

SENATE BILL No. 236

April 9, 1991, Introduced by Senator GAST and referred to the Committee on Finance.

A bill 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:

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

7 Sec. 19. (1) All remittances of taxes administered by this
8 act shall be made to the department payable to the state of
9 Michigan by bank draft, check, cashier's check, certified check,
10 money order, ~~or~~ cash, OR ELECTRONIC FUNDS TRANSFER. The money
11 received shall be credited as provided by law. A remittance
12 other than cash OR ELECTRONIC FUNDS TRANSFER shall not be a final
13 discharge of liability for the tax assessed and levied until the
14 instrument remitted has been honored.

15 (2) FOR REPORTING PERIODS BEGINNING AFTER APRIL 30, 1991, A
16 TAXPAYER WHO PAID IN THE IMMEDIATELY PRECEDING CALENDAR YEAR AN
17 AVERAGE OF \$100,000.00 OR MORE PER MONTH IN DESIGNATED TAXES
18 SHALL REMIT ON A WEEKLY BASIS THE DESIGNATED TAXES BY ELECTRONIC
19 FUNDS TRANSFER IN A FORMAT PRESCRIBED BY THE COMMISSIONER. THE
20 REMITTANCE IS DUE EACH THURSDAY FOR A PERIOD OF THE PRECEDING
21 SUNDAY THROUGH SATURDAY.

22 (3) THE COMMISSIONER MAY REQUIRE A TAXPAYER REQUIRED BY THE
23 FEDERAL GOVERNMENT TO REMIT FEDERAL INCOME TAX WITHHOLDING WITHIN
24 3 BUSINESS DAYS TO REMIT DESIGNATED TAXES AS PROVIDED IN
25 SUBSECTION (2).

1 (4) A TAXPAYER MAY VOLUNTARILY ELECT TO REMIT TAXES BY
2 ELECTRONIC FUNDS TRANSFER WITH PRIOR APPROVAL FROM THE
3 COMMISSIONER.

4 (5) ~~-(2)-~~ For failure to remit a tax administered by this
5 act with a negotiable remittance, a penalty of 25% of the tax due
6 may be added in addition to any other penalties imposed by this
7 act.

8 (6) ~~-(3)-~~ The commissioner may require that all money col-
9 lected by the taxpayer for taxes administered by this act ~~which~~
10 ~~have~~ THAT HAS not been paid to the department of treasury ~~shall~~
11 ~~be, and remain~~ IS public money ~~,~~ AND the property of this
12 state, and shall be held in trust in a separate account and fund
13 for the sole use and benefit of this state until paid over to the
14 department of treasury.

15 (7) AS USED IN THIS SECTION, "DESIGNATED TAXES" MEANS THE
16 FOLLOWING:

17 (A) SALES TAX PURSUANT TO THE GENERAL SALES TAX ACT, ACT
18 NO. 167 OF THE PUBLIC ACTS OF 1933, BEING SECTIONS 205.51 TO
19 205.78 OF THE MICHIGAN COMPILED LAWS.

20 (B) USE TAX PURSUANT TO THE USE TAX ACT, ACT NO. 94 OF THE
21 PUBLIC ACTS OF 1937, BEING SECTIONS 205.91 TO 205.111 OF THE
22 MICHIGAN COMPILED LAWS.

23 (C) INCOME TAX WITHHOLDING PURSUANT TO THE INCOME TAX ACT OF
24 1967, ACT NO. 281 OF THE PUBLIC ACTS OF 1967, BEING
25 SECTIONS 206.1 TO 206.532 OF THE MICHIGAN COMPILED LAWS.

26 Sec. 21. (1) If a person fails or refuses to make a return
27 OR ELECTRONIC FUNDS TRANSFER as required, in whole or in part, or

1 if the department has reason to believe that a return made OR
2 ELECTRONIC FUNDS TRANSFER does not supply sufficient information
3 for an accurate determination of the amount of tax due, the
4 department may obtain information on which to base an assessment
5 of the tax. The department, by its duly authorized agents, may
6 examine the books, records, and papers and audit the accounts of
7 a person or any other records pertaining to the tax. As soon as
8 possible after procuring information, the department shall assess
9 the tax determined to be due and shall notify the taxpayer of the
10 assessed amount and the specific reasons for the assessment.

