

HOUSE BILL No. 5025

September 27, 2017, Introduced by Rep. Byrd and referred to the Committee on Tax Policy.

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 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 30a (MCL 205.30a), as amended by 1995 PA 116.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30a. (1) If a taxpayer claims a refund that the
2 department determines is valid as provided in section 30(2), and
3 the department identifies a liability of the taxpayer described in
4 subsection (2), the department shall first apply the amount of the
5 refund as provided in subsections (2) and (3), and the excess, if
6 any, shall be refunded or credited as provided in section 30.

7 (2) The amount of a refund described in subsection (1) shall
8 be applied to the following in the order of priority stated:

9 (a) Any other known tax liability of the taxpayer to this
10 state.

11 (b) Any other known liability of the taxpayer to this state,
12 including a liability to pay support if the right to receive the
13 support has been assigned to the state and the liability is the
14 basis of a request for tax refund offset from the office of child
15 support.

16 (c) Any of the following in the order of priority received,
17 unless otherwise provided by law:

18 (i) A support liability of the taxpayer that is the basis of a
19 request for tax refund offset from the office of child support,
20 other than as provided by subdivision (b).

21 (ii) A writ of garnishment or other valid court order issued
22 by a court of competent jurisdiction and directed to this state or
23 the state treasurer to satisfy a liability of the taxpayer.

24 **(iii) A KNOWN CITY INCOME TAX LIABILITY FOR A TAX ADMINISTERED**
25 **BY THE DEPARTMENT THROUGH AN AGREEMENT ENTERED INTO UNDER SECTION 9**
26 **OF CHAPTER 1 OF THE CITY INCOME TAX ACT, 1964 PA 284, MCL 141.509.**

27 (iv) ~~(iii)~~—A levy of the internal revenue service to satisfy a

1 liability of the taxpayer.

2 (v) ~~(iv)~~—A liability to repay benefits obtained under the
3 Michigan employment security act, ~~Act No. 1 of the Public Acts of~~
4 ~~the Extra Session of 1936, being sections 421.1 to 421.75 of the~~
5 ~~Michigan Compiled Laws, 1936 (EX SESS) PA 1, MCL 421.1 TO 421.75,~~
6 to which the taxpayer was not entitled, upon a request for tax
7 refund offset from the Michigan ~~employment security~~
8 ~~commission.~~ **UNEMPLOYMENT INSURANCE AGENCY.**

9 (3) If the claim for refund is reflected on a joint tax
10 return, the department shall allocate to each joint taxpayer his or
11 her share of the refund. The amount allocated to each taxpayer
12 shall be applied to his or her respective liabilities in the order
13 of priority stated in subsection (2).

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

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

24 (b) The nature of the other liability or liabilities and the
25 name of the obligated spouse or spouses.

26 (c) That a nonobligated spouse may claim his or her share of
27 the refund by filing a nonobligated spouse allocation form with the

1 department of treasury not more than 30 days after the date the
2 notice was mailed.

3 (d) A statement of the penalties under subsection (7).

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

15 (a) A federal deduction for 2-income married persons shall be
16 allocated to the spouse with the lower income who claims the
17 deduction.

18 (b) Individual income shall be allocated to the spouse who
19 earned the income. Joint income shall be allocated equally between
20 the spouses. The tax base appropriate to tax other than income tax
21 shall be similarly allocated.

22 (c) Each spouse shall be allocated the personal exemptions he
23 or she would be entitled to claim if separate federal returns had
24 been filed, except that dependency exemptions shall be prorated
25 according to the relative income of the spouses.

26 (d) Adjustments resulting from a business shall be allocated
27 to the spouse who claimed income from the business.

1 (e) A homestead property tax credit shall be allocated to the
2 spouse who owned the title or held the leasehold interest in the
3 property claimed as a homestead. A homestead property tax credit
4 for property jointly owned or leased shall be allocated jointly
5 between the spouses.

6 (f) Ownership of other assets relevant to the allocation shall
7 be disclosed upon request of the department.

8 (6) A nonobligated spouse allocation form shall be signed by
9 both joint taxpayers. However, the form may be submitted without
10 the signature of the obligated spouse if his or her signature
11 cannot be obtained. The nonobligated spouse shall certify that he
12 or she has made a good faith effort to obtain the signature and
13 shall state the reason that the signature was not obtained.

14 (7) A person who knowingly makes a false statement on a
15 nonobligated spouse allocation form shall be subject to a penalty
16 of \$25.00 or 25% of the excessive claim for his or her share of the
17 refund, whichever is greater, and other penalties as provided in
18 this act.

19 (8) A nonobligated spouse to whom the department has sent a
20 notice under subsection (4), who fails to file a nonobligated
21 spouse allocation form within 30 days after the date the notice was
22 mailed, shall be barred from commencing any action against this
23 state or the state treasurer to recover an amount withheld to
24 satisfy a liability of the obligated spouse to which a joint tax
25 refund is applied under this section. The payment by this state of
26 any amount applied to a liability of a taxpayer under this section
27 shall release this state and the state treasurer from all liability

1 to the obligated spouse, the nonobligated spouse, and any other
2 person having or claiming any interest in the amount paid.

3 (9) The department shall promulgate rules under the
4 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
5 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
6 ~~Compiled Laws, 1969 PA 306, MCL 24.201 TO 24.328~~, as necessary to
7 implement this section. The rules shall include a procedure for
8 assuring that a taxpayer subject to application of a refund under
9 this section and section 30 has received or will receive notice and
10 an opportunity for a hearing with respect to the liability to which
11 the refund is to be applied.

12 (10) As used in this section:

13 (a) "Nonobligated spouse" means a person who has filed a joint
14 income tax return or other joint state tax return and who is not
15 liable for an obligation of his or her spouse described in
16 subsection (2).

17 (b) "Obligated spouse" means a person who has filed a joint
18 income tax return or other joint state tax return and who is liable
19 for an obligation described in subsection (2) for which his or her
20 spouse is not liable.

21 (c) "Office of child support" means the agency created in
22 section 2 of the office of child support act, ~~Act No. 174 of the~~
23 ~~Public Acts of 1971, being section 400.232 of the Michigan Compiled~~
24 ~~Laws. 1971 PA 174, MCL 400.232.~~

25 Enacting section 1. This amendatory act does not take effect
26 unless House Bill No. 4618 of the 99th Legislature is enacted into
27 law.