

HOUSE BILL No. 5358

October 25, 2005, Introduced by Reps. Wenke, Jones, Huizenga, Pastor, Palmer, Vander Veen, Meyer, Hummel, Amos, Kahn, Baxter and Robertson 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 section 21 (MCL 205.21), as amended by 2002 PA 657.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21. (1) If a taxpayer fails or refuses to make a return
2 or payment as required, in whole or in part, or if the department

1 has reason to believe that a return made or payment does not supply
2 sufficient information for an accurate determination of the amount
3 of tax due, the department may obtain information on which to base
4 an assessment of the tax. By its duly authorized agents, the
5 department may examine the books, records, and papers and audit the
6 accounts of a person or any other records pertaining to the tax.

7 (2) In carrying out this section, the department and the
8 taxpayer shall comply with the following procedure:

9 (a) The department shall send to the taxpayer a letter of
10 inquiry stating, in a courteous and nonintimidating manner, the
11 department's opinion that the taxpayer needs to furnish further
12 information or owes taxes to the state, and the reason for that
13 opinion. A letter of inquiry shall also explain the procedure by
14 which the person may initiate communication with the department to
15 resolve any dispute. This subdivision does not apply in any of the
16 following circumstances:

17 (i) The taxpayer files a return showing a tax due and fails to
18 pay that tax.

19 (ii) The deficiency resulted from an audit of the taxpayer's
20 books and records by this state.

21 (iii) The taxpayer otherwise affirmatively admits that a tax is
22 due and owing.

23 (b) If the dispute is not resolved within 30 days after the
24 department sends the taxpayer a letter of inquiry or if a letter of
25 inquiry is not required pursuant to subdivision (a), the
26 department, after determining the amount of tax due from a
27 taxpayer, shall give notice to the taxpayer of its intent to assess

1 the tax. The notice shall include the amount of the tax the
2 department believes the taxpayer owes, the reason for that
3 deficiency, and a statement advising the taxpayer of a right to an
4 informal conference, the requirement of a written request by the
5 taxpayer for the informal conference that includes the taxpayer's
6 statement of the contested amounts and an explanation of the
7 dispute, and the 30-day time limit for that request.

8 (c) If the taxpayer serves written notice upon the department
9 within 30 days after the taxpayer receives a notice of intent to
10 assess, remits the uncontested portion of the liability, and
11 provides a statement of the contested amounts and an explanation of
12 the dispute, the taxpayer is entitled to an informal conference on
13 the question of liability for the assessment.

14 (d) Upon receipt of a taxpayer's written notice, the
15 department shall set a mutually agreed upon or reasonable time and
16 place for the informal conference and shall give the taxpayer
17 reasonable written notice not less than 20 days before the informal
18 conference. The notice shall specify the intent to assess, type of
19 tax, and tax year that is the subject of the informal conference.
20 The informal conference provided for by this subdivision is not
21 subject to the administrative procedures act of 1969, 1969 PA 306,
22 MCL 24.201 to 24.328, but is subject to the rules governing
23 informal conferences as promulgated by the department in accordance
24 with the administrative procedures act of 1969, 1969 PA 306, MCL
25 24.201 to 24.328. The taxpayer may appear or be represented by any
26 person before the department at an informal conference, and may
27 present testimony and argument. At the party's own expense and with

1 advance notice to the other party, a taxpayer or the department, or
2 both, may make an audio recording of an informal conference.

3 (e) After the informal conference, the department shall render
4 a decision and order in writing, setting forth the reasons and
5 authority, and shall assess the tax, interest, and penalty found to
6 be due and payable. The decision and order are limited to the
7 subject of the informal conference as included in the notice under
8 subdivision (d).

9 (f) If the taxpayer does not protest the notice of intent to
10 assess within the time provided in subdivision (c), the department
11 may assess the tax and the interest and penalty on the tax that the
12 department believes are due and payable. An assessment under this
13 subdivision or subdivision (e) is final and subject to appeal as
14 provided in section 22. The final notice of assessment shall
15 include a statement advising the person of a right to appeal.

16 **(3) IF AS A RESULT OF AN AUDIT IT IS DETERMINED THAT A**
17 **TAXPAYER IS OWED A REFUND, THE DEPARTMENT SHALL SEND A NOTICE TO**
18 **THE TAXPAYER STATING THE AMOUNT OF THE REFUND THE DEPARTMENT**
19 **BELIEVES IS OWED TO THE TAXPAYER AS A RESULT OF THE AUDIT. IF THE**
20 **REFUND IS LESS THAN THE TAXPAYER BELIEVES IS CORRECT BECAUSE OF**
21 **DISPUTES WITH THE FINDINGS OF THE AUDIT, THE TAXPAYER MAY SERVE**
22 **WRITTEN NOTICE UPON THE DEPARTMENT IN THE SAME MANNER AS PROVIDED**
23 **FOR IN SUBSECTION (2)(C) AND THE TAXPAYER IS ENTITLED TO THE SAME**
24 **INFORMAL HEARING AND SUBSEQUENT APPEALS AS PROVIDED FOR IN THIS**
25 **SECTION.**

26 **(4) —(3)—** If a protest to the notice of intent to assess the
27 tax is determined by the department to be a frivolous protest or a

1 desire by the taxpayer to delay or impede the administration of
2 taxes administered under this act, a penalty of \$25.00 or 25% of
3 the amount of tax under protest, whichever is greater, shall be
4 added to the tax.