

HOUSE BILL No. 4385

March 1, 2007, Introduced by Rep. Bennett 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 sections 3, 4, 19, and 24 (MCL 205.3, 205.4, 205.19, and 205.24), section 3 as amended by 2006 PA 615, sections 4 and 19 as amended by 2002 PA 657, and section 24 as amended by 2003 PA 201.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. Except as otherwise provided in this act, the
2 department shall have all the powers and perform the duties
3 formerly vested in a department, board, commission, or other
4 agency, in connection with taxes due to or claimed by this state
5 and in connection with unpaid accounts or money due to this state
6 or any of its departments, institutions, or agencies that may be
7 made payable to or collectible by the department created by this
8 act. The department has the power and authority incidental to the
9 performance of the following acts, duties, and services:

10 (a) The state treasurer or a duly appointed agent of the state
11 treasurer may examine the books, records, and papers ~~touching~~
12 **CONCERNING** the matter at issue of any person or taxpayer subject to
13 any tax, unpaid account, or money the collection of which is
14 charged to the department. The state treasurer or a duly appointed
15 agent of the state treasurer may issue a subpoena requiring a
16 person to appear and be examined ~~with reference to~~ **CONCERNING** a
17 matter within the scope of the inquiry or investigation being
18 conducted by the department and to produce any books, records, or
19 papers. The state treasurer or a duly appointed agent, referee, or
20 examiner of the state treasurer may administer an oath to a witness
21 in any matter before the department. The department may invoke the
22 aid of the circuit court of this state in requiring the attendance
23 and testimony of witnesses and the ~~producing~~ **PRODUCTION** of books,
24 papers, and documents. The circuit court of this state within the
25 jurisdiction of which an inquiry is carried on, in case of
26 contumacy or refusal to obey a subpoena, may issue an order

1 requiring the person to appear before the department and produce
2 books and papers ~~if so ordered~~ and any evidence ~~touching~~ **CONCERNING**
3 the matter in question **IF SO ORDERED**, and **THE** failure to obey the
4 order of the court may be punished by the court as a contempt. A
5 person shall not be excused from testifying or from producing any
6 books, papers, records, or memoranda in any investigation, or upon
7 any hearing when ordered to do so by the state treasurer, upon the
8 ground that the testimony or evidence, documentary or otherwise,
9 may tend to incriminate or subject him or her to a criminal
10 penalty. ~~however~~ **HOWEVER**, a person shall not be prosecuted or
11 subjected to any criminal penalty for or on account of any
12 transaction made or ~~thing~~ **ANYTHING** concerning which he or she may
13 testify or produce evidence, documentary or otherwise, before the
14 department or its agent. A person testifying is not exempt from
15 prosecution and punishment for perjury committed while testifying.

16 (b) After reasonable notice and public hearing, the department
17 may promulgate rules consistent with this act in accordance with
18 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
19 to 24.328, necessary to the enforcement of the provisions of tax
20 and other revenue measures that are administered by the department.

21 (c) The department may consult with the governor and the
22 legislature on the subject of taxation, revenue, and the
23 administration of the laws in relation to taxation and revenue, and
24 the progress of the work of the department, including the
25 furnishing of reports, information, and other assistance as the
26 governor may require.

27 (d) The department may investigate and study all matters of

1 taxation and revenue as the basis of recommending to the governor
2 and the legislature those changes and alterations in the tax laws
3 of this state ~~, as~~ **THAT** in the state treasurer's judgment may bring
4 about a more adequate and just system of state and local taxation.

5 (e) The department may formulate a standard procedure that
6 requires the departments, commissions, boards, institutions, and
7 the agencies of this state that collect taxes, fees, or accounts
8 for this state to report all sums of money due and uncollected and
9 those uncollected items as prescribed by law and by the state
10 treasurer. The procedure prescribed in this subdivision shall
11 include a standard practice for receiving, receipting,
12 safeguarding, and periodically reporting all state revenue
13 receipts, whether current, delinquent, penalty, interest, or
14 otherwise, and the amounts, kinds, and terms of items either
15 collected, compromised, or still outstanding, to be summarized,
16 studied, and reported upon as the state treasurer considers
17 advisable.

18 (f) The department may periodically issue bulletins that index
19 and explain current department interpretations of current state tax
20 laws. Beginning October ~~22, 2003~~ **24, 2005**, each bulletin or letter
21 ruling issued by the department on or after August 18, 2000 shall
22 be published and made available to the public in printed and
23 electronic formats **AND BEGINNING JUNE 1, 2007 ON THE DEPARTMENT'S**
24 **WEBSITE**. The department may charge a reasonable fee for
25 subscriptions to this service not to exceed the cost of printing.
26 The money received from the sale of subscriptions shall revert to
27 the department and be placed in the taxation manual revolving fund.

1 Sec. 4. (1) Not later than 1 year after the effective date of
2 this section, the department of treasury shall submit rules for a
3 public hearing pursuant to the administrative procedures act of
4 1969, 1969 PA 306, MCL 24.201 to 24.328, that provide for all of
5 the following:

6 (a) Standards to be followed by department officers and
7 employees for the fair and courteous treatment of the public, and a
8 system for monitoring compliance with those standards.

9 (b) The procedures governing an informal conference held under
10 section 21. These procedures shall include at least all of the
11 following:

12 (i) A method by which the department attempts to schedule the
13 informal conference at a mutually convenient time and place.

14 (ii) A requirement that the department include in the notice
15 for the informal conference the scope and nature of the subject of
16 the informal conference.

17 (iii) Authorization for the taxpayer at whose request the
18 informal conference is being held to make a sound recording of the
19 informal conference with prior notice to the department and for the
20 department to do the same with prior notice to the taxpayer.

21 (2) Not later than 1 year after the effective date of this
22 section, the department shall develop guidelines to govern
23 departmental employee responses to inquiries from the public and
24 standards for tax audit activities. The guidelines shall explicitly
25 exclude the use of a collection goal or quota for evaluating an
26 employee. The department shall assemble the guidelines required by
27 this subsection into an employee handbook. However, the handbook

1 shall not disclose information or parameters excluded from
2 disclosure under section 28(1)(f). The department shall distribute
3 the handbook to all departmental employees involved in the
4 collection or auditing of taxes and shall make the handbook
5 available to the public.

6 (3) The department shall publish a handbook for taxpayers and
7 tax preparers. The handbook shall be made available **ON THE**
8 **DEPARTMENT'S WEBSITE AND** at a reasonable cost, not to exceed the
9 actual cost of publication, and shall contain all of the following:

10 (a) The audit and collection procedures used by the
11 department.

12 (b) The procedures governing departmental communications with
13 taxpayers in the audit and collection process.

14 Sec. 19. (1) All remittances of taxes administered by this act
15 shall be made to the department payable to the state of Michigan by
16 bank draft, check, cashier's check, certified check, money order,
17 cash, or electronic funds transfer. The money received shall be
18 credited as provided by law. A remittance other than cash or
19 electronic funds transfer shall not be a final discharge of
20 liability for the tax assessed and levied until the instrument
21 remitted has been honored.

22 (2) For reporting periods beginning after August 31, 1991, a
23 taxpayer other than a city or a county who paid in the immediately
24 preceding calendar year an average of \$40,000.00 or more per month
25 in income tax withholding pursuant to the income tax act of 1967,
26 1967 PA 281, MCL 206.1 to 206.532, shall deposit Michigan income
27 tax withholding either in the same manner and according to the same

1 schedule as deposits of federal income tax withholding or in
2 another manner that has been approved by the department.

3 (3) For failure to remit a tax administered by this act with a
4 negotiable remittance, the following penalty may be added in
5 addition to any other penalties imposed by this act:

6 (a) For notices of intent to assess issued on or before
7 February 28, 2003, 25% of the tax due.

8 (b) ~~For~~ **EXCEPT AS PROVIDED IN SUBDIVISION (C),** FOR notices of
9 intent to assess issued after February 28, 2003, \$50.00.

10 **(C) FOR NOTICES OF INTENT TO ASSESS ISSUED AFTER FEBRUARY 28,**
11 **2003, FOR INCOME TAX WITHHOLDING UNDER THE INCOME TAX ACT OF 1967,**
12 **1967 PA 281, MCL 206.1 TO 206.532, FOR SALE TAXES UNDER THE GENERAL**
13 **SALES TAX ACT, 1933 PA 167, MCL 205.51 TO 205.78, OR FOR USE TAX**
14 **LIABILITY OF \$300.00 OR MORE PER YEAR UNDER THE USE TAX ACT, 1937**
15 **PA 94, MCL 205.91 TO 205.111, PAID AFTER JUNE 1, 2007, 25% OF THE**
16 **TAX DUE.**

17 (4) The department may require that all money collected by the
18 taxpayer for taxes administered by this act that has not been paid
19 to the department of treasury is public money and the property of
20 this state, and shall be held in trust in a separate account and
21 fund for the sole use and benefit of this state until paid over to
22 the department of treasury.

