

Act No. 195
Public Acts of 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senator Anthony

ENROLLED SENATE BILL No. 507

AN ACT to amend 1964 PA 284, entitled “An act to permit the imposition and collection by cities of an excise tax levied on or measured by income; to permit the collection and administration of the tax by the state; to provide the procedure including referendums for, and to require the adoption of a prescribed uniform city income tax ordinance by cities desiring to impose and collect such a tax; to limit the imposition and collection by cities and villages of excise taxes levied on or measured by income; to prescribe the powers and duties of certain state and municipal agencies, departments, and officials; to establish the city income tax trust fund; to provide for appeals; and to prescribe penalties and provide remedies,” by amending sections 6 and 9 of chapter 1 and sections 3, 73, 84, 85, 86a, 86b, 86c, 91, 92, and 93 of chapter 2 (MCL 141.506, 141.509, 141.603, 141.673, 141.684, 141.685, 141.686a, 141.686b, 141.686c, 141.691, 141.692, and 141.693), section 6 of chapter 1 as amended and sections 86a, 86b, and 86c of chapter 2 as added by 2018 PA 456 and section 9 of chapter 1 as added and sections 3, 73, 84, 85, 92, and 93 of chapter 2 as amended by 1996 PA 478, and by adding section 92a to chapter 2.

The People of the State of Michigan enact:

CHAPTER 1

Sec. 6. Except as otherwise provided in this section, the uniform city income tax ordinance does not apply to a person or corporation as to whom or which it is beyond the power of the city to impose the tax provided for in this act. However, an employer located in this state that does not do business in or maintain an establishment in a city that has entered into an agreement with the department pursuant to section 9 of this chapter may voluntarily register to withhold taxes on compensation of certain employees in accordance with this act. If an employer voluntarily registers to withhold taxes pursuant to this section, the employer is required to withhold taxes from all employees who are residents of that city and to comply with sections 51 through 61 of chapter 2 and the alternative provisions of chapter 3. An employee who is a resident of that city is not permitted to opt out of the withholding requirements voluntarily imposed by his or her employer pursuant to this section.

Sec. 9. (1) A city that imposes a city income tax pursuant to this act may enter into an agreement with the department of treasury under which the department of treasury shall administer, enforce, and collect the city income tax on behalf of the city.

(2) City income taxes, interest, penalties, and collection fees collected under an agreement entered into pursuant to subsection (1) shall be kept in the city income tax trust fund and shall be paid to the city, except that an amount of the taxes collected as determined in the agreement may be retained by the department of treasury to cover the cost of collection and administration and that amount shall be deposited into the state general fund.

The department of treasury shall not charge to or collect from a taxpayer any amount not otherwise authorized by law in conjunction with the collection of city income tax pursuant to an agreement entered into pursuant to this section.

(3) If the city enters into an agreement under subsection (1), the agreement shall include provisions that relate to all of the following:

- (a) The development of and distribution of forms required by the agreement and the ordinance under chapter 2.
- (b) The processing of all payments.
- (c) Enforcement procedures.
- (d) Administrative and legal costs.
- (e) Data exchange.
- (f) Transfer and payment of funds.
- (g) Termination of the agreement by either party.
- (h) Any additional provisions as appropriate.

CHAPTER 2

Sec. 3. (1) "Administrator" means the official designated by the city to administer this ordinance or the duly authorized agent or representative of that official but does not mean the department.

(2) "Business" means an enterprise, activity, profession, or undertaking of any nature conducted or ordinarily conducted for profit or gain by any person, including the operation of an unrelated business by a charitable, religious, or educational organization.

(3) "Capital gains" and "capital losses" mean those terms as defined for federal income tax purposes.

(4) "Department" means the department of treasury. Department includes a duly authorized agent or representative of the department.

