

SENATE BILL No. 1501

November 12, 2002, Introduced by Senator EMMONS and referred to the Committee on Finance.

A bill to amend 1941 PA 122, entitled

"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 regulate the importation, stamping, and disposition of certain tobacco products; 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 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 30c (MCL 205.30c), as amended by 2001

PA 168.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 30c. (1) The commissioner, or an authorized
2 representative of the commissioner, on behalf of the department,
3 may enter into a voluntary disclosure agreement PURSUANT TO SUB-
4 SECTIONS (2) TO (11) OR AN AGREEMENT WITH A FEDERALLY RECOGNIZED
5 INDIAN TRIBE WITHIN THE STATE OF MICHIGAN PURSUANT TO SUBSECTIONS
6 (12) AND (13).

7 (2) A VOLUNTARY DISCLOSURE AGREEMENT MAY BE ENTERED INTO
8 with a person who makes application, who is a nonfiler, and who
9 meets 1 or more of the following criteria:

10 (a) Has a filing responsibility under nexus standards issued
11 by the department after December 31, 1997.

12 (b) Has a reasonable basis to contest liability, as deter-
13 mined by the commissioner, for a tax or fee administered under
14 this act.

15 (3) ~~(2)~~ All taxes and fees administered under this act are
16 eligible for inclusion in a voluntary disclosure agreement.

17 (4) ~~(3)~~ To be eligible for a voluntary disclosure agree-
18 ment, subject to subsection (1), a person must meet all of the
19 following requirements:

20 (a) Except as otherwise provided in this subdivision, has
21 had no previous contact by the department or its agents regarding
22 a tax covered by the agreement. For purposes of this subdivi-
23 sion, a letter of inquiry, whether a final letter or otherwise,
24 requesting information under section 21(2)(a) that was sent to a
25 nonfiler shall not be considered a previous contact under this
26 subdivision if the nonfiler sends a written request to the

1 department to enter into a voluntary disclosure agreement not
2 later than June 30, 1999.

3 (b) Has had no notification of an impending audit by the
4 department or its agents.

5 (c) Is not currently under audit by the department of trea-
6 sury or under investigation by the department of state police,
7 department of attorney general, or any local law enforcement
8 agency regarding a tax covered by the agreement.

9 (d) Is not currently the subject of a civil action or a
10 criminal prosecution involving any tax covered by the agreement.

11 (e) Has agreed to register, file returns, and pay all taxes
12 due in accordance with all applicable laws of this state for all
13 taxes administered under this act for all periods after the look-
14 back period.

15 (f) Has agreed to pay all taxes due for each tax covered
16 under the agreement for the lookback period, plus statutory
17 interest as stated in section 23, within the period of time and
18 in the manner specified in the agreement.

19 (g) Has agreed to file returns and worksheets for the look-
20 back period as specified in the agreement.

21 (h) Has agreed not to file a protest or seek a refund of
22 taxes paid to this state for the lookback period based on the
23 issues disclosed in the agreement or based on the person's lack
24 of nexus or contacts with this state.

25 (5) ~~-(4)-~~ If a person satisfies all requirements stated in
26 subsections (1), (2), and ~~-(3)-~~ (4), the department shall enter

1 into a voluntary disclosure agreement with that person providing
2 the following relief:

3 (a) Notwithstanding section 28(1)(e) of this act, the
4 department shall not assess any tax, delinquency for a tax, pen-
5 alty, or interest covered under the agreement for any period
6 before the lookback period identified in the agreement.

7 (b) The department shall not assess any applicable discre-
8 tionary or nondiscretionary penalties for the lookback period.

9 (c) The department shall provide complete confidentiality of
10 the agreement and shall also enter into an agreement not to dis-
11 close, in accordance with section 28(1)(f), any of the terms or
12 conditions of the agreement to any tax authorities of any state
13 or governmental authority or to any person except as required by
14 exchange of information agreements authorized under section
15 28(1)(f), including the international fuel tax agreement under
16 chapter 317 of title 49 of the United States Code, 49
17 U.S.C. 31701 to 31708. The department shall not exchange infor-
18 mation obtained under this section with other states regarding
19 the person unless information regarding the person is specifi-
20 cally requested by another state.

21 (6) ~~-(5)-~~ The department shall not bring a criminal action
22 against a person for failure to report or to remit any tax cov-
23 ered by the agreement before or during the lookback period if the
24 facts established by the department are not materially different
25 from the facts disclosed by the person to the department.

