

HOUSE BILL No. 5095

August 17, 2005, Introduced by Rep. Condino and referred to the Committee on Tax Policy.

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 sections 3, 4, 19, 24, and 31 (MCL 205.3, 205.4, 205.19, 205.24, and 205.31), section 3 as amended by 2003 PA 92,

sections 4, 19, and 31 as amended by 2002 PA 657, and section 24 as amended by 2003 PA 201, and by adding section 30d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. The department shall have all the powers and perform
2 the duties formerly vested in a department, board, commission, or
3 other agency, in connection with taxes due to or claimed by this
4 state and in connection with unpaid accounts or amounts due to this
5 state or any of its departments, institutions, or agencies that may
6 be made payable to or collectible by the department created by this
7 act. The department has the power and authority incidental to the
8 performance of the following acts, duties, and services:

9 (a) The state treasurer or a duly appointed agent of the state
10 treasurer may examine the books, records, and papers ~~touching~~
11 **CONCERNING** the matter at issue of any person or taxpayer subject to
12 any tax, unpaid account, or amount the collection of which is
13 charged to the department. The state treasurer or a duly appointed
14 agent of the state treasurer may issue a subpoena requiring a
15 person to appear and be examined ~~with reference to~~ **CONCERNING** a
16 matter within the scope of the inquiry or investigation being
17 conducted by the department and to produce any books, records, or
18 papers. The state treasurer or a duly appointed agent, referee, or
19 examiner of the state treasurer may administer an oath to a witness
20 in any matter before the department. The department may invoke the
21 aid of the circuit court of this state in requiring the attendance
22 and testimony of witnesses and the ~~producing~~ **PRODUCTION** of books,
23 papers, and documents. The circuit court of this state within the
24 jurisdiction of which an inquiry is carried on, in case of

1 contumacy or refusal to obey a subpoena, may issue an order
2 requiring the person to appear before the department and produce
3 books and papers ~~if so ordered~~ and any evidence ~~touching~~
4 **CONCERNING** the matter in question **IF SO ORDERED**, and **THE** failure to
5 obey the order of the court may be punished by the court as a
6 contempt. A person shall not be excused from testifying or from
7 producing any books, papers, records, or memoranda in any
8 investigation, or upon any hearing when ordered to do so by the
9 state treasurer, upon the ground that the testimony or evidence,
10 documentary or otherwise, may tend to incriminate or subject him or
11 her to a criminal penalty. ~~—, however~~ **HOWEVER**, a person shall not
12 be prosecuted or subjected to any criminal penalty for or on
13 account of any transaction made or ~~thing~~ **ANYTHING** concerning
14 which he or she may testify or produce evidence, documentary or
15 otherwise, before the department or its agent. A person testifying
16 is not exempt from prosecution and punishment for perjury committed
17 while testifying.

18 (b) After reasonable notice and public hearing, the department
19 may promulgate rules consistent with this act in accordance with
20 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
21 to 24.328, necessary to the enforcement of the provisions of tax
22 and other revenue measures that are administered by the department.

23 (c) The department may consult with the governor and the
24 legislature on the subject of taxation, revenue, and the
25 administration of the laws in relation to taxation and revenue, and
26 the progress of the work of the department, including the
27 furnishing of reports, information, and other assistance as the

1 governor may require.

2 (d) The department may investigate and study all matters of
3 taxation and revenue as the basis of recommending to the governor
4 and the legislature those changes and alterations in the tax laws
5 of this state ~~—, as~~ **THAT** in the state treasurer's judgment may
6 bring about a more adequate and just system of state and local
7 taxation.

8 (e) The department may formulate a standard procedure that
9 requires the departments, commissions, boards, institutions, and
10 the agencies of this state that collect taxes, fees, or accounts
11 for this state to report all sums of money due and uncollected and
12 those uncollected items as prescribed by law and by the state
13 treasurer. The procedure prescribed in this subdivision shall
14 include a standard practice for receiving, receipting,
15 safeguarding, and periodically reporting all state revenue
16 receipts, whether current, delinquent, penalty, interest, or
17 otherwise, and the amounts, kinds, and terms of items either
18 collected, compromised, or still outstanding, to be summarized,
19 studied, and reported upon as the state treasurer considers
20 advisable.

21 (f) The department may periodically issue bulletins that index
22 and explain current department interpretations of current state tax
23 laws. Beginning ~~90 days after the effective date of the amendatory~~
24 ~~act that added this sentence~~ **OCTOBER 24, 2005**, each bulletin or
25 letter ruling issued by the department on or after August 18, 2000
26 shall be published and made available to the public in printed and
27 electronic formats **AND ON THE DEPARTMENT'S WEBSITE**. The department

1 may charge a reasonable fee for subscriptions to this service not
2 to exceed the cost of printing. The money received from the sale of
3 subscriptions shall revert to the department and be placed in the
4 taxation manual revolving fund.

5 Sec. 4. (1) Not later than 1 year after the effective date of
6 this section, the department of treasury shall submit rules for a
7 public hearing pursuant to the administrative procedures act of
8 1969, 1969 PA 306, MCL 24.201 to 24.328, that provide for all of
9 the following:

10 (a) Standards to be followed by department officers and
11 employees for the fair and courteous treatment of the public, and a
12 system for monitoring compliance with those standards.

13 (b) The procedures governing an informal conference held under
14 section 21. These procedures shall include at least all of the
15 following:

16 (i) A method by which the department attempts to schedule the
17 informal conference at a mutually convenient time and place.

18 (ii) A requirement that the department include in the notice
19 for the informal conference the scope and nature of the subject of
20 the informal conference.

21 (iii) Authorization for the taxpayer at whose request the
22 informal conference is being held to make a sound recording of the
23 informal conference with prior notice to the department and for the
24 department to do the same with prior notice to the taxpayer.

25 (2) Not later than 1 year after the effective date of this
26 section, the department shall develop guidelines to govern
27 departmental employee responses to inquiries from the public and

standards for tax audit activities. The guidelines shall explicitly exclude the use of a collection goal or quota for evaluating an employee. The department shall assemble the guidelines required by this subsection into an employee handbook. However, the handbook shall not disclose information or parameters excluded from disclosure under section 28(1)(f). The department shall distribute the handbook to all departmental employees involved in the collection or auditing of taxes and shall make the handbook available to the public.

(3) The department shall publish a handbook for taxpayers and tax preparers. The handbook shall be made available **ON THE DEPARTMENT'S WEBSITE AND** at a reasonable cost, not to exceed the actual cost of publication, and shall contain all of the following:

(a) The audit and collection procedures used by the department.

(b) The procedures governing departmental communications with taxpayers in the audit and collection process.

Sec. 19. (1) All remittances of taxes administered by this act shall be made to the department payable to the state of Michigan by bank draft, check, cashier's check, certified check, money order, cash, or electronic funds transfer. The money received shall be credited as provided by law. A remittance other than cash or electronic funds transfer shall not be a final discharge of liability for the tax assessed and levied until the instrument remitted has been honored.

(2) For reporting periods beginning after August 31, 1991, a taxpayer other than a city or a county who paid in the immediately

1 preceding calendar year an average of \$40,000.00 or more per month
2 in income tax withholding pursuant to the income tax act of 1967,
3 1967 PA 281, MCL 206.1 to 206.532, shall deposit Michigan income
4 tax withholding either in the same manner and according to the same
5 schedule as deposits of federal income tax withholding or in
6 another manner that has been approved by the department.

7 (3) For failure to remit a tax administered by this act with a
8 negotiable remittance, the following penalty may be added in
9 addition to any other penalties imposed by this act:

10 (a) For notices of intent to assess issued on or before
11 February 28, 2003, 25% of the tax due.

12 (b) ~~For~~ **EXCEPT AS PROVIDED IN SUBDIVISION (C),** FOR notices
13 of intent to assess issued after February 28, 2003, \$50.00.

14 **(C) THE NOTICES OF INTENT TO ASSESS ISSUED AFTER SEPTEMBER 30,**
15 **2005, FOR INCOME TAX WITHHOLDING UNDER THE INCOME TAX ACT OF 1967,**
16 **1967 PA 281, MCL 206.1 TO 206.532, FOR SALE TAXES UNDER THE GENERAL**
17 **SALES TAX ACT, 1933 PA 167, MCL 205.51 TO 205.78, OR FOR USE TAX**
18 **LIABILITY OF \$300.00 OR MORE PER YEAR UNDER THE USE TAX ACT, 1937**
19 **PA 94, MCL 205.91 TO 205.111, 25% OF THE TAX DUE.**

20 (4) The department may require that all money collected by the
21 taxpayer for taxes administered by this act that has not been paid
22 to the department of treasury is public money and the property of
23 this state, and shall be held in trust in a separate account and
24 fund for the sole use and benefit of this state until paid over to
25 the department of treasury.

