

HOUSE BILL No. 5514

March 27, 2012, Introduced by Reps. Cavanagh, Smiley, Nathan, Townsend, Stallworth, Rutledge, Constan, Irwin, Geiss, Dillon, Gilbert and Ananich 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 25 and 28 (MCL 205.25 and 205.28), section 25 as amended by 2002 PA 657 and section 28 as amended by 2010 PA 313, and by adding section 30d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 25. (1) The state treasurer, or an authorized
2 representative of the state treasurer, may cause a demand to be
3 made on a taxpayer for the payment of a tax, unpaid account, or
4 amount due the state or any of its departments, institutions, or
5 agencies, subject to administration under this act. If the
6 liability remains unpaid for 10 days after the demand and
7 proceedings are not taken to review the liability, the state
8 treasurer or an authorized representative of the state treasurer
9 may issue a warrant under the official seal of that office. Except
10 as provided in subsection (5), the state treasurer or an authorized
11 representative of the state treasurer, through any state officer
12 authorized to serve process or through his or her authorized
13 employees, may levy on all property and rights to property, real
14 and personal, tangible and intangible, belonging to the taxpayer or
15 on which a lien is provided by law for the amount of the
16 deficiency, and sell the real and personal property of the taxpayer
17 found within the state for the payment of the amount due, the cost
18 of executing the warrant, and the additional penalties and
19 interest. Except as provided in subsection (6), the officer or
20 agent serving the warrant shall proceed upon the warrant in all
21 respects and in the same manner as prescribed by law in respect to
22 executions issued against property upon judgments by a court of
23 record. The state, through the state treasurer or an authorized
24 representative of the state treasurer, may bid for and purchase any
25 property sold pursuant to this section.

26 (2) A person who refuses or fails to surrender any property or
27 rights to property subject to levy, upon demand by the state

1 treasurer or an authorized representative of the state treasurer,
2 is personally liable to the state in a sum equal to the value of
3 the property or rights not surrendered, but not exceeding the
4 amount due for which the levy was made, together with costs and
5 interest on the sum at the rate provided in section 23(2) from the
6 date of the levy. Any amount, other than costs, recovered under
7 this subsection shall be credited against the liability for the
8 collection of which the levy was made.

9 (3) In addition to the personal liability imposed by
10 subsection (2), if a person required to surrender property or
11 rights to property fails or refuses to surrender the property or
12 rights to property without reasonable cause, the person shall be
13 liable for a penalty equal to 50% of the amount recoverable under
14 subsection (2), none of which penalty shall be credited against the
15 liability for the collection of which the levy was made.

16 (4) A person in possession of, or obligated with respect to,
17 property or property rights subject to levy and upon which a levy
18 has been made who, upon demand of the state treasurer or an
19 authorized representative of the state treasurer, surrenders the
20 property or rights to property or discharges the obligation to the
21 state treasurer or an authorized representative of the state
22 treasurer or who pays a liability under subsection (1) shall have
23 his or her obligation to a person delinquent in payment of a tax or
24 other account reduced in an amount equal to the property or rights
25 to property surrendered or amounts paid to the state.

26 (5) There shall be exempt from levy under this section:

27 (a) For an unpaid tax, the type of property and the amount of

1 that property as provided in section 6334 of the internal revenue
2 code of 1986.

3 (b) For an unpaid account, or amount due the state or any of
4 its departments other than an unpaid tax, disposable earnings to
5 the extent provided in section 303 of title III of the consumer
6 credit protection act, 82 Stat. 163, 15 U.S.C.—~~USC~~ 1673.

7 (c) The effect of a levy on salary or wages shall be
8 continuous from the date the levy is first made until the liability
9 out of which the levy arose is satisfied.

10 (6) A warrant-notice of levy may be served by certified mail,
11 return receipt requested, on any person in possession of, or
12 obligated with respect to, property and rights to property, real
13 and personal, tangible and intangible, belonging to the taxpayer or
14 on which a lien is provided by law. The date of delivery on the
15 receipt shall be the date the levy is made. A person may, upon
16 written notice to the state treasurer, have all notices of levy by
17 mail sent to 1 designated office.

18 **(7) A LEVY UNDER THIS SECTION SHALL NOT BE MADE ON THE**
19 **PROPERTY OF ANY TAXPAYER WITH RESPECT TO ANY UNPAID TAX UNDER THE**
20 **INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713, DURING**
21 **THE PERIOD THAT AN OFFER-IN-COMPROMISE UNDER SECTION 30D IS**
22 **PENDING.**

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

26 (a) Notice, if required, shall be given either by personal
27 service or by certified mail addressed to the last known address of

1 the taxpayer. Service upon the department may be made in the same
2 manner.

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

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

8 (d) The state treasurer may request in writing information or
9 records in the possession of any other department, institution, or
10 agency of state government for the performance of duties under this
11 act. Departments, institutions, or agencies of state government
12 shall furnish the information and records upon receipt of the state
13 treasurer's request. Upon request of the state treasurer, any
14 department, institution, or agency of state government shall hold a
15 hearing under the administrative procedures act of 1969, 1969 PA
16 306, MCL 24.201 to 24.328, to consider withholding a license or
17 permit of a person for nonpayment of taxes or accounts collected
18 under this act.

19 (e) Except as otherwise provided in section 30c **OR 30D**, the
20 state treasurer or an employee of the department shall not
21 compromise or reduce in any manner the taxes due to or claimed by
22 this state or unpaid accounts or amounts due to any department,
23 institution, or agency of state government. This subdivision does
24 not prevent a compromise of interest or penalties, or both.

25 (f) Except as otherwise provided in this subdivision or in
26 subsection (6) or (7), an employee, authorized representative, or
27 former employee or authorized representative of the department or

1 anyone connected with the department shall not divulge any facts or
2 information obtained in connection with the administration of a tax
3 or information or parameters that would enable a person to
4 ascertain the audit selection or processing criteria of the
5 department for a tax administered by the department. An employee or
6 authorized representative shall not willfully inspect any return or
7 information contained in a return unless it is appropriate for the
8 proper administration of a tax law administered under this act. A
9 person may disclose information described in this subdivision if
10 the disclosure is required for the proper administration of a tax
11 law administered under this act or the general property tax act,
12 1893 PA 206, MCL 211.1 to 211.155, pursuant to a judicial order
13 sought by an agency charged with the duty of enforcing or
14 investigating support obligations pursuant to an order of a court
15 in a domestic relations matter as that term is defined in section 2
16 of the friend of the court act, 1982 PA 294, MCL 552.502, or
17 pursuant to a judicial order sought by an agency of the federal,
18 state, or local government charged with the responsibility for the
19 administration or enforcement of criminal law for purposes of
20 investigating or prosecuting criminal matters or for federal or
21 state grand jury proceedings or a judicial order if the taxpayer's
22 liability for a tax administered under this act is to be
23 adjudicated by the court that issued the judicial order. A person
24 required to disclose information under section 10(1)(j) of the
25 Michigan economic growth authority act, 1995 PA 24, MCL 207.810,
26 may disclose the information only to the individuals described in
27 that section. A person may disclose the adjusted gross receipts and

1 the wagering tax paid by a casino licensee licensed under the
2 Michigan gaming control and revenue act, 1996 IL 1, MCL 432.201 to
3 432.226, pursuant to section 18, sections 341, 342, and 386 of the
4 management and budget act, 1984 PA 431, MCL 18.1341, 18.1342, and
5 18.1386, or authorization by the executive director of the gaming
6 control board. However, the state treasurer or a person designated
7 by the state treasurer may divulge information set forth or
8 disclosed in a return or report or by an investigation or audit to
9 any department, institution, or agency of state government upon
10 receipt of a written request from a head of the department,
11 institution, or agency of state government if it is required for
12 the effective administration or enforcement of the laws of this
13 state, to a proper officer of the United States department of
14 treasury, and to a proper officer of another state reciprocating in
15 this privilege. The state treasurer may enter into reciprocal
16 agreements with other departments of state government, the United
17 States department of treasury, local governmental units within this
18 state, or taxing officials of other states for the enforcement,
19 collection, and exchange of data after ascertaining that any
20 information provided will be subject to confidentiality
21 restrictions substantially the same as the provisions of this act.

22 (2) A person who violates subsection (1)(e), (1)(f), or (4) is
23 guilty of a felony, punishable by a fine of not more than
24 \$5,000.00, or imprisonment for not more than 5 years, or both,
25 together with the costs of prosecution. In addition, if the offense
26 is committed by an employee of this state, the person shall be
27 dismissed from office or discharged from employment upon

1 conviction.

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

6 (4) A person who receives information under subsection (1)(f)
7 for the proper administration of the general property tax act, 1893
8 PA 206, MCL 211.1 to 211.155, shall not willfully disclose that
9 information for any purpose other than the administration of the
10 general property tax act, 1893 PA 206, MCL 211.1 to 211.155. A
11 person who violates this subsection is subject to the penalties
12 provided in subsection (2).

13 (5) A person identified in section 10(1) of the Michigan
14 economic growth authority act, 1995 PA 24, MCL 207.810, who
15 receives information under section 10(1)(j) of the Michigan
16 economic growth authority act, 1995 PA 24, MCL 207.810, as
17 permitted in subsection (1)(f), shall not willfully disclose that
18 information for any purpose other than the proper administration of
19 his or her legislative duties nor disclose that information to
20 anyone other than an employee of the legislature, who is also bound
21 by the same restrictions. A person who violates this subsection is
22 responsible for and subject to a civil fine of not more than
23 \$5,000.00 per violation.

24 (6) The department shall annually prepare a report containing
25 statistics described in this subsection concerning the Michigan
26 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, **AND PART 2**
27 **OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.699,**

1 for the most recent tax year for which reliable return data have
2 been processed and cleared in the ordinary course of return
3 processing by the department. A copy of the report shall be
4 provided to the chairpersons of the senate and house of
5 representatives standing committees that have jurisdiction over
6 matters relating to taxation and finance, the director of the
7 senate fiscal agency, and the director of the house fiscal agency.
8 The department shall report the following information broken down
9 by business sector and, provided that no grouping consists of fewer
10 than 10 taxpayers, by firm size in compliance with subsection
11 (1)(f) and in a manner that does not result in the disclosure of
12 information regarding any specific taxpayer:

13 (a) Apportioned business income tax base.

14 (b) Apportioned modified gross receipts tax base.

15 (c) Business income tax liability.

16 (d) Use of credits.

17 (e) Modified gross receipts tax liability.

18 (f) Total final liability.

19 (g) Total liability before credits.

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

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

24 (b) An application to enter into an agreement, a communication
25 denying an application to enter into an agreement, an agreement, a
26 postproduction certificate, a communication denying a
27 postproduction certificate, or the total amount of credits claimed

1 in a tax year under section 455 of the Michigan business tax act,
2 2007 PA 36, MCL 208.1455, notwithstanding section 455(6) of the
3 Michigan business tax act, 2007 PA 36, MCL 408.1455.

4 (c) An application to enter into an agreement, a communication
5 denying an application to enter into an agreement, an agreement, an
6 investment expenditure certificate, a communication denying an
7 investment expenditure certificate, or the total amount of credits
8 claimed in a tax year under section 457 of the Michigan business
9 tax act, 2007 PA 36, MCL 208.1457, notwithstanding section 457(6)
10 of the Michigan business tax act, 2007 PA 36, MCL 408.1457.

11 (d) An application to enter into an agreement, a communication
12 denying an application to enter into an agreement, an agreement, a
13 qualified job training expenditures certificate, a communication
14 denying a qualified job training expenditures certificate, or the
15 total amount of credits claimed in a tax year under section 459 of
16 the Michigan business tax act, 2007 PA 36, MCL 208.1459,
17 notwithstanding section 459(6) of the Michigan business tax act,
18 2007 PA 36, MCL 408.1459.

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

22 **SEC. 30D. (1) THE DEPARTMENT MAY COMPROMISE ANY CIVIL OR**
23 **CRIMINAL CASE ARISING UNDER THE INCOME TAX ACT OF 1967, 1967 PA**
24 **281, MCL 206.1 TO 206.713, BEFORE REFERRING THE CASE TO THE**
25 **ATTORNEY GENERAL FOR PROSECUTION OR DEFENSE. THE ATTORNEY GENERAL**
26 **MAY COMPROMISE ANY SUCH CASE AFTER THE CASE HAS BEEN REFERRED TO**
27 **THE ATTORNEY GENERAL FOR PROSECUTION OR DEFENSE.**

1 (2) THE DEPARTMENT AND THE ATTORNEY GENERAL MAY COMPROMISE A
2 CIVIL OR CRIMINAL CASE DESCRIBED IN SUBSECTION (1) ONLY IF 1 OF THE
3 FOLLOWING IS MET:

4 (A) IF THE AMOUNT OF THE DELINQUENT TAX, INTEREST, AND PENALTY
5 IS \$50,000.00 OR LESS, THEN ALL OF THE FOLLOWING:

6 (i) THE TAXPAYER HAS ENTERED INTO AN OFFER OF COMPROMISE WITH
7 THE INTERNAL REVENUE SERVICE.

8 (ii) THE AMOUNT OF THE COMPROMISE WITH THE TAXPAYER SHALL BE
9 THE SAME PERCENTAGE REDUCTION AS IS THE TAXPAYER'S OFFER OF
10 COMPROMISE WITH THE INTERNAL REVENUE SERVICE.

11 (iii) THE COMPROMISE IS IN THE BEST INTEREST OF THIS STATE.

12 (B) IF THE AMOUNT OF THE DELINQUENT TAX, INTEREST, AND PENALTY
13 IS MORE THAN \$50,000.00, THEN ALL OF THE FOLLOWING:

14 (i) AN AMOUNT DETERMINED BY THE DEPARTMENT OR ATTORNEY GENERAL
15 THAT IS BASED ON THE TAXPAYER'S SPECIFIC CIRCUMSTANCES.

16 (ii) THE COMPROMISE IS IN THE BEST INTEREST OF THIS STATE.

17 (3) IF A COMPROMISE IS MADE UNDER SUBSECTION (1), THE
18 DEPARTMENT SHALL PLACE ON FILE A STATEMENT OF ALL OF THE FOLLOWING:

19 (A) THE AMOUNT OF TAX ASSESSED.

20 (B) THE AMOUNT OF INTEREST OR PENALTY IMPOSED ON THE TAXPAYER.

21 (C) THE AMOUNT ACTUALLY PAID UNDER THE TERMS OF THE
22 COMPROMISE.

23 (4) PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
24 1969 PA 306, MCL 24.201 TO 24.328, THE DEPARTMENT SHALL ADOPT
25 GUIDELINES FOR OFFICERS AND EMPLOYEES OF THE DEPARTMENT TO
26 DETERMINE WHETHER AN OFFER-IN-COMPROMISE TO RESOLVE A DISPUTE UNDER
27 THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713, IS

1 ADEQUATE AND SHOULD BE ACCEPTED.

2 (5) THE STATE TREASURER SHALL ESTABLISH PROCEDURES FOR AN
3 INDEPENDENT ADMINISTRATIVE REVIEW OF A REJECTION OF A PROPOSED
4 OFFER-IN-COMPROMISE UNDER SUBSECTION (1) BEFORE THE REJECTION IS
5 COMMUNICATED TO THE TAXPAYER.