

HOUSE BILL No. 6229

June 27, 2002, Introduced by Rep. Schauer 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 sections 25 and 28 (MCL 205.25 and 205.28), section 25 as amended by 1986 PA 58 and section 28 as amended by 2000 PA 308, and by adding section 30d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 25. (1) The commissioner, or an authorized
2 representative of the commissioner, may cause a demand to be made
3 on a taxpayer for the payment of a tax, unpaid account, or amount
4 due the state or any of its departments, institutions, or agen-
5 cies, subject to administration under this act. If the liability
6 remains unpaid for 10 days after the demand and proceedings are
7 not taken to review the liability, the commissioner or an autho-
8 rized representative of the commissioner may issue a warrant
9 under the official seal of that office. Except as provided in
10 subsection (5), the commissioner or an authorized representative
11 of the commissioner, through any state officer authorized to
12 serve process or through his or her authorized employees, may
13 levy on all property and rights to property, real and personal,
14 tangible and intangible, belonging to the taxpayer or on which a
15 lien is provided by law for the amount of the deficiency, and
16 sell the real and personal property of the taxpayer found within
17 the state for the payment of the amount due, the cost of execut-
18 ing the warrant, and the additional penalties and interest.
19 Except as provided in subsection ~~-(6)-~~ (7), the officer or agent
20 serving the warrant shall proceed upon the warrant in all
21 respects and in the same manner as prescribed by law in respect
22 to executions issued against property upon judgments by a court
23 of record. The state, through the commissioner or an authorized
24 representative of the commissioner, may bid for and purchase any
25 property sold pursuant to this section.

1 (2) A person who refuses or fails to surrender any property
2 or rights to property subject to levy, upon demand by the
3 commissioner or an authorized representative of the commissioner,
4 is personally liable to the state in a sum equal to the value of
5 the property or rights not surrendered, but not exceeding the
6 amount due for which the levy was made, together with costs and
7 interest on the sum at the rate provided in section 23(2) from
8 the date of the levy. Any amount, other than costs, recovered
9 under this subsection shall be credited against the liability for
10 the collection of which the levy was made.

11 (3) In addition to the personal liability imposed by subsec-
12 tion (2), if a person required to surrender property or rights to
13 property fails or refuses to surrender the property or rights to
14 property without reasonable cause, the person shall be liable for
15 a penalty equal to 50% of the amount recoverable under subsection
16 (2), none of which penalty shall be credited against the liabil-
17 ity for the collection of which the levy was made.

18 (4) A person in possession of, or obligated with respect to,
19 property or property rights subject to levy and upon which a levy
20 has been made who, upon demand of the commissioner or an autho-
21 rized representative of the commissioner, surrenders the property
22 or rights to property or discharges the obligation to the commis-
23 sioner or an authorized representative of the commissioner or who
24 pays a liability under subsection (1) shall have his or her obli-
25 gation to a person delinquent in payment of a tax or other
26 account reduced in an amount equal to the property or rights to
27 property surrendered or amounts paid to the state.

(5) There shall be exempt from levy under this section:

(a) For an unpaid tax, the type of property and the amount of that property as provided in section 6334 of the internal revenue code OF 1986.

(b) For an unpaid account, or amount due the state or any of its departments other than an unpaid tax, disposable earnings to the extent provided in section 303 of TITLE III OF the consumer credit protection act, PUBLIC LAW 90-321, 15 U.S.C. 1673.

(c) The effect of a levy on salary or wages shall be continuous from the date the levy is first made until the liability out of which the levy arose is satisfied.

(6) A LEVY UNDER THIS SECTION SHALL NOT BE MADE ON THE PROPERTY OF ANY TAXPAYER WITH RESPECT TO ANY UNPAID TAX UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, DURING THE PERIOD THAT AN OFFER-IN-COMPROMISE UNDER SECTION 30D IS PENDING.

(7) ~~-(6)-~~ A warrant-notice of levy may be served by certified mail, return receipt requested, on any person in possession of, or obligated with respect to, property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law. The date of delivery on the receipt shall be the date the levy is made. A person may, upon written notice to the commissioner, have all notices of levy by mail sent to 1 designated office.

Sec. 28. (1) The following conditions apply to all taxes administered under this act unless otherwise provided for in the specific tax statute:

1 (a) Notice, if required, shall be given either by personal
2 service or by certified mail addressed to the last known address
3 of the taxpayer. Service upon the commissioner may be made in
4 the same manner.

5 (b) An injunction shall not issue to stay proceedings for
6 the assessment and collection of a tax.

7 (c) In addition to the mode of collection provided in this
8 act, the department may institute an action at law in any county
9 in which the taxpayer resides or transacts business.

10 (d) The commissioner may request in writing information or
11 records in the possession of any other department, institution,
12 or agency of state government for the performance of duties under
13 this act. Departments, institutions, or agencies of state gov-
14 ernment shall furnish the information and records upon receipt of
15 the commissioner's request. Upon request of the commissioner,
16 any department, institution, or agency of state government shall
17 hold a hearing under the administrative procedures act of 1969,
18 1969 PA 306, MCL 24.201 to 24.328, to consider withholding a
19 license or permit of a person for nonpayment of taxes or accounts
20 collected under this act.

21 (e) Except as otherwise provided in ~~section 30c~~
22 SECTIONS 30C AND 30D, the commissioner or an employee of the
23 department shall not compromise or reduce in any manner the taxes
24 due to or claimed by this state or unpaid accounts or amounts due
25 to any department, institution, or agency of state government.
26 This subdivision does not prevent a compromise of interest or
27 penalties, or both.

1 (f) Except as otherwise provided in this subdivision, an
2 employee, authorized representative, or former employee or autho-
3 rized representative of the department or anyone connected with
4 the department shall not divulge any facts or information
5 obtained in connection with the administration of a tax or infor-
6 mation or parameters that would enable a person to ascertain the
7 audit selection or processing criteria of the department for a
8 tax administered by the department. An employee or authorized
9 representative shall not willfully inspect any return or informa-
10 tion contained in a return unless it is appropriate for the
11 proper administration of a tax law administered under this act.
12 A person may disclose information described in this subdivision
13 if the disclosure is required for the proper administration of a
14 tax law administered under this act, pursuant to a judicial order
15 sought by an agency charged with the duty of enforcing or inves-
16 tigating support obligations pursuant to an order of a court in a
17 domestic relations matter as that term is defined in section 2 of
18 the friend of the court act, 1982 PA 294, 552.502, or pursuant to
19 a judicial order sought by an agency of the federal, state, or
20 local government charged with the responsibility for the adminis-
21 tration or enforcement of criminal law for purposes of investi-
22 gating or prosecuting criminal matters or for federal or state
23 grand jury proceedings or PURSUANT TO a judicial order if the
24 taxpayer's liability for a tax administered under this act is to
25 be adjudicated by the court that issued the judicial order. A
26 person may disclose the adjusted gross receipts and the wagering
27 tax paid by a casino licensee licensed under the Michigan gaming

1 control and revenue act, the Initiated Law of 1996, MCL 432.201
2 to 432.226, pursuant to section 18, sections 341, 342, and 386 of
3 the management and budget act, 1984 PA 431, MCL 18.1341, 18.1342,
4 and 18.1386, or authorization by the executive director of the
5 gaming control board. However, the commissioner or a person des-
6 ignated by the commissioner may divulge information set forth or
7 disclosed in a return or report or by an investigation or audit
8 to any department, institution, or agency of state government
9 upon receipt of a written request from a head of the department,
10 institution, or agency of state government if it is required for
11 the effective administration or enforcement of the laws of this
12 state, to a proper officer of the United States department of
13 treasury, and to a proper officer of another state reciprocating
14 in this privilege. The commissioner may enter into reciprocal
15 agreements with other departments of state government, the United
16 States department of treasury, local governmental units within
17 this state, or taxing officials of other states for the enforce-
18 ment, collection, and exchange of data after ascertaining that
19 any information provided will be subject to confidentiality
20 restrictions substantially the same as the provisions of this
21 act.

22 (2) A person who violates subsection (1)(e) or (1)(f) is
23 guilty of a felony, punishable by a fine of not more than
24 \$5,000.00, or imprisonment for not more than 5 years, or both,
25 together with the costs of prosecution. In addition, if the
26 offense is committed by an employee of this state, the person

1 shall be dismissed from office or discharged from employment upon
2 conviction.

3 (3) A person liable for any tax administered under this act
4 shall keep accurate and complete records necessary for the proper
5 determination of tax liability as required by law or rule of the
6 department.

7 (4) As used in subsection (1), "adjusted gross receipts" and
8 "wagering tax" mean those terms as described in the Michigan
9 gaming control and revenue act, the Initiated Law of 1996,
10 MCL 432.201 to 432.226.

11 SEC. 30D. (1) THE DEPARTMENT MAY COMPROMISE ANY CIVIL OR
12 CRIMINAL CASE ARISING UNDER THE INCOME TAX ACT OF 1967, 1967
13 PA 281, MCL 206.1 TO 206.532, BEFORE REFERRING THE CASE TO THE
14 ATTORNEY GENERAL FOR PROSECUTION OR DEFENSE. THE ATTORNEY GEN-
15 ERAL MAY COMPROMISE ANY SUCH CASE AFTER THE CASE HAS BEEN
16 REFERRED TO THE ATTORNEY GENERAL FOR PROSECUTION OR DEFENSE.

17 (2) IF A COMPROMISE IS MADE UNDER SUBSECTION (1), THE
18 DEPARTMENT OR ATTORNEY GENERAL, AS APPLICABLE, SHALL PLACE ON
19 FILE A STATEMENT OF ALL OF THE FOLLOWING:

20 (A) THE AMOUNT OF TAX ASSESSED.

21 (B) THE AMOUNT OF INTEREST OR PENALTY IMPOSED ON THE
22 TAXPAYER.

23 (C) THE AMOUNT ACTUALLY PAID UNDER THE TERMS OF THE
24 COMPROMISE.

25 (3) PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
26 1969 PA 306, MCL 24.201 TO 24.328, THE COMMISSIONER SHALL ADOPT
27 GUIDELINES FOR OFFICERS AND EMPLOYEES OF THE REVENUE DIVISION OF

1 THE DEPARTMENT OF TREASURY TO DETERMINE WHETHER AN
2 OFFER-IN-COMPROMISE TO RESOLVE A DISPUTE UNDER THE INCOME TAX ACT
3 OF 1967, 1967 PA 281, MCL 206.1 TO 206.532, IS ADEQUATE AND
4 SHOULD BE ACCEPTED.

5 (4) THE GUIDELINES UNDER SUBSECTION (3) SHALL PROHIBIT AN
6 OFFICER OR EMPLOYEE OF THE REVENUE DIVISION OF THE DEPARTMENT OF
7 TREASURY FROM REJECTING AN OFFER-IN-COMPROMISE FROM A LOW-INCOME
8 TAXPAYER SOLELY ON THE BASIS OF THE AMOUNT OF THE OFFER. IN
9 ADDITION, IN THE CASE OF AN OFFER-IN-COMPROMISE FROM ANY TAXPAYER
10 THAT RELATES ONLY TO ISSUES OF LIABILITY OF THE TAXPAYER, THE
11 GUIDELINES SHALL PROHIBIT BOTH OF THE FOLLOWING:

12 (A) THE REJECTION OF THE OFFER-IN-COMPROMISE SOLELY BECAUSE
13 THE DEPARTMENT IS UNABLE TO LOCATE THE TAXPAYER'S RETURN OR
14 RETURN INFORMATION FOR VERIFICATION OF LIABILITY.

15 (B) A REQUIREMENT THAT THE TAXPAYER PROVIDE A FINANCIAL
16 STATEMENT.

17 (5) THE COMMISSIONER SHALL ESTABLISH PROCEDURES FOR AN INDE-
18 PENDENT ADMINISTRATIVE REVIEW OF A REJECTION OF A PROPOSED
19 OFFER-IN-COMPROMISE UNDER SUBSECTION (1) BEFORE THE REJECTION IS
20 COMMUNICATED TO THE TAXPAYER.

21 (6) IN ADOPTING GUIDELINES UNDER SUBSECTION (3) AND ESTAB-
22 LISHING PROCEDURES UNDER SUBSECTION (5), THE DEPARTMENT SHALL
23 CONSIDER PROCEDURES UNDER SECTION 7122 OF THE INTERNAL REVENUE
24 CODE OF 1986 AND THE RULES AND REGULATIONS PROMULGATED TO IMPL-
25 MENT SECTION 7122 OF THE INTERNAL REVENUE CODE OF 1986.