26 (7) ~~-(6)-~~ A voluntary disclosure agreement is effective when
27 signed by the person subject to the agreement, or his, her, or

1 its lawful representative, and returned to the department within
2 the time period specified in the agreement. The department shall
3 only provide the relief specified in the executed agreement. Any
4 verbal or written communication by the department before the
5 effective date of the agreement shall not afford any penalty
6 waiver, limited lookback period, or other benefit otherwise
7 available under this section.

8 (8) ~~-(7)-~~ A material misrepresentation of the fact by an
9 applicant relating to the applicant's current activity in this
10 state renders an agreement null and void and of no effect. A
11 change in the activities or operations of a person after the
12 effective date of the agreement is not a material misrepresenta-
13 tion of fact and shall not affect the agreement's validity.

14 (9) ~~-(8)-~~ The department may audit any of the taxes covered
15 by the agreement within the lookback period or in any prior
16 period if, in the department's opinion, an audit of a prior
17 period is necessary to determine the person's tax liability for
18 the tax periods within the lookback period or to determine
19 another person's tax liability.

20 (10) ~~-(9)-~~ Nothing in ~~this section~~ SUBSECTIONS (2) TO (9)
21 shall be interpreted to allow or permit unjust enrichment as that
22 term is defined in subsection ~~-(11)-~~ (15). Any tax collected or
23 withheld from another person by an applicant shall be remitted to
24 the department without respect to whether it was collected during
25 or before the lookback period.

1 (11) ~~(10)~~ The department shall not require a person who
2 enters into a voluntary disclosure agreement to make any filings
3 that are additional to those otherwise required by law.

4 (12) THE DEPARTMENT MAY ENTER INTO A TRIBAL AGREEMENT WITH A
5 FEDERALLY RECOGNIZED INDIAN TRIBE SPECIFYING THE APPLICABILITY OF
6 A TAX ADMINISTERED UNDER THIS ACT TO THAT TRIBE, ITS MEMBERS, AND
7 ANY PERSON CONDUCTING BUSINESS WITH THEM. THE TRIBE, ITS MEM-
8 BERS, AND ANY PERSON CONDUCTING BUSINESS WITH THEM SHALL REMAIN
9 FULLY SUBJECT TO THIS STATE'S TAX ACTS EXCEPT AS OTHERWISE SPE-
10 CIFICALLY PROVIDED BY AN AGREEMENT IN EFFECT FOR THE PERIOD AT
11 ISSUE. A TRIBAL AGREEMENT SHALL INCLUDE ALL OF THE FOLLOWING:

12 (A) A STATEMENT OF ITS PURPOSE.

13 (B) PROVISIONS GOVERNING DURATION AND TERMINATION THAT MAKE
14 THE AGREEMENT TERMINABLE BY EITHER PARTY IF THERE IS NONCOMPLI-
15 ANCE AND TERMINABLE AT-WILL AFTER A PERIOD OF NOT MORE THAN
16 2 YEARS.

17 (C) PROVISIONS GOVERNING ADMINISTRATION, COLLECTION, AND
18 ENFORCEMENT. THOSE PROVISIONS SHALL INCLUDE ALL OF THE
19 FOLLOWING:

20 (i) COLLECTION OF TAXES LEVIED UNDER THE GENERAL SALES TAX
21 ACT, 1933 PA 167, MCL 205.51 TO 205.78, OR THE USE TAX ACT, 1937
22 PA 94, MCL 205.91 TO 205.111, ON THE SALE OF TANGIBLE PERSONAL
23 PROPERTY OR THE STORAGE, USE, OR CONSUMPTION OF TANGIBLE PERSONAL
24 PROPERTY NOT EXEMPT UNDER THE AGREEMENT.

25 (ii) COLLECTION OF TAXES LEVIED ON TOBACCO PRODUCTS UNDER
26 THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO
27 205.436, AND TAXES LEVIED UNDER THE MOTOR FUEL TAX ACT, 2000

1 PA 403, MCL 207.1001 TO 207.1170, AND THE MOTOR CARRIER FUEL TAX
2 ACT, 1980 PA 119, MCL 207.211 TO 207.234, ON SALES OF TOBACCO
3 PRODUCTS OR MOTOR FUELS NOT EXEMPT UNDER THE AGREEMENT.

4 (iii) WITHHOLDING AND REMITTANCE OF INCOME TAXES LEVIED
5 UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO
6 206.532, FROM EMPLOYEES NOT EXEMPT UNDER THE AGREEMENT.

