The bill further specifies that the department could estimate a business's tax liability based on prior returns and payments. If the department is not provided with sufficient information to accurately determine a business's tax liability, it could estimate the liability using other available information.

The act provides that if the purchaser of a business fails to comply with the escrow requirements, the purchaser is personally liable for any unpaid taxes on the business plus applicable interest and penalties. The bill adds that if purchaser complies with the escrow requirements, the purchaser would not be held liable for more than the known or estimated tax liability disclosed by the department and held in escrow.

The bill further specifies that if the department does not provide the required tax liability information within the 60-day period, the *purchaser* would not be liable for any unpaid taxes.

Statute of Limitations

The Revenue Act (MCL 205.27a) provides a general 4-year statute of limitations (from the date a return was required to be filed or actually filed, whichever is later) during which the Department of Treasury may assess a deficiency, interest, or penalties. (The 4-year statute of limitations also applies to taxpayers claiming refunds.)

The act currently allows the statute of limitations to be tolled (suspended) for both of the following instances:

1. The period pending a final determination of tax – including audit, conference, hearing, and litigation of liability – for federal income tax or for a tax administered by the department, and for one year after that period.¹
2. The period agreed to by the taxpayer and the department.

The bill would strike references to suspending the statute of limitations and instead would say that the statute of limitations is *extended* if the time periods described above (and additional time periods described below) exceed the general 4-year statute of limitations. For the first time period described above, the bill would also delete the reference to taxes administered by the department.

The bill would also *extend* the statute of limitations in instances where the following time period exceed the statute of limitations:

1. During the pendency of an appeal of a final assessment.²
2. During the pendency of an informal conference, and the period of 90 days after the issuance of a decision and order on that matter subject to the informal conference.
3. During the pendency of an appeal of a decision of the department in a case in which a final assessment was not issued prior to the appeal, and the period of 90 days after the issuance of a court order resolving the case.
4. During the pendency of an examination (audit) that started after September 30, 2014 and was conducted within a specified timeframe established by the bill.

Examination of Taxpayer Records – Tax Determination

As noted above, the Senate Bill 337 would establish a time frame during which examinations (audits) of taxpayers started after September 30, 2014 would have to be conducted. For these audits, the department would have to complete its fieldwork and provide a written preliminary audit determination for any tax period not later than one year after the statute of limitations runs its course (generally 4 years).³ This time requirement would not apply in situations where the department and taxpayer agreed extend the statute of limitations.

¹ For further information on this provision see, Department of Treasury, Revenue Administrative Bulletin 2008-8, *Revenue Act – Audits and the Suspension of the Statute of Limitations*, approved December 2, 2008, http://www.michigan.gov/documents/treasury/RAB_2008-8_258580_7.pdf.

² For a general overview of the Department of Treasury’s assessment and appeals process, see its *Taxpayer Rights Handbook* (revised April 2013), http://www.michigan.gov/documents/taxes/TBOR_199483_7.pdf.

³ The Department of Treasury notes that it will “send a *Notice of Preliminary Audit Determination (NOPAD)* that identifies either the tax, interest, and penalty amount due or any refund owed to the taxpayer.” See, *Taxpayer Rights During an Audit*, http://www.michigan.gov/documents/treasury/2315_285135_7.pdf?20131211132016.

The bill also provides that, for audits that started after September 30, 2014, the final assessment issued by the department following the completion of an audit would have to be provided to the taxpayer within 9 months after the department provided the taxpayer with the preliminary audit determination, unless otherwise agreed to by the department and the taxpayer. This 9-month requirement would not apply if the taxpayer requests reconsideration of the preliminary audit determination (i.e. before a final audit determination letter is issued) or requests an informal conference (i.e. after it receives the final audit determination letter or it receives the Notice of Intent to Assess).

The act provides that the statute of limitations is tolled only for those items that were the subject of the audit, conference, hearing, or litigation. The bill would define those items *that were the subject of the audit* to mean “items that share a common characteristic that were examined by an auditor even if there was no adjustment to the tax as a result of the examination.” These items would include items that are reported on the same line on a tax return, or items that are grouped by ledger, account, or record, or by class or type of asset, liability, income, or expense.

Claims for Refund

Under the Revenue Act, a taxpayer may file a claim for a refund within four years from the date a return was due. Senate Bill 337 provides that if a claim for a refund, other than one made under Part 1 (Individual Income Tax), is not acted upon (approved, denied, or adjusted) within one year from the date the claim is received, the absence of that action could be considered to be a denial of that claim and could be appealed to the Michigan Tax Tribunal or the Court of Claims as provided in Section 22 of the act.

FISCAL IMPACT:

As written, the bill could affect state revenues and costs to the Department of Treasury. Costs to Treasury could rise if the 60-day deadline for the release of tax information cannot be met on a regular basis under current funding levels. Costs could also rise if the one year deadline on Treasury decisions cannot be met under current funding levels, or appeals by taxpayers to the Tax Tribunal or Court of Claims become more common. Additional taxpayer appeals would have an indeterminate effect on state revenues, while the elimination of the statute of limitations could reduce state revenues by an unknown amount.

Legislative Analyst: Mark Wolf
Fiscal Analyst: Adam Desrosiers

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.