

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4462**

A bill to amend 1964 PA 284, entitled
"City income tax act,"
by amending sections 41, 43, 51, 52, 53, 60, 61, and 82 of chapter
2 (MCL 141.641, 141.643, 141.651, 141.652, 141.653, 141.660,
141.661, and 141.682), sections 41, 43, 60, 61, and 82 as amended
by 1996 PA 478, section 51 as amended by 1982 PA 124, and section
52 as amended by 1996 PA 442, and by adding sections 43a and 50 to
chapter 2; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER 2

2

Sec. 41. (1) Every corporation doing business in the city and

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every other person having income taxable under this ordinance in

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any year before the 1997 tax year or in any tax year after the 1996

1 tax year for which the city has not entered into an agreement with
2 the department of treasury pursuant to section 9 of chapter 1,
3 shall make and file with the city an annual return for that year,
4 on a form furnished or approved by the city, on or before the last
5 day of the fourth month for the same calendar year, fiscal year, or
6 other accounting period, that has been accepted by the internal
7 revenue service for federal income tax purposes for the taxpayer.
8 For tax years after the 1996 tax year and for which a city has
9 entered into an agreement pursuant to section 9 of chapter 1, the
10 annual return required by this subsection shall be filed with the
11 city or the department as provided by the agreement on or before
12 the fifteenth day of the fourth month for the same calendar year,
13 fiscal year, or other accounting period that has been accepted by
14 the internal revenue service for federal income tax purposes for
15 the taxpayer.

16 (2) A ~~husband and wife~~ **MARRIED COUPLE** may file a joint return
17 and, in such case, the tax liability is joint and several.

18 Sec. 43. (1) A balance of the tax that is due the city at the
19 time of filing an annual return shall be paid with the return
20 unless the balance is less than \$1.00, in which case payment is not
21 required.

22 (2) If the annual return reflects an overpayment of the tax,
23 the declaration of the overpayment on the return constitutes a
24 claim for refund. Subject to subsection (6), if the city or the
25 department agrees that a claim is valid, the city or the department
26 shall apply the overpayment first to a delinquent tax liability
27 under this ordinance of the taxpayer to the city. The city shall

1 apply any remaining overpayment against a subsequent liability
 2 under this ordinance or, at the election of the taxpayer and if
 3 indicated on the return, shall refund the overpayment. However, the
 4 city shall not pay a refund of less than \$1.00.

5 (3) ~~If~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 43A, IF** a
 6 valid claim for a refund of taxes, except a refund under section
 7 61, due for the taxable year 1992 or a taxable year after 1992 is
 8 filed, interest at the rate established in section 30(3) of ~~Act No.~~
 9 ~~122 of the Public Acts of 1941, being section 205.30 of the~~
 10 ~~Michigan Compiled Laws, 1941 PA 122, MCL 205.30,~~ shall be added to
 11 the refund beginning 45 days after the claim is filed or 45 days
 12 after the date established under this ordinance for the filing of
 13 the return, whichever is later. For tax years after the 1996 tax
 14 year and for which a city has entered into an agreement pursuant to
 15 section 9 of chapter 1, a claim for refund shall be paid from money
 16 in the city income tax trust fund.

17 (4) For tax years after the 1995 tax year and for which a city
 18 has entered into an agreement pursuant to section 9 of chapter 1,
 19 if a taxpayer pays, when filing his or her annual return, an amount
 20 less than the sum of the declared tax liability under this act, and
 21 the declared tax liability under the income tax act of 1967, ~~Act~~
 22 ~~No. 281 of the Public Acts of 1967, being sections 206.1 to 206.532~~
 23 ~~of the Michigan Compiled Laws, 1967 PA 281, MCL 206.1 TO 206.713,~~
 24 and there is no indication of the allocation of payment between the
 25 tax liabilities against which the payment should be applied, the
 26 amount paid shall first be applied against the taxpayer's tax
 27 liability under this act and any remaining amount of payment shall

1 be applied to the taxpayer's tax liability under ~~Act No. 281 of the~~
2 ~~Public Acts of 1967.~~ **THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL**
3 **206.1 TO 206.713.** The taxpayer's designation of a payee on a
4 payment is not a dispositive determination of the allocation of
5 that payment under this subsection.

