

SENATE BILL No. 1446

(As amended by the Senate, November 12, 2002)

September 24, 2002, Introduced by Senator EMMONS and referred to the Committee on Finance.

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 regulate the importation, stamping, and disposition of certain tobacco products; 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 prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act,"

by amending the title and sections 1, 3, 4, 12, 19, 21, 24, 25, 26, 27a, 28, 30c, and 31 (MCL 205.1, 205.3, 205.4, 205.12, 205.19, 205.21, 205.24, 205.25, 205.26, 205.27a, 205.28, 205.30c, and 205.31), the title as amended by 1999 PA 182, sections 3, 12,

25, and 26 as amended by 1986 PA 58, section 4 as added and section 27a as amended by 1993 PA 14, section 19 as amended by 1996 PA 479, section 21 as amended by 1993 PA 13, sections 24, 30c, and 31 as amended by 2001 PA 168, and section 28 as amended by 2000 PA 308; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to establish ~~a~~ THE revenue ~~division~~ COLLECTION DUTIES 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 regulate the importation, stamping, and disposition of certain tobacco products; ~~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 prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; and to declare the effect of this act.

1 Sec. 1. (1) ~~A tax collection agency is created, to be~~
2 ~~known as the revenue division of the~~ THE department of treasury
3 ~~of the state, for the following purposes:~~ IS THE AGENCY OF THIS
4 STATE RESPONSIBLE FOR THE COLLECTION OF TAXES AND IS RESPONSIBLE
5 FOR ALL OF THE FOLLOWING:

6 (a) Coordinated collection of ~~such~~ state taxes, assess-
7 ments, licenses, fees, and other ~~moneys~~ MONEY as may be desig-
8 nated by law. ~~, either herein or hereafter.~~

9 (b) Specialized service for tax enforcement, through estab-
10 lishment and maintenance of uniformity in definition, regulation,
11 return, and payment.

12 (c) Avoidance of duplication in state facilities for tax
13 collections that involve seasonal or occasional increases of
14 staff, duplication of audits, and wasteful travel expenses.

15 (d) Safeguarding tax and other collections wherever received
16 until duly deposited in the state treasury.

17 (e) Providing an advisory service on fiscal status,
18 processes, and needs of state government, including periodic
19 reports on payments, receipts, and debts.

20 (f) Development of a state revenue enforcement service by
21 means of a staff that is permanent, qualified by training and
22 experience, protected by merit system procedure, and so organized
23 as to serve the public with efficiency, economy, consistency, and
24 equity.

25 (2) Any reference to the department of revenue in this act
26 or any other act shall mean the ~~revenue division of the~~
27 ~~department of treasury~~ STATE TREASURER. ANY REFERENCE TO THE

1 STATE COMMISSIONER OF REVENUE IN THIS ACT OR ANY OTHER ACT SHALL
2 MEAN THE STATE TREASURER.

3 (3) AS USED IN THIS ACT, "DEPARTMENT" MEANS THE DEPARTMENT
4 OF TREASURY.

5 Sec. 3. The ~~commissioner~~ DEPARTMENT shall have all the
6 powers and perform the duties formerly vested in any department,
7 board, commission, or other agency, in connection with taxes due
8 to or claimed by the state and in connection with unpaid accounts
9 or amounts due to the state or any of its departments, institu-
10 tions, or agencies which may be made payable to or collectible by
11 the department created by this act, and the power and authority
12 incidental to the performance of the following acts, duties, and
13 services:

14 (a) The ~~commissioner~~ STATE TREASURER or any of the duly
15 appointed agents of the ~~commissioner~~ STATE TREASURER may
16 examine the books, records, and papers touching the matter at
17 issue of any person or taxpayer subject to any tax, unpaid
18 account, or amount the collection of which is charged to the
19 department. The ~~commissioner~~ STATE TREASURER or any of the
20 duly appointed agents of the ~~commissioner~~ STATE TREASURER may
21 issue a subpoena requiring a person to appear and be examined
22 with reference to a matter within the scope of the inquiry or
23 investigation being conducted by the department and to produce
24 any books, records, or papers. The ~~commissioner~~ STATE
25 TREASURER or any of the duly appointed agents, referees, or exam-
26 iners of the ~~commissioner~~, STATE TREASURER may administer an
27 oath to a witness in any matter before the department. The

1 department may invoke the aid of the circuit court of this state
2 in requiring the attendance and testimony of witnesses and the
3 producing of books, papers, and documents. The circuit court of
4 the state within the jurisdiction of which an inquiry is carried
5 on, in case of contumacy or refusal to obey a subpoena, may issue
6 an order requiring the person to appear before the department and
7 produce books and papers if so ordered and any evidence touching
8 the matter in question, and failure to obey the order of the
9 court may be punished by the court as a contempt. A person shall
10 not be excused from testifying or from producing any books,
11 papers, records, or memoranda in any investigation, or upon any
12 hearing when ordered to do so by the ~~commissioner~~ STATE
13 TREASURER, upon the ground that the testimony or evidence, docu-
14 mentary or otherwise, may tend to incriminate or subject him or
15 her to a criminal penalty, however, a person shall not be prose-
16 cuted or subjected to any criminal penalty for or on account of
17 any transaction made or thing concerning which he or she may tes-
18 tify or produce evidence, documentary or otherwise, before the
19 board or its agent. A person so testifying shall not be exempt
20 from prosecution and punishment for perjury committed while
21 testifying.

22 (b) After reasonable notice and public hearing to promulgate
23 rules consistent with this act in accordance with ~~Act No. 306 of~~
24 ~~the Public Acts of 1969, as amended, being sections 24.201 to~~
25 ~~24.328 of the Michigan Compiled Laws~~ THE ADMINISTRATIVE PROCE-
26 DURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, as may be
27 necessary to the enforcement of the provisions of tax and other

1 revenue measures which are administered by the ~~commissioner~~
2 DEPARTMENT.