26 (5) For tax years after the 1995 tax year for which taxes are
27 collected under an agreement entered into pursuant to section 9 **OF**

1 **CHAPTER 1** of the city income tax act, 1964 PA 284, MCL 141.509, if
2 a taxpayer pays, when filing his or her annual return, an amount
3 less than the sum of the declared tax liability under the city
4 income tax act, 1964 PA 284, MCL 141.501 to 141.787, and the
5 declared tax liability under the income tax act of 1967, 1967 PA
6 281, MCL 206.1 to 206.532, and if there is no indication of the
7 allocation of payment between the tax liabilities against which the
8 payment should be applied, the amount paid shall first be applied
9 against the taxpayer's tax liability under the city income tax act,
10 1964 PA 284, MCL 141.501 to 141.787, and any remaining amount of
11 the payment shall be applied to the taxpayer's tax liability under
12 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. The
13 taxpayer's designation of a payee on a payment is not a dispositive
14 determination of the allocation of that payment under this
15 subsection.

16 Sec. 24. (1) If a taxpayer fails or refuses to file a return
17 or pay a tax administered under this act within the time specified,
18 the department, as soon as possible, shall assess the tax against
19 the taxpayer and notify the taxpayer of the amount of the tax. A
20 liability for a tax administered under this act is subject to the
21 interest and penalties prescribed in subsections (2) to (5).

22 (2) Except as provided in subsections (3), (6), and (7), if a
23 taxpayer fails or refuses to file a return or pay a tax within the
24 time specified for notices of intent to assess issued on or before
25 February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever
26 is greater, shall be added if the failure is for not more than 1
27 month, with an additional 5% penalty for each additional month or

1 fraction of a month during which the failure continues or the tax
2 and penalty is not paid, to a maximum of 50%. Except as provided in
3 subsections (3), (6), and (7) **AND AS OTHERWISE PROVIDED IN THIS**
4 **SUBSECTION**, if a taxpayer fails or refuses to file a return or pay
5 a tax within the time specified for notices of intent to assess
6 issued after February 28, 2003, a penalty of 5% of the tax shall be
7 added if the failure is for not more than 2 months, with an
8 additional 5% penalty for each additional month or fraction of a
9 month during which the failure continues or the tax and penalty is
10 not paid, to a maximum of 25%. **EXCEPT AS PROVIDED IN SUBSECTIONS**
11 **(3), (6), AND (7), IF A TAXPAYER FAILS OR REFUSES TO FILE A RETURN**
12 **OR PAY A TAX WITHIN THE TIME SPECIFIED FOR NOTICES OF INTENT TO**
13 **ASSESS ISSUED AFTER SEPTEMBER 30, 2005, FOR INCOME TAX WITHHOLDING**
14 **UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO**
15 **206.532, FOR SALE TAXES UNDER THE GENERAL SALES TAX ACT, 1933 PA**
16 **167, MCL 205.51 TO 205.78, OR FOR USE TAX LIABILITY OF \$300.00 OR**
17 **MORE PER YEAR UNDER THE USE TAX ACT, 1937 PA 94, MCL 205.91 TO**
18 **205.111, A PENALTY OF \$10.00 OR 5% OF THE TAX, WHICHEVER IS**
19 **GREATER, SHALL BE ADDED IF THE FAILURE IS FOR NOT MORE THAN 1**
20 **MONTH, WITH AN ADDITIONAL 5% PENALTY FOR EACH ADDITIONAL MONTH OR**
21 **FRACTION OF A MONTH DURING WHICH THE FAILURE CONTINUES OR THE TAX**
22 **AND PENALTY IS NOT PAID, TO A MAXIMUM OF 50%.** In addition to the
23 penalty, interest at the rate provided in section 23 for
24 deficiencies in tax payments shall be added on the tax from the
25 time the tax was due, until paid. After June 30, 1994, the penalty
26 prescribed by this subsection shall not be imposed until the
27 department submits for public hearing pursuant to the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328, a rule defining what constitutes reasonable cause for
3 waiver of the penalty under subsection (4), which definition shall
4 include illustrative examples.

5 (3) If a person is required to remit tax due pursuant to
6 section 19(2) and fails or refuses to pay the tax within the time
7 specified, a penalty of 0.167% of the tax shall be added for each
8 day during which the failure continues or the tax and penalty are
9 not paid, ~~as follows:~~

10 ~~— (a) For notices of intent to assess issued on or before~~
11 ~~February 28, 2003, to a maximum of 50% of the tax.~~

12 ~~— (b) For notices of intent to assess issued after February 28,~~
13 ~~2003, to a maximum of 25% of the tax.~~

14 (4) If a return is filed or remittance is paid after the time
15 specified and it is shown to the satisfaction of the department
16 that the failure was due to reasonable cause and not to willful
17 neglect, the state treasurer or an authorized representative of the
18 state treasurer shall waive the penalty prescribed by subsection
19 (2).

