

# HOUSE BILL No. 5716

May 3, 1990, Introduced by Reps. Martin, Maynard, Law, Miller, London, Bandstra, Trim, Dolan, Crandall, Bartnik, Hoffman, Johnson, Walberg, Bender, Gilmer, Middaugh, Hillegonds, Gnodtke, Stacey, Van Singel, Power, Runco, Dolan, Trim, Munsell, Emmons, Kulchitsky, Fitzgerald, Hoekman, Ostling, Stabenow, Oxender, Krause, Bankes, Ouwinga, Profit, Jonker, Perry Bullard, Pitoniak, DeBeaussaert, Kosteva, Sikkema, Pridnia, Bryant, Alley, Stopczynski, Mathieu and Jaye and referred to the Committee on Taxation.

A bill to amend sections 21, 22, 29, and 31 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,"

sections 21, 22, and 29 as amended and section 31 as added by Act No. 58 of the Public Acts of 1986, being sections 205.21, 205.22, 205.29, and 205.31 of the Michigan Compiled Laws; and to add sections 1a and 6.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 21, 22, 29, and 31 of Act No. 122 of  
2 the Public Acts of 1941, sections 21, 22, and 29 as amended and  
3 section 31 as added by Act No. 58 of the Public Acts of 1986,  
4 being sections 205.21, 205.22, 205.29, and 205.31 of the Michigan  
5 Compiled Laws, are amended and sections 1a, 6, 24a, and 29a are  
6 added to read as follows:

7       SEC. 1A. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE  
8 "STATE REVENUE ADMINISTRATION AND TAXPAYER PROTECTIONS ACT".

9       SEC. 6. (1) WITH EACH LETTER OR NOTICE TO A PERSON CONCERN-  
10 ING THE COLLECTION OR ENFORCEMENT OF A TAX ADMINISTERED UNDER  
11 THIS ACT INCLUDING, BUT NOT LIMITED TO, AN ASSESSMENT NOTICE,  
12 NOTICE OF TAXES PAST DUE, NOTICE OF INTENT TO LEVY, LETTER OF  
13 INQUIRY, AND NOTICE OF PENALTY OR INTEREST, THE DEPARTMENT SHALL  
14 CITE THE STATUTE ON WHICH THE LETTER OR NOTICE IS BASED AND SHALL  
15 PROVIDE A NARRATIVE EXPLANATION OF THE LETTER OR NOTICE AND STAT-  
16 UTE IN SIMPLE, NONTECHNICAL TERMS.

17       (2) THE DEPARTMENT SHALL ACKNOWLEDGE A WRITTEN COMMUNICATION  
18 FROM A PERSON CONCERNING THE COLLECTION OR ENFORCEMENT OF A TAX  
19 ADMINISTERED UNDER THIS ACT BY SENDING A RECEIPT WITHIN 5 DAYS  
20 AFTER THE DEPARTMENT RECEIVES THE COMMUNICATION. THE RECEIPT  
21 SHALL INDICATE THE DEPARTMENTAL EMPLOYEE WHO RECEIVED THE  
22 PERSON'S WRITTEN COMMUNICATION ON BEHALF OF THE DEPARTMENT.

23       Sec. 21. (1) If a person fails or refuses to make a return  
24 as required, in whole or in part, or if the department has reason  
25 to believe that a return made does not supply sufficient informa-  
26 tion for an accurate determination of the amount of tax due, the  
27 department may obtain information on which to base an assessment

1 of the tax. ~~The department, by~~ BY its duly authorized agents,  
2 THE DEPARTMENT may examine the books, records, and papers and  
3 audit the accounts of a person or any other records pertaining to  
4 the tax. ~~As soon as possible after procuring information, the~~  
5 ~~department shall assess the tax determined to be due and shall~~  
6 ~~notify the taxpayer of the assessed amount and the specific rea-~~  
7 ~~sons for the assessment.~~

8 (2) In carrying out this section, the department SHALL  
9 COMPLY WITH THE FOLLOWING PROCEDURE:

10 (A) THE DEPARTMENT SHALL SEND TO THE PERSON A LETTER OF  
11 INQUIRY STATING, IN A COURTEOUS AND UNINTIMIDATING MANNER, THE  
12 DEPARTMENT'S OPINION THAT THE PERSON NEEDS TO FURNISH FURTHER  
13 INFORMATION OR OWES TAXES TO THE STATE, AND THE REASON FOR THAT  
14 OPINION. A LETTER OF INQUIRY SHALL ALSO EXPLAIN THE PROCEDURE BY  
15 WHICH THE PERSON MAY INITIATE COMMUNICATION WITH THE DEPARTMENT  
16 TO RESOLVE ANY DISPUTE AS PROVIDED IN SUBDIVISION (B). THIS SUB-  
17 DIVISION DOES NOT APPLY IF A PERSON FILES A RETURN SHOWING A TAX  
18 DUE AND FAILS TO PAY THAT TAX, OR OTHERWISE AFFIRMATIVELY ADMITS  
19 THAT A TAX IS DUE AND OWING.

