

# HOUSE BILL No. 5718

May 3, 1990; Introduced by Reps. Bandstra, Law, Miller, Weeks, Niederstadt, London, Oxender, Johnson, Crandall, Jaye, Strand, Willis Bullard, Trim, Webb, Hart, Gire, Hillegonds, Rocca, Gnodtke, Bankes, Bender, Fitzgerald, Runco, Bartnik, Martin, Gilmer, Krause, Mathieu, Keith, Kulchitsky, DeLange, O'Connor, Hickner and Dolan and referred to the Committee on Taxation.

A bill to amend sections 22, 24, and 30 of Act No. 122 of the Public Acts of 1941, entitled as amended

"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 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 provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act,"

as amended by Act No. 58 of the Public Acts of 1986, being sections 205.22, 205.24, and 205.30 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 22, 24, and 30 of Act No. 122 of the  
2 Public Acts of 1941, as amended by Act No. 58 of the Public Acts

1 of 1986, being sections 205.22, 205.24, and 205.30 of the  
2 Michigan Compiled Laws, are amended to read as follows:

3       Sec. 22. (1) A person aggrieved by an assessment, decision,  
4 or order of the department may appeal the contested portion of an  
5 assessment, decision, or order to the tax tribunal within 30  
6 days, or to the court of claims within 90 days after the assess-  
7 ment, decision, or order. The uncontested portion of an assess-  
8 ment, order, or decision ~~must~~ SHALL be paid as a prerequisite  
9 to appeal. However, an action shall be commenced in the court of  
10 claims within 6 months after payment of the tax or an adverse  
11 determination of the ~~taxpayer's~~ PERSON'S claim for refund,  
12 whichever is later, if the payment of the tax or adverse determi-  
13 nation of the claim for refund occurred under THE SINGLE BUSINESS  
14 TAX ACT, Act No. 228 of the Public Acts of 1975, being sections  
15 208.1 to 208.145 of the Michigan Compiled Laws, and before ~~the~~  
16 ~~effective date of section 27a~~ MAY 1, 1986. The appeal shall be  
17 perfected as provided under THE TAX TRIBUNAL ACT, Act No. 186 of  
18 the Public Acts of 1973, as amended, being sections 205.701 to  
19 205.779 of the Michigan Compiled Laws, and rules established  
20 under that act for the tax tribunal, or chapter 64 of THE REVISED  
21 JUDICATURE ACT OF 1961, Act No. 236 of the Public Acts of 1961,  
22 as amended, being sections 600.6401 to 600.6475 of the Michigan  
23 Compiled Laws, and rules adopted under that chapter for the court  
24 of claims. ~~In an appeal to the court of claims, the appellant~~  
25 ~~shall first pay the tax, including any applicable penalties and~~  
26 ~~interest, under protest and claim a refund as part of the~~  
27 ~~appeal.~~ An appeal by right from a decision of the tax tribunal

1 or the court of claims may be taken by the ~~taxpayer~~ PERSON or  
2 the department to the court of appeals. The appeal shall be  
3 taken on the record made before the tax tribunal or the court of  
4 claims. Further appeal to the supreme court may be taken by the  
5 ~~taxpayer~~ PERSON or the department in accordance with the court  
6 rules provided for appeals to the supreme court.

7 (2) The assessment, decision, or order of the department, if  
8 not appealed in accordance with this section, ~~shall be~~ IS final  
9 and ~~shall~~ IS not ~~be~~ reviewable in any court by mandamus,  
10 appeal, or other method of direct or collateral attack.

11 (3) An assessment ~~shall be~~ IS final, conclusive, and not  
12 subject to further challenge after 90 days from the issuance of  
13 the assessment, decision, or order of the department. ~~, and a~~  
14 A person ~~shall~~ IS not ~~be~~ entitled to a refund of any tax,  
15 interest, or penalty paid pursuant to an assessment unless the  
16 aggrieved person ~~has appealed~~ APPEALS the assessment in the  
17 manner provided by this section.

18 (4) A COURT MAY AWARD COSTS AND EXPENSES, INCLUDING REASON-  
19 ABLE ATTORNEY'S FEES, TO A PERSON THAT SUBSTANTIALLY PREVAILS IN  
20 AN ACTION BROUGHT TO CONTEST OR ENFORCE A TAX ADMINISTERED UNDER  
21 THIS ACT AND THAT ESTABLISHES THAT THE DEPARTMENTAL POSITION WAS  
22 NOT SUBSTANTIALLY JUSTIFIED.

23 Sec. 24. (1) If a person fails or refuses to file a return  
24 or pay a tax administered under this act within the time speci-  
25 fied, the department, as soon as possible, shall assess the tax  
26 against the person and notify the person of the amount of the  
27 tax.