20 (5) For failure or refusal to file an information return or
21 other informational report required by a tax statute, within the
22 time specified, a penalty of \$10.00 per day for each day for each
23 separate failure or refusal may be added. The total penalty for
24 each separate failure or refusal shall not exceed \$400.00.

25 (6) If a taxpayer fails to pay an estimated tax payment as may
26 be required by the income tax act of 1967, 1967 PA 281, MCL 206.1
27 to 206.532, a penalty shall not be imposed if the taxpayer was not

1 required to make estimated tax payments in the taxpayer's
2 immediately preceding tax year.

3 (7) Notwithstanding any other provision of this act, for any
4 return or tax remittance due on August 15, 2003 that was filed or
5 remitted not later than August 22, 2003, the department shall waive
6 all interest and penalty for the failure to file or remit for the
7 period of August 15, 2003 through August 22, 2003.

8 SEC. 30D. (1) NOTWITHSTANDING ITS FORM OF BUSINESS
9 ORGANIZATION OR THE EXISTENCE OF AN AGENCY RELATIONSHIP OR LACK OF
10 AN AGENCY RELATIONSHIP, A PERSON SUBJECT TO A TAX ADMINISTERED
11 UNDER THIS ACT AND AN OUT-OF-STATE AFFILIATE OF THAT PERSON THAT
12 MEET 1 OR MORE OF THE FOLLOWING CRITERIA ARE JOINTLY AND SEVERALLY
13 LIABLE FOR ANY TAX ADMINISTERED UNDER THIS ACT:

14 (A) THE PERSON AND THE OUT-OF-STATE AFFILIATE OF THAT PERSON
15 USE AN IDENTICAL OR SUBSTANTIALLY SIMILAR NAME, TRADE NAME,
16 TRADEMARK, OR GOODWILL TO DEVELOP, PROMOTE, OR MAINTAIN SALES.

17 (B) THE PERSON AND THE OUT-OF-STATE AFFILIATE OF THAT PERSON
18 PAY FOR EACH OTHER'S SERVICES IN WHOLE OR IN PART CONTINGENT UPON
19 THE VOLUME OR VALUE OF SALES.

20 (C) THE PERSON AND THE OUT-OF-STATE AFFILIATE OF THAT PERSON
21 SHARE OR EXCHANGE VALUE IN THE OPERATION OF THEIR BUSINESSES.

22 (D) THE PERSON AND THE OUT-OF-STATE AFFILIATE OF THAT PERSON
23 SUBSTANTIALLY COORDINATE COMMON BUSINESS PLANS.

24 (2) NOTWITHSTANDING ITS FORM OF BUSINESS ORGANIZATION OR THE
25 EXISTENCE OF AN AGENCY RELATIONSHIP OR LACK OF AN AGENCY
26 RELATIONSHIP, AN OUT-OF-STATE AFFILIATE OF A PERSON SUBJECT TO A
27 TAX ADMINISTERED UNDER THIS ACT HAS SUBSTANTIAL NEXUS WITH THIS

1 STATE FOR ANY TAX ADMINISTERED UNDER THIS ACT IF THE OUT-OF-STATE
2 AFFILIATE MEETS 1 OR MORE OF THE CRITERIA IN SUBSECTION (1).

3 (3) AS USED IN THIS SECTION, "OUT-OF-STATE AFFILIATE OF A
4 PERSON SUBJECT TO A TAX ADMINISTERED UNDER THIS ACT" MEANS ANY OUT-
5 OF-STATE PERSON WHO DIRECTLY, INDIRECTLY, OR CONSTRUCTIVELY OWNS OR
6 CONTROLS, IS OWNED OR CONTROLLED BY, OR IS UNDER COMMON OWNERSHIP
7 OR CONTROL WITH A PERSON SUBJECT TO A TAX ADMINISTERED UNDER THIS
8 ACT.

9 (4) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT THE
10 TAXING JURISDICTION OF THIS STATE UNDER THE CONSTITUTION OF THE
11 UNITED STATES.

12 (5) THIS SECTION APPLIES FOR TAXES COLLECTED UNDER THE USE TAX
13 ACT, 1937 PA 94, MCL 205.91 TO 205.111, BEGINNING OCTOBER 1, 2005.