23 (5) For tax years after the 1995 tax year for which taxes are
24 collected under an agreement entered into pursuant to section 9 **OF**
25 **CHAPTER 1** of the city income tax act, 1964 PA 284, MCL 141.509, if
26 a taxpayer pays, when filing his or her annual return, an amount
27 less than the sum of the declared tax liability under the city

1 income tax act, 1964 PA 284, MCL 141.501 to 141.787, and the
2 declared tax liability under the income tax act of 1967, 1967 PA
3 281, MCL 206.1 to 206.532, and if there is no indication of the
4 allocation of payment between the tax liabilities against which the
5 payment should be applied, the amount paid shall first be applied
6 against the taxpayer's tax liability under the city income tax act,
7 1964 PA 284, MCL 141.501 to 141.787, and any remaining amount of
8 the payment shall be applied to the taxpayer's tax liability under
9 the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532. The
10 taxpayer's designation of a payee on a payment is not a dispositive
11 determination of the allocation of that payment under this
12 subsection.

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

19 (2) Except as provided in subsections (3), (6), and (7), if a
20 taxpayer fails or refuses to file a return or pay a tax within the
21 time specified for notices of intent to assess issued on or before
22 February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever
23 is greater, shall be added if the failure is for not more than 1
24 month, with an additional 5% penalty for each additional month or
25 fraction of a month during which the failure continues or the tax
26 and penalty is not paid, to a maximum of 50%. Except as provided in
27 subsections (3), (6), and (7) **AND AS OTHERWISE PROVIDED IN THIS**

1 **SUBSECTION**, if a taxpayer fails or refuses to file a return or pay
2 a tax within the time specified for notices of intent to assess
3 issued after February 28, 2003, a penalty of 5% of the tax shall be
4 added if the failure is for not more than 2 months, with an
5 additional 5% penalty for each additional month or fraction of a
6 month during which the failure continues or the tax and penalty is
7 not paid, to a maximum of 25%. **EXCEPT AS PROVIDED IN SUBSECTIONS**
8 **(3), (6), AND (7), IF A TAXPAYER FAILS OR REFUSES TO FILE A RETURN**
9 **OR PAY A TAX WITHIN THE TIME SPECIFIED FOR NOTICES OF INTENT TO**
10 **ASSESS ISSUED AFTER FEBRUARY 28, 2003, FOR INCOME TAX WITHHOLDING**
11 **UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO**
12 **206.532, FOR SALE TAXES UNDER THE GENERAL SALES TAX ACT, 1933 PA**
13 **167, MCL 205.51 TO 205.78, OR FOR USE TAX LIABILITY OF \$300.00 OR**
14 **MORE PER YEAR UNDER THE USE TAX ACT, 1937 PA 94, MCL 205.91 TO**
15 **205.111, PAID AFTER JUNE 1, 2007, A PENALTY OF \$10.00 OR 5% OF THE**
16 **TAX, WHICHEVER IS GREATER, SHALL BE ADDED IF THE FAILURE IS FOR NOT**
17 **MORE THAN 1 MONTH, WITH AN ADDITIONAL 5% PENALTY FOR EACH**
18 **ADDITIONAL MONTH OR FRACTION OF A MONTH DURING WHICH THE FAILURE**
19 **CONTINUES OR THE TAX AND PENALTY IS NOT PAID, TO A MAXIMUM OF 50%.**
20 In addition to the penalty, interest at the rate provided in
21 section 23 for deficiencies in tax payments shall be added on the
22 tax from the time the tax was due, until paid. After June 30, 1994,
23 the penalty prescribed by this subsection shall not be imposed
24 until the department submits for public hearing pursuant to the
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
26 24.328, a rule defining what constitutes reasonable cause for
27 waiver of the penalty under subsection (4), which definition shall

1 include illustrative examples.

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

7 (a) For notices of intent to assess issued on or before
8 February 28, 2003, **OR AFTER FEBRUARY 28, 2003 FOR TAXES DESCRIBED**
9 **IN THIS SUBSECTION THAT ARE PAID AFTER JUNE 1, 2007**, to a maximum
10 of 50% of the tax.

11 (b) For notices of intent to assess issued after February 28,
12 2003 **FOR TAXES DESCRIBED IN THIS SUBSECTION THAT ARE PAID ON OR**
13 **BEFORE JUNE 1, 2007**, to a maximum of 25% of the tax.

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

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

25 (6) If a taxpayer fails to pay an estimated tax payment as may
26 be required by the income tax act of 1967, 1967 PA 281, MCL 206.1
27 to 206.532, a penalty shall not be imposed if the taxpayer was not

1 required to make estimated tax payments in the taxpayer's
2 immediately preceding tax year.

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