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TO: Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division

DATE: March 20, 2020

RE: 90 Day Extension of State Tax Payments



The Legislative Policy Division (LPD) received a request from Council President Brenda Jones to provide a report regarding the feasibility of amending the Detroit Income Tax Ordinance to allow for a 90-day extension for Detroit businesses to pay their City of Detroit (City) taxes due to the impact of the COVID-19 crises. In addition, we have been asked to provide a resolution urging Governor Whitmer to issue an executive order to allow for a 90-day extension on State income taxes due to the COVID-19 health crisis.

LPD looked to the Detroit City Code to answer the first portion of the Council President's request. The Detroit City Code, Section 44-2-15 *Returns procedure*, provides in pertinent part:

- (a) Filing of return required. Every corporation doing business in the City, and every other person having income taxable under this article in any year, shall make and file with the City an annual return for that year on a form furnished or approved by the City, on or before the last day of the fourth month for the same calendar year, fiscal year or other accounting period, as has been accepted by the Internal Revenue Service for federal income tax purposes for the taxpayer.

The City Code requires that every corporation or person having income taxable under the Code shall make and file an annual return for that year on or before April 30th. In addition to filing the return the Subsection (c)(1) provides in pertinent part:

A balance of the tax that is due the City at the time of filing an annual return shall be paid with the return, unless the balance is less than \$1.00, in which case payment is not required.

This subsection requires the filer to pay the balance of the tax due at the time of filing the annual return. The City's authority to levy the income tax is derived from the City Income Tax Act of 1964. The City Income Tax Act enables the City to enact an ordinance that provides for the excising of income taxes and the manner in which the annual return for taxes are to be filed. As set forth under MCL 141.641 *Annual return; joint return*, which provides in pertinent part:

- (1) Every corporation doing business in the city and every other person having income taxable under this ordinance ...For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, the annual return required by this subsection shall be filed with the city or the department as provided by the agreement on or before the fifteenth day of the fourth month for the same calendar year, fiscal year, or other accounting period that has been accepted by the internal revenue service for federal income tax purposes for the taxpayer.

The Act provides that the City is authorized to enact an ordinance for the excise and collection of income taxes and if the City has entered into an agreement with the State under Section 9 of Chapter 1 of the Act¹ the annual return must be filed by a corporation or person subject to the tax] on or before April 15th with the City. The City Code reflects and is subject to the requirements set forth under State law. It is therefore not feasible for the City to amend the City Income Tax Ordinance without a change in State law that would provide for such amendment.

With regard to the second part of the Council President's request, LPD has attached a proposed resolution for this Honorable Body's consideration.

If we can be of further assistance, please feel free to call upon us.

¹ MCL 141.509(1) provides: "For the 1996 tax year and each year after 1996, a city that imposes a city income tax pursuant to this act may enter into an agreement with the department of treasury under which the department of treasury shall administer, enforce, and collect the city income tax on behalf of the city." It is LPD's understanding that the City is currently under agreement with the State to collect its income taxes pursuant to the Act.

**RESOLUTION URGING A 90-DAY EXTENSION
OF STATE AND CITY INCOME TAX PAYMENTS**

PRESENTED BY: CITY COUNCIL PRESIDENT BRENDA JONES

WHEREAS, As a result of the Coronavirus 19 (COVID-19) health crisis, the President of the United States, under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, has declared that residents and businesses are allowed a 90-day extension to pay their federal taxes without calculation of interest, penalty or addition to tax, for failure to pay during the extended 90-day period; and

WHEREAS, Residents of the State of Michigan and City of Detroit are subject to the same health crisis caused by COVID-19 and the emergent imposition that payment of taxes due on April 15, 2020 required by residents and businesses within the State of Michigan and City of Detroit; and

WHEREAS, The COVID-19 health crisis has resulted in reduction in business activities, shutdowns, closures, and layoffs of employees that has placed extreme financial burdens on residents of the State of Michigan and City of Detroit; and

WHEREAS, The required payment of taxes due the State and City of Detroit on April 15, 2020, would take finances from residents and businesses that are necessary and desperately needed to maintain the health and safety of impacted families instead of preserving finances to pay the cost of food, water and shelter; and

WHEREAS, Governor Gretchen Whitmer has declared a state of emergency across the state of Michigan and having invoked the Emergency Management Act, MCL 30.401 et seq., has been granted the broad powers and duties to issue “executive orders, proclamations, and directives having the force and effect of law”, in addition to being granted the authority under the Emergency Powers of the Governor Act, MCL 10.31(1), which provides that after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control”; and

WHEREAS, COVID-19 presents a continuing emergency to life and property which would be exacerbated if residents and businesses within the State and the City of Detroit are required to adhere to the statutory requirements to pay the balance of taxes due on April 15, 2020; **and**

WHEREAS, The Detroit City Council believes that Governor Gretchen Whitmer may have the power to provide a 90-day extension to residents and businesses of the State and the City of Detroit to pay the balance of the taxes due the State and the City by and through the powers vested the Governor under MCL 30.401-421 and MCL 10.31(1); and **BE IT THEREFORE**

RESOLVED, That the Detroit City Council urges Governor Whitmer to exercise her emergency powers in a manner that grants residents and businesses within the State and city of Detroit a 90-day extension to pay balance of the taxes due, without calculation of interest, penalty or addition to tax, for failure to pay during the extended 90-day period; and **BE IT FINALLY**

RESOLVED, That a copy of this resolution be submitted to Governor Gretchen Whitmer and Mayor Michael Duggan.