

Act No. 13
Public Acts of 1993
Approved by the Governor
April 1, 1993
Filed with the Secretary of State
April 1, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Bandstra, Bullard, Gustafson, Brackenridge, Kaza, Dobb, Horton, Gernaat, McManus, Stille, Kukuk, Bobier, Bodem and Jaye
Reps. Allen, Anthony, Baade, Bender; Berman, Bryant, Byrum, Crissman, Cropsey, Curtis, Dalman, DeMars, Dobronski, Dolan, Fitzgerald, Freeman, Galloway, Gire, Goschka, Gubow, Hammerstrom, Harder, Harrison, Hill, Hoffman, Jamian, Jersevic, Johnson, Jondahl, Keith, Llewellyn, London, Lowe, Martin, McBryde, McNutt, Middaugh, Middleton, Murphy, Olshove, Pitoniak, Points, Porreca, Profit, Randall, Rivers, Schroer, Shepich, Shugars, Sikkema, Varga, Voorhees, Vorva, Wallace, Wetters, Whyman, Willard and Yokich named co-sponsors

ENROLLED HOUSE BILL No. 4104

AN ACT to amend sections 21, 22, and 28 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 sections 22 and 28 as amended by Act No. 58 of the Public Acts of 1986, being sections 205.21, 205.22, and 205.28 of the Michigan Compiled Laws; and to add sections 5 and 29a.

The People of the State of Michigan enact:

Section 1. Sections 21, 22, and 28 of Act No. 122 of the Public Acts of 1941, section 21 as amended by Act No. 83 of the Public Acts of 1991 and sections 22 and 28 as amended by Act No. 58 of the Public Acts of 1986, being sections 205.21, 205.22, and 205.28 of the Michigan Compiled Laws, are amended and sections 5 and 29a are added to read as follows:

Sec. 5. (1) The department shall prepare a brochure that lists and explains, in simple and nontechnical terms, a taxpayer's protections and recourses in regard to a departmental action administering or enforcing a tax statute, including at least all of the following:

- (a) A taxpayer's protections and the department's obligations during an audit.
- (b) Both the administrative and judicial procedures for appealing a departmental decision.
- (c) The procedures for claiming refunds and filing complaints.

(d) The means by which the department may enforce a tax statute, including assessment, jeopardy assessment, and enforcement of a lien.

(2) The department shall include the brochure prepared as required under subsection (1) with a communication to a taxpayer concerning the determination or collection of a tax administered under this act. The department may take the actions necessary to prevent sending multiple brochures to the same taxpayer.

Sec. 21. (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax.

(2) In carrying out this section, the department and the taxpayer shall comply with the following procedure:

(a) The department shall send to the taxpayer a letter of inquiry stating, in a courteous and unthreatening manner, the department's opinion that the taxpayer needs to furnish further information or owes taxes to the state, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the person may initiate communication with the department to resolve any dispute. This subdivision does not apply in any of the following circumstances:

(i) The taxpayer files a return showing a tax due and fails to pay that tax.

(ii) The deficiency resulted from an audit of the taxpayer's books and records by this state.

(iii) The taxpayer otherwise affirmatively admits that a tax is due and owing.

(b) If the dispute is not resolved within 30 days after the department sends the taxpayer a letter of inquiry or if a letter of inquiry is not required pursuant to subdivision (a), the department, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to 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 by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 30-day time limit for that request.

(c) If the taxpayer serves written notice upon the department within 30 days after the taxpayer receives a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.

(d) Upon receipt of a taxpayer's written notice, the department shall set a mutually agreed upon or reasonable time and place for the informal conference and shall give the taxpayer reasonable written notice not less than 20 days before the informal conference. The notice shall specify the intent to assess, type of tax, and tax year that is the subject of the informal conference. The informal conference provided for by this subdivision is not subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, but is subject to the rules governing informal conferences as promulgated by the department in accordance with Act No. 306 of the Public Acts of 1969. The taxpayer may appear or be represented by any person before the department at an informal conference, and may present testimony and argument. At the party's own expense and with advance notice to the other party, a taxpayer or the department, or both, may make an audio recording of an informal conference.

(e) After the informal conference, the commissioner shall render a decision and order in writing, setting forth the reasons and authority, and shall assess the tax, interest, and penalty found to be due and payable. The decision and order are limited to the subject of the informal conference as included in the notice under subdivision (d).

(f) If the taxpayer does not protest the notice of intent to assess within the time provided in subdivision (c), the department may assess the tax and the interest and penalty on the tax that the department believes are due and payable. An assessment under this subdivision or subdivision (e) is final and subject to appeal as provided in section 22. The final notice of assessment shall include a statement advising the person of a right to appeal.

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

Sec. 22. (1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. However, an action shall be commenced in the court of claims within 6 months after payment of the tax or an adverse determination of the taxpayer's claim for refund, whichever is later, if the payment of the tax or adverse determination of the claim for refund occurred under the single business tax act, Act No. 228 of the Public Acts of 1975, being sections 208.1 to 208.145 of the Michigan Compiled Laws, and before May 1, 1986.

(2) An appeal under this section shall be perfected as provided under the tax tribunal act, Act No. 186 of the Public Acts of 1973, as amended, being sections 205.701 to 205.779 of the Michigan Compiled Laws, and rules promulgated under that act for the tax tribunal, or chapter 64 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being sections 600.6401 to 600.6475 of the Michigan Compiled Laws, and rules adopted under that chapter for the court of claims. In an appeal to the court of claims, the appellant shall first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal.

