

Act No. 478
Public Acts of 1996
Approved by the Governor
December 23, 1996
Filed with the Secretary of State
December 26, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Gilmer and Johnson

ENROLLED HOUSE BILL No. 6235

AN ACT to amend the title and section 5 of chapter 1, sections 3, 41, 43, 46, 60, 61, 62, 63, 64, 66, 71, 73, 82, 84, 85, 86, 87, 88, 89, 92, 93, 94, and 95 of chapter 2, and sections 60, 61, and 87 of chapter 3 of Act No. 284 of the Public Acts of 1964, entitled "An act to permit the imposition and collection by cities of an excise tax levied on or measured by income; to provide the procedure including referendums for, and to require the adoption of a prescribed uniform city income tax ordinance by cities desiring to impose and collect such a tax; to limit the imposition and collection by cities and villages of excise taxes levied on or measured by income; to prescribe the powers and duties of the state commissioner of revenue; and to provide for appeals of income tax matters," sections 43 and 82 of chapter 2 as amended by Act No. 198 of the Public Acts of 1991 and section 62 of chapter 2 as amended by Act No. 249 of the Public Acts of 1990, being sections 141.505, 141.603, 141.641, 141.643, 141.646, 141.660, 141.661, 141.662, 141.663, 141.664, 141.666, 141.671, 141.673, 141.682, 141.684, 141.685, 141.686, 141.687, 141.688, 141.689, 141.692, 141.693, 141.694, 141.695, 141.760, 141.761, and 141.787 of the Michigan Compiled Laws; to add sections 5d and 9 to chapter 1 and section 64a to chapter 2; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. The title and section 5 of chapter 1, sections 3, 41, 43, 46, 60, 61, 62, 63, 64, 66, 71, 73, 82, 84, 85, 86, 87, 88, 89, 92, 93, 94, and 95 of chapter 2, and sections 60, 61, and 87 of chapter 3 of Act No. 284 of the Public Acts of 1964, sections 43 and 82 of chapter 2 as amended by Act No. 198 of the Public Acts of 1991 and section 62 of chapter 2 as amended by Act No. 249 of the Public Acts of 1990, being sections 141.505, 141.603, 141.641, 141.643, 141.646, 141.660, 141.661, 141.662, 141.663, 141.664, 141.666, 141.671, 141.673, 141.682, 141.684, 141.685, 141.686, 141.687, 141.688, 141.689, 141.692, 141.693, 141.694, 141.695, 141.760, 141.761, and 141.787 of the Michigan Compiled Laws, are amended and sections 5d and 9 are added to chapter 1 and section 64a is added to chapter 2 to read as follows:

TITLE

An act to permit the imposition and collection by cities of an excise tax levied on or measured by income; to permit the collection and administration of the tax by the state; to provide the procedure including referendums for, and to require the adoption of a prescribed uniform city income tax ordinance by cities desiring to impose and collect such a tax; to limit the imposition and collection by cities and villages of excise taxes levied on or measured by income; to prescribe the powers and duties of certain state and municipal agencies, departments, and officials; to establish the city income tax trust fund; and to provide for appeals.

CHAPTER 1

Sec. 5. (1) A person liable for the tax imposed by the ordinance set forth in and adopted pursuant to this act, a city that imposes a tax pursuant to the ordinance set forth in and adopted pursuant to this act or the department has the right of appeal from a decision or order made under this act as set forth in chapter 2.

(2) The city income tax trust fund is established in the department of treasury and all of the following apply to the fund:

(a) The state is prohibited from borrowing from the fund.

(b) The interest earned on the money in the fund shall remain in the fund.

(c) After an agreement entered into pursuant to section 9 is terminated, any liabilities that relate to that agreement shall be paid from the fund and if there are insufficient funds to pay those liabilities, the city that entered into the agreement shall be responsible for paying those liabilities.

(3) If a taxpayer or employer, as the result of an appeal under this act, is found entitled to recover any sum paid, the taxpayer or employer shall be paid from the general fund of the city except that if the city has entered into an agreement pursuant to section 9, the amount to be paid shall be paid by the state from the city income tax trust fund established in subsection (2). Only recoveries based on taxes payable for a tax year for which a city has entered into an agreement under section 9 shall be paid by the state from the city income tax trust fund. The city or the department shall promptly and uniformly comply with a final order upon appeal.

Sec. 5d. The department of treasury shall not charge to or collect from a taxpayer any amount not otherwise authorized by law in conjunction with the collection of city income tax imposed under this act.

