



SENATE BILL No. 167

January 26, 1993, Introduced by Senator BOUCHARD and referred to the Committee on Finance.

A bill 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:

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

9 SEC. 4. (1) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE
10 OF THIS SECTION, THE DEPARTMENT OF TREASURY SHALL SUBMIT RULES
11 FOR A PUBLIC HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES
12 ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SEC-
13 TIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, THAT PRO-
14 VIDE FOR ALL OF THE FOLLOWING:

15 (A) STANDARDS TO BE FOLLOWED BY REVENUE DIVISION OFFICERS
16 AND EMPLOYEES FOR THE FAIR AND COURTEOUS TREATMENT OF THE PUBLIC,
17 AND A SYSTEM FOR MONITORING COMPLIANCE WITH THOSE STANDARDS.

18 (B) THE PROCEDURES GOVERNING AN INFORMAL CONFERENCE HELD
19 UNDER SECTION 21. THESE PROCEDURES SHALL INCLUDE AT LEAST ALL OF
20 THE FOLLOWING:

21 (i) A METHOD BY WHICH THE DEPARTMENT ATTEMPTS TO SCHEDULE
22 THE INFORMAL CONFERENCE AT A MUTUALLY CONVENIENT TIME AND PLACE.

23 (ii) A REQUIREMENT THAT THE DEPARTMENT INCLUDE IN THE NOTICE
24 FOR THE INFORMAL CONFERENCE THE SCOPE AND NATURE OF THE SUBJECT
25 OF THE INFORMAL CONFERENCE.

1 (iii) AUTHORIZATION FOR THE TAXPAYER AT WHOSE REQUEST THE
2 INFORMAL CONFERENCE IS BEING HELD TO MAKE A SOUND RECORDING OF
3 THE INFORMAL CONFERENCE WITH PRIOR NOTICE TO THE DEPARTMENT AND
4 FOR THE DEPARTMENT TO DO THE SAME WITH PRIOR NOTICE TO THE
5 TAXPAYER.

6 (2) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS
7 SECTION, THE DEPARTMENT SHALL DEVELOP GUIDELINES TO GOVERN
8 DEPARTMENTAL EMPLOYEE RESPONSES TO INQUIRIES FROM THE PUBLIC AND
9 STANDARDS FOR TAX AUDIT ACTIVITIES. THE GUIDELINES SHALL EXPLIC-
10 ITLY EXCLUDE THE USE OF A COLLECTION GOAL OR QUOTA FOR EVALUATING
11 AN EMPLOYEE. THE DEPARTMENT SHALL ASSEMBLE THE GUIDELINES
12 REQUIRED BY THIS SUBSECTION INTO AN EMPLOYEE HANDBOOK. HOWEVER,
13 THE HANDBOOK SHALL NOT DISCLOSE INFORMATION OR PARAMETERS
14 EXCLUDED FROM DISCLOSURE UNDER SECTION 28(1)(F). THE DEPARTMENT
15 SHALL DISTRIBUTE THE HANDBOOK TO ALL DEPARTMENTAL EMPLOYEES
16 INVOLVED IN THE COLLECTION OR AUDITING OF TAXES AND SHALL MAKE
17 THE HANDBOOK AVAILABLE TO THE PUBLIC.

18 SEC. 7. IF THE DEPARTMENT INTENTIONALLY OR RECKLESSLY DIS-
19 REGARDS A PROVISION OF A LAW, RULE, OR WRITTEN GUIDELINE OR PRO-
20 CEDURE OF THE DEPARTMENT IN CONNECTION WITH THE DETERMINATION,
21 COLLECTION, OR REFUND OF A TAX, INTEREST, OR PENALTY UNDER THIS
22 ACT OR A TAX ADMINISTERED UNDER THIS ACT, A TAXPAYER MAY BE
23 AWARDED ACTUAL DAMAGES, INCLUDING REASONABLE ATTORNEY FEES, SUS-
24 TAINED AS A RESULT OF THE DEPARTMENT'S ACTION. AN AWARD UNDER
25 THIS SECTION SHALL NOT EXCEED \$10,000.00. A CLAIM MAY BE BROUGHT
26 UNDER THIS SECTION ONLY IF THE CAUSE OF ACTION AROSE BEFORE
27 JANUARY 1, 1995.

