



HOUSE BILL No. 4104

February 2, 1993, Introduced by Reps. Bandstra, Bullard, Gustafson, Brackenridge, Kaza, Dobb, Horton, Gernaat, McManus, Stille, Kukuk, Bobier, Bodem and Jaye and referred to the Committee on Taxation.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 SEC. 5. (1) THE DEPARTMENT SHALL PREPARE A BROCHURE THAT
8 LISTS AND EXPLAINS, IN SIMPLE AND NONTECHNICAL TERMS, A
9 TAXPAYER'S PROTECTIONS AND RECOURSES IN REGARD TO A DEPARTMENTAL
10 ACTION ADMINISTERING OR ENFORCING A TAX STATUTE, INCLUDING AT
11 LEAST ALL OF THE FOLLOWING:

12 (A) A TAXPAYER'S PROTECTIONS AND THE DEPARTMENT'S OBLIGA-
13 TIONS DURING AN AUDIT.

14 (B) BOTH THE ADMINISTRATIVE AND JUDICIAL PROCEDURES FOR
15 APPEALING A DEPARTMENTAL DECISION.

16 (C) THE PROCEDURES FOR CLAIMING REFUNDS AND FILING
17 COMPLAINTS.

18 (D) THE MEANS BY WHICH THE DEPARTMENT MAY ENFORCE A TAX
19 STATUTE, INCLUDING ASSESSMENT, JEOPARDY ASSESSMENT, AND ENFORCE-
20 MENT OF A LIEN.

21 (2) THE DEPARTMENT SHALL INCLUDE THE BROCHURE PREPARED AS
22 REQUIRED UNDER SUBSECTION (1) WITH A COMMUNICATION TO A TAXPAYER
23 CONCERNING THE DETERMINATION OR COLLECTION OF A TAX ADMINISTERED
24 UNDER THIS ACT. THE DEPARTMENT MAY TAKE THE ACTIONS NECESSARY TO
25 PREVENT SENDING MULTIPLE BROCHURES TO THE SAME TAXPAYER.

26 Sec. 21. (1) If a ~~person~~ TAXPAYER fails or refuses to
27 make a return or payment as required, in whole or in part, or if

1 the department has reason to believe that a return made or
2 payment does not supply sufficient information for an accurate
3 determination of the amount of tax due, the department may obtain
4 information on which to base an assessment of the tax. ~~-The~~
5 ~~department, by~~ BY its duly authorized agents, THE DEPARTMENT 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 AND THE
12 TAXPAYER SHALL COMPLY WITH THE FOLLOWING PROCEDURE:

13 (A) THE DEPARTMENT SHALL SEND TO THE TAXPAYER A LETTER OF
14 INQUIRY STATING, IN A COURTEOUS AND UNINTIMIDATING MANNER, THE
15 DEPARTMENT'S OPINION THAT THE TAXPAYER NEEDS TO FURNISH FURTHER
16 INFORMATION OR OWES TAXES TO THE STATE, AND THE REASON FOR THAT
17 OPINION. A LETTER OF INQUIRY SHALL ALSO EXPLAIN THE PROCEDURE BY
18 WHICH THE PERSON MAY INITIATE COMMUNICATION WITH THE DEPARTMENT
19 TO RESOLVE ANY DISPUTE. THIS SUBDIVISION DOES NOT APPLY IN ANY
20 OF THE FOLLOWING CIRCUMSTANCES:

21 (i) THE TAXPAYER FILES A RETURN SHOWING A TAX DUE AND FAILS
22 TO PAY THAT TAX.

23 (ii) THE DEFICIENCY RESULTED FROM AN AUDIT OF THE TAXPAYER'S
24 BOOKS AND RECORDS BY THIS STATE.

25 (iii) THE TAXPAYER OTHERWISE AFFIRMATIVELY ADMITS THAT A TAX
26 IS DUE AND OWING.

1 (B) IF THE DISPUTE IS NOT RESOLVED WITHIN 30 DAYS AFTER THE
2 DEPARTMENT SENDS THE TAXPAYER A LETTER OF INQUIRY OR IF A LETTER
3 OF INQUIRY IS NOT REQUIRED PURSUANT TO SUBDIVISION (A), THE
4 DEPARTMENT, after determining the amount of tax due from a tax-
5 payer, shall give notice to the taxpayer of its intent to ~~levy~~
6 ASSESS the tax. The notice shall include THE AMOUNT OF THE TAX
7 THE DEPARTMENT BELIEVES THE TAXPAYER OWES, THE REASON FOR THAT
8 DEFICIENCY, AND a statement advising the taxpayer of a right to
9 an informal conference, THE REQUIREMENT OF A WRITTEN REQUEST BY
10 THE TAXPAYER FOR THE INFORMAL CONFERENCE THAT INCLUDES THE
11 TAXPAYER'S STATEMENT OF THE CONTESTED AMOUNTS AND AN EXPLANATION
12 OF THE DISPUTE, AND THE 30-DAY TIME LIMIT FOR THAT REQUEST.

13 (C) If the taxpayer serves written notice upon the depart-
14 ment within ~~20~~ 30 days after ~~receipt of~~ the TAXPAYER RECEIVES
15 A notice ~~to the taxpayer and~~ OF INTENT TO ASSESS, remits the
16 uncontested portion of the liability, AND PROVIDES A STATEMENT OF
17 THE CONTESTED AMOUNTS AND AN EXPLANATION OF THE DISPUTE, the tax-
18 payer ~~may request~~ IS ENTITLED TO an informal conference on the
19 question of liability for the assessment.

20 (D) Upon receipt of ~~the~~ A TAXPAYER'S written notice, the
21 department shall set a MUTUALLY AGREED UPON OR REASONABLE time
22 and place for the INFORMAL conference and shall give the taxpayer
23 reasonable WRITTEN notice not less than 20 days before the
24 INFORMAL conference. THE NOTICE SHALL SPECIFY THE INTENT TO
25 ASSESS, TYPE OF TAX, AND TAX YEAR THAT IS THE SUBJECT OF THE
26 INFORMAL CONFERENCE. The INFORMAL conference provided for by this
27 ~~subsection shall~~ SUBDIVISION IS not ~~be~~ subject to the

1 administrative procedures act of 1969, Act No. 306 of the Public
2 Acts of 1969, as amended, being sections 24.201 to 24.328 of the
3 Michigan Compiled Laws, BUT IS SUBJECT TO THE RULES GOVERNING
4 INFORMAL CONFERENCES AS PROMULGATED BY THE DEPARTMENT IN ACCORD-
5 ANCE WITH ACT NO. 306 OF THE PUBLIC ACTS OF 1969. The taxpayer
6 may appear or be represented BY ANY PERSON before the department
7 AT AN INFORMAL CONFERENCE, and MAY present testimony and
8 argument. AT THE PARTY'S OWN EXPENSE AND WITH ADVANCE NOTICE TO
9 THE OTHER PARTY, A TAXPAYER OR THE DEPARTMENT, OR BOTH, MAY MAKE
10 AN AUDIO RECORDING OF AN INFORMAL CONFERENCE.

11 (E) After the INFORMAL conference, the commissioner shall
12 render a decision and order in writing, setting forth the reasons
13 and authority, and ~~levy any~~ SHALL ASSESS THE tax, interest, and
14 penalty found to be due and payable. The ~~assessments shall be~~
15 DECISION AND ORDER ARE LIMITED TO THE SUBJECT OF THE INFORMAL
16 CONFERENCE AS INCLUDED IN THE NOTICE UNDER SUBDIVISION (D).

17 (F) IF THE TAXPAYER DOES NOT PROTEST THE NOTICE OF INTENT TO
18 ASSESS WITHIN THE TIME PROVIDED IN SUBDIVISION (C), THE DEPART-
19 MENT MAY ASSESS THE TAX AND THE INTEREST AND PENALTY ON THE TAX
20 THAT THE DEPARTMENT BELIEVES ARE DUE AND PAYABLE. AN ASSESSMENT
21 UNDER THIS SUBDIVISION OR SUBDIVISION (E) IS final and subject to
22 appeal as provided in section 22. The final notice of assessment
23 shall include a statement advising the ~~taxpayer~~ PERSON of a
24 right to appeal.

25 (3) If a protest to the notice of intent to ~~levy~~ ASSESS
26 the tax is determined by the commissioner to be a frivolous
27 protest or a desire by the taxpayer to delay or impede the

1 administration of taxes ~~imposed by~~ ADMINISTERED UNDER this act,
2 a penalty of \$25.00 or 25% of the amount of tax under protest,
3 whichever is greater, shall be added to the tax.

4 Sec. 22. (1) A ~~person~~ TAXPAYER aggrieved by an assess-
5 ment, decision, or order of the department may appeal the con-
6 tested portion of ~~an~~ THE assessment, decision, or order to the
7 tax tribunal within ~~30~~ 35 days, or to the court of claims
8 within 90 days after the assessment, decision, or order. The
9 uncontested portion of an assessment, order, or decision ~~must~~
10 SHALL be paid as a prerequisite to appeal. However, an action
11 shall be commenced in the court of claims within 6 months after
12 payment of the tax or an adverse determination of the taxpayer's
13 claim for refund, whichever is later, if the payment of the tax
14 or adverse determination of the claim for refund occurred under
15 THE SINGLE BUSINESS TAX ACT, Act No. 228 of the Public Acts of
16 1975, being sections 208.1 to 208.145 of the Michigan Compiled
17 Laws, and before ~~the effective date of section 27a. The~~ MAY 1,
18 1986.

19 (2) AN appeal UNDER THIS SECTION shall be perfected as pro-
20 vided under THE TAX TRIBUNAL ACT, Act No. 186 of the Public Acts
21 of 1973, as amended, being sections 205.701 to 205.779 of the
22 Michigan Compiled Laws, and rules ~~established~~ PROMULGATED under
23 that act for the tax tribunal, or chapter 64 of THE REVISED
24 JUDICATURE ACT OF 1961, Act No. 236 of the Public Acts of 1961,
25 as amended, being sections 600.6401 to 600.6475 of the Michigan
26 Compiled Laws, and rules adopted under that chapter for the court
27 of claims. In an appeal to the court of claims, the appellant

1 shall first pay the tax, including any applicable penalties and
2 interest, under protest and claim a refund as part of the
3 appeal. ~~An~~

4 (3) A TAXPAYER OR THE DEPARTMENT MAY TAKE AN appeal by right
5 from a decision of the tax tribunal or the court of claims ~~may~~
6 ~~be taken by the taxpayer or the department~~ to the court of
7 appeals. The appeal shall be taken on the record made before the
8 tax tribunal or the court of claims. ~~Further~~ THE TAXPAYER OR
9 DEPARTMENT MAY TAKE FURTHER appeal to the supreme court ~~may be~~
10 ~~taken by the taxpayer or the department~~ in accordance with the
11 court rules provided for appeals to the supreme court.

12 (4) ~~(2)~~ The assessment, decision, or order of the depart-
13 ment, if not appealed in accordance with this section, ~~shall be~~
14 IS final and ~~shall~~ IS not ~~be~~ reviewable in any court by man-
15 damus, appeal, or other method of direct or collateral attack.

16 (5) ~~(3)~~ An assessment ~~shall be~~ IS final, conclusive, and
17 not subject to further challenge after 90 days ~~from~~ AFTER the
18 issuance of the assessment, decision, or order of the department,
19 and a person ~~shall~~ IS not ~~be~~ entitled to a refund of any tax,
20 interest, or penalty paid pursuant to an assessment unless the
21 aggrieved person has appealed the assessment in the manner pro-
22 vided by this section.

23 SEC. 29A. (1) IF THE DEPARTMENT FILES FOR RECORDING A LIEN
24 IMPOSED PURSUANT TO THIS ACT AGAINST PROPERTY OR RIGHTS OF PROP-
25 ERTY UNDER THE STATE TAX LIEN REGISTRATION ACT, ACT NO. 203 OF
26 THE PUBLIC ACTS OF 1968, BEING SECTIONS 211.681 TO 211.687 OF THE
27 MICHIGAN COMPILED LAWS, TO SATISFY A TAX LIABILITY AND THE

1 DEPARTMENT DETERMINES THAT THE TAX LIABILITY OUT OF WHICH THE
2 LIEN AROSE IS SATISFIED, THE DEPARTMENT SHALL FILE FOR RECORDING
3 A CERTIFICATE OF DISCHARGE, RELEASE, OR NONATTACHMENT REGARDING
4 THE PROPERTY OR RIGHTS OF PROPERTY, AS APPLICABLE, UNDER ACT
5 NO. 203 OF THE PUBLIC ACTS OF 1968 NOT MORE THAN 20 BUSINESS DAYS
6 AFTER FUNDS TO SATISFY THE TAX LIABILITY OUT OF WHICH THE LIEN
7 AROSE HAVE BEEN APPLIED TO THE TAXPAYER'S ACCOUNT.