Sec. 9. (1) For the 1996 tax year and each year after 1996, a city that imposes a city income tax pursuant to this act may enter into an agreement with the department of treasury under which the department of treasury shall administer, enforce, and collect the city income tax on behalf of the city.

(2) City income taxes, interest, penalties, and collection fees collected under an agreement entered into pursuant to subsection (1) shall be kept in the city income tax trust fund and shall be paid to the city, except that an amount of the taxes collected as determined in the agreement may be retained by the department of treasury to cover the cost of collection and administration and that amount shall be deposited into the state general fund. The department of treasury shall not charge to or collect from a taxpayer any amount not otherwise authorized by law in conjunction with the collection of city income tax pursuant to an agreement entered into pursuant to this section.

(3) If the city enters into an agreement under subsection (1), the agreement shall include provisions that relate to all of the following:

(a) The development of and distribution of forms required by the agreement and the ordinance under chapter 2.

(b) The processing of all payments.

(c) Enforcement procedures.

(d) Administrative and legal costs.

(e) Data exchange.

(f) Transfer and payment of funds.

(g) Termination of the agreement by either party.

(h) Any additional provisions as appropriate.

CHAPTER 2

Sec. 3. (1) "Administrator" means the official designated by the city to administer this ordinance or the duly authorized agent or representative of that official but does not mean the department of treasury.

(2) "Business" means an enterprise, activity, profession, or undertaking of any nature conducted or ordinarily conducted for profit or gain by any person, including the operation of an unrelated business by a charitable, religious, or educational organization.

(3) "Capital gains" and "capital losses" mean those terms as defined for federal income tax purposes.

(4) "Department" means the department of treasury for tax years after the 1996 tax year for which a city has entered into an agreement with the department of treasury pursuant to section 9 of chapter 1. Department includes a duly authorized agent or representative of the department.

Sec. 41. (1) Every corporation doing business in the city and every other person having income taxable under this ordinance in any year before the 1997 tax year or in any tax year after the 1996 tax year for which the city has not

entered into an agreement with the department of treasury pursuant to section 9 of chapter 1, shall make and file with the city an annual return for that year, on a form furnished or approved by the city, on or before the last day of the fourth month for the same calendar year, fiscal year, or other accounting period, that has been accepted by the internal revenue service for federal income tax purposes for the taxpayer. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, the annual return required by this subsection shall be filed with the city or the department as provided by the agreement on or before the fifteenth day of the fourth month for the same calendar year, fiscal year, or other accounting period that has been accepted by the internal revenue service for federal income tax purposes for the taxpayer.

(2) A husband and wife may file a joint return and, in such case, the tax liability is joint and several.

Sec. 43. (1) A balance of the tax that is due the city at the time of filing an annual return shall be paid with the return unless the balance is less than \$1.00, in which case payment is not required.

(2) If the annual return reflects an overpayment of the tax, the declaration of the overpayment on the return constitutes a claim for refund. Subject to subsection (6), if the city or the department agrees that a claim is valid, the city or the department shall apply the overpayment first to a delinquent tax liability under this ordinance of the taxpayer to the city. The city shall apply any remaining overpayment against a subsequent liability under this ordinance or, at the election of the taxpayer and if indicated on the return, shall refund the overpayment. However, the city shall not pay a refund of less than \$1.00.

(3) If a valid claim for a refund of taxes, except a refund under section 61, due for the taxable year 1992 or a taxable year after 1992 is filed, interest at the rate established in section 30(3) of Act No. 122 of the Public Acts of 1941, being section 205.30 of the Michigan Compiled Laws, shall be added to the refund beginning 45 days after the claim is filed or 45 days after the date established under this ordinance for the filing of the return, whichever is later. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, a claim for refund shall be paid from money in the city income tax trust fund.

(4) For tax years after the 1995 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, if a taxpayer pays, when filing his or her annual return, an amount less than the sum of the declared tax liability under this act, and the declared tax liability under 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, and there is no indication of the allocation of payment between the tax liabilities against which the payment should be applied, the amount paid shall first be applied against the taxpayer's tax liability under this act and any remaining amount of payment shall be applied to the taxpayer's tax liability under Act No. 281 of the Public Acts of 1967. The taxpayer's designation of a payee on a payment is not a dispositive determination of the allocation of that payment under this subsection.

(5) If the claim for refund is reflected on a joint tax return, the administrator shall allocate to each joint taxpayer his or her share of the refund. The amount allocated to each taxpayer shall be applied to his or her respective liabilities under this ordinance.

(6) If the administrator or the department determines that all or a portion of a refund claimed on a joint tax return is subject to application to a liability of an obligated spouse, the administrator or the department shall notify the joint taxpayers by first class mail sent to the address shown on the joint return. The notice shall be accompanied by a nonobligated spouse allocation form. The notice shall state all of the following:

(a) That all or a portion of the refund claimed by the joint taxpayers is subject to interception to satisfy a liability or liabilities of 1 or both spouses.

(b) The nature of the liability and the name of the obligated spouse or spouses.

(c) That a nonobligated spouse may claim his or her share of the refund by filing a nonobligated spouse allocation form with the city or the department not more than 30 days after the date the notice was mailed.

(d) A statement of the penalties under subsection (9).

(7) A nonobligated spouse who wishes to claim his or her share of a tax refund shall file with the city or the department a nonobligated spouse allocation form. The nonobligated spouse allocation form shall be in a form specified by the administrator or the department and shall require the spouses to state the amount of income or other tax base and all adjustments to the income or other tax base, including all subtractions, additions, deductions, credits, and exemptions, stated on the joint tax return that is the basis for the claimed refund, and an allocation of those amounts between the obligated and nonobligated spouse. In allocating these amounts, all of the following apply:

(a) Individual income shall be allocated to the spouse who earned the income. Joint income shall be allocated equally between the spouses.

(b) Each spouse shall be allocated the personal exemptions he or she would be entitled to claim if separate federal returns had been filed, except that dependency exemptions shall be prorated according to the relative income of the spouses.

(c) Adjustments resulting from a business shall be allocated to the spouse who claimed income from the business.

(d) Ownership of other assets relevant to the allocation shall be disclosed upon request of the administrator or the department.

(8) A nonobligated spouse allocation form shall be signed by both joint taxpayers. However, the form may be submitted without the signature of the obligated spouse if his or her signature cannot be obtained. The nonobligated spouse shall certify that he or she has made a good faith effort to obtain the signature of the obligated spouse and shall state the reason that the signature was not obtained.

(9) A person who knowingly makes a false statement on a nonobligated spouse allocation form is subject to a penalty of \$25.00 or 25% of the excessive claim for his or her share of the refund, whichever is greater, and other penalties as provided in this ordinance.

(10) A nonobligated spouse to whom the administrator or the department has sent a notice under subsection (6), who fails to file a nonobligated spouse allocation form within 30 days after the date the notice was mailed, shall be barred from commencing any action against the city or the department to recover an amount withheld to satisfy a liability of the obligated spouse to which a joint tax refund is applied under this section. The payment by the city or the department of any amount applied to a liability of a taxpayer under this section shall release the department or the city and the administrator from all liability to the obligated spouse, the nonobligated spouse, and any other person having or claiming any interest in the amount paid. A payment by the department of treasury under this subsection shall be made from the city income tax trust fund created in section 5 of chapter 1.

(11) As used in this section:

(a) "Nonobligated spouse" means a person who has filed a joint city income tax return and who is not liable for an obligation of his or her spouse described in this ordinance.

(b) "Obligated spouse" means a person who has filed a joint city income tax return and who is liable for an obligation described in this ordinance for which his or her spouse is not liable.

Sec. 46. An amended return shall be filed with the city or the department, on a form obtainable from the city or the department, if necessary to report additional income and pay an additional tax due, or to claim a refund of tax overpaid. Within 90 days after final determination of a federal tax liability that also affects the computation of a taxpayer's city income tax liability, the taxpayer shall prepare and file with the city or the department an amended city income tax return showing income subject to the city tax based upon the final determination of federal income tax liability, and pay any additional tax shown due on the return or make a claim for refund of an overpayment. A taxpayer shall not change the method of accounting or apportionment of net profits after the due date for filing the original return or any extensions for the filing of the original return.

Sec. 60. (1) Except as provided in subsection (2), an employer shall file a return, furnished by or obtainable on request from the city, and pay to the city the full amount of the tax withheld on or before the last day of the month following the close of each calendar quarter.

(2) For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, an employer shall file a return and pay the tax withheld for each calendar month on or before the fifteenth day of the month following the close of each calendar month to the department by means of an electronic funds transfer method approved by the state commissioner of revenue.

Sec. 61. (1) An employer shall file with the city or the department a reconciliation of quarterly returns on or before the last day of February following each calendar year in which the employer has withheld from an employee's compensation. A deficiency is due when the reconciliation is filed. If the employer made quarterly payments in excess of the amount withheld from an employee's compensation, the city or the department upon proper verification shall refund the excess to the employer.