Sec. 73. (1) If a taxpayer or employer fails or refuses to make a return or payment as required, in whole or in part, or if the administrator or the department has reason to believe that a return made does not supply sufficient information for an accurate determination of the amount of tax due, the administrator or the department may obtain information on which to base an assessment of the tax. The administrator or the department may examine the books, papers, and records of any person, employer, taxpayer, or agent or representative of any person, employer, or taxpayer or audit the accounts of any person, employer, or taxpayer or any other records pertaining to the tax, to verify the accuracy and completeness of a return filed, or, if no return was filed, to ascertain the tax, withholding, penalties, or interest due under this ordinance.

(2) The administrator or the department may examine any person, under oath, concerning income which was or should have been reported for taxation under this ordinance, and for this purpose may compel the production of books, papers, and records and the attendance of all parties before him or her, whether as parties or witnesses, if he or she believes those persons have knowledge of the income. For a city that has entered into an agreement with the department pursuant to section 9 of chapter 1, all of the following apply to implement this section:

(a) The department shall send to the taxpayer or employer a letter of inquiry stating, in a courteous and unthreatening manner, the department's opinion that the taxpayer or employer needs to furnish further information or owes taxes to the city, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the taxpayer or employer may initiate communication with the department to resolve any dispute. A letter of inquiry may be served on the taxpayer in any manner determined appropriate by the department. This subdivision does not apply in any of the following circumstances:

(i) The taxpayer or employer files a return that shows a tax due and fails to pay that tax.

(ii) The deficiency resulted from an audit of the taxpayer's or employer's books and records by the city or the department.

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

(b) If the dispute is not resolved within 30 days after the department sends the taxpayer or employer a letter of inquiry or if a letter of inquiry is not required under subdivision (a), the department, after determining the amount of tax due from a taxpayer or employer, shall give notice to the taxpayer or employer of the department's notice of intent to assess the tax. The notice shall include all of the following:

(i) The amount of the tax the department claims the taxpayer or employer owes.

(ii) The reason for the deficiency.

(iii) A statement advising the taxpayer or employer of his or her right to file a protest and to a hearing with the department as provided under section 84.

Sec. 84. (1) For a city that has not entered into an agreement pursuant to section 9 of chapter 1, if the administrator determines that a taxpayer or an employer subject to the provisions of this ordinance has failed to pay the full amount of the tax due or tax withheld, he or she shall issue a proposed assessment showing the amount due and unpaid, together with interest and penalties that may have accrued thereon. The proposed assessment shall be served upon the taxpayer or employer in person or by registered or certified mail to the last known address of the taxpayer or employer. Proof of mailing the proposed assessment is prima facie evidence of a receipt of the proposed assessment by the addressee. A taxpayer or employer has 30 days after receipt of a proposed assessment issued under this subsection within which to file a written protest with the administrator, who shall then give the taxpayer or employer or his or her duly authorized representative an opportunity to be heard and present evidence and arguments in his or her behalf.

(2) For a city that has entered into an agreement with the department pursuant to section 9 of chapter 1, a taxpayer or employer has 60 days after receipt of a notice of intent to assess from the department issued under section 73(2)(b) to file a written request for an informal conference to dispute the assessment, in whole or in part. For a city that has entered into an agreement with the department pursuant to section 9 of chapter 1, a taxpayer or employer who serves written notice upon the department within 60 days of the issuance of a credit audit or a refund denial is entitled to an informal conference in the same manner as required for a notice of intent to assess under this subsection. Except as otherwise provided under this chapter, upon request, the department shall conduct the informal conference in accordance with section 21 of 1941 PA 122, MCL 205.21. A taxpayer or employer must not file an appeal under section 92a unless an informal conference has been requested and conducted as required by this subsection.

(3) If a protest to the proposed assessment or notice of intent to assess the tax filed under this section is determined by the administrator or the department, whichever is applicable, to be a frivolous protest or a desire by the taxpayer or employer to delay or impede the administration of the tax under this ordinance, a penalty of \$25.00 or 25% of the amount of tax under protest, whichever is greater, shall be added to the tax.

