

HOUSE BILL No. 5333

October 23, 2001, Introduced by Reps. Bob Brown, Wojno, Vear, Drolet and Richardville and referred to the Committee on Tax Policy.

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:

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.

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

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 AT
7 THE TIME THE JOINT RETURN WAS FILED WITH THE DEPARTMENT. The
8 nonobligated spouse allocation form shall be in a form specified
9 by the department and shall require the spouses to state the
10 amount of income or other tax base and all adjustments to the
11 income or other tax base, including all subtractions, additions,
12 deductions, credits, and exemptions, stated on their joint income
13 tax return or other joint tax return that is the basis for the
14 claimed refund, and an allocation of those amounts between the
15 obligated and nonobligated spouse. In allocating these amounts,
16 all of the following apply:

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

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

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

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

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

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

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

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

21 (8) A nonobligated spouse to whom the department has sent a
22 notice under subsection (4) ~~—~~ who fails to file a nonobligated
23 spouse allocation form within ~~30~~ 60 days after the date the
24 notice was mailed ~~—~~ shall be barred from commencing any action
25 against this state or the state treasurer to recover an amount
26 withheld to satisfy a liability of the obligated spouse to which
27 a joint tax refund is applied under this section. The payment by

1 this state of any amount applied to a liability of a taxpayer
2 under this section shall release this state and the state trea-
3 surer from all liability to the obligated spouse, the nonobli-
4 gated spouse, and any other person having or claiming any inter-
5 est in the amount paid.

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

15 (10) As used in this section:

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

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

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

1 (11) BEGINNING JANUARY 1, 2003, THE DEPARTMENT SHALL PROVIDE
2 THAT NONOBLIGATED SPOUSE ALLOCATION FORMS MAY BE FILED
3 ELECTRONICALLY.