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TAX DEBTS OF DISSOLVING OR WITHDRAWING CORPORATION

Senate Bill 593 as passed by the Senate
Senate Bill 594 (Substitute H-1)
Senate Bill 595 as passed by the Senate
First Analysis (5-28-02)

Sponsor: Sen. Bill Bullard, Jr.
House Committee: Tax Policy
Senate Committee: Finance

THE APPARENT PROBLEM:

The Business Corporation Act and the Nonprofit Corporation Act specify procedures by which corporations that are authorized to do business in the state may dissolve or cease doing business in the state. A "foreign corporation", i.e., a corporation not organized under Michigan's laws but operating in the state, may "withdraw" from the state by filing an application with the Department of Consumer and Industry Services (CIS) and obtaining a certificate. A "domestic corporation", i.e., a corporation organized under Michigan's laws, may initiate dissolution of the corporation in a number of different ways. For instance, the corporation may file a certificate of dissolution to be approved and issued by CIS. Several of the state's tax acts—the General Sales Tax Act, the Use Tax Act, and the Income Tax Act of 1967—specify that CIS is not to issue an approved certificate of dissolution or withdrawal to a corporation until the corporation has paid all taxes levied under the respective act or is otherwise "cleared" of its tax liability. A corporation may also achieve dissolution by failing to file an annual report or failing to pay its annual filing fee, however. In this case, dissolution does not involve filing and obtaining the certificate of dissolution. According to CIS, in 2001 alone approximately 20,000 corporations were dissolved in this manner. In many cases, a corporation that dissolves in this manner intends to file the return or pay its fees whether in the near future or even several years later, but in other cases the corporation may fully intend to dissolve completely.

The Department of Treasury rather than the Department of Consumer and Industry Services makes the final judgment that a corporation is clear of taxes. According to committee testimony, some corporations who submit certificates of withdrawal or dissolution have expressed frustration with both the amount of time that it takes to initiate and complete the withdrawal or dissolution process and the difficulty involved in determining what stage of the process is creating delays. Legislation has been introduced to disengage the tax clearance process from the process allowing for the submission, approval, and issuance of certificates of corporate withdrawal or dissolution.

THE CONTENT OF THE BILLS:

The bills would amend the General Sales Tax Act, the Use Tax Act, and the Income Tax Act of 1967 to delete provisions that require the Department of Consumer and Industry Services to withhold a certificate of dissolution or withdrawal from a corporation until it has been determined that the corporation does not owe any sales, use, or income taxes. However, the bill would add a requirement that a corporation request certification from the Department of Treasury that it did not owe taxes. (Currently, the acts require that CIS obtain such information from the treasury department.) Specifically, the bills would require that any domestic or foreign corporation that submitted to CIS a certificate of dissolution or withdrawal from the state also request from the treasury department a tax clearance certificate, as provided in Section 27a of Public Act 122 of 1941, which is the authorizing act for the revenue division of the treasury department. Section 27a requires a person, including a corporation, who sells or quits a business to file a final tax return within 15 days after selling or quitting. The section further requires the purchaser of a going or closed business to escrow sufficient money to cover taxes, interest, and penalties that may be due until the former owner produces a receipt from the treasury department showing that taxes are paid, or a certificate stating that taxes are not due. (The section does not expressly require a corporation that is quitting the business to request or obtain a certificate stating that taxes are not due.) The corporation would have to request the tax clearance certificate from the treasury department within 60 days after submitting a certificate of dissolution or withdrawal to CIS. A corporation that did not request a certificate from the department would be subject to the same penalties that a taxpayer would be subject to for failure to file a return, as provided in the revenue act.

Senate Bill 593 would amend the General Sales Tax Act, (MCL 205.65). Senate Bill 594 would amend the Use Tax Act (MCL 205.95). Senate Bill 595 would amend the Income Tax Act (MCL 206.451). Senate Bill 593 is tie-barred to Senate Bill 595.

HOUSE COMMITTEE ACTION:

The House Tax Policy Committee adopted a conflict substitute for Senate Bill 594, to reflect changes to the Use Tax Act made by Public Act 255 of 2002.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, Senate Bills 593 – 595 would have no significant impact on state or local revenues. (5-20-02)

ARGUMENTS:

For:

Current laws unnecessarily tangle the Department of Consumer and Industry Services' withdrawal and dissolution processes with the Department of Treasury's tax clearance process in the case of a corporation that files a certificate of withdrawal or dissolution for approval and issuance by CIS. There is clearly no reason for connecting the two processes, since CIS already allows corporations to dissolve by means other than submitting and receiving a certificate—for instance, by simply not submitting an annual return. Moreover, requiring the two departments to confer on the tax clearance status of a corporation that submits a certificate of withdrawal or dissolution adds just one more layer of bureaucracy for the departments. This bureaucracy creates frustration for a corporation who may for legal reasons need or want some assurance that if it files a certificate of withdrawal or dissolution on a given date, it can expect the certificate to be approved and issued within a specific period of time. The bills would still require any corporation that submitted a certificate of withdrawal or dissolution to CIS to go through the tax clearance process, but they would require that the corporation do so through the treasury department and receive affirmative certification that it owed no taxes. These changes would allow each department to focus on the work that is properly under its jurisdiction.

POSITIONS:

The Department of Treasury supports the bills. (5-23-02)

Analyst: J. Caver

■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.