Sec. 85. (1) After the hearing or informal conference as provided in section 84, the administrator or the department shall issue a final assessment setting forth the total amount found due in the proposed assessment or notice of intent to assess and any adjustment he or she may have made as a result of the protest. The final assessment shall be served in the same manner as a proposed assessment or notice of intent to assess. Proof of mailing of the final assessment is prima facie evidence of receipt of the final assessment by the addressee.

(2) If a protest under section 84 is not filed in respect to a proposed assessment or notice of intent to assess, a taxpayer or employer is considered to have received a final assessment 30 days after receipt of the proposed assessment or 60 days after receipt of the notice of intent to assess.

Sec. 86a. (1) Notwithstanding section 86, a city that has entered into an agreement with the department pursuant to section 9 of chapter 1 may recover the tax with interest and penalties without a judgment or order from a court of competent jurisdiction by imposing a lien as provided under this section. A lien imposed pursuant to this section is a lien in favor of the city against all property and rights of property, both real and personal, tangible and intangible, owned at the time the lien attaches, or afterwards acquired by any person liable for the tax, to secure the payment of the tax. The lien shall attach to the property from and after the date that any report or return on which the tax is levied is required to be filed and shall continue for 7 years after the date of attachment. The lien may be extended for another 7 years by refiling under subsection (2) if the refiling is done within 6 months prior to the expiration date of the original 7-year period.

(2) The lien imposed by this section shall take precedence over all other liens and encumbrances, except bona fide liens recorded before the date the lien under this ordinance is recorded. However, bona fide liens recorded before the lien under this ordinance is recorded shall take precedence only to the extent of disbursements made under a financing arrangement before the forty-sixth day after the date of the tax lien recording or before the person making the disbursements had actual knowledge of a tax lien recording under this ordinance, whichever is earlier. A lien shall be recorded and discharged in the same manner required for a state tax lien under the state tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687.

(3) A purchaser or succeeding purchaser of property, from a taxpayer in other than the ordinary course of business, against which a lien has been properly recorded as provided under subsection (2) is personally liable for the unpaid taxes that are due on the lien. The purchaser's liability is limited to the value of the property less any proceeds that were applied to balances due on secured interests which are superior to the lien recorded under subsection (2).

Sec. 86b. (1) Notwithstanding section 86, a city that has entered into an agreement with the department pursuant to section 9 of chapter 1 may cause a demand to be made on a taxpayer for the payment of a tax due under this ordinance. If the liability remains unpaid for 10 days after the demand and proceedings are not taken to review the liability, a warrant may be issued. Except as provided in this section, the city, through any officer or agent or person authorized to serve process or through authorized employees, may levy on all property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law for the amount of the deficiency, and sell the real and personal property of the taxpayer found within the state for the payment of the amount due, the cost of executing the warrant, and the additional penalties and interest. Except as provided in subsection (6), the officer or agent or person serving the warrant shall proceed upon the warrant in all respects and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record. A city, through its authorized representative, may bid for and purchase any property sold pursuant to this section.

(2) A person that refuses or fails to surrender any property or rights to property subject to levy, upon demand by the city, is personally liable to the city in a sum equal to the value of the property or rights not surrendered, but not exceeding the amount due for which the levy was made, together with costs and interest on the sum at the rate provided in section 82 from the date of the levy. Any amount, other than costs, recovered under this subsection shall be credited against the liability for the collection of which the levy was made.

(3) In addition to the personal liability imposed by subsection (2), if a person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, the person shall be liable for a penalty equal to 50% of the amount recoverable under subsection (2), none of which penalty shall be credited against the liability for the collection of which the levy was made.

(4) A person in possession of, or obligated with respect to, property or property rights subject to levy and upon which a levy has been made who, upon demand of the city, surrenders the property or rights to property or discharges the obligation to the city or who pays a liability under subsection (1) shall have that obligation to a person delinquent in payment of a tax reduced in an amount equal to the property or rights to property surrendered or amounts paid to the city.