3 (c) Consult with the governor and the legislature upon the
4 subject of taxation, revenue, and the administration of the laws
5 in relation to taxation and revenue, and the progress of the work
6 of the department, including the furnishing of reports, informa-
7 tion, and other assistance as the governor may require.

8 (d) Investigate and study all matters of taxation and reve-
9 nue as the basis of recommending to the governor and the legisla-
10 ture those changes and alterations in the tax laws of the state
11 as in the ~~commissioner's~~ STATE TREASURER'S judgment may bring
12 about a more adequate and just system of state and local
13 taxation.

14 (e) Formulate a standard procedure whereby the departments,
15 commissions, boards, institutions, and the agencies of ~~the~~ THIS
16 state which collect taxes, fees, or accounts for ~~the~~ THIS state
17 shall report all sums of money due and uncollected and those
18 uncollected items as may be prescribed by law and by the
19 ~~commissioner~~ STATE TREASURER. The procedure prescribed in this
20 subdivision shall include a standard practice for receiving,
21 receipting, safeguarding, and periodically reporting all state
22 revenue receipts, whether current, delinquent, penalty, interest,
23 or otherwise, and the amounts, kinds, and terms of items either
24 collected, compromised, or still outstanding, to be summarized,
25 studied, and reported upon as the ~~commissioner~~ STATE TREASURER
26 considers advisable.

1 (f) The department may periodically issue bulletins that
2 index and explain current department interpretations of current
3 state tax laws. The department may charge a reasonable fee for
4 subscriptions to this service not to exceed the cost of
5 printing. The money received from the sale of such subscription
6 shall revert to the department and be placed in the taxation
7 manual revolving fund.

8 Sec. 4. (1) Not later than 1 year after the effective date
9 of this section, the department of treasury shall submit rules
10 for a public hearing pursuant to the administrative procedures
11 act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sec-~~
12 ~~tions 24.201 to 24.328 of the Michigan Compiled Laws 1969~~
13 PA 306, MCL 24.201 TO 24.328, that provide for all of the
14 following:

15 (a) Standards to be followed by ~~revenue division~~
16 DEPARTMENT officers and employees for the fair and courteous
17 treatment of the public, and a system for monitoring compliance
18 with those standards.

19 (b) The procedures governing an informal conference held
20 under section 21. These procedures shall include at least all of
21 the following:

22 (i) A method by which the department attempts to schedule
23 the informal conference at a mutually convenient time and place.

24 (ii) A requirement that the department include in the notice
25 for the informal conference the scope and nature of the subject
26 of the informal conference.

1 (iii) Authorization for the taxpayer at whose request the
2 informal conference is being held to make a sound recording of
3 the informal conference with prior notice to the department and
4 for the department to do the same with prior notice to the
5 taxpayer.

6 (2) Not later than 1 year after the effective date of this
7 section, the department shall develop guidelines to govern
8 departmental employee responses to inquiries from the public and
9 standards for tax audit activities. The guidelines shall explic-
10 itly exclude the use of a collection goal or quota for evaluating
11 an employee. The department shall assemble the guidelines
12 required by this subsection into an employee handbook. However,
13 the handbook shall not disclose information or parameters
14 excluded from disclosure under section 28(1)(f). The department
15 shall distribute the handbook to all departmental employees
16 involved in the collection or auditing of taxes and shall make
17 the handbook available to the public.

18 (3) ~~Not later than 1 year after the effective date of this~~
19 ~~section, the~~ THE department shall publish a handbook for taxpay-
20 ers and tax preparers. The handbook shall be made available at a
21 reasonable cost, not to exceed the actual cost of publication,
22 and shall contain all of the following:

23 (a) The audit and collection procedures used by the
24 department.

25 (b) The procedures governing departmental communications
26 with taxpayers in the audit and collection process.

1 Sec. 12. ~~The commissioner shall select an official seal of~~
2 ~~the department and file a facsimile thereof in the office of the~~
3 ~~secretary of state.~~ All orders, certificates, JEOPARDY
4 ASSESSMENTS, and subpoenas made or issued by the department shall
5 be signed by the ~~commissioner~~ STATE TREASURER or ~~a deputy rev-~~
6 ~~enue commissioner~~ THE STATE TREASURER'S DESIGNEE. ~~The commis-~~
7 ~~sioner may authorize designated representatives to sign only doc-~~
8 ~~uments relating to jeopardy assessments issued under section 26~~
9 ~~of this act. The seal of the department shall be affixed~~
10 ~~thereto.~~

11 Sec. 19. (1) All remittances of taxes administered by this
12 act shall be made to the department payable to the state of
13 Michigan by bank draft, check, cashier's check, certified check,
14 money order, cash, or electronic funds transfer. The money
15 received shall be credited as provided by law. A remittance
16 other than cash or electronic funds transfer shall not be a final
17 discharge of liability for the tax assessed and levied until the
18 instrument remitted has been honored.

19 (2) For reporting periods beginning after August 31, 1991, a
20 taxpayer other than a city or a county who paid in the immedi-
21 ately preceding calendar year an average of \$40,000.00 or more
22 per month in income tax withholding pursuant to the income tax
23 act of 1967, ~~Act No. 281 of the Public Acts of 1967, being sec-~~
24 ~~tions 206.1 to 206.532 of the Michigan Compiled Laws 1967~~
25 PA 281, MCL 206.1 TO 206.532, shall deposit Michigan income tax
26 withholding either in the same manner and according to the same
27 schedule as deposits of federal income tax withholding or in

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1 another manner that has been approved by the ~~commissioner~~

2 DEPARTMENT.

3 (3) For failure to remit a tax administered by this act with
4 a negotiable remittance, a penalty of ~~25% of the tax due~~ \$50.00 may be
5 added in addition to any other penalties imposed by this act.

6 (4) The ~~commissioner~~ DEPARTMENT may require that all money
7 collected by the taxpayer for taxes administered by this act that
8 has not been paid to the department of treasury is public money
9 and the property of this state, and shall be held in trust in a
10 separate account and fund for the sole use and benefit of this
11 state until paid over to the department of treasury.