1 SEC. 8. IF A TAXPAYER FILES WITH THE DEPARTMENT A WRITTEN
2 REQUEST THAT COPIES OF LETTERS AND NOTICES REGARDING A DISPUTE
3 WITH THAT TAXPAYER BE SENT TO THE TAXPAYER'S OFFICIAL REPRESENTA-
4 TIVE, THE DEPARTMENT SHALL SEND THE OFFICIAL REPRESENTATIVE, AT
5 THE ADDRESS DESIGNATED BY THE TAXPAYER IN THE WRITTEN REQUEST, A
6 COPY OF EACH LETTER OR NOTICE SENT TO THAT TAXPAYER. A TAXPAYER
7 SHALL NOT DESIGNATE MORE THAN 1 OFFICIAL REPRESENTATIVE UNDER
8 THIS SECTION FOR A SINGLE DISPUTE.

9 Sec. 23. (1) If the department believes, based upon either
10 the examination of a tax return, a payment, or an audit autho-
11 rized by this act, that a taxpayer has not satisfied a tax
12 liability or that a claim was excessive, the department shall
13 determine the tax liability and notify the taxpayer of that
14 determination. A LIABILITY FOR A TAX ADMINISTERED UNDER THIS ACT
15 IS SUBJECT TO THE INTEREST AND PENALTIES PRESCRIBED IN
16 SUBSECTIONS (2) TO (5).

17 (2) If the amount of a tax paid is less than the amount that
18 should have been paid or an excessive claim has been made, the
19 deficiency and interest on the deficiency at the current monthly
20 INTEREST rate of 1 percentage point above the adjusted prime rate
21 per annum from the time the tax was due, and until paid, are due
22 and payable after notice and INFORMAL conference as provided in
23 this act. A deficiency in an estimated payment as may be
24 required by a tax statute administered under this act shall be
25 treated in the same manner as a tax due and shall be subject to
26 the same current monthly interest rate of 1 percentage point
27 above the adjusted prime rate PER ANNUM from the time the payment

1 was due, until paid. ~~The term~~ AS USED IN THIS SECTION,
2 "adjusted prime rate" ~~charged by banks~~ means the average pre-
3 dominant prime rate quoted by not less than 3 commercial banks to
4 large businesses, as determined by the department of treasury.
5 The adjusted prime rate is to be based on the average prime rate
6 charged by not less than 3 commercial banks during the 6-month
7 period ending on March 31 and the 6-month period ending on
8 September 30. One percentage point shall be added to the
9 adjusted prime rate, and the resulting sum shall be divided by 12
10 to establish the current monthly interest rate. The resulting
11 current monthly interest rate based on the 6-month period ending
12 March 31 becomes effective on the following July 1, and the
13 resulting current monthly interest rate based on the 6-month
14 period ending September 30 becomes effective on January 1 of the
15 following year.

16 (3) ~~If~~ EXCEPT AS PROVIDED IN SUBSECTION (4), IF any part
17 of the deficiency or an excessive claim for credit is due to neg-
18 ligence, but without intent to defraud, a penalty of \$10.00 or
19 10% of the total amount of the deficiency in the tax, whichever
20 is greater, plus interest as provided in subsection (2), shall be
21 added. ~~Interest and penalty become~~ THIS AMOUNT BECOMES due and
22 payable after notice and INFORMAL conference as provided in this
23 act. IF A TAXPAYER SUBJECT TO A PENALTY UNDER THIS SUBSECTION
24 DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT THE DEFICI-
25 CIENCY OR EXCESS CLAIM FOR CREDIT WAS DUE TO REASONABLE CAUSE,
26 THE DEPARTMENT SHALL WAIVE THE PENALTY. THE PENALTY PRESCRIBED
27 BY THIS SUBSECTION SHALL NOT BE IMPOSED AFTER JUNE 30, 1993

1 UNLESS AND UNTIL THE DEPARTMENT SUBMITS FOR PUBLIC HEARING
2 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT
3 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
4 24.328 OF THE MICHIGAN COMPILED LAWS, A RULE DEFINING WHAT CON-
5 STITUTES REASONABLE CAUSE FOR WAIVER OF THE PENALTY UNDER THIS
6 SUBSECTION, WHICH DEFINITION SHALL INCLUDE ILLUSTRATIVE EXAMPLES.