1 (2) In case of failure or refusal to file a return or pay a  
2 tax within the time specified, a penalty of \$10.00 or 5% of the  
3 tax, whichever is greater, shall be added if the failure OR  
4 REFUSAL is for not more than 1 month, with an additional 5% pen-  
5 alty for each additional month or fraction of a month during  
6 which the failure OR REFUSAL continues or the tax and penalty is  
7 not paid, to a maximum of 50%. In addition to the penalty,  
8 interest at the rate provided in section 23(2) shall be added on  
9 the tax from the time the tax was due, until paid. THIS SUBSEC-  
10 TION DOES NOT APPLY TO AN UNDERPAYMENT OF TAX UNDER SECTION 301  
11 OF THE INCOME TAX ACT OF 1967, ACT NO. 281 OF THE PUBLIC ACTS OF  
12 1967, BEING SECTION 206.301 OF THE MICHIGAN COMPILED LAWS.

13 (3) If a return is filed or remittance is paid after the  
14 time specified and it is shown to the satisfaction of the depart-  
15 ment that the failure was due to reasonable cause and not to  
16 willful neglect, the penalty may be waived at the discretion of  
17 the commissioner or an authorized representative of the  
18 commissioner.

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

24 (5) For a taxpayer who has failed to file a return during  
25 THE AMNESTY PERIOD FOR any previous tax period for which amnesty  
26 ~~is~~ WAS available under section 31, ~~during the amnesty period,~~

1 a penalty of 50% of any tax delinquency discovered after the  
2 amnesty period shall be added to the tax.

3       Sec. 30. (1) The department shall credit or refund all  
4 overpayment of taxes ~~—~~ AND all taxes, penalties, and interest  
5 erroneously assessed and collected, and all taxes, penalties, and  
6 interest that are found unjustly assessed, excessive in amount,  
7 or wrongfully collected with interest at the rate ~~of 3/4 of 1%~~  
8 ~~per month~~ PROVIDED IN SECTION 23(2).

9       (2) A ~~taxpayer~~ PERSON who paid a tax ~~claimed not to be~~  
10 THE PERSON CLAIMS IS NOT due may petition the department for  
11 refund of the amount paid within the time period specified as the  
12 statute of limitations in section 27a. If a tax return reflects  
13 an overpayment or credits in excess of the tax, the declaration  
14 of that fact on the return constitutes a claim for refund. If  
15 the department agrees the claim is valid, the amount of overpay-  
16 ment, penalties, and interest shall be first applied to any known  
17 liability as provided in section 30a ~~—~~ and the excess, if any,  
18 shall be refunded to the ~~taxpayer~~ PERSON, or credited, at  
19 ~~taxpayer's~~ THE PERSON'S request, against any current or subse-  
20 quent tax liability.

21       (3) A refund shall be certified to the state disbursing  
22 authority who shall pay the amount out of the proceeds of the tax  
23 in accordance with the accounting laws of the state. Interest at  
24 the rate ~~of 3/4 of 1% per month~~ PROVIDED IN SECTION 23(2) shall  
25 be added to the refund commencing 45 days after the claim is  
26 filed ~~—~~ or 45 days after the date established by law for the  
27 filing of the return, whichever is later, except that interest on

1 refunds intercepted and applied as provided in section 30a shall  
2 cease as of the date of interception. ~~(4)~~ Refunds for amounts  
3 of less than \$1.00 shall not be paid.

4 (4) IF AN OVERPAYMENT, A TAX, A PENALTY, OR INTEREST IS  
5 UNJUSTLY ASSESSED, EXCESSIVE IN AMOUNT, OR WRONGFULLY COLLECTED  
6 DUE TO THE DEPARTMENT'S NEGLIGENCE, A PENALTY OF \$10.00 OR 10% OF  
7 THE TOTAL AMOUNT OF THE OVERPAYMENT, TAX, PENALTY, AND INTEREST,  
8 WHICHEVER IS GREATER, PLUS INTEREST AS PROVIDED IN SUBSECTION  
9 (1), SHALL BE ADDED TO THE REFUND.

10 (5) IF AN OVERPAYMENT, A TAX, A PENALTY, OR INTEREST IS  
11 UNJUSTLY ASSESSED, EXCESSIVE IN AMOUNT, OR WRONGFULLY COLLECTED  
12 DUE TO THE DEPARTMENT'S INTENTIONAL DISREGARD OF THE LAW OR OF  
13 THE RULES PROMULGATED BY THE DEPARTMENT, A PENALTY OF \$25.00 OR  
14 25% OF THE TOTAL AMOUNT OF THE OVERPAYMENT, TAX, PENALTY, AND  
15 INTEREST, WHICHEVER IS GREATER, PLUS INTEREST AS PROVIDED IN SUB-  
16 SECTION (1), SHALL BE ADDED TO THE REFUND.