(5) Property described in section 6334 of the internal revenue code of 1986, 26 USC 6334, is exempt from levy under this section for an unpaid tax. The effect of a levy on salary or wages shall be continuous from the date the levy is first made until the liability out of which the levy arose is satisfied.

(6) A warrant notice of levy may be served by certified mail, return receipt requested, on any person in possession of, or obligated with respect to, property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law. The date of delivery on the receipt shall be the date the levy is made. A person may, upon written notice to the department, on behalf of the city, have all notices of levy sent to 1 designated office.

Sec. 86c. (1) If a city that has entered into an agreement with the department pursuant to section 9 of chapter 1 files for recording a lien imposed pursuant to this ordinance against property or rights of property to satisfy a tax liability and the city determines that the tax liability out of which the lien arose is satisfied, the city shall file for recording a release regarding the property or rights of property in the same manner required for a state tax lien under the state tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687, not more than 20 business days after funds to satisfy the tax liability out of which the lien arose have been applied to the taxpayer's account.

(2) If the city files for recording a lien imposed pursuant to this ordinance against property or rights of property to satisfy a tax liability and upon request the city determines that the taxpayer named on the recorded lien does not have any interest in certain properties owned by another person, the city shall file for recording a certificate of nonattachment regarding the property or rights of property, in the same manner as required for a state tax lien under the state tax lien registration act, 1968 PA 203, MCL 211.681 to 211.687, with all due haste but not more than 5 business days after the city determines that the lien is recorded or filed against property or rights of property to which the city does not have a lien interest under section 86a. The city shall clearly indicate on the certificate of nonattachment that the taxpayer named on the recorded lien does not have any interest in the property or rights of property of the other person.

(3) If a warrant or warrant-notice of levy is issued and served upon a person to levy on property or rights of property to satisfy a tax liability and the city determines that the tax liability out of which the warrant or warrant-notice of levy arose is satisfied, the city shall serve a release of levy regarding the property or rights of property on the person that was served the warrant or warrant-notice of levy not more than 10 business days after funds to satisfy the tax liability out of which the warrant or warrant-notice of levy arose have been applied to the taxpayer's account.

(4) If a warrant or warrant-notice of levy is issued and served upon a person to levy on property or rights of property to satisfy a tax liability and the city determines that the property or rights of property are not subject to levy under section 86a, the city shall serve a release of levy regarding the property or rights of property on the person that was served the warrant or warrant-notice of levy with all due haste but not more than 5 business days after the city determines that the property or rights of property are not subject to levy under section 86a, the city shall clearly indicate on the release of levy that the property or rights of property were not subject to levy under section 86a.

(5) If a person is required to pay a fee to the city, a bank, or other financial institution as the result of an erroneous recording or filing of a lien as described in subsection (2), or an erroneous issuance and service of a warrant or warrant-notice of levy as described in subsection (4), the city shall reimburse the fee to that person.

(6) If the city receives money to satisfy a tax liability or liabilities or receives information that would cancel that tax liability or those liabilities and subsequently files a lien for recording specifying that tax liability or those liabilities, the city, upon request and upon a determination by the city that the lien was filed and recorded in error, with all due haste, but not more than 5 business days after the city determines that it has erroneously filed a lien for recording, shall file for recording a certificate of withdrawal for that tax liability or those liabilities which were satisfied which states that the recorded lien for that tax liability or those liabilities was filed in error.

(7) If the city receives money to satisfy a tax liability or liabilities or receives information that would cancel that tax liability or those liabilities and subsequently issues a warrant or warrant-notice of levy specifying that liability or those liabilities pursuant to this ordinance, upon request and upon a determination by the city that the warrant or warrant-notice of levy was issued in error, with all due haste, but not more than 5 business days after the department determines that it has erroneously issued a warrant or warrant-notice of levy, the city shall issue a release of levy for that tax liability or those liabilities which were satisfied which states that the levy for that tax liability or those liabilities was issued in error.