12 (5) For tax years after the 1995 tax year for which taxes
13 are collected under an agreement entered into pursuant to section
14 9 of the city income tax act, ~~Act No. 284 of the Public Acts of~~
15 ~~1964, being section 141.509 of the Michigan Compiled Laws~~ 1964
16 PA 284, MCL 141.509, if a taxpayer pays, when filing his or her
17 annual return, an amount less than the sum of the declared tax
18 liability under ~~Act No. 284 of the Public Acts of 1964, being~~
19 ~~sections 141.501 to 141.787 of the Michigan Compiled Laws~~ THE
20 CITY INCOME TAX ACT, 1964 PA 284, MCL 141.501 TO 141.787, and the
21 declared tax liability under the income tax act of 1967, ~~Act~~
22 ~~No. 281 of the Public Acts of 1967, being sections 206.1 to~~
23 ~~206.532 of the Michigan Compiled Laws~~ 1967 PA 281, MCL 206.1 TO
24 206.532, and if there is no indication of the allocation of pay-
25 ment between the tax liabilities against which the payment should
26 be applied, the amount paid shall first be applied against the
27 taxpayer's tax liability under ~~Act No. 284 of the Public Acts of~~

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1 ~~1964~~ THE CITY INCOME TAX ACT, 1964 PA 284, MCL 141.501 TO
2 141.787, and any remaining amount of the payment shall be applied
3 to the taxpayer's tax liability under ~~Act No. 281 of the Public~~
4 ~~Acts of 1967~~ THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1
5 TO 206.532. The taxpayer's designation of a payee on a payment
6 is not a dispositive determination of the allocation of that pay-
7 ment under this subsection.

8 Sec. 21. (1) If a taxpayer fails or refuses to make a
9 return or payment as required, in whole or in part, or if the
10 department has reason to believe that a return made or payment
11 does not supply sufficient information for an accurate determina-
12 tion of the amount of tax due, the department may obtain informa-
13 tion on which to base an assessment of the tax. By its duly
14 authorized agents, the department may examine the books, records,
15 and papers and audit the accounts of a person or any other
16 records pertaining to the tax.

17 (2) In carrying out this section, the department and the
18 taxpayer shall comply with the following procedure:

19 (a) The department shall send to the taxpayer a letter of
20 inquiry stating, in a courteous and unthreatening manner, the
21 department's opinion that the taxpayer needs to furnish further
22 information or owes taxes to the state, and the reason for that
23 opinion. A letter of inquiry shall also explain the procedure by
24 which the person may initiate communication with the department
25 to resolve any dispute. This subdivision does not apply in any
26 of the following circumstances:

1 (i) The taxpayer files a return showing a tax due and fails
2 to pay that tax.

3 (ii) The deficiency resulted from an audit of the taxpayer's
4 books and records by this state.

5 (iii) The taxpayer otherwise affirmatively admits that a tax
6 is due and owing.

7 (b) If the dispute is not resolved within 30 days after the
8 department sends the taxpayer a letter of inquiry or if a letter
9 of inquiry is not required pursuant to subdivision (a), the
10 department, after determining the amount of tax due from a tax-
11 payer, shall give notice to the taxpayer of its intent to assess
12 the tax. The notice shall include the amount of the tax the
13 department believes the taxpayer owes, the reason for that defi-
14 ciency, and a statement advising the taxpayer of a right to an
15 informal conference, the requirement of a written request by the
16 taxpayer for the informal conference that includes the taxpayer's
17 statement of the contested amounts and an explanation of the dis-
18 pute, and the 30-day time limit for that request.

19 (c) If the taxpayer serves written notice upon the depart-
20 ment within 30 days after the taxpayer receives a notice of
21 intent to assess, remits the uncontested portion of the liabili-
22 ty, and provides a statement of the contested amounts and an
23 explanation of the dispute, the taxpayer is entitled to an infor-
24 mal conference on the question of liability for the assessment.

25 (d) Upon receipt of a taxpayer's written notice, the depart-
26 ment shall set a mutually agreed upon or reasonable time and
27 place for the informal conference and shall give the taxpayer

1 reasonable written notice not less than 20 days before the
2 informal conference. The notice shall specify the intent to
3 assess, type of tax, and tax year that is the subject of the
4 informal conference. The informal conference provided for by
5 this subdivision is not subject to the administrative procedures
6 act of 1969, ~~Act No. 306 of the Public Acts of 1969, as amended,~~
7 ~~being sections 24.201 to 24.328 of the Michigan Compiled Laws~~
8 1969 PA 306, MCL 24.201 TO 24.328, but is subject to the rules
9 governing informal conferences as promulgated by the department
10 in accordance with ~~Act No. 306 of the Public Acts of 1969~~ THE
11 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
12 24.328. The taxpayer may appear or be represented by any person
13 before the department at an informal conference, and may present
14 testimony and argument. At the party's own expense and with
15 advance notice to the other party, a taxpayer or the department,
16 or both, may make an audio recording of an informal conference.

17 (e) After the informal conference, the ~~commissioner~~
18 DEPARTMENT shall render a decision and order in writing, setting
19 forth the reasons and authority, and shall assess the tax, inter-
20 est, and penalty found to be due and payable. The decision and
21 order are limited to the subject of the informal conference as
22 included in the notice under subdivision (d).

23 (f) If the taxpayer does not protest the notice of intent to
24 assess within the time provided in subdivision (c), the depart-
25 ment may assess the tax and the interest and penalty on the tax
26 that the department believes are due and payable. An assessment
27 under this subdivision or subdivision (e) is final and subject to

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1 appeal as provided in section 22. The final notice of assessment
2 shall include a statement advising the person of a right to
3 appeal.

