

HOUSE BILL No. 5398

September 17, 2009, Introduced by Rep. Cushingberry 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 28 (MCL 205.28), as amended by 2003 PA 114, and by adding section 3b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3B. (1) THE DEPARTMENT OF TREASURY MAY DISCLOSE A LIST OF
2 ALL TAXPAYERS THAT ARE DELINQUENT IN THE PAYMENT OF TAX LIABILITIES
3 COLLECTED BY THE DEPARTMENT. THE LIST MAY INCLUDE THOSE TAXPAYERS
4 WITH ACCOUNT BALANCES FOR ALL TAXES COLLECTED BY THE DEPARTMENT
5 INCLUDING PENALTIES AND INTEREST TOTALING GREATER THAN \$100,000.00
6 FOR A PERIOD IN EXCESS OF 180 DAYS FROM THE DATE OF THE FINAL TAX
7 ASSESSMENT. THE LIST MAY CONTAIN THE NAME, LAST KNOWN ADDRESS, AND
8 TOTAL ACCOUNT BALANCE OF EACH DELINQUENT TAXPAYER AND, IN THE CASE
9 OF A BUSINESS TAXPAYER, MAY INCLUDE THE NAME OF ANY TAXPAYERS OR
10 INDIVIDUALS ASSESSED A LIABILITY UNDER SECTION 27A(1) OR (5).

11 (2) NOT LESS THAN 90 DAYS BEFORE THE DISCLOSURE OF THE NAME OF
12 A DELINQUENT TAXPAYER PRESCRIBED IN SUBSECTION (1), THE DEPARTMENT
13 SHALL MAIL A WRITTEN NOTICE TO THE DELINQUENT TAXPAYER AT HIS OR
14 HER LAST KNOWN ADDRESS INFORMING THE TAXPAYER OF THE TOTAL ACCOUNT
15 BALANCE AND THE INTENDED DISCLOSURE OF THE DELINQUENCY. IF THE
16 ACCOUNT BALANCE HAS NOT BEEN PAID WITHIN 60 DAYS AFTER THE NOTICE
17 WAS MAILED AND THE TAXPAYER HAS NOT, SINCE THE MAILING OF THE
18 NOTICE, EITHER ENTERED INTO IN A WRITTEN AGREEMENT WITH THE
19 DEPARTMENT FOR PAYMENT OF THE DELINQUENCY OR CORRECTED A DEFAULT IN
20 AN EXISTING AGREEMENT TO THE SATISFACTION OF THE DEPARTMENT, THE
21 DEPARTMENT MAY DISCLOSE THE TAXPAYER IN THE LIST OF DELINQUENT
22 TAXPAYERS.

23 (3) UNPAID TAXES MAY NOT BE DISCLOSED IF 1 OR MORE OF THE
24 FOLLOWING APPLY:

25 (A) A WRITTEN AGREEMENT FOR PAYMENT EXISTS WITHOUT DEFAULT
26 BETWEEN THE TAXPAYER AND THE DEPARTMENT.

1 (B) THE TAX LIABILITY IS THE SUBJECT OF AN INFORMAL
2 CONFERENCE, ADMINISTRATIVE REVIEW, OR JUDICIAL REVIEW PROVIDED FOR
3 IN THIS ACT, OR AN APPEAL OF ANY OF THESE PROCEEDINGS.

4 (C) THE DEPARTMENT HAS RECEIVED WRITTEN NOTICE THAT THE
5 TAXPAYER HAS FILED FOR BANKRUPTCY PROTECTION.

6 (4) THE LIST MAY BE AVAILABLE FOR PUBLIC INSPECTION AT THE
7 DEPARTMENT AND BY OTHER MEANS OF PUBLICATION, INCLUDING THE
8 INTERNET. IN THE CASE OF A BUSINESS TAXPAYER, THE DEPARTMENT MAY
9 POST WRITTEN NOTICE OF THE DELINQUENCY IN A CONSPICUOUS LOCATION AT
10 THE TAXPAYER'S BUSINESS PREMISES.

11 (5) THE NAME OF A TAXPAYER SHALL BE REMOVED WITHIN 30 DAYS
12 AFTER 1 OF THE FOLLOWING:

13 (A) THE PAYMENT OF THE DEBT.

14 (B) THE TAXPAYER OTHERWISE MEETS 1 OF THE CONDITIONS DESCRIBED
15 IN SUBSECTION (3).

16 (6) IF THE DEPARTMENT HAS PLACED THE NAME OF A TAXPAYER ON THE
17 LIST ERRONEOUSLY, THE NAME OF THAT TAXPAYER SHALL BE REMOVED WITHIN
18 7 DAYS AFTER THE DEPARTMENT RECEIVES WRITTEN INFORMATION
19 ESTABLISHING THAT THE TAXPAYER WAS LISTED ERRONEOUSLY.

20 (7) ANY DISCLOSURE MADE BY AN EMPLOYEE OF THE DEPARTMENT IN A
21 GOOD FAITH EFFORT TO COMPLY WITH THIS SECTION SHALL NOT BE
22 CONSIDERED A VIOLATION OF ANY STATUTE PROHIBITING DISCLOSURE OF
23 TAXPAYER INFORMATION INCLUDING SECTION 28(1)(F).

