

**SUBSTITUTE FOR  
HOUSE BILL NO. 5333**

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 regulate the importation, stamping, and disposition of certain tobacco products; 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 prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; to prescribe penalties and provide remedies; 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:**

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1       Sec. 30a. (1) If a taxpayer claims a refund that the  
2 department determines is valid as provided in section 30(2), and  
3 the department identifies a liability of the taxpayer described  
4 in subsection (2), the department shall first apply the amount of  
5 the refund as provided in subsections (2) and (3), and the  
6 excess, if any, shall be refunded or credited as provided in  
7 section 30.

8       (2) The amount of a refund described in subsection (1) shall  
9 be applied to the following in the order of priority stated:

10       (a) Any other known tax liability of the taxpayer to this  
11 state.

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

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

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

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

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

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1       (iv) A liability to repay benefits obtained under the  
2 Michigan employment security act, ~~Act No. 1 of the Public Acts~~  
3 ~~of the Extra Session of 1936, being sections 421.1 to 421.75 of~~  
4 ~~the Michigan Compiled Laws 1936 (EX SESS) PA 1, MCL 421.1 TO~~  
5 421.75, to which the taxpayer was not entitled, upon a request  
6 for tax refund offset from the Michigan employment security  
7 commission.

8       (3) If the claim for refund is reflected on a joint tax  
9 return, the department shall allocate to each joint taxpayer his  
10 or her share of the refund. The amount allocated to each tax-  
11 payer shall be applied to his or her respective liabilities in  
12 the order of priority stated in subsection (2).

13       (4) If the department determines that all or a portion of a  
14 refund claimed on a joint tax return is subject to application to  
15 a liability of an obligated spouse, the department shall notify  
16 the joint taxpayers by first-class mail sent to the address shown  
17 on the joint return. The notice shall be accompanied by a nonob-  
18 ligated spouse allocation form. The notice shall state all of  
19 the following:

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

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

25       (c) That a nonobligated spouse may claim his or her share of  
26 the refund by filing a nonobligated spouse allocation form with

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1 the department of treasury not more than ~~30~~ 60 days after the  
2 date the notice was mailed.

3 (d) A statement of the penalties under subsection (7).

4 (5) A nonobligated spouse who wishes to claim his or her  
5 share of a tax refund shall file with the department a nonobli-  
6 gated spouse allocation form AS PROVIDED IN SUBSECTION (4) OR,  
7 FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2001, AT THE TIME THE  
8 JOINT RETURN WAS FILED WITH THE DEPARTMENT. The nonobligated  
9 spouse allocation form shall be in a form specified by the  
10 department and shall require the spouses to state the amount of  
11 income or other tax base and all adjustments to the income or  
12 other tax base, including all subtractions, additions, deduc-  
13 tions, credits, and exemptions, stated on their joint income tax  
14 return or other joint tax return that is the basis for the  
15 claimed refund, and an allocation of those amounts between the  
16 obligated and nonobligated spouse. In allocating these amounts,  
17 all of the following apply:

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

21 (b) Individual income shall be allocated to the spouse who  
22 earned the income. Joint income shall be allocated equally  
23 between the spouses. The tax base appropriate to tax other than  
24 income tax shall be similarly allocated.

25 (c) Each spouse shall be allocated the personal exemptions  
26 he or she would be entitled to claim if separate federal returns

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1 had been filed, except that dependency exemptions shall be  
2 prorated according to the relative income of the spouses.

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

5 (e) A homestead property tax credit shall be allocated to  
6 the spouse who owned the title or held the leasehold interest in  
7 the property claimed as a homestead. A homestead property tax  
8 credit for property jointly owned or leased shall be allocated  
9 jointly between the spouses.

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

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

18 (7) A person who knowingly makes a false statement on a non-  
19 obligated spouse allocation form shall be subject to a penalty of  
20 \$25.00 or 25% of the excessive claim for his or her share of the  
21 refund, whichever is greater, and other penalties as provided in  
22 this act.

23 (8) A nonobligated spouse to whom the department has sent a  
24 notice under subsection (4) — who fails to file a nonobligated  
25 spouse allocation form within 30 DAYS OR, FOR TAX YEARS THAT  
26 BEGIN AFTER DECEMBER 31, 2001, 60 days after the date the notice  
27 was mailed — shall be barred from commencing any action against

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1 this state or the state treasurer to recover an amount withheld  
2 to satisfy a liability of the obligated spouse to which a joint  
3 tax refund is applied under this section. The payment by this  
4 state of any amount applied to a liability of a taxpayer under  
5 this section shall release this state and the state treasurer  
6 from all liability to the obligated spouse, the nonobligated  
7 spouse, and any other person having or claiming any interest in  
8 the amount paid.

9 (9) The department shall promulgate rules under the adminis-  
10 trative procedures act of 1969, ~~Act No. 306 of the Public Acts~~  
11 ~~of 1969, being sections 24.201 to 24.328 of the Michigan Compiled~~  
12 ~~Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, as necessary to imple-  
13 ment this section. The rules shall include a procedure for  
14 assuring that a taxpayer subject to application of a refund under  
15 this section and section 30 has received or will receive notice  
16 and an opportunity for a hearing with respect to the liability to  
17 which the refund is to be applied.

18 (10) As used in this section:

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

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

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

5 (11) BEGINNING JANUARY 1, 2005, THE DEPARTMENT SHALL PROVIDE  
6 THAT NONOBLIGATED SPOUSE ALLOCATION FORMS MAY BE FILED  
7 ELECTRONICALLY.