

HOUSE BILL NO. 5812

June 12, 2024, Introduced by Reps. Steele, Martin, Zorn, Schuette, Tisdell, Kuhn, Schmaltz, Roth, Bierlein, Neyer, Kunse, St. Germaine, Rigas, Johnsen, Cavitt, Aragona, DeBoyer, Meerman, Thompson, DeBoer, Wozniak and Jaime Greene and referred to the Committee on Tax Policy.

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 this state; to prescribe certain powers and duties of the state treasurer; to establish the collection duties of certain other state departments for money or accounts owed to this state; 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 21 (MCL 205.21), as amended by 2017 PA 215.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21. (1) If a taxpayer fails or refuses to make a return
 2 or payment as required, in whole or in part, or if the department
 3 has reason to believe that a return made or payment does not supply
 4 sufficient information for an accurate determination of the amount
 5 of tax due, the department may obtain information on which to base
 6 an assessment of the tax. By its duly authorized agents, the
 7 department may examine the books, records, and papers and audit the
 8 accounts of a person or any other records pertaining to the tax. A
 9 taxpayer who has been audited by the department or its agent or a
 10 taxpayer whose books, records, and papers have been examined by the
 11 department shall, ~~upon~~**on** request, be provided a complete copy in
 12 printed or electronic format of the complete audit work papers and
 13 the audit report of findings. Any audit performed by the department
 14 or its duly authorized agents under section 3(a) shall be performed
 15 in accordance with auditing standards, ~~which shall include,~~
 16 **including**, but ~~are~~ not limited to, confidentiality, technical
 17 training, independence, due professional care, planning,
 18 supervision, understanding of the entity audited including internal
 19 control and an assessment of risk, audit evidence and
 20 documentation, sampling and sampling projections, and elements of
 21 the audit report of findings. The department shall promulgate
 22 administrative rules on audit standards ~~within 1 year of the date~~
 23 ~~of enactment of the amendatory act that added this sentence.~~**by**

1 **March 20, 2015.**

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

4 (a) The department shall send to the taxpayer a letter of
5 inquiry stating, in a courteous and nonintimidating manner, the
6 department's opinion that the taxpayer needs to furnish further
7 information or owes taxes to ~~the~~**this** state, and the reason for
8 that opinion. A letter of inquiry ~~shall~~**must** also explain the
9 procedure by which the person may initiate communication with the
10 department to resolve any dispute. This subdivision does not apply
11 in any of the following circumstances:

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

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

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

18 (b) If the dispute is not resolved within 30 days after the
19 department sends the taxpayer a letter of inquiry or if a letter of
20 inquiry is not required ~~pursuant to~~**under** subdivision (a), the
21 department, after determining the amount of tax due from a
22 taxpayer, shall ~~give notice to~~**notify** the taxpayer of its intent to
23 assess the tax. The notice ~~shall~~**must** include the amount of the tax
24 the department believes the taxpayer owes, the reason for that
25 deficiency, and a statement advising the taxpayer of a right to an
26 informal conference, the requirement of a written request by the
27 taxpayer for the informal conference that includes the taxpayer's
28 statement of the contested amounts and an explanation of the
29 dispute, and the 60-day time limit for that request.

1 (c) If the taxpayer serves written notice ~~upon~~**on** the
2 department within 60 days after the taxpayer receives a notice of
3 intent to assess, remits the uncontested portion of the liability,
4 and provides a statement of the contested amounts and an
5 explanation of the dispute, the taxpayer is entitled to an informal
6 conference on the question of liability for the assessment.

7 (d) ~~Upon~~**On** receipt of a taxpayer's written notice, the
8 department shall set a mutually agreed ~~upon~~**on** or reasonable time
9 and place for the informal conference and shall give the taxpayer
10 reasonable written notice not less than 20 days before the informal
11 conference. The notice ~~shall~~**must** specify the intent to assess,
12 type of tax, and tax year that is the subject of the informal
13 conference. The informal conference provided for by this
14 subdivision is not subject to the administrative procedures act of
15 1969, 1969 PA 306, MCL 24.201 to 24.328, but is subject to the
16 rules governing informal conferences as promulgated by the
17 department in accordance with the administrative procedures act of
18 1969, 1969 PA 306, MCL 24.201 to 24.328. The taxpayer may appear or
19 be represented by any person before the department at an informal
20 conference, and may present testimony and argument. At the party's
21 own expense and with advance notice to the other party, a taxpayer
22 or the department, or both, may make an audio recording of an
23 informal conference. A taxpayer who has made a timely request for
24 an informal conference may at any time withdraw that request by
25 filing written notice with the department. ~~Upon~~**On** receipt of the
26 request for withdrawal from the informal conference process, the
27 department shall issue a decision and order of determination and,
28 ~~where~~**if** appropriate, a final assessment, from which a taxpayer may
29 seek an appeal as provided under section 22.

1 (e) After a timely request for an informal conference has been
2 made under subdivision (c), the taxpayer and the department may
3 seek to settle any or all issues in dispute by submitting a written
4 settlement offer to the other party in accordance with the
5 following:

6 (i) The taxpayer shall submit a written settlement offer ~~no~~**not**
7 later than 21 days after the informal conference. The settlement
8 offer must identify the issues in dispute to be settled, the amount
9 of the settlement offer, and the factual and legal bases supporting
10 the taxpayer's settlement offer, and include any supporting
11 documents. The state treasurer or the state treasurer's designee or
12 designees shall review the settlement offer and the department's
13 recommendation regarding the offer. The state treasurer or the
14 state treasurer's designee or designees shall determine whether to
15 accept, reject, or counter the settlement offer. The department
16 shall notify the taxpayer in writing of the department's
17 acceptance, rejection, or counter-offer. If the department does not
18 accept the taxpayer's offer, the department shall include in its
19 written notification the factual and legal bases for the
20 department's rejection or counter-offer. The taxpayer may accept,
21 reject, or counter the department's counter-offer and proceed in
22 accordance with subparagraph (iii).

23 (ii) The informal conference referee or the administrator of
24 the department's hearings division or its successor unit may submit
25 a written report to the state treasurer or the state treasurer's
26 designee or designees that identifies the relevant facts and issues
27 involved in the dispute, the factual and legal bases supporting
28 settlement of any or all of the issues, and a settlement
29 recommendation. Doubt as to collectability ~~shall~~**is** not ~~be~~a reason

1 for settlement under this subdivision. If the state treasurer or
2 the state treasurer's designee or designees determines to pursue a
3 settlement, the department shall notify the taxpayer in writing of
4 the department's settlement offer, to be determined by the state
5 treasurer or the state treasurer's designee or designees. The
6 department's written settlement offer ~~shall~~**must** include the
7 factual and legal bases supporting the department's settlement
8 offer. The taxpayer, in writing, may accept, reject, or counter the
9 department's settlement offer and proceed in accordance with
10 subparagraph (iii).

11 (iii) If the department rejects the taxpayer's settlement offer
12 or counter-offer or the taxpayer rejects the department's
13 settlement offer or counter-offer, the informal conference process
14 shall proceed as provided under this section unless the taxpayer
15 files a written notice to withdraw the request for an informal
16 conference as provided in subdivision (d). If the department
17 accepts the taxpayer's settlement offer or counter-offer or the
18 taxpayer accepts the department's settlement offer or counter-
19 offer, the department and the taxpayer shall execute a written
20 agreement outlining all of the terms of the settlement. If the
21 agreement settles all of the issues in dispute, then the written
22 agreement is also the taxpayer's written notice to withdraw its
23 request for an informal conference. Then the department shall,
24 ~~where~~**if** appropriate, issue a final assessment that reflects the
25 agreement and the ~~agreed-upon~~**agreed-on** amount of liability as to
26 the settled issues. The department's final assessment issued under
27 this subdivision is not subject to challenge or appeal under this
28 act or reviewable in any court by mandamus, appeal, or other method
29 of direct or collateral attack. With respect to any issues in

1 dispute that are not included in the settlement agreement, the
2 informal conference process shall proceed as provided under this
3 section unless the taxpayer files a written notice to withdraw the
4 request for an informal conference as provided in subdivision (d).

5 (iv) The taxpayer's and the department's settlement offers,
6 counter-offers, and responses to those offers and counter-offers,
7 the disposition of a settlement offer or counter-offer under this
8 subdivision, and settlement agreements, may not be offered by any
9 party in any proceeding before the Michigan tax tribunal, the court
10 of claims, or any court of competent jurisdiction as proof of the
11 validity of the department's decision, order, or assessment, or of
12 the proper amount of the taxpayer's tax liability.

13 (v) Settlement offers, counter-offers, responses thereto,
14 settlement agreements, and reports of the informal conference
15 referee, the administrator, or the department related to
16 settlements under this subdivision are exempt from disclosure under
17 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
18 and may not be obtained through discovery in any proceeding.

19 (f) Except for those issues that were settled pursuant to
20 subdivision (e), after the informal conference, the department
21 shall render a decision and order in writing, setting forth the
22 reasons and authority, and shall assess the tax, interest, and
23 penalty found to be due and payable. The decision and order are
24 limited to the subject of the informal conference as included in
25 the notice under subdivision (d).

26 (g) If the taxpayer does not protest the notice of intent to
27 assess within the time provided in subdivision (c), the department
28 may assess the tax and the interest and penalty on the tax that the
29 department believes are due and payable. An assessment under this

1 subdivision or subdivision (f) is final and subject to appeal as
2 provided in section 22. The final notice of assessment shall
3 include a statement advising the person of a right to appeal.

4 (3) If as a result of an audit it is determined that a
5 taxpayer is owed a refund, the department shall send a notice to
6 the taxpayer stating the amount of the refund the department
7 believes is owed to the taxpayer as a result of the audit. The
8 notice shall inform the taxpayer of ~~his or her~~ **the taxpayer's**
9 appeal rights. If the taxpayer disputes the findings of the audit,
10 the taxpayer may serve written notice ~~upon~~ **on** the department in the
11 same manner as provided for in subsection (2)(c) and the taxpayer
12 is entitled to the same informal conference and subsequent appeals
13 as provided for in this section.

14 (4) If a protest to the notice of intent to assess the tax is
15 determined by the department to be a frivolous protest or a desire
16 by the taxpayer to delay or impede the administration of taxes
17 administered under this act, a penalty of \$25.00 or 25% of the
18 amount of tax under protest, whichever is greater, shall be added
19 to the tax.

20 (5) During the course of the informal conference under
21 subsection (2)(d), the taxpayer by written notice may convert ~~his~~
22 ~~or her~~ **the taxpayer's** contest of the assessment to a claim for a
23 refund. The written notice shall be accompanied by payment of the
24 contested amount. The informal conference shall continue and the
25 department shall render a decision and issue an order regarding the
26 claim for refund.

27 (6) For audits commenced after September 30, 2014, the
28 department must complete fieldwork and provide a written
29 preliminary audit determination for any tax period no later than 1

1 year after the period provided for in section 27a(2) without regard
2 to the extension provided for in section 27a(3). The limitation
3 described in this subsection does not apply to any tax period in
4 which the department and the taxpayer agreed in writing to extend
5 the statute of limitations described in section 27a(2).

6 (7) For audits commenced after September 30, 2014, unless
7 otherwise agreed to by the department and the taxpayer, the final
8 assessment issued under subsection (2)(g) must be issued within 9
9 months of the date that the department provided the taxpayer with a
10 written preliminary audit determination unless the taxpayer, for
11 any reason, requests reconsideration of the preliminary audit
12 determination or the taxpayer requests an informal conference under
13 subsection (2)(c). A request for reconsideration by a taxpayer
14 permits, but does not require, the department to delay the issuance
15 of a final assessment under subsection (2)(g).

16 (8) The department shall publish semiannually on the
17 department's website a report containing the following information:

18 (a) The aggregate amount of the department's original
19 determinations of liability attributed to settlements entered into
20 during the reporting period.

21 (b) The aggregate settled amount of liability attributed to
22 the settlements entered into during the reporting period.

23 (c) If the total number of settlements between taxpayers and
24 the department entered into during the reporting period is 5 or
25 more, include the actual number of settlements. If the number of
26 settlements is less than 5, the department shall state "less than
27 5".

28 (9) Except as otherwise provided ~~under~~**in** this subsection, the
29 settlement process established under subsection (2)(e) ~~only~~ applies

1 **only** to taxes subject to administration under this act. The
2 settlement process established under subsection (2)(e) does not
3 apply to matters arising under the general property tax act, 1893
4 PA 206, MCL 211.1 to 211.155, ~~the state real estate transfer tax~~
5 ~~act, **former** 1993 PA 330, MCL 207.521 to 207.537,~~ the tobacco
6 products tax act, 1993 PA 327, MCL 205.421 to 205.436, ~~the health~~
7 ~~insurance claims assessment act, **former** 2011 PA 142, MCL 550.1731~~
8 ~~to 550.1741,~~ and the city income tax act, 1964 PA 284, MCL 141.501
9 to 141.787.

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. _____ or House Bill No. 5811 (request no.
12 03473'23) of the 102nd Legislature is enacted into law.