24 Sec. 28. (1) The following conditions apply to all taxes
25 administered under this act unless otherwise provided for in the
26 specific tax statute:

27 (a) Notice, if required, shall be given either by personal

1 service or by certified mail addressed to the last known address of
2 the taxpayer. Service upon the department may be made in the same
3 manner.

4 (b) An injunction shall not issue to stay proceedings for the
5 assessment and collection of a tax.

6 (c) In addition to the mode of collection provided in this
7 act, the department may institute an action at law in any county in
8 which the taxpayer resides or transacts business.

9 (d) The state treasurer may request in writing information or
10 records in the possession of any other department, institution, or
11 agency of state government for the performance of duties under this
12 act. Departments, institutions, or agencies of state government
13 shall furnish the information and records upon receipt of the state
14 treasurer's request. Upon request of the state treasurer, any
15 department, institution, or agency of state government shall hold a
16 hearing under the administrative procedures act of 1969, 1969 PA
17 306, MCL 24.201 to 24.328, to consider withholding a license or
18 permit of a person for nonpayment of taxes or accounts collected
19 under this act.

20 (e) Except as otherwise provided in section 30c, the state
21 treasurer or an employee of the department shall not compromise or
22 reduce in any manner the taxes due to or claimed by this state or
23 unpaid accounts or amounts due to any department, institution, or
24 agency of state government. This subdivision does not prevent a
25 compromise of interest or penalties, or both.

26 (f) Except as otherwise provided in this subdivision, an
27 employee, authorized representative, or former employee or

1 authorized representative of the department or anyone connected
2 with the department shall not divulge any facts or information
3 obtained in connection with the administration of a tax or
4 information or parameters that would enable a person to ascertain
5 the audit selection or processing criteria of the department for a
6 tax administered by the department. An employee or authorized
7 representative shall not willfully inspect any return or
8 information contained in a return unless it is appropriate for the
9 proper administration of a tax law administered under this act. A
10 person may disclose information described in this subdivision if
11 the disclosure is **PERMITTED UNDER SECTION 3B OR IS** required for the
12 proper administration of a tax law administered under this act or
13 the general property tax act, 1893 PA 206, MCL 211.1 to ~~211.157~~
14 **211.155**, pursuant to a judicial order sought by an agency charged
15 with the duty of enforcing or investigating support obligations
16 pursuant to an order of a court in a domestic relations matter as
17 that term is defined in section 2 of the friend of the court act,
18 1982 PA 294, MCL 552.502, or pursuant to a judicial order sought by
19 an agency of the federal, state, or local government charged with
20 the responsibility for the administration or enforcement of
21 criminal law for purposes of investigating or prosecuting criminal
22 matters or for federal or state grand jury proceedings or a
23 judicial order if the taxpayer's liability for a tax administered
24 under this act is to be adjudicated by the court that issued the
25 judicial order. A person may disclose the adjusted gross receipts
26 and the wagering tax paid by a casino licensee licensed under the
27 Michigan gaming control and revenue act, ~~the Initiated Law of 1996~~

1 IL 1, MCL 432.201 to 432.226, pursuant to section 18, sections 341,
2 342, and 386 of the management and budget act, 1984 PA 431, MCL
3 18.1341, 18.1342, and 18.1386, or authorization by the executive
4 director of the gaming control board. However, the state treasurer
5 or a person designated by the state treasurer may divulge
6 information set forth or disclosed in a return or report or by an
7 investigation or audit to any department, institution, or agency of
8 state government upon receipt of a written request from a head of
9 the department, institution, or agency of state government if it is
10 required for the effective administration or enforcement of the
11 laws of this state, to a proper officer of the United States
12 department of treasury, and to a proper officer of another state
13 reciprocating in this privilege. The state treasurer may enter into
14 reciprocal agreements with other departments of state government,
15 the United States department of treasury, local governmental units
16 within this state, or taxing officials of other states for the
17 enforcement, collection, and exchange of data after ascertaining
18 that any information provided will be subject to confidentiality
19 restrictions substantially the same as the provisions of this act.

20 (2) A person who violates subsection (1)(e), (1)(f), or (4) is
21 guilty of a felony, punishable by a fine of not more than
22 \$5,000.00, or imprisonment for not more than 5 years, or both,
23 together with the costs of prosecution. In addition, if the offense
24 is committed by an employee of this state, the person shall be
25 dismissed from office or discharged from employment upon
26 conviction.

27 (3) A person liable for any tax administered under this act

1 shall keep accurate and complete records necessary for the proper
2 determination of tax liability as required by law or rule of the
3 department.

4 (4) A person who receives information under subsection (1)(f)
5 for the proper administration of the general property tax act, 1893
6 PA 206, MCL 211.1 to ~~211.157~~ **211.155**, shall not willfully disclose
7 that information for any purpose other than the administration of
8 the general property tax act, 1893 PA 206, MCL 211.1 to ~~211.157~~
9 **211.155**. A person who violates this subsection is subject to the
10 penalties provided in subsection (2).

11 (5) As used in subsection (1), "adjusted gross receipts" and
12 "wagering tax" mean those terms as described in the Michigan gaming
13 control and revenue act, ~~the Initiated Law of 1996 IL 1~~, MCL
14 432.201 to 432.226.