

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 931

Sponsor: Senator Doug Carl

Committee: Finance

Date Completed: 5-8-90

SUMMARY OF SENATE BILL 931 as introduced 4-25-90:

The bill would establish the "State Revenue Administration Act" within the revenue Act. The bill would require the Department of Treasury to establish rules to provide for standards for the fair and courteous treatment of the public by employees; to develop a handbook with guidelines for employees involved in the collection or auditing of taxes; and to develop a brochure that lists taxpayers' protections and recourses. The bill also would provide for changes in current procedures regarding the payment, administration, and levy of interest and penalties on unpaid taxes and taxes in dispute, including prohibiting the accrual of interest on taxes in dispute until the date a dispute was resolved. Following is a detailed description of the bill's provisions.

Department Rules

Within one year after the effective date of the bill, the Department would have to submit rules to provide for: a) standards to be followed by Revenue Division officers and employees for the fair and courteous treatment of the public, and a system for monitoring compliance with those standards; and b) procedures governing an informal conference. (Under the revenue Act, under certain circumstances, taxpayers have a right to an informal conference with the Department to discuss tax disputes.) The rules for procedures governing an informal conference would have to include the following:

- A method by which the Department would attempt to schedule the conference "at a mutually convenient time and place".
- A requirement that the Department include in the notice for the conference the scope and nature of the conference's subject.
- Authorization for the taxpayer to make a sound recording of the conference with prior notice to the Department, and for the Department to do the same with prior notice to the taxpayer.

Assessment and Levy

Currently, under the revenue Act, if a taxpayer fails or refuses to file a return, or if the Department has reason to believe that a return has insufficient information to determine accurately the tax due, the Department can obtain information by examining the books and records of the taxpayer. The Act provides that, as soon as possible after procuring the information, the Department must assess the tax determined to be due and notify the taxpayer of the amount and reasons for the assessment. The bill would eliminate this provision requiring

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the Department to assess the tax and notify the taxpayer, and instead would require the Department to send the taxpayer a letter of inquiry stating, "in a courteous and unthreatening manner", the Department's opinion that the taxpayer needs to furnish further information or owes taxes, and the reason for that opinion. Not less than 14 days after sending a taxpayer a letter of inquiry, the Department would have to give notice to the taxpayer of its intent to levy the tax. Currently, if the taxpayer gives the Department written notice within 20 days after receiving the Department's notice to levy, and remits the uncontested portion of the liability, the taxpayer can request an informal conference on the levy. The bill provides that if the taxpayer served written notice upon the Department within 45 days after receiving the Department's notice, the taxpayer would be entitled to an informal conference. If the Department served a notice of intent to levy upon a taxpayer, and the taxpayer did not protest the notice within the 45-day time limit, the Department could levy the tax and the interest and penalty due on the tax.

Currently, if a taxpayer is aggrieved by an assessment, decision, or order of the Department, he or she can appeal to the Tax Tribunal within 30 days after the assessment, decision, or order. The bill would allow a taxpayer 45 days to appeal. Currently, a taxpayer can appeal an assessment, decision, or order to the Court of Claims, but he or she must first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of an appeal. The bill would eliminate this provision.

#### Interest and Penalty

Under the Act, if the Department believes that a taxpayer has not satisfied a tax liability or that a claim is excessive, the Department must determine the liability and notify the taxpayer. If the tax paid is less than should have been paid or an excessive claim is made, the deficiency, and interest on the deficiency at a monthly rate of 1 percentage point above the adjusted prime rate from the time the tax was due until paid, are due and payable. The bill provides that if a taxpayer disputed a tax liability, the interest would not accrue, and the interest and a penalty prescribed under the Act would not be due and payable on the disputed amount, until the date of the final disposition of the dispute, whether the disposition was administrative or judicial. If a taxpayer's deficiency or excessive claim currently is due to negligence but not with intent to defraud, a penalty of \$10 or 10% of the total deficiency, whichever is greater, is added. The bill would reduce the 10% penalty to 5%, and provides that if a taxpayer subject to penalty demonstrated to the satisfaction of the Department that adding the penalty was "substantially unjust", the penalty could not be added.

