

HOUSE BILL No. 5385

September 17, 2009, Introduced by Rep. Cushingberry 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 24, 30c, and 31 (MCL 205.24, 205.30c, and 205.31), section 24 as amended by 2003 PA 201, section 30c as amended by 2007 PA 194, and section 31 as amended by 2002 PA 657.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 (2) Except as provided in subsections (3), (6), and (7), if a
8 taxpayer fails or refuses to file a return or pay a tax within the
9 time specified for notices of intent to assess issued on or before
10 February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever
11 is greater, shall be added if the failure is for not more than 1
12 month, with an additional 5% penalty for each additional month or
13 fraction of a month during which the failure continues or the tax
14 and penalty is not paid, to a maximum of 50%. Except as provided in
15 subsections (3), (6), and (7), if a taxpayer fails or refuses to
16 file a return or pay a tax within the time specified for notices of
17 intent to assess issued after February 28, 2003, a penalty of 5% of
18 the tax shall be added if the failure is for not more than 2
19 months, with an additional 5% penalty for each additional month or
20 fraction of a month during which the failure continues or the tax
21 and penalty is not paid, to a maximum of 25%. In addition to the
22 penalty, interest at the rate provided in section 23 for
23 deficiencies in tax payments shall be added on the tax from the
24 time the tax was due, until paid. After June 30, 1994, the penalty
25 prescribed by this subsection shall not be imposed until the
26 department submits for public hearing pursuant to the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, a rule defining what constitutes reasonable cause for
2 waiver of the penalty under subsection (4), which definition shall
3 include illustrative examples.

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

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

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

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

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

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

1 immediately preceding tax year.

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

7 (8) IN ADDITION TO ANY OTHER INTEREST OR PENALTY PRESCRIBED
8 UNDER THIS SECTION, A TAXPAYER WHO HAS FAILED TO FILE A RETURN OR
9 PAY A TAX THAT WAS DUE BEFORE JULY 1, 2009, DURING A PERIOD FOR
10 WHICH AMNESTY IS AVAILABLE UNDER SECTION 31(2), IS LIABLE FOR AN
11 ADDITIONAL PENALTY EQUAL TO 25% OF THE AMOUNT OF TAX DUE.

12 Sec. 30c. (1) The state treasurer, or an authorized
13 representative of the state treasurer, on behalf of the department,
14 may enter into a voluntary disclosure agreement pursuant to
15 subsections (2) to (11) or an agreement with a federally recognized
16 Indian tribe within the state of Michigan pursuant to subsections
17 (12) and (13).

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

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

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

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

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

4 (a) Except as otherwise provided in this subdivision, has had
5 no previous contact by the department or its agents regarding a tax
6 covered by the agreement. For purposes of this subdivision, a
7 letter of inquiry, whether a final letter or otherwise, requesting
8 information under section 21(2)(a) that was sent to a nonfiler
9 shall not be considered a previous contact under this subdivision
10 if the nonfiler sends a written request to the department to enter
11 into a voluntary disclosure agreement not later than June 30, ~~1999~~
12 2006.

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

15 (c) Is not currently under audit by the department of treasury
16 or under investigation by the department of state police,
17 department of attorney general, or any local law enforcement agency
18 regarding a tax covered by the agreement.

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

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

25 (f) Has agreed to pay all taxes due for each tax covered under
26 the agreement for the lookback period, plus statutory interest as
27 stated in section 23, within the period of time and in the manner

1 specified in the agreement.

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

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

8 (5) If a person satisfies all requirements stated in
9 subsections (1), (2), and (4), the department shall enter into a
10 voluntary disclosure agreement with that person providing the
11 following relief:

12 (a) Notwithstanding section 28(1)(e) of this act, the
13 department shall not assess any tax, delinquency for a tax,
14 penalty, or interest covered under the agreement for any period
15 before the lookback period identified in the agreement.

16 (b) The department shall not assess any applicable
17 discretionary or nondiscretionary penalties for the lookback
18 period.

