

HOUSE BILL No. 5193

September 7, 2007, Introduced by Rep. Tobocman 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 this state; to prescribe certain powers and duties of the state treasurer; to establish the collection duties of certain other state departments for money or accounts owed to this state; 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 22, 30b, and 30c (MCL 205.22, 205.30b, and 205.30c), section 22 as amended by 1993 PA 13, section 30b as added by 1986 PA 58, and section 30c as amended by 2002 PA 616.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22. (1) A taxpayer aggrieved by an assessment, decision,
2 or order of the department may appeal the contested portion of the
3 assessment, decision, or order to the tax tribunal within 35 days,
4 or to the court of claims within 90 days after the assessment,
5 decision, or order. The uncontested portion of an assessment,
6 order, or decision shall be paid as a prerequisite to appeal.
7 However, an action shall be commenced in the court of claims within
8 6 months after payment of the tax or an adverse determination of
9 the taxpayer's claim for refund, whichever is later, if the payment
10 of the tax or adverse determination of the claim for refund
11 occurred under the **FORMER** single business tax act, ~~Act No. 228 of~~
12 ~~the Public Acts of 1975, being sections 208.1 to 208.145 of the~~
13 ~~Michigan Compiled Laws 1975 PA 228~~, and before May 1, 1986.

14 (2) An appeal under this section shall be perfected as
15 provided under the tax tribunal act, ~~Act No. 186 of the Public Acts~~
16 ~~of 1973, as amended, being sections 205.701 to 205.779 of the~~
17 ~~Michigan Compiled Laws 1973 PA 186, MCL 205.701 TO 205.779~~, and
18 rules promulgated under that act for the tax tribunal, or chapter
19 64 of the revised judicature act of 1961, ~~Act No. 236 of the Public~~
20 ~~Acts of 1961, as amended, being sections 600.6401 to 600.6475 of~~
21 ~~the Michigan Compiled Laws 1961 PA 236, MCL 600.6401 TO 600.6475~~,
22 and rules adopted under that chapter for the court of claims. In an
23 appeal to the court of claims, the appellant shall first pay the
24 tax, including any applicable penalties and interest, under protest
25 and claim a refund as part of the appeal.

26 (3) A taxpayer or the department may take an appeal by right

1 from a decision of the tax tribunal or the court of claims to the
2 court of appeals. The appeal shall be taken on the record made
3 before the tax tribunal or the court of claims. The taxpayer or
4 department may take further appeal to the supreme court in
5 accordance with the court rules provided for appeals to the supreme
6 court.

7 (4) The assessment, decision, or order of the department, if
8 not appealed in accordance with this section, is final and is not
9 reviewable in any court by mandamus, appeal, or other method of
10 direct or collateral attack.

11 (5) An assessment is final, conclusive, and not subject to
12 further challenge after 90 days after the issuance of the
13 assessment, decision, or order of the department, and a person is
14 not entitled to a refund of any tax, interest, or penalty paid
15 pursuant to an assessment unless the aggrieved person has appealed
16 the assessment in the manner provided by this section.

17 Sec. 30b. (1) Within 45 days after the publication of the
18 comprehensive annual financial report by the director of the
19 department of management and budget pursuant to section 494 of ~~Act~~
20 ~~No. 431 of the Public Acts of 1984, being section 18.1494 of the~~
21 ~~Michigan Compiled Laws~~ **THE MANAGEMENT AND BUDGET ACT, 1984 PA 431,**
22 **MCL 18.1494**, the director of the department of management and
23 budget and the state treasurer shall issue a report regarding the
24 application of the revenue limitation in section 26 of article IX
25 of the state constitution of 1963 to the fiscal year for which the
26 comprehensive annual financial report applies. Within 30 days after
27 the director of the department of management and budget and the

1 state treasurer issue their report, the auditor general shall audit
2 that report. This audit shall examine the past and present
3 methodology of calculating revenues and comment on differences, if
4 any, from past practices.

5 (2) If a refund is required by section 26 of article IX of the
6 state constitution of 1963, a taxpayer shall petition for the
7 refund by filling out the appropriate line to be provided on the
8 annual income tax or ~~single-business~~ tax returns. The amount of
9 refund shall be based on the tax liability for the taxpayer's year
10 commencing in the state's fiscal year in which the revenue limit
11 was exceeded. Failure to fill out the appropriate line on the
12 annual income tax or ~~single-business~~ tax return shall not
13 extinguish the taxpayer's right to petition for the refund pursuant
14 to ~~Act No. 34 of the Public Acts of 1980, being sections 21.221 to~~
15 ~~21.224 of the Michigan Compiled Laws~~ **SECTION 350D OF THE MANAGEMENT**
16 **AND BUDGET ACT, 1984 PA 431, MCL 18.1350D.**

17 (3) If before November 1, 1986, a final determination is made
18 that the method of refund provided for in subsection (2) is
19 unconstitutional, the state treasurer shall cause the refunds due,
20 if any, to be paid for the state fiscal year 1984-85 beginning
21 January 1, 1987 and through February 28, 1987.

22 (4) The governor may create an escrow account in the general
23 fund and set aside in that account an amount equal to the refunds
24 required by section 26 of article IX of the state constitution of
25 1963.

