

# HOUSE BILL NO. 5718

April 24, 2020, Introduced by Rep. Sheppard and referred to the Committee on Government Operations.

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



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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 24 and 30 (MCL 205.24 and 205.30), section 24 as amended by 2003 PA 201 and section 30 as amended by 2016 PA 267.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 24. (1) If a taxpayer fails or refuses to file a return  
2       or pay a tax administered under this act within the time specified,  
3       the department, as soon as possible, shall assess the tax against  
4       the taxpayer and notify the taxpayer of the amount of the tax. A  
5       liability for a tax administered under this act is subject to the  
6       interest and penalties prescribed in subsections (2) to (5).

7       (2) Except as provided in subsections (3), (6), and (7), if a  
8       taxpayer fails or refuses to file a return or pay a tax within the  
9       time specified for notices of intent to assess issued on or before  
10      February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever  
11      is greater, shall be added if the failure is for not more than 1  
12      month, with an additional 5% penalty for each additional month or  
13      fraction of a month during which the failure continues or the tax  
14      and penalty is not paid, to a maximum of 50%. Except as provided in  
15      subsections (3), (6), ~~and (7)~~, **and (8)**, if a taxpayer fails or  
16      refuses to file a return or pay a tax within the time specified for  
17      notices of intent to assess issued after February 28, 2003, a  
18      penalty of 5% of the tax shall be added if the failure is for not  
19      more than 2 months, with an additional 5% penalty for each  
20      additional month or fraction of a month during which the failure  
21      continues or the tax and penalty is not paid, to a maximum of 25%.  
22      In addition to the penalty, interest at the rate provided in



1 section 23 for deficiencies in tax payments shall be added on the  
2 tax from the time the tax was due, until paid. After June 30, 1994,  
3 the penalty prescribed by this subsection shall not be imposed  
4 until the department submits for public hearing pursuant to the  
5 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
6 24.328, a rule defining what constitutes reasonable cause for  
7 waiver of the penalty under subsection (4), which definition shall  
8 include illustrative examples.

9 (3) If a person is required to remit tax due pursuant to  
10 section 19(2) and fails or refuses to pay the tax within the time  
11 specified, a penalty of 0.167% of the tax shall be added for each  
12 day during which the failure continues or the tax and penalty are  
13 not paid as follows:

14 (a) For notices of intent to assess issued on or before  
15 February 28, 2003, to a maximum of 50% of the tax.

16 (b) For notices of intent to assess issued after February 28,  
17 2003, to a maximum of 25% of the tax.

18 (4) If a return is filed or remittance is paid after the time  
19 specified and it is shown to the satisfaction of the department  
20 that the failure was due to reasonable cause and not to willful  
21 neglect, the state treasurer or an authorized representative of the  
22 state treasurer shall waive the penalty prescribed by subsection  
23 (2).

24 (5) For failure or refusal to file an information return or  
25 other informational report required by a tax statute, within the  
26 time specified, a penalty of \$10.00 per day for each day for each  
27 separate failure or refusal may be added. The total penalty for  
28 each separate failure or refusal shall not exceed \$400.00.

29 (6) If a taxpayer fails to pay an estimated tax payment as may



1 be required by the income tax act of 1967, 1967 PA 281, MCL 206.1  
2 to ~~206.532~~, **206.713**, a penalty shall not be imposed if the taxpayer  
3 was not required to make estimated tax payments in the taxpayer's  
4 immediately preceding tax year.

5 (7) Notwithstanding any other provision of this act, for any  
6 return or tax remittance due on August 15, 2003 that was filed or  
7 remitted not later than August 22, 2003, the department shall waive  
8 all interest and penalty for the failure to file or remit for the  
9 period of August 15, 2003 through August 22, 2003.

10 (8) **Notwithstanding any other provision of this act, for any**  
11 **return or tax remittance that was originally due on April 15 or**  
12 **April 30, 2020 for the 2019 tax year under the income tax act of**  
13 **1967, 1967 PA 281, MCL 206.1 to 206.713, or the city income tax**  
14 **act, 1964 PA 284, MCL 141.501 to 141.787, and that is subsequently**  
15 **filed or remitted, in accordance with Executive Order No. 2020-26,**  
16 **not later than July 15 or July 31, 2020, whichever is applicable,**  
17 **the department shall waive all interest and penalties for the**  
18 **failure to file or remit for the period of April 15 or April 30,**  
19 **2020 through July 15 or July 31, 2020, whichever is applicable. Any**  
20 **applicable penalties and interest for failure to file a return or**  
21 **pay a tax will not begin to accrue until July 16, 2020 for any**  
22 **remaining unpaid balances due on July 15, 2020 and will not begin**  
23 **to accrue until August 1, 2020 for any remaining unpaid balances**  
24 **due on July 31, 2020.**

25 Sec. 30. (1) The department shall credit or refund an  
26 overpayment of taxes; taxes, penalties, and interest erroneously  
27 assessed and collected; and taxes, penalties, and interest that are  
28 found unjustly assessed, excessive in amount, or wrongfully  
29 collected with interest at the rate calculated under section 23 for



1 deficiencies in tax payments.

