

HOUSE BILL No. 5696

March 16, 1992, Introduced by Reps. Randall, Van Singel, McBryde, Strand, Bender and Allen and referred to the Committee on Taxation.

A bill to amend section 30a 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 added by Act No. 211 of the Public Acts of 1985, being section 205.30a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 30a of Act No. 122 of the Public Acts of
2 1941, as added by Act No. 211 of the Public Acts of 1985, being

1 section 205.30a of the Michigan Compiled Laws, is amended to read
2 as follows:

3 Sec. 30a. (1) If a taxpayer claims a refund which the
4 department determines is valid, as provided in section 30(2), and
5 the department identifies any liability of the taxpayer described
6 in subsection (2), the department shall first apply the amount of
7 the refund in the manner provided in subsections (2) and (3), and
8 the excess, if any, shall be refunded or credited as provided in
9 section 30.

10 (2) The amount of a refund described in subsection (1) shall
11 be applied to the following in the order of priority stated:

12 (a) Any other known tax liability of the taxpayer to this
13 state.

14 (b) Any other known liability of the taxpayer to this state,
15 including a liability to pay support if the right to receive the
16 support has been assigned to the state and the liability is the
17 basis of a request for tax refund offset from the office of child
18 support OR A FINAL DETERMINATION OF LIABILITY OF A TAXPAYER TO
19 REIMBURSE THE MICHIGAN EMPLOYMENT SECURITY COMMISSION FOR UNEM-
20 PLOYMENT BENEFITS PAID IN ERROR TO THE TAXPAYER.

21 (c) The following in the order of priority received, unless
22 otherwise provided by law:

23 (i) A support liability of the taxpayer that is the basis of
24 a request for tax refund offset from the office of child support,
25 other than as provided by subdivision (b).

1 (ii) A writ of garnishment or other valid court order issued
2 by a court of competent jurisdiction and directed to this state
3 or the state treasurer to satisfy a liability of the taxpayer.

4 (iii) A levy of the internal revenue service to satisfy a
5 liability of the taxpayer.

6 (3) If the claim for refund is reflected on a joint tax
7 return, the department shall allocate to each joint taxpayer his
8 or her share of the refund. The amount allocated to each tax-
9 payer shall be applied to his or her respective liabilities in
10 the order of priority stated in subsection (2).

11 (4) If the department determines that all or a portion of a
12 refund claimed on a joint tax return is subject to application to
13 a liability of an obligated spouse, the department shall notify
14 the joint taxpayers by first class mail sent to the address shown
15 on the joint return. The notice shall be accompanied by a nonob-
16 ligated spouse allocation form. The notice shall state all of
17 the following:

18 (a) That all or a portion of the refund claimed by the joint
19 taxpayers is subject to interception to satisfy a liability or
20 liabilities of 1 or both spouses.

21 (b) The nature of the other liability or liabilities and the
22 name of the obligated spouse or spouses.

23 (c) That a nonobligated spouse may claim his or her share of
24 the refund by filing a nonobligated spouse allocation form with
25 the department of treasury within 30 days after the date the
26 notice was mailed.

1 (d) A statement of the penalties under subsection (7).

2 (5) A nonobligated spouse who wishes to claim his or her
3 share of a tax refund shall file with the department a nonobli-
4 gated spouse allocation form. The nonobligated spouse allocation
5 form shall be in a form specified by the department and shall
6 require the spouses to state the amount of income or other tax
7 base and all adjustments to the income or other tax base, includ-
8 ing all subtractions, additions, deductions, credits, and exemp-
9 tions, stated on their joint income tax return or other joint tax
10 return that is the basis for the claimed refund, and an alloca-
11 tion of those amounts between the obligated and nonobligated
12 spouse. In allocating these amounts, all of the following shall
13 apply:

14 (a) A federal deduction for 2-income married persons shall
15 be allocated to the spouse with the lower income who claims the
16 deduction.

17 (b) Individual income shall be allocated to the spouse who
18 earned the income. Joint income shall be allocated equally
19 between the spouses. The tax base appropriate to tax other than
20 income tax shall be similarly allocated.

21 (c) Each spouse shall be allocated the personal exemptions
22 he or she would be entitled to claim if separate federal returns
23 had been filed, except that dependency exemptions shall be pro-
24 rated according to the relative income of the spouses.

25 (d) Adjustments resulting from a business shall be allocated
26 to the spouse who claimed income from the business.

1 (e) A homestead property tax credit shall be allocated to
2 the spouse who owned the title or held the leasehold interest in
3 the property claimed as a homestead. A homestead property tax
4 credit for property jointly owned or leased shall be allocated
5 jointly between the spouses.

6 (f) Ownership of other assets relevant to the allocation
7 shall be disclosed upon request of the department.

8 (6) A nonobligated spouse allocation form shall be signed by
9 both joint taxpayers. However, the form may be submitted without
10 the signature of the obligated spouse if his or her signature
11 cannot be obtained. The nonobligated spouse shall certify that
12 he or she has made a good faith effort to obtain the signature
13 and shall state the reason that the signature was not obtained.

14 (7) A person who knowingly makes a false statement on a non-
15 obligated spouse allocation form shall be subject to a penalty of
16 \$25.00 or 25% of the excessive claim for his or her share of the
17 refund, whichever is greater, and other penalties as provided in
18 this act.

19 (8) A nonobligated spouse to whom the department has sent a
20 notice under subsection (4), who fails to file a nonobligated
21 spouse allocation form within 30 days after the date the notice
22 was mailed, shall be barred from commencing any action against
23 this state or the state treasurer to recover an amount withheld
24 to satisfy a liability of the obligated spouse to which a joint
25 tax refund is applied pursuant to this section. The payment by
26 the state of any amount applied to a liability of a taxpayer in
27 accordance with this section shall release this state and the

1 state treasurer from all liability to the obligated spouse, the
2 nonobligated spouse, and any other person having or claiming any
3 interest in the amount so paid.

4 (9) The department shall promulgate rules pursuant to the
5 administrative procedures act of 1969, Act No. 306 of the Public
6 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
7 Compiled Laws, as necessary to implement this section. The rules
8 shall include a procedure for assuring that a taxpayer subject to
9 application of a refund pursuant to this section and section 30
10 has received or will receive notice and an opportunity for a
11 hearing with respect to the liability for which the refund is to
12 be applied.

13 (10) For the purposes of this section:

14 (a) "Nonobligated spouse" means a person who has filed a
15 joint income tax return or other joint state tax return and who
16 is not liable for an obligation of his or her spouse described in
17 subsection (2).

18 (b) "Obligated spouse" means a person who has filed a joint
19 income tax return or other joint state tax return and who is
20 liable for an obligation described in subsection (2) for which
21 his or her spouse is not liable.

22 (c) "Office of child support" means the agency created in
23 section 2 of the office of child support act, Act No. 174 of the
24 Public acts of 1971, being section 400.232 of the Michigan
25 Compiled Laws.