(2) In addition to the reconciliation, the employer shall file with the city or the department an information return for each employee from whom the city income tax has been withheld and each employee subject to withholding under this ordinance, setting forth his or her name, address, and social security number, the total amount of compensation paid him or her during the year, and the amount of city income tax withheld. The information return shall be on a copy of the federal W-2 form or on a form furnished or approved by the city or the department. A copy of the information return shall be furnished to the employee.

(3) Except as provided in subsection (4), if an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed with the city by the date the final withholding return and payment are due.

(4) For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, if an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed with the department within 30 days after the employer goes out of business or ceases to be an employer.

Sec. 62. (1) A person who anticipates taxable income from which the city income tax will not be withheld with the city or the department shall file a declaration of estimated tax on a form furnished by or obtainable on request from the city or from the department if the city has entered into an agreement pursuant to section 9 of chapter 1. A calendar year taxpayer shall file a declaration on or before each April 30 or for tax years after the 1996 tax year and for which a city has entered into an agreement with the department of treasury pursuant to section 9 of chapter 1, on or before each April 15. A taxpayer on a fiscal year basis or other accounting period shall file with the department a declaration within 4 months after the beginning of each fiscal year or other accounting period.

(2) If a taxpayer has not previously been required to file, the declaration shall be filed on or before the first date for making a quarterly payment that occurs after the taxpayer becomes subject to the requirement to file a declaration. A taxpayer shall file a declaration for the same calendar year, fiscal year, or other accounting period that has been accepted by the federal internal revenue service for federal income tax purposes. A declaration by an individual or unincorporated entity is not required if the total estimated tax, less any credits applicable to the tax, does not exceed \$100.00. A declaration by a corporation is not required if the total estimated tax, less any credits applicable to the tax, does not exceed \$250.00. A declaration by or on behalf of an estate or trust is not required.

Sec. 63. (1) A taxpayer's annual return for the preceding year may be used as the basis for computing a declaration of estimated tax for the current year, or the taxpayer may use the same figures used for estimating federal income tax adjusted to exclude any income or deductions not taxable or permissible under this ordinance.

(2) Except as otherwise provided, the estimated tax may be paid in full with the declaration or in 4 equal installments on or before the last day of the fourth, sixth, ninth, and thirteenth months after the beginning of the taxpayer's taxable year. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, the estimated tax shall be paid in 4 equal installments on or before the fifteenth day of the fourth, sixth, ninth, and thirteenth months after the beginning of the taxpayer's taxable year.

(3) An amended declaration may be filed when making a quarterly payment, and the unpaid balance shown due shall be paid in equal installments over the remaining payment dates.

Sec. 64. (1) The filing of a declaration of estimated tax does not excuse the taxpayer from filing an annual return even though there is no change in the declared tax liability. An annual return shall be filed with the city by the end of the fourth month or for tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, filed with the department on or before the fifteenth day of the fourth month of the year following that for which the declaration was filed. Upon written request of a taxpayer the administrator or the department may extend the time for filing the annual return for not to exceed 6 months. The administrator or the department may require a tentative return and payment of the estimated tax.

(2) A penalty or interest shall not be assessed if the return is filed and the final tax paid within the extended time and all other filing and payment requirements of this ordinance are satisfied, and the estimated tax paid equals 70% or more of the tax shown due on the final return or 70% or more of the tax shown due on the taxpayer's return for the immediately preceding taxable year.

Sec. 64a. (1) If a person liable for the tax imposed under this ordinance sells a business or the stock of goods of a business or quits a business, the person shall make a final return to the city or the department within 15 days after the date the business or stock of goods is sold or the person quits the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or stock of goods of a going or closed business shall escrow sufficient money to cover the amount of taxes, interest, and penalties that may be due and unpaid until the former owner produces a receipt from the administrator that shows that the taxes due have been paid, or a certificate that states that taxes are not due. If the owner provides a written waiver of confidentiality, the administrator may release to a purchaser a business's 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 stock of goods of a business 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 applied to balances due on secured interests that are superior to any lien provided for in this ordinance.

(2) If a corporation that is liable for the tax imposed under this ordinance fails for any reason to file the required returns or to pay the tax due, any officers of the corporation that have control or supervision of, or who are charged with the responsibility for, making the returns or payments are personally liable for the failure to file or pay. The signature of any corporate officer on a return or negotiable instrument submitted in payment of a tax is prima facie evidence of the officer's 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 a tax due. The sum due for a liability may be assessed and collected under this ordinance.

Sec. 66. In withholding the tax due under this ordinance, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more, in which case it shall be increased to 1 cent. For tax years after the 1996 tax year in paying the tax due under this ordinance if any amount other than a whole dollar amount is used, the administrator, or the department shall disregard the fractional part of the dollar unless the fractional part amounts to 1/2 dollar or more, in which case the amount shall be increased by \$1.00.

Sec. 71. (1) The administrator may adopt, amend, and repeal rules and regulations relating to the administration and enforcement of this ordinance subject to the approval of the city governing body. The rules and regulations, amendments, and repeals, after approval by the city governing body, shall become effective when published in the official newspaper of the city.

(2) The administrator shall enforce this ordinance and the rules and regulations approved as provided in subsection (1). The administrator or the department shall prepare, adopt, and make available to taxpayers, employers, and other persons all forms necessary for compliance with this ordinance.

(3) For tax years before the 1997 tax year and for tax years after the 1996 tax year and for which a city has not entered into an agreement pursuant to section 9 of chapter 1, the city treasurer shall collect all taxes and payments due under this ordinance and deposit them in a designated city depository. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, the department shall collect taxes and payments due under this ordinance and deposit them in the city income tax trust fund established in section 5 of chapter 1.

Sec. 73. (1) If a taxpayer or employer fails or refuses to make a return or payment as required, in whole or in part, or if the administrator or the department has reason to believe that a return made does not supply sufficient information for an accurate determination of the amount of tax due, the administrator or the department may obtain information on which to base an assessment of the tax. The administrator or the department may examine the books, papers, and records of any person, employer, taxpayer, or agent or representative of any person, employer, or taxpayer or audit the accounts of any person, employer, or taxpayer or any other records pertaining to the tax, to verify the accuracy and completeness of a return filed, or, if no return was filed, to ascertain the tax, withholding, penalties, or interest due under this ordinance.

(2) The administrator or the department may examine any person, under oath, concerning income which was or should have been reported for taxation under this ordinance, and for this purpose may compel the production of books, papers, and records and the attendance of all parties before him or her, whether as parties or witnesses, if he or she believes those persons have knowledge of the income. In addition, for tax years after the 1996 tax year and for which a city has entered into an agreement with the department of treasury pursuant to section 9 of chapter 1, all of the following apply to implement this section:

(a) The department of treasury shall send to the taxpayer or employer a letter of inquiry stating, in a courteous and unthreatening manner, the department's opinion that the taxpayer or employer needs to furnish further information or owes taxes to the city, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the taxpayer or employer may initiate communication with the department to resolve any dispute. A letter of inquiry may be served on the taxpayer in any manner determined appropriate by the department of treasury. This subdivision does not apply in any of the following circumstances:

(i) The taxpayer or employer files a return that shows a tax due and fails to pay that tax.

(ii) The deficiency resulted from an audit of the taxpayer's or employer's books and records by the city or the department.

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

(b) If the dispute is not resolved within 30 days after the department of treasury sends the taxpayer or employer a letter of inquiry or if a letter of inquiry is not required under subdivision (a), the department, after determining the amount of tax due from a taxpayer or employer, shall give notice to the taxpayer or employer of the department of treasury's notice of intent to assess the tax. The notice shall include all of the following:

(i) The amount of the tax the department of treasury claims the taxpayer or employer owes.

(ii) The reason for the deficiency.

(iii) A statement advising the taxpayer or employer of his or her right to file a protest and to a hearing with the department of treasury.

(3) A taxpayer or employer has 30 days after receipt of a notice of intent to assess within which to file a written protest with the department of treasury. If a written protest is received, the department of treasury shall give the taxpayer or employer or duly authorized representative of the taxpayer or employer an opportunity to be heard and present evidence and arguments in his or her behalf.

(4) If a protest to the notice of intent to assess the tax under subsection (2) is determined by the department of treasury to be a frivolous protest or a desire by the taxpayer or employer to delay or impede the administration of the

tax under this ordinance, a penalty of \$25.00 or 25% of the amount of tax under protest, whichever is greater, shall be added to the tax.

Sec. 82. (1) All taxes imposed in a taxable year before the 1992 taxable year on a taxpayer and money withheld by an employer under this ordinance and remaining unpaid after the taxes or money withheld are due bear interest from the due date at the rate of 1/2 of 1% per month until paid. For the 1992 taxable year and each subsequent taxable year before the 1997 taxable year, all taxes imposed on a taxpayer and money withheld by an employer under this ordinance and remaining unpaid after the taxes or money withheld are due bear interest from the due date at the current monthly rate of 1 percentage point above the adjusted prime rate per annum per month until the tax or money is paid. For taxable years after the 1996 taxable year, if the amount of a tax paid is less than the amount that should have been paid or an excessive claim for credit 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 a final assessment as provided in section 85. A deficiency in an estimated payment required by this ordinance shall be treated in the same manner as a tax due and is 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. The term "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. For tax years before the 1997 tax year, the adjusted prime rate is to be based on the average prime rate charged by not less than 3 commercial banks during the 12-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 12-month period ending September 30 becomes effective on January 1 of the following year. For tax years after the 1996 tax year, "adjusted prime rate" means that term as defined in and determined under section 23(2) of Act No. 122 of the Public Acts of 1941, being section 205.23 of the Michigan Compiled Laws.

(2) A person who fails to file a return, pay the tax, or remit withholding, when due, is liable, in addition to the interest, to a penalty of 1% of the amount of the unpaid tax for each month or fraction of a month, not to exceed a total penalty of 25% of the unpaid tax. If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the city or the department that the failure was due to reasonable cause and not to willful neglect, the penalty shall be waived by the administrator or the department. If the total interest or interest and penalty to be assessed is less than \$2.00, the administrator or the department shall instead assess \$2.00.

(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 (1), shall be added. The penalty becomes due and payable after a final assessment is issued as provided in section 85. If a taxpayer subject to a penalty under this subsection demonstrates to the satisfaction of the administrator or the department that the deficiency or excess claim for credit was due to reasonable cause, the administrator or the department shall waive the penalty.

(4) If any part of the deficiency or an excessive claim for credit is due to intentional disregard of this ordinance, 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 (1), shall be added. The penalty becomes due and payable after a final assessment is issued as provided in section 85. If a penalty is imposed under this subsection and the taxpayer subject to the penalty successfully disputes the penalty, the administrator or 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 the tax imposed under this ordinance, or to obtain a refund for a fraudulent claim, a penalty of 100% of the deficiency, plus interest as provided in subsection (1), shall be added. The penalty becomes due and payable after a final assessment is issued as provided in section 85.

Sec. 84. (1) For tax years before the 1997 tax year and for tax years after the 1996 tax year and for which a city has not entered into an agreement pursuant to section 9 of chapter 1, if the administrator determines that a taxpayer or an employer subject to the provisions of this ordinance has failed to pay the full amount of the tax due or tax withheld, he or she shall issue a proposed assessment showing the amount due and unpaid, together with interest and penalties that may have accrued thereon. The proposed assessment shall be served upon the taxpayer or employer in person or by registered or certified mail to the last known address of the taxpayer or employer. Proof of mailing the proposed assessment is prima facie evidence of a receipt of the proposed assessment by the addressee.

(2) A taxpayer or employer has 30 days after receipt of a proposed assessment within which to file a written protest with the administrator or 30 days after receipt of a notice of intent to assess from the department of treasury to file a written protest with the department of treasury, who shall then give the taxpayer or employer or his or her duly authorized representative an opportunity to be heard and present evidence and arguments in his or her behalf.

Sec. 85. (1) After the hearing as provided in section 84, the administrator or the department shall issue a final assessment setting forth the total amount found due in the proposed assessment or notice of intent to assess and any

adjustment he or she may have made as a result of the protest. The final assessment shall be served in the same manner as a proposed assessment or notice of intent to assess. Proof of mailing of the final assessment is prima facie evidence of receipt of the final assessment by the addressee.

(2) If a protest under section 73(3) or 84(2) is not filed in respect to a proposed assessment or notice of intent to assess, a taxpayer or employer is considered to have received a final assessment 30 days after receipt of the proposed assessment.

Sec. 86. If an employer or taxpayer files a return showing the amount of tax or withholding due the city or the department, but fails to pay the amount to the city or the department, the administrator or the department is not required to issue a proposed assessment, notice of intent to assess, or a final assessment. The administrator or the department shall issue a 10-day demand for payment and if no payment or satisfactory evidence of payment is made in the 10 days the administrator or the department may recover the tax with interest and penalties in the name of the city in any court of competent jurisdiction as other debts are recoverable, or prosecute for violation of this ordinance under section 99, or both.

Sec. 87. (1) If the administrator or the department believes that collection of the tax withheld from an employee's compensation as imposed under this ordinance will be jeopardized by delay, the administrator or the department, whether or not the time otherwise prescribed by the ordinance for making the return and paying the tax has expired, shall immediately assess the tax and interest and additions provided by the ordinance. The tax, interest, and additions shall become immediately due and payable, and the administrator or the department shall make an immediate notice and demand for payment, notwithstanding when the withheld tax is otherwise due and payable.

(2) If the administrator or the department finds that a person liable for the tax administered under this ordinance intends quickly to depart from the city or to remove property from this city, to conceal the person or the person's property in the city, or to do any other act tending to render wholly or partly ineffectual proceedings to collect the tax unless proceedings are brought without delay, the administrator or the department of treasury shall give notice of the findings to the person, together with a demand for an immediate return and immediate payment of the tax. A warrant or warrant-notice of levy may issue immediately upon issuance of a jeopardy assessment. When the warrant or warrant-notice is issued, the tax shall become immediately due and payable. If the person is not in default in making a return or paying a tax prescribed by this ordinance, and furnishes evidence satisfactory to the administrator or the department that the return will be filed and the tax to which the finding relates will be paid, then the tax shall not be payable before the time otherwise fixed for payment.

Sec. 88. (1) Except in case of fraud, failure to file a return, failure to comply with the withholding provisions of this ordinance, or omission of substantial portions of income subject to the tax, an additional assessment shall not be made after 4 years from the date the return was due, including extensions, or from the date the return was filed, or the tax was paid, whichever is later. An omission of more than 25% of gross income is considered a substantial omission of income. Under this section a declaration of estimated tax is not considered a return.

(2) If the federal internal revenue service and a taxpayer execute a waiver of the federal statute of limitations, as to a taxable year, the expiration of the period within which an additional assessment may be made by the administrator or the department or a claim for refund filed by the taxpayer for such taxable year for city income tax purposes shall be 6 months from the date of expiration of the waiver.

Sec. 89. (1) Except as otherwise provided in this ordinance, a tax erroneously paid shall not be refunded unless a claim for refund is made within 4 years from the date the payment was made or the original final return was due, including extensions, whichever is later, unless the administrator or the department and the taxpayer mutually agree to extend the time for assessment or refund. Under this section a declaration of estimated tax is not considered a return. Upon denial of a refund a taxpayer may follow the same procedure for appeal as provided in the case of a deficiency assessment.

(2) A tax deficiency as finally determined and interest or penalties thereon shall be paid within 30 days after receipt of a final assessment if no appeal is made.

Sec. 92. (1) A taxpayer or employer may file a written notice of appeal with the secretary of the income tax board of review not more than 30 days after receipt by the taxpayer or employer of a final assessment, denial in whole or part of a claim for refund, decision, order, or special ruling of the administrator or the department. Upon receipt of the notice of appeal, the income tax board of review shall notify the administrator or the department, who shall forward within 15 days to the income tax board of review a certified transcript of all actions and findings taken by the administrator or the department that relate to the matter under appeal. The appellant or his or her duly authorized representative may inspect the transcript.

(2) The income tax board of review shall grant the appellant a hearing at which the appellant or his or her duly authorized representative and the administrator or the department have an opportunity to present evidence that

relates to the matter under appeal. After conclusion of the hearing, the income tax board of review by a majority vote of its 3 members shall affirm, reverse, or modify the final assessment, denial, decision, or order under appeal and furnish a copy of the decision to the appellant and to the administrator or the department.

(3) The provisions of this ordinance as to the confidential character of tax data are applicable to proceedings pending before or submitted to the income tax board of review.

(4) A tax deficiency or refund and any interest or penalties on a deficiency or refund shall be paid not more than 30 days after receipt by the taxpayer or employer or by the city or the department of notice of determination by the income tax board of review if no further appeal is made.

Sec. 93. (1) A taxpayer, employer, or other person aggrieved by a rule adopted by the administrator may file a timely appeal to the state commissioner of revenue in the form and manner prescribed by the commissioner.

(2) A taxpayer or employer aggrieved by a final assessment, denial, decision, or order of the income tax board of review other than a decision under subsection (1), may appeal the assessment, denial, decision, or order to the tax tribunal not more than 35 days after the final assessment, denial, decision, or order was issued. The uncontested portion of a final assessment, order, or decision shall be paid as a prerequisite to appeal. An appeal under this subsection shall be perfected as provided under the tax tribunal act, Act No. 186 of the Public Acts of 1973, being sections 205.701 to 205.779 of the Michigan Compiled Laws, and rules promulgated under that act for the tax tribunal.

(3) Not more than 35 days after a final order of the tax tribunal, the taxpayer, employer, or other person shall pay the city the taxes, interest, and penalty found due to the city or the department, and the city or the department shall refund to the taxpayer, employer, or other person any amount found to have been overpaid by the taxpayer, employer, or other person.