(3) A taxpayer or the department may take an appeal by right from a decision of the tax tribunal or the court of claims to the court of appeals. The appeal shall be taken on the record made before the tax tribunal or the court of claims. The taxpayer or department may take further appeal to the supreme court in accordance with the court rules provided for appeals to the supreme court.

(4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

(5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.

Sec. 28. (1) The following conditions apply to all taxes administered under this act unless otherwise provided for in the specific tax statute:

(a) Notice, if required, shall be given either by personal service or by certified mail addressed to the last known address of the taxpayer. Service upon the commissioner may be made in the same manner.

(b) An injunction shall not issue to stay proceedings for the assessment and collection of a tax.

(c) In addition to the mode of collection provided in this act, the department may institute an action at law in any county in which the taxpayer resides or transacts business.

(d) The commissioner may request in writing information or records in the possession of any other department, institution, or agency of state government for the performance of duties under this act. Departments, institutions, or agencies of state government shall furnish the information and records upon receipt of the commissioner's request. Upon request of the commissioner, any department, institution, or agency of state government shall hold a hearing under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to consider withholding a license or permit of a person for nonpayment of taxes or accounts collected under this act.

(e) The commissioner or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by the state or unpaid accounts or amounts due to any department, institution, or agency of state government. This subdivision does not prevent a compromise of interest or penalties, or both.

(f) Except as otherwise provided in this subdivision, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department shall not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department. A person may disclose information described in this subdivision if the disclosure is required for the proper administration of a tax law administered under this act, pursuant to a judicial order 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 that term is defined in section 31 of the friend of the court act, Act No. 294 of the Public Acts of 1982, being section 552.531 of the Michigan Compiled Laws, or pursuant to a judicial order sought by an agency of the federal, state, or local government charged with the responsibility for the administration or enforcement of criminal law for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings or a judicial order if the taxpayer's liability for a tax administered under this act is to be adjudicated by the court that issued the judicial order. However, the commissioner or a person designated by the commissioner may divulge information set forth or disclosed in a return or report or by an investigation or audit to any department, institution, or agency of state government upon receipt of a written request from a head of the department, institution, or agency of state government if it is required for the effective administration or enforcement of the laws of this state, to a proper officer of the United States department of treasury, and to a proper officer of another state reciprocating in this privilege. The commissioner may enter into reciprocal agreements with other departments of state government, the United States department of treasury, local governmental units within this state, or taxing officials of other states for the enforcement, collection, and exchange of data after ascertaining that any information provided will be subject to confidentiality restrictions substantially the same as the provisions of this act.

(2) A person who violates subsection (1)(e) or (1)(f) is guilty of a felony, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 5 years, or both, together with the costs of prosecution. In addition, if the

offense is committed by an employee of this state, the person shall be dismissed from office or discharged from employment upon conviction.

(3) A person liable for any tax administered under this act shall keep accurate and complete records necessary for the proper determination of tax liability as required by law or rule of the department.

Sec. 29a. (1) If the department files for recording a lien imposed pursuant to this act against property or rights of property under the state tax lien registration act, Act No. 203 of the Public Acts of 1968, being sections 211.681 to 211.687 of the Michigan Compiled Laws, to satisfy a tax liability and the department determines that the tax liability out of which the lien arose is satisfied, the department shall file for recording a certificate of discharge, release, or nonattachment regarding the property or rights of property, as applicable, under Act No. 203 of the Public Acts of 1968 not more than 20 business days after funds to satisfy the tax liability out of which the lien arose have been applied to the taxpayer's account.

(2) If the department files for recording a lien imposed pursuant to this act against property or rights of property under Act No. 203 of the Public Acts of 1968 to satisfy a tax liability and the department determines that the lien is recorded or filed against property or rights of property to which the state does not have a lien under section 29, the department shall file for recording a certificate of discharge, release, or nonattachment regarding the property or rights of property, as applicable, under Act No. 203 of the Public Acts of 1968 with all due haste but not more than 3 business days after the department determines that the lien is recorded or filed against property or rights of property to which the state does not have a lien under section 29.

(3) If a warrant or warrant-notice of levy is issued and served upon a person to levy on property or rights of property to satisfy a tax liability and the department determines that the tax liability out of which the warrant or warrant-notice of levy arose is satisfied, the department shall serve a release of levy regarding the property or rights of property on the person who was served the warrant or warrant-notice of levy not more than 10 business days after funds to satisfy the tax liability out of which the warrant or warrant-notice of levy arose have been applied to the taxpayer's account.

(4) If a warrant or warrant-notice of levy is issued and served upon a person to levy on property or rights of property to satisfy a tax liability and the department determines that the property or rights of property are not subject to levy under section 25(1) or (5), the department shall serve a release of levy regarding the property or rights of property on the person who was served the warrant or warrant-notice of levy with all due haste but not more than 3 business days after the department determines that the property or rights of property are not subject to levy under section 25(1) or (5).

(5) If a person is required to pay a fee to the department, a bank, or other financial institution as the result of an erroneous recording or filing of a lien as described in subsection (2), or an erroneous issuance and service of a warrant or warrant-notice of levy as described in subsection (4), the department shall reimburse the fee to that person.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.