



HOUSE BILL No. 4190

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January 30, 1995, Introduced by Rep. Schroer and referred to the Committee on Tax Policy.

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 monthly
14 interest rate of 1 percentage point above the adjusted prime rate
15 per annum from the time the ~~tax was due~~ TAXPAYER RECEIVES THE
16 NOTICE REQUIRED BY SUBSECTION (1), and until THE TAX IS paid, are
17 due and payable after notice and informal conference as provided
18 in 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 subject to
21 the same current monthly interest rate of 1 percentage point
22 above the adjusted prime rate per annum from the time the
23 ~~payment was due~~ TAXPAYER RECEIVES THE NOTICE REQUIRED BY
24 SUBSECTION (1), until ~~paid~~ THE PAYMENT IS MADE. As used in
25 this section, "adjusted prime rate" means the average predominant
26 prime rate quoted by not less than 3 commercial banks to large
27 businesses, as determined by the department of treasury. The

1 adjusted prime rate is to be based on the average prime rate
2 charged by not less than 3 commercial banks during the 6-month
3 period ending on March 31 and the 6-month period ending on
4 September 30. One percentage point shall be added to the
5 adjusted prime rate, and the resulting sum shall be divided by 12
6 to establish the current monthly interest rate. The resulting
7 current monthly interest rate based on the 6-month period ending
8 March 31 becomes effective on the following July 1, and the
9 resulting current monthly interest rate based on the 6-month
10 period ending September 30 becomes effective on January 1 of the
11 following 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 the administrative procedures act of 1969,
25 Act No. 306 of the Public Acts of 1969, being sections 24.201 to
26 24.328 of the Michigan Compiled Laws, a rule defining what
27 constitutes reasonable cause for waiver of the penalty under this

1 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 to obtain a
16 refund for a fraudulent claim, a penalty of 100% of the deficien-
17 cy, plus interest as provided in subsection (2), shall be added.
18 The penalty becomes due and payable after notice and informal
19 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) and (6), if a
2 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 AFTER THE TAXPAYER RECEIVES THE NOTICE REQUIRED BY
6 SUBSECTION (1), with an additional 5% penalty for each additional
7 month or fraction of a month during which the failure continues
8 or the tax and penalty is not paid, to a maximum of 50%. In
9 addition to the penalty, interest at the rate provided in section
10 23 for deficiencies in tax payments shall be added on the tax
11 from the time the ~~tax was due~~ TAXPAYER RECEIVES THE NOTICE
12 REQUIRED BY SUBSECTION (1), until THE TAX IS paid. After June
13 30, 1994, the penalty prescribed by this subsection shall not be
14 imposed until the department submits for public hearing pursuant
15 to the administrative procedures act of 1969, Act No. 306 of the
16 Public Acts of 1969, being sections 24.201 to 24.328 of the
17 Michigan Compiled Laws, a rule defining what constitutes reason-
18 able cause for waiver of the penalty under subsection (4), which
19 definition shall include illustrative examples.

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

1 under this subsection if the tax is remitted within 2 banking
2 days of the date specified and the taxpayer demonstrates that the
3 taxpayer's account at their financial institution was charged for
4 the tax owed on or before the date the remittance was due.

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

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

16 (6) If a taxpayer fails to pay an estimated tax payment as
17 may be required by the income tax act of 1967, Act No. 281 of the
18 Public Acts of 1967, being sections 206.1 to 206.532 of the
19 Michigan Compiled Laws, a penalty shall not be imposed if the
20 taxpayer was not required to make estimated tax payments in the
21 taxpayer's immediately preceding tax year.