



# SENATE BILL No. 729

October 18, 1995, Introduced by Senators STILLE, GAST, YOUNG, MCMANUS, SCHWARZ, SHUGARS, STEIL and STALLINGS and referred to the Committee on Finance.

A bill to amend section 30a 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. 116 of the Public Acts of 1995, being section 205.30a of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 30a of Act No. 122 of the Public Acts of  
2 1941, as amended by Act No. 116 of the Public Acts of 1995, being

1 section 205.30a of the Michigan Compiled Laws, is amended to read  
2 as follows:

3       Sec. 30a. (1) If a taxpayer claims a refund that the  
4 department determines is valid ~~as provided in~~ UNDER  
5 section 30(2), and the department identifies a liability of the  
6 taxpayer described in subsection (2), the department shall first  
7 apply the amount of the refund as provided in subsections (2) and  
8 ~~(3)~~ (4), and the excess, if any, shall be refunded or credited  
9 as provided in section 30.

10       (2) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (3), THE amount  
11 of a refund described in subsection (1) shall be applied to the  
12 following in the order of priority stated:

13       (a) Any other known tax liability of the taxpayer to this  
14 state.

15       (b) Any other known liability of the taxpayer to this state,  
16 including a liability to pay support if the right to receive the  
17 support has been assigned to the state and the liability is the  
18 basis of a request for tax refund offset from the office of child  
19 support.

20       (c) Any of the following in the order of priority received,  
21 unless otherwise provided by law:

22       (i) A support liability of the taxpayer that is the basis of  
23 a request for tax refund offset from the office of child support,  
24 other than as provided by subdivision (b).

25       (ii) A writ of garnishment or other valid court order issued  
26 by a court of competent jurisdiction and directed to this state  
27 or the state treasurer to satisfy a liability of the taxpayer.

1 (iii) A levy of the internal revenue service to satisfy a  
2 liability of the taxpayer.

3 (iv) A liability to repay benefits obtained under the  
4 Michigan employment security act, Act No. 1 of the Public Acts of  
5 the Extra Session of 1936, being sections 421.1 to 421.75 of the  
6 Michigan Compiled Laws, to which the taxpayer was not entitled,  
7 upon a request for tax refund offset from the Michigan employment  
8 security commission.

9 (3) A REFUND AMOUNT CLAIMED BY A SENIOR CITIZEN TAXPAYER  
10 THAT IS EQUAL TO ANY OF THE FOLLOWING CREDITS OR FOLLOWING DEDUC-  
11 TION SHALL NOT BE APPLIED TO A WRIT OF GARNISHMENT UNDER SUBSEC-  
12 TION (2):

13 (A) THE PRESCRIPTION DRUG CREDIT ALLOWED UNDER SECTION 273  
14 OF THE INCOME TAX ACT OF 1967, ACT NO. 281 OF THE PUBLIC ACTS OF  
15 1967, BEING SECTION 206.273 OF THE MICHIGAN COMPILED LAWS.

16 (B) THE HOME HEATING CREDIT ALLOWED UNDER SECTION 527A OF  
17 ACT NO. 281 OF THE PUBLIC ACTS OF 1967, BEING SECTION 206.527A OF  
18 THE MICHIGAN COMPILED LAWS.

19 (C) THE INCOME TAX DEDUCTION ALLOWED UNDER SECTION 30 OF ACT  
20 NO. 281 OF THE PUBLIC ACTS OF 1967, BEING SECTION 206.30 OF THE  
21 MICHIGAN COMPILED LAWS.

22 (D) THE HOMESTEAD PROPERTY TAX CREDIT ALLOWED UNDER SECTION  
23 522 OF ACT NO. 281 OF THE PUBLIC ACTS OF 1967, BEING SECTION  
24 206.522 OF THE MICHIGAN COMPILED LAWS.

25 (4) ~~(3)~~ If the claim for refund is reflected on a joint  
26 tax return, the department shall allocate to each joint taxpayer  
27 his or her share of the refund. The amount allocated to each

1 taxpayer shall be applied to his or her respective liabilities in  
2 the order of priority stated in subsection (2).

3 (5) ~~(4)~~ If the department determines that all or a portion  
4 of a refund claimed on a joint tax return is subject to applica-  
5 tion to a liability of an obligated spouse, the department shall  
6 notify the joint taxpayers by first-class mail sent to the  
7 address shown on the joint return. The notice shall be accom-  
8 panied by a nonobligated spouse allocation form. The notice  
9 shall state all of the following:

10 (a) That all or a portion of the refund claimed by the joint  
11 taxpayers is subject to interception to satisfy a liability or  
12 liabilities of 1 or both spouses.

13 (b) The nature of the other liability or liabilities and the  
14 name of the obligated spouse or spouses.

15 (c) That a nonobligated spouse may claim his or her share of  
16 the refund by filing a nonobligated spouse allocation form with  
17 the department of treasury not more than 30 days after the date  
18 the notice was mailed.

19 (d) A statement of the penalties under subsection ~~(7)~~  
20 (8).

21 (6) ~~(5)~~ A nonobligated spouse who wishes to claim his or  
22 her share of a tax refund shall file with the department a nonob-  
23 ligated spouse allocation form. The nonobligated spouse alloca-  
24 tion form shall be in a form specified by the department and  
25 shall require the spouses to state the amount of income or other  
26 tax base and all adjustments to the income or other tax base,  
27 including all subtractions, additions, deductions, credits, and

1 exemptions, stated on their joint income tax return or other  
2 joint tax return that is the basis for the claimed refund, and an  
3 allocation of those amounts between the obligated and nonobli-  
4 gated spouse. In allocating these amounts, all of the following  
5 apply:

6 (a) A federal deduction for 2-income married persons shall  
7 be allocated to the spouse with the lower income who claims the  
8 deduction.

9 (b) Individual income shall be allocated to the spouse who  
10 earned the income. Joint income shall be allocated equally  
11 between the spouses. The tax base appropriate to tax other than  
12 income tax shall be similarly allocated.

13 (c) Each spouse shall be allocated the personal exemptions  
14 he or she would be entitled to claim if separate federal returns  
15 had been filed, except that dependency exemptions shall be pro-  
16 rated according to the relative income of the spouses.

17 (d) Adjustments resulting from a business shall be allocated  
18 to the spouse who claimed income from the business.

19 (e) A homestead property tax credit shall be allocated to  
20 the spouse who owned the title or held the leasehold interest in  
21 the property claimed as a homestead. A homestead property tax  
22 credit for property jointly owned or leased shall be allocated  
23 jointly between the spouses.

24 (f) Ownership of other assets relevant to the allocation  
25 shall be disclosed upon request of the department.

26 (7) ~~(6)~~ A nonobligated spouse allocation form shall be  
27 signed by both joint taxpayers. However, the form may be

1 submitted without the signature of the obligated spouse if his or  
2 her signature cannot be obtained. The nonobligated spouse shall  
3 certify that he or she has made a good faith effort to obtain the  
4 signature and shall state the reason that the signature was not  
5 obtained.

6 (8) ~~(7)~~ A person who knowingly makes a false statement on  
7 a nonobligated spouse allocation form shall be subject to a pen-  
8 alty of \$25.00 or 25% of the excessive claim for his or her share  
9 of the refund, whichever is greater, and other penalties as pro-  
10 vided in this act.

11 (9) ~~(8)~~ A nonobligated spouse to whom the department has  
12 sent a notice under subsection ~~(4)~~ (5), who fails to file a  
13 nonobligated spouse allocation form within 30 days after the date  
14 the notice was mailed, shall be barred from commencing any action  
15 against this state or the state treasurer to recover an amount  
16 withheld to satisfy a liability of the obligated spouse to which  
17 a joint tax refund is applied under this section. The payment by  
18 this state of any amount applied to a liability of a taxpayer  
19 under this section shall release this state and the state trea-  
20 surer from all liability to the obligated spouse, the nonobli-  
21 gated spouse, and any other person having or claiming any inter-  
22 est in the amount paid.

23 (10) ~~(9)~~ The department shall promulgate rules under the  
24 administrative procedures act of 1969, Act No. 306 of the Public  
25 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
26 Compiled Laws, as necessary to implement this section. The rules  
27 shall include a procedure for assuring that a taxpayer subject to

1 application of a refund under this section and section 30 has  
2 received or will receive notice and an opportunity for a hearing  
3 with respect to the liability to which the refund is to be  
4 applied.

5 (11) ~~(10)~~ As used in this section:

6 (a) "Nonobligated spouse" means a person who has filed a  
7 joint income tax return or other joint state tax return and who  
8 is not liable for an obligation of his or her spouse described in  
9 subsection (2).

10 (b) "Obligated spouse" means a person who has filed a joint  
11 income tax return or other joint state tax return and who is  
12 liable for an obligation described in subsection (2) for which  
13 his or her spouse is not liable.

14 (c) "Office of child support" means the agency created in  
15 section 2 of the office of child support act, Act No. 174 of the  
16 Public Acts of 1971, being section 400.232 of the Michigan  
17 Compiled Laws.