20 (B) IF, WITHIN 45 DAYS AFTER RECEIVING A LETTER OF INQUIRY,  
21 THE PERSON SUBMITS A WRITTEN RESPONSE DISAGREEING WITH THE  
22 DEPARTMENT'S OPINION IN THE LETTER OF INQUIRY, THE DEPARTMENT  
23 SHALL ATTEMPT TO RESOLVE THE DISPUTE BY COMMUNICATING WITH THE  
24 PERSON BY TELEPHONE, THROUGH WRITTEN CORRESPONDENCE, OR IN  
25 PERSON, AS MUTUALLY AGREEABLE. THIS SUBDIVISION DOES NOT APPLY  
26 IF A PERSON FILES A RETURN SHOWING A TAX DUE AND FAILS TO PAY

1 THAT TAX, OR OTHERWISE AFFIRMATIVELY ADMITS THAT A TAX IS DUE AND  
2 OWING.

3 (C) IF THE DISPUTE IS NOT RESOLVED BY THE MEANS PRESCRIBED  
4 IN SUBDIVISION (B) WITHIN 45 DAYS AFTER THE DEPARTMENT RECEIVES  
5 THE PERSON'S WRITTEN DISAGREEMENT WITH THE DEPARTMENT'S LETTER OF  
6 INQUIRY, THE DEPARTMENT, after determining the amount of tax due  
7 from ~~a taxpayer~~ THE PERSON, shall give notice to the ~~taxpayer~~  
8 PERSON of its intent to levy the tax. The notice shall include a  
9 statement advising the ~~taxpayer~~ PERSON of a right to an infor-  
10 mal conference, THE REQUIREMENT OF A WRITTEN REQUEST FOR THE CON-  
11 FERENCE, AND THE 20-DAY TIME LIMIT FOR THAT REQUEST.

12 (D) If ~~the taxpayer~~ A PERSON serves written notice upon  
13 the department within 20 days after ~~receipt of~~ the PERSON  
14 RECEIVES A notice ~~to the taxpayer~~ OF INTENT TO LEVY and remits  
15 the uncontested portion of the liability, the ~~taxpayer may~~  
16 ~~request~~ PERSON IS ENTITLED TO an informal conference on the  
17 question of liability for the assessment.

18 (E) Upon receipt of ~~the~~ A PERSON'S written notice, the  
19 department shall set a MUTUALLY AGREED UPON OR REASONABLE time  
20 and place for the conference and shall give the ~~taxpayer~~ PERSON  
21 reasonable WRITTEN notice not less than 20 days before the  
22 conference. THE NOTICE SHALL SPECIFY THE SCOPE AND NATURE OF THE  
23 SUBJECT OF THE CONFERENCE. The conference provided for by this  
24 subsection ~~shall~~ IS not ~~be~~ subject to the administrative pro-  
25 cedures act of 1969, Act No. 306 of the Public Acts of 1969, as  
26 amended, being sections 24.201 to 24.328 of the Michigan Compiled  
27 Laws, BUT IS SUBJECT TO RULES PROMULGATED UNDER ACT NO. 306 OF

1 THE PUBLIC ACTS OF 1969 THAT GOVERN INFORMAL CONFERENCES. ~~The~~  
2 ~~taxpayer~~ A PERSON may appear or be represented before the  
3 department AT AN INFORMAL CONFERENCE, and MAY present testimony  
4 and argument. AT THE PARTY'S OWN EXPENSE AND WITH ADVANCE NOTICE  
5 TO THE OTHER PARTY, A PERSON OR THE DEPARTMENT, OR BOTH, MAY MAKE  
6 AN AUDIO RECORDING OF AN INFORMAL CONFERENCE.

7 (F) After the conference, the commissioner shall render a  
8 decision and order in writing, setting forth the reasons and  
9 authority, and SHALL levy ~~any~~ THE tax, interest, and penalty  
10 found to be due and payable. ~~The assessments shall be~~ THE  
11 DECISION AND ORDER ARE LIMITED TO THE SUBJECT OF THE CONFERENCE  
12 AS INCLUDED IN THE NOTICE UNDER SUBDIVISION (E).

