

Act No. 215
Public Acts of 2017
Approved by the Governor
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2017**

Introduced by Rep. Tedder

ENROLLED HOUSE BILL No. 4976

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 sections 21 and 28 (MCL 205.21 and 205.28), section 21 as amended by 2014 PA 35 and section 28 as amended by 2017 PA 111.

The People of the State of Michigan enact:

Sec. 21. (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax. A taxpayer who has been audited by the department or its agent or a taxpayer whose books, records, and papers have been examined by the department shall, upon request, be provided a complete copy in printed or electronic format of the complete audit work papers and the audit report of findings. Any audit performed by the department or its duly authorized agents under section 3(a) shall be performed in accordance with auditing standards which shall include, but are not limited to, confidentiality, technical training, independence, due professional care, planning, supervision, understanding of the entity audited including internal control and an assessment of risk, audit evidence and documentation, sampling and sampling projections, and elements of the audit report of findings. The department shall promulgate administrative rules on audit standards within 1 year of the date of enactment of the amendatory act that added this sentence.

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

(a) The department shall send to the taxpayer a letter of inquiry stating, in a courteous and nonintimidating manner, the department's opinion that the taxpayer needs to furnish further information or owes taxes to the state, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the person may initiate communication with the department to resolve any dispute. This subdivision does not apply in any of the following circumstances:

- (i) The taxpayer files a return showing a tax due and fails to pay that tax.
- (ii) The deficiency resulted from an audit of the taxpayer's books and records by this state.
- (iii) The taxpayer otherwise affirmatively admits that a tax is due and owing.

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

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

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

(e) After a timely request for an informal conference has been made under subdivision (c), the taxpayer and the department may seek to settle any or all issues in dispute by submitting a written settlement offer to the other party in accordance with the following:

(i) The taxpayer shall submit a written settlement offer no later than 21 days after the informal conference. The settlement offer must identify the issues in dispute to be settled, the amount of the settlement offer, and the factual and legal bases supporting the taxpayer's settlement offer, and include any supporting documents. The state treasurer or the state treasurer's designee or designees shall review the settlement offer and the department's recommendation regarding the offer. The state treasurer or the state treasurer's designee or designees shall determine whether to accept, reject, or counter the settlement offer. The department shall notify the taxpayer in writing of the department's acceptance, rejection, or counter-offer. If the department does not accept the taxpayer's offer, the department shall include in its written notification the factual and legal bases for the department's rejection or counter-offer. The taxpayer may accept, reject, or counter the department's counter-offer and proceed in accordance with subparagraph (iii).

(ii) The informal conference referee or the administrator of the department's hearings division or its successor unit may submit a written report to the state treasurer or the state treasurer's designee or designees that identifies the relevant facts and issues involved in the dispute, the factual and legal bases supporting settlement of any or all of the issues, and a settlement recommendation. Doubt as to collectability shall not be a reason for settlement under this subdivision. If the state treasurer or the state treasurer's designee or designees determines to pursue a settlement, the department shall notify the taxpayer in writing of the department's settlement offer, to be determined by the state treasurer or the state treasurer's designee or designees. The department's written settlement offer shall include the factual and legal bases supporting the department's settlement offer. The taxpayer, in writing, may accept, reject, or counter the department's settlement offer and proceed in accordance with subparagraph (iii).

(iii) If the department rejects the taxpayer's settlement offer or counter-offer or the taxpayer rejects the department's settlement offer or counter-offer, the informal conference process shall proceed as provided under this section unless the taxpayer files a written notice to withdraw the request for an informal conference as provided in subdivision (d). If the department accepts the taxpayer's settlement offer or counter-offer or the taxpayer accepts the department's settlement offer or counter-offer, the department and the taxpayer shall execute a written agreement outlining all of the terms of the settlement. If the agreement settles all of the issues in dispute, then the written agreement is also the taxpayer's written notice to withdraw its request for an informal conference. Then the department shall, where appropriate, issue a final assessment that reflects the agreement and the agreed-upon amount of liability as to the settled issues. The department's final assessment issued under this subdivision is not subject to challenge or appeal under this act or reviewable in any court by mandamus, appeal, or other method of direct or collateral attack. With respect to any issues in dispute that are not included in the settlement agreement, the informal conference process shall proceed as provided under this section unless the taxpayer files a written notice to withdraw the request for an informal conference as provided in subdivision (d).

(iv) The taxpayer's and the department's settlement offers, counter-offers, and responses to those offers and counter-offers, the disposition of a settlement offer or counter-offer under this subdivision, and settlement agreements, may not be offered by any party in any proceeding before the Michigan tax tribunal, the court of claims, or any court of

competent jurisdiction as proof of the validity of the department's decision, order, or assessment, or of the proper amount of the taxpayer's tax liability.

(v) Settlement offers, counter-offers, responses thereto, settlement agreements, and reports of the informal conference referee, the administrator, or the department related to settlements under this subdivision are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and may not be obtained through discovery in any proceeding.

(f) Except for those issues that were settled pursuant to subdivision (e), after the informal conference, the department shall render a decision and order in writing, setting forth the reasons and authority, and shall assess the tax, interest, and penalty found to be due and payable. The decision and order are limited to the subject of the informal conference as included in the notice under subdivision (d).

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

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

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

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

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

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

(8) The department shall publish semiannually on the department's website a report containing the following information:

(a) The aggregate amount of the department's original determinations of liability attributed to settlements entered into during the reporting period.

(b) The aggregate settled amount of liability attributed to the settlements entered into during the reporting period.

(c) If the total number of settlements between taxpayers and the department entered into during the reporting period is 5 or more, include the actual number of settlements. If the number of settlements is less than 5, the department shall state "less than 5".

(9) Except as otherwise provided under this subsection, the settlement process established under subsection (2)(e) only applies to taxes subject to administration under this act. The settlement process established under subsection (2)(e) does not apply to matters arising under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, the state real estate transfer tax act, 1993 PA 330, MCL 207.521 to 207.537, the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, the health insurance claims assessment act, 2011 PA 142, MCL 550.1731 to 550.1741, and the city income tax act, 1964 PA 284, MCL 141.501 to 141.787.

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, must 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 21(2)(e), 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, 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, 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 pursuant to 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 information required for the report described in section 9 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2009, for programs with new written agreements entered into after the effective date of the amendatory act that added this sentence for programs operated under the Michigan strategic fund act, 1984 PA 270, MCL 125.2001 to 125.2094. 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 as authorized 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. The state treasurer or a person designated by the state treasurer may disclose the address of each housing unit that is part of a housing project exempt from ad valorem taxes under section 15a of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, or under section 11a of 1933 (Ex Sess) PA 18, MCL 125.661a, and whether the unit is subject to a service charge in lieu of ad valorem taxes. The state treasurer or a person designated by the state treasurer may also disclose the millage rates of property taxes as defined in section 512a of the income tax act of 1967, 1967 PA 281, MCL 206.512a.

(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 must 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.

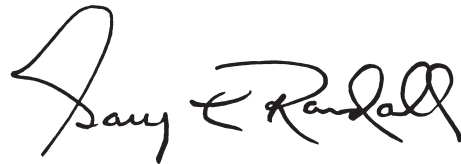
(b) An application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, a postproduction certificate, a communication denying a postproduction certificate, or the total amount of credits claimed in a tax year under section 455 of the Michigan business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

(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 208.1457.

(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 208.1459.

(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

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Governor