

HOUSE BILL No. 4003

January 9, 2013, Introduced by Rep. Walsh 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 2010 PA 313, and by adding section 23a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 23A. (1) THE STATE TREASURER, OR AN AUTHORIZED
2 REPRESENTATIVE OF THE STATE TREASURER, MAY COMPROMISE ALL OR ANY
3 PART OF ANY PAYMENT OF A TAX, UNPAID ACCOUNT, OR AMOUNT DUE THE
4 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES, SUBJECT
5 TO ADMINISTRATION UNDER THIS ACT INCLUDING ANY RELATED PENALTIES
6 AND INTEREST IF 1 OR MORE OF THE FOLLOWING GROUNDS EXIST:

7 (A) A DOUBT EXISTS AS TO LIABILITY.

8 (B) A DOUBT EXISTS AS TO COLLECTIBILITY.

9 (C) A SUBSTANTIAL PROBABILITY EXISTS THAT A COMPROMISE WOULD
10 FURTHER THE FAIR AND EFFICIENT ADMINISTRATION OF THE TAX.

11 (2) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (3), IF THE
12 STATE TREASURER, OR AN AUTHORIZED REPRESENTATIVE OF THE STATE
13 TREASURER, COMPROMISES ALL OR ANY PART OF ANY PAYMENT OF A TAX,
14 UNPAID ACCOUNT, OR AMOUNT DUE THE STATE OR ANY OF ITS DEPARTMENTS,
15 INSTITUTIONS, OR AGENCIES AS AUTHORIZED UNDER SUBSECTION (1), HE OR
16 SHE SHALL PLACE ON FILE IN THE OFFICE OF THE STATE TREASURER A
17 WRITTEN REPORT OUTLINING THE BASIS FOR THE COMPROMISE AND, AT A
18 MINIMUM, A STATEMENT OF EACH OF THE FOLLOWING:

19 (A) THE AMOUNT OF TAX ASSESSED OR OTHER AMOUNT DUE TO THIS
20 STATE.

21 (B) THE AMOUNT OF INTEREST, ADDITIONAL AMOUNT, ADDITION TO THE
22 TAX, OR ASSESSABLE PENALTY IMPOSED BY LAW ON THE PERSON AGAINST
23 WHOM THE TAX IS ASSESSED.

24 (C) THE AMOUNT ACTUALLY PAID IN ACCORDANCE WITH THE TERMS OF
25 THE COMPROMISE.

26 (3) THE STATE TREASURER, OR AN AUTHORIZED REPRESENTATIVE OF
27 THE STATE TREASURER, IS NOT REQUIRED TO FILE A REPORT IF THE

1 COMPROMISE IS RELATED TO A CIVIL CASE THAT INVOLVES AN UNPAID
2 AMOUNT OF TAX ASSESSED, AN UNPAID ACCOUNT, OR OTHER AMOUNT DUE
3 INCLUDING ANY INTEREST, ADDITIONAL AMOUNT, ADDITION TO THE TAX, OR
4 OTHER ASSESSABLE PENALTY THAT IS LESS THAN \$25,000.00.

5 (4) A COMPROMISE UNDER THIS SECTION IS SUBJECT TO CONTINUING
6 QUALITY REVIEW BY THE STATE TREASURER. THE DEPARTMENT MAY REVOKE
7 ANY COMPROMISE IF THE COMPROMISE WAS INDUCED BY FRAUD OR PERJURY,
8 OR IF THE TAXPAYER FAILS TO COMPLY WITH ANY TAX PAYMENT AGREEMENT
9 WITHIN 5 YEARS AFTER THE DATE THE COMPROMISE IS MADE.

10 (5) THE FACT THAT A TAXPAYER RECEIVED A FEDERAL COMPROMISE OF
11 TAX IN A TAX YEAR IS PRIMA FACIE EVIDENCE THAT THE SAME TAXPAYER IS
12 ENTITLED TO A COMPROMISE OF ANY SIMILAR OR COMPARABLE MICHIGAN TAX
13 LIABILITY THAT EXISTS, AT LEAST IN A PROPORTIONAL AMOUNT, FOR THE
14 TAX YEAR IN WHICH THE FEDERAL COMPROMISE WAS GRANTED.

15 (6) WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
16 ACT THAT ADDED THIS SECTION, THE STATE TREASURER SHALL DO ALL OF
17 THE FOLLOWING:

18 (A) ESTABLISH GUIDELINES FOR THE OFFER-IN-COMPROMISE PROGRAM
19 AUTHORIZED UNDER THIS SECTION. IF APPROPRIATE, THE GUIDELINES SHALL
20 BE MODELED AFTER THOSE GUIDELINES PUBLISHED BY THE INTERNAL REVENUE
21 SERVICE OF THE UNITED STATES DEPARTMENT OF TREASURY IN REGARDS TO
22 THE FEDERAL OFFER-IN-COMPROMISE PROGRAM ESTABLISHED UNDER SECTION
23 7122 OF THE INTERNAL REVENUE CODE.

