

# HOUSE BILL No. 6535

October 15, 2008, Introduced by Reps. Robert Jones, Leland, Alma Smith, Cushingberry, Tobocman, Coulouris and Dean and referred to the Committee on Judiciary.

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 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 section 30(2), and  
3 the department identifies a liability of the taxpayer described in

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

4 (2) The amount of a refund described in subsection (1) shall  
5 be applied to the following in the order of priority stated:

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

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

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

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

18 (ii) ~~A—EXCEPT FOR A PORTION OF THE REFUND THAT RESULTS FROM A~~  
19 ~~STATE TAX CREDIT, A~~ writ of garnishment or other valid court order  
20 issued by a court of competent jurisdiction and directed to this  
21 state or the state treasurer to satisfy a liability of the  
22 taxpayer.

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

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

1 ~~Compiled Laws—1936~~ (EX SESS) PA 1, MCL 421.1 TO 421.75, to which  
2 the taxpayer was not entitled, upon a request for tax refund offset  
3 from the Michigan employment security commission.

4 (3) If the claim for refund is reflected on a joint tax  
5 return, the department shall allocate to each joint taxpayer his or  
6 her share of the refund. The amount allocated to each taxpayer  
7 shall be applied to his or her respective liabilities in the order  
8 of priority stated in subsection (2).

9 (4) If the department determines that all or a portion of a  
10 refund claimed on a joint tax return is subject to application to a  
11 liability of an obligated spouse, the department shall notify the  
12 joint taxpayers by first class mail sent to the address shown on  
13 the joint return. The notice shall be accompanied by a nonobligated  
14 spouse allocation form. The notice shall state all of the  
15 following:

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

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

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

25 (d) A statement of the penalties under subsection (7).

26 (5) A nonobligated spouse who wishes to claim his or her share  
27 of a tax refund shall file with the department a nonobligated

1 spouse allocation form. The nonobligated spouse allocation form  
2 shall be in a form specified by the department and shall require  
3 the spouses to state the amount of income or other tax base and all  
4 adjustments to the income or other tax base, including all  
5 subtractions, additions, deductions, credits, and exemptions,  
6 stated on their joint income tax return or other joint tax return  
7 that is the basis for the claimed refund, and an allocation of  
8 those amounts between the obligated and nonobligated spouse. In  
9 allocating these amounts, all of the following apply:

10 (a) A federal deduction for 2-income married persons shall be  
11 allocated to the spouse with the lower income who claims the  
12 deduction.

13 (b) Individual income shall be allocated to the spouse who  
14 earned the income. Joint income shall be allocated equally between  
15 the spouses. The tax base appropriate to tax other than income tax  
16 shall be similarly allocated.

17 (c) Each spouse shall be allocated the personal exemptions he  
18 or she would be entitled to claim if separate federal returns had  
19 been filed, except that dependency exemptions shall be prorated  
20 according to the relative income of the spouses.

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

23 (e) A homestead property tax credit shall be allocated to the  
24 spouse who owned the title or held the leasehold interest in the  
25 property claimed as a homestead. A homestead property tax credit  
26 for property jointly owned or leased shall be allocated jointly  
27 between the spouses.

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

3 (6) A nonobligated spouse allocation form shall be signed by  
4 both joint taxpayers. However, the form may be submitted without  
5 the signature of the obligated spouse if his or her signature  
6 cannot be obtained. The nonobligated spouse shall certify that he  
7 or she has made a good faith effort to obtain the signature and  
8 shall state the reason that the signature was not obtained.

9 (7) A person who knowingly makes a false statement on a  
10 nonobligated spouse allocation form ~~shall be~~ **IS** subject to a  
11 penalty of \$25.00 or 25% of the excessive claim for his or her  
12 share of the refund, whichever is greater, and other penalties as  
13 provided in this act.

14 (8) A nonobligated spouse to whom the department has sent a  
15 notice under subsection (4), who fails to file a nonobligated  
16 spouse allocation form within 30 days after the date the notice was  
17 mailed, ~~shall be~~ **IS** barred from commencing any action against this  
18 state or the state treasurer to recover an amount withheld to  
19 satisfy a liability of the obligated spouse to which a joint tax  
20 refund is applied under this section. The payment by this state of  
21 any amount applied to a liability of a taxpayer under this section  
22 ~~shall release~~ **RELEASES** this state and the state treasurer from all  
23 liability to the obligated spouse, the nonobligated spouse, and any  
24 other person having or claiming any interest in the amount paid.

25 (9) The department shall promulgate rules under the  
26 administrative procedures act of 1969, ~~Act No. 306 of the Public~~  
27 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~

1 ~~Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328~~, as necessary to  
2 implement this section. The rules shall include a procedure for  
3 assuring that a taxpayer subject to application of a refund under  
4 this section and section 30 has received or will receive notice and  
5 an opportunity for a hearing with respect to the liability to which  
6 the refund is to be applied.

7 (10) As used in this section:

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

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

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

20 Enacting section 1. This amendatory act does not take effect  
21 unless Senate Bill No. \_\_\_\_ or House Bill No. 6534 (request no.  
22 04264'07) of the 94th Legislature is enacted into law.