6 (5) If the claim for refund is reflected on a joint tax
7 return, the administrator shall allocate to each joint taxpayer his
8 or her share of the refund. The amount allocated to each taxpayer
9 shall be applied to his or her respective liabilities under this
10 ordinance.

11 (6) If the administrator or the department determines that all
12 or a portion of a refund claimed on a joint tax return is subject
13 to application to a liability of an obligated spouse, the
14 administrator or the department shall notify the joint taxpayers by
15 first class mail sent to the address shown on the joint return. The
16 notice shall be accompanied by a nonobligated spouse allocation
17 form. The notice shall state all of the following:

18 (a) That all or a portion of the refund claimed by the joint
19 taxpayers is subject to interception to satisfy a liability or
20 liabilities of 1 or both spouses.

21 (b) The nature of the liability and the name of the obligated
22 spouse or spouses.

23 (c) That a nonobligated spouse may claim his or her share of
24 the refund by filing a nonobligated spouse allocation form with the
25 city or the department not more than 30 days after the date the
26 notice was mailed.

27 (d) A statement of the penalties under subsection (9).

1 (7) A nonobligated spouse who wishes to claim his or her share
2 of a tax refund shall file with the city or the department a
3 nonobligated spouse allocation form. The nonobligated spouse
4 allocation form shall be in a form specified by the administrator
5 or the department and shall require the spouses to state the amount
6 of income or other tax base and all adjustments to the income or
7 other tax base, including all subtractions, additions, deductions,
8 credits, and exemptions, stated on the joint tax return that is the
9 basis for the claimed refund, and an allocation of those amounts
10 between the obligated and nonobligated spouse. In allocating these
11 amounts, all of the following apply:

12 (a) Individual income shall be allocated to the spouse who
13 earned the income. Joint income shall be allocated equally between
14 the spouses.

15 (b) Each spouse shall be allocated the personal exemptions he
16 or she would be entitled to claim if separate federal returns had
17 been filed, except that dependency exemptions shall be prorated
18 according to the relative income of the spouses.

19 (c) Adjustments resulting from a business shall be allocated
20 to the spouse who claimed income from the business.

21 (d) Ownership of other assets relevant to the allocation shall
22 be disclosed upon request of the administrator or the department.

23 (8) A nonobligated spouse allocation form shall be signed by
24 both joint taxpayers. However, the form may be submitted without
25 the signature of the obligated spouse if his or her signature
26 cannot be obtained. The nonobligated spouse shall certify that he
27 or she has made a good faith effort to obtain the signature of the

1 obligated spouse and shall state the reason that the signature was
2 not obtained.

3 (9) A person who knowingly makes a false statement on a
4 nonobligated spouse allocation form is subject to a penalty of
5 \$25.00 or 25% of the excessive claim for his or her share of the
6 refund, whichever is greater, and other penalties as provided in
7 this ordinance.

8 (10) A nonobligated spouse to whom the administrator or the
9 department has sent a notice under subsection (6), who fails to
10 file a nonobligated spouse allocation form within 30 days after the
11 date the notice was mailed, shall be barred from commencing any
12 action against the city or the department to recover an amount
13 withheld to satisfy a liability of the obligated spouse to which a
14 joint tax refund is applied under this section. The payment by the
15 city or the department of any amount applied to a liability of a
16 taxpayer under this section shall release the department or the
17 city and the administrator from all liability to the obligated
18 spouse, the nonobligated spouse, and any other person having or
19 claiming any interest in the amount paid. A payment by the
20 department of treasury under this subsection shall be made from the
21 city income tax trust fund created in section 5 of chapter 1.

22 (11) As used in this section:

23 (a) "Nonobligated spouse" means a person who has filed a joint
24 city income tax return and who is not liable for an obligation of
25 his or her spouse described in this ordinance.