4 (3) If a protest to the notice of intent to assess the tax
5 is determined by the ~~commissioner~~ DEPARTMENT to be a frivolous
6 protest or a desire by the taxpayer to delay or impede the admin-
7 istration of taxes administered under this act, a penalty of
8 \$25.00 or 25% of the amount of tax under protest, whichever is
9 greater, shall be added to the tax.

10 Sec. 24. (1) If a taxpayer fails or refuses to file a
11 return or pay a tax administered under this act within the time
12 specified, the department, as soon as possible, shall assess the
13 tax against the taxpayer and notify the taxpayer of the amount of
14 the tax. A liability for a tax administered under this act is
15 subject to the interest and penalties prescribed in
16 subsections (2) to (5).

17 (2) Except as provided in subsections (3) and (6), if a tax-
18 payer fails or refuses to file a return or pay a tax within the
19 time specified, a penalty of ~~\$10.00 or~~ 5% of the tax, ~~whichever~~
20 ~~is greater,~~ shall be added if the failure is for not more than ~~1~~
21 ~~month~~ 2 MONTHS, with an additional 5% penalty for each additional month or
22 fraction of a month during which the failure continues or the tax
23 and penalty is not paid, to a maximum of ~~50%~~ 25%. In addition to the
24 penalty, interest at the rate provided in section 23 for defi-
25 ciencies in tax payments shall be added on the tax from the time
26 the tax was due, until paid. After June 30, 1994, the penalty
27 prescribed by this subsection shall not be imposed until the

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1 department submits for public hearing pursuant to the
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
3 24.328, a rule defining what constitutes reasonable cause for
4 waiver of the penalty under subsection (4), which definition
5 shall include illustrative examples.

6 (3) If a person is required to remit tax due pursuant to
7 section 19(2) and fails or refuses to pay the tax within the time
8 specified, a penalty of 0.167% of the tax shall be added for each
9 day during which the failure continues or the tax and penalty are
10 not paid, to a maximum of ~~50%~~ 25% of the tax.

11 (4) If a return is filed or remittance is paid after the
12 time specified and it is shown to the satisfaction of the depart-
13 ment that the failure was due to reasonable cause and not to
14 willful neglect, the ~~commissioner~~ STATE TREASURER or an autho-
15 rized representative of the ~~commissioner~~ STATE TREASURER shall
16 waive the penalty prescribed by subsection (2).

17 (5) For failure or refusal to file an information return or
18 other informational report required by a tax statute, within the
19 time specified, a penalty of \$10.00 per day for each day for each
20 separate failure or refusal may be added. The total penalty for
21 each separate failure or refusal shall not exceed \$400.00.

22 (6) If a taxpayer fails to pay an estimated tax payment as
23 may be required by the income tax act of 1967, 1967 PA 281,
24 MCL 206.1 to 206.532, a penalty shall not be imposed if the tax-
25 payer was not required to make estimated tax payments in the
26 taxpayer's immediately preceding tax year.

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1 ~~(7) In addition to any other interest or penalty prescribed~~
2 ~~under this section, a taxpayer who has failed to file a return or~~
3 ~~pay a tax that was due before June 1, 2001, during a period for~~
4 ~~which amnesty is available under section 31(2), is liable for an~~
5 ~~additional penalty equal to 25% of the amount of tax due.~~

6 Sec. 25. (1) The ~~commissioner~~ STATE TREASURER, or an
7 authorized representative of the ~~commissioner~~ STATE TREASURER,
8 may cause a demand to be made on a taxpayer for the payment of a
9 tax, unpaid account, or amount due the state or any of its
10 departments, institutions, or agencies, subject to administration
11 under this act. If the liability remains unpaid for 10 days
12 after the demand and proceedings are not taken to review the
13 liability, the ~~commissioner~~ STATE TREASURER or an authorized
14 representative of the ~~commissioner~~ STATE TREASURER may issue a
15 warrant under the official seal of that office. Except as pro-
16 vided in subsection (5), the ~~commissioner~~ STATE TREASURER or an
17 authorized representative of the ~~commissioner~~ STATE TREASURER,
18 through any state officer authorized to serve process or through
19 his or her authorized employees, may levy on all property and
20 rights to property, real and personal, tangible and intangible,
21 belonging to the taxpayer or on which a lien is provided by law
22 for the amount of the deficiency, and sell the real and personal
23 property of the taxpayer found within the state for the payment
24 of the amount due, the cost of executing the warrant, and the
25 additional penalties and interest. Except as provided in subsec-
26 tion (6), the officer or agent serving the warrant shall proceed
27 upon the warrant in all respects and in the same manner as

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1 prescribed by law in respect to executions issued against
2 property upon judgments by a court of record. The state, through
3 the ~~commissioner~~ STATE TREASURER or an authorized representa-
4 tive of the ~~commissioner~~ STATE TREASURER, may bid for and pur-
5 chase any property sold pursuant to this section.

6 (2) A person who refuses or fails to surrender any property
7 or rights to property subject to levy, upon demand by the
8 ~~commissioner~~ STATE TREASURER or an authorized representative of
9 the ~~commissioner~~ STATE TREASURER, is personally liable to the
10 state in a sum equal to the value of the property or rights not
11 surrendered, but not exceeding the amount due for which the levy
12 was made, together with costs and interest on the sum at the rate
13 provided in section 23(2) from the date of the levy. Any amount,
14 other than costs, recovered under this subsection shall be cred-
15 ited against the liability for the collection of which the levy
16 was made.

17 (3) In addition to the personal liability imposed by subsec-
18 tion (2), if a person required to surrender property or rights to
19 property fails or refuses to surrender the property or rights to
20 property without reasonable cause, the person shall be liable for
21 a penalty equal to 50% of the amount recoverable under subsection
22 (2), none of which penalty shall be credited against the liabil-
23 ity for the collection of which the levy was made.