2 (2) A taxpayer who paid a tax that the taxpayer claims is not  
 3 due may petition the department for refund of the amount paid  
 4 within the time period specified as the statute of limitations in  
 5 section 27a. If a tax return reflects an overpayment or credits in  
 6 excess of the tax, the declaration of that fact on the return  
 7 constitutes a claim for refund. If the department agrees the claim  
 8 is valid, the amount of overpayment, penalties, and interest shall  
 9 be first applied to any known liability as provided in section 30a,  
 10 and the excess, if any, shall be refunded to the taxpayer or  
 11 credited, at the taxpayer's request, against any current or  
 12 subsequent tax liability. Except claims for refunds, other than  
 13 those made under part 1 of the income tax act of 1967, 1967 PA 281,  
 14 MCL 206.1 to 206.532, that have not been approved, denied, or  
 15 adjusted within 1 year of the date received may be treated as  
 16 denied at the election of the taxpayer, and may be appealed by the  
 17 taxpayer in accordance with section 22.

18 (3) The department shall certify a refund to the state  
 19 disbursing authority who shall pay the amount out of the proceeds  
 20 of the tax in accordance with the accounting laws of the state.  
 21 ~~Interest~~ **Except as otherwise provided under subsection (8),**  
 22 **interest** at the rate calculated under section 23 for deficiencies  
 23 in tax payments regarding those refunds shall be added to the  
 24 refund commencing 45 days after the claim is filed or 45 days after  
 25 the date established by law for the filing of the return, whichever  
 26 is later. Interest on refunds intercepted and applied as provided  
 27 in section 30a shall cease as of the date of interception. Refunds  
 28 for amounts of less than \$1.00 shall not be paid.

29 (4) ~~Beginning~~ **Except as otherwise provided under subsection**



(8), beginning January 1, 2014, in addition to and separate from the interest added to a refund under subsection (3), for refunds for taxes imposed under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, the state disbursing authority shall add interest to refunds that are not paid within 1 of the following dates for the applicable tax year:

(a) May 1, for returns received by the department on or before March 1 of the applicable tax year.

(b) Sixty days from the date the return was received by the department for returns received by the department after March 1 of the applicable tax year.

~~(5) Interest—~~**Subject to subsection (8), interest** described in subsection (4) shall be paid at a rate of 3% per annum, calculated from the date the original return was due under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315, and until a date preceding the date of the refund by not more than 7 days, if all of the following conditions are met:

(a) The refund is due on an original return which was timely filed under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315.

(b) The refund is not adjusted by the department.

(c) The return is not subject to section 27a(3) or (4) except for audit by the department.

(d) The return is complete for processing purposes with no calculation errors and contains all required information as prescribed by the department under section 315(1)(d) of the income tax act of 1967, 1967 PA 281, MCL 206.315, including any state and federal returns, forms, or schedules necessary to process the return.



1 (e) The taxpayer who has filed a complete return under  
2 subdivision (d) has complied with the department's request, if any,  
3 for additional documentation or information within 30 days of that  
4 request.

5 (f) No portion of the refund is subject to interception under  
6 section 30a.

7 (g) The amount to be refunded is more than \$1.00.

8 (6) Beginning January 1, 2015, in addition to and separate  
9 from the interest added to a refund under subsection (3), for  
10 refunds for taxes imposed under the Michigan business tax act, 2007  
11 PA 36, MCL 208.1101 to 208.1601, the state disbursing authority  
12 shall add interest to refunds that are not paid within 90 days  
13 after the claim is approved or 90 days after the date established  
14 by law for filing the return, whichever is later. Interest  
15 described in this subsection shall be paid at a rate of 3% per  
16 annum for each day the refund is not issued within the time frame  
17 required in this subsection if all of the following conditions are  
18 met:

19 (a) The refund is claimed on an original return which was  
20 timely filed under section 505(1) of the Michigan business tax act,  
21 2007 PA 36, MCL 208.1505.

22 (b) The refund is not adjusted by the department.

23 (c) The refund is not claimed by a taxpayer filing as a  
24 unitary business group.

25 (d) The return is not subject to section 27a(3) or (4) except  
26 for audit by the department.

27 (e) The return is complete for processing purposes with no  
28 calculation errors and contains all required information as  
29 prescribed by the department under section 507 or 509 of the



1 Michigan business tax act, 2007 PA 36, MCL 208.1507 and 208.1509,  
2 including any state and federal returns, forms, or schedules  
3 necessary to process the return.

4 (f) The taxpayer who has filed a complete return under  
5 subdivision (e) has complied with the department's request, if any,  
6 for additional documentation or information within 30 days of that  
7 request.

8 (g) No portion of the refund is subject to interception under  
9 section 30a.

10 (h) The amount to be refunded is more than \$10.00.

11 (7) Beginning January 1, 2017, the interest calculations in  
12 subsections (3), (4), (5), and (6) also apply to refunds of credits  
13 authorized under section 36109 of the natural resources and  
14 environmental protection act, 1994 PA 451, MCL 324.36109, for  
15 contracts that have been approved and processed by the department  
16 of agriculture and rural development and forwarded to the  
17 department. If the state disbursing authority does not pay or  
18 refund a credit described in this subsection within 45 days from  
19 the date the return was received by the department, the department  
20 shall notify the taxpayer of the status of the return and whether  
21 the taxpayer has filed a complete return.

22 **(8) For the 2019 tax year only, interest at the rate provided**  
23 **under subsection (3) will be added to a refund for amounts paid**  
24 **beginning 45 days after the claim for the refund is filed or 45**  
25 **days after July 15 or July 31, 2020, whichever is later. Additional**  
26 **interest under subsection (4) or (5) does not apply to an income**  
27 **tax return filed for the 2019 tax year.**

28 Enacting section 1. This amendatory act does not take effect  
29 unless all of the following bills of the 100th Legislature are





1 enacted into law:

2 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5717 (request no.  
3 06586'20).

4 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5716 (request no.  
5 06594'20).

