

REVENUE DIVISION OF DEPARTMENT OF TREASURY (EXCERPT)
Act 122 of 1941

205.23 Determination of tax liability; notice; payment of deficiency; interest and penalties.

Sec. 23.

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

(2) If the amount of a tax paid is less than the amount that should have been paid or an excessive claim has been made, the deficiency and interest on the deficiency at the current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the tax was due, and until paid, are due and payable after notice and informal conference as provided in this act. A deficiency in an estimated payment as may be required by a tax statute administered under this act shall be treated in the same manner as a tax due and shall be subject to the same current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the payment was due, until paid. As used in this section, "adjusted prime rate" means the average predominant prime rate quoted by not less than 3 commercial banks to large businesses, as determined by the department of treasury. The adjusted prime rate is to be based on the average prime rate charged by not less than 3 commercial banks during the 6-month period ending on March 31 and the 6-month period ending on September 30. One percentage point shall be added to the adjusted prime rate, and the resulting sum shall be divided by 12 to establish the current monthly interest rate. The resulting current monthly interest rate based on the 6-month period ending March 31 becomes effective on the following July 1, and the resulting current monthly interest rate based on the 6-month period ending September 30 becomes effective on January 1 of the following year.

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

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

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

History: Add. 1980, Act 162, Eff. Sept. 17, 1980 ;-- Am. 1986, Act 58, Eff. May 1, 1986 ;-- Am. 1991, Act 83, Imd. Eff. July 18, 1991 ;-- Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993

Compiler's Notes: Enacting section 4 of Act 162 of 1980 provides: "Section 4. This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows: "(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981." "(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981." "(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act." Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows: "Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982." "Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows: "(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982." "(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982." "(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance

with this amendatory act."However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.Enacting sections 2 and 3 of Act 58 of 1986 provide:"Section 2. The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986."Section 3. Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular Name: Revenue Act

Admin Rule: R 205.1001 et seq. of the Michigan Administrative Code.