

DISREGARDED ENTITIES REMEDY

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House Bill 5937 as introduced
Sponsor: Rep. Andrew Kandrevas
Committee: Tax Policy

Complete to 3-15-10

A SUMMARY OF HOUSE BILL 5937 AS REPORTED FROM COMMITTEE

The bill would amend the Revenue Act, generally speaking, to restore the tax filing responsibilities of firms under the former Single Business Tax Act to the state of affairs that existed prior to a 2009 Michigan Court of Appeals ruling.

Without the bill, according to testimony before the House Committee on Tax Policy, many taxpayers -- those that were classified as "disregarded entities" for federal tax purposes -- would have to retroactively file separate SBT returns for years when they had been included for tax purposes in the filing of a larger entity. (The SBT Act was replaced in 2008 by the Michigan Business Tax Act.)

In brief, according to committee testimony, in some cases a business can elect for federal tax purposes whether to be treated as a separate tax entity and file its own return or be treated as a disregarded entity and be part of a tax return filed by a larger entity with which it is connected. The state policy had been that firms considered disregarded entities for federal purposes also should not file separate SBT tax returns. The 2009 court of appeals decision required a change in Treasury policy, with the result that businesses that were disregarded entities for federal purposes were nonetheless required to file separately for state SBT tax purposes. House Bill 5937 is intended to address that.

For further information on the change in state policy due to the court decision, see

http://www.michigan.gov/documents/taxes/Kmart_Notice_Retroactive_Application_Amended>Returns_1_310402_7.pdf

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Specifically, the bill provides:

- For a taxpayer that filed a tax return under the former Single Business Tax Act that included in the return an entity disregarded for federal income tax purposes under the Internal Revenue Code, both of the following would apply:
 - The Department of Treasury shall not assess the taxpayer an additional tax or reduce an overpayment because the taxpayer included a disregarded entity for federal income tax purposes on its SBT tax return.

- The department shall not require the disregarded entity to file a separate SBT return.
- If a taxpayer filed a return under the former SBT Act that included in the tax return an entity disregarded for federal tax purposes, then the taxpayer could not claim a refund based on the disregarded entity's filing a separate return as a distinct taxpayer.

The bill contains an Enacting Section that specifies the following:

- The bill "is curative, shall be retroactively applied, and is intended to correct any misinterpretation concerning the treatment of an entity disregarded for federal income tax purposes under the Internal Revenue Code under 1975 PA 228 [the former Single Business Tax Act] that may have been caused by the decision of the Michigan Court of Appeals in *Kmart Michigan Property Services v Michigan Department of Treasury* [on] May 12, 2009."
- The bill also specifies: "However, this amendatory act is not intended to affect a refund resulting from a final order or a court of competent jurisdiction for which all rights of appeal have been exhausted prior to February 12, 2010 to a taxpayer who is a party to that proceeding."

(The aim of this Enacting Section, according to committee testimony, is for the bill not to affect the winning plaintiff in the court of appeals case but also not to let the court decision lead to taxpayers filing SBT returns retroactively, whether those returns would result in taxes owed or refunds due.)

FISCAL IMPACT:

House Bill 5937 would have an indeterminate State fiscal impact and no direct impact on local governments.

POSITIONS:

The Michigan Department of Treasury supports the bill. (3-10-10)

The following indicated support for the bill: The Michigan Association of CPAs; the Michigan Chamber of Commerce; the Michigan Manufacturers Association; Spartan Stores; the Michigan Grocers Association; the Detroit Regional Chamber of Commerce; and ArvinMeritor (a motor vehicle supplier). (3-10-10)

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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.