

SENATE BILL No. 413

April 29, 2003, Introduced by Senators BRATER, JACOBS, BERNERO, PRUSI and CLARK-COLEMAN and referred to the Committee on Finance.

A bill to amend 1941 PA 122, entitled

"An act to establish the revenue 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 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 sections 19 and 24 (MCL 205.19 and 205.24), as amended by 2002 PA 657.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 19. (1) All remittances of taxes administered by this
2 act shall be made to the department payable to the state of

1 Michigan by bank draft, check, cashier's check, certified check,
2 money order, cash, or electronic funds transfer. The money
3 received shall be credited as provided by law. A remittance
4 other than cash or electronic funds transfer shall not be a final
5 discharge of liability for the tax assessed and levied until the
6 instrument remitted has been honored.

7 (2) For reporting periods beginning after August 31, 1991, a
8 taxpayer other than a city or a county who paid in the
9 immediately preceding calendar year an average of \$40,000.00 or
10 more per month in income tax withholding pursuant to the income
11 tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, shall deposit
12 Michigan income tax withholding either in the same manner and
13 according to the same schedule as deposits of federal income tax
14 withholding or in another manner that has been approved by the
15 department.

16 (3) For failure to remit a tax administered by this act with
17 a negotiable remittance, ~~the following penalty~~ **a penalty of 25%**
18 **of the tax due** may be added in addition to any other penalties
19 imposed by this act. —÷

20 ~~—— (a) For notices of intent to assess issued on or before~~
21 ~~February 28, 2003, 25% of the tax due.~~

22 ~~—— (b) For notices of intent to assess issued after February 28,~~
23 ~~2003, \$50.00.~~

24 (4) The department may require that all money collected by
25 the taxpayer for taxes administered by this act that has not been
26 paid to the department of treasury is public money and the
27 property of this state, and shall be held in trust in a separate

1 account and fund for the sole use and benefit of this state until
2 paid over to the department of treasury.

3 (5) For tax years after the 1995 tax year for which taxes are
4 collected under an agreement entered into pursuant to section 9
5 of chapter 1 of the city income tax act, 1964 PA 284,
6 MCL 141.509, if a taxpayer pays, when filing his or her annual
7 return, an amount less than the sum of the declared tax liability
8 under the city income tax act, 1964 PA 284, MCL 141.501 to
9 141.787, and the declared tax liability under the income tax act
10 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and if there is no
11 indication of the allocation of payment between the tax
12 liabilities against which the payment should be applied, the
13 amount paid shall first be applied against the taxpayer's tax
14 liability under the city income tax act, 1964 PA 284, MCL 141.501
15 to 141.787, and any remaining amount of the payment shall be
16 applied to the taxpayer's tax liability under the income tax act
17 of 1967, 1967 PA 281, MCL 206.1 to 206.532. The taxpayer's
18 designation of a payee on a payment is not a dispositive
19 determination of the allocation of that payment under this
20 subsection.

21 Sec. 24. (1) If a taxpayer fails or refuses to file a
22 return or pay a tax administered under this act within the time
23 specified, the department, as soon as possible, shall assess the
24 tax against the taxpayer and notify the taxpayer of the amount of
25 the tax. A liability for a tax administered under this act is
26 subject to the interest and penalties prescribed in
27 subsections (2) to (5).

1 (2) Except as provided in subsections (3) and (6), if a
2 taxpayer fails or refuses to file a return or pay a tax within
3 the time specified, ~~for notices of intent to assess issued on or~~
4 ~~before February 28, 2003,~~ a penalty of \$10.00 or 5% of the tax,
5 whichever is greater, shall be added if the failure is for not
6 more than 1 month, with an additional 5% penalty for each
7 additional month or fraction of a month during which the failure
8 continues or the tax and penalty is not paid, to a maximum of
9 50%. ~~Except as provided in subsections (3) and (6), if a~~
10 ~~taxpayer fails or refuses to file a return or pay a tax within~~
11 ~~the time specified for notices of intent to assess issued after~~
12 ~~February 28, 2003, a penalty of 5% of the tax shall be added if~~
13 ~~the failure is for not more than 2 months, with an additional 5%~~
14 ~~penalty for each additional month or fraction of a month during~~
15 ~~which the failure continues or the tax and penalty is not paid,~~
16 ~~to a maximum of 25%.~~ In addition to the penalty, interest at the
17 rate provided in section 23 for deficiencies in tax payments
18 shall be added on the tax from the time the tax was due, until
19 paid. After June 30, 1994, the penalty prescribed by this
20 subsection shall not be imposed until the department submits for
21 public hearing pursuant to the administrative procedures act of
22 1969, 1969 PA 306, MCL 24.201 to 24.328, a rule defining what
23 constitutes reasonable cause for waiver of the penalty under
24 subsection (4), which definition shall include illustrative
25 examples.

26 (3) If a person is required to remit tax due pursuant to
27 section 19(2) and fails or refuses to pay the tax within the time

1 specified, a penalty of 0.167% of the tax shall be added for each
2 day during which the failure continues or the tax and penalty are
3 not paid, ~~as follows:~~

4 ~~—— (a) For notices of intent to assess issued on or before~~
5 ~~February 28, 2003, to a maximum of 50% of the tax.~~

6 ~~(b) For notices of intent to assess issued after February~~
7 ~~28, 2003, to a maximum of 25% of the tax.~~

8 (4) If a return is filed or remittance is paid after the time
9 specified and it is shown to the satisfaction of the department
10 that the failure was due to reasonable cause and not to willful
11 neglect, the state treasurer or an authorized representative of
12 the state treasurer shall waive the penalty prescribed by
13 subsection (2).

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

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

24 Enacting section 1. This amendatory act takes effect March
25 1, 2003.