



HOUSE BILL No. 5729

September 13, 1994 Introduced by Rep Bryant and referred to the Committee on Taxation

A bill to amend sections 23 and 24 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,

as amended by Act No 14 of the Public Acts of 1993, being sections 205 23 and 205 24 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 23 and 24 of Act No 122 of the Public
2 Acts of 1941, as amended by Act No 14 of the Public Acts of

1 1993 being sections 205 23 and 205 24 of the Michigan Compiled
2 Laws, are amended to read as follows

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

11 (2) If the amount of a tax paid is less than the amount that
12 should have been paid or an excessive claim has been made, the
13 deficiency and interest on the deficiency at the ~~current~~
14 monthly interest rate of 9% OR 1 percentage point above the
15 CURRENT MONTHLY adjusted prime rate per annum, WHICHEVER IS
16 GREATER from the time the tax was due, and until paid, are due
17 and payable after notice and informal conference as provided in
18 this act A deficiency in an estimated payment ~~as may be~~
19 required by a tax statute administered under this act shall be
20 treated in the same manner as a tax due and ~~shall be~~ IS subject
21 to the same current monthly interest rate of 9% OR 1 percentage
22 point above the CURRENT MONTHLY adjusted prime rate per annum,
23 WHICHEVER IS GREATER, from the time the payment was due, until
24 paid As used in this section, "adjusted prime rate" means the
25 average predominant prime rate quoted by not less than 3 commer-
26 cial banks to large businesses as determined by the department
27 of treasury The adjusted prime rate is to be based on the

1 average prime rate charged by not less than 3 commercial banks
2 during the 6-month period ending on March 31 and the 6-month
3 period ending on September 30 One percentage point shall be
4 added to the adjusted prime rate, and the resulting sum shall be
5 divided by 12 to establish the current monthly ADJUSTED PRIME
6 interest rate The resulting current monthly interest rate based
7 on the 6-month period ending March 31 becomes effective on the
8 following July 1, and the resulting current monthly ADJUSTED
9 PRIME interest rate based on the 6-month period ending
10 September 30 becomes effective on January 1 of the following
11 year

12 (3) Except as provided in subsection (4), if any part of the
13 deficiency or an excessive claim for credit is due to negligence,
14 but without intent to defraud, a penalty of \$10 00 or 10% of the
15 total amount of the deficiency in the tax, whichever is greater,
16 plus interest as provided in subsection (2), shall be added The
17 penalty becomes due and payable after notice and informal confer-
18 ence as provided in this act If a taxpayer subject to a penalty
19 under this subsection demonstrates to the satisfaction of the
20 department that the deficiency or excess claim for credit was due
21 to reasonable cause, the department shall waive the penalty The
22 penalty prescribed by this subsection shall not be imposed after
23 June 30, 1994 unless and until the department submits for public
24 hearing ~~pursuant to~~ UNDER the administrative procedures act of
25 1969, Act No 306 of the Public Acts of 1969, being sections
26 24 201 to 24 328 of the Michigan Compiled Laws, a rule defining
27 what constitutes reasonable cause for waiver of the penalty under

1 this subsection which definition shall include illustrative
2 examples

3 (4) If any part of the deficiency or an excessive claim for
4 credit is due to intentional disregard of the law or of the rules
5 promulgated by the department, but without intent to defraud, a
6 penalty of \$25 00 or 25% of the total amount of the deficiency in
7 the tax whichever is greater plus interest as provided in sub-
8 section (2), shall be added The penalty becomes due and payable
9 after notice and informal conference as provided in this act If
10 a penalty is imposed under this subsection and the taxpayer
11 subject to the penalty successfully disputes the penalty, the
12 department shall not impose a penalty prescribed by
13 subsection (3) to the tax otherwise due

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

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

1 (2) Except as provided in subsections (3) (4) and (6) if
 2 a taxpayer fails or refuses to file a return or pay a tax within
 3 the time specified a penalty of \$10 00 or 5% of the tax, which-
 4 ever is greater, shall be added if the failure is for not more
 5 than 1 month, with an additional 5% penalty for each additional
 6 month or fraction of a month during which the ~~failure continues~~
 7 RETURN IS NOT FILED or the tax and penalty is not paid, to a max-
 8 imum of 50% OF THE TAX In addition to the penalty, interest at
 9 the rate provided in section 23 for deficiencies in tax payments
 10 shall be added ~~on~~ TO the tax from the time the tax was due,
 11 until paid After June 30, 1994, the penalty prescribed by this
 12 subsection shall not be imposed until the department submits for
 13 public hearing ~~pursuant to~~ UNDER the administrative procedures
 14 act of 1969, Act No 306 of the Public Acts of 1969 being sec-
 15 tions 24 201 to 24 328 of the Michigan Compiled Laws, a rule
 16 defining what constitutes reasonable cause for waiver of the pen-
 17 alty under subsection (4), which definition shall include illus-
 18 trative examples

19 (3) If a ~~person~~ TAXPAYER is required to remit tax due
 20 ~~pursuant to~~ UNDER section 19(2) and fails or refuses to pay the
 21 tax within the time specified, a penalty of 0 167% of the tax
 22 shall be added for each day during which the ~~failure continues~~
 23 RETURN IS NOT FILED or the tax and penalty are not paid, to a
 24 maximum of 50% of the tax For reporting periods beginning after
 25 August 31, 1991 and before November 1, 1991, the commissioner
 26 shall not impose the penalty under this subsection if the tax is
 27 remitted within 2 banking days of the date specified and the

1 taxpayer demonstrates that the taxpayer s account at ~~their~~ HIS
2 OR HER financial institution was charged for the tax owed on or
3 before the date the remittance was due

4 (4) If a return is filed or remittance is paid after the
5 time specified and it is shown to the satisfaction of the depart-
6 ment that the failure was due to reasonable cause and not to
7 willful neglect the commissioner or an authorized representative
8 of the commissioner shall waive the penalty prescribed by
9 subsection (2)

10 (5) For failure or refusal to file an information return or
11 other informational report required by a tax statute ~~—~~ within
12 the time specified, a penalty of \$10 00 per day for each day for
13 each separate failure or refusal may be added The total penalty
14 for each separate failure or refusal shall not exceed \$400 00

15 (6) If a taxpayer fails to pay an estimated tax payment as
16 may be required by ~~the income tax act of 1967, Act No 281 of~~
17 ~~the Public Acts of 1967 being sections 206 1 to 206 532 of the~~
18 ~~Michigan Compiled Laws~~ A TAX STATUTE ADMINISTERED UNDER THIS
19 ACT, a penalty ~~shall not be imposed if the taxpayer was not~~
20 ~~required to make estimated tax payments in the taxpayer's immedi-~~
21 ~~ately preceding tax year~~ OF 0 03% OF THE TAX SHALL BE ADDED FOR
22 EACH DAY DURING WHICH THE TAX AND PENALTY ARE NOT PAID