

SENATE BILL NO. 788

February 11, 2020, Introduced by Senator RUNESTAD and referred to the Committee on Finance.

A bill to amend 1964 PA 284, entitled
"City income tax act,"
(MCL 141.501 to 141.787) by adding section 96 to chapter 2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 2

Sec. 96. (1) The administrator may enter into a voluntary
disclosure agreement pursuant to subsections (2) to (11).

(2) A voluntary disclosure agreement may be entered into with
a person who makes application, who is a nonfiler, and who meets 1
or more of the following criteria:

1 (a) Has a filing responsibility for income taxable under this
2 ordinance.

3 (b) Has a reasonable basis to contest liability, as determined
4 by the administrator, for a tax or fee administered under this
5 ordinance.

6 (3) All taxes and fees administered under this ordinance are
7 eligible for inclusion in a voluntary disclosure agreement.

8 (4) To be eligible for a voluntary disclosure agreement,
9 subject to subsection (1), a person must meet all of the following
10 requirements:

11 (a) Except as otherwise provided in this subdivision, has had
12 no previous contact by the administrator regarding a tax covered by
13 the agreement. For purposes of this subdivision, a letter of
14 inquiry requesting information under section 73(2)(a) that was sent
15 to a nonfiler shall not be considered a previous contact under this
16 subdivision.

17 (b) Has had no notification of an impending audit by the
18 administrator.

19 (c) Is not currently under audit by the department of treasury
20 or the administrator, or under investigation by the department of
21 state police, department of attorney general, or any local law
22 enforcement agency regarding a tax covered by the agreement.

23 (d) Is not currently the subject of a civil action or a
24 criminal prosecution involving any tax covered by the agreement.

25 (e) Has agreed to register, file returns, and pay all taxes
26 due in accordance with all applicable laws of this state for all
27 taxes administered under this ordinance for all periods after the
28 lookback period.

29 (f) Has agreed to pay all taxes due for each tax covered under

1 the agreement for the lookback period, plus statutory interest as
2 stated in section 82, within the period of time and in the manner
3 specified in the agreement.

4 (g) Has agreed to file returns and worksheets for the lookback
5 period as specified in the agreement.

6 (h) Has agreed not to file a protest or seek a refund of taxes
7 paid to this city for the lookback period based on the issues
8 disclosed in the agreement or based on the person's lack of nexus
9 or contacts with this city.

10 (5) If a person satisfies all requirements stated in
11 subsections (2) and (4), the administrator shall enter into a
12 voluntary disclosure agreement with that person providing the
13 following relief:

14 (a) The administrator shall not assess any tax, delinquency
15 for a tax, penalty, or interest covered under the agreement for any
16 period before the lookback period identified in the agreement.

17 (b) The administrator shall not assess any applicable
18 discretionary or nondiscretionary penalties for the lookback
19 period.

20 (c) The administrator shall provide complete confidentiality
21 of the agreement and shall also enter into an agreement not to
22 disclose, in accordance with section 74, any of the terms or
23 conditions of the agreement to any tax authorities of any state or
24 governmental authority or to any person except as required by
25 exchange of information agreements authorized under section 74. The
26 administrator shall not exchange information obtained under this
27 section with other cities or states regarding the person unless
28 information regarding the person is specifically requested by
29 another city or state.

1 (6) The administrator shall not bring a criminal action
2 against a person for failure to report or to remit any tax covered
3 by the agreement before or during the lookback period if the facts
4 established by the administrator are not materially different from
5 the facts disclosed by the person to the administrator.

6 (7) A voluntary disclosure agreement is effective when signed
7 by the person subject to the agreement, or his, her, or its lawful
8 representative, and returned to the administrator within the time
9 period specified in the agreement. The administrator shall only
10 provide the relief specified in the executed agreement. Any verbal
11 or written communication by the administrator before the effective
12 date of the agreement shall not afford any penalty waiver, limited
13 lookback period, or other benefit otherwise available under this
14 section.

15 (8) A material misrepresentation of fact by an applicant
16 relating to the applicant's current activity in this city renders
17 an agreement null and void and of no effect. A change in the
18 activities or operations of a person after the effective date of
19 the agreement is not a material misrepresentation of fact and shall
20 not affect the agreement's validity.

21 (9) The administrator may audit any of the taxes covered by
22 the agreement within the lookback period or in any prior period if,
23 in the administrator's opinion, an audit of a prior period is
24 necessary to determine the person's tax liability for the tax
25 periods within the lookback period or to determine another person's
26 tax liability.

27 (10) Nothing in subsections (2) to (9) shall be interpreted to
28 allow or permit unjust enrichment. Any tax collected or withheld
29 from another person by an applicant shall be remitted to the city

1 without respect to whether it was collected during or before the
2 lookback period.

3 (11) The department shall not require a person who enters into
4 a voluntary disclosure agreement to make any filings that are
5 additional to those otherwise required by law.

6 (12) As used in this section:

7 (a) "Lookback period" means 1 or more of the following:

8 (i) The most recent 48-month period as determined by the
9 administrator or the first date the person subject to an agreement
10 under this section began doing business in this city if less than
11 48 months.

12 (ii) Notwithstanding subparagraphs (i) and (iii), the most recent
13 36-month period as determined by the administrator or the first
14 date the person subject to an agreement under this section began
15 doing business in this city if less than 36 months, if tax returns
16 filed in another state for a tax based on net income that included
17 sales in the numerator of the apportionment formula that now must
18 be included in the numerator of the apportionment formula under the
19 Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, or
20 part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to
21 206.699, and those sales increased the net tax liability payable to
22 that state.

23 (iii) If there is doubt as to liability for the tax during the
24 lookback period, another period as determined by the administrator
25 to be in the best interest of this state and to preserve equitable
26 and fair administration of taxes.

27 (b) "Nonfiler" means a person that has not filed a return for
28 the tax being disclosed.

29 (c) "Previous contact" means any notification of an impending

1 audit pursuant to section 73(1), review, notice of intent to
2 assess, or assessment. Previous contact also includes final letters
3 of inquiry pursuant to section 73(2)(a).

4 (d) "Unjust enrichment" includes the withholding of income tax
5 under this ordinance or the income tax act of 1967, 1967 PA 281,
6 MCL 206.1 to 206.713, that has not been remitted to the city.

7 (e) "Voluntary disclosure agreement" or "agreement" means a
8 written agreement that complies with this section.