

SENATE BILL No. 1324

June 29, 2004, Introduced by Senators KUIPERS, SIKKEMA, EMERSON, JOHNSON, McMANUS, BIRKHOLZ and LELAND and referred to the Committee on Finance.

A bill to amend 1941 PA 122, entitled

"An act to establish the revenue collection duties 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 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 30c (MCL 205.30c), as amended by 2002 PA 616.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30c. (1) The state treasurer, or an authorized
2 representative of the state treasurer, on behalf of the

1 department, may enter into a voluntary disclosure agreement
2 pursuant to subsections (2) to (11) or an agreement with a
3 federally recognized Indian tribe within the state of Michigan
4 pursuant to subsections (12) and (13).

5 (2) A voluntary disclosure agreement may be entered into with
6 a person who makes application, who is a nonfiler, and who meets
7 1 or more of the following criteria:

8 (a) Has a filing responsibility under nexus standards issued
9 by the department after December 31, 1997.

10 (b) Has a reasonable basis to contest liability, as
11 determined by the state treasurer, for a tax or fee administered
12 under this act.

13 (3) All taxes and fees administered under this act are
14 eligible for inclusion in a voluntary disclosure agreement.

15 (4) To be eligible for a voluntary disclosure agreement,
16 subject to subsection (1), a person must meet all of the
17 following requirements:

18 (a) Except as otherwise provided in this subdivision, has had
19 no previous contact by the department or its agents regarding a
20 tax covered by the agreement. For purposes of this subdivision,
21 a letter of inquiry, whether a final letter or otherwise,
22 requesting information under section 21(2)(a) that was sent to a
23 nonfiler shall not be considered a previous contact under this
24 subdivision if the nonfiler sends a written request to the
25 department to enter into a voluntary disclosure agreement not
26 later than June 30, 1999.

27 (b) Has had no notification of an impending audit by the

1 department or its agents.

2 (c) Is not currently under audit by the department of
3 treasury or under investigation by the department of state
4 police, department of attorney general, or any local law
5 enforcement agency regarding a tax covered by the agreement.

6 (d) Is not currently the subject of a civil action or a
7 criminal prosecution involving any tax covered by the agreement.

8 (e) Has agreed to register, file returns, and pay all taxes
9 due in accordance with all applicable laws of this state for all
10 taxes administered under this act for all periods after the
11 lookback period.

12 (f) Has agreed to pay all taxes due for each tax covered
13 under the agreement for the lookback period, plus statutory
14 interest as stated in section 23, within the period of time and
15 in the manner specified in the agreement.

16 (g) Has agreed to file returns and worksheets for the
17 lookback period as specified in the agreement.

18 (h) Has agreed not to file a protest or seek a refund of
19 taxes paid to this state for the lookback period based on the
20 issues disclosed in the agreement or based on the person's lack
21 of nexus or contacts with this state.

22 (5) If a person satisfies all requirements stated in
23 subsections (1), (2), and (4), the department shall enter into a
24 voluntary disclosure agreement with that person providing the
25 following relief:

26 (a) Notwithstanding section 28(1)(e) of this act, the
27 department shall not assess any tax, delinquency for a tax,

1 penalty, or interest covered under the agreement for any period
2 before the lookback period identified in the agreement.

3 (b) The department shall not assess any applicable
4 discretionary or nondiscretionary penalties for the lookback
5 period.

6 (c) The department shall provide complete confidentiality of
7 the agreement and shall also enter into an agreement not to
8 disclose, in accordance with section 28(1)(f), any of the terms
9 or conditions of the agreement to any tax authorities of any
10 state or governmental authority or to any person except as
11 required by exchange of information agreements authorized under
12 section 28(1)(f), including the international fuel tax agreement
13 under chapter 317 of title 49 of the United States Code, 49
14 ~~U.S.C.~~ **USC** 31701 to 31708. The department shall not exchange
15 information obtained under this section with other states
16 regarding the person unless information regarding the person is
17 specifically requested by another state.

18 (6) The department shall not bring a criminal action against
19 a person for failure to report or to remit any tax covered by the
20 agreement before or during the lookback period if the facts
21 established by the department are not materially different from
22 the facts disclosed by the person to the department.