7 (4) If any part of the deficiency or an excessive claim for
8 credit is due to intentional disregard of the law or of the rules
9 promulgated by the department, but without intent to defraud, a
10 penalty of \$25.00 or 25% of the total amount of the deficiency in
11 the tax, whichever is greater, plus interest as provided in sub-
12 section (2), shall be added. ~~Interest and penalty become~~ THIS
13 AMOUNT BECOMES due and payable after notice and INFORMAL confer-
14 ence as provided in this act. IF A PENALTY IS IMPOSED UNDER THIS
15 SUBSECTION AND THE TAXPAYER SUBJECT TO THE PENALTY SUCCESSFULLY
16 DISPUTES THE PENALTY, THE DEPARTMENT SHALL NOT IMPOSE A PENALTY
17 PRESCRIBED BY SUBSECTION (3) TO THE TAX OTHERWISE DUE.

18 (5) If any part of the deficiency or an excessive claim for
19 credit is due to fraudulent intent to evade a tax, or to obtain a
20 refund for a fraudulent claim, a penalty of 100% of the deficien-
21 cy, plus interest as provided in subsection (2), shall be added.
22 ~~The whole amount of the unpaid tax, together with the penalty,~~
23 THIS AMOUNT becomes due and payable — after notice and INFORMAL
24 conference as provided in this act.

25 Sec. 24. (1) If a ~~person~~ TAXPAYER fails or refuses to
26 file a return or pay a tax administered under this act within the
27 time specified, the department, as soon as possible, shall assess

1 the tax against the ~~person~~ TAXPAYER and notify the ~~person~~
2 TAXPAYER of the amount of the tax. A LIABILITY FOR A TAX ADMIN-
3 ISTERED UNDER THIS ACT IS SUBJECT TO THE INTEREST AND PENALTIES
4 PRESCRIBED IN SUBSECTIONS (2) TO (5).

5 (2) Except as provided in ~~subsection 3~~ SUBSECTIONS (3) AND
6 (6), if a ~~person~~ TAXPAYER fails or refuses to file a return or
7 pay a tax within the time specified, a penalty of \$10.00 or 5% of
8 the tax, whichever is greater, shall be added if the failure is
9 for not more than 1 month, with an additional 5% penalty for each
10 additional month or fraction of a month during which the failure
11 continues or the tax and penalty is not paid, to a maximum of
12 50%. In addition to the penalty, interest at the rate provided
13 in section ~~23(2)~~ 23 FOR DEFICIENCIES IN TAX PAYMENTS shall be
14 added on the tax from the time the tax was due, until paid. THE
15 PENALTY PRESCRIBED BY THIS SUBSECTION SHALL NOT BE IMPOSED AFTER
16 JUNE 30, 1993 UNLESS AND UNTIL THE DEPARTMENT SUBMITS FOR PUBLIC
17 HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
18 ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
19 24.328 OF THE MICHIGAN COMPILED LAWS, A RULE DEFINING WHAT CON-
20 STITUTES REASONABLE CAUSE FOR WAIVER OF THE PENALTY UNDER SUBSEC-
21 TION (4), WHICH DEFINITION SHALL INCLUDE ILLUSTRATIVE EXAMPLES.

