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BILL ANALYSIS

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Senate Bill 1185 (Substitute S-1 as reported)
Sponsor: Senator Nancy Cassis
Committee: Finance

Date Completed: 7-13-04

RATIONALE

A 2003 amendment to the General Property Tax Act, effective December 29, 2003, requires the State Tax Commission to impose penalties and interest on incorrectly reported and omitted personal property. Public Act 247 of 2003 provides for the imposition of a penalty and interest of 1.25% per month from the date the taxes originally could have been paid without interest or penalty. Before the amendment was enacted, neither a penalty nor interest was assessed on incorrectly reported or omitted property. Some people believe that the penalty and interest imposed under the Act are excessive and discourage businesses from locating in Michigan.

CONTENT

The bill would amend the General Property Tax Act to revise the rate of interest on a corrected personal property tax bill; allow the Tax Commission to impose a 10% penalty; require the Commission to waive the penalty under certain circumstances; and permit the local taxing authority to waive all or part of the penalty. The bill also would require the State Tax Commission, if it determined that property had been incorrectly reported or omitted in any of the previous tax years designated in the bill, to issue an order to the local treasurer in possession of the tax roll being amended, requiring the revision of the assessed value and taxable value for each year the property was incorrectly reported or omitted. The amendments would apply retroactively and would be effective as of December 29, 2003.

The bill would amend Section 154 of the Act, which applies to property subject to the collection of taxes under the Act, including property located in plant rehabilitation and industrial development districts; public utilities; tax-exempt property used for profit; and property developed under the Commercial Redevelopment Act.

Currently, if the State Tax Commission determines that property has been incorrectly reported or omitted for a previous year--but not beyond the current assessment year and two years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the Commission--the Commission must place the corrected assessment value for the appropriate years on the appropriate assessment roll. The bill provides, instead, that if the Commission determined that property had been incorrectly reported or omitted for any of the previous years designated in the bill, the Commission would have to issue an order to the local tax collecting unit if the local tax collecting unit had possession of the tax roll being amended, or to the county treasurer if the county treasurer had possession of the tax roll being amended, requiring the revision of the assessed value and taxable value for each year for which the property was incorrectly reported or omitted.

The order could include the current assessment year and the two years immediately preceding the date a person liable for the incorrectly reported or omitted taxes notified the Commission that the taxes were incorrectly reported or omitted. If the Commission were notified that taxes had been incorrectly reported or omitted by

someone other than a person liable for the taxes, the order could include the current assessment year and two years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the Commission or the date written notice of the incorrect reporting or omission was provided to the taxpayer, whichever was later.

Presently, the Commission must issue an order to the treasurer of the local tax collecting unit or the county treasurer (depending on which has possession of the tax roll for a year for which an assessment change is made) certifying the amount of taxes due as computed by the correct annual rate of taxation for each year except the current year. Under the bill, the Commission's order also would have to require the revision of the assessed value and taxable value.

Under the Act, a corrected tax bill based on an assessment corrected for incorrectly reported or omitted personal property, must include a penalty and interest at the rate of 1.25% per month from the date the taxes originally could have been paid without interest or penalty. The bill provides, instead, that for assessments corrected by the Commission as a result of a person's failure to file the statement required under Section 19 of the Act (requiring a sworn statement of personal property) for property that the local tax collecting unit could prove had not been otherwise assessed, a corrected tax bill could include a penalty of 10% of the resulting tax bill plus interest as specified in Section 37 of the Tax Tribunal Act. (That Act requires interest to accrue at a rate set each year based on the average auction rate of 91-day discount treasury bills in the immediately preceding State fiscal year as certified by the Department of Treasury, plus 1%.) The interest would accrue from the date the taxes originally could have been paid without interest. If the Commission determined that the failure to file the statement was due to a reasonable cause, it would have to waive the penalty. Currently, if the tax bill has not been paid within 60 days after the corrected tax bill is issued, interest must begin to accrue again at the rate of 1.25% per month. Under the bill, interest would have to begin accruing again from the date the corrected tax bill was issued at the rate

provided for under Section 37 of the Tax Tribunal Act.