24 (B) ESTABLISH ADMINISTRATIVE GUIDELINES FOR OFFICERS AND
25 EMPLOYEES WITHIN THE DEPARTMENT TO USE WHEN MAKING DECISIONS ON
26 WHETHER AN OFFER-IN-COMPROMISE IS APPROPRIATE.

27 (C) ESTABLISH PROCEDURES FOR AN INDEPENDENT ADMINISTRATIVE

1 REVIEW OF ANY REJECTION OF A PROPOSED OFFER-IN-COMPROMISE MADE BY A
2 TAXPAYER UNDER THIS SECTION BEFORE THE REJECTION IS COMMUNICATED TO
3 THE TAXPAYER.

4 (D) ESTABLISH PROCEDURES FOR THE APPEAL OF ANY REJECTION OF AN
5 OFFER-IN-COMPROMISE BY THE TAXPAYER.

6 (E) ESTABLISH APPROPRIATE APPLICATION FEES AND PROCEDURES TO
7 ALLOW FOR PAYMENT PLANS TO SATISFY A COMPROMISED LIABILITY.

8 (7) THE DEPARTMENT SHALL DISCLOSE RETURN INFORMATION TO
9 MEMBERS OF THE GENERAL PUBLIC TO THE EXTENT NECESSARY TO PERMIT
10 INSPECTION OF ANY ACCEPTED OFFER-IN-COMPROMISE UNDER THIS SECTION
11 RELATING TO THE LIABILITY FOR A TAX IMPOSED BY THIS STATE.

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

15 (a) Notice, if required, shall be given either by personal
16 service or by certified mail addressed to the last known address of
17 the taxpayer. Service upon the department may be made in the same
18 manner.

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

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

24 (d) The state treasurer may request in writing information or
25 records in the possession of any other department, institution, or
26 agency of state government for the performance of duties under this
27 act. Departments, institutions, or agencies of state government

1 shall furnish the information and records upon receipt of the state
2 treasurer's request. Upon request of the state treasurer, any
3 department, institution, or agency of state government shall hold a
4 hearing under the administrative procedures act of 1969, 1969 PA
5 306, MCL 24.201 to 24.328, to consider withholding a license or
6 permit of a person for nonpayment of taxes or accounts collected
7 under this act.

8 (e) Except as otherwise provided in ~~section~~**SECTIONS 23A AND**
9 30c, the state treasurer or an employee of the department shall not
10 compromise or reduce in any manner the taxes due to or claimed by
11 this state or unpaid accounts or amounts due to any department,
12 institution, or agency of state government. This subdivision does
13 not prevent a compromise of interest or penalties, or both.

14 (f) Except as otherwise provided in this subdivision or in
15 subsection (6) or (7), an employee, authorized representative, or
16 former employee or authorized representative of the department or
17 anyone connected with the department shall not divulge any facts or
18 information obtained in connection with the administration of a tax
19 or information or parameters that would enable a person to
20 ascertain the audit selection or processing criteria of the
21 department for a tax administered by the department. An employee or
22 authorized representative shall not willfully inspect any return or
23 information contained in a return unless it is appropriate for the
24 proper administration of a tax law administered under this act. A
25 person may disclose information described in this subdivision if
26 the disclosure is required for the proper administration of a tax
27 law administered under this act or the general property tax act,

1 1893 PA 206, MCL 211.1 to 211.155, pursuant to a judicial order
2 sought by an agency charged with the duty of enforcing or
3 investigating support obligations pursuant to an order of a court
4 in a domestic relations matter as that term is defined in section 2
5 of the friend of the court act, 1982 PA 294, MCL 552.502, or
6 pursuant to a judicial order sought by an agency of the federal,
7 state, or local government charged with the responsibility for the
8 administration or enforcement of criminal law for purposes of
9 investigating or prosecuting criminal matters or for federal or
10 state grand jury proceedings or a judicial order if the taxpayer's
11 liability for a tax administered under this act is to be
12 adjudicated by the court that issued the judicial order. A person
13 required to disclose information under section 10(1)(j) of the
14 Michigan economic growth authority act, 1995 PA 24, MCL 207.810,
15 may disclose the information only to the individuals described in
16 that section. A person may disclose the adjusted gross receipts and
17 the wagering tax paid by a casino licensee licensed under the
18 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to
19 432.226, pursuant to section 18, sections 341, 342, and 386 of the
20 management and budget act, 1984 PA 431, MCL 18.1341, 18.1342, and
21 18.1386, or authorization by the executive director of the gaming
22 control board. However, the state treasurer or a person designated
23 by the state treasurer may divulge information set forth or
24 disclosed in a return or report or by an investigation or audit to
25 any department, institution, or agency of state government upon
26 receipt of a written request from a head of the department,
27 institution, or agency of state government if it is required for

1 the effective administration or enforcement of the laws of this
2 state, to a proper officer of the United States department of
3 treasury, and to a proper officer of another state reciprocating in
4 this privilege. The state treasurer may enter into reciprocal
5 agreements with other departments of state government, the United
6 States department of treasury, local governmental units within this
7 state, or taxing officials of other states for the enforcement,
8 collection, and exchange of data after ascertaining that any
9 information provided will be subject to confidentiality
10 restrictions substantially the same as the provisions of this act.

