

Act No. 14
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. Gubow, Bobier, Brown, Oxender, Nye, Dalman, Jondahl, Dobb, Freeman, Profit, Bennane, Gire and Demars
Reps. Agee, Allen, Alley, Anthony, Bandstra, Bankes, Barns, Berman, Bodem, Bullard, Byrum, Crissman, Cropsey, Curtis, Dobronski, Dolan, Fitzgerald, Gagliardi, Gernaat, Gilmer, Goschka, Hammerstrom, Harder, Harrison, Hertel, Hill, Hoffman, Hollister, Horton, Jaye, Jersevic, Johnson, Kaza, Kilpatrick, Llewellyn, London, Lowe, McBryde, McManus, McNutt, Middaugh, Middleton, Murphy, Olshove, Pitoniak, Points, Randall, Rivers, Rocca, Schroer, Scott, Shepich, Shugars, Sikkema, Stallworth, Stille, Varga, Voorhees, Vorva, Wallace, Wetters, Willard, Yokich, Joe Young, Jr. and Richard A. Young named co-sponsors

ENROLLED HOUSE BILL No. 4160

AN ACT to amend sections 23, 24, 27a, 30, 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," sections 23 and 24 as amended by Act No. 83 of the Public Acts of 1991, section 27a as amended by Act No. 344 of the Public Acts of 1990, and section 30 as amended and section 31 as added by Act No. 58 of the Public Acts of 1986, being sections 205.23, 205.24, 205.27a, 205.30, and 205.31 of the Michigan Compiled Laws; and to add sections 4, 7, and 8.

The People of the State of Michigan enact:

Section 1. Sections 23, 24, 27a, 30, and 31 of Act No. 122 of the Public Acts of 1941, sections 23 and 24 as amended by Act No. 83 of the Public Acts of 1991, section 27a as amended by Act No. 344 of the Public Acts of 1990, and section 30 as amended and section 31 as added by Act No. 58 of the Public Acts of 1986, being sections 205.23, 205.24, 205.27a, 205.30, and 205.31 of the Michigan Compiled Laws, are amended and sections 4, 7, and 8 are added to read as follows:

Sec. 4. (1) Not later than 1 year after the effective date of this section, the department of treasury shall submit rules for a public hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, that provide for all of the following:

(a) Standards to be followed by revenue division officers and employees for the fair and courteous treatment of the public, and a system for monitoring compliance with those standards.

(b) The procedures governing an informal conference held under section 21. These procedures shall include at least all of the following:

(i) A method by which the department attempts to schedule the informal conference at a mutually convenient time and place.

(ii) A requirement that the department include in the notice for the informal conference the scope and nature of the subject of the informal conference.

(iii) Authorization for the taxpayer at whose request the informal conference is being held to make a sound recording of the informal conference with prior notice to the department and for the department to do the same with prior notice to the taxpayer.

(2) Not later than 1 year after the effective date of this section, the department shall develop guidelines to govern departmental employee responses to inquiries from the public and standards for tax audit activities. The guidelines shall explicitly exclude the use of a collection goal or quota for evaluating an employee. The department shall assemble the guidelines required by this subsection into an employee handbook. However, the handbook shall not disclose information or parameters excluded from disclosure under section 28(1)(f). The department shall distribute the handbook to all departmental employees involved in the collection or auditing of taxes and shall make the handbook available to the public.

(3) Not later than 1 year after the effective date of this section, the department shall publish a handbook for taxpayers and tax preparers. The handbook shall be made available at a reasonable cost, not to exceed the actual cost of publication, and shall contain all of the following:

(a) The audit and collection procedures used by the department.

(b) The procedures governing departmental communications with taxpayers in the audit and collection process.

Sec. 7. If the department intentionally or recklessly disregards a provision of a law, rule, or written guideline or procedure of the department in connection with the determination, collection, or refund of a tax, interest, or penalty under this act or a tax administered under this act, a taxpayer may be awarded actual damages, including reasonable attorney fees, sustained as a result of the department's action. An award under this section shall not exceed \$10,000.00. A claim may be brought under this section only if the cause of action arose before January 1, 1996.

Sec. 8. If a taxpayer files with the department a written request that copies of letters and notices regarding a dispute with that taxpayer be sent to the taxpayer's official representative, the department shall send the official representative, at the address designated by the taxpayer in the written request, a copy of each letter or notice sent to that taxpayer. A taxpayer shall not designate more than 1 official representative under this section for a single dispute.

Sec. 23. (1) If the department believes, based upon either the examination of a tax return, a payment, or an audit authorized by this act, that a taxpayer has not satisfied a tax liability or that a claim was excessive, the department shall determine the tax liability and notify the taxpayer of that determination. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) If the amount of a tax paid is less than the amount that should have been paid or an excessive claim has been made, the deficiency and interest on the deficiency at the current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the tax was due, and until paid, are due and payable after notice and informal conference as provided in this act. A deficiency in an estimated payment as may be required by a tax statute administered under this act shall be treated in the same manner as a tax due and shall be subject to the same current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the payment was due, until paid. As used in this section, "adjusted prime rate" means the average predominant prime rate quoted by not less than 3 commercial banks to large businesses, as determined by the department of treasury. The adjusted prime rate is to be based on the average prime rate charged by not less than 3 commercial banks during the 6-month period ending on March 31 and the 6-month period ending on September 30. One percentage point shall be added to the adjusted prime rate, and the resulting sum shall be divided by 12 to establish the current monthly interest rate. The resulting current monthly interest rate based on the 6-month period ending March 31 becomes effective on the following July 1, and the resulting current monthly interest rate based on the 6-month period ending September 30 becomes effective on January 1 of the following year.

(3) Except as provided in subsection (4), if any part of the deficiency or an excessive claim for credit is due to negligence, but without intent to defraud, a penalty of \$10.00 or 10% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (2), shall be added. The penalty becomes due and payable after notice and informal conference as provided in this act. If a taxpayer subject to a penalty under this subsection demonstrates to the satisfaction of the department that the deficiency or excess claim for credit was due to reasonable cause, the department shall waive the penalty. The penalty prescribed by this subsection shall not be imposed after June 30, 1994 unless and until the department submits for public hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, a rule defining what constitutes reasonable cause for waiver of the penalty under this subsection, which definition shall include illustrative examples.

(4) If any part of the deficiency or an excessive claim for credit is due to intentional disregard of the law or of the rules promulgated by the department, but without intent to defraud, a penalty of \$25.00 or 25% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (2), shall be added. The penalty becomes due and payable after notice and informal conference as provided in this act. If a penalty is imposed under this subsection and the taxpayer subject to the penalty successfully disputes the penalty, the department shall not impose a penalty prescribed by subsection (3) to the tax otherwise due.

(5) If any part of the deficiency or an excessive claim for credit is due to fraudulent intent to evade a tax, or to obtain a refund for a fraudulent claim, a penalty of 100% of the deficiency, plus interest as provided in subsection (2), shall be added. The penalty becomes due and payable after notice and informal conference as provided in this act.

Sec. 24. (1) If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) Except as provided in subsections (3) and (6), if a taxpayer fails or refuses to file a return or pay a tax within the time specified, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. In addition to the penalty, interest at the rate provided in section 23 for deficiencies in tax payments shall be added on the tax from the time the tax was due, until paid. After June 30, 1994, the penalty prescribed by this subsection shall not be imposed until the department submits for public hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, a rule defining what constitutes reasonable cause for waiver of the penalty under subsection (4), which definition shall include illustrative examples.

(3) If a person is required to remit tax due pursuant to section 19(2) and fails or refuses to pay the tax within the time specified, a penalty of 0.167% of the tax shall be added for each day during which the failure continues or the tax and penalty are not paid, to a maximum of 50% of the tax. For reporting periods beginning after August 31, 1991 and before November 1, 1991, the commissioner shall not impose the penalty under this subsection if the tax is remitted within 2 banking days of the date specified and the taxpayer demonstrates that the taxpayer's account at their financial institution was charged for the tax owed on or before the date the remittance was due.

(4) If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the commissioner or an authorized representative of the commissioner shall waive the penalty prescribed by subsection (2).