24 (4) A person in possession of, or obligated with respect to,
25 property or property rights subject to levy and upon which a levy
26 has been made who, upon demand of the ~~commissioner~~ STATE
27 TREASURER or an authorized representative of the ~~commissioner~~

1 STATE TREASURER, surrenders the property or rights to property or
2 discharges the obligation to the ~~commissioner~~ STATE TREASURER
3 or an authorized representative of the ~~commissioner~~ STATE
4 TREASURER or who pays a liability under subsection (1) shall have
5 his or her obligation to a person delinquent in payment of a tax
6 or other account reduced in an amount equal to the property or
7 rights to property surrendered or amounts paid to the state.

8 (5) There shall be exempt from levy under this section:

9 (a) For an unpaid tax, the type of property and the amount
10 of that property as provided in section 6334 of the internal rev-
11 enue code OF 1986.

12 (b) For an unpaid account, or amount due the state or any of
13 its departments other than an unpaid tax, disposable earnings to
14 the extent provided in section 303 OF TITLE III of the consumer
15 credit protection act, 82 STAT. 163, 15 U.S.C. 1673.

16 (c) The effect of a levy on salary or wages shall be contin-
17 uous from the date the levy is first made until the liability out
18 of which the levy arose is satisfied.

19 (6) A warrant-notice of levy may be served by certified
20 mail, return receipt requested, on any person in possession of,
21 or obligated with respect to, property and rights to property,
22 real and personal, tangible and intangible, belonging to the tax-
23 payer or on which a lien is provided by law. The date of deliv-
24 ery on the receipt shall be the date the levy is made. A person
25 may, upon written notice to the ~~commissioner~~ STATE TREASURER,
26 have all notices of levy by mail sent to 1 designated office.

1 Sec. 26. If the ~~commissioner~~ STATE TREASURER or the
2 ~~commissioner's~~ STATE TREASURER'S designated representative
3 finds that a person liable for a tax administered under this act
4 intends quickly to depart from the state or to remove property
5 from this state, to conceal the person or the person's property
6 in this state, or to do any other act tending to render wholly or
7 partly ineffectual proceedings to collect the tax unless proceed-
8 ings are brought without delay, the ~~commissioner~~ STATE
9 TREASURER or the ~~commissioner's~~ STATE TREASURER'S designated
10 representative shall give notice of the findings to the person,
11 together with a demand for an immediate return and immediate pay-
12 ment of the tax. A warrant or warrant-notice of levy may issue
13 immediately upon issuance of a jeopardy assessment. ~~Thereupon~~
14 IN THAT INSTANCE, the tax shall become immediately due and
15 payable. If the person is not in default in making a return or
16 paying a tax prescribed by this act, and furnishes evidence sat-
17 isfactory to the ~~commissioner~~ STATE TREASURER or the
18 ~~commissioner's~~ STATE TREASURER'S designated representative
19 under rules promulgated by the department that the return will be
20 filed and the tax to which the ~~commissioner's~~ STATE TREASURER'S
21 or the ~~commissioner's~~ STATE TREASURER'S designated
22 representative's finding relates will be paid, then the tax shall
23 not be payable before the time otherwise fixed for payment.

24 Sec. 27a. (1) If a person liable for a tax administered
25 under this act sells out his or her business or its stock of
26 goods or quits the business, the person shall make a final return
27 within 15 days after the date of selling or quitting the

1 business. The purchaser or succeeding purchasers, if any, who
2 purchase a going or closed business or its stock of goods shall
3 escrow sufficient money to cover the amount of taxes, interest,
4 and penalties as may be due and unpaid until the former owner
5 produces a receipt from the ~~commissioner~~ STATE TREASURER or the
6 ~~commissioner's~~ STATE TREASURER'S designated representative
7 showing that the taxes due are paid, or a certificate stating
8 that taxes are not due. Upon the owner's written waiver of con-
9 fidentiality, the ~~commissioner~~ DEPARTMENT may release to a pur-
10 chaser a ~~business~~ BUSINESS'S known tax liability for the pur-
11 poses of establishing an escrow account for the payment of
12 taxes. If the purchaser or succeeding purchasers of a business
13 or its stock of goods fail to comply with the escrow requirements
14 of this subsection, the purchaser is personally liable for the
15 payment of the taxes, interest, and penalties accrued and unpaid
16 by the business of the former owner. The purchaser's or succeed-
17 ing purchaser's personal liability is limited to the fair market
18 value of the business less the amount of any proceeds that are
19 applied to balances due on secured interests that are superior to
20 the lien provided for in section 29(1).

21 (2) A deficiency, interest, or penalty shall not be assessed
22 after the expiration of 4 years after the date set for the filing
23 of the required return or after the date the return was filed,
24 whichever is later. The taxpayer shall not claim a refund of any
25 amount paid to the department after the expiration of 4 years
26 after the date set for the filing of the original return. A
27 person who has failed to file a return is liable for all taxes

1 due for the entire period for which the person would be subject
2 to the taxes. If a person subject to tax fraudulently conceals
3 any liability for the tax or a part of the tax, or fails to
4 notify the department of any alteration in or modification of
5 federal tax liability, the department, within 2 years after dis-
6 covery of the fraud or the failure to notify, shall assess the
7 tax with penalties and interest as provided by this act, computed
8 from the date on which the tax liability originally accrued. The
9 tax, penalties, and interest are due and payable after notice and
10 hearing as provided by this act.

11 (3) The running of the statute of limitations is suspended
12 for the following:

13 (a) The period pending a final determination of tax, includ-
14 ing audit, conference, hearing, and litigation of liability for
15 federal income tax or a tax administered by the department and
16 for 1 year after that period.

17 (b) The period for which the taxpayer and the ~~commissioner~~
18 STATE TREASURER have consented to in writing that the period be
19 extended.

20 (4) The running of the statute of limitations is suspended
21 only as to those items that were the subject of the audit, con-
22 ference, hearing, or litigation for federal income tax or a tax
23 administered by the department.