23 (7) A voluntary disclosure agreement is effective when signed
24 by the person subject to the agreement, or his, her, or its
25 lawful representative, and returned to the department within the
26 time period specified in the agreement. The department shall
27 only provide the relief specified in the executed agreement. Any

1 verbal or written communication by the department before the
2 effective date of the agreement shall not afford any penalty
3 waiver, limited lookback period, or other benefit otherwise
4 available under this section.

5 (8) A material misrepresentation of the fact by an applicant
6 relating to the applicant's current activity in this state
7 renders an agreement null and void and of no effect. A change in
8 the activities or operations of a person after the effective date
9 of the agreement is not a material misrepresentation of fact and
10 shall not affect the agreement's validity.

11 (9) The department may audit any of the taxes covered by the
12 agreement within the lookback period or in any prior period if,
13 in the department's opinion, an audit of a prior period is
14 necessary to determine the person's tax liability for the tax
15 periods within the lookback period or to determine another
16 person's tax liability.

17 (10) Nothing in subsections (2) to (9) shall be interpreted
18 to allow or permit unjust enrichment as that term is defined in
19 subsection ~~-(15)-~~ (16). Any tax collected or withheld from
20 another person by an applicant shall be remitted to the
21 department without respect to whether it was collected during or
22 before the lookback period.

23 (11) The department shall not require a person who enters
24 into a voluntary disclosure agreement to make any filings that
25 are additional to those otherwise required by law.

26 (12) The department may enter into a tribal agreement with a
27 federally recognized Indian tribe specifying the applicability of

1 a tax administered under this act to that tribe, its members, and
2 any person conducting business with them. The tribe, its
3 members, and any person conducting business with them shall
4 remain fully subject to this state's tax acts except as otherwise
5 specifically provided by an agreement in effect for the period at
6 issue. A tribal agreement shall include all of the following:

7 (a) A statement of its purpose.

8 (b) Provisions governing duration and termination that make
9 the agreement terminable by either party if there is
10 noncompliance and terminable at-will after a period of not more
11 than 2 years.

12 (c) Provisions governing administration, collection, and
13 enforcement. Those provisions shall include all of the
14 following:

15 (i) Collection of taxes levied under the general sales tax
16 act, 1933 PA 167, MCL 205.51 to 205.78, or the use tax act, 1937
17 PA 94, MCL 205.91 to 205.111, on the sale of tangible personal
18 property or the storage, use, or consumption of tangible personal
19 property not exempt under the agreement.

20 (ii) Collection of taxes levied on tobacco products under the
21 tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436,
22 and taxes levied under the motor fuel tax act, 2000 PA 403,
23 MCL 207.1001 to 207.1170, and the motor carrier fuel tax act,
24 1980 PA 119, MCL 207.211 to 207.234, on sales of tobacco products
25 or motor fuels not exempt under the agreement.

26 (iii) Withholding and remittance of income taxes levied under
27 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532,

1 from employees not exempt under the agreement.

2 (iv) Reporting of gambling winnings to the same extent and in
3 the same manner as reported to the federal government.

4 (v) A waiver of tribal sovereign immunity sufficient to make
5 the agreement enforceable against both parties.

6 (d) Provisions governing disclosure of information between
7 the department and the tribe as necessary for the proper
8 administration of the tribal agreement.

9 (e) A provision ensuring that the members of the tribe will
10 be bound by the terms of the agreement.

11 (f) A designation of the agreement area within which the
12 specific provisions of the tribal agreement apply.

13 (13) A tribal agreement authorized under subsection (12) may
14 include 1 or more of the following:

15 (a) A provision for dispute resolution between this state and
16 the tribe, which may include a nonjudicial forum.

17 (b) A provision for the sharing between the parties of
18 certain taxes collected by the tribe and its members.

19 (c) Any other provisions beneficial to the administration or
20 enforcement of the tribal agreement.

21 (14) A tribal agreement authorized under subsection (12)
22 shall not authorize the approval of a class III gaming compact
23 negotiated under the Indian gaming regulatory act, Public
24 Law 100-497, 102 Stat. 2467.

25 **(15) If a federally recognized Indian tribe does not enter**
26 **into a tribal agreement or has terminated or breached a tribal**
27 **agreement, or for any tax not covered by a tribal agreement, the**

1 department shall use all of its authority and powers under this
2 act and the laws of this state to ensure the proper collection of
3 all taxes administered under this act. The department is
4 authorized to take action against any person conducting business
5 with an Indian tribe or individual tribal members who is in
6 violation of the tax laws of this state administered under this
7 act. The department shall search for contraband and other
8 illegal, untaxed, or undertaxed goods, and use appropriate search
9 methods to ensure that every person conducting business with an
10 Indian tribe or individual tribal members is in compliance with
11 the tax laws of this state administered under this act.

12 (16) ~~(15)~~ As used in this section:

13 (a) "Lookback period" means 1 or more of the following:

14 (i) The most recent 48-month period as determined by the
15 department or the first date the person subject to an agreement
16 under this section began doing business in this state if less
17 than 48 months.

18 (ii) For single business taxes levied under the single
19 business tax act, 1975 PA 228, MCL 208.1 to 208.145, the lookback
20 period shall be the 4 most recent completed fiscal or calendar
21 years over a 48-month period or the first date the person subject
22 to an agreement under this section began doing business in this
23 state if less than 48 months.

24 (iii) Notwithstanding subparagraphs (i), (ii), and (iv), the
25 most recent 36-month period as determined by the department or
26 the first date the person subject to an agreement under this
27 section began doing business in this state if less than 36

1 months, if tax returns filed in another state for a tax based on
2 net income that included sales in the numerator of the
3 apportionment formula that now must be included in the numerator
4 of the apportionment formula under the single business tax act,
5 1975 PA 228, MCL 208.1 to 208.145, and those sales increased the
6 net tax liability payable to that state.

7 (iv) If there is doubt as to liability for the tax during the
8 lookback period, another period as determined by the state
9 treasurer to be in the best interest of this state and to
10 preserve equitable and fair administration of taxes.

11 (b) "Nonfiler" for a particular tax means, beginning July 1,
12 1998, a person that has not filed a return for the particular tax
13 being disclosed for periods beginning after December 31, 1988.
14 Nonfiler also includes a person whose only filing was a single
15 business tax estimated tax return filed before January 1, 1999.

16 (c) "Person" means an individual, firm, bank, financial
17 institution, limited partnership, copartnership, partnership,
18 joint venture, association, corporation, limited liability
19 company, limited liability partnership, receiver, estate, trust,
20 or any other group or combination acting as a unit.

21 (d) "Previous contact" means any notification of an impending
22 audit pursuant to section 21(1), review, notice of intent to
23 assess, or assessment. Previous contact also includes final
24 letters of inquiry pursuant to section 21(2)(a) or a subpoena
25 from the department.

26 (e) "Unjust enrichment" includes the withholding of income
27 tax under the income tax act of 1967, 1967 PA 281, MCL 206.1 to

1 206.532, and the collection of any other tax administered by this
2 act that has not been remitted to the department.

3 (f) "Voluntary disclosure agreement" or "agreement" means a
4 written agreement that complies with this act.

5 (17) ~~—(16)—~~ The department of treasury shall post a copy of
6 each tribal agreement and any changes to a tribal agreement on
7 the department of treasury's website not later than 60 days after
8 the tribal agreement takes effect or the changes to the tribal
9 agreement take effect.

10 (18) ~~—(17)—~~ Not later than January 31 of each year, the
11 department of treasury shall report to each house of the
12 legislature, including the majority leader and minority leader of
13 the senate and the speaker and minority leader of the house of
14 representatives, on the tribal agreement and changes to the
15 tribal agreement entered into during the immediately preceding
16 calendar year. The report shall include all of the following:

17 (a) A copy of the tribal agreement.

18 (b) A summary of the changes since the immediately preceding
19 report.

20 (c) A detailed listing and description of changes to any
21 agreement areas described in a tribal agreement.