

HOUSE BILL No. 5519

March 27, 2012, Introduced by Reps. Walsh, Cotter, Foster, Heise, Tyler and Kowall 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 section 28 (MCL 205.28), as amended by 2010 PA 313, and by adding section 23a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 23A. (1) THE STATE TREASURER, OR AN AUTHORIZED

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1 REPRESENTATIVE OF THE STATE TREASURER, MAY COMPROMISE ALL OR ANY
2 PART OF ANY PAYMENT OF A TAX, UNPAID ACCOUNT, OR AMOUNT DUE THE
3 STATE OR ANY OF ITS DEPARTMENTS, INSTITUTIONS, OR AGENCIES, SUBJECT
4 TO ADMINISTRATION UNDER THIS ACT INCLUDING ANY RELATED PENALTIES
5 AND INTEREST IF 1 OR MORE OF THE FOLLOWING GROUNDS EXIST:

6 (A) A DOUBT EXISTS AS TO LIABILITY.

7 (B) A DOUBT EXISTS AS TO COLLECTIBILITY.

8 (C) A SUBSTANTIAL PROBABILITY EXISTS THAT A COMPROMISE WOULD
9 FURTHER THE FAIR AND EFFICIENT ADMINISTRATION OF THE TAX.

10 (2) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (3), IF THE
11 STATE TREASURER, OR AN AUTHORIZED REPRESENTATIVE OF THE STATE
12 TREASURER, COMPROMISES ALL OR ANY PART OF ANY PAYMENT OF A TAX,
13 UNPAID ACCOUNT, OR AMOUNT DUE THE STATE OR ANY OF ITS DEPARTMENTS,
14 INSTITUTIONS, OR AGENCIES AS AUTHORIZED UNDER SUBSECTION (1), HE OR
15 SHE SHALL PLACE ON FILE IN THE OFFICE OF THE STATE TREASURER A
16 WRITTEN REPORT OUTLINING THE BASIS FOR THE COMPROMISE AND, AT A
17 MINIMUM, A STATEMENT OF EACH OF THE FOLLOWING:

18 (A) THE AMOUNT OF TAX ASSESSED OR OTHER AMOUNT DUE TO THIS
19 STATE.

20 (B) THE AMOUNT OF INTEREST, ADDITIONAL AMOUNT, ADDITION TO THE
21 TAX, OR ASSESSABLE PENALTY IMPOSED BY LAW ON THE PERSON AGAINST
22 WHOM THE TAX IS ASSESSED.

23 (C) THE AMOUNT ACTUALLY PAID IN ACCORDANCE WITH THE TERMS OF
24 THE COMPROMISE.

25 (3) THE STATE TREASURER, OR AN AUTHORIZED REPRESENTATIVE OF
26 THE STATE TREASURER, IS NOT REQUIRED TO FILE A REPORT IF THE
27 COMPROMISE IS RELATED TO A CIVIL CASE THAT INVOLVES AN UNPAID

1 AMOUNT OF TAX ASSESSED, AN UNPAID ACCOUNT, OR OTHER AMOUNT DUE
2 INCLUDING ANY INTEREST, ADDITIONAL AMOUNT, ADDITION TO THE TAX, OR
3 OTHER ASSESSABLE PENALTY THAT IS LESS THAN \$25,000.00.

4 (4) A COMPROMISE UNDER THIS SECTION IS SUBJECT TO CONTINUING
5 QUALITY REVIEW BY THE STATE TREASURER. THE DEPARTMENT MAY REVOKE
6 ANY COMPROMISE IF THE COMPROMISE WAS INDUCED BY FRAUD OR PERJURY,
7 OR IF THE TAXPAYER FAILS TO COMPLY WITH ANY TAX PAYMENT AGREEMENT
8 WITHIN 5 YEARS AFTER THE DATE THE COMPROMISE IS MADE.

9 (5) THE FACT THAT A TAXPAYER RECEIVED A FEDERAL COMPROMISE OF
10 TAX IN A TAX YEAR IS PRIMA FACIE EVIDENCE THAT THE SAME TAXPAYER IS
11 ENTITLED TO A COMPROMISE OF ANY SIMILAR OR COMPARABLE MICHIGAN TAX
12 LIABILITY THAT EXISTS, AT LEAST IN A PROPORTIONAL AMOUNT, FOR THE
13 TAX YEAR IN WHICH THE FEDERAL COMPROMISE WAS GRANTED.

14 (6) WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
15 ACT THAT ADDED THIS SECTION, THE STATE TREASURER SHALL DO ALL OF
16 THE FOLLOWING:

17 (A) ESTABLISH GUIDELINES FOR THE OFFER-IN-COMPROMISE PROGRAM
18 AUTHORIZED UNDER THIS SECTION. IF APPROPRIATE, THE GUIDELINES SHALL
19 BE MODELED AFTER THOSE GUIDELINES PUBLISHED BY THE INTERNAL REVENUE
20 SERVICE OF THE UNITED STATES DEPARTMENT OF TREASURY IN REGARDS TO
21 THE FEDERAL OFFER-IN-COMPROMISE PROGRAM ESTABLISHED UNDER SECTION
22 7122 OF THE INTERNAL REVENUE CODE.

23 (B) ESTABLISH ADMINISTRATIVE GUIDELINES FOR OFFICERS AND
24 EMPLOYEES WITHIN THE DEPARTMENT TO USE WHEN MAKING DECISIONS ON
25 WHETHER AN OFFER-IN-COMPROMISE IS APPROPRIATE.

26 (C) ESTABLISH PROCEDURES FOR AN INDEPENDENT ADMINISTRATIVE
27 REVIEW OF ANY REJECTION OF A PROPOSED OFFER-IN-COMPROMISE MADE BY A

1 TAXPAYER UNDER THIS SECTION BEFORE THE REJECTION IS COMMUNICATED TO
2 THE TAXPAYER.

3 (D) ESTABLISH PROCEDURES FOR THE APPEAL OF ANY REJECTION OF AN
4 OFFER-IN-COMPROMISE BY THE TAXPAYER.

5 (E) ESTABLISH APPROPRIATE APPLICATION FEES AND PROCEDURES TO
6 ALLOW FOR PAYMENT PLANS TO SATISFY A COMPROMISED LIABILITY.

7 (7) THE DEPARTMENT SHALL DISCLOSE RETURN INFORMATION TO
8 MEMBERS OF THE GENERAL PUBLIC TO THE EXTENT NECESSARY TO PERMIT
9 INSPECTION OF ANY ACCEPTED OFFER-IN-COMPROMISE UNDER THIS SECTION
10 RELATING TO THE LIABILITY FOR A TAX IMPOSED BY THIS STATE.

11 Sec. 28. (1) The following conditions apply to all taxes
12 administered under this act unless otherwise provided for in the
13 specific tax statute:

14 (a) Notice, if required, shall be given either by personal
15 service or by certified mail addressed to the last known address of
16 the taxpayer. Service upon the department may be made in the same
17 manner.

18 (b) An injunction shall not issue to stay proceedings for the
19 assessment and collection of a tax.

20 (c) In addition to the mode of collection provided in this
21 act, the department may institute an action at law in any county in
22 which the taxpayer resides or transacts business.

23 (d) The state treasurer may request in writing information or
24 records in the possession of any other department, institution, or
25 agency of state government for the performance of duties under this
26 act. Departments, institutions, or agencies of state government
27 shall furnish the information and records upon receipt of the state

1 treasurer's request. Upon request of the state treasurer, any
2 department, institution, or agency of state government shall hold a
3 hearing under the administrative procedures act of 1969, 1969 PA
4 306, MCL 24.201 to 24.328, to consider withholding a license or
5 permit of a person for nonpayment of taxes or accounts collected
6 under this act.

7 (e) Except as otherwise provided in ~~section~~**SECTIONS 23A AND**
8 30c, the state treasurer or an employee of the department shall not
9 compromise or reduce in any manner the taxes due to or claimed by
10 this state or unpaid accounts or amounts due to any department,
11 institution, or agency of state government. This subdivision does
12 not prevent a compromise of interest or penalties, or both.

13 (f) Except as otherwise provided in this subdivision or in
14 subsection (6) or (7), an employee, authorized representative, or
15 former employee or authorized representative of the department or
16 anyone connected with the department shall not divulge any facts or
17 information obtained in connection with the administration of a tax
18 or information or parameters that would enable a person to
19 ascertain the audit selection or processing criteria of the
20 department for a tax administered by the department. An employee or
21 authorized representative shall not willfully inspect any return or
22 information contained in a return unless it is appropriate for the
23 proper administration of a tax law administered under this act. A
24 person may disclose information described in this subdivision if
25 the disclosure is required for the proper administration of a tax
26 law administered under this act or the general property tax act,
27 1893 PA 206, MCL 211.1 to 211.155, pursuant to a judicial order

1 sought by an agency charged with the duty of enforcing or
2 investigating support obligations pursuant to an order of a court
3 in a domestic relations matter as that term is defined in section 2
4 of the friend of the court act, 1982 PA 294, MCL 552.502, or
5 pursuant to a judicial order sought by an agency of the federal,
6 state, or local government charged with the responsibility for the
7 administration or enforcement of criminal law for purposes of
8 investigating or prosecuting criminal matters or for federal or
9 state grand jury proceedings or a judicial order if the taxpayer's
10 liability for a tax administered under this act is to be
11 adjudicated by the court that issued the judicial order. A person
12 required to disclose information under section 10(1)(j) of the
13 Michigan economic growth authority act, 1995 PA 24, MCL 207.810,
14 may disclose the information only to the individuals described in
15 that section. A person may disclose the adjusted gross receipts and
16 the wagering tax paid by a casino licensee licensed under the
17 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to
18 432.226, pursuant to section 18, sections 341, 342, and 386 of the
19 management and budget act, 1984 PA 431, MCL 18.1341, 18.1342, and
20 18.1386, or authorization by the executive director of the gaming
21 control board. However, the state treasurer or a person designated
22 by the state treasurer may divulge information set forth or
23 disclosed in a return or report or by an investigation or audit to
24 any department, institution, or agency of state government upon
25 receipt of a written request from a head of the department,
26 institution, or agency of state government if it is required for
27 the effective administration or enforcement of the laws of this

