

Act No. 227
Public Acts of 2005
Approved by the Governor
November 21, 2005
Filed with the Secretary of State
November 21, 2005

NO EFFECTIVE DATE: Tie-barred to bill which was vetoed by the Governor

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Rep. Condino

ENROLLED HOUSE BILL No. 5095

AN ACT 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, and 24 (MCL 205.3, 205.4, 205.19, and 205.24), section 3 as amended by 2003 PA 92, sections 4 and 19 as amended by 2002 PA 657, and section 24 as amended by 2003 PA 201.

The People of the State of Michigan enact:

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

(a) The state treasurer or a duly appointed agent of the state treasurer may examine the books, records, and papers concerning the matter at issue of any person or taxpayer subject to any tax, unpaid account, or amount the collection of which is charged to the department. The state treasurer or a duly appointed agent of the state treasurer may issue a subpoena requiring a person to appear and be examined concerning a matter within the scope of the inquiry or investigation being conducted by the department and to produce any books, records, or papers. The state treasurer or a duly appointed agent, referee, or examiner of the state treasurer may administer an oath to a witness in any matter before the department. The department may invoke the aid of the circuit court of this state in requiring the attendance and testimony of witnesses and the production of books, papers, and documents. The circuit court of this state within the jurisdiction of which an inquiry is carried on, in case of contumacy or refusal to obey a subpoena, may issue an order requiring the person to appear before the department and produce books and papers and any evidence concerning the matter in question if so ordered, and the failure to obey the order of the court may be punished by the court as a contempt. A person shall not be excused from testifying or from producing any books, papers, records, or memoranda in any investigation, or upon any hearing when ordered to do so by the state treasurer, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate or subject him or her to a criminal penalty. However, a person shall not be prosecuted or subjected to any criminal penalty for or on account of any transaction made or anything concerning which he or she may testify or produce evidence, documentary or otherwise, before the

department or its agent. A person testifying is not exempt from prosecution and punishment for perjury committed while testifying.

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

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

(d) The department may investigate and study all matters of taxation and revenue as the basis of recommending to the governor and the legislature those changes and alterations in the tax laws of this state that in the state treasurer's judgment may bring about a more adequate and just system of state and local taxation.

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

(f) The department may periodically issue bulletins that index and explain current department interpretations of current state tax laws. Beginning October 24, 2003, each bulletin or letter ruling issued by the department on or after August 18, 2000 shall be published and made available to the public in printed and electronic formats and, beginning January 1, 2006, on the department's website. The department may charge a reasonable fee for subscriptions to this service not to exceed the cost of printing. The money received from the sale of subscriptions shall revert to the department and be placed in the taxation manual revolving fund.

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

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

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

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

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

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

(2) Not later than 1 year after the effective date of this section, the department shall develop guidelines to govern 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 preceding calendar year an average of \$40,000.00 or more per month in income tax withholding pursuant to the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, shall deposit Michigan income tax withholding either in the same manner and according to the same schedule as deposits of federal income tax withholding or in another manner that has been approved by the department.

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

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

(b) Except as provided in subdivision (c), for notices of intent to assess issued after February 28, 2003, \$50.00.

(c) For notices of intent to assess issued after February 28, 2003, for income tax withholding under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for sale taxes under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or for use tax liability of \$300.00 or more per year under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, due before October 1, 2005, 25% of the tax due.

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

(5) For tax years after the 1995 tax year for which taxes are collected under an agreement entered into pursuant to section 9 of chapter 1 of the city income tax act, 1964 PA 284, MCL 141.509, if a taxpayer pays, when filing his or her annual return, an amount less than the sum of the declared tax liability under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, and the declared tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and if there is no indication of the allocation of payment between the tax liabilities against which the payment should be applied, the amount paid shall first be applied against the taxpayer's tax liability under the city income tax act, 1964 PA 284, MCL 141.501 to 141.787, and any remaining amount of the payment shall be applied to the taxpayer's tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. The taxpayer's designation of a payee on a payment is not a dispositive determination of the allocation of that payment under this subsection.

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

(2) Except as provided in subsections (3), (6), and (7), if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued on or before February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. Except as provided in subsections (3), (6), and (7) and as otherwise provided in this subsection, if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued after February 28, 2003, a penalty of 5% of the tax shall be added if the failure is for not more than 2 months, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 25%. Except as provided in subsections (3), (6), and (7), if a taxpayer fails or refuses to file a return or pay a tax within the time specified for notices of intent to assess issued after February 28, 2003, for income tax withholding under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for sale taxes under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, or for use tax liability of \$300.00 or more per year under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, due before October 1, 2005, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. In addition to the penalty, interest at the rate provided in section 23 for deficiencies in tax payments shall be added on the tax from the time the tax was due, until paid. After June 30, 1994, the penalty prescribed by this subsection shall not be imposed until the department submits for public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, a rule defining what constitutes reasonable cause for waiver of the penalty under subsection (4), which definition shall include illustrative examples.

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

(a) For notices of intent to assess issued on or before February 28, 2003, or after February 28, 2003 for taxes described in this subsection that are due before October 1, 2005, to a maximum of 50% of the tax.

(b) For notices of intent to assess issued after February 28, 2003 for taxes described in this subsection that are due on or after October 1, 2005, to a maximum of 25% of the tax.

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

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

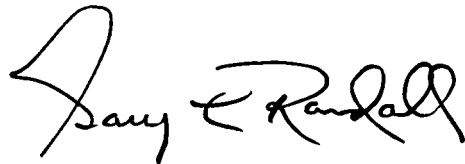
(6) If a taxpayer fails to pay an estimated tax payment as may be required by the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, a penalty shall not be imposed if the taxpayer was not required to make estimated tax payments in the taxpayer's immediately preceding tax year.

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

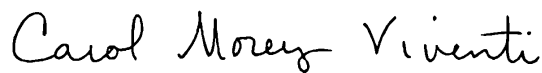
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

- (a) House Bill No. 4342.
- (b) House Bill No. 4972.
- (c) House Bill No. 4973.
- (d) House Bill No. 4980.
- (e) House Bill No. 5096.
- (f) House Bill No. 5097.
- (g) House Bill No. 5098.
- (h) House Bill No. 5106.
- (i) House Bill No. 5107.
- (j) House Bill No. 5108.
- (k) Senate Bill No. 633.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor