

Legislative Analysis



VOLUNTARY DISCLOSURE AGREEMENTS

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House Bill 4586

Sponsor: Rep. Pat Somerville

Committee: Tax Policy

(Enrolled as PA 135 of 2013)

Complete to 4-23-13

A SUMMARY OF HOUSE BILL 4586 AS INTRODUCED 4-18-13

The bill would amend the Revenue Act (1941 PA 122) to:

- Limit the combined look-back period of a voluntary disclosure agreement (VDA) regarding the Single Business Tax (SBT), Michigan Business Tax (MBT), or the Corporate Income Tax (CIT) to a combined maximum of 48 months (4-years) and,
- For VDAs entered into between October 2, 2012, and April 30, 2013, provide a refund for taxes paid for tax years outside of the combined 48-month look-back period.

A voluntary disclosure agreement (VDA) provides relief to non-filers when the state's changing nexus standards created a filing responsibility on business entities that previously were not required to file a tax return. Under a VDA, the taxpayer agrees to pay all taxes and interest for a specified look-back period (generally 48 months) without penalty and agrees to register, file returns, and pay taxes going forward after the look-back period. In return, the Department of Treasury does not assess taxes, interest, and penalties that would have been due for tax years before the look-back period and does not impose penalties for taxes due during the look-back period.

To be eligible to enter into a VDA with the Department of Treasury, the non-filer must meet either of the following criteria:

- Have a filing responsibility under nexus standards issued by the department after December 31, 1997.¹ (House Bill 4586 adds a reference to nexus standards enacted into law.²)

¹ Nexus generally refers to the amount or level of presence in a state that must exist before a firm is subject to taxation by the state. The voluntary disclosure provisions were added by 1998 PA 221 after a series of state court decisions prompted the Department of Treasury to change its interpretations of what constituted "nexus" under the Single Business Tax. See Revenue Administrative Bulletin 1998-1 (February 24, 1998), *Single Business Tax Nexus Standards*, http://www.michigan.gov/documents/98-1SBT_114674_7.pdf. Because the underlying law had not changed, the department's revised nexus standards were retroactive to 1989, which would have subjected many firms to penalties for the failure to file SBT returns. The voluntary disclosure agreement enabled these firms to pay past-due taxes without penalty. See also, Revenue Administrative Bulletin 2008-4 (October 24, 2008), *Michigan Business Tax Nexus Standards*, http://www.michigan.gov/documents/treasury/RAB2008-4_253768_7.pdf.

- Has a reasonable basis to contest liability for a tax or fee administered under the act.

Additionally, the non-filer must not have had any previous contact by the Department of Treasury – such as through a notice of impending audit, notice of intent to assess, an assessment, or letters of inquiry – and not be under audit by the department or under investigation by state or local law enforcement agencies regarding a tax subject to the VDA.

Under current law, the standard look-back period under a VDA for the SBT or the MBT is the four most recent completed fiscal or calendar years over a 48-month period (or the first date the person subject to the agreement began doing business in this state if less than 48 months).

House Bill 4586 specifically adds a reference to the CIT (1967 PA 281, Part 2)³ and specifies that the combined look-back period for the three business taxes shall be the four most recent completed fiscal or calendar quarters over a 48-month period (or since the person began doing business in the state, if less than 48 months.)

The act also provides an alternate 36-month look-back period for the SBT and MBT for firms that filed returns in another state for a tax based on net income that included sales that must be included in the numerator of the apportionment formula that are now included in the numerator of the Michigan apportionment formula if those sales increased the net tax liability to that other state. House Bill 4586 includes a reference in this provision to the CIT.

With the bill's combined 48-month look-back for SBT, MBT, or CIT taxes, the bill would provide a refund for taxes paid outside of that 48-month look-back period under a VDA entered between October 2, 2012 and April 30, 2013.

FISCAL IMPACT:

Without specific taxpayer information, a fiscal impact cannot be determined.

² Nexus standards for the CIT are spelled out in Section 621 of the Income Tax Act (MCL 206.621) which provides, in part, "a taxpayer has substantial nexus in this state and is subject to the tax imposed under this part if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year, if the taxpayer actively solicits sales in this state and has gross receipts of \$350,000.00 or more sourced to this state, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in this state."

³ The VDA provisions of the Revenue Act (MCL 206.30c) already apply to the CIT. Section 30c(3) provides that all taxes administered under the act are eligible for inclusion in a VDA, and Section 693 of the Income Tax Act (MCL 205.693) provides that the CIT is to be administered in accordance with the Revenue Act. See, Treasury's discussion on CIT filing requirements in a series of frequently asked questions (FAQs), http://www.michigan.gov/documents/taxes/CIT_FAQ_4-1-12_382106_7.pdf.

BACKGROUND INFORMATION:

The following are the number of voluntary disclosure agreements, by the type of tax, for 2010-2012.

	2010	2011	2012
Michigan Business Tax	294	389	167
Single Business Tax	306	270	79
Individual Income Tax	94	111	77
Use Tax	147	148	108
Total	841	918	431

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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.