

HOUSE BILL No. 4199

January 30, 1997, Introduced by Reps. Baade, Anthony, DeHart, McBryde, Goschka, Martinez, Gire, Hammerstrom, Cherry, Prusi, Hanley and Galloway and referred to the Committee on Tax Policy.

A bill to amend 1941 PA 122, entitled

"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,"

by amending section 30a (MCL 205.30a), as amended by 1995 PA 116.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30a. (1) If a taxpayer claims a refund that the
2 department determines is valid ~~as provided in~~ UNDER
3 section 30(2), and the department identifies a liability of the
4 taxpayer described in subsection (2), the department shall first

1 apply the amount of the refund as provided in subsections (2) and
2 ~~(3)~~ (4), and the excess, if any, shall be refunded or credited
3 as provided in section 30.

4 (2) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (3), THE amount
5 of a refund described in subsection (1) shall be applied to the
6 following in the order of priority stated:

7 (a) Any other known tax liability of the taxpayer to this
8 state.

9 (b) Any other known liability of the taxpayer to this state,
10 including a liability to pay support if the right to receive the
11 support has been assigned to the state and the liability is the
12 basis of a request for tax refund offset from the office of child
13 support.

14 (c) Any of the following in the order of priority received,
15 unless otherwise provided by law:

16 (i) A support liability of the taxpayer that is the basis of
17 a request for tax refund offset from the office of child support,
18 other than as provided by subdivision (b).

19 (ii) A writ of garnishment or other valid court order issued
20 by a court of competent jurisdiction and directed to this state
21 or the state treasurer to satisfy a liability of the taxpayer.

22 (iii) A levy of the internal revenue service to satisfy a
23 liability of the taxpayer.

24 (iv) A liability to repay benefits obtained under the
25 Michigan employment security act, ~~Act No. 1 of the Public Acts~~
26 ~~of the Extra Session of 1936, being sections 421.1 to 421.75 of~~
27 ~~the Michigan Compiled Laws 1936 (EX SESS) PA 1, MCL 421.1 TO~~

1 421.75, to which the taxpayer was not entitled, upon a request
2 for tax refund offset from the Michigan employment security
3 commission.

4 (3) A REFUND AMOUNT THAT IS EQUAL TO EITHER OF THE FOLLOWING
5 CREDITS SHALL NOT BE APPLIED TO A WRIT OF GARNISHMENT UNDER SUB-
6 SECTION (2):

7 (A) THE PRESCRIPTION DRUG CREDIT ALLOWED UNDER SECTION 273
8 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.273.

9 (B) THE HOME HEATING CREDIT ALLOWED UNDER SECTION 527A OF
10 THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.527A.

11 (4) ~~-(3)-~~ If the claim for refund is reflected on a joint
12 tax return, the department shall allocate to each joint taxpayer
13 his or her share of the refund. The amount allocated to each
14 taxpayer shall be applied to his or her respective liabilities in
15 the order of priority stated in subsection (2).

16 (5) ~~-(4)-~~ If the department determines that all or a portion
17 of a refund claimed on a joint tax return is subject to applica-
18 tion to a liability of an obligated spouse, the department shall
19 notify the joint taxpayers by first-class mail sent to the
20 address shown on the joint return. The notice shall be accom-
21 panied by a nonobligated spouse allocation form. The notice
22 shall state all of the following:

23 (a) That all or a portion of the refund claimed by the joint
24 taxpayers is subject to interception to satisfy a liability or
25 liabilities of 1 or both spouses.

26 (b) The nature of the other liability or liabilities and the
27 name of the obligated spouse or spouses.

1 (c) That a nonobligated spouse may claim his or her share of
2 the refund by filing a nonobligated spouse allocation form with
3 the department of treasury not more than 30 days after the date
4 the notice was mailed.

5 (d) A statement of the penalties under subsection ~~-(7)-~~
6 (8).

7 (6) ~~-(5)-~~ A nonobligated spouse who wishes to claim his or
8 her share of a tax refund shall file with the department a nonob-
9 ligated spouse allocation form. The nonobligated spouse alloca-
10 tion form shall be in a form specified by the department and
11 shall require the spouses to state the amount of income or other
12 tax base and all adjustments to the income or other tax base,
13 including all subtractions, additions, deductions, credits, and
14 exemptions, stated on their joint income tax return or other
15 joint tax return that is the basis for the claimed refund, and an
16 allocation of those amounts between the obligated and nonobli-
17 gated spouse. In allocating these amounts, all of the following
18 apply:

19 (a) A federal deduction for 2-income married persons shall
20 be allocated to the spouse with the lower income who claims the
21 deduction.

22 (b) Individual income shall be allocated to the spouse who
23 earned the income. Joint income shall be allocated equally
24 between the spouses. The tax base appropriate to tax other than
25 income tax shall be similarly allocated.

26 (c) Each spouse shall be allocated the personal exemptions
27 he or she would be entitled to claim if separate federal returns

1 had been filed, except that dependency exemptions shall be
2 prorated according to the relative income of the spouses.

3 (d) Adjustments resulting from a business shall be allocated
4 to the spouse who claimed income from the business.

5 (e) A homestead property tax credit shall be allocated to
6 the spouse who owned the title or held the leasehold interest in
7 the property claimed as a homestead. A homestead property tax
8 credit for property jointly owned or leased shall be allocated
9 jointly between the spouses.

10 (f) Ownership of other assets relevant to the allocation
11 shall be disclosed upon request of the department.

12 (7) ~~-(6)-~~ A nonobligated spouse allocation form shall be
13 signed by both joint taxpayers. However, the form may be submit-
14 ted without the signature of the obligated spouse if his or her
15 signature cannot be obtained. The nonobligated spouse shall cer-
16 tify that he or she has made a good faith effort to obtain the
17 signature and shall state the reason that the signature was not
18 obtained.

19 (8) ~~-(7)-~~ A person who knowingly makes a false statement on
20 a nonobligated spouse allocation form shall be subject to a pen-
21 alty of \$25.00 or 25% of the excessive claim for his or her share
22 of the refund, whichever is greater, and other penalties as pro-
23 vided in this act.

24 (9) ~~-(8)-~~ A nonobligated spouse to whom the department has
25 sent a notice under subsection ~~-(4)-~~ (5), who fails to file a
26 nonobligated spouse allocation form within 30 days after the date
27 the notice was mailed, shall be barred from commencing any action

1 against this state or the state treasurer to recover an amount
2 withheld to satisfy a liability of the obligated spouse to which
3 a joint tax refund is applied under this section. The payment by
4 this state of any amount applied to a liability of a taxpayer
5 under this section shall release this state and the state trea-
6 surer from all liability to the obligated spouse, the nonobli-
7 gated spouse, and any other person having or claiming any inter-
8 est in the amount paid.

9 (10) ~~-(9)-~~ The department shall promulgate rules under the
10 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
11 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
12 ~~Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, as necessary to
13 implement this section. The rules shall include a procedure for
14 assuring that a taxpayer subject to application of a refund under
15 this section and section 30 has received or will receive notice
16 and an opportunity for a hearing with respect to the liability to
17 which the refund is to be applied.

18 (11) ~~-(10)-~~ As used in this section:

19 (a) "Nonobligated spouse" means a person who has filed a
20 joint income tax return or other joint state tax return and who
21 is not liable for an obligation of his or her spouse described in
22 subsection (2).

23 (b) "Obligated spouse" means a person who has filed a joint
24 income tax return or other joint state tax return and who is
25 liable for an obligation described in subsection (2) for which
26 his or her spouse is not liable.

1 (c) "Office of child support" means the agency created in
2 section 2 of the office of child support act, ~~Act No. 174 of the~~
3 ~~Public Acts of 1971, being section 400.232 of the Michigan~~
4 ~~Compiled Laws~~ 1971 PA 174, MCL 400.232.