26 (b) "Obligated spouse" means a person who has filed a joint
27 city income tax return and who is liable for an obligation

1 described in this ordinance for which his or her spouse is not
2 liable.

3 SEC. 43A. IF A VALID CLAIM FOR A REFUND OF TAXES, EXCEPT A
4 REFUND UNDER SECTION 61, DUE FOR THE TAXABLE YEAR 2017 OR A TAXABLE
5 YEAR AFTER 2017 IS FILED, INTEREST AT THE RATE AND IN THE MANNER
6 ESTABLISHED IN SECTION 30(3) OF 1941 PA 122, MCL 205.30, SHALL BE
7 ADDED TO THE REFUND.

8 SEC. 50. (1) FOR THE 2016 TAX YEAR AND EACH TAX YEAR AFTER
9 2016 THROUGH THE 2020 TAX YEAR, A CITY MAY ENTER INTO A WRITTEN
10 AGREEMENT WITH THE OWNER OF PROPERTY LOCATED IN THE CITY ON BEHALF
11 OF A QUALIFIED EMPLOYER OR WITH A QUALIFIED EMPLOYER TO PROVIDE FOR
12 THE ADVANCE PAYMENT OF THE TAX REQUIRED TO BE WITHHELD PURSUANT TO
13 SECTION 51 FOR ALL EMPLOYEES, WHO ARE EITHER RESIDENTS OR
14 NONRESIDENTS, EQUAL TO THE NONRESIDENT RATE FOR THE DURATION OF THE
15 WRITTEN AGREEMENT. THE WRITTEN AGREEMENT SHALL NOT BE FOR A PERIOD
16 OF MORE THAN 25 YEARS AND SHALL SPECIFY THE AMOUNT OF THE ADVANCE
17 PAYMENT TO BE PAID AND WHETHER THE OWNER OF THE PROPERTY OR THE
18 QUALIFIED EMPLOYER IS RESPONSIBLE FOR PAYING THE AGREED-UPON
19 AMOUNT. THE WRITTEN AGREEMENT MAY INCLUDE A RECONCILIATION
20 PROVISION AS DESCRIBED IN SECTION 61(5).

21 (2) AS USED IN THIS SECTION:

22 (A) "CASINO" MEANS A CASINO REGULATED BY THIS STATE UNDER THE
23 MICHIGAN GAMING CONTROL AND REVENUE ACT, 1996 IL 1, MCL 432.201 TO
24 432.226, AND ALL PROPERTY ASSOCIATED OR AFFILIATED WITH THE
25 OPERATION OF A CASINO, INCLUDING, BUT NOT LIMITED TO, A PARKING
26 LOT, HOTEL, MOTEL, OR RETAIL STORE.

27 (B) "QUALIFIED EMPLOYER" MEANS AN EMPLOYER OTHER THAN AN OWNER

1 OR OPERATOR OF A CASINO, RETAIL ESTABLISHMENT, PROFESSIONAL SPORTS
2 STADIUM, OR THAT PORTION OF A BUSINESS USED EXCLUSIVELY FOR RETAIL
3 SALES.

4 Sec. 51. (1) ~~An~~ UNLESS AN ADVANCE PAYMENT OF THE TAX REQUIRED
5 TO BE WITHHELD UNDER THIS SECTION HAS ALREADY BEEN PAID TO THE CITY
6 PURSUANT TO AN AGREEMENT ENTERED UNDER SECTION 50, AN employer
7 doing business or maintaining an establishment within the city
8 shall withhold from each payment to the employer's employees on and
9 after the effective date of this ordinance the tax on their
10 compensation subject to the tax, after giving effect to exemptions,
11 as follows:

12 (a) Residents.

13 (i) At a rate equal to the rate set by ordinance to be levied
14 against resident individuals under this ordinance, but not to
15 exceed 3%, of all compensation paid to the employee who is a
16 resident of the city, if the employee is not subject to withholding
17 in any other city levying the tax.

18 (ii) At a rate equal to the difference in the percentage rate
19 of tax on resident individuals as set by ordinance to be levied
20 under this ordinance less the percentage rate of tax levied by any
21 other city in which the employee works, on all compensation earned
22 by the resident in another city.

