

**TREASURY BULLETINS:
PROSPECTIVE IMPACT ONLY**

**House Bill 4345 as introduced
First Analysis (2-24-98)**

**Sponsor: Rep. Alvin Kukuk
Committee: Tax Policy**

THE APPARENT PROBLEM:

The revenue act allows the Department of Treasury to issue bulletins to explain current department interpretations of current state tax laws. While the stated intent of such bulletins (known as revenue administrative bulletins) is to explain to interested parties how to understand and apply existing tax laws, critics of the department allege that sometimes the bulletins actually make law. Critics say the "interpretations" sometimes impose new tax liabilities on unsuspecting taxpayers, and apply the law in ways not anticipated by the legislature. Aggrieved taxpayers and department critics find this particularly galling when the result of a bulletin is the demand for payment of taxes for past years; to them, this appears to be the retroactive application of a "new tax" or at least of a new interpretation of a tax. (Defenders of the treasury department point out that bulletins often just spell out, in response to audits or court decisions, what a particular set of provisions have meant since their enactment.) Legislation has been introduced that would only permit treasury bulletins to apply prospectively.

THE CONTENT OF THE BILL:

The bill would amend the revenue act to provide that a bulletin or letter ruling issued by the revenue commissioner regarding the payment of a tax would apply prospectively and would not apply retroactively.

(The act currently says the Department of Treasury may periodically issue bulletins that index and explain current department interpretations of current state tax laws. The bill would say the commissioner, rather than the department, may do so.)

MCL 205.3

FISCAL IMPLICATIONS:

The bill's impact is indeterminate, according to the House Fiscal Agency. (2-23-98)

ARGUMENTS:

For:

The Department of Treasury should not be able to make tax law through revenue bulletins. Conduct that was legal at the time it was carried out should not be made illegal retrospectively. Taxpayers should not be faced with additional tax burdens for past years based on new interpretations of tax law by the Department of Treasury. How are taxpayers supposed to plan their affairs if "clarifications" of the law by the department can result in their being billed for additional taxes for years past, years in which taxpayers believed, without contradiction, that they were following the law?

Against:

Treasury bulletins are explanations of the state of current law. They typically explain how taxpayers should have been complying all along, or at least from a given date, and not how they should comply from now on. Even when a bulletin is issued in response to a court decision, the point of the court's decision may be to settle a dispute by stating how the law should have been applied all along. Note that if a party loses a tax law case in court, the decision often is saying, in effect, "your understanding of the law is wrong and the other party's is right, and you must pay accordingly (including for past years)." Courts can specify the years for which taxes will be owed based on a decision; a bulletin based on such a decision should be applied accordingly. Besides, the bill as written raises questions. It refers to bulletins issued regarding "the payment of a tax." Construed broadly, this bill could prevent taxpayers from receiving refunds of taxes already paid based on bulletins or letters explaining current law.

POSITIONS:

The Department of Treasury has indicated its opposition to the bill. (2-18-98)

Analyst: C. Couch

■ 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.

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