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

1 may enter into a voluntary disclosure agreement pursuant to
2 subsections (2) to (11) or an agreement with a federally recognized
3 Indian tribe within the state of Michigan pursuant to subsections
4 (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 1
7 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 determined
11 by the state treasurer, for a tax or fee administered under this
12 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 following
17 requirements:

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

26 (b) Has had no notification of an impending audit by the
27 department or its agents.

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

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

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

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

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

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

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

25 (a) Notwithstanding section 28(1)(e) of this act, the
26 department shall not assess any tax, delinquency for a tax,
27 penalty, or interest covered under the agreement for any period

1 before the lookback period identified in the agreement.

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

5 (c) The department shall provide complete confidentiality of
6 the agreement and shall also enter into an agreement not to
7 disclose, in accordance with section 28(1)(f), any of the terms or
8 conditions of the agreement to any tax authorities of any state or
9 governmental authority or to any person except as required by
10 exchange of information agreements authorized under section
11 28(1)(f), including the international fuel tax agreement under
12 chapter 317 of title 49 of the United States Code, 49 ~~U.S.C.~~ **USC**
13 31701 to ~~31708~~ **31707**. The department shall not exchange information
14 obtained under this section with other states regarding the person
15 unless information regarding the person is specifically requested
16 by another state.

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

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

1 date of the agreement shall not afford any penalty waiver, limited
2 lookback period, or other benefit otherwise available under this
3 section.

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

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

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

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

23 (12) The department may enter into a tribal agreement with a
24 federally recognized Indian tribe specifying the applicability of a
25 tax administered under this act to that tribe, its members, and any
26 person conducting business with them. The tribe, its members, and
27 any person conducting business with them shall remain fully subject

1 to this state's tax acts except as otherwise specifically provided
2 by an agreement in effect for the period at issue. A tribal
3 agreement shall include all of the following:

4 (a) A statement of its purpose.

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

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

10 (i) Collection of taxes levied under the general sales tax act,
11 1933 PA 167, MCL 205.51 to 205.78, or the use tax act, 1937 PA 94,
12 MCL 205.91 to 205.111, on the sale of tangible personal property or
13 the storage, use, or consumption of tangible personal property not
14 exempt under the agreement.

15 (ii) Collection of taxes levied on tobacco products under the
16 tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, and
17 taxes levied under the motor fuel tax act, 2000 PA 403, MCL
18 207.1001 to 207.1170, and the motor carrier fuel tax act, 1980 PA
19 119, MCL 207.211 to 207.234, on sales of tobacco products or motor
20 fuels not exempt under the agreement.

21 (iii) Withholding and remittance of income taxes levied under
22 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, from
23 employees not exempt under the agreement.

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

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

1 (d) Provisions governing disclosure of information between the
2 department and the tribe as necessary for the proper administration
3 of the tribal agreement.

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

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

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

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

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

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

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

20 (15) As used in this section:

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

22 (i) The most recent 48-month period as determined by the
23 department or the first date the person subject to an agreement
24 under this section began doing business in this state if less than
25 48 months.

26 (ii) For ~~single-business taxes levied under the single-business~~
27 ~~tax act, 1975 PA 228, MCL 208.1 to 208.145~~ **MICHIGAN BUSINESS TAX**

1 ACT, 2007 PA 36, MCL 208.1101 TO 208.1601, the lookback period
2 shall be the 4 most recent completed fiscal or calendar years over
3 a 48-month period or the first date the person subject to an
4 agreement under this section began doing business in this state if
5 less than 48 months.

6 (iii) Notwithstanding subparagraphs (i), (ii), and (iv), the most
7 recent 36-month period as determined by the department or the first
8 date the person subject to an agreement under this section began
9 doing business in this state if less than 36 months, if tax returns
10 filed in another state for a tax based on net income that included
11 sales in the numerator of the apportionment formula that now must
12 be included in the numerator of the apportionment formula under the
13 ~~single business tax act, 1975 PA 228, MCL 208.1 to 208.145~~ **MICHIGAN**
14 **BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601**, and those
15 sales increased the net tax liability payable to that state.

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

20 (b) "Nonfiler" for a particular tax means, beginning July 1,
21 1998, a person that has not filed a return for the particular tax
22 being disclosed for periods beginning after December 31, 1988.
23 Nonfiler also includes a person whose only filing was a single
24 business tax estimated tax return filed before January 1, 1999.

25 (c) "Person" means an individual, firm, bank, financial
26 institution, limited partnership, copartnership, partnership, joint
27 venture, association, corporation, limited liability company,

1 limited liability partnership, receiver, estate, trust, or any
2 other group or combination acting as a unit.

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

8 (e) "Unjust enrichment" includes the withholding of income tax
9 under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
10 206.532, and the collection of any other tax administered by this
11 act that has not been remitted to the department.

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

14 (16) The department of treasury shall post a copy of each
15 tribal agreement and any changes to a tribal agreement on the
16 department of treasury's website not later than 60 days after the
17 tribal agreement takes effect or the changes to the tribal
18 agreement take effect.

19 (17) Not later than January 31 of each year, the department of
20 treasury shall report to each house of the legislature, including
21 the majority leader and minority leader of the senate and the
22 speaker and minority leader of the house of representatives, on the
23 tribal agreement and changes to the tribal agreement entered into
24 during the immediately preceding calendar year. The report shall
25 include all of the following:

26 (a) A copy of the tribal agreement.

27 (b) A summary of the changes since the immediately preceding

1 report.

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