

Act No. 83
Public Acts of 1991
Approved by the Governor
July 18, 1991
Filed with the Secretary of State
July 18, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Senator Gast

ENROLLED SENATE BILL No. 236

AN ACT to amend sections 19, 21, 23, 24, and 27 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," sections 19, 21, 23, and 24 as amended by Act No. 58 of the Public Acts of 1986 and section 27 as added by Act No. 162 of the Public Acts of 1980, being sections 205.19, 205.21, 205.23, 205.24, and 205.27 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 19, 21, 23, 24, and 27 of Act No. 122 of the Public Acts of 1941, sections 19, 21, 23, and 24 as amended by Act No. 58 of the Public Acts of 1986 and section 27 as added by Act No. 162 of the Public Acts of 1980, being sections 205.19, 205.21, 205.23, 205.24, and 205.27 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 19. (1) All remittances of taxes administered by this act shall be made to the department payable to the state of Michigan by bank draft, check, cashier's check, certified check, money order, cash, or electronic funds transfer. The money received shall be credited as provided by law. A remittance other than cash or electronic funds transfer shall not be a final discharge of liability for the tax assessed and levied until the instrument remitted has been honored.

(2) For reporting periods beginning after August 31, 1991, a taxpayer other than a city or a county who paid in the immediately preceding calendar year an average of \$40,000.00 or more per month in income tax withholding pursuant to the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being sections 206.1 to 206.532 of the Michigan Compiled Laws, shall deposit Michigan income tax withholding either in the same manner and according to the same schedule as deposits of federal income tax withholding or in another manner that has been approved by the commissioner.

(3) For failure to remit a tax administered by this act with a negotiable remittance, a penalty of 25% of the tax due may be added in addition to any other penalties imposed by this act.

(4) The commissioner may require that all money collected by the taxpayer for taxes administered by this act that has not been paid to the department of treasury is public money and the property of this state, and shall be held in trust in a separate account and fund for the sole use and benefit of this state until paid over to the department of treasury.

Sec. 21. (1) If a person 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. The department, by its duly authorized agents, may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax. As soon as possible after procuring information, the department shall assess the tax determined to be due and shall notify the taxpayer of the assessed amount and the specific reasons for the assessment.

(2) In carrying out this section, the department, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to levy the tax. The notice shall include a statement advising the taxpayer of a right to an informal conference. If the taxpayer serves written notice upon the department within 20 days after receipt of the notice to the taxpayer and remits the uncontested portion of the liability, the taxpayer may request an informal conference on the question of liability for the assessment. Upon receipt of the written notice, the department shall set a time and place for the conference and shall give the taxpayer reasonable notice not less than 20 days before the conference. The conference provided for by this subsection shall not be subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The taxpayer may appear or be represented before the department and present testimony and argument. After the conference, the commissioner shall render a decision and order in writing, setting forth the reasons and authority, and levy any tax, interest, and penalty found to be due and payable. The assessments shall be final and subject to appeal as provided in section 22. The final notice of assessment shall include a statement advising the taxpayer of a right to appeal.

(3) If a protest to the notice of intent to levy the tax is determined by the commissioner to be a frivolous protest or a desire by the taxpayer to delay or impede the administration of taxes imposed by 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.

Sec. 23. (1) If the department believes, based upon either the examination of a tax return, a payment, or an audit authorized by this act, that a taxpayer has not satisfied a tax liability or that a claim was excessive, the department shall determine the tax liability and notify the taxpayer of that determination.

