

HOUSE BILL No. 5772

April 28, 1992, Introduced by Reps. Bryant, Munsell, Bartnik, Dolan, Fitzgerald, Oxender, McNutt, Strand, Robertson, Bobier, Nye, Martin, Goss, Shugars, Sikkema, Horton, Johnson, O'Connor, Ostling, Rocca, Scott, Wozniak, Wallace, Baade, DeMars, Van Singel, Dobb, O'Neill, Richard A. Young, Kosteva, Pitoniak, Jaye, Dalman, Gernaat, Brackenridge, Bankes, Dresch, Hillegonds, London, Willis Bullard, Gilmer, Bender, Gire and Olshove and referred to the Committee on Taxation.

A bill to amend sections 23, 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,"

sections 23 and 24 as amended by Act No. 83 of the Public Acts of 1991 and section 30 as amended by Act No. 58 of the Public Acts of 1986, being sections 205.23, 205.24, and 205.30 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 23, 24, and 30 of Act No. 122 of the
2 Public Acts of 1941, sections 23 and 24 as amended by Act No. 83
3 of the Public Acts of 1991 and section 30 as amended by Act
4 No. 58 of the Public Acts of 1986, being sections 205.23, 205.24,
5 and 205.30 of the Michigan Compiled Laws, are amended to read as
6 follows:

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

13 (2) If the amount of a tax paid is less than the amount that
14 should have been paid or an excessive claim has been made, the
15 deficiency and interest on the deficiency at the current monthly
16 rate of THE GREATER OF 9% OR 1 percentage point above the
17 adjusted prime rate per annum from the time the tax was due, and
18 until paid, are due and payable after notice and conference as
19 provided in this act. A deficiency in an estimated payment as
20 may be required by a tax statute administered under this act
21 shall be treated in the same manner as a tax due and shall be
22 subject to the same current monthly interest rate of THE GREATER
23 OF 9% OR 1 percentage point above the adjusted prime rate from
24 the time the payment was due, until paid. ~~The term~~ AS USED IN
25 THIS SECTION, "adjusted prime rate" ~~charged by banks~~ means the
26 average predominant prime rate quoted by not less than 3
27 commercial banks to large businesses, as determined by the

1 department of treasury. The adjusted prime rate is to be based
2 on the average prime rate charged by not less than 3 commercial
3 banks during the 6-month period ending on March 31 and the
4 6-month period ending on September 30. One percentage point
5 shall be added to the adjusted prime rate, and the resulting sum
6 shall be divided by 12 to establish the current monthly interest
7 rate. The resulting current monthly interest rate based on the
8 6-month period ending March 31 becomes effective on the following
9 July 1, and the resulting current monthly interest rate based on
10 the 6-month period ending September 30 becomes effective on
11 January 1 of the following year.

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

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

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

10 (2) Except as provided in ~~subsection 3~~ SUBSECTIONS (3) AND
11 (7), if a ~~person~~ TAXPAYER fails or refuses to file a return or
12 pay a tax within the time specified, a penalty of \$10.00 or 5% of
13 the tax, whichever is greater, shall be added if the failure is
14 for not more than 1 month, with an additional 5% penalty for each
15 additional month or fraction of a month during which the ~~failure~~
16 ~~continues~~ RETURN IS NOT FILED or the tax and penalty is not
17 paid, to a maximum of 50%. In addition to the penalty, interest
18 at the rate provided in section 23(2) shall be added on the tax
19 from the time the tax was due, until paid.

20 (3) If a ~~person~~ TAXPAYER is required to remit tax due pur-
21 suant to section 19(2) and fails or refuses to pay the tax within
22 the time specified, a penalty of 0.167% of the tax shall be added
23 for each day during which the failure continues or the tax and
24 penalty are not paid, to a maximum of 50% of the tax. For
25 reporting periods beginning after August 31, 1991 and before
26 November 1, 1991, the commissioner shall not impose the penalty
27 under this subsection if the tax is remitted within 2 banking

1 days of the date specified and the taxpayer demonstrates that the
2 taxpayer's account at their financial institution was charged for
3 the tax owed on or before the date the remittance was due.

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

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

15 (6) ~~For~~ IF a taxpayer ~~who has~~ failed to file a return
16 BOTH during any previous tax period for which amnesty is avail-
17 able under section 31 AND during the amnesty period, a penalty of
18 50% of any tax delinquency discovered after the amnesty period
19 shall be added to the tax.

20 (7) IF A TAXPAYER FAILS TO PAY AN ESTIMATED TAX PAYMENT AS
21 MAY BE REQUIRED BY A TAX STATUTE ADMINISTERED UNDER THIS ACT, A
22 PENALTY OF 0.03% OF THE TAX SHALL BE ADDED FOR EACH DAY DURING
23 WHICH THE TAX AND PENALTY ARE NOT PAID.

24 Sec. 30. (1) The department shall credit or refund ~~all~~ AN
25 overpayment of taxes; ~~all~~ taxes, penalties, and interest
26 erroneously assessed and collected; ~~and~~ and ~~all~~ taxes,
27 penalties, and interest that are found unjustly assessed,

1 excessive in amount, or wrongfully collected with interest at the
2 rate ~~of 3/4 of 1% per month~~ CALCULATED UNDER SECTION 23 FOR
3 DEFICIENCIES IN TAX PAYMENTS.

4 (2) A taxpayer who paid a tax claimed not to be due may
5 petition the department for refund of the amount paid within the
6 time period specified as the statute of limitations in section
7 27a. If a tax return reflects an overpayment or credits in
8 excess of the tax, the declaration of that fact on the return
9 constitutes a claim for refund. If the department agrees the
10 claim is valid, the amount of overpayment, penalties, and inter-
11 est shall be first applied to any known liability as provided in
12 section 30a, and the excess, if any, shall be refunded to the
13 taxpayer ~~or~~ credited, at THE taxpayer's request, against any
14 current or subsequent tax liability.

15 (3) A refund shall be certified to the state disbursing
16 authority who shall pay the amount out of the proceeds of the tax
17 in accordance with the accounting laws of the state. Interest at
18 the rate ~~of 3/4 of 1% per month~~ CALCULATED UNDER SECTION 23 FOR
19 DEFICIENCIES IN TAX PAYMENTS shall be added to the refund com-
20 mencing 45 days after the claim is filed, or 45 days after the
21 date established by law for the filing of the return, whichever
22 is later, except that interest on refunds intercepted and applied
23 as provided in section 30a shall cease as of the date of
24 interception.

25 (4) Refunds for amounts of less than \$1.00 shall not be
26 paid.