



**House  
Legislative  
Analysis  
Section**

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**TAXPAYERS' RIGHTS**

**House Bill 4104**

**Sponsor: Rep. Richard Bandstra**

**House Bill 4160**

**Sponsor: Rep. David M. Gubow**

**Committee: Taxation**

**Complete to 2-16-93**

**A SUMMARY OF HOUSE BILLS 4104 AND 4160 AS INTRODUCED 2-2-93 AND  
2-4-93**

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 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 has not filed a return or made a payment as required or when the department believes a return or payment does 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 must explain how the taxpayer can 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

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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 with all due haste but 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. 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.

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.

- \* 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.

House Bill 4160 is tie-barred to a bill that has not yet been introduced.