14 (6) THIS SECTION APPLIES FOR TAX YEARS THAT BEGIN ON OR AFTER
15 JANUARY 1, 2006 FOR TAXES ADMINISTERED UNDER THIS ACT, OTHER THAN
16 TAXES COLLECTED UNDER THE USE TAX ACT, 1937 PA 94, MCL 205.91 TO
17 205.111.

18 Sec. 31. (1) If a taxpayer does not satisfy a tax liability or
19 makes an excessive claim for a refund as a result of reliance on
20 erroneous current written information provided by the department,
21 the state treasurer shall waive all criminal and civil penalties
22 provided by law for failing or refusing to file a return, for
23 failing to pay a tax, or for making an excessive claim for a refund
24 for a tax administered by the department of treasury pursuant to
25 this act if the taxpayer makes a written request for a waiver,
26 files a return or an amended return, and makes full payment of the
27 tax and interest.

1 (2) ~~For a period to be designated by the state treasurer of~~
2 ~~not less than 30 days and not more than 60 days, and ending before~~
3 ~~September 30, 2002~~ **BEGINNING JANUARY 1, 2006 AND THROUGH FEBRUARY**
4 **28, 2006**, there shall be an amnesty period during which the state
5 treasurer shall waive all criminal and civil penalties provided by
6 law for failing or refusing to file a return, for failing to pay a
7 tax, or for making an excessive claim for a refund for a tax
8 administered by the ~~revenue division of the~~ department of
9 treasury under this act if the taxpayer makes a written request for
10 a waiver, files a return or an amended return, and makes full
11 payment in either a lump sum or installments as provided under
12 subsection ~~-(9)-~~ **(8)**, of the tax and interest due for any prior tax
13 year.

14 (3) This section applies to the nonreporting and
15 underreporting of tax liabilities and to the nonpayment of taxes
16 previously determined to be due, but only to the extent of the
17 penalties attributable to the taxes that were previously due and
18 that are paid during the amnesty period provided for in subsection
19 (2).

20 (4) The department shall administer this section.

21 (5) Subsection (2) does not apply to taxes due after ~~June 1,~~
22 ~~2001~~ **SEPTEMBER 30, 2005**.

23 ~~—(6) There is appropriated from the revenues generated by taxes~~
24 ~~paid under subsection (2) the sum of \$1,500,000.00 to the~~
25 ~~department of treasury for administration of the amnesty program~~
26 ~~created by the amendatory act that added this subsection. This~~
27 ~~appropriation is allotted for expenditure on and after October 1,~~

1 ~~2001. Only general purpose revenue generated by the amendatory act~~
2 ~~that added this subsection may be used to finance this~~
3 ~~appropriation.~~

4 (6) ~~—(7)—~~ The state treasurer shall not waive criminal and
5 civil penalties applicable to a tax under subsection (2) if 1 or
6 more of the following circumstances apply:

7 (a) If the taxpayer is eligible to enter into a voluntary
8 disclosure agreement under section 30c for that tax.

9 (b) If the tax is attributable to income derived from a
10 criminal act, if the taxpayer is under criminal investigation or
11 involved in a civil action or criminal prosecution for that tax, or
12 if the taxpayer has been convicted of a felony under this act or
13 the internal revenue code of 1986.

14 (7) ~~—(8)—~~ The department shall provide reasonable notice to
15 taxpayers that may be eligible for the amnesty program at least 30
16 days before the start of the designated amnesty period.
17 Notification shall include, but is not limited to, a description of
18 the amnesty program on appropriate tax instruction forms and on the
19 internet.

20 (8) ~~—(9)—~~ Under the amnesty program described in subsection
21 (2), a taxpayer may pay tax and interest due in installments if the
22 taxpayer meets 1 of the following:

23 (a) The taxpayer is an individual and submits the greater of
24 \$10,000.00 or 50% of the tax and interest due with the request for
25 waiver under subsection (2) and pays the remaining tax and interest
26 due in 2 equal installments, the first installment due no later
27 than ~~August 15, 2002~~ **FEBRUARY 15, 2006** and the second installment

1 due no later than ~~September 15, 2002~~ **MARCH 15, 2006**.

2 (b) A taxpayer that is not an individual submits the greater
3 of \$100,000.00 or 50% of the tax and interest due with the request
4 for waiver under subsection (2) and pays the remaining tax and
5 interest due in 2 equal installments, the first installment due no
6 later than ~~August 15, 2002~~ **FEBRUARY 15, 2006** and the second
7 installment due no later than ~~September 15, 2002~~ **MARCH 15, 2006**.