22 (3) If a person is required to remit tax due pursuant to
23 section 19(2) and fails or refuses to pay the tax within the time
24 specified, a penalty of 0.167% of the tax shall be added for each
25 day during which the failure continues or the tax and penalty are
26 not paid, to a maximum of 50% of the tax. For reporting periods
27 beginning after August 31, 1991 and before November 1, 1991, the

1 commissioner shall not impose the penalty under this subsection
2 if the tax is remitted within 2 banking days of the date speci-
3 fied and the taxpayer demonstrates that the taxpayer's account at
4 their financial institution was charged for the tax owed on or
5 before the date the remittance was due.

6 (4) If a return is filed or remittance is paid after the
7 time specified and it is shown to the satisfaction of the depart-
8 ment that the failure was due to reasonable cause and not to
9 willful neglect, ~~the penalty may be waived at the discretion of~~
10 the commissioner or an authorized representative of the commis-
11 sioner SHALL WAIVE THE PENALTY PRESCRIBED BY SUBSECTION (2).

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

17 (6) ~~For a taxpayer who has failed to file a return during~~
18 ~~any previous tax period for which amnesty is available under~~
19 ~~section 31 during the amnesty period, a penalty of 50% of any tax~~
20 ~~delinquency discovered after the amnesty period shall be added to~~
21 ~~the tax.~~ IF A TAXPAYER FAILS TO PAY AN ESTIMATED TAX PAYMENT AS
22 MAY BE REQUIRED BY THE INCOME TAX ACT OF 1967, ACT NO. 281 OF THE
23 PUBLIC ACTS OF 1967, BEING SECTIONS 206.1 TO 206.532 OF THE
24 MICHIGAN COMPILED LAWS, A PENALTY SHALL NOT BE IMPOSED IF THE
25 TAXPAYER WAS NOT REQUIRED TO MAKE ESTIMATED TAX PAYMENTS IN THE
26 TAXPAYER'S IMMEDIATELY PRECEDING TAX YEAR.

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

24 (2) A deficiency, interest, or penalty shall not be assessed
25 after the expiration of 4 years after the date set for the filing
26 of the required return or after the date the return was filed,
27 whichever is later. The taxpayer shall not claim a refund of any

1 amount paid to the department after the expiration of 4 years
2 after the date set for the filing of the original return. A
3 person who has failed to file a return is liable for all taxes
4 due for the entire period for which the person would be subject
5 to the taxes. If a person subject to tax fraudulently conceals
6 any liability for the tax or a part of the tax, or fails to
7 notify the department of any alteration in or modification of
8 federal tax liability, the department, within 2 years after dis-
9 covery of the fraud or the failure to notify, shall assess the
10 tax with penalties and interest as provided by this act, computed
11 from the date on which the tax liability originally accrued. The
12 tax, penalties, and interest are due and payable after notice and
13 hearing as provided by this act.

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

16 (a) The period pending a final determination of tax, includ-
17 ing audit, conference, hearing, and litigation of liability for
18 federal income tax or a tax administered by the department AND
19 FOR 1 YEAR AFTER THAT PERIOD.

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

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

26 (5) If a corporation liable for taxes administered under
27 this act fails for any reason to file the required returns or to

1 pay the tax due, any of its officers having control or
2 supervision of, or charged with the responsibility for, making
3 the returns or payments is personally liable for the failure.
4 The signature of any corporate officers on returns or negotiable
5 instruments submitted in payment of taxes is prima facie evidence
6 of their responsibility for making the returns and payments. The
7 dissolution of a corporation does not discharge an officer's
8 liability for a prior failure of the corporation to make a return
9 or remit the tax due. The sum due for a liability may be
10 assessed and collected under the related sections of this act.

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

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

24

1	Refunds for	Payable on
2	<u>tax year:</u>	<u>or after:</u>
3		
4	1988 and 1987	July 1, 1990
5	1986	July 1, 1991
6	1985	July 1, 1992
7	1984	July 1, 1993

8 Sec. 30. (1) The department shall credit or refund ~~all~~ AN
9 overpayment of taxes; ~~all~~ taxes, penalties, and interest
10 erroneously assessed and collected; ~~and~~ ~~all~~ taxes, penal-
11 ties, and interest that are found unjustly assessed, excessive in
12 amount, or wrongfully collected with interest at the rate ~~of 3/4~~
13 ~~of 1% per month~~ CALCULATED UNDER SECTION 23 FOR DEFICIENCIES IN
14 TAX PAYMENTS.