Sec. 94. (1) If a taxpayer, employer, other person, or the city or the department is aggrieved by a decision of the tax tribunal, the aggrieved party may take an appeal by right from a decision of the tax tribunal to the court of appeals. The appeal shall be taken on the record made before the tax tribunal. The taxpayer, employer, other person, city, or department may take further appeal to the supreme court in accordance with the court rules provided for appeals to the supreme court.

(2) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the final assessment, decision, or order of the administrator or the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this ordinance.

Sec. 95. For tax years before the 1997 tax year and for tax years after the 1996 tax year and for which a city has not entered into an agreement pursuant to section 9 of chapter 1, if a taxpayer is found by a decision on an appeal entitled to recover any sum paid and further appeal has not been taken within the time permitted, the sum shall be paid from the general fund of the city. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, if a taxpayer is found by a decision on an appeal to be entitled to recover any sum paid and further appeal has not been taken within the time permitted, the sum shall be paid from the the city income tax trust fund established in section 5 of chapter 1.

CHAPTER 3

Sec. 60. (1) Except as provided in subsection (2), an employer shall file a return, furnished by or obtainable on request from the city, and pay to the city the full amount of the tax withheld on or before the last day of the month following the close of each calendar quarter, except that if during any calendar month other than the last month of a calendar quarter the amount withheld exceeds \$100.00, the employer shall deposit the amount withheld with the city treasurer before the end of the next calendar month.

(2) For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, an employer shall file a return and pay the tax withheld for each calendar month on or before the fifteenth day of the month to the department following the close of each calendar month by means of an electronic funds transfer method approved by the state commissioner of revenue.

Sec. 61. (1) An employer shall file with the city or the department a reconciliation of quarterly returns on or before the last day of February following each calendar year in which the employer has withheld from an employee's compensation. A deficiency is due when the reconciliation is filed. If the employer made monthly or quarterly or both, payments in excess of the amount withheld from an employee's compensation, the city or the department upon proper verification shall refund the excess to the employer.

(2) In addition to the reconciliation the employer shall file with the city or the department an information return for each employee from whom the city income tax has been withheld and each employee subject to withholding under this

ordinance, setting forth his or her name, address and social security number, the total amount of compensation paid him or her during the year, and the amount of city income tax withheld from him or her. The information return shall be on a copy of the federal W-2 form or on a form furnished or approved by the city or the department. A copy of the information return shall be furnished to the employee.

(3) Except as provided in subsection (4), if an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed with the city by the date the final withholding return and payment are due.

(4) For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to section 9 of chapter 1, if an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed with the department within 30 days after the employer goes out of business or ceases to be an employer.

Sec. 87. (1) If the administrator or the department believes that collection of the tax withheld from an employee's compensation as imposed under this ordinance will be jeopardized by delay, the administrator or the department of treasury, whether or not the time otherwise prescribed by the ordinance for making the return and paying or depositing the tax has expired, shall immediately assess the tax and interest and additions provided by the ordinance. The tax, interest, and additions shall become immediately due and payable and the administrator or the department of treasury shall make an immediate notice and demand for payment, notwithstanding when the withheld tax is otherwise due and payable.

(2) If the administrator or the department finds that a person liable for the tax administered under this ordinance intends quickly to depart from the city or to remove property from this city, to conceal the person or the person's property in the city, or to do any other act tending to render wholly or partly ineffectual proceedings to collect the tax unless proceedings are brought without delay, the administrator or the department of treasury shall give notice of the findings to the person, together with a demand for an immediate return and immediate payment of the tax. A warrant or warrant-notice of levy may issue immediately upon issuance of a jeopardy assessment. When the warrant or warrant-notice is issued, the tax shall become immediately due and payable. If the person is not in default in making a return or paying a tax prescribed by this ordinance, and furnishes evidence satisfactory to the administrator or the department of treasury that the return will be filed and the tax to which the finding relates will be paid, then the tax shall not be payable before the time otherwise fixed for payment.

Section 2. (1) The title of Act No. 284 of the Public Acts of 1964, as amended, and section 9 of chapter 1 of Act No. 284 of the Public Acts of 1964, as added, by this amendatory act shall take effect January 1, 1996.

(2) Except as provided in subsection (1), this amendatory act shall take effect for tax years that begin after December 31, 1996.

Section 3. Section 81 of chapter 2 of Act No. 284 of the Public Acts of 1964 is repealed effective January 1, 1997.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.