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

(6) If a taxpayer fails to pay an estimated tax payment as may be required by the income tax act of 1967, Act No. 281 of the Public Acts of 1967, being sections 206.1 to 206.532 of the Michigan Compiled Laws, a penalty shall not be imposed if the taxpayer was not required to make estimated tax payments in the taxpayer's immediately preceding tax year.

Sec. 27a. (1) If a person liable for a tax administered under this act sells out his or her business or its stock of goods or quits the business, the person shall make a final return within 15 days after the date of selling or quitting the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or its stock of goods shall escrow sufficient money to cover the amount of taxes, interest, and penalties as may be due and unpaid until the former owner produces a receipt from the commissioner or the commissioner's designated representative showing that the taxes due are paid, or a certificate stating that taxes are not due. Upon the owner's written waiver of confidentiality, the commissioner may release to a purchaser a business' known tax liability for the purposes of establishing an escrow account for the payment of taxes. If the purchaser or succeeding purchasers of a business or its stock of goods fail to comply with the escrow requirements of this subsection, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by the business of the former owner. The purchaser's or succeeding purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in section 29(1).

(2) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return. A person who has failed to file a return is liable for all taxes due for the entire period for which the person would be subject to the taxes. If a person subject to tax fraudulently conceals any liability for the tax or a part of the tax, or fails to notify the department of any alteration in or modification of federal tax liability, the department, within 2 years after discovery of the fraud or the failure to notify, shall assess the tax with penalties and interest as

provided by this act, computed from the date on which the tax liability originally accrued. The tax, penalties, and interest are due and payable after notice and hearing as provided by this act.

(3) The running of the statute of limitations is suspended for the following:

(a) The period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department and for 1 year after that period.

(b) The period for which the taxpayer and the commissioner have consented to in writing that the period be extended.

(4) The running of the statute of limitations is suspended only as to those items that were the subject of the audit, conference, hearing, or litigation for federal income tax or a tax administered by the department.

(5) If a corporation liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for, making the returns or payments is personally liable for the failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for a liability may be assessed and collected under the related sections of this act.

(6) Notwithstanding the provisions of subsection (2), a claim for refund based upon the validity of a tax law based on the laws or constitution of the United States or the state constitution of 1963 shall not be paid unless the claim is filed within 90 days after the date set for filing a return.

(7) Subsection (6) does not apply to a claim for the refund of a tax paid for the 1984 tax year or a tax year after the 1984 tax year on income received as retirement or pension benefits from a public retirement system of the United States government if the claimant waives any claim for the refund of such a tax paid for a tax year before 1984. Claims for refunds to which this subsection applies shall be paid in accordance with the following schedule:

| <u>Refunds for tax year:</u> | <u>Payable on or after:</u> |
|------------------------------|-----------------------------|
| 1988 and 1987 | July 1, 1990 |
| 1986 | July 1, 1991 |
| 1985 | July 1, 1992 |
| 1984 | July 1, 1993 |

Sec. 30. (1) The department shall credit or refund an overpayment of taxes; taxes, penalties, and interest erroneously assessed and collected; and taxes, penalties, and interest that are found unjustly assessed, excessive in amount, or wrongfully collected with interest at the rate calculated under section 23 for deficiencies in tax payments.

(2) A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a. If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund. If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability.

(3) The department shall certify a refund to the state disbursing authority who shall pay the amount out of the proceeds of the tax in accordance with the accounting laws of the state. Interest at the rate calculated under section 23 for deficiencies in tax payments shall be added to the refund commencing 45 days after the claim is filed or 45 days after the date established by law for the filing of the return, whichever is later. Interest on refunds intercepted and applied as provided in section 30a shall cease as of the date of interception. Refunds for amounts of less than \$1.00 shall not be paid.

Sec. 31. If a taxpayer does not satisfy a tax liability or makes an excessive claim for a refund as a result of reliance on erroneous current written information provided by the department, the commissioner shall waive all criminal and civil penalties provided by law for failing or refusing to file a return, for failing to pay a tax, or for making an excessive claim for a refund for a tax administered by the revenue division of the department of treasury pursuant to this act if the taxpayer makes a written request for a waiver, files a return or an amended return, and makes full payment of the tax and interest.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.