15 (2) A taxpayer who paid a tax ~~claimed not to be~~ THAT THE
16 TAXPAYER CLAIMS IS NOT due may petition the department for refund
17 of the amount paid within the time period specified as the stat-
18 ute of limitations in section 27a. If a tax return reflects an
19 overpayment or credits in excess of the tax, the declaration of
20 that fact on the return constitutes a claim for refund. If the
21 department agrees the claim is valid, the amount of overpayment,
22 penalties, and interest shall be first applied to any known
23 liability as provided in section 30a, and the excess, if any,
24 shall be refunded to the taxpayer ~~or~~ or credited, at THE
25 taxpayer's request, against any current or subsequent tax
26 liability.

1 (3) ~~A refund shall be certified~~ THE DEPARTMENT SHALL
2 CERTIFY A REFUND to the state disbursing authority who shall pay
3 the amount out of the proceeds of the tax ~~in accordance with~~
4 PURSUANT TO the accounting laws of ~~the~~ THIS state. Interest at
5 the rate ~~of 3/4 of 1% per month~~ CALCULATED UNDER SECTION 23 FOR
6 DEFICIENCIES IN TAX PAYMENTS shall be added to the refund com-
7 mencing 45 days after the claim is filed ~~—~~ or 45 days after the
8 date established by law for the filing of the return, whichever
9 is later. ~~—, except that interest~~ INTEREST on refunds inter-
10 cepted and applied as provided in section 30a shall cease as of
11 the date of interception. ~~—(4)—~~ Refunds for amounts of less than
12 \$1.00 shall not be paid.

13 Sec. 31. ~~(1) For a period to be designated by the state~~
14 ~~treasurer of not less than 30 days nor more than 60 days, and~~
15 ~~ending before June 30, 1986~~ IF A TAXPAYER DOES NOT SATISFY A TAX
16 LIABILITY OR MAKES AN EXCESSIVE CLAIM FOR A REFUND AS A RESULT OF
17 RELIANCE ON ERRONEOUS CURRENT WRITTEN INFORMATION PROVIDED BY THE
18 DEPARTMENT, the commissioner shall waive all criminal and civil
19 penalties provided by law for ~~the failure or refusal~~ FAILING OR
20 REFUSING to file a return, ~~or failure~~ FOR FAILING to pay ~~any~~
21 ~~state~~ A TAX, OR FOR MAKING AN EXCESSIVE CLAIM FOR A REFUND FOR A
22 tax administered by the revenue division of the department of
23 treasury pursuant to this act if the taxpayer makes a written
24 request for a waiver, files a return OR AN AMENDED RETURN, and
25 makes full payment of the tax and interest. ~~—due for any prior~~
26 ~~tax year.—~~

1 ~~(2) This section applies to the nonreporting and~~
2 ~~underreporting of tax liabilities or to the nonpayment of taxes~~
3 ~~previously determined to be due, but only to the extent of the~~
4 ~~penalties attributable to the taxes which were previously due and~~
5 ~~which are paid during the time period provided for in subsection~~
6 ~~(1). This section shall not apply to any tax due by the taxpayer~~
7 ~~that is under criminal investigation, or involved in a civil~~
8 ~~action or criminal prosecution.~~

9 ~~(3) The commissioner shall administer the provisions of this~~
10 ~~section.~~

11 ~~(4) This section shall not apply to taxes due after~~
12 ~~September 30, 1985.~~

13 ~~(5) There is hereby appropriated from the revenues generated~~
14 ~~by this act the sum of \$2,000,000.00 to the department of trea-~~
15 ~~sury for administration. This appropriation is allotted for~~
16 ~~expenditure on the effective date of this act. Any unencumbered~~
17 ~~funds may be carried over into the 1986-87 fiscal year. Only~~
18 ~~general purpose revenue generated by the program may be used to~~
19 ~~finance this appropriation.~~