

HOUSE BILL No. 5990

November 8, 2012, Introduced by Rep. Nesbitt 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 section 21 (MCL 205.21), as amended by 2006 PA 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21. (1) If a taxpayer fails or refuses to make a return

1 or payment as required, in whole or in part, or if the department
2 has reason to believe that a return made or payment does not supply
3 sufficient information for an accurate determination of the amount
4 of tax due, the department may obtain information on which to base
5 an assessment of the tax. By its duly authorized agents, the
6 department may examine the books, records, and papers and audit the
7 accounts of a person or any other records pertaining to the tax. **A**
8 **PERSON WHO HAS BEEN AUDITED BY THE DEPARTMENT OR ITS AGENT OR A**
9 **PERSON WHOSE BOOKS, RECORDS, AND PAPERS HAVE BEEN EXAMINED BY THE**
10 **DEPARTMENT SHALL BE PROVIDED A COMPLETE COPY IN PRINTED OR**
11 **ELECTRONIC FORMAT OF THE COMPLETE AUDIT WORK PAPERS, THE AUDIT**
12 **REPORT FINDINGS, PLUS ALL CORRESPONDENCE AND DOCUMENTATION WHICH**
13 **FORMED A BASIS FOR ANY AND ALL AUDIT DETERMINATIONS. ANY AUDIT**
14 **PERFORMED BY THE DEPARTMENT OR ITS DULY AUTHORIZED AGENTS UNDER**
15 **SECTION 3(A) SHALL BE PERFORMED IN ACCORDANCE WITH THE GENERALLY**
16 **ACCEPTED GOVERNMENT AUDITING STANDARDS PUBLISHED BY THE GOVERNMENT**
17 **ACCOUNTABILITY OFFICE OF THE UNITED STATES GOVERNMENT. ANY SAMPLING**
18 **USED IN THE PERFORMANCE OF AN AUDIT SHALL BE DONE IN ACCORDANCE**
19 **WITH THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS' AUDIT**
20 **GUIDE, AUDIT SAMPLING.**

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

23 (a) The department shall send to the taxpayer a letter of
24 inquiry stating, in a courteous and nonintimidating manner, the
25 department's opinion that the taxpayer needs to furnish further
26 information or owes taxes to the state, and the reason for that
27 opinion. A letter of inquiry shall also explain the procedure by

1 which the person may initiate communication with the department to
2 resolve any dispute. This subdivision does not apply in any of the
3 following circumstances:

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

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

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

10 (b) If the dispute is not resolved within 30 days after the
11 department sends the taxpayer a letter of inquiry or if a letter of
12 inquiry is not required pursuant to subdivision (a), the
13 department, after determining the amount of tax due from a
14 taxpayer, shall give notice to the taxpayer of its intent to assess
15 the tax. The notice shall include the amount of the tax the
16 department believes the taxpayer owes, the reason for that
17 deficiency, and a statement advising the taxpayer of a right to an
18 informal conference, the requirement of a written request by the
19 taxpayer for the informal conference that includes the taxpayer's
20 statement of the contested amounts and an explanation of the
21 dispute, and the 60-day time limit for that request.

22 (c) If the taxpayer serves written notice upon the department
23 within 60 days after the taxpayer receives a notice of intent to
24 assess, remits the uncontested portion of the liability, and
25 provides a statement of the contested amounts and an explanation of
26 the dispute, the taxpayer is entitled to an informal conference on
27 the question of liability for the assessment.

1 (d) Upon receipt of a taxpayer's written notice, the
2 department shall set a mutually agreed upon or reasonable time and
3 place for the informal conference and shall give the taxpayer
4 reasonable written notice not less than 20 days before the informal
5 conference. The notice shall specify the intent to assess, type of
6 tax, and tax year that is the subject of the informal conference.
7 The informal conference provided for by this subdivision is not
8 subject to the administrative procedures act of 1969, 1969 PA 306,
9 MCL 24.201 to 24.328, but is subject to the rules governing
10 informal conferences as promulgated by the department in accordance
11 with the administrative procedures act of 1969, 1969 PA 306, MCL
12 24.201 to 24.328. The taxpayer may appear or be represented by any
13 person before the department at an informal conference, and may
14 present testimony and argument. At the party's own expense and with
15 advance notice to the other party, a taxpayer or the department, or
16 both, may make an audio recording of an informal conference. A
17 taxpayer who has made a timely request for an informal conference
18 may at any time withdraw that request by filing written notice with
19 the department. Upon receipt of the request for withdrawal from the
20 informal conference process, the department shall issue a decision
21 and order of determination and, where appropriate, a final
22 assessment, from which a taxpayer may seek an appeal as provided
23 under section 22.

24 (e) After the informal conference, the department shall render
25 a decision and order in writing, setting forth the reasons and
26 authority, and shall assess the tax, interest, and penalty found to
27 be due and payable. The decision and order are limited to the

1 subject of the informal conference as included in the notice under
2 subdivision (d).

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

10 (3) If as a result of an audit it is determined that a
11 taxpayer is owed a refund, the department shall send a notice to
12 the taxpayer stating the amount of the refund the department
13 believes is owed to the taxpayer as a result of the audit. The
14 notice shall inform the taxpayer of his or her appeal rights. If
15 the taxpayer disputes the findings of the audit, the taxpayer may
16 serve written notice upon the department in the same manner as
17 provided for in subsection (2)(c) and the taxpayer is entitled to
18 the same informal conference and subsequent appeals as provided for
19 in this section.

20 (4) If a protest to the notice of intent to assess the tax is
21 determined by the department to be a frivolous protest or a desire
22 by the taxpayer to delay or impede the administration of taxes
23 administered under this act, a penalty of \$25.00 or 25% of the
24 amount of tax under protest, whichever is greater, shall be added
25 to the tax.

26 (5) During the course of the informal conference under
27 subsection (2)(d), the taxpayer by written notice may convert his

1 or her contest of the assessment to a claim for a refund. The
2 written notice shall be accompanied by payment of the contested
3 amount. The informal conference shall continue and the department
4 shall render a decision and issue an order regarding the claim for
5 refund.