(2) If the amount of a tax paid is less than the amount that should have been paid or an excessive claim has been made, the deficiency and interest on the deficiency at the current monthly rate of 1 percentage point above the adjusted prime rate per annum from the time the tax was due, and until paid, are due and payable after notice and conference as provided in this act. A deficiency in an estimated payment as may be required by a tax statute administered under this act shall be treated in the same manner as a tax due and shall be subject to the same current monthly interest rate of 1 percentage point above the adjusted prime rate from the time the payment was due, until paid. The term "adjusted prime rate charged by banks" means the average predominant prime rate quoted by not less than 3 commercial banks to large businesses, as determined by the department of treasury. The adjusted prime rate is to be based on the average prime rate charged by not less than 3 commercial banks during the 6-month period ending on March 31 and the 6-month period ending on September 30. One percentage point shall be added to the adjusted prime rate, and the resulting sum shall be divided by 12 to establish the current monthly interest rate. The resulting current monthly interest rate based on the 6-month period ending March 31 becomes effective on the following July 1, and the resulting current monthly interest rate based on the 6-month period ending September 30 becomes effective on January 1 of the following year.

(3) If any part of the deficiency or an excessive claim for credit is due to negligence, but without intent to defraud, a penalty of \$10.00 or 10% of the total amount of the deficiency in the tax, whichever is greater, plus

interest as provided in subsection (2), shall be added. Interest and penalty become due and payable after notice and conference as provided in this act.

(4) If any part of the deficiency or an excessive claim for credit is due to intentional disregard of the law or of the rules promulgated by the department, but without intent to defraud, a penalty of \$25.00 or 25% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (2), shall be added. Interest and penalty become due and payable after notice and conference as provided in this act.

(5) If any part of the deficiency or an excessive claim for credit is due to fraudulent intent to evade a tax, or to obtain a refund for a fraudulent claim, a penalty of 100% of the deficiency, plus interest as provided in subsection (2), shall be added. The whole amount of the unpaid tax, together with the penalty, becomes due and payable, after notice and conference as provided in this act.

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

(2) Except as provided in subsection 3, if a person fails or refuses to file a return or pay a tax within the time specified, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. In addition to the penalty, interest at the rate provided in section 23(2) shall be added on the tax from the time the tax was due, until paid.

(3) If a person is required to remit tax due pursuant to section 19(2) and fails or refuses to pay the tax within the time specified, a penalty of 0.167% of the tax shall be added for each day during which the failure continues or the tax and penalty are not paid, to a maximum of 50% of the tax. For reporting periods beginning after August 31, 1991 and before November 1, 1991, the commissioner shall not impose the penalty under this subsection if the tax is remitted within 2 banking days of the date specified and the taxpayer demonstrates that the taxpayer's account at their financial institution was charged for the tax owed on or before the date the remittance was due.

(4) If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the penalty may be waived at the discretion of the commissioner or an authorized representative of the commissioner.

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

(6) For a taxpayer who has failed to file a return during any previous tax period for which amnesty is available under section 31 during the amnesty period, a penalty of 50% of any tax delinquency discovered after the amnesty period shall be added to the tax.

Sec. 27. (1) In the performance of the duties and responsibilities required by a statute, the administration of which is subject to this act, a person shall not do any of the following:

(a) Fail or refuse to make a return or payment within the time specified, make a false or fraudulent return or payment, or make a false statement in a return or payment.

(b) Aid, abet, or assist another in an attempt to evade the payment of a tax, or a part of a tax, or file a false claim for credit as provided in statutes administered under this act.

(c) Make or permit to be made for himself or herself or for any other person a false return or payment, a false statement in a return or payment, or a false claim for credit or refund, either in whole or in part.

(2) A person who violates a provision of this section with intent to defraud or to evade or assist in defrauding or evading the payment of a tax, or a part of a tax, is guilty of a felony, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 5 years, or both.

(3) In addition to the penalties provided in subsection (2), a person who knowingly swears to or verifies a false or fraudulent return or a false or fraudulent payment, or a return or payment containing a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding the state, is guilty of perjury, punishable in the manner provided by law.

(4) A person who is not in violation pursuant to subsection (2), but who knowingly violates any other provision of this act, or of any statute administered under this act, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(5) The attorney general and the prosecuting attorney of each county of this state have concurrent power to enforce this act.