

HOUSE BILL No. 5164

October 11, 1989, Introduced by Reps. Trim, Bartnik, Bandstra, Willis Bullard, Sikkema, Pridnia, Gilmer, Krause, Honigman, Munsell and Van Singel and referred to the Committee on Taxation.

A bill to amend sections 19, 21, 23, and 24 of Act No. 122 of the Public Acts of 1941, entitled as amended

"An act to establish a revenue division of the department of treasury; to prescribe its powers and duties as the revenue collection agency of the state; to prescribe certain powers and duties of the state treasurer; to create the position and to define the powers and duties of the state commissioner of revenue; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act,"

as amended by Act No. 58 of the Public Acts of 1986, being sections 205.19, 205.21, 205.23, and 205.24 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 19, 21, 23, and 24 of Act No. 122 of
2 the Public Acts of 1941, as amended by Act No. 58 of the Public

1 Acts of 1986, being sections 205.19, 205.21, 205.23, and 205.24
2 of the Michigan Compiled Laws, are amended to read as follows:

3 Sec. 19. (1) All remittances of taxes administered by this
4 act shall be made to the department payable to the state of
5 Michigan by bank draft, check, cashier's check, certified check,
6 money order, or cash. The money received shall be credited as
7 provided by law. A remittance other than cash shall not be a
8 final discharge of liability for the tax assessed and levied
9 until the instrument remitted has been honored.

10 (2) ~~For failure to remit a tax administered by this act~~
11 ~~with a negotiable remittance, a penalty of 25% of the tax due may~~
12 ~~be added in addition to any other penalties imposed by this~~
13 ~~act.~~ (3) The commissioner may require that all money collected
14 by the taxpayer for taxes administered by this act ~~which have~~
15 THAT HAS not been paid to the department of treasury ~~shall be,~~
16 ~~and remain~~ IS public money ~~—~~ AND the property of this state,
17 and shall be held in trust in a separate account and fund for the
18 sole use and benefit of this state until paid over to the depart-
19 ment of treasury.

20 Sec. 21. (1) If a person fails or refuses to make a return
21 as required, in whole or in part, or if the department has reason
22 to believe that a return made does not supply sufficient informa-
23 tion for an accurate determination of the amount of tax due, the
24 department may obtain information on which to base an assessment
25 of the tax. The department, by its duly authorized agents, may
26 examine the books, records, and papers and audit the accounts of
27 a person or any other records pertaining to the tax. As soon as

1 possible after procuring information, the department shall assess
2 the tax determined to be due and shall notify the taxpayer of the
3 assessed amount and the specific reasons for the assessment.

4 (2) In carrying out this section, the department, after
5 determining the amount of tax due from a taxpayer, shall give
6 notice to the taxpayer of its intent to levy the tax. The notice
7 shall include a statement advising the taxpayer of a right to an
8 informal conference. If the taxpayer serves written notice upon
9 the department within 20 days after receipt of the notice to the
10 taxpayer and remits the uncontested portion of the liability, the
11 taxpayer may request an informal conference on the question of
12 liability for the assessment. Upon receipt of the written
13 notice, the department shall set a time and place for the confer-
14 ence and shall give the taxpayer reasonable notice not less than
15 20 days before the conference. The conference provided for by
16 this subsection shall not be subject to the administrative proce-
17 dures act of 1969, Act No. 306 of the Public Acts of 1969, as
18 amended, being sections 24.201 to 24.328 of the Michigan Compiled
19 Laws. The taxpayer may appear or be represented before the
20 department and present testimony and argument. After the confer-
21 ence, the commissioner shall render a decision and order in writ-
22 ing, setting forth the reasons and authority, and levy any tax,
23 interest, and penalty found to be due and payable. The assess-
24 ments shall be final and subject to appeal as provided in section
25 22. The final notice of assessment shall include a statement
26 advising the taxpayer of a right to appeal.

~~1 (3) If a protest to the notice of intent to levy the tax is
2 determined by the commissioner to be a frivolous protest or a
3 desire by the taxpayer to delay or impede the administration of
4 taxes imposed by this act, a penalty of \$25.00 or 25% of the
5 amount of tax under protest, whichever is greater, shall be added
6 to the tax.~~

7 Sec. 23. (1) If the department believes, based upon either
8 the examination of a tax return or an audit authorized by this
9 act, that a taxpayer has not satisfied a tax liability or that a
10 claim was excessive, the tax liability shall be determined by the
11 department, and the taxpayer shall be notified of that
12 determination.