23 (b) Nonresidents. At a rate equal to the rate set by ordinance
24 to be levied under this ordinance on nonresidents but not to exceed
25 50% of the percentage rate imposed on resident individuals of the
26 compensation paid to the employee for work done or services
27 performed in the city designated by the employee as the employee's

1 predominant place of employment. The withholding rate shall be
2 applied to the percentage of the employee's total compensation
3 equal to the employee's estimated percentage of work to be done or
4 services to be performed in the city for that employer, but no
5 withholding shall be required if the estimated percentage of work
6 is less than 25%.

7 (2) An employer withholding the tax is deemed to hold the tax
8 as a trustee for the city.

9 (3) An employer who is required to withhold and who fails or
10 refuses to deduct and withhold is liable for the payment of the
11 amount required to be withheld. The liability shall be discharged
12 upon payment of the tax by the employee but the employer is not
13 relieved of penalties and interest provided in this ordinance for
14 this failure or refusal.

15 Sec. 52. Employers shall not withhold any tax from the
16 following payments or persons:

17 (a) Compensation paid to domestic help.

18 (b) Compensation paid to a person who is not an employee,
19 including an independent contractor.

20 (c) An amount allowed and paid to an employee as reimbursement
21 for expenses necessarily and actually incurred by the employee in
22 the actual performance of his or her services, and that is
23 deductible by the employer.

24 (d) A qualified taxpayer. "Qualified taxpayer" means that term
25 as defined in section 35(12)(c)(i) **OF THIS CHAPTER.**

26 **(E) COMPENSATION PAID TO AN EMPLOYEE FOR WHOM AN ADVANCE**
27 **PAYMENT OF THE TAX HAS ALREADY BEEN MADE ON BEHALF OF THE EMPLOYEE**

1 PURSUANT TO AN AGREEMENT ENTERED UNDER SECTION 50 OF THIS CHAPTER.

2 Sec. 53. (1) If the tax is not withheld, an employee is not
3 excused from filing a return and paying the tax on his OR HER
4 compensation. If the tax is withheld but an employer fails to pay
5 the tax to the city, the employee is not liable for the tax so
6 withheld.

7 (2) ANY TAX THAT HAS BEEN PAID PURSUANT TO AN AGREEMENT
8 ENTERED INTO UNDER SECTION 50 ON BEHALF OF AN EMPLOYEE IS
9 CONSIDERED TO BE TAX WITHHELD BY THE EMPLOYER AND THE EMPLOYEE IS
10 NOT LIABLE FOR THE TAX WITHHELD AND PAID TO THE CITY ON HIS OR HER
11 BEHALF. HOWEVER, AN EMPLOYEE FOR WHOM THE TAX HAS ALREADY BEEN PAID
12 PURSUANT TO AN AGREEMENT ENTERED INTO UNDER SECTION 50 SHALL FILE A
13 RETURN AND, IF HE OR SHE IS A RESIDENT OF THE CITY, SHALL PAY
14 REMAINING TAX DUE ON HIS OR HER COMPENSATION FROM THAT EMPLOYER.

15 Sec. 60. (1) Except as provided in subsection (2) OR (3), an
16 employer shall file a return, furnished by or obtainable on request
17 from the city, and pay to the city the full amount of the tax
18 withheld on or before the last day of the month following the close
19 of each calendar quarter.

20 (2) For tax years after the 1996 tax year and for which a city
21 has entered into an agreement pursuant to section 9 of chapter 1,
22 an employer shall file a return and pay the tax withheld for each
23 calendar month on or before the fifteenth day of the month
24 following the close of each calendar month to the department by
25 means of an electronic funds transfer method approved by the state
26 commissioner of revenue.

27 (3) AN EMPLOYER SUBJECT TO AN AGREEMENT ENTERED INTO PURSUANT

1 TO SECTION 50 SHALL FILE A RETURN IN A MANNER AND FORM AS
2 PRESCRIBED BY THE CITY UNLESS OTHERWISE PROVIDED PURSUANT TO THE
3 AGREEMENT.

4 Sec. 61. (1) ~~AN~~ EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION
5 (5), AN employer shall file with the city or the department a
6 reconciliation of quarterly returns on or before the last day of
7 February following each calendar year in which the employer has
8 withheld from an employee's compensation. A deficiency is due when
9 the reconciliation is filed. If the employer made quarterly
10 payments in excess of the amount withheld from an employee's
11 compensation, the city or the department upon proper verification
12 shall refund the excess to the employer.

13 (2) In addition to the reconciliation, the employer shall file
14 with the city or the department an information return for each
15 employee from whom the city income tax has been withheld and each
16 employee subject to withholding under this ordinance, setting forth
17 his or her name, address, and social security number, the total
18 amount of compensation paid him or her during the year, and the
19 amount of city income tax withheld. The information return shall be
20 on a copy of the federal W-2 form or on a form furnished or
21 approved by the city or the department. A copy of the information
22 return shall be furnished to the employee.

23 (3) Except as provided in subsection (4), if an employer goes
24 out of business or otherwise ceases to be an employer,
25 reconciliation forms and the information return forms shall be
26 filed with the city by the date the final withholding return and
27 payment are due.

1 (4) For tax years after the 1996 tax year and for which a city
2 has entered into an agreement pursuant to section 9 of chapter 1,
3 if an employer goes out of business or otherwise ceases to be an
4 employer, reconciliation forms and the information return forms
5 shall be filed with the department within 30 days after the
6 employer goes out of business or ceases to be an employer.

7 **(5) FOR AN EMPLOYER SUBJECT TO AN AGREEMENT ENTERED INTO**
8 **PURSUANT TO SECTION 50, THE CITY MAY REQUIRE, UPON REQUEST, THAT**
9 **THE QUALIFIED EMPLOYER FILE AN ANNUAL RECONCILIATION RETURN WITH**
10 **THE CITY ON OR BEFORE THE LAST DAY OF FEBRUARY FOLLOWING EACH**
11 **CALENDAR YEAR THAT INCLUDES, AT A MINIMUM, THE CALCULATION OF THE**
12 **AMOUNT DUE PURSUANT TO THE AGREEMENT AND THE PAYMENT MADE PURSUANT**
13 **TO THE AGREEMENT. IN ADDITION TO THE RECONCILIATION, THE CITY MAY**
14 **ALSO REQUIRE THE EMPLOYER TO FILE AN INFORMATION RETURN FOR EACH**
15 **EMPLOYEE COVERED BY THE AGREEMENT, SETTING FORTH HIS OR HER NAME,**
16 **ADDRESS, AND SOCIAL SECURITY NUMBER, AND THE TOTAL AMOUNT OF**
17 **COMPENSATION PAID TO HIM OR HER DURING THE YEAR. THE INFORMATION**
18 **RETURN SHALL BE ON A COPY OF THE FEDERAL W-2 FORM OR ON A FORM**
19 **FURNISHED OR APPROVED BY THE CITY. A COPY OF THE INFORMATION RETURN**
20 **SHALL BE FURNISHED TO THE EMPLOYEE.**

21 Sec. 82. (1) All taxes imposed in a taxable year before the
22 1992 taxable year on a taxpayer and money withheld by an employer
23 under this ordinance and remaining unpaid after the taxes or money
24 withheld are due bear interest from the due date at the rate of 1/2
25 of 1% per month until paid. For the 1992 taxable year and each
26 subsequent taxable year before the 1997 taxable year, all taxes
27 imposed on a taxpayer and money withheld by an employer under this