19 (c) The department shall provide complete confidentiality of
20 the agreement and shall also enter into an agreement not to
21 disclose, in accordance with section 28(1)(f), any of the terms or
22 conditions of the agreement to any tax authorities of any state or
23 governmental authority or to any person except as required by
24 exchange of information agreements authorized under section
25 28(1)(f), including the international fuel tax agreement under
26 ~~chapter 317 of title 49 of the United States Code, 49 USC 31701 to~~
27 31707. The department shall not exchange information obtained under

1 this section with other states regarding the person unless
2 information regarding the person is specifically requested by
3 another state.

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

9 (7) A voluntary disclosure agreement is effective when signed
10 by the person subject to the agreement, or his, her, or its lawful
11 representative, and returned to the department within the time
12 period specified in the agreement. The department shall only
13 provide the relief specified in the executed agreement. Any verbal
14 or written communication by the department before the effective
15 date of the agreement shall not afford any penalty waiver, limited
16 lookback period, or other benefit otherwise available under this
17 section.

18 (8) A material misrepresentation of the fact by an applicant
19 relating to the applicant's current activity in this state renders
20 an agreement null and void and of no effect. A change in the
21 activities or operations of a person after the effective date of
22 the agreement is not a material misrepresentation of fact and shall
23 not affect the agreement's validity.

24 (9) The department may audit any of the taxes covered by the
25 agreement within the lookback period or in any prior period if, in
26 the department's opinion, an audit of a prior period is necessary
27 to determine the person's tax liability for the tax periods within

1 the lookback period or to determine another person's tax liability.

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

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

10 (12) The department may enter into a tribal agreement with a
11 federally recognized Indian tribe specifying the applicability of a
12 tax administered under this act to that tribe, its members, and any
13 person conducting business with them. The tribe, its members, and
14 any person conducting business with them shall remain fully subject
15 to this state's tax acts except as otherwise specifically provided
16 by an agreement in effect for the period at issue. A tribal
17 agreement shall include all of the following:

18 (a) A statement of its purpose.

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

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

24 (i) Collection of taxes levied under the general sales tax act,
25 1933 PA 167, MCL 205.51 to 205.78, or the use tax act, 1937 PA 94,
26 MCL 205.91 to 205.111, on the sale of tangible personal property or
27 the storage, use, or consumption of tangible personal property not

1 exempt under the agreement.

2 (ii) Collection of taxes levied on tobacco products under the
3 tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, and
4 taxes levied under the motor fuel tax act, 2000 PA 403, MCL
5 207.1001 to 207.1170, and the motor carrier fuel tax act, 1980 PA
6 119, MCL 207.211 to 207.234, on sales of tobacco products or motor
7 fuels not exempt under the agreement.

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

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

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

15 (d) Provisions governing disclosure of information between the
16 department and the tribe as necessary for the proper administration
17 of the tribal agreement.

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

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

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

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

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

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

3 (14) A tribal agreement authorized under subsection (12) shall
4 not authorize the approval of a class III gaming compact negotiated
5 under the Indian gaming regulatory act, Public Law 100-497. ~~7-102~~
6 ~~Stat. 2467.~~

7 (15) As used in this section:

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

9 (i) The most recent 48-month period as determined by the
10 department or the first date the person subject to an agreement
11 under this section began doing business in this state if less than
12 48 months.

13 (ii) For business taxes levied under the former single business
14 tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36,
15 MCL 208.1101 to 208.1601, the lookback period shall be the 4 most
16 recent completed fiscal or calendar years over a 48-month period or
17 the first date the person subject to an agreement under this
18 section began doing business in this state if less than 48 months.

19 (iii) Notwithstanding subparagraphs (i), (ii), and (iv), the most
20 recent 36-month period as determined by the department or the first
21 date the person subject to an agreement under this section began
22 doing business in this state if less than 36 months, if tax returns
23 filed in another state for a tax based on net income that included
24 sales in the numerator of the apportionment formula that now must
25 be included in the numerator of the apportionment formula under the
26 former single business tax act, 1975 PA 228, or the Michigan
27 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, and those

1 sales increased the net tax liability payable to that state.

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

6 (b) "Nonfiler" for a particular tax means, beginning July 1,
7 1998, a person that has not filed a return for the particular tax
8 being disclosed for periods beginning after December 31, 1988.
9 Nonfiler also includes a person whose only filing was a single
10 business tax estimated tax return filed before January 1, 1999.

11 (c) "Person" means an individual, firm, bank, financial
12 institution, limited partnership, copartnership, partnership, joint
13 venture, association, corporation, limited liability company,
14 limited liability partnership, receiver, estate, trust, or any
15 other group or combination acting as a unit.

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

21 (e) "Unjust enrichment" includes the withholding of income tax
22 under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
23 206.532, and the collection of any other tax administered by this
24 act that has not been remitted to the department.

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

27 (16) The department of treasury shall post a copy of each

1 tribal agreement and any changes to a tribal agreement on the
2 department of treasury's website not later than 60 days after the
3 tribal agreement takes effect or the changes to the tribal
4 agreement take effect.

5 (17) Not later than January 31 of each year, the department of
6 treasury shall report to each house of the legislature, including
7 the majority leader and minority leader of the senate and the
8 speaker and minority leader of the house of representatives, on the
9 tribal agreement and changes to the tribal agreement entered into
10 during the immediately preceding calendar year. The report shall
11 include all of the following:

12 (a) A copy of the tribal agreement.

13 (b) A summary of the changes since the immediately preceding
14 report.

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

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

27 (2) For a period to be designated by the state treasurer of

1 not less than 30 days and not more than 60 days, and ending before
2 ~~September~~**NOVEMBER** 30, 2002~~—2009~~, there shall be an amnesty period
3 during which the state treasurer shall waive all criminal and civil
4 penalties provided by law for failing or refusing to file a return,
5 for failing to pay a tax, or for making an excessive claim for a
6 refund for a tax administered by the ~~revenue division of the~~
7 department of treasury under this act if the taxpayer makes a
8 written request for a waiver, files a return or an amended return,
9 and makes full payment in either a lump sum or installments as
10 provided under subsection (9), of the tax and interest due for any
11 prior tax year.

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

18 (4) The department shall administer this section.

19 (5) Subsection (2) does not apply to taxes due after June 1,
20 ~~2001—30, 2009~~.

21 (6) ~~There~~**FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2010, THERE**
22 is appropriated from the revenues generated by taxes paid under
23 subsection (2) the sum of \$1,500,000.00 to the department of
24 treasury for administration of the amnesty program created by the
25 amendatory act that ~~added~~**AMENDED** this subsection. This
26 appropriation is allotted for expenditure on and after October 1,
27 ~~2001—2009~~. Only general purpose revenue generated by the amendatory

1 act that ~~added~~**AMENDED** this subsection may be used to finance this
2 appropriation.

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

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

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

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

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

22 (a) The taxpayer is an individual and submits the greater of
23 \$10,000.00 or 50% of the tax and interest due with the request for
24 waiver under subsection (2) and pays the remaining tax and interest
25 due in 2 equal installments, the first installment due no later
26 than ~~August~~**NOVEMBER** 15, ~~2002~~**2009** and the second installment due
27 no later than ~~September~~**DECEMBER** 15, ~~2002~~**2009**.

1 (b) A taxpayer that is not an individual submits the greater
2 of \$100,000.00 or 50% of the tax and interest due with the request
3 for waiver under subsection (2) and pays the remaining tax and
4 interest due in 2 equal installments, the first installment due no
5 later than ~~August~~**NOVEMBER** 15, ~~2002~~**2009** and the second installment
6 due no later than ~~September~~**DECEMBER** 15, ~~2002~~**2009**.