1 state, to a proper officer of the United States department of
2 treasury, and to a proper officer of another state reciprocating in
3 this privilege. The state treasurer may enter into reciprocal
4 agreements with other departments of state government, the United
5 States department of treasury, local governmental units within this
6 state, or taxing officials of other states for the enforcement,
7 collection, and exchange of data after ascertaining that any
8 information provided will be subject to confidentiality
9 restrictions substantially the same as the provisions of this act.

10 (2) A person who violates subsection (1)(e), (1)(f), or (4) is
11 guilty of a felony, punishable by a fine of not more than
12 \$5,000.00, or imprisonment for not more than 5 years, or both,
13 together with the costs of prosecution. In addition, if the offense
14 is committed by an employee of this state, the person shall be
15 dismissed from office or discharged from employment upon
16 conviction.

17 (3) A person liable for any tax administered under this act
18 shall keep accurate and complete records necessary for the proper
19 determination of tax liability as required by law or rule of the
20 department.

21 (4) A person who receives information under subsection (1)(f)
22 for the proper administration of the general property tax act, 1893
23 PA 206, MCL 211.1 to 211.155, shall not willfully disclose that
24 information for any purpose other than the administration of the
25 general property tax act, 1893 PA 206, MCL 211.1 to 211.155. A
26 person who violates this subsection is subject to the penalties
27 provided in subsection (2).

1 (5) A person identified in section 10(1) of the Michigan
2 economic growth authority act, 1995 PA 24, MCL 207.810, who
3 receives information under section 10(1)(j) of the Michigan
4 economic growth authority act, 1995 PA 24, MCL 207.810, as
5 permitted in subsection (1)(f), shall not willfully disclose that
6 information for any purpose other than the proper administration of
7 his or her legislative duties nor disclose that information to
8 anyone other than an employee of the legislature, who is also bound
9 by the same restrictions. A person who violates this subsection is
10 responsible for and subject to a civil fine of not more than
11 \$5,000.00 per violation.

12 (6) The department shall annually prepare a report containing
13 statistics described in this subsection concerning the Michigan
14 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the
15 most recent tax year for which reliable return data have been
16 processed and cleared in the ordinary course of return processing
17 by the department. A copy of the report shall be provided to the
18 chairpersons of the senate and house of representatives standing
19 committees that have jurisdiction over matters relating to taxation
20 and finance, the director of the senate fiscal agency, and the
21 director of the house fiscal agency. The department shall report
22 the following information broken down by business sector and,
23 provided that no grouping consists of fewer than 10 taxpayers, by
24 firm size in compliance with subsection (1)(f) and in a manner that
25 does not result in the disclosure of information regarding any
26 specific taxpayer:

27 (a) Apportioned business income tax base.

1 (b) Apportioned modified gross receipts tax base.

2 (c) Business income tax liability.

3 (d) Use of credits.

4 (e) Modified gross receipts tax liability.

5 (f) Total final liability.

6 (g) Total liability before credits.

7 (7) A person may disclose the following information described
8 in this subsection:

9 (a) Information required to be reported under section 455 of
10 the Michigan business tax act, 2007 PA 36, MCL 208.1455.

11 (b) An application to enter into an agreement, a communication
12 denying an application to enter into an agreement, an agreement, a
13 postproduction certificate, a communication denying a
14 postproduction certificate, or the total amount of credits claimed
15 in a tax year under section 455 of the Michigan business tax act,
16 2007 PA 36, MCL 208.1455, notwithstanding section 455(6) of the
17 Michigan business tax act, 2007 PA 36, MCL 408.1455.

18 (c) An application to enter into an agreement, a communication
19 denying an application to enter into an agreement, an agreement, an
20 investment expenditure certificate, a communication denying an
21 investment expenditure certificate, or the total amount of credits
22 claimed in a tax year under section 457 of the Michigan business
23 tax act, 2007 PA 36, MCL 208.1457, notwithstanding section 457(6)
24 of the Michigan business tax act, 2007 PA 36, MCL 408.1457.

25 (d) An application to enter into an agreement, a communication
26 denying an application to enter into an agreement, an agreement, a
27 qualified job training expenditures certificate, a communication

1 denying a qualified job training expenditures certificate, or the
2 total amount of credits claimed in a tax year under section 459 of
3 the Michigan business tax act, 2007 PA 36, MCL 208.1459,
4 notwithstanding section 459(6) of the Michigan business tax act,
5 2007 PA 36, MCL 408.1459.

6 (8) As used in subsection (1), "adjusted gross receipts" and
7 "wagering tax" mean those terms as described in the Michigan gaming
8 control and revenue act, 1996 IL 1, MCL 432.201 to 432.226.