Sec. 91. (1) The governing body of the city that has not entered into an agreement with the department pursuant to section 9 of chapter 1 shall appoint an income tax board of review consisting of 3 residents of the city who are not city officials or city employees.

(2) The board shall select a chairperson, secretary, and other officers as the board considers necessary and shall adopt rules governing the procedure for hearings and other procedures. The rules shall be filed in the office of the city clerk and shall be available for inspection by an interested person. A copy of the rules shall be furnished on request to an interested person.

(3) A majority of the board members shall constitute a quorum for an action by or hearing before the board, or for any other purpose. A member of the board shall not act on a matter in which the member has a financial interest other than the common public interest. A record shall be kept of the board's transactions and proceedings. The record and any other writing prepared, owned, used, in the possession of, or retained by the board of review in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) The business which the board may perform shall be conducted at a public hearing of the commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the hearing shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

Sec. 92. (1) If a city has not entered into an agreement with the department pursuant to section 9 of chapter 1, a taxpayer or employer may file a written notice of appeal with the secretary of the income tax board of review not more than 30 days after receipt by the taxpayer or employer of a final assessment, denial in whole or part of a claim for refund, decision, order, or special ruling of the administrator. Upon receipt of the notice of appeal, the income tax board of review shall notify the administrator, who shall forward within 15 days to the income tax board of review a certified transcript of all actions and findings taken by the administrator that relate to the matter under appeal. The appellant or his or her duly authorized representative may inspect the transcript.

(2) The income tax board of review shall grant the appellant a hearing at which the appellant or his or her duly authorized representative and the administrator have an opportunity to present evidence that relates to the matter under appeal. After conclusion of the hearing, the income tax board of review by a majority vote of its 3 members shall affirm, reverse, or modify the final assessment, denial, decision, or order under appeal and furnish a copy of the decision to the appellant and to the administrator.

(3) The provisions of this ordinance as to the confidential character of tax data are applicable to proceedings pending before or submitted to the income tax board of review.

(4) A tax deficiency or refund and any interest or penalties on a deficiency or refund shall be paid not more than 30 days after receipt by the taxpayer or employer or by the city of notice of determination by the income tax board of review if no further appeal is made.

Sec. 92a. (1) Except as otherwise provided under subsection (2), if a city has entered into an agreement with the department pursuant to section 9 of chapter 1, a taxpayer or employer within 35 days after receipt by the taxpayer or employer of a final assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal. The uncontested portion of an assessment, order, or decision must be paid as a prerequisite to appeal. An appeal under this section must be conducted in accordance with the tax tribunal act, 1973 PA 186, MCL 205.701 to 205.779.

(2) A taxpayer or employer that failed to request and participate in an informal conference in any matter subject to section 84(2) is not allowed to appeal a final assessment, decision, or order of the department under this section.

Sec. 93. (1) A taxpayer, employer, or other person aggrieved by a rule adopted by the administrator may file a timely appeal to the department in the form and manner prescribed by the department.

(2) If a city has not entered into an agreement with the department pursuant to section 9 of chapter 1, a taxpayer or employer aggrieved by a final assessment, denial, decision, or order of the income tax board of review other than a decision under subsection (1), may appeal the assessment, denial, decision, or order to the tax tribunal not more than 35 days after the final assessment, denial, decision, or order was issued. The uncontested portion of a final assessment, order, or decision shall be paid as a prerequisite to appeal. An appeal under this subsection shall be perfected as provided under the tax tribunal act, 1973 PA 186, MCL 205.701 to 205.779, and rules promulgated under that act for the tax tribunal.

(3) Not more than 35 days after a final order of the tax tribunal, the taxpayer, employer, or other person shall pay the city the taxes, interest, and penalty found due to the city, and the city shall refund to the taxpayer, employer, or other person any amount found to have been overpaid by the taxpayer, employer, or other person.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor