



HOUSE BILL No. 5072

September 29, 1993, Introduced by Reps. Gire, Weeks, Pitoniak, Berman, Gubow, Scott and Yokich and referred to the Committee on Taxation.

A bill to amend sections 21 and 29 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. 13 of the Public Acts of 1993 and section 29 as amended by Act No. 58 of the Public Acts of 1986, being sections 205.21 and 205.29 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 21 and 29 of Act No. 122 of the Public
2 Acts of 1941, section 21 as amended by Act No. 13 of the Public
3 Acts of 1993 and section 29 as amended by Act No. 58 of the
4 Public Acts of 1986, being sections 205.21 and 205.29 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 21. (1) If a taxpayer fails or refuses to make a
7 return or payment as required, in whole or in part, ~~or~~ if the
8 department has reason to believe that a return made or payment
9 does not supply sufficient information for an accurate determina-
10 tion of the amount of tax due, OR IF A PERSON FAILS TO PAY THE
11 TAX IMPOSED BY THE CONTROLLED SUBSTANCES TAX ACT, the department
12 may obtain information on which to base an assessment of the
13 tax. By its duly authorized agents, the department may examine
14 the books, records, and papers and audit the accounts of a person
15 or any other records pertaining to the tax.

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

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

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

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

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

5 (b) If the dispute is not resolved within 30 days after the
6 department sends the taxpayer a letter of inquiry or if a letter
7 of inquiry is not required pursuant to subdivision (a), the
8 department, after determining the amount of tax due from a tax-
9 payer, shall give notice to the taxpayer of its intent to assess
10 the tax. The notice shall include the amount of the tax the
11 department believes the taxpayer owes, the reason for that defi-
12 ciency, and a statement advising the taxpayer of a right to an
13 informal conference, the requirement of a written request by the
14 taxpayer for the informal conference that includes the taxpayer's
15 statement of the contested amounts and an explanation of the dis-
16 pute, and the 30-day time limit for that request.

17 (c) If the taxpayer serves written notice upon the depart-
18 ment within 30 days after the taxpayer receives a notice of
19 intent to assess, remits the uncontested portion of the liabili-
20 ty, and provides a statement of the contested amounts and an
21 explanation of the dispute, the taxpayer is entitled to an infor-
22 mal conference on the question of liability for the assessment.

23 (d) Upon receipt of a taxpayer's written notice, the depart-
24 ment shall set a mutually agreed upon or reasonable time and
25 place for the informal conference and shall give the taxpayer
26 reasonable written notice not less than 20 days before the
27 informal conference. The notice shall specify the intent to

1 assess, type of tax, and tax year that is the subject of the
2 informal conference. The informal conference provided for by
3 this subdivision is not subject to the administrative procedures
4 act of 1969, Act No. 306 of the Public Acts of 1969, as amended,
5 being sections 24.201 to 24.328 of the Michigan Compiled Laws,
6 but is subject to the rules governing informal conferences as
7 promulgated by the department in accordance with Act No. 306 of
8 the Public Acts of 1969. The taxpayer may appear or be repre-
9 sented by any person before the department at an informal confer-
10 ence, and may present testimony and argument. At the party's own
11 expense and with advance notice to the other party, a taxpayer or
12 the department, or both, may make an audio recording of an infor-
13 mal conference.

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

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

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

7 Sec. 29. (1) Taxes administered under this act, together
8 with the interest and penalties on those taxes, ~~shall be~~ ARE a
9 lien in favor of the state against all property and rights of
10 property, both real and personal, tangible and intangible, owned
11 at the time the lien attaches ~~or~~ or afterwards acquired by ~~any~~
12 A person liable for the tax, to secure the payment of the tax.
13 The lien ~~shall attach~~ ATTACHES to the property from and after
14 the date that ~~any~~ A report or return on which the tax is levied
15 is required to be filed with the department ~~and shall continue~~
16 OR, IF THE TAX IS IMPOSED BY THE CONTROLLED SUBSTANCES TAX ACT,
17 FROM AND AFTER THE DATE THE TAX IS REQUIRED TO BE PAID. THE LIEN
18 CONTINUES for 7 years after the date of attachment. The lien may
19 be extended for another 7 years by refiling pursuant to subsec-
20 tion (2) if the refiling is made within 6 months prior to the
21 expiration date of the original 7-year period.

22 (2) The lien imposed by this act ~~shall take~~ TAKES prece-
23 dence over all other liens and encumbrances, except bona fide
24 liens recorded before the date the lien under this act is
25 recorded. However, bona fide liens recorded before the lien
26 under this act is recorded ~~shall~~ take precedence only to the
27 extent of disbursements made under a financing arrangement before

1 the forty-sixth day after the date of the tax lien recording ~~—~~
2 or before the person making the disbursements ~~had~~ HAS actual
3 knowledge of a tax lien recording under this act, whichever is
4 earlier. A lien shall be recorded and discharged in accordance
5 with THE STATE TAX LIEN REGISTRATION ACT, Act No. 203 of the
6 Public Acts of 1968, as amended, being sections 211.681 to
7 211.687 of the Michigan Compiled Laws.

8 (3) A purchaser or succeeding purchaser of property, from a
9 taxpayer in other than the ordinary course of business, against
10 which a lien has been properly recorded pursuant to subsection
11 (2) shall be personally liable for the unpaid taxes which are due
12 on the lien. The purchaser's liability shall be limited to the
13 value of the property less any proceeds which were applied to
14 balances due on secured interests which are superior to the lien
15 recorded under subsection (2).

16 Section 2. This amendatory act shall not take effect unless
17 Senate Bill No. _____ or House Bill No. 5071 (request
18 no. 02955'93) of the 87th Legislature is enacted into law.