

Act No. 240
Public Acts of 2014
Approved by the Governor
June 21, 2014
Filed with the Secretary of State
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EFFECTIVE DATE: June 27, 2014

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Rep. Walsh

ENROLLED HOUSE BILL No. 4003

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 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 28 (MCL 205.28), as amended by 2010 PA 313, and by adding section 23a.

The People of the State of Michigan enact:

Sec. 23a. (1) Beginning January 1, 2015, the state treasurer, or an authorized representative of the state treasurer, may compromise all or any part of any payment of a tax subject to administration under this act including any related penalties and interest if 1 or more of the following grounds exist:

(a) A doubt exists as to liability if the department concludes, based on evidence provided by the taxpayer, that the taxpayer would have prevailed in a contested case if the taxpayer's appeal rights had not expired.

(b) A doubt exists as to collectability if the taxpayer establishes both of the following:

(i) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(ii) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(c) A federal compromise of tax under section 7122 of the internal revenue code has been granted for the same tax years. If an offer to compromise a tax under part 1 or part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.699, is accepted pursuant to this subdivision, the state treasurer, or an authorized representative of the state treasurer, may compromise the outstanding balance of the liability for each year by applying the same percentage as the federal liability compromised to the total liability.

(2) If the state treasurer, or an authorized representative of the state treasurer, compromises all or any part of any payment of a tax as authorized under this section, he or she shall place on file in the office of the state treasurer and publish on the department of treasury's website a written report outlining the basis for the compromise and, at a minimum, a statement of each of the following:

(a) The amount of tax assessed.

- (b) The amount of interest or assessable penalty imposed by law on the person against whom the tax is assessed.
- (c) The terms of the compromise and the amount actually paid in accordance with the terms of the compromise.
- (d) The grounds for the compromise.

(3) A compromise under this section is subject to continuing review by the state treasurer. The department may revoke any compromise made under this section, may reestablish all compromised liabilities, without regard to any statute of limitations that otherwise may be applicable, and shall not refund any portion of the amount offered in compromise, if either of the following occurs:

(a) The state treasurer, or an authorized representative of the state treasurer, reasonably determines that the person receiving the compromise concealed from the department any property belonging to the taxpayer, the estate of a taxpayer, or any other person liable for the tax or, with the intent to mislead, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax to induce the compromise.

(b) The taxpayer fails to comply with any of the terms and conditions relative to the offer or to file subsequent required returns and pay subsequent final tax liabilities within 20 days after the department issues a notice and demand to the person stating that the continued failure to file or pay the tax may result in the revocation of the compromise made under this section.

(4) Within 180 days after the effective date of the amendatory act that added this section, the state treasurer shall do all of the following:

(a) Establish guidelines for the offer-in-compromise program authorized under this section. If appropriate, the guidelines shall be modeled after those guidelines published by the internal revenue service of the United States department of treasury in regards to the federal offer-in-compromise program established under section 7122 of the internal revenue code.

(b) Establish guidelines for officers and employees within the department to use when making decisions on whether an offer-in-compromise is appropriate.

(c) Establish procedures for an independent administrative review within the department of any rejection of a proposed offer-in-compromise made by the taxpayer. In order to initiate a review under this subdivision, the taxpayer shall make a written request on a form prescribed by the department within 30 days after the department issues the rejection. If appropriate, the independent administrative review procedures shall be modeled after the guidelines published by the internal revenue service for the federal offer-in-compromise program established under section 7122 of the internal revenue code.

(5) The department shall disclose return information to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under this section relating to the liability for a tax imposed by this state.

(6) Except for a revocation as provided under subsection (3), a tax that was compromised is not subject to additional assessment or collection unless the compromised tax is modified or adjusted as a result of information received from the internal revenue service or as a result of an audit performed by this state or on behalf of this state. Except as to any additional assessment imposed as provided under this subsection, a taxpayer shall not request an informal conference or institute tribunal or judicial proceeding against the department regarding the taxpayer's tax liability or the compromise.

(7) The department shall not levy against property to collect a liability while an offer to compromise is pending unless the state treasurer, or an authorized representative of the state treasurer, has determined that the taxpayer's offer to compromise was intended to delay collection of the tax or the department has issued a jeopardy assessment under section 26.

(8) A taxpayer who submits an offer to compromise a tax, penalty, or interest shall remit with its offer \$100.00 or 20% of the offer, whichever is greater, to the department. The amount remitted with the offer shall be applied to the outstanding balance of that taxpayer's liability and shall not be refunded if the offer to compromise is rejected or reduced.

(9) Except for the independent administrative review available as provided under subsection (4)(c), a rejection of an offer to compromise, in whole or in part, is final and is not subject to further challenge or appeal under this act.

Sec. 28. (1) The following conditions apply to all taxes administered under this act unless otherwise provided for in the specific tax statute:

(a) Notice, if required, shall be given either by personal service or by certified mail addressed to the last known address of the taxpayer. Service upon the department may be made in the same manner.

(b) An injunction shall not issue to stay proceedings for the assessment and collection of a tax.

(c) In addition to the mode of collection provided in this act, the department may institute an action at law in any county in which the taxpayer resides or transacts business.

(d) The state treasurer may request in writing information or records in the possession of any other department, institution, or agency of state government for the performance of duties under this act. Departments, institutions, or agencies of state government shall furnish the information and records upon receipt of the state treasurer's request. Upon request of the state treasurer, any department, institution, or agency of state government shall hold a hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to consider withholding a license or permit of a person for nonpayment of taxes or accounts collected under this act.