24 (5) If a corporation liable for taxes administered under
25 this act fails for any reason to file the required returns or to
26 pay the tax due, any of its officers having control or
27 supervision of, or charged with the responsibility for, making

1 the returns or payments is personally liable for the failure.
2 The signature of any corporate officers on returns or negotiable
3 instruments submitted in payment of taxes is prima facie evidence
4 of their responsibility for making the returns and payments. The
5 dissolution of a corporation does not discharge an officer's
6 liability for a prior failure of the corporation to make a return
7 or remit the tax due. The sum due for a liability may be
8 assessed and collected under the related sections of this act.

9 (6) Notwithstanding the provisions of subsection (2), a
10 claim for refund based upon the validity of a tax law based on
11 the laws or constitution of the United States or the state con-
12 stitution of 1963 shall not be paid unless the claim is filed
13 within 90 days after the date set for filing a return.

14 (7) Subsection (6) does not apply to a claim for the refund
15 of a tax paid for the 1984 tax year or a tax year after the 1984
16 tax year on income received as retirement or pension benefits
17 from a public retirement system of the United States government
18 if the claimant waives any claim for the refund of such a tax
19 paid for a tax year before 1984. Claims for refunds to which
20 this subsection applies shall be paid in accordance with the fol-
21 lowing schedule:

1	Refunds for	Payable on
2	<u>tax year:</u>	<u>or after:</u>
3		
4	1988 and 1987	July 1, 1990
5	1986	July 1, 1991
6	1985	July 1, 1992
7	1984	July 1, 1993

8 Sec. 28. (1) The following conditions apply to all taxes
9 administered under this act unless otherwise provided for in the
10 specific tax statute:

11 (a) Notice, if required, shall be given either by personal
12 service or by certified mail addressed to the last known address
13 of the taxpayer. Service upon the ~~commissioner~~ DEPARTMENT may
14 be made in the same manner.

15 (b) An injunction shall not issue to stay proceedings for
16 the assessment and collection of a tax.

17 (c) In addition to the mode of collection provided in this
18 act, the department may institute an action at law in any county
19 in which the taxpayer resides or transacts business.

20 (d) The ~~commissioner~~ STATE TREASURER may request in writ-
21 ing information or records in the possession of any other depart-
22 ment, institution, or agency of state government for the per-
23 formance of duties under this act. Departments, institutions, or
24 agencies of state government shall furnish the information and
25 records upon receipt of the ~~commissioner's~~ STATE TREASURER'S
26 request. Upon request of the ~~commissioner~~ STATE TREASURER, any
27 department, institution, or agency of state government shall hold

1 a hearing under the administrative procedures act of 1969, 1969
2 PA 306, MCL 24.201 to 24.328, to consider withholding a license
3 or permit of a person for nonpayment of taxes or accounts col-
4 lected under this act.

5 (e) Except as otherwise provided in section 30c, the
6 ~~commissioner~~ STATE TREASURER or an employee of the department
7 shall not compromise or reduce in any manner the taxes due to or
8 claimed by this state or unpaid accounts or amounts due to any
9 department, institution, or agency of state government. This
10 subdivision does not prevent a compromise of interest or penal-
11 ties, or both.

12 (f) Except as otherwise provided in this subdivision, an
13 employee, authorized representative, or former employee or autho-
14 rized representative of the department or anyone connected with
15 the department shall not divulge any facts or information
16 obtained in connection with the administration of a tax or infor-
17 mation or parameters that would enable a person to ascertain the
18 audit selection or processing criteria of the department for a
19 tax administered by the department. An employee or authorized
20 representative shall not willfully inspect any return or informa-
21 tion contained in a return unless it is appropriate for the
22 proper administration of a tax law administered under this act.
23 A person may disclose information described in this subdivision
24 if the disclosure is required for the proper administration of a
25 tax law administered under this act, pursuant to a judicial order
26 sought by an agency charged with the duty of enforcing or
27 investigating support obligations pursuant to an order of a court

1 in a domestic relations matter as that term is defined in section
2 2 of the friend of the court act, 1982 PA 294, 552.502, or pursu-
3 ant to a judicial order sought by an agency of the federal,
4 state, or local government charged with the responsibility for
5 the administration or enforcement of criminal law for purposes of
6 investigating or prosecuting criminal matters or for federal or
7 state grand jury proceedings or a judicial order if the
8 taxpayer's liability for a tax administered under this act is to
9 be adjudicated by the court that issued the judicial order. A
10 person may disclose the adjusted gross receipts and the wagering
11 tax paid by a casino licensee licensed under the Michigan gaming
12 control and revenue act, the Initiated Law of 1996, MCL 432.201
13 to 432.226, pursuant to section 18, sections 341, 342, and 386 of
14 the management and budget act, 1984 PA 431, MCL 18.1341, 18.1342,
15 and 18.1386, or authorization by the executive director of the
16 gaming control board. However, the ~~commissioner~~ STATE
17 TREASURER or a person designated by the ~~commissioner~~ STATE
18 TREASURER may divulge information set forth or disclosed in a
19 return or report or by an investigation or audit to any depart-
20 ment, institution, or agency of state government upon receipt of
21 a written request from a head of the department, institution, or
22 agency of state government if it is required for the effective
23 administration or enforcement of the laws of this state, to a
24 proper officer of the United States department of treasury, and
25 to a proper officer of another state reciprocating in this
26 privilege. The ~~commissioner~~ STATE TREASURER may enter into
27 reciprocal agreements with other departments of state government,

1 the United States department of treasury, local governmental
2 units within this state, or taxing officials of other states for
3 the enforcement, collection, and exchange of data after ascer-
4 taining that any information provided will be subject to confi-
5 dentiality restrictions substantially the same as the provisions
6 of this act.

7 (2) A person who violates subsection (1)(e) or (1)(f) is
8 guilty of a felony, punishable by a fine of not more than
9 \$5,000.00, or imprisonment for not more than 5 years, or both,
10 together with the costs of prosecution. In addition, if the
11 offense is committed by an employee of this state, the person
12 shall be dismissed from office or discharged from employment upon
13 conviction.

14 (3) A person liable for any tax administered under this act
15 shall keep accurate and complete records necessary for the proper
16 determination of tax liability as required by law or rule of the
17 department.

18 (4) As used in subsection (1), "adjusted gross receipts" and
19 "wagering tax" mean those terms as described in the Michigan
20 gaming control and revenue act, the Initiated Law of 1996,
21 MCL 432.201 to 432.226.

22 Sec. 30c. (1) The ~~commissioner~~ STATE TREASURER, or an
23 authorized representative of the ~~commissioner~~ STATE TREASURER,
24 on behalf of the department, may enter into a voluntary disclo-
25 sure agreement with a person who makes application, who is a non-
26 filer, and who meets 1 or more of the following criteria:

1 (a) Has a filing responsibility under nexus standards issued
2 by the department after December 31, 1997.

3 (b) Has a reasonable basis to contest liability, as deter-
4 mined by the ~~commissioner~~ STATE TREASURER, for a tax or fee
5 administered under this act.

6 (2) All taxes and fees administered under this act are eli-
7 gible for inclusion in a voluntary disclosure agreement.

8 (3) To be eligible for a voluntary disclosure agreement,
9 subject to subsection (1), a person must meet all of the follow-
10 ing requirements:

11 (a) Except as otherwise provided in this subdivision, has
12 had no previous contact by the department or its agents regarding
13 a tax covered by the agreement. For purposes of this subdivi-
14 sion, a letter of inquiry, whether a final letter or otherwise,
15 requesting information under section 21(2)(a) that was sent to a
16 nonfiler shall not be considered a previous contact under this
17 subdivision if the nonfiler sends a written request to the
18 department to enter into a voluntary disclosure agreement not
19 later than June 30, 1999.

20 (b) Has had no notification of an impending audit by the
21 department or its agents.

22 (c) Is not currently under audit by the department of trea-
23 sury or under investigation by the department of state police,
24 department of attorney general, or any local law enforcement
25 agency regarding a tax covered by the agreement.

26 (d) Is not currently the subject of a civil action or a
27 criminal prosecution involving any tax covered by the agreement.

1 (e) Has agreed to register, file returns, and pay all taxes
2 due in accordance with all applicable laws of this state for all
3 taxes administered under this act for all periods after the look-
4 back period.

5 (f) Has agreed to pay all taxes due for each tax covered
6 under the agreement for the lookback period, plus statutory
7 interest as stated in section 23, within the period of time and
8 in the manner specified in the agreement.

9 (g) Has agreed to file returns and worksheets for the look-
10 back period as specified in the agreement.

11 (h) Has agreed not to file a protest or seek a refund of
12 taxes paid to this state for the lookback period based on the
13 issues disclosed in the agreement or based on the person's lack
14 of nexus or contacts with this state.

15 (4) If a person satisfies all requirements stated in
16 subsections (1) and (3), the department shall enter into a volun-
17 tary disclosure agreement with that person providing the follow-
18 ing relief:

19 (a) Notwithstanding section 28(1)(e) of this act, the
20 department shall not assess any tax, delinquency for a tax, pen-
21 alty, or interest covered under the agreement for any period
22 before the lookback period identified in the agreement.

23 (b) The department shall not assess any applicable discre-
24 tionary or nondiscretionary penalties for the lookback period.

25 (c) The department shall provide complete confidentiality of
26 the agreement and shall also enter into an agreement not to
27 disclose, in accordance with section 28(1)(f), any of the terms

1 or conditions of the agreement to any tax authorities of any
2 state or governmental authority or to any person except as
3 required by exchange of information agreements authorized under
4 section 28(1)(f), including the international fuel tax agreement
5 under chapter 317 of title 49 of the United States Code, PUBLIC
6 LAW 103-272, 49 U.S.C. 31701 to ~~31708~~ 31707. The department
7 shall not exchange information obtained under this section with
8 other states regarding the person unless information regarding
9 the person is specifically requested by another state.

10 (5) The department shall not bring a criminal action against
11 a person for failure to report or to remit any tax covered by the
12 agreement before or during the lookback period if the facts
13 established by the department are not materially different from
14 the facts disclosed by the person to the department.

15 (6) A voluntary disclosure agreement is effective when
16 signed by the person subject to the agreement, or his, her, or
17 its lawful representative, and returned to the department within
18 the time period specified in the agreement. The department shall
19 only provide the relief specified in the executed agreement. Any
20 verbal or written communication by the department before the
21 effective date of the agreement shall not afford any penalty
22 waiver, limited lookback period, or other benefit otherwise
23 available under this section.

24 (7) A material misrepresentation of the fact by an applicant
25 relating to the applicant's current activity in this state
26 renders an agreement null and void and of no effect. A change in
27 the activities or operations of a person after the effective date

1 of the agreement is not a material misrepresentation of fact and
2 shall not affect the agreement's validity.

3 (8) The department may audit any of the taxes covered by the
4 agreement within the lookback period or in any prior period if,
5 in the department's opinion, an audit of a prior period is neces-
6 sary to determine the person's tax liability for the tax periods
7 within the lookback period or to determine another person's tax
8 liability.

9 (9) Nothing in this section shall be interpreted to allow or
10 permit unjust enrichment as that term is defined in subsection
11 (11). Any tax collected or withheld from another person by an
12 applicant shall be remitted to the department without respect to
13 whether it was collected during or before the lookback period.

14 (10) The department shall not require a person who enters
15 into a voluntary disclosure agreement to make any filings that
16 are additional to those otherwise required by law.

17 (11) As used in this section:

18 (a) "Lookback period" means 1 or more of the following:

19 (i) The most recent 48-month period as determined by the
20 department or the first date the person subject to an agreement
21 under this section began doing business in the state if less than
22 48 months.