13 (2) If the amount paid is less than the amount ~~which~~ THAT
14 should have been paid or an excessive claim has been made, the
15 deficiency, together with interest at the ~~current monthly~~ rate
16 of ~~+ percentage point above the adjusted prime rate per annum~~
17 3/4 OF 1% PER MONTH from the time the tax was due, and until
18 paid, shall become due and payable after notice and conference as
19 provided in this act. A deficiency in an estimated payment as
20 may be required by a tax statute administered under this act
21 shall be treated in the same manner as a tax due and shall be
22 subject to the same ~~current monthly~~ interest rate of ~~+ percen-~~
23 ~~tage point above the adjusted prime rate~~ 3/4 OF 1% PER MONTH
24 from the time the payment was due, until paid. ~~The term~~
25 ~~"adjusted prime rate charged by banks" means the average predomi-~~
26 ~~nant prime rate quoted by not less than 3 commercial banks to~~
27 ~~large businesses, as determined by the department of treasury.~~

1 ~~The adjusted prime rate is to be based on the average prime rate~~
2 ~~charged by not less than 3 commercial banks during the 6 month~~
3 ~~period ending on March 31 and the 6 month period ending on~~
4 ~~September 30. One percentage point shall be added to the~~
5 ~~adjusted prime rate, and the resulting sum shall be divided by 12~~
6 ~~to establish the current monthly interest rate. The resulting~~
7 ~~current monthly interest rate based on the 6 month period ending~~
8 ~~March 31 will become effective on the following July 1, and the~~
9 ~~resulting current monthly interest rate based on the 6 month~~
10 ~~period ending September 30 will become effective on January 1 of~~
11 ~~the following year.~~

12 (3) If any part of the deficiency or an excessive claim for
13 credit is due to negligence OR INTENTIONAL DISREGARD OF THE LAW
14 OR OF RULES PROMULGATED BY THE DEPARTMENT, but without intent to
15 defraud, a penalty of ~~-\$10.00 or~~ 10% of the total amount of the
16 deficiency in the tax, ~~whichever is greater,~~ plus interest as
17 provided in subsection (2), shall be added. Interest and penalty
18 ~~shall become~~ ARE due and payable after notice and conference as
19 provided in this act.

20 (4) ~~If any part of the deficiency or an excessive claim for~~
21 ~~credit is due to intentional disregard of the law or of the rules~~
22 ~~promulgated by the department, but without intent to defraud, a~~
23 ~~penalty of \$25.00 or 25% of the total amount of the deficiency in~~
24 ~~the tax, whichever is greater, plus interest as provided in sub-~~
25 ~~section (2), shall be added. Interest and penalty shall become~~
26 ~~due and payable after notice and conference as provided in this~~
27 ~~act.~~ (5) If any part of the deficiency or an excessive claim

1 for credit is due to fraudulent intent to evade a tax, or to
2 obtain a refund for a fraudulent claim, a penalty of 100% of the
3 deficiency, plus interest as provided in subsection (2), shall be
4 added. The whole amount of the unpaid tax, together with the
5 penalty, ~~shall become~~ ARE due and payable, after notice and
6 conference as provided in this act.

7 Sec. 24. (1) If a person fails or refuses to file a return
8 or pay a tax administered under this act within the time speci-
9 fied, the department, as soon as possible, shall assess the tax
10 against the person and notify the person of the amount of the
11 tax.

12 (2) In case of failure or refusal to file a return or pay a
13 tax within the time specified, a penalty of ~~\$10.00~~ \$5.00 or 5%
14 of the tax, whichever is greater, shall be added if the failure
15 is for not more than 1 month, with an additional 5% penalty for
16 each additional month or fraction of a month during which the
17 failure continues or the tax and penalty is not paid, to a maxi-
18 mum of ~~50%~~ 25%. In addition to the penalty, interest at the
19 rate provided in section 23(2) shall be added on the tax from the
20 time the tax was due, until paid.

21 (3) If a return is filed or remittance is paid after the
22 time specified and it is shown to the satisfaction of the depart-
23 ment that the failure was due to reasonable cause and not to
24 willful neglect, the penalty may be waived at the discretion of
25 the commissioner or an authorized representative of the
26 commissioner.

1 (4) For failure or refusal to file an information return or
2 other informational report required by a tax statute, within the
3 time specified, a penalty of ~~-\$10.00-~~ \$5.00 per day for each day
4 for each separate failure or refusal may be added. The total
5 penalty for each separate failure or refusal shall not exceed
6 ~~-\$400.00-~~ \$200.00.

7 ~~(5) For a taxpayer who has failed to file a return during~~
8 ~~any previous tax period for which amnesty is available under~~
9 ~~section 31 during the amnesty period, a penalty of 50% of any tax~~
10 ~~delinquency discovered after the amnesty period shall be added to~~
11 ~~the tax.~~