

SENATE BILL NO. 670

July 10, 1997, Introduced by Senators STILLE, VAUGHN, BENNETT, NORTH, SHUGARS, ROGERS, CARL, GOUGEON, STALLINGS, BYRUM, DINGELL, YOUNG, CONROY, A. SMITH, CHERRY, V. SMITH, KOIVISTO, MC MANUS, SCHWARZ, HART and DE BEAUSSAERT and referred to the Committee on Judiciary.

A bill to amend 1941 PA 122, entitled

"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,"

by amending section 30a (MCL 205.30a), as amended by 1995 PA 116.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30a. (1) If a taxpayer claims a refund that the
2 department determines is valid ~~as provided in~~ UNDER
3 section 30(2), and the department identifies a liability of the
4 taxpayer described in subsection (2), the department shall first

1 apply the amount of the refund as provided in subsections (2) and
2 ~~(3)~~ (5), and the excess, if any, shall be refunded or credited
3 as provided in section 30.

4 (2) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (3), THE amount
5 of a refund described in subsection (1) shall be applied to the
6 following in the order of priority stated:

7 (a) Any other known tax liability of the taxpayer to this
8 state.

9 (b) Any other known liability of the taxpayer to this state,
10 including a liability to pay support if the right to receive the
11 support has been assigned to the state and the liability is the
12 basis of a request for tax refund offset from the office of child
13 support.

14 (c) Any of the following in the order of priority received,
15 unless otherwise provided by law:

16 (i) A support liability of the taxpayer that is the basis of
17 a request for tax refund offset from the office of child support,
18 other than as provided by subdivision (b).

19 (ii) A writ of garnishment or other valid court order issued
20 by a court of competent jurisdiction and directed to this state
21 or the state treasurer to satisfy a liability of the taxpayer.

22 (iii) A levy of the internal revenue service to satisfy a
23 liability of the taxpayer.

24 (iv) A liability to repay benefits obtained under the
25 Michigan employment security act, ~~Act No. 1 of the Public Acts~~
26 ~~of the Extra Session of 1936, being sections 421.1 to 421.75 of~~
27 ~~the Michigan Compiled Laws 1936 (EX SESS) PA 1, MCL 421.1 TO~~

1 421.75, to which the taxpayer was not entitled, upon a request
2 for tax refund offset from the Michigan employment security
3 commission.

4 (3) A REFUND CLAIMED ON AN ANNUAL RETURN BY A TAXPAYER WHO
5 IS A SENIOR CITIZEN SHALL NOT BE APPLIED TO A WRIT OF GARNISHMENT
6 UNDER SUBSECTION (2) IF THAT REFUND AMOUNT IS LESS THAN OR EQUAL
7 TO THE SUM OF THE FOLLOWING AMOUNTS:

8 (A) A CREDIT CLAIMED BY THE TAXPAYER UNDER SECTIONS 520 AND
9 522 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.520 AND
10 206.522.

11 (B) A CREDIT CLAIMED UNDER SECTION 527A OF THE INCOME TAX
12 ACT OF 1967, 1967 PA 281, MCL 206.527A, TO THE EXTENT THE CREDIT
13 AMOUNT IS PAID IN THE FORM OF A NEGOTIABLE CHECK.

14 (C) ANY OTHER REFUNDABLE CREDIT CLAIMED BY THE TAXPAYER.

15 (4) THE AMOUNT OF A CREDIT CLAIMED UNDER SECTION 273 OF THE
16 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.273, BY A TAXPAYER
17 WHO IS A SENIOR CITIZEN SHALL NOT BE APPLIED TO A WRIT OF GAR-
18 NISHMENT UNDER SUBSECTION (2).

19 (5) ~~(3)~~ If the claim for refund is reflected on a joint
20 tax return, the department shall allocate to each joint taxpayer
21 his or her share of the refund. The amount allocated to each
22 taxpayer shall be applied to his or her respective liabilities in
23 the order of priority stated in subsection (2).

24 (6) ~~(4)~~ If the department determines that all or a portion
25 of a refund claimed on a joint tax return is subject to applica-
26 tion to a liability of an obligated spouse, the department shall
27 notify the joint taxpayers by first-class mail sent to the

1 address shown on the joint return. The notice shall be
2 accompanied by a nonobligated spouse allocation form. The notice
3 shall state all of the following:

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

7 (b) The nature of the other liability or liabilities and the
8 name of the obligated spouse or spouses.