23 (ii) For single business taxes levied under the single busi-
24 ness tax act, 1975 PA 228, MCL 208.1 to 208.145, the lookback
25 period shall be the 4 most recent completed fiscal or calendar
26 years over a 48-month period or the first date the person subject

1 to an agreement under this section began doing business in this
2 state if less than 48 months.

3 (iii) Notwithstanding subparagraphs (i), (ii), and (iv), the
4 most recent 36-month period as determined by the department or
5 the first date the person subject to an agreement under this sec-
6 tion began doing business in this state if less than 36 months,
7 if tax returns filed in another state for a tax based on net
8 income that included sales in the numerator of the apportionment
9 formula that now must be included in the numerator of the appor-
10 tionment formula under the single business tax act, 1975 PA 228,
11 MCL 208.1 to 208.145, and those sales increased the net tax
12 liability payable to that state.

13 (iv) If there is doubt as to liability for the tax during
14 the lookback period, another period as determined by the
15 ~~commissioner~~ STATE TREASURER to be in the best interest of this
16 state and to preserve equitable and fair administration of
17 taxes.

18 (b) "Nonfiler" for a particular tax means, beginning July 1,
19 1998, a person that has not filed a return for the particular tax
20 being disclosed for periods beginning after December 31, 1988.
21 Nonfiler also includes a person whose only filing was a single
22 business tax estimated tax return filed before January 1, 1999.

23 (c) "Person" means an individual, firm, bank, financial
24 institution, limited partnership, copartnership, partnership,
25 joint venture, association, corporation, limited liability com-
26 pany, limited liability partnership, receiver, estate, trust, or
27 any other group or combination acting as a unit.

1 (d) "Previous contact" means any notification of an
2 impending audit pursuant to section 21(1), review, notice of
3 intent to assess, or assessment. Previous contact also includes
4 final letters of inquiry pursuant to section 21(2)(a) or a sub-
5 poena from the department.

6 (e) "Unjust enrichment" includes the withholding of income
7 tax under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
8 206.532, and the collection of any other tax administered by this
9 act that has not been remitted to the department.

10 (f) "Voluntary disclosure agreement" or "agreement" means a
11 written agreement that complies with this act.

12 Sec. 31. (1) If a taxpayer does not satisfy a tax liability
13 or makes an excessive claim for a refund as a result of reliance
14 on erroneous current written information provided by the depart-
15 ment, the ~~commissioner~~ STATE TREASURER shall waive all criminal
16 and civil penalties provided by law for failing or refusing to
17 file a return, for failing to pay a tax, or for making an exces-
18 sive claim for a refund for a tax administered by the ~~revenue~~
19 ~~division of the~~ department of treasury pursuant to this act if
20 the taxpayer makes a written request for a waiver, files a return
21 or an amended return, and makes full payment of the tax and
22 interest.

23 (2) For a period to be designated by the state treasurer of
24 not less than 30 days and not more than 60 days, and ending
25 before September 30, 2002, there shall be an amnesty period
26 during which the ~~commissioner~~ STATE TREASURER shall waive all
27 criminal and civil penalties provided by law for failing or

1 refusing to file a return, for failing to pay a tax, or for
2 making an excessive claim for a refund for a tax administered by
3 the revenue division of the department of treasury under this act
4 if the taxpayer makes a written request for a waiver, files a
5 return or an amended return, and makes full payment in either a
6 lump sum or installments as provided under subsection (9), of the
7 tax and interest due for any prior tax year.

8 (3) This section applies to the nonreporting and underre-
9 porting of tax liabilities and to the nonpayment of taxes previ-
10 ously determined to be due, but only to the extent of the penal-
11 ties attributable to the taxes that were previously due and that
12 are paid during the amnesty period provided for in subsection
13 (2).

14 (4) The ~~commissioner~~ DEPARTMENT shall administer this
15 section.

16 (5) Subsection (2) does not apply to taxes due after June 1,
17 2001.

18 (6) There is appropriated from the revenues generated by
19 taxes paid under subsection (2) the sum of \$1,500,000.00 to the
20 department of treasury for administration of the amnesty program
21 created by the amendatory act that added this subsection. This
22 appropriation is allotted for expenditure on and after October 1,
23 2001. Only general purpose revenue generated by the amendatory
24 act that added this subsection may be used to finance this
25 appropriation.

1 (7) The ~~commissioner~~ STATE TREASURER shall not waive
2 criminal and civil penalties applicable to a tax under subsection
3 (2) if 1 or more of the following circumstances apply:

4 (a) If the taxpayer is eligible to enter into a voluntary
5 disclosure agreement under section 30c for that tax.

6 (b) If the tax is attributable to income derived from a
7 criminal act, if the taxpayer is under criminal investigation or
8 involved in a civil action or criminal prosecution for that tax,
9 or if the taxpayer has been convicted of a felony under this act
10 or the internal revenue code of 1986.

11 (8) The department shall provide reasonable notice to tax-
12 payers that may be eligible for the amnesty program at least 30
13 days before the start of the designated amnesty period.

14 Notification shall include, but is not limited to, a description
15 of the amnesty program on appropriate tax instruction forms and
16 on the internet.

17 (9) Under the amnesty program described in subsection (2), a
18 taxpayer may pay tax and interest due in installments if the tax-
19 payer meets 1 of the following:

20 (a) The taxpayer is an individual and submits the greater of
21 \$10,000.00 or 50% of the tax and interest due with the request
22 for waiver under subsection (2) and pays the remaining tax and
23 interest due in 2 equal installments, the first installment due
24 no later than August 15, 2002 and the second installment due no
25 later than September 15, 2002.

26 (b) A taxpayer that is not an individual submits the greater
27 of \$100,000.00 or 50% of the tax and interest due with the

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1 request for waiver under subsection (2) and pays the remaining
2 tax and interest due in 2 equal installments, the first install-
3 ment due no later than August 15, 2002 and the second installment
4 due no later than September 15, 2002.

5 Enacting section 1. Section 2 of 1941 PA 122, MCL 205.2, is
6 repealed.