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## TAXPAYERS' RIGHTS

House Bill 4104 as enrolled  
Sponsor: Rep. Richard Bandstra

House Bill 4160 as enrolled  
Sponsor: Rep. David M. Gubow

House Committee: Taxation  
Senate Committee: Finance  
Second Analysis (9-10-93)

### ***THE APPARENT PROBLEM:***

In recent years, there has been a movement at the state and federal levels to improve the relationship between tax administrators and taxpayers. Tax departments, including Michigan's, have adopted policies stating that taxpayers should be treated as valued customers. There have also been legislative proposals known as "taxpayer bills of rights," that aim at protecting citizens from unreasonable, overbearing, and intimidating enforcement of the tax laws. (Such a law was passed at the federal level for federal tax administration in 1988.) Proponents of such laws argue that a system that depends on voluntary compliance requires that taxpayers have respect for and confidence in the tax system. Taxpayers need to perceive their treatment by tax collectors as fair and need to believe that they are on "a level playing field" when involved in disputes with government over tax liabilities. Gaining or maintaining the public trust is not easy in what is inherently an unpopular activity. As a former state tax commissioner has said, "Under the best of circumstances, revenue departments are viewed all too often as bureaucratic black holes, populated with Gestapo-like enforcers of laws few people understand and even fewer respect." Tax administrators need to treat the public consistently, fairly, courteously, and competently. And they must provide the public with the information needed to cooperate with the tax system. At the same time, tax cheats do exist and so the tax laws must be enforced vigorously. The honest taxpayer must have enough faith in the tax system to take the side of tax collectors against tax evaders and cheats.

Proposals along these lines have been introduced by legislators of both parties to improve Michigan's tax administration system, some stemming from a 1990 report of a special task force sponsored by House

Republicans. The proposals seek to guarantee more uniform, courteous, unthreatening, and evenhanded treatment for Michigan taxpayers. To cite one example offered in the House Republican task force report, when the state believes a taxpayer has failed to pay sufficient taxes, it typically sends a "notice of intent to assess" as a first step. This is considered unfair because it presumes the taxpayer is guilty and warns about the penalties and interest that will be due. A better first step would be a polite letter of inquiry that invites the taxpayer to try to resolve a dispute about tax liabilities in a non-threatening way before any "intent to assess" notice could be sent. Another concern cited in committee testimony is the treasury department's treatment of liens. Liens discovered to be in error or based on obligations since satisfied can remain on a taxpayer's record for a long time, threatening a credit rating, a business deal, or even a whole enterprise. The law should make it clear that liens should be promptly removed.

### ***THE CONTENT OF THE BILLS:***

The bills would amend the revenue act (MCL 205.21 et al.) to make changes in the manner in which the Department of Treasury deals with taxpayers.

House Bill 4104 would do the following:

- \* Require the Department of Treasury to prepare a brochure to be sent with communications to taxpayers about the determination of or collection of a state tax. The brochure would list and explain in simple and nontechnical language a taxpayer's protections and recourses when involved in a departmental action administering or enforcing a tax

House Bills 4104 and 4160 (9-10-93)

law. The brochure specifically would have to address a taxpayer's protections and the department's obligations during an audit; administrative and judicial procedures for appealing a departmental decision; procedures for claiming refunds and filing complaints; and the means by which the treasury department can enforce a tax law, including assessment, jeopardy assessment, and enforcement of a lien.

\* Alter the procedure to be followed when a taxpayer did not file a return or make a payment as required or when the department believed a return or payment did not contain sufficient information for an accurate determination of tax due. The department would first send a courteous and unthreatening letter of inquiry. The letter would state the department's opinion that the taxpayer needs to send more information or owes taxes and the reason for the opinion. The letter also would have to explain how the taxpayer could communicate with the department to resolve the dispute. (A letter of inquiry would not be required if a taxpayer had filed a return but not paid the tax due on the return; if a deficiency was due to an audit by the state; or if the taxpayer admitted the tax was owed.)

If a dispute was not resolved within 30 days after the letter was sent, the department would give notice to the taxpayer of its intent to assess the tax owed and inform the taxpayer of the right to an informal conference. (Currently, this is the first step in the process.) The notice would tell the taxpayer that a written request was required within 30 days for an informal conference containing the taxpayer's statement of the contested amounts and an explanation of the dispute. The department would be required to set a mutually agreed upon or reasonable time and place for the conference and give the taxpayer 20 days' written notice, specifying the intent to assess, type of tax, and tax year that will be the subject of the conference. The taxpayer or the department could, with advance notice and at the party's own expense, make an audio recording of an informal conference. Any decision and order by the department following an informal conference would be limited to the subject of the conference. A taxpayer would have 35 days to appeal the decision to the tax tribunal (rather than 30 days, as is currently the case). If a taxpayer did not protest the intent to assess within the 30 days allotted, the department could assess the tax and the interest and

penalty on the tax that the department believed was due and payable.

\* Require the department to release a lien once the tax liability was satisfied not more than 20 business days after the funds to satisfy the liability were applied to the taxpayer's account. If a lien was found to have been improper, the release would have to be accomplished not more than 3 business days after that discovery was made. In the case of a warrant or warrant-notice of levy, the department would be required to release the levy not more than 10 business days after funds to satisfy the tax liability were applied to the taxpayer's account (or 3 business days for an improper warrant or warrant-notice). The department also would have to reimburse any fee a person had to pay to the department or a financial institution because of an erroneous recording or filing of a lien.

