

# HOUSE BILL No. 4715

April 16, 1991, Introduced by Rep. Bryant and referred to the Committee on Taxation.

A bill to amend section 23 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 section 205.23 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Section 23 of Act No. 122 of the Public Acts of  
2 1941, as amended by Act No. 58 of the Public Acts of 1986, being

1 section 205.23 of the Michigan Compiled Laws, is amended to read  
2 as follows:

3       Sec. 23. (1) If the department believes, based upon either  
4 the examination of a tax return or an audit authorized by this  
5 act, that a taxpayer has not satisfied a tax liability or that a  
6 claim was excessive, the tax liability shall be determined by the  
7 department and the taxpayer shall be notified of that  
8 determination.

9       (2) If the amount paid is less than the amount ~~which~~ THAT  
10 should have been paid or an excessive claim has been made, the  
11 deficiency, together with interest at the current monthly rate of  
12 1 percentage point above the adjusted prime rate per annum from  
13 the time the tax was due, and until paid, shall become due and  
14 payable after notice and conference as provided in this act. A  
15 deficiency in an estimated payment as may be required by a tax  
16 statute administered under this act shall be treated in the same  
17 manner as a tax due and shall be subject to the same current  
18 monthly interest rate of 1 percentage point above the adjusted  
19 prime rate from the time the ESTIMATED payment was due, until  
20 paid; ~~. The term~~ EXCEPT THAT, IF A PENALTY IS IMPOSED UNDER  
21 SECTION 24(2), THE PENALTY SHALL BE AT THE RATE OF 1% PER MONTH  
22 AND COMPUTED ON A DAILY BASIS. AS USED IN THIS SECTION,  
23 "adjusted prime rate" ~~charged by banks~~ means the average pre-  
24 dominant prime rate quoted by not less than 3 commercial banks to  
25 large businesses, as determined by the department of treasury.  
26 The adjusted prime rate is to be based on the average prime rate  
27 charged by not less than 3 commercial banks during the 6-month

1 period ending on March 31 and the 6-month period ending on  
2 September 30. One percentage point shall be added to the  
3 adjusted prime rate, and the resulting sum shall be divided by 12  
4 to establish the current monthly interest rate. The resulting  
5 current monthly interest rate based on the 6-month period ending  
6 March 31 will become effective on the following July 1, and the  
7 resulting current monthly interest rate based on the 6-month  
8 period ending September 30 will become effective on January 1 of  
9 the following year.

10 (3) If any part of the deficiency or an excessive claim for  
11 credit is due to negligence, but without intent to defraud, a  
12 penalty of \$10.00 or 10% of the total amount of the deficiency in  
13 the tax, whichever is greater, plus interest as provided in sub-  
14 section (2), shall be added. Interest and penalty shall become  
15 due and payable after notice and conference as provided in this  
16 act.

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

25 (5) If any part of the deficiency or an excessive claim for  
26 credit is due to fraudulent intent to evade a tax ~~—~~ or to  
27 obtain a refund for a fraudulent claim, a penalty of 100% of the

1 deficiency, plus interest as provided in subsection (2), shall be  
2 added. The whole amount of the unpaid tax, together with the  
3 penalty, shall become due and payable, after notice and confer-  
4 ence as provided in this act.