11 (2) In carrying out this section, the department, after
12 determining the amount of tax due from a taxpayer, shall give
13 notice to the taxpayer of its intent to levy the tax. The notice
14 shall include a statement advising the taxpayer of a right to an
15 informal conference. If the taxpayer serves written notice upon
16 the department within 20 days after receipt of the notice to the
17 taxpayer and remits the uncontested portion of the liability, the
18 taxpayer may request an informal conference on the question of
19 liability for the assessment. Upon receipt of the written
20 notice, the department shall set a time and place for the confer-
21 ence and shall give the taxpayer reasonable notice not less than
22 20 days before the conference. The conference provided for by
23 this subsection shall not be subject to the administrative proce-
24 dures act of 1969, Act No. 306 of the Public Acts of 1969, as
25 amended, being sections 24.201 to 24.328 of the Michigan Compiled
26 Laws. The taxpayer may appear or be represented before the
27 department and present testimony and argument. After the

1 conference, the commissioner shall render a decision and order in
2 writing, setting forth the reasons and authority, and levy any
3 tax, interest, and penalty found to be due and payable. The
4 assessments shall be final and subject to appeal as provided in
5 section 22. The final notice of assessment shall include a
6 statement advising the taxpayer of a right to appeal.

7 (3) If a protest to the notice of intent to levy the tax is
8 determined by the commissioner to be a frivolous protest or a
9 desire by the taxpayer to delay or impede the administration of
10 taxes imposed by this act, a penalty of \$25.00 or 25% of the
11 amount of tax under protest, whichever is greater, shall be added
12 to the tax.

13 Sec. 23. (1) If the department believes, based upon either
14 the examination of a tax return, A PAYMENT, or an audit autho-
15 rized by this act, that a taxpayer has not satisfied a tax
16 liability or that a claim was excessive, THE DEPARTMENT SHALL
17 DETERMINE the tax liability ~~shall be determined by the~~
18 ~~department~~ and NOTIFY the taxpayer ~~shall be notified~~ of that
19 determination.

20 (2) If the amount OF A TAX paid is less than the amount
21 ~~which~~ THAT should have been paid or an excessive claim has been
22 made, the deficiency ~~—, together with—~~ AND interest ON THE
23 DEFICIENCY at the current monthly rate of 1 percentage point
24 above the adjusted prime rate per annum from the time the tax was
25 due, and until paid, ~~shall become~~ ARE due and payable after
26 notice and conference as provided in this act. A deficiency in
27 an estimated payment as may be required by a tax statute

1 administered under this act shall be treated in the same manner
2 as a tax due and shall be subject to the same current monthly
3 interest rate of 1 percentage point above the adjusted prime rate
4 from the time the payment was due, until paid. The term
5 "adjusted prime rate charged by banks" means the average predomi-
6 nant prime rate quoted by not less than 3 commercial banks to
7 large businesses, as determined by the department of treasury.
8 The adjusted prime rate is to be based on the average prime rate
9 charged by not less than 3 commercial banks during the 6-month
10 period ending on March 31 and the 6-month period ending on
11 September 30. One percentage point shall be added to the
12 adjusted prime rate, and the resulting sum shall be divided by 12
13 to establish the current monthly interest rate. The resulting
14 current monthly interest rate based on the 6-month period ending
15 March 31 ~~will become~~ BECOMES effective on the following July 1,
16 and the resulting current monthly interest rate based on the
17 6-month period ending September 30 ~~will become~~ BECOMES effec-
18 tive on January 1 of the following year.

19 (3) If any part of the deficiency or an excessive claim for
20 credit is due to negligence, but without intent to defraud, a
21 penalty of \$10.00 or 10% 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 ~~shall~~ become
24 due and payable after notice and conference as provided in this
25 act.

26 (4) If any part of the deficiency or an excessive claim for
27 credit is due to intentional disregard of the law or of the rules

1 promulgated by the department, but without intent to defraud, a
2 penalty of \$25.00 or 25% of the total amount of the deficiency in
3 the tax, whichever is greater, plus interest as provided in sub-
4 section (2), shall be added. Interest and penalty ~~shall~~ become
5 due and payable after notice and conference as provided in this
6 act.

7 (5) If any part of the deficiency or an excessive claim for
8 credit is due to fraudulent intent to evade a tax, or to obtain a
9 refund for a fraudulent claim, a penalty of 100% of the deficien-
10 cy, plus interest as provided in subsection (2), shall be added.
11 The whole amount of the unpaid tax, together with the penalty,
12 ~~shall become~~ BECOMES due and payable, after notice and confer-
13 ence as provided in this act.

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

19 (2) ~~In case of failure or refusal~~ EXCEPT AS PROVIDED IN
20 SUBSECTION 3, IF A PERSON FAILS OR REFUSES to file a return or
21 pay a tax within the time specified, a penalty of \$10.00 or 5% of
22 the tax, whichever is greater, shall be added if the failure is
23 for not more than 1 month, with an additional 5% penalty for each
24 additional month or fraction of a month during which the failure
25 continues or the tax and penalty is not paid, to a maximum of
26 50%. In addition to the penalty, interest at the rate provided

1 in section 23(2) shall be added on the tax from the time the tax
2 was due, until paid.

3 (3) IF A PERSON IS REQUIRED TO REMIT TAX ON A WEEKLY BASIS
4 AND FAILS OR REFUSES TO PAY THE TAX WITHIN THE TIME SPECIFIED, A
5 PENALTY OF 0.167% OF THE TAX SHALL BE ADDED FOR EACH DAY DURING
6 WHICH THE FAILURE CONTINUES OR THE TAX AND PENALTY ARE NOT PAID,
7 TO A MAXIMUM OF 50% OF THE TAX.

8 (4) ~~-(3)-~~ If a return is filed or remittance is paid after
9 the time specified and it is shown to the satisfaction of the
10 department that the failure was due to reasonable cause and not
11 to willful neglect, the penalty may be waived at the discretion
12 of the commissioner or an authorized representative of the
13 commissioner.

14 (5) ~~-(4)-~~ For failure or refusal to file an information
15 return or other informational report required by a tax statute,
16 within the time specified, a penalty of \$10.00 per day for each
17 day for each separate failure or refusal may be added. The total
18 penalty for each separate failure or refusal shall not exceed
19 \$400.00.

20 (6) ~~-(5)-~~ For a taxpayer who has failed to file a return
21 during any previous tax period for which amnesty is available
22 under section 31 during the amnesty period, a penalty of 50% of
23 any tax delinquency discovered after the amnesty period shall be
24 added to the tax.

25 Sec. 27. (1) In the performance of the duties and respon-
26 sibilities required by a statute, the administration of which is
27 subject to this act, a person shall not DO ANY OF THE FOLLOWING:

1 (a) Fail or refuse to make a return OR PAYMENT within the
2 time specified, ~~or~~ make a false or fraudulent return OR
3 PAYMENT, or MAKE A false statement in a return OR PAYMENT.

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

7 (c) Make or permit to be made for himself or herself or for
8 any other person a false return or PAYMENT, A false statement in
9 a return OR PAYMENT, or a false claim for credit or refund,
10 either in whole or in part.

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

16 (3) In addition to the penalties provided in subsection (2),
17 a person who knowingly swears to or verifies a false or fraudu-
18 lent return OR A FALSE OR FRAUDULENT PAYMENT, or a return OR
19 PAYMENT containing a false or fraudulent statement, with the
20 intent to aid, abet, or assist in defrauding the state, is guilty
21 of perjury, ~~and shall be punished~~ PUNISHABLE in the manner pro-
22 vided by law.

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

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