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

13 (d) A statement of the penalties under subsection ~~(7)~~
14 (9).

15 (7) ~~(5)~~ A nonobligated spouse who wishes to claim his or
16 her share of a tax refund shall file with the department a nonob-
17 ligated spouse allocation form. The nonobligated spouse alloca-
18 tion form shall be in a form specified by the department and
19 shall require the spouses to state the amount of income or other
20 tax base and all adjustments to the income or other tax base,
21 including all subtractions, additions, deductions, credits, and
22 exemptions, stated on their joint income tax return or other
23 joint tax return that is the basis for the claimed refund, and an
24 allocation of those amounts between the obligated and nonobli-
25 gated spouse. In allocating these amounts, all of the following
26 apply:

1 (a) A federal deduction for 2-income married persons shall
2 be allocated to the spouse with the lower income who claims the
3 deduction.

4 (b) Individual income shall be allocated to the spouse who
5 earned the income. Joint income shall be allocated equally
6 between the spouses. The tax base appropriate to tax other than
7 income tax shall be similarly allocated.

8 (c) Each spouse shall be allocated the personal exemptions
9 he or she would be entitled to claim if separate federal returns
10 had been filed, except that dependency exemptions shall be pro-
11 rated according to the relative income of the spouses.

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

14 (e) A homestead property tax credit shall be allocated to
15 the spouse who owned the title or held the leasehold interest in
16 the property claimed as a homestead. A homestead property tax
17 credit for property jointly owned or leased shall be allocated
18 jointly between the spouses.

19 (f) Ownership of other assets relevant to the allocation
20 shall be disclosed upon request of the department.

21 (8) ~~(6)~~ A nonobligated spouse allocation form shall be
22 signed by both joint taxpayers. However, the form may be submit-
23 ted without the signature of the obligated spouse if his or her
24 signature cannot be obtained. The nonobligated spouse shall cer-
25 tify that he or she has made a good faith effort to obtain the
26 signature and shall state the reason that the signature was not
27 obtained.

1 (9) ~~-(7)-~~ A person who knowingly makes a false statement on
2 a nonobligated spouse allocation form shall be subject to a pen-
3 alty of \$25.00 or 25% of the excessive claim for his or her share
4 of the refund, whichever is greater, and other penalties as pro-
5 vided in this act.

6 (10) ~~-(8)-~~ A nonobligated spouse to whom the department has
7 sent a notice under subsection ~~-(4)-~~ (6), who fails to file a
8 nonobligated spouse allocation form within 30 days after the date
9 the notice was mailed, shall be barred from commencing any action
10 against this state or the state treasurer to recover an amount
11 withheld to satisfy a liability of the obligated spouse to which
12 a joint tax refund is applied under this section. The payment by
13 this state of any amount applied to a liability of a taxpayer
14 under this section shall release this state and the state trea-
15 surer from all liability to the obligated spouse, the nonobli-
16 gated spouse, and any other person having or claiming any inter-
17 est in the amount paid.

18 (11) ~~-(9)-~~ The department shall promulgate rules under the
19 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
20 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
21 ~~Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, as necessary to
22 implement this section. The rules shall include a procedure for
23 assuring that a taxpayer subject to application of a refund under
24 this section and section 30 has received or will receive notice
25 and an opportunity for a hearing with respect to the liability to
26 which the refund is to be applied.

1 (12) ~~(10)~~ As used in this section:

2 (a) "Nonobligated spouse" means a person who has filed a
3 joint income tax return or other joint state tax return and who
4 is not liable for an obligation of his or her spouse described in
5 subsection (2).

6 (b) "Obligated spouse" means a person who has filed a joint
7 income tax return or other joint state tax return and who is
8 liable for an obligation described in subsection (2) for which
9 his or her spouse is not liable.

10 (c) "Office of child support" means the agency created in
11 section 2 of the office of child support act, ~~Act No. 174 of the~~
12 ~~Public Acts of 1971, being section 400.232 of the Michigan~~
13 ~~Compiled Laws~~ 1971 PA 174, MCL 400.232.

14 (D) "SENIOR CITIZEN" MEANS THAT TERM AS DEFINED IN SECTION
15 514 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.514.