

HOUSE BILL No. 6211

May 26, 2010, Introduced by Reps. Durhal, Calley, Melton, Johnson, Constan, Huckleberry, Nathan, Slavens, Liss, Young, Womack, Kennedy, Haugh, Terry Brown, Stanley, Sheltroun, Geiss, Bledsoe, Smith, Roberts, Leland, Donigan, Barnett, Hammel, Lemmons, Slezak, Dean, Meadows, Nerat, Cushingberry, Gonzales, Neumann, Spade, Walsh, Valentine, Jackson and Stamas 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 24 and 31 (MCL 205.24 and 205.31), section 24 as amended by 2003 PA 201 and section 31 as amended by 2002 PA 657.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 (2) Except as provided in subsections (3), (6), and (7), if a
8 taxpayer fails or refuses to file a return or pay a tax within the
9 time specified for notices of intent to assess issued on or before
10 February 28, 2003, a penalty of \$10.00 or 5% of the tax, whichever
11 is greater, shall be added if the failure is for not more than 1
12 month, with an additional 5% penalty for each additional month or
13 fraction of a month during which the failure continues or the tax
14 and penalty is not paid, to a maximum of 50%. Except as provided in
15 subsections (3), (6), and (7), if a taxpayer fails or refuses to
16 file a return or pay a tax within the time specified for notices of
17 intent to assess issued after February 28, 2003, a penalty of 5% of
18 the tax shall be added if the failure is for not more than 2
19 months, with an additional 5% penalty for each additional month or
20 fraction of a month during which the failure continues or the tax
21 and penalty is not paid, to a maximum of 25%. In addition to the
22 penalty, interest at the rate provided in section 23 for
23 deficiencies in tax payments shall be added on the tax from the
24 time the tax was due, until paid. After June 30, 1994, the penalty
25 prescribed by this subsection shall not be imposed until the
26 department submits for public hearing pursuant to the
27 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to

1 24.328, a rule defining what constitutes reasonable cause for
2 waiver of the penalty under subsection (4), which definition shall
3 include illustrative examples.

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

9 (a) For notices of intent to assess issued on or before
10 February 28, 2003, to a maximum of 50% of the tax.

11 (b) For notices of intent to assess issued after February 28,
12 2003, to a maximum of 25% of the tax.

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

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

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

1 immediately preceding tax year.

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

7 (8) **IN ADDITION TO ANY OTHER INTEREST OR PENALTY PRESCRIBED**
8 **UNDER THIS SECTION, A TAXPAYER WHO HAS FAILED TO FILE A RETURN OR**
9 **PAY A TAX THAT WAS DUE BEFORE JANUARY 1, 2010, DURING A PERIOD FOR**
10 **WHICH AMNESTY IS AVAILABLE UNDER SECTION 31(3), IS LIABLE FOR AN**
11 **ADDITIONAL PENALTY EQUAL TO 25% OF THE AMOUNT OF TAX DUE.**

12 Sec. 31. (1) If a taxpayer does not satisfy a tax liability or
13 makes an excessive claim for a refund as a result of reliance on
14 erroneous current written information provided by the department,
15 the state treasurer shall waive all criminal and civil penalties
16 provided by law for failing or refusing to file a return, for
17 failing to pay a tax, or for making an excessive claim for a refund
18 for a tax administered by the department of treasury pursuant to
19 this act if the taxpayer makes a written request for a waiver,
20 files a return or an amended return, and makes full payment of the
21 tax and interest.

22 (2) For a period to be designated by the state treasurer of
23 not less than 30 days and not more than 60 days, and ending before
24 September 30, 2002, there shall be an amnesty period during which
25 the state treasurer shall waive all criminal and civil penalties
26 provided by law for failing or refusing to file a return, for
27 failing to pay a tax, or for making an excessive claim for a refund

1 for a tax administered by the revenue division of the department of
2 treasury under this act if the taxpayer makes a written request for
3 a waiver, files a return or an amended return, and makes full
4 payment in either a lump sum or installments as provided under
5 subsection ~~(9)~~-(11), of the tax and interest due for any prior tax
6 year.

7 (3) THERE SHALL BE AN AMNESTY PERIOD LASTING 60 DAYS AND
8 ENDING JUNE 30, 2011, DURING WHICH THE STATE TREASURER SHALL WAIVE
9 ALL CRIMINAL AND CIVIL PENALTIES PROVIDED BY LAW FOR FAILING OR
10 REFUSING TO FILE A RETURN, FOR FAILING TO PAY A TAX, OR FOR MAKING
11 AN EXCESSIVE CLAIM FOR A REFUND FOR A TAX ADMINISTERED BY THE
12 DEPARTMENT OF TREASURY UNDER THIS ACT IF THE TAXPAYER MAKES A
13 WRITTEN REQUEST FOR A WAIVER ON A FORM PRESCRIBED BY THE
14 DEPARTMENT, FILES A RETURN OR AN AMENDED RETURN, AND MAKES FULL
15 PAYMENT IN EITHER A LUMP SUM OR INSTALLMENTS AS PROVIDED UNDER
16 SUBSECTION (10), OF THE TAX AND INTEREST DUE FOR ANY PRIOR TAX
17 YEAR.

18 (4) ~~(3)~~—This section applies to the nonreporting and
19 underreporting of tax liabilities and to the nonpayment of taxes
20 previously determined to be due, but only to the extent of the
21 penalties attributable to the taxes that were previously due and
22 that are paid during the amnesty period provided for in subsection
23 (2).

24 (5) ~~(4)~~—~~The~~ SUBJECT TO SUBSECTIONS (7), (8), (9), (10), AND
25 (11), THE department shall administer this section.

26 (6) ~~(5)~~—Subsection ~~(2)~~-(3) does not apply to taxes due after
27 ~~June 1, 2001~~ JANUARY 1, 2010.

1 (7) ~~(6) There~~ FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2011,
2 **THERE** is appropriated from the revenues generated by taxes paid
3 under subsection ~~(2)~~-(3) the sum of \$1,500,000.00 to the department
4 of treasury for **INTERNAL** administration of the amnesty program
5 created by the amendatory act that ~~added~~-**AMENDED** this subsection **OR**
6 **FOR OTHER ENHANCED TAX COMPLIANCE EFFORTS**. This appropriation is
7 allotted for expenditure on and after October 1, ~~2001~~-2010. Only
8 general purpose revenue generated by the amendatory act that ~~added~~
9 **AMENDED** this subsection may be used to finance this appropriation.

10 (8) **CONSISTENT WITH SOUND COLLECTION PURPOSES AND TO MAXIMIZE**
11 **THE EFFECTIVENESS AND GROSS COLLECTIONS OF THIS TAX AMNESTY**
12 **PROGRAM, THE DEPARTMENT OF TREASURY SHALL, AFTER THE EFFECTIVE DATE**
13 **OF THE AMENDATORY ACT WHICH ADDED THIS SUBSECTION, ISSUE A REQUEST**
14 **FOR PROPOSALS AND SELECT VIA A COMPETITIVE BID PROCESS AN ELIGIBLE**
15 **COLLECTION AGENCY TO COLLECT ALL DEBT ELIGIBLE FOR AMNESTY AND TO**
16 **PROVIDE SUPPLEMENTAL ADMINISTRATION FOR THE AMNESTY PROGRAM CREATED**
17 **BY SUBSECTION (3). THE REQUEST FOR PROPOSALS TO BE ISSUED BY THE**
18 **DEPARTMENT OF TREASURY SHALL REQUIRE THAT THE ELIGIBLE COLLECTION**
19 **AGENCY WHICH IS SELECTED VIA A COMPETITIVE BIDDING PROCESS WILL**
20 **COLLECT ALL DEBT ELIGIBLE FOR AMNESTY ON A CONTINGENCY FEE BASIS**
21 **WHICH INCENTIVIZES PERFORMANCE THAT INURES TO THE FIDUCIARY**
22 **INTERESTS OF THE TAXPAYERS OF THIS STATE. THE DEPARTMENT OF**
23 **TREASURY SHALL DO ALL OF THE FOLLOWING:**

24 (A) **EXPEND THE FUNDS NECESSARY FOR PURPOSES OF CONTRACTING AND**
25 **EMPLOYING PERSONNEL FOR THE COLLECTION OF DELINQUENT STATE TAXES**
26 **AND OTHER DEBTS THAT THE DEPARTMENT OF TREASURY HAS UNDERTAKEN TO**
27 **COLLECT.**

1 (B) ENTER INTO AGREEMENTS WITH THIRD PARTIES TO PUBLICLY
2 ADVERTISE, COLLECT ELIGIBLE TAXES, AND SUPPLEMENT THE
3 ADMINISTRATION OF THIS SECTION UNDER WHICH CONTINGENCY AND OTHER
4 FEES MAY BE PAYABLE TO THIRD PARTIES.

