

REVENUE DIVISION OF DEPARTMENT OF TREASURY (EXCERPT)
Act 122 of 1941

205.21 Failure or refusal to make return or payment; obtaining information on which to base assessment; audit; rules; procedure; determination of refund as result of audit; appeal; frivolous protest; penalty; claim for refund; audits commenced after September 30, 2014; report; applicability of settlement process established under subsection (2)(e).

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

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

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

- (i) The taxpayer files a return showing a tax due and fails to pay that tax.
- (ii) The deficiency resulted from an audit of the taxpayer's books and records by this state.
- (iii) The taxpayer otherwise affirmatively admits that a tax is due and owing.

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

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

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

(e) After a timely request for an informal conference has been made under subdivision (c), the taxpayer and the department may seek to settle any or all issues in dispute by submitting a written settlement offer to

the other party in accordance with the following:

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

(ii) The informal conference referee or the administrator of the department's hearings division or its successor unit may submit a written report to the state treasurer or the state treasurer's designee or designees that identifies the relevant facts and issues involved in the dispute, the factual and legal bases supporting settlement of any or all of the issues, and a settlement recommendation. Doubt as to collectability shall not be a reason for settlement under this subdivision. If the state treasurer or the state treasurer's designee or designees determines to pursue a settlement, the department shall notify the taxpayer in writing of the department's settlement offer, to be determined by the state treasurer or the state treasurer's designee or designees. The department's written settlement offer shall include the factual and legal bases supporting the department's settlement offer. The taxpayer, in writing, may accept, reject, or counter the department's settlement offer and proceed in accordance with subparagraph (iii).

(iii) If the department rejects the taxpayer's settlement offer or counter-offer or the taxpayer rejects the department's settlement offer or counter-offer, the informal conference process shall proceed as provided under this section unless the taxpayer files a written notice to withdraw the request for an informal conference as provided in subdivision (d). If the department accepts the taxpayer's settlement offer or counter-offer or the taxpayer accepts the department's settlement offer or counter-offer, the department and the taxpayer shall execute a written agreement outlining all of the terms of the settlement. If the agreement settles all of the issues in dispute, then the written agreement is also the taxpayer's written notice to withdraw its request for an informal conference. Then the department shall, where appropriate, issue a final assessment that reflects the agreement and the agreed-upon amount of liability as to the settled issues. The department's final assessment issued under this subdivision is not subject to challenge or appeal under this act or reviewable in any court by mandamus, appeal, or other method of direct or collateral attack. With respect to any issues in dispute that are not included in the settlement agreement, the informal conference process shall proceed as provided under this section unless the taxpayer files a written notice to withdraw the request for an informal conference as provided in subdivision (d).

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

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

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

(g) If the taxpayer does not protest the notice of intent to assess within the time provided in subdivision (c), the department may assess the tax and the interest and penalty on the tax that the department believes are due and payable. An assessment under this subdivision or subdivision (f) is final and subject to appeal as provided in section 22. The final notice of assessment shall include a statement advising the person of a right to appeal.

(3) If as a result of an audit it is determined that a taxpayer is owed a refund, the department shall send a notice to the taxpayer stating the amount of the refund the department believes is owed to the taxpayer as a result of the audit. The notice shall inform the taxpayer of his or her appeal rights. If the taxpayer disputes the findings of the audit, the taxpayer may serve written notice upon the department in the same manner as provided for in subsection (2)(c) and the taxpayer is entitled to the same informal conference and subsequent appeals as provided for in this section.

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

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

(6) For audits commenced after September 30, 2014, the department must complete fieldwork and provide a written preliminary audit determination for any tax period no later than 1 year after the period provided for in section 27a(2) without regard to the extension provided for in section 27a(3). The limitation described in this subsection does not apply to any tax period in which the department and the taxpayer agreed in writing to extend the statute of limitations described in section 27a(2).

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

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

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

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

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

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

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1991, Act 83, Imd. Eff. July 18, 1991;—Am. 1993, Act 13, Imd. Eff. Apr. 1, 1993;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2006, Act 8, Eff. Oct. 1, 2006;—Am. 2006, Act 9, Eff. Oct. 1, 2006;—Am. 2006, Act 10, Eff. Oct. 1, 2006;—Am. 2006, Act 11, Eff. Oct. 1, 2006;—Am. 2014, Act 3, Imd. Eff. Feb. 6, 2014;—Am. 2014, Act 35, Imd. Eff. Mar. 20, 2014;—Am. 2017, Act 215, Imd. Eff. Dec. 20, 2017.

Compiler's note: Enacting section 4 of Act 162 of 1980 provides:

"Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows:

"Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Enacting sections 2 and 3 of Act 58 of 1986 provide:

"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986.

"Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act