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BILL ANALYSIS



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Senate Bill 658 (Substitute S-2 as reported)
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Sponsor: Senator Jim Ananich
Committee: Economic Development

CONTENT

Senate Bill 658 (S-2) would amend the General Sales Tax Act to provide that a seller who sold tangible personal property to a purchaser in Michigan would be presumed to be engaged in the business of making sales at retail in Michigan if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engaged in or performed certain activities. That presumption could be rebutted by a demonstration that a person's activities in Michigan were not significantly associated with the seller's ability to establish or maintain a market in the State for the seller's sales of tangible personal property to purchasers in Michigan.

In addition, a seller of tangible person property would be presumed to be engaged in the business of making sales at retail of tangible personal property in Michigan if the seller entered into an agreement with one or more Michigan residents under which the resident, for a commission or other consideration, referred potential purchasers to the seller, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller, if certain conditions were met. That presumption could be rebutted by a demonstration that the Michigan residents with whom the seller had an agreement did not engage in any solicitation or any other activity within Michigan that was significantly associated with the seller's ability to establish or maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

Senate Bill 659 (S-2) would amend the Use Tax Act to provide that a seller who sold tangible personal property would be presumed to have nexus with Michigan and would have to register with the Department of Treasury and collect the use tax if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engaged in or performed certain activities. That presumption could be rebutted by a demonstration that a person's activities in Michigan were not significantly associated with the seller's ability to establish or maintain a market in the State for the seller's sales of tangible personal property to purchasers in Michigan.

In addition, a seller of tangible person property would be presumed to have nexus in Michigan and would have to register with the Department and collect the use tax if the seller entered into an agreement with one or more Michigan residents under which the resident, for a commission or other consideration, referred potential purchasers to the seller, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller, if certain conditions were met. That presumption could be rebutted by a demonstration that the Michigan residents with whom the seller had an agreement did not engage in any solicitation or any other activity within Michigan that was significantly associated with the seller's ability to establish or maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan for storage, use, or consumption in Michigan.

Both bills would apply to transactions occurring on or after the bill's effective date and without regard to the date the seller and resident entered into an agreement described in the bills.

Proposed MCL 205.52b (S.B. 658)
Proposed MCL 205.95a (S.B. 659)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate positive fiscal impact on State and local government, depending on how broadly the definitions and provisions of the bills would be applied, and how affiliates and businesses would respond to the legislation. Assuming the provisions of the bills applied broadly and affiliate networks were relatively unresponsive to the legislation, the bills would increase General Fund and School Aid Fund revenue by approximately \$45.0 million per year and local unit revenue by approximately \$5.0 million per year. To the extent that the bills' provisions were applied more narrowly, or that affiliate networks were dissolved and/or restructured in response to the legislation, the bills would generate less revenue.

The actual split between the State and local units, and between the General Fund and the School Aid Fund, would depend on the revenue collected under the Sales Tax Act relative to that collected under the Use Tax Act. The School Aid Fund receives one-third of use tax revenue, with the remainder directed to the General Fund. In contrast, for most sales, approximately 73.3% of sales tax revenue is directed to the School Aid Fund, 10% is directed to local units through constitutional revenue sharing provisions, and much of the rest is directed to the General Fund.

Date Completed: 12-8-14

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.