8 (2) IF THE DEPARTMENT FILES FOR RECORDING A LIEN IMPOSED
9 PURSUANT TO THIS ACT AGAINST PROPERTY OR RIGHTS OF PROPERTY UNDER
10 ACT NO. 203 OF THE PUBLIC ACTS OF 1968 TO SATISFY A TAX LIABILITY
11 AND THE DEPARTMENT DETERMINES THAT THE LIEN IS RECORDED OR FILED
12 AGAINST PROPERTY OR RIGHTS OF PROPERTY TO WHICH THE STATE DOES
13 NOT HAVE A LIEN UNDER SECTION 29, THE DEPARTMENT SHALL FILE FOR
14 RECORDING A CERTIFICATE OF DISCHARGE, RELEASE, OR NONATTACHMENT
15 REGARDING THE PROPERTY OR RIGHTS OF PROPERTY, AS APPLICABLE,
16 UNDER ACT NO. 203 OF THE PUBLIC ACTS OF 1968 WITH ALL DUE HASTE
17 BUT NOT MORE THAN 3 BUSINESS DAYS AFTER THE DEPARTMENT DETERMINES
18 THAT THE LIEN IS RECORDED OR FILED AGAINST PROPERTY OR RIGHTS OF
19 PROPERTY TO WHICH THE STATE DOES NOT HAVE A LIEN UNDER
20 SECTION 29.

21 (3) IF A WARRANT OR WARRANT-NOTICE OF LEVY IS ISSUED AND
22 SERVED UPON A PERSON TO LEVY ON PROPERTY OR RIGHTS OF PROPERTY TO
23 SATISFY A TAX LIABILITY AND THE DEPARTMENT DETERMINES THAT THE
24 TAX LIABILITY OUT OF WHICH THE WARRANT OR WARRANT-NOTICE OF LEVY
25 AROSE IS SATISFIED, THE DEPARTMENT SHALL SERVE A RELEASE OF LEVY
26 REGARDING THE PROPERTY OR RIGHTS OF PROPERTY ON THE PERSON WHO
27 WAS SERVED THE WARRANT OR WARRANT-NOTICE OF LEVY NOT MORE THAN 10

1 BUSINESS DAYS AFTER FUNDS TO SATISFY THE TAX LIABILITY OUT OF
2 WHICH THE WARRANT OR WARRANT-NOTICE OF LEVY AROSE HAVE BEEN
3 APPLIED TO THE TAXPAYER'S ACCOUNT.

4 (4) IF A WARRANT OR WARRANT-NOTICE OF LEVY IS ISSUED AND
5 SERVED UPON A PERSON TO LEVY ON PROPERTY OR RIGHTS OF PROPERTY TO
6 SATISFY A TAX LIABILITY AND THE DEPARTMENT DETERMINES THAT THE
7 PROPERTY OR RIGHTS OF PROPERTY ARE NOT SUBJECT TO LEVY UNDER SEC-
8 TION 25(1) OR (5), THE DEPARTMENT SHALL SERVE A RELEASE OF LEVY
9 REGARDING THE PROPERTY OR RIGHTS OF PROPERTY ON THE PERSON WHO
10 WAS SERVED THE WARRANT OR WARRANT-NOTICE OF LEVY WITH ALL DUE
11 HASTE BUT NOT MORE THAN 3 BUSINESS DAYS AFTER THE DEPARTMENT
12 DETERMINES THAT THE PROPERTY OR RIGHTS OF PROPERTY ARE NOT
13 SUBJECT TO LEVY UNDER SECTION 25(1) OR (5).

14 (5) IF A PERSON IS REQUIRED TO PAY A FEE TO THE DEPARTMENT,
15 A BANK, OR OTHER FINANCIAL INSTITUTION AS THE RESULT OF AN ERRO-
16 NEOUS RECORDING OR FILING OF A LIEN AS DESCRIBED IN
17 SUBSECTION (2), OR AN ERRONEOUS ISSUANCE AND SERVICE OF A WARRANT
18 OR WARRANT-NOTICE OF LEVY AS DESCRIBED IN SUBSECTION (4), THE
19 DEPARTMENT SHALL REIMBURSE THE FEE TO THAT PERSON.