(e) Except as otherwise provided in sections 23a and 30c, the state treasurer or an employee of the department shall not compromise or reduce in any manner the taxes due to or claimed by this state or unpaid accounts or amounts due to any department, institution, or agency of state government. This subdivision does not prevent a compromise of interest or penalties, or both.

(f) Except as otherwise provided in this subdivision, in subsection (6) or (7), or in section 23a, an employee, authorized representative, or former employee or authorized representative of the department or anyone connected with the department shall not divulge any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria of the department for a tax administered by the department. An employee or authorized representative shall not willfully inspect any return or information contained in a return unless it is appropriate for the proper administration of a tax law administered under this act. A person may disclose information described in this subdivision if the disclosure is required for the proper administration of a tax law administered under this act or the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, pursuant to a judicial order sought by an agency charged with the duty of enforcing or investigating support obligations pursuant to an order of a court in a domestic relations matter as that term is defined in section 2 of the friend of the court act, 1982 PA 294, MCL 552.502, or pursuant to a judicial order sought by an agency of the federal, state, or local government charged with the responsibility for the administration or enforcement of criminal law for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings or a judicial order if the taxpayer's liability for a tax administered under this act is to be adjudicated by the court that issued the judicial order. A person required to disclose information under section 10(1)(j) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.810, may disclose the information only to the individuals described in that section. A person may disclose the adjusted gross receipts and the wagering tax paid by a casino licensee licensed under the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226, pursuant to section 18, sections 341, 342, and 386 of the management and budget act, 1984 PA 431, MCL 18.1341, 18.1342, and 18.1386, or authorization by the executive director of the gaming control board. However, the state treasurer or a person designated by the state treasurer may divulge information set forth or disclosed in a return or report or by an investigation or audit to any department, institution, or agency of state government upon receipt of a written request from a head of the department, institution, or agency of state government if it is required for the effective administration or enforcement of the laws of this state, to a proper officer of the United States department of treasury, and to a proper officer of another state reciprocating in this privilege. The state treasurer may enter into reciprocal agreements with other departments of state government, the United States department of treasury, local governmental units within this state, or taxing officials of other states for the enforcement, collection, and exchange of data after ascertaining that any information provided will be subject to confidentiality restrictions substantially the same as the provisions of this act.

(2) A person who violates subsection (1)(e), (1)(f), or (4) is guilty of a felony, punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 5 years, or both, together with the costs of prosecution. In addition, if the offense is committed by an employee of this state, the person shall be dismissed from office or discharged from employment upon conviction.

(3) A person liable for any tax administered under this act shall keep accurate and complete records necessary for the proper determination of tax liability as required by law or rule of the department.

(4) A person who receives information under subsection (1)(f) for the proper administration of the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, shall not willfully disclose that information for any purpose other than the administration of the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. A person who violates this subsection is subject to the penalties provided in subsection (2).

(5) A person identified in section 10(1) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.810, who receives information under section 10(1)(j) of the Michigan economic growth authority act, 1995 PA 24, MCL 207.810, as permitted in subsection (1)(f), shall not willfully disclose that information for any purpose other than the proper administration of his or her legislative duties nor disclose that information to anyone other than an employee of the legislature, who is also bound by the same restrictions. A person who violates this subsection is responsible for and subject to a civil fine of not more than \$5,000.00 per violation.

(6) The department shall annually prepare a report containing statistics described in this subsection concerning the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the most recent tax year for which reliable return data have been processed and cleared in the ordinary course of return processing by the department. A copy of the report shall be provided to the chairpersons of the senate and house of representatives standing committees that have jurisdiction over matters relating to taxation and finance, the director of the senate fiscal agency, and the director of

the house fiscal agency. The department shall report the following information broken down by business sector and, provided that no grouping consists of fewer than 10 taxpayers, by firm size in compliance with subsection (1)(f) and in a manner that does not result in the disclosure of information regarding any specific taxpayer:

- (a) Apportioned business income tax base.
- (b) Apportioned modified gross receipts tax base.
- (c) Business income tax liability.
- (d) Use of credits.
- (e) Modified gross receipts tax liability.
- (f) Total final liability.
- (g) Total liability before credits.
- (7) A person may disclose the following information described in this subsection:

(a) Information required to be reported under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.

(b) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, a postproduction certificate, a communication denying a postproduction certificate, or the total amount of credits claimed in a tax year under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455, notwithstanding section 455(6) of the Michigan business tax act, 2007 PA 36, MCL 408.1455.

(c) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, an investment expenditure certificate, a communication denying an investment expenditure certificate, or the total amount of credits claimed in a tax year under section 457 of the Michigan business tax act, 2007 PA 36, MCL 208.1457, notwithstanding section 457(6) of the Michigan business tax act, 2007 PA 36, MCL 408.1457.

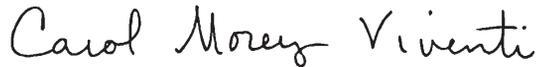
(d) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, a qualified job training expenditures certificate, a communication denying a qualified job training expenditures certificate, or the total amount of credits claimed in a tax year under section 459 of the Michigan business tax act, 2007 PA 36, MCL 208.1459, notwithstanding section 459(6) of the Michigan business tax act, 2007 PA 36, MCL 408.1459.

(8) As used in subsection (1), "adjusted gross receipts" and "wagering tax" mean those terms as described in the Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor