

CONFIDENTIAL
TAX LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S. 97 Name of Bill: An act relating to taxation of prewritten software

Agency/ Dept: Tax Author of Bill Review: Devon Green

Date of Bill Review: 3/16/15 Related Bills and Key Players _____

Status of Bill: (check one): _____ Upon Introduction ☒ As passed by 1st body _____ As passed by both

Recommended Position:

☒ Support _____ Oppose _____ Remain Neutral _____ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

S. 97 is session law clarifying that prewritten software accessed remotely is not subject to a sales tax. It brings to a close the uncertainty that started in the last Administration with a Tax Department bulletin, and that continued after the Legislature refused to extend a moratorium.

2. Is there a need for this bill? *Please explain why or why not.*

Technically, the Department could accomplish the same result by issuing a new bulletin, but the legislation is powerful indication of legislative intent.

We were one of just four streamlined states, including Michigan, to interpret streamlined language to include taxation of remotely accessed software as tangible personal property. Michigan's state courts have since determined that prewritten software accessed remotely is a service, not tangible personal property subject to sales and use tax.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

JFO did not provide a fiscal note for this bill. Since it is just a clarification of existing law, there technically is no fiscal impact – the provision just acknowledges that the market has moved beyond taxation. Programmatically, S.97 provides clarity and strong legal ground for Tax.

Practically speaking, there is a chance that we might receive some refund requests, but the risk would seem small. First, a vendor cannot claim a refund unless they first rebate the tax to the customer. Second, the legal ground for a refund would be in question, since the market has evolved. In any event, we cannot quantify the exposure since any sales tax paid on cloud computing is not separated out from the total sales tax remitted.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Since the "cloud tax" has been cited as a business impediment, this clarification should help economic development.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? *(for example, public, municipalities, organizations, business, regulated entities, etc)*

Accountants, software developers, and businesses will be happy with this clarification. This change may have some people choosing cloud computing over physical software.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

6.2 Who else is likely to oppose the proposal and why?

This bill is session law, some accountants wanted clarification in statute.

Some entities may be worried about losing any revenue at all.

7. Rationale for recommendation: *Justify recommendation stated above.*

H.97 clarifies current law. Puts Tax on firmer legal ground. Provides tax and businesses with guidance around this issue.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*
None.

9. Gubernatorial appointments to board or commission?

N/A

Secretary/Commissioner has reviewed this document: _____ **Date:** _____