5 (C) MAKE PAYMENTS AUTHORIZED BY THIS SUBSECTION TO THIRD
6 PARTIES FROM PAYMENTS RECEIVED BY TAXPAYERS UNDER THIS SECTION.
7 THE COMPETITIVE SELECTION AND AWARD OF A CONTRACT TO AN ELIGIBLE
8 COLLECTION AGENCY AS REQUIRED BY THIS SUBSECTION SHALL BE COMPLETED
9 NO LATER THAN 120 DAYS BEFORE THE FIRST DAY OF AMNESTY PERIOD
10 AUTHORIZED BY SUBSECTION (3). AS USED IN THIS SUBSECTION, AN
11 "ELIGIBLE COLLECTION AGENCY" MEANS A THIRD-PARTY COLLECTION AGENCY
12 WHICH HAS CONTRACTED FOR AND PERFORMED TAX AMNESTY COLLECTION
13 SERVICES ON BEHALF OF ANOTHER STATE WITHIN THE 5 YEARS IMMEDIATELY
14 PRECEDING THE AMENDATORY ACT WHICH ADDED THIS SUBSECTION, WHICH HAS
15 NOT PREVIOUSLY ATTEMPTED TO COLLECT ANY OF THE TAXPAYER DEBT FOR
16 WHICH AMNESTY IS BEING SOUGHT, AND WHICH SHALL PROVIDE COLLECTION
17 AND SUPPLEMENTAL ADMINISTRATION SERVICES AT A LOCATION IN THIS
18 STATE WITHIN 100 MILES OF LANSING FROM A FACILITY LOCATED IN A
19 METROPOLITAN STATISTICAL AREA IN WHICH THE 2009 ANNUAL AVERAGE
20 UNEMPLOYMENT RATE EXCEEDED THE 2009 ANNUAL AVERAGE UNEMPLOYMENT
21 RATE FOR THE STATE OF MICHIGAN AS DETERMINED BY THE UNITED STATES
22 DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS.

23 (9) ~~(7)~~—The state treasurer shall not waive criminal and civil
24 penalties applicable to a tax under subsection (2) if 1 or more of
25 the following circumstances apply:

26 (a) If the taxpayer is eligible to enter into a voluntary
27 disclosure agreement under section 30c for that tax.

1 (b) If the tax is attributable to income derived from a
2 criminal act, if the taxpayer is under criminal investigation or
3 involved in a civil action or criminal prosecution for that tax, or
4 if the taxpayer has been convicted of a felony under this act or
5 the internal revenue code of 1986.

6 (10) ~~(8)~~—The department shall provide reasonable notice to
7 taxpayers that may be eligible for the amnesty program at least 30
8 days before the start of the designated amnesty period.
9 Notification shall include, but is not limited to, a description of
10 the amnesty program on appropriate tax instruction forms and on the
11 internet.

12 (11) ~~(9)~~—Under the amnesty program described in subsection
13 (2), a taxpayer may pay tax and interest due in installments if the
14 taxpayer meets 1 of the following:

15 (a) The taxpayer is an individual and submits the greater of
16 \$10,000.00 or 50% of the tax and interest due with the request for
17 waiver under subsection ~~(2)~~—(3) and pays the remaining tax and
18 interest due in ~~2 equal installments, the first installment due no~~
19 ~~later than August 15, 2002 and the second installment due no later~~
20 ~~than September 15, 2002~~ **WITHIN 90 DAYS IMMEDIATELY FOLLOWING THE**
21 **LAST DAY OF THE AMNESTY PERIOD AUTHORIZED UNDER SUBSECTION (3).**

22 (b) A taxpayer that is not an individual submits the greater
23 of \$100,000.00 or 50% of the tax and interest due with the request
24 for waiver under subsection ~~(2)~~—(3) and pays the remaining tax and
25 interest due in ~~2 equal installments, the first installment due no~~
26 ~~later than August 15, 2002 and the second installment due no later~~
27 ~~than September 15, 2002~~ **WITHIN 90 DAYS IMMEDIATELY FOLLOWING THE**

1 LAST DAY OF THE AMNESTY PERIOD AUTHORIZED UNDER SUBSECTION (3).