Currently, if a taxpayer fails or refuses to file a return or pay a tax within the specified time, the Department must assess the tax as soon as possible and notify the taxpayer. Penalties and interest are added to the tax from the time the tax was due until paid. The bill provides that if a taxpayer disputed a tax liability, interest would not accrue, and the interest and penalty would not be due and payable on the disputed amount until the date of the final disposition of the dispute, whether administrative or judicial. Failure or refusal to file a return or pay a tax within a time specified is subject to a penalty of \$10 or 5% of the tax, whichever is greater, with an additional 5% penalty for each month the return is not filed or the tax is not paid. If a return is filed or the tax is paid after the specified time, and it is shown to the satisfaction of the Department that the failure was due to "reasonable cause" and not willful

neglect, the penalty can be waived at the discretion of the Revenue Commissioner. The bill would require that the penalty be waived, and provides that the penalty could not be imposed until the Department promulgated a rule to define what constituted "reasonable cause". The definition would have to include illustrative examples.

### Refunds

Currently, the Department is required to refund or credit an overpayment of taxes; taxes, penalties, and interest erroneously assessed and collected; and all taxes, penalties, and interest found to be unjustly assessed, excessive, or wrongfully collected. A credit or refund must include interest at the rate of  $\frac{3}{4}$  of 1% per month, and must be added to the refund commencing 45 days after a claim is filed or 45 days after the date established by law for filing a return, whichever is later. The bill would require the Department to pay interest on a refund or credit in the amount of the current monthly rate of 1 percentage point above the adjusted prime rate, in the following manner:

- For a refund from a return filed on or before the last date established by law, interest would commence 60 days after the claim was filed or 45 days after the date established by law for the filing of the return, whichever was earlier.
- For a refund from a return filed after the last date established by law, interest would commence 60 days after a claim was filed.
- For a refund resulting from a taxpayer's claim of the senior citizens prescription drug credit, interest would commence 60 days after June 1. (Under Public Act 516 of 1988, qualifying seniors can claim a refundable credit for expenditures for prescription drugs if they file for the credit by June 1 of the tax year for which the credit is claimed.)

The bill would require the Department to add to a refund a penalty of \$25 or 25% of the total amount, whichever was greater, if an overpayment, tax, penalty, or interest were unjustly assessed, excessive, or wrongfully collected due to the Department's negligence. Further, the Department would have to add to the refund interest in the amount of the current monthly rate of 1 percentage point above the adjusted prime rate.

### Handbook and Brochure

The bill would require the Department to develop guidelines to govern employee responses to inquiries from the public and standards for tax audit activities. The guidelines would have to "explicitly exclude the use of a collection goal or quota for evaluating an employee". The Department would have to assemble the guidelines into an employee handbook, distribute the handbook to all employees involved in the collection and auditing of taxes, and make the handbook available to the public.

The Department would have to prepare a brochure that listed and explained, "in simple and nontechnical terms", a taxpayer's protections and recourses in regard to a departmental action administering or enforcing a tax statute, including at least the following:

- A taxpayer's protections and the Department's obligations during an audit.
- Both the administrative and judicial procedures for appealing a departmental decision.

- The procedures for claiming refunds and filing complaints.
- The means by which the Department can enforce a tax statute, including assessment, jeopardy assessment, and enforcement of a lien.

#### Award Expenses

The bill provides that in an administrative or judicial proceeding that was brought by or against the State in connection with the determination, collection, or refund of a tax, interest, or penalty, a taxpayer could be awarded the reasonable and necessary expenses and attorney's fees of the proceeding. An award could be made only if the Department's position in the proceeding were taken without substantial justification in the law or in fact.

MCL 205.21 et al.

Legislative Analyst: G. Towne

#### FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

Fiscal Analyst: N. Khouri

#### S8990/S931SA

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.