

A SUMMARY OF HOUSE BILL 5036 AS INTRODUCED 7-12-01

The bill would amend the revenue act to provide for a tax amnesty period of from 30 to 60 days ending before September 30, 2002, as designated by the state treasurer, and provide for an additional penalty for those who failed to participate in the amnesty program. It would also extend the period for voluntary tax disclosure agreements for certain single business taxpayers.

Voluntary tax disclosure. The bill would remove the December 31, 2003 expiration date of provisions added by Public Act 221 of 1998, which provided for voluntary disclosure agreements between single business taxpayers and the treasury department in cases in which companies had not filed SBT returns but should have according to nexus standards issued by the department after December 31, 1997. ("Nexus" refers to the amount or level of presence in a state that is required before a company is subject to taxation by that state given the restrictions of the Commerce Clause of the U.S. Constitution.) Under a voluntary disclosure agreement, eligible persons may file returns and pay taxes and interested for a limited "lookback" period of four years without imposition of penalties. Further, the bill would change the definition of "nonfiler". The 1998 legislation defines that term to mean ". . . a person that has *never* filed a return for the particular tax being disclosed" (emphasis added). Under the bill, that term would mean "a person that has not filed a return for the particular tax being disclosed for periods beginning after December 31, 1988 . . . [and also would include] a person whose only filing was a single business tax estimated tax return filed before January 1, 1999".

Tax amnesty. Under the bill, the state treasurer would designate an amnesty period during which the revenue commissioner would be required to waive all criminal and civil penalties for failing or refusing to file a return, for failing to pay a tax, or for making an excessive claim for a refund. A taxpayer would have to make a written request for a waiver, file a return or an amended return, and make full payment of the tax and interest due (either in a lump sum or in installments). An individual taxpayer could pay amounts due in installments only if he or she submitted \$10,000 or 50 percent of the tax and interest due, whichever were greater, with the request for the waiver, and paid the remaining amounts in two equal installments, with the first installment due no later than August 15, 2002, and the second due no later than September 15, 2002. A taxpayer that was not an individual would have to pay \$100,000 or 50 percent of the tax and interest due, whichever were greater, at the time of the request for the waiver, and pay the remaining amounts in two installments by August, 15, 2002 and September 15, 2002.

The tax amnesty program would apply only to taxes due on or before June 1, 2001. It would apply to the nonreporting and underreporting of tax liabilities, and to the nonpayment of taxes previously determined to be due, but only to the extent of the penalties attributable to the taxes that were previously due and that are paid during the amnesty period.

The amnesty provisions would not apply to a taxpayer if the taxpayer were eligible to enter into a voluntary disclosure agreement. Further, they would not apply if the tax in question was attributable to income derived from a criminal act, if the taxpayer was under criminal investigation or involved in a civil action or criminal prosecution for that tax, or if the taxpayer had been convicted of a felony under the revenue act or the federal Internal Revenue Code.

The Department of Treasury would be required to provide reasonable notice to taxpayers that may be eligible for the amnesty program at least 30 days before the start of the designated amnesty period. The notification would have to include a description of the amnesty program on appropriate tax instruction forms and on the Internet.

Additional penalties. The bill would impose a penalty of 25 percent of the amount of tax due on a taxpayer who failed to file a return or pay a tax that was due before June 1, 2001, during a period for which amnesty was available. This penalty would be in addition to any other interest or penalty prescribed under the act.

MCL 205.24, 205.30c, and 205.31

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■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.