7 (iv) REPORTING OF GAMBLING WINNINGS TO THE SAME EXTENT AND
8 IN THE SAME MANNER AS REPORTED TO THE FEDERAL GOVERNMENT.

9 (v) A WAIVER OF TRIBAL SOVEREIGN IMMUNITY SUFFICIENT TO MAKE
10 THE AGREEMENT ENFORCEABLE AGAINST BOTH PARTIES.

11 (D) PROVISIONS GOVERNING DISCLOSURE OF INFORMATION BETWEEN
12 THE DEPARTMENT AND THE TRIBE AS NECESSARY FOR THE PROPER ADMINIS-
13 TRATION OF THE TRIBAL AGREEMENT.

14 (E) A PROVISION ENSURING THAT THE MEMBERS OF THE TRIBE WILL
15 BE BOUND BY THE TERMS OF THE AGREEMENT.

16 (13) A TRIBAL AGREEMENT AUTHORIZED UNDER SUBSECTION (12) MAY
17 INCLUDE 1 OR MORE OF THE FOLLOWING:

18 (A) A PROVISION FOR DISPUTE RESOLUTION BETWEEN THIS STATE
19 AND THE TRIBE, WHICH MAY INCLUDE A NONJUDICIAL FORUM.

20 (B) A PROVISION FOR THE SHARING BETWEEN THE PARTIES OF CER-
21 TAIN TAXES COLLECTED BY THE TRIBE AND ITS MEMBERS.

22 (C) ANY OTHER PROVISIONS BENEFICIAL TO THE ADMINISTRATION OR
23 ENFORCEMENT OF THE TRIBAL AGREEMENT.

24 (14) A TRIBAL AGREEMENT AUTHORIZED UNDER SUBSECTION (12)
25 SHALL NOT AUTHORIZE THE APPROVAL OF A CLASS III GAMING COMPACT
26 NEGOTIATED UNDER THE INDIAN GAMING REGULATORY ACT, PUBLIC
27 LAW 100-497, 102 STAT. 2467.

1 (15) ~~(11)~~ As used in this section:

2 (a) "Lookback period" means 1 or more of the following:

3 (i) The most recent 48-month period as determined by the
4 department or the first date the person subject to an agreement
5 under this section began doing business in ~~the~~ THIS state if
6 less than 48 months.

7 (ii) For single business taxes levied under the single busi-
8 ness tax act, 1975 PA 228, MCL 208.1 to 208.145, the lookback
9 period shall be the 4 most recent completed fiscal or calendar
10 years over a 48-month period or the first date the person subject
11 to an agreement under this section began doing business in this
12 state if less than 48 months.

13 (iii) Notwithstanding subparagraphs (i), (ii), and (iv), the
14 most recent 36-month period as determined by the department or
15 the first date the person subject to an agreement under this sec-
16 tion began doing business in this state if less than 36 months,
17 if tax returns filed in another state for a tax based on net
18 income that included sales in the numerator of the apportionment
19 formula that now must be included in the numerator of the appor-
20 tionment formula under the single business tax act, 1975 PA 228,
21 MCL 208.1 to 208.145, and those sales increased the net tax
22 liability payable to that state.

23 (iv) If there is doubt as to liability for the tax during
24 the lookback period, another period as determined by the commis-
25 sioner to be in the best interest of this state and to preserve
26 equitable and fair administration of taxes.

1 (b) "Nonfiler" for a particular tax means, beginning July 1,
2 1998, a person that has not filed a return for the particular tax
3 being disclosed for periods beginning after December 31, 1988.
4 Nonfiler also includes a person whose only filing was a single
5 business tax estimated tax return filed before January 1, 1999.

6 (c) "Person" means an individual, firm, bank, financial
7 institution, limited partnership, copartnership, partnership,
8 joint venture, association, corporation, limited liability com-
9 pany, limited liability partnership, receiver, estate, trust, or
10 any other group or combination acting as a unit.

11 (d) "Previous contact" means any notification of an impend-
12 ing audit pursuant to section 21(1), review, notice of intent to
13 assess, or assessment. Previous contact also includes final let-
14 ters of inquiry pursuant to section 21(2)(a) or a subpoena from
15 the department.

16 (e) "Unjust enrichment" includes the withholding of income
17 tax under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
18 206.532, and the collection of any other tax administered by this
19 act that has not been remitted to the department.

20 (f) "Voluntary disclosure agreement" or "agreement" means a
21 written agreement that complies with this act.