



HOUSE BILL No. 4721

April 25, 1995, Introduced by Reps. Perricone, Bush, Munsell, Goschka, Dobb, Brackenridge, Dalman, London, Bullard, Jersevic, Hammerstrom, Horton, Voorhees, Pitoniak, DeMars, Hill, Cropsey, McBryde, Galloway, Gnodtke and Ryan and referred to the Committee on Tax Policy.

A bill to amend section 23 of Act No. 122 of the Public Acts of 1941, entitled as amended

"An act to establish a revenue division of the department of treasury; to prescribe its powers and duties as the revenue collection agency of the state; to prescribe certain powers and duties of the state treasurer; to create the position and to define the powers and duties of the state commissioner of revenue; 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 provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act,"

as amended by Act No. 14 of the Public Acts of 1993, being section 205.23 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 23 of Act No. 122 of the Public Acts of
2 1941, as amended by Act No. 14 of the Public Acts of 1993, being

1 section 205.23 of the Michigan Compiled Laws, is amended to read
2 as follows:

3 Sec. 23. (1) If the department believes, based upon either
4 the examination of a tax return, a payment, or an audit autho-
5 rized by this act, that a taxpayer has not satisfied a tax
6 liability or that a claim was excessive, the department shall
7 determine the tax liability and notify the taxpayer of that
8 determination. A liability for a tax administered under this act
9 is subject to the interest and penalties prescribed in
10 subsections (2) to (5).

11 (2) If the amount of a tax paid is less than the amount that
12 should have been paid or an excessive claim has been made, the
13 deficiency and interest on the deficiency at the current monthly
14 interest rate of 1 percentage point above the adjusted prime rate
15 per annum from the time the tax was due, and until paid, are due
16 and payable after notice and informal conference as provided in
17 this act. A deficiency in an estimated payment as may be
18 required by a tax statute administered under this act shall be
19 treated in the same manner as a tax due and shall be subject to
20 the same current monthly interest rate of 1 percentage point
21 above the adjusted prime rate per annum from the time the payment
22 was due, until paid. As used in this section, "adjusted prime
23 rate" means the average predominant prime rate quoted by not less
24 than 3 commercial banks to large businesses, as determined by the
25 department of treasury. The adjusted prime rate is to be based
26 on the average prime rate charged by not less than 3 commercial
27 banks during the 6-month period ending on March 31 and the

1 6-month period ending on September 30. One percentage point
2 shall be added to the adjusted prime rate, and the resulting sum
3 shall be divided by 12 to establish the current monthly interest
4 rate. The resulting current monthly interest rate based on the
5 6-month period ending March 31 becomes effective on the following
6 July 1, and the resulting current monthly interest rate based on
7 the 6-month period ending September 30 becomes effective on
8 January 1 of the following year.

9 (3) Except as provided in subsection (4), if any part of the
10 deficiency or an excessive claim for credit is due to negligence,
11 but without intent to defraud, a penalty of \$10.00 or 10% of the
12 total amount of the deficiency in the tax, whichever is greater,
13 plus interest as provided in subsection (2), shall be added. The
14 penalty becomes due and payable after notice and informal confer-
15 ence as provided in this act. If a taxpayer subject to a penalty
16 under this subsection demonstrates to the satisfaction of the
17 department that the deficiency or excess claim for credit was due
18 to reasonable cause, the department shall waive the penalty. The
19 penalty prescribed by this subsection shall not be imposed after
20 June 30, 1994 unless and until the department submits for public
21 hearing pursuant to the administrative procedures act of 1969,
22 Act No. 306 of the Public Acts of 1969, being sections 24.201 to
23 24.328 of the Michigan Compiled Laws, a rule defining what con-
24 stitutes reasonable cause for waiver of the penalty under this
25 subsection, which definition shall include illustrative
26 examples.

1 (4) If any part of the deficiency or an excessive claim for
2 credit is due to intentional disregard of the law or of the rules
3 promulgated by the department, but without intent to defraud, a
4 penalty of \$25.00 or 25% of the total amount of the deficiency in
5 the tax, whichever is greater, plus interest as provided in sub-
6 section (2), shall be added. The penalty becomes due and payable
7 after notice and informal conference as provided in this act. If
8 a penalty is imposed under this subsection and the taxpayer
9 subject to the penalty successfully disputes the penalty, the
10 department shall not impose a penalty prescribed by
11 subsection (3) to the tax otherwise due.

12 (5) If any part of the deficiency or an excessive claim for
13 credit is due to fraudulent intent to evade a tax, or to obtain a
14 refund for a fraudulent claim, a penalty of 100% of the deficien-
15 cy, plus interest as provided in subsection (2), shall be added.
16 The penalty becomes due and payable after notice and informal
17 conference as provided in this act.

18 (6) IF THE DEPARTMENT DETERMINES UNDER THIS ACT THAT A TAX-
19 PAYER HAS OVERPAID A TAX LIABILITY UNDER ACT NO. 301 OF THE
20 PUBLIC ACTS OF 1939, BEING SECTIONS 205.131 TO 205.147 OF THE
21 MICHIGAN COMPILED LAWS, THE DEPARTMENT SHALL ISSUE A REFUND OF
22 THE OVERPAYMENT WITHOUT REQUIRING THE TAXPAYER TO FILE AN AMENDED
23 RETURN.