13 (G) IF THE PERSON DOES NOT PROTEST THE NOTICE OF INTENT TO  
14 LEVY WITHIN THE TIME PROVIDED IN SUBDIVISION (D), THE DEPARTMENT  
15 MAY LEVY THE TAX AND THE INTEREST AND PENALTY ON THE TAX THAT THE  
16 DEPARTMENT BELIEVES ARE DUE AND PAYABLE. AN ASSESSMENT UNDER  
17 THIS SUBDIVISION OR SUBDIVISION (D) IS final and subject to  
18 appeal as provided in section 22. The final notice of assessment  
19 shall include a statement advising the ~~taxpayer~~ PERSON of a  
20 right to appeal.

21 (3) If a protest to the notice of intent to levy the tax is  
22 determined by the commissioner to be a frivolous protest or a  
23 desire by the ~~taxpayer~~ PERSON to delay or impede the adminis-  
24 tration of taxes imposed by this act, a penalty of \$25.00 or 25%  
25 of the amount of tax under protest, whichever is greater, shall  
26 be added to the tax.

1       Sec. 22. (1) A person aggrieved by an assessment, decision,  
 2 or order of the department may appeal the contested portion of an  
 3 assessment, decision, or order to the tax tribunal within ~~30~~ 45  
 4 days, or to the court of claims within 90 days after the assess-  
 5 ment, decision, or order. The uncontested portion of an assess-  
 6 ment, order, or decision ~~must~~ SHALL be paid as a prerequisite  
 7 to appeal. However, an action shall be commenced in the court of  
 8 claims within 6 months after payment of the tax or an adverse  
 9 determination of the ~~taxpayer's~~ PERSON'S claim for refund,  
 10 whichever is later, if the payment of the tax or adverse determi-  
 11 nation of the claim for refund occurred under THE SINGLE BUSINESS  
 12 TAX ACT, Act No. 228 of the Public Acts of 1975, being sections  
 13 208.1 to 208.145 of the Michigan Compiled Laws, and before ~~the~~  
 14 ~~effective date of section 27a. The~~ MAY 1, 1986.

15       (2) AN appeal UNDER THIS SECTION shall be perfected as pro-  
 16 vided under THE TAX TRIBUNAL ACT, Act No. 186 of the Public Acts  
 17 of 1973, as amended, being sections 205.701 to 205.779 of the  
 18 Michigan Compiled Laws, and rules established under that act for  
 19 the tax tribunal, or chapter 64 of THE REVISED JUDICATURE ACT OF  
 20 1961, Act No. 236 of the Public Acts of 1961, as amended, being  
 21 sections 600.6401 to 600.6475 of the Michigan Compiled Laws, and  
 22 rules adopted under that chapter for the court of claims. In an  
 23 appeal to the court of claims, the appellant shall first pay the  
 24 tax, including ~~any~~ applicable penalties and interest, under  
 25 protest and claim a refund as part of the appeal. ~~An~~

26       (3) THE PERSON OR DEPARTMENT MAY TAKE AN appeal by right  
 27 from a decision of the tax tribunal or the court of claims ~~may~~

1 ~~be taken by the taxpayer or the department~~ to the court of  
 2 appeals. The appeal shall be taken on the record made before the  
 3 tax tribunal or the court of claims. ~~Further~~ THE PERSON OR  
 4 DEPARTMENT MAY TAKE FURTHER appeal to the supreme court ~~may be~~  
 5 ~~taken by the taxpayer or the department~~ in accordance with the  
 6 court rules provided for appeals to the supreme court.

7 (4) ~~(2)~~ The assessment, decision, or order of the depart-  
 8 ment, if not appealed in accordance with this section, ~~shall be~~  
 9 IS final and ~~shall~~ IS not ~~be~~ reviewable in any court by man-  
 10 damus, appeal, or other method of direct or collateral attack.

11 (5) ~~(3)~~ An assessment ~~shall be~~ IS final, conclusive, and  
 12 not subject to further challenge after 90 days from the issuance  
 13 of the assessment, decision, or order of the department, and a  
 14 person ~~shall~~ IS not ~~be~~ entitled to a refund of any tax,  
 15 interest, or penalty paid pursuant to an assessment unless the  
 16 aggrieved person has appealed the assessment in the manner pro-  
 17 vided by this section.