11 (2) A person who violates subsection (1)(e), (1)(f), or (4) is
12 guilty of a felony, punishable by a fine of not more than
13 \$5,000.00, or imprisonment for not more than 5 years, or both,
14 together with the costs of prosecution. In addition, if the offense
15 is committed by an employee of this state, the person shall be
16 dismissed from office or discharged from employment upon
17 conviction.

18 (3) A person liable for any tax administered under this act
19 shall keep accurate and complete records necessary for the proper
20 determination of tax liability as required by law or rule of the
21 department.

22 (4) A person who receives information under subsection (1)(f)
23 for the proper administration of the general property tax act, 1893
24 PA 206, MCL 211.1 to 211.155, shall not willfully disclose that
25 information for any purpose other than the administration of the
26 general property tax act, 1893 PA 206, MCL 211.1 to 211.155. A
27 person who violates this subsection is subject to the penalties

1 provided in subsection (2).

2 (5) A person identified in section 10(1) of the Michigan
3 economic growth authority act, 1995 PA 24, MCL 207.810, who
4 receives information under section 10(1)(j) of the Michigan
5 economic growth authority act, 1995 PA 24, MCL 207.810, as
6 permitted in subsection (1)(f), shall not willfully disclose that
7 information for any purpose other than the proper administration of
8 his or her legislative duties nor disclose that information to
9 anyone other than an employee of the legislature, who is also bound
10 by the same restrictions. A person who violates this subsection is
11 responsible for and subject to a civil fine of not more than
12 \$5,000.00 per violation.

13 (6) The department shall annually prepare a report containing
14 statistics described in this subsection concerning the Michigan
15 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the
16 most recent tax year for which reliable return data have been
17 processed and cleared in the ordinary course of return processing
18 by the department. A copy of the report shall be provided to the
19 chairpersons of the senate and house of representatives standing
20 committees that have jurisdiction over matters relating to taxation
21 and finance, the director of the senate fiscal agency, and the
22 director of the house fiscal agency. The department shall report
23 the following information broken down by business sector and,
24 provided that no grouping consists of fewer than 10 taxpayers, by
25 firm size in compliance with subsection (1)(f) and in a manner that
26 does not result in the disclosure of information regarding any
27 specific taxpayer:

1 (a) Apportioned business income tax base.

2 (b) Apportioned modified gross receipts tax base.

3 (c) Business income tax liability.

4 (d) Use of credits.

5 (e) Modified gross receipts tax liability.

6 (f) Total final liability.

7 (g) Total liability before credits.

8 (7) A person may disclose the following information described
9 in this subsection:

10 (a) Information required to be reported under section 455 of
11 the Michigan business tax act, 2007 PA 36, MCL 208.1455.

12 (b) An application to enter into an agreement, a communication
13 denying an application to enter into an agreement, an agreement, a
14 postproduction certificate, a communication denying a
15 postproduction certificate, or the total amount of credits claimed
16 in a tax year under section 455 of the Michigan business tax act,
17 2007 PA 36, MCL 208.1455, notwithstanding section 455(6) of the
18 Michigan business tax act, 2007 PA 36, MCL 408.1455.

19 (c) An application to enter into an agreement, a communication
20 denying an application to enter into an agreement, an agreement, an
21 investment expenditure certificate, a communication denying an
22 investment expenditure certificate, or the total amount of credits
23 claimed in a tax year under section 457 of the Michigan business
24 tax act, 2007 PA 36, MCL 208.1457, notwithstanding section 457(6)
25 of the Michigan business tax act, 2007 PA 36, MCL 408.1457.

26 (d) An application to enter into an agreement, a communication
27 denying an application to enter into an agreement, an agreement, a

1 qualified job training expenditures certificate, a communication
2 denying a qualified job training expenditures certificate, or the
3 total amount of credits claimed in a tax year under section 459 of
4 the Michigan business tax act, 2007 PA 36, MCL 208.1459,
5 notwithstanding section 459(6) of the Michigan business tax act,
6 2007 PA 36, MCL 408.1459.

7 (8) As used in subsection (1), "adjusted gross receipts" and
8 "wagering tax" mean those terms as described in the Michigan gaming
9 control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.