

HOUSE BILL No. 6092

July 21, 2004, Introduced by Reps. Wenke, Stakoe, Meyer, Condino, Zelenko, Milosch, Nofs, Sheen, Koetje, LaJoy, Taub, Acciavatti, Ward, DeRoche and Pastor 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 the state; to prescribe certain powers and duties of the state treasurer; 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 21 (MCL 205.21), as amended by 2002 PA 657.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21. (1) If a taxpayer fails or refuses to make a
2 return or payment as required, in whole or in part, or if the
3 department has reason to believe that a return made or payment

1 does not supply sufficient information for an accurate
2 determination of the amount of tax due, the department may obtain
3 information on which to base an assessment of the tax. By its
4 duly authorized agents, the department may examine the books,
5 records, and papers and audit the accounts of a person or any
6 other records pertaining to the tax.

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

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

17 (i) The taxpayer files a return showing a tax due and fails
18 to pay that tax.

19 (ii) The deficiency resulted from an audit of the taxpayer's
20 books and records by this state.

21 (iii) The taxpayer otherwise affirmatively admits that a tax
22 is due and owing.

23 (b) If the dispute is not resolved within 30 days after the
24 department sends the taxpayer a letter of inquiry or if a letter
25 of inquiry is not required pursuant to subdivision (a), the
26 department, after determining the amount of tax due from a
27 taxpayer, shall give notice to the taxpayer of its intent to

1 assess the tax. The notice shall include the amount of the tax
2 the department believes the taxpayer owes, the reason for that
3 deficiency, and a statement advising the taxpayer of a right to
4 an informal conference, the requirement of a written request by
5 the taxpayer for the informal conference that includes the
6 taxpayer's statement of the contested amounts and an explanation
7 of the dispute, and the 30-day time limit for that request.

8 (c) If the taxpayer serves written notice upon the department
9 within 30 days after the taxpayer receives a notice of intent to
10 assess, remits the uncontested portion of the liability, and
11 provides a statement of the contested amounts and an explanation
12 of the dispute, the taxpayer is entitled to an informal
13 conference on the question of liability for the assessment.

14 (d) Upon receipt of a taxpayer's written notice, the
15 department shall set a mutually agreed upon or reasonable time
16 and place for the informal conference and shall give the taxpayer
17 reasonable written notice not less than 20 days before the
18 informal conference. The notice shall specify the intent to
19 assess, type of tax, and tax year that is the subject of the
20 informal conference. The informal conference provided for by
21 this subdivision is not subject to the administrative procedures
22 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, but is subject to
23 the rules governing informal conferences as promulgated by the
24 department in accordance with the administrative procedures act
25 of 1969, 1969 PA 306, MCL 24.201 to 24.328. The taxpayer may
26 appear or be represented by any person before the department at
27 an informal conference, and may present testimony and argument.

1 At the party's own expense and with advance notice to the other
2 party, a taxpayer or the department, or both, may make an audio
3 recording of an informal conference.

4 (e) After the informal conference, the department shall
5 render a decision and order in writing, setting forth the reasons
6 and authority, and shall assess the tax, interest, and penalty
7 found to be due and payable. The decision and order are limited
8 to the subject of the informal conference as included in the
9 notice under subdivision (d).

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

18 (3) If as a result of an audit it is determined that a
19 taxpayer is owed a refund, the department shall send a notice to
20 the taxpayer stating the amount of the refund the department
21 believes is owed to the taxpayer as a result of the audit. If
22 the refund is less than the taxpayer believes is correct because
23 of disputes with the findings of the audit, the taxpayer may
24 serve written notice upon the department in the same manner as
25 provided for in subsection (2)(c) and the taxpayer is entitled to
26 the same informal hearing and subsequent appeals as provided for
27 in this section.

1 **(4)** ~~-(3)-~~ If a protest to the notice of intent to assess the
2 tax is determined by the department to be a frivolous protest or
3 a desire by the taxpayer to delay or impede the administration of
4 taxes administered under this act, a penalty of \$25.00 or 25% of
5 the amount of tax under protest, whichever is greater, shall be
6 added to the tax.