18 Sec. 29. (1) Taxes administered under this act, together  
 19 with the interest and penalties on those taxes, ~~shall be~~ ARE a  
 20 lien in favor of the state against all property and rights of  
 21 property, both real and personal, tangible and intangible, owned  
 22 at the time the lien attaches, or afterwards acquired by any  
 23 person liable for the tax, to secure the payment of the tax. The  
 24 lien ~~shall attach~~ ATTACHES to the property from and after the  
 25 date that any report or return on which the tax is levied is  
 26 required to be filed with the department and ~~shall continue~~  
 27 CONTINUES for 7 years after the date of attachment. The lien may

1 be extended for another 7 years by refiling pursuant to  
2 subsection (2) if the refiling is made within 6 months prior to  
3 the expiration date of the original 7-year period.

4 (2) The lien imposed by this act ~~shall take~~ TAKES prece-  
5 dence over all other liens and encumbrances, except bona fide  
6 liens recorded before the date the lien under this act is  
7 recorded. However, bona fide liens recorded before the lien  
8 under this act is recorded ~~shall~~ take precedence only to the  
9 extent of disbursements made under a financing arrangement before  
10 the forty-sixth day after the date of the tax lien recording, or  
11 before the person making the disbursements had actual knowledge  
12 of a tax lien recording under this act, whichever is earlier. A  
13 lien shall be recorded and discharged in accordance with THE  
14 STATE TAX LIEN REGISTRATION ACT, Act No. 203 of the Public Acts  
15 of 1968, as amended, being sections 211.681 to 211.687 of the  
16 Michigan Compiled Laws, OR AS PROVIDED IN SECTION 3175 OF THE  
17 REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF  
18 1961, BEING SECTION 600.3175 OF THE MICHIGAN COMPILED LAWS.

19 (3) A purchaser or succeeding purchaser of property, from a  
20 ~~taxpayer~~ PERSON in other than the ordinary course of business,  
21 against which a lien has been properly recorded pursuant to sub-  
22 section (2) shall be personally liable for the unpaid taxes  
23 ~~which~~ THAT are due on the lien. The purchaser's liability  
24 ~~shall be~~ IS limited to the value of the property less any pro-  
25 ceeds ~~which~~ THAT were applied to balances due on secured inter-  
26 ests ~~which~~ THAT are superior to the lien recorded under  
27 subsection (2).



1       Sec. 31. ~~(1) For a period to be designated by the state~~  
2 ~~treasurer of not less than 30 days nor more than 60 days, and~~  
3 ~~ending before June 30, 1986~~ IF A PERSON DOES NOT SATISFY A TAX  
4 LIABILITY OR MAKES AN EXCESSIVE CLAIM FOR A REFUND AS A RESULT OF  
5 RELIANCE ON ERRONEOUS WRITTEN INFORMATION PROVIDED BY THE  
6 DEPARTMENT, the commissioner shall waive all INTEREST AND crimi-  
7 nal and civil penalties provided by law for ~~the failure or~~  
8 ~~refusal~~ FAILING OR REFUSING to file a return ~~or failure~~ UNDER  
9 A STATE TAX, FOR FAILING to pay ~~any~~ A STATE TAX, OR FOR MAKING  
10 AN EXCESSIVE CLAIM FOR A REFUND FOR A state tax administered by  
11 the revenue division of the department of treasury pursuant to  
12 this act if the ~~taxpayer~~ PERSON makes a written request for a  
13 waiver, files a return OR AN AMENDED RETURN, and makes full pay-  
14 ment of the tax. ~~and interest due for any prior tax year.~~

15       ~~(2) This section applies to the nonreporting and underre-~~  
16 ~~porting of tax liabilities or to the nonpayment of taxes previ-~~  
17 ~~ously determined to be due, but only to the extent of the penal-~~  
18 ~~ties attributable to the taxes which were previously due and~~  
19 ~~which are paid during the time period provided for in subsection~~  
20 ~~(1). This section shall not apply to any tax due by the taxpayer~~  
21 ~~that is under criminal investigation, or involved in a civil~~  
22 ~~action or criminal prosecution.~~

23       ~~(3) The commissioner shall administer the provisions of this~~  
24 ~~section.~~

25       ~~(4) This section shall not apply to taxes due after~~  
26 ~~September 30, 1985.~~

1       ~~(5) There is hereby appropriated from the revenues generated~~  
2 ~~by this act the sum of \$2,000,000.00 to the department of~~  
3 ~~treasury for administration. This appropriation is allotted for~~  
4 ~~expenditure on the effective date of this act. Any unencumbered~~  
5 ~~funds may be carried over into the 1986-87 fiscal year. Only~~  
6 ~~general purpose revenue generated by the program may be used to~~  
7 ~~finance this appropriation.~~