

# HOUSE BILL No. 5773

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

A bill to amend sections 21 and 31 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,"

section 21 as amended by Act No. 83 of the Public Acts of 1991 and section 31 as added by Act No. 58 of the Public Acts of 1986, being sections 205.21 and 205.31 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21 and 31 of Act No. 122 of the Public  
2 Acts of 1941, section 21 as amended by Act No. 83 of the Public

1 Acts of 1991 and section 31 as added by Act No. 58 of the Public  
2 Acts of 1986, being sections 205.21 and 205.31 of the Michigan  
3 Compiled Laws, are amended to read as follows:

4       Sec. 21. (1) If a ~~person~~ TAXPAYER fails or refuses to  
5 make a return or payment as required, in whole or in part, or if  
6 the department has reason to believe that a return made or pay-  
7 ment does not supply sufficient information for an accurate  
8 determination of the amount of tax due, the department may obtain  
9 information on which to base an assessment of the tax. ~~The~~  
10 ~~department, by~~ BY its duly authorized agents, THE DEPARTMENT may  
11 examine the books, records, and papers and audit the accounts of  
12 a person or any other records pertaining to the tax. ~~As soon as~~  
13 ~~possible after procuring information, the department shall assess~~  
14 ~~the tax determined to be due and shall notify the taxpayer of the~~  
15 ~~assessed amount and the specific reasons for the assessment.~~

16       (2) In carrying out this section, the department AND THE  
17 TAXPAYER SHALL COMPLY WITH THE FOLLOWING PROCEDURE:

18       (A) THE DEPARTMENT SHALL SEND TO THE TAXPAYER A LETTER OF  
19 INQUIRY STATING, IN A COURTEOUS AND UNINTIMIDATING MANNER, THE  
20 DEPARTMENT'S OPINION THAT THE TAXPAYER NEEDS TO FURNISH FURTHER  
21 INFORMATION OR OWES TAXES TO THE STATE, AND THE REASON FOR THAT  
22 OPINION. A LETTER OF INQUIRY SHALL ALSO EXPLAIN THE PROCEDURE BY  
23 WHICH THE PERSON MAY INITIATE COMMUNICATION WITH THE DEPARTMENT  
24 TO RESOLVE ANY DISPUTE. THIS SUBDIVISION DOES NOT APPLY IN ANY  
25 OF THE FOLLOWING CIRCUMSTANCES:

26       (i) THE TAXPAYER FILES A RETURN SHOWING A TAX DUE AND FAILS  
27 TO PAY THAT TAX.

(ii) THE TAXPAYER FAILS TO FILE A RETURN OR PAY A TAX.

(iii) THE TAXPAYER FAILS TO FILE AN AMENDED RETURN AND PAY THE ADDITIONAL MICHIGAN TAX DUE TO MODIFICATIONS MADE TO A FEDERAL RETURN, IF THE DEFICIENCY RESULTED FROM AN AUDIT OF THE TAXPAYER'S BOOKS AND RECORDS.

(iv) THE TAXPAYER OTHERWISE AFFIRMATIVELY ADMITS THAT A TAX IS DUE AND OWING.

(B) IF THE DISPUTE IS NOT RESOLVED BY THE MEANS PRESCRIBED IN SUBDIVISION (A) WITHIN 30 DAYS AFTER THE DEPARTMENT SENDS THE TAXPAYER A LETTER OF INQUIRY, THE DEPARTMENT, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to ~~levy~~ ASSESS the tax. The notice shall include THE AMOUNT OF THE TAX THE DEPARTMENT BELIEVES THE TAXPAYER OWES, THE REASON FOR THAT DEFICIENCY, AND a statement advising the taxpayer of a right to an informal conference, THE REQUIREMENT OF A WRITTEN REQUEST FOR THE CONFERENCE INCLUDING A TAXPAYER'S STATEMENT OF THE CONTESTED AMOUNTS AND REASONS FOR THE DISPUTE, AND THE 30-DAY TIME LIMIT FOR THAT REQUEST.

(C) If the taxpayer serves written notice upon the department within ~~20~~ 30 days after ~~receipt of~~ the TAXPAYER RECEIVES A notice ~~to the taxpayer and~~ OF INTENT TO ASSESS, remits the uncontested portion of the liability, AND PROVIDES A STATEMENT OF THE CONTESTED AMOUNTS AND REASONS FOR THE DISPUTE, the taxpayer ~~may request~~ IS ENTITLED TO an informal conference on the question of liability for the assessment.