A corrected personal property tax bill that was issued under the Section 154 due to reasons other than a person's failure to file the statement of personal property, would have to include interest as provided under Section 37 of the Tax Tribunal Act, calculated from the date the taxes originally could have been paid without interest or penalty, and a penalty of 10% of the increase in the amount of taxes payable because of the corrected assessment. This would apply to assessments corrected as a result of notification filed with the Commission after December 29, 2003, and for which a person either did not request that an increased assessment due to incorrectly reported or omitted personal property be added to the assessment roll before March 1, 2004, or did not otherwise inform the Commission of an issue as to the person's reporting or omitting personal property before December 29, 2003. If the Commission determined that the incorrect reporting or omission was the result of reasonable cause, the Commission would have to waive the penalty. In no case could interest and a penalty be imposed on any assessment subject to a notification pending before the Commission as of December 29, 2003. If the tax bill had not been paid within 60 days after the corrected tax bill was issued, interest would have to begin accruing again from the date the corrected tax bill was issued.

The assessor for a local tax collecting unit could enter into an agreement on behalf of the local tax collecting unit to waive all or a portion of the 10% penalty for a person who previously had failed to file a sworn statement of personal property. If the resulting tax bill had not been paid within 60 days after the corrected tax bill was issued, interest would have to begin accruing again from the date the corrected tax bill was issued.

The bill provides that failure to file a statement of personal property under Section 19 by the date required would not prohibit a person from seeking relief under Section 154 if the person filed the statement prior to or contemporaneously with an action seeking relief under Section 154.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The provision under Public Act (P.A.) 247 for penalties and interest for incorrectly reported and omitted personal property runs contrary to the Legislature's recent efforts to attract new businesses to Michigan, in order to increase employment and add to the State tax base. The part of the statute that is especially onerous to business is the provision that a corrected tax bill based on an assessment roll corrected for incorrectly reported or omitted personal property must include a penalty and interest at the rate of 1.25% per month from the date the taxes originally could have been paid without interest or penalty. Previously, the General Property Tax Act had contained no provisions for either penalties or interest on incorrectly reported or omitted personal property.

The penalty and interest imposed by P.A. 247 are excessive and act as a damper on the growth of business in Michigan. Many small businesses are unaware of the fact that they must file a personal property tax statement, and fail to do so out of ignorance. For this reason, a penalty of 1.25% per month is unreasonable. The penalty on the amount owed should be capped at 10% with an interest rate that would be the same as the rate for Tax Tribunal judgments.

Additionally, the wording of P.A. 247 is unclear as to whether the penalty and interest should be imposed upon the full amount of a business's personal property tax liability or only on the unpaid portion of the liability. The bill would make it clear the penalty and interest could be assessed only on the unpaid obligation, and would require the State Tax Commission to waive the penalty if the business were to show reasonable cause for incorrectly reporting personal property.

Supporting Argument

According to Section 154 of the General Property Tax Act, if the Tax Commission

determines that property subject to taxation under the Act "has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll". It is not clear, however, whether the time limitation also applies to the interest and penalty added by P.A. 247. The bill would make it clear that the penalties and interest could be assessed only for the tax year in which the Commission determined that the business was liable for unpaid taxes and the two preceding years.

Opposing Argument

The revenue the State will earn from the penalties and interest on incorrectly reported or omitted personal property was part of this year's budget estimate, from which the Legislature is working in attempting to solve Michigan's current budget crisis. Retroactively eliminating the penalties and interest would contribute to the revenue shortfall.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would reduce State and local revenue. The bill would reduce the effective interest rate applied to certain property tax bills, and in some cases, change the length of time interest is applied to outstanding balances. The degree of the reduction is somewhat unclear because in one subsection the bill indicates that the new penalty and interest "may" be applied, while in another section it indicates that they "shall" be applied. Furthermore, the bill would allow a local assessor to waive a portion of the penalty, and it is unknown to what extent such waivers would occur.

Under current law, interest payments are distributed in the same proportion as the tax revenue is distributed. However, the bill would assess a separate penalty but does not specify how the penalty would be distributed. To the extent that the interest rate was lower than under current law, interest payments would be lowered under

the bill. If the penalty were distributed in a different manner than the distribution of interest payments, the bill would change the distribution of the reductions under the bill.

It is also unknown how much penalty and interest will be assessed on notifications pending before the State Tax Commission as of December 29, 2003, if the bill is not enacted. The bill would eliminate any penalty and interest on the taxes associated with those assessments.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.