1 ordinance and remaining unpaid after the taxes or money withheld
2 are due bear interest from the due date at the current monthly rate
3 of 1 percentage point above the adjusted prime rate per annum per
4 month until the tax or money is paid. For taxable years after the
5 1996 taxable year, if the amount of a tax paid is less than the
6 amount that should have been paid or an excessive claim for credit
7 has been made, the deficiency and interest on the deficiency at the
8 current monthly interest rate of 1 percentage point above the
9 adjusted prime rate per annum from the time the tax was due, and
10 until paid, are due and payable after a final assessment as
11 provided in section 85. A deficiency in an estimated payment
12 required by this ordinance shall be treated in the same manner as a
13 tax due and is subject to the same current monthly interest rate of
14 1 percentage point above the adjusted prime rate per annum from the
15 time the payment was due, until paid. The term "adjusted prime
16 rate" means the average predominant prime rate quoted by not less
17 than 3 commercial banks to large businesses, as determined by the
18 department of treasury. For tax years before the 1997 tax year, the
19 adjusted prime rate is to be based on the average prime rate
20 charged by not less than 3 commercial banks during the 12-month
21 period ending on September 30. One percentage point shall be added
22 to the adjusted prime rate, and the resulting sum shall be divided
23 by 12 to establish the current monthly interest rate. The resulting
24 current monthly interest rate based on the 12-month period ending
25 September 30 becomes effective on January 1 of the following year.
26 For tax years after the 1996 tax year, "adjusted prime rate" means
27 that term as defined in and determined under section 23(2) of Act

~~No. 122 of the Public Acts of 1941, being section 205.23 of the Michigan Compiled Laws. 1941 PA 122, MCL 205.23.~~

(2) A person who fails to file a return, pay the tax, or remit withholding, when due, is liable, in addition to the interest, to a penalty of 1% of the amount of the unpaid tax for each month or fraction of a month, not to exceed a total penalty of 25% of the unpaid tax. If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the city or the department that the failure was due to reasonable cause and not to willful neglect, the penalty shall be waived by the administrator or the department. If the total interest or interest and penalty to be assessed is less than \$2.00, the administrator or the department shall instead assess \$2.00.

(3) Except as provided in subsection (4), if any part of the deficiency or an excessive claim for credit is due to negligence, but without intent to defraud, a penalty of \$10.00 or 10% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (1), shall be added. The penalty becomes due and payable after a final assessment is issued as provided in section 85. If a taxpayer subject to a penalty under this subsection demonstrates to the satisfaction of the administrator or the department that the deficiency or excess claim for credit was due to reasonable cause, the administrator or the department shall waive the penalty.

(4) If any part of the deficiency or an excessive claim for credit is due to intentional disregard of this ordinance, but without intent to defraud, a penalty of \$25.00 or 25% of the total

1 amount of the deficiency in the tax, whichever is greater, plus
2 interest as provided in subsection (1), shall be added. The penalty
3 becomes due and payable after a final assessment is issued as
4 provided in section 85. If a penalty is imposed under this
5 subsection and the taxpayer subject to the penalty successfully
6 disputes the penalty, the administrator or the department shall not
7 impose a penalty prescribed by subsection (3) to the tax otherwise
8 due.

9 (5) If any part of the deficiency or an excessive claim for
10 credit is due to fraudulent intent to evade the tax imposed under
11 this ordinance, or to obtain a refund for a fraudulent claim, a
12 penalty of 100% of the deficiency, plus interest as provided in
13 subsection (1), shall be added. The penalty becomes due and payable
14 after a final assessment is issued as provided in section 85.

15 (6) **AN EMPLOYER WHO FAILS OR REFUSES TO FILE A RECONCILIATION**
16 **OR INFORMATION RETURN UPON REQUEST PURSUANT TO SECTION 61(5),**
17 **WITHIN THE TIME SPECIFIED, IS SUBJECT TO A PENALTY OF \$10.00 PER**
18 **DAY FOR EACH DAY FOR EACH SEPARATE FAILURE OR REFUSAL, WHICH**
19 **PENALTY MAY BE ADDED TO THE TAX DUE. THE TOTAL PENALTY FOR EACH**
20 **SEPARATE FAILURE OR REFUSAL SHALL NOT EXCEED \$400.00.**

21 Enacting section 1. Section 43a of chapter 2 of the city
22 income tax act, 1964 PA 284, MCL 141.643a, is repealed effective
23 December 31, 2016.