\* Limit the occasions when tax information would be released pursuant to a judicial order. The law now says that a current or former employee or authorized representative of the department, or anyone connected with the department, is prohibited from divulging facts or information obtained in connection with the administration of a tax, except in accordance with a judicial order (and except as required by the proper administration of the tax law). Under House Bill 4104, information would be disclosed in accordance with a judicial order only if the order was sought by an agency charged with the duty of enforcing or investigating support obligations pursuant to an order of a court in a domestic relations matter (as defined in the Friend of the Court Act) or sought by a federal, state, or local law enforcement agency for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings, or if the order was issued by a court adjudicating a taxpayer's liability for a tax administered under the revenue act.

#### House Bill 4160 would:

\* Require the treasury department, one year after the effective date of the bill, to submit rules to a public hearing covering the standards to be followed by the staff of the revenue division for the fair and courteous treatment of the public and a system for monitoring compliance with those standards and procedures governing the informal conference for taxpayers.

\* Require the department, at the same time, to develop guidelines to govern responses by departmental employees to inquiries from the public and to develop standards for tax audit activities. An employee handbook would be assembled containing the guidelines to be distributed to all appropriate departmental employees and to be made available to the public. The guidelines would explicitly exclude the use of any collection goal or quota for evaluating an employee.

\* Require the department, within one year from the effective date of the bill, to publish a handbook for taxpayers and tax preparers. The handbook would have to be available at a reasonable cost, not to exceed the cost of publication, and contain the audit and collection procedures used by the department and the procedures governing departmental communication with taxpayers in the audit and collection process.

\* Allow a taxpayer to be awarded actual damages, including attorney fees, if the department intentionally or recklessly disregarded a law, rule, or written guideline or procedure when determining, collecting, or refunding a tax, interest, or penalty. An award could not exceed \$10,000. A claim could be brought under this provision only if the cause of action arose before January 1, 1996.

\* Require that copies of letters and notices regarding a department-taxpayer dispute be sent to a taxpayer's official representative (in addition to the taxpayer) by the department upon the request of the taxpayer.

\* Prohibit the department from imposing certain penalties after June 30, 1994, unless and until a rule was submitted for public hearing defining what constitutes reasonable cause for waiving the penalties (including illustrative examples). This would apply to the penalty when a deficiency or excessive credit claim is due to negligence without intent to defraud and the penalty for failing to file a return or to pay a tax with a return.

\* Specify that a taxpayer who failed to make a required estimated tax payment would not be subject to a penalty if he or she had not been required to make estimated tax payments in the immediately preceding tax year.

\* Prevent the department, when a taxpayer had successfully disputed a penalty imposed based on

intentional disregard of the law, from then imposing a lesser penalty based on negligence.

\* Waive all criminal and civil penalties in cases in which a taxpayer's failure to satisfy a tax liability or making of an excessive claim for a refund was due to reliance on erroneous current written information provided by the treasury department.

\* Alter the interest added when the department credits or refunds: an overpayment of taxes; taxes, penalties, and interest erroneously assessed and collected; and taxes, penalties, and interest unjustly assessed, excessive in amount, or wrongfully collected. Interest is calculated now at 3/4 of 1 percent per month. The bill would require interest to be paid at the same rate used for taxpayer deficiencies in Section 23 of the revenue act, one percent above the adjusted prime rate per annum.

### **FISCAL IMPLICATIONS:**

The Senate Fiscal Agency says the bills would result in additional costs to the Department of Treasury associated with production of the brochure, informal conferences, and rule promulgation for public hearings. A loss of revenue could occur due to the penalty provisions. There is no specific information. (Analysis dated 3-10-93)

### **ARGUMENTS:**

#### **For:**

The bills aim at seeing that taxpayers are treated evenhandedly by state tax administrators. Taxpayers deserve to be treated courteously, without intimidating tactics. Standards need to be developed to ensure that taxpayers are treated equally, that like cases are treated alike as regards enforcement and penalties. Department of Treasury employees should be provided with guidelines and standards to follow in dealing with citizens. Citizens should be given the information they need to comply with tax laws and to defend themselves in disputes with the state. Deadlines ought to be reasonable. The department should be subject to penalties when it violates the law. The thinking behind legislation of this kind is that the fair and equal treatment of taxpayers is essential to the public's confidence in and respect for the tax system, which depends in large part on the voluntary compliance of citizens.

***For:***

According to the treasury department, access to taxpayer information is being abused by collection attorneys, who commonly obtain judicial orders for the release of information. The department is concerned that the revenue act's provisions allowing divulgence of taxpayer information are being abused, and might even be used by a lawyer to determine a person's income level in order to know what to ask for in damages, before a case has been adjudicated. The volume of subpoenas for taxpayer information has become a burden on the department, which reportedly had to fill over 2,300 requests in a recent six-month period. By restricting the release of information under a judicial order to certain specific orders (involving criminal matters and domestic support cases), House Bill 4104 would curb the current abuses and ease the department's workload.

***Against:***

The requirement that liens improperly placed be removed three business days after their discovery could be difficult to meet given current Department of Treasury staffing levels.