

# HOUSE BILL No. 6094

July 21, 2004, Introduced by Reps. Zelenko, Stakoe, Meyer, Wenke, Condino, 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. **At the taxpayer's option,**  
4 **if the department fails to issue an order and determination**  
5 **within 180 days after the taxpayer serves notice upon the**  
6 **department, the informal conference may be considered denied. If**  
7 **so denied, the taxpayer may appeal the issues contested as**  
8 **provided under section 22.**

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

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

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

1 added to the tax.