(D) Upon receipt of ~~the~~ A TAXPAYER'S written notice, the department shall set a MUTUALLY AGREED UPON OR REASONABLE time

1 and place for the conference and shall give the taxpayer  
2 reasonable WRITTEN notice not less than 20 days before the  
3 conference. THE NOTICE SHALL SPECIFY THE INTENT TO ASSESS, TYPE  
4 OF TAX, AND TAX YEAR AS THE SUBJECT OF THE CONFERENCE. The con-  
5 ference provided for by this ~~subsection shall~~ SUBDIVISION IS  
6 not ~~be~~ subject to the administrative procedures act of 1969,  
7 Act No. 306 of the Public Acts of 1969, as amended, being sec-  
8 tions 24.201 to 24.328 of the Michigan Compiled Laws, BUT IS  
9 SUBJECT TO THE RULES GOVERNING INFORMAL CONFERENCES AS PROMUL-  
10 GATED BY THE DEPARTMENT IN ACCORDANCE WITH ACT NO. 306 OF THE  
11 PUBLIC ACTS OF 1969. The taxpayer may appear or be represented  
12 BY ANY PERSON before the department AT AN INFORMAL CONFERENCE,  
13 and MAY present testimony and argument. AT THE PARTY'S OWN  
14 EXPENSE AND WITH ADVANCE NOTICE TO THE OTHER PARTY, A TAXPAYER OR  
15 THE DEPARTMENT, OR BOTH, MAY MAKE AN AUDIO RECORDING OF AN INFOR-  
16 MAL CONFERENCE.

17 (E) After the conference, the commissioner shall render a  
18 decision and order in writing, setting forth the reasons and  
19 authority, and ~~levy any~~ SHALL ASSESS THE tax, interest, and  
20 penalty found to be due and payable. The ~~assessments shall be~~  
21 DECISION AND ORDER ARE LIMITED TO THE SUBJECT OF THE CONFERENCE  
22 AS INCLUDED IN THE NOTICE UNDER SUBDIVISION (D).

23 (F) IF THE TAXPAYER DOES NOT PROTEST THE NOTICE OF INTENT TO  
24 ASSESS WITHIN THE TIME PROVIDED IN SUBDIVISION (C), THE DEPART-  
25 MENT MAY ASSESS THE TAX AND THE INTEREST AND PENALTY ON THE TAX  
26 THAT THE DEPARTMENT BELIEVES ARE DUE AND PAYABLE. AN ASSESSMENT  
27 UNDER THIS SUBDIVISION OR SUBDIVISION (E) IS final and subject to

1 appeal as provided in section 22. The final notice of assessment  
2 shall include a statement advising the ~~taxpayer~~ PERSON of a  
3 right to appeal.

4 (3) If a protest to the notice of intent to ~~levy~~ ASSESS  
5 the tax is determined by the commissioner to be a frivolous pro-  
6 test or a desire by the taxpayer to delay or impede the adminis-  
7 tration of taxes imposed by this act, a penalty of \$25.00 or 25%  
8 of the amount of tax under protest, whichever is greater, shall  
9 be added to the tax.

10 Sec. 31. ~~(1) For a period to be designated by the state~~  
11 ~~treasurer of not less than 30 days nor more than 60 days, and~~  
12 ~~ending before June 30, 1986~~ IF A TAXPAYER DOES NOT SATISFY A TAX  
13 LIABILITY OR MAKES AN EXCESSIVE CLAIM FOR A REFUND AS A RESULT OF  
14 RELIANCE ON ERRONEOUS CURRENT WRITTEN INFORMATION PROVIDED BY THE  
15 DEPARTMENT, the commissioner shall waive all criminal and civil  
16 penalties provided by law for ~~the failure or refusal~~ FAILING OR  
17 REFUSING to file a return ~~or failure~~ UNDER A STATE TAX, FOR  
18 FAILING to pay ~~any~~ A STATE TAX, OR FOR MAKING AN EXCESSIVE  
19 CLAIM FOR A REFUND FOR A state tax administered by the revenue  
20 division of the department of treasury pursuant to this act if  
21 the taxpayer makes a written request for a waiver, files a return  
22 OR AN AMENDED RETURN, and makes full payment of the tax and  
23 interest. ~~due for any prior tax year.~~

24 ~~(2) This section applies to the nonreporting and underre-~~  
25 ~~porting of tax liabilities or to the nonpayment of taxes previ-~~  
26 ~~ously determined to be due, but only to the extent of the~~  
27 ~~penalties attributable to the taxes which were previously due and~~

1 ~~which are paid during the time period provided for in subsection~~  
2 ~~(1). This section shall not apply to any tax due by the taxpayer~~  
3 ~~that is under criminal investigation, or involved in a civil~~  
4 ~~action or criminal prosecution.~~

5 ~~(3) The commissioner shall administer the provisions of this~~  
6 ~~section.~~

7 ~~(4) This section shall not apply to taxes due after~~  
8 ~~September 30, 1985.~~

9 ~~(5) There is hereby appropriated from the revenues generated~~  
10 ~~by this act the sum of \$2,000,000.00 to the department of trea-~~  
11 ~~sury for administration. This appropriation is allotted for~~  
12 ~~expenditure on the effective date of this act. Any unencumbered~~  
13 ~~funds may be carried over into the 1986-87 fiscal year. Only~~  
14 ~~general purpose revenue generated by the program may be used to~~  
15 ~~finance this appropriation.~~