

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4291

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 2014 PA 3.

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. A
7 TAXPAYER WHO HAS BEEN AUDITED BY THE DEPARTMENT OR ITS AGENT OR A
8 TAXPAYER WHOSE BOOKS, RECORDS, AND PAPERS HAVE BEEN EXAMINED BY THE
9 DEPARTMENT SHALL, UPON REQUEST, BE PROVIDED A COMPLETE COPY IN
10 PRINTED OR ELECTRONIC FORMAT OF THE COMPLETE AUDIT WORK PAPERS AND
11 THE AUDIT REPORT OF FINDINGS. ANY AUDIT PERFORMED BY THE DEPARTMENT
12 OR ITS DULY AUTHORIZED AGENTS UNDER SECTION 3(A) SHALL BE PERFORMED
13 IN ACCORDANCE WITH AUDITING STANDARDS WHICH SHALL INCLUDE, BUT ARE
14 NOT LIMITED TO, CONFIDENTIALITY, TECHNICAL TRAINING, INDEPENDENCE,
15 DUE PROFESSIONAL CARE, PLANNING, SUPERVISION, UNDERSTANDING OF THE
16 ENTITY AUDITED INCLUDING INTERNAL CONTROL AND AN ASSESSMENT OF
17 RISK, AUDIT EVIDENCE AND DOCUMENTATION, SAMPLING AND SAMPLING
18 PROJECTIONS, AND ELEMENTS OF THE AUDIT REPORT OF FINDINGS. THE
19 DEPARTMENT SHALL PROMULGATE ADMINISTRATIVE RULES ON AUDIT STANDARDS
20 WITHIN 1 YEAR OF THE DATE OF ENACTMENT OF THE AMENDATORY ACT THAT
21 ADDED THIS SENTENCE.

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

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

1 opinion. A letter of inquiry shall also explain the procedure by
2 which the person may initiate communication with the department to
3 resolve any dispute. This subdivision does not apply in any of the
4 following circumstances:

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

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

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

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

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

1 the question of liability for the assessment.

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

25 (e) After the informal conference, the department shall render
26 a decision and order in writing, setting forth the reasons and
27 authority, and shall assess the tax, interest, and penalty found to

1 be due and payable. The decision and order are limited to the
2 subject of the informal conference as included in the notice under
3 subdivision (d).

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

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

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

27 (5) During the course of the informal conference under

1 subsection (2)(d), the taxpayer by written notice may convert his
2 or her contest of the assessment to a claim for a refund. The
3 written notice shall be accompanied by payment of the contested
4 amount. The informal conference shall continue and the department
5 shall render a decision and issue an order regarding the claim for
6 refund.

7 (6) For audits commenced after September 30, 2014, the
8 department must complete fieldwork and provide a written
9 preliminary audit determination for any tax period no later than 1
10 year after the period provided for in section 27a(2) without regard
11 to the extension provided for in section 27a(3). The limitation
12 described in this subsection does not apply to any tax period in
13 which the department and the taxpayer agreed in writing to extend
14 the statute of limitations described in section 27a(2).

15 (7) For audits commenced after September 30, 2014, unless
16 otherwise agreed to by the department and the taxpayer, the final
17 assessment issued under subsection (2)(f) must be issued within 9
18 months of the date that the department provided the taxpayer with a
19 written preliminary audit determination unless the taxpayer, for
20 any reason, requests reconsideration of the preliminary audit
21 determination or the taxpayer requests an informal conference under
22 subsection (2)(c). A request for reconsideration by a taxpayer
23 permits, but does not require, the department to delay the issuance
24 of a final assessment under subsection (2)(f).