

**REPRINT**

**SUBSTITUTE FOR**

**HOUSE BILL NO. 5580**

(As passed the House, May 6, 1998)

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 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; and to declare the effect of this act,"

by amending section 28 (MCL 205.28), as amended by 1993 PA 13, and by adding section 30c.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

4       (a) Notice, if required, shall be given either by personal  
5 service or by certified mail addressed to the last known address  
6 of the taxpayer. Service upon the commissioner may be made in  
7 the same manner.

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

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

13       (d) The commissioner may request in writing information or  
14 records in the possession of any other department, institution,  
15 or agency of state government for the performance of duties under  
16 this act. Departments, institutions, or agencies of state gov-  
17 ernment shall furnish the information and records upon receipt of  
18 the commissioner's request. Upon request of the commissioner,  
19 any department, institution, or agency of state government shall  
20 hold a hearing under the administrative procedures act of 1969,  
21 ~~Act No. 306 of the Public Acts of 1969, as amended, being sec-~~  
22 ~~tions 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA  
23 306, MCL 24.201 TO 24.328, to consider withholding a license or  
24 permit of a person for nonpayment of taxes or accounts collected  
25 under this act.

26       (e) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 30C, THE  
27 commissioner or an employee of the department shall not

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1 compromise or reduce in any manner the taxes due to or claimed by  
2 the state or unpaid accounts or amounts due to any department,  
3 institution, or agency of state government. This subdivision  
4 does not prevent a compromise of interest or penalties, or both.

5 (f) Except as otherwise provided in this subdivision, an  
6 employee, authorized representative, or former employee or autho-  
7 rized representative of the department or anyone connected with  
8 the department shall not divulge any facts or information  
9 obtained in connection with the administration of a tax or infor-  
10 mation or parameters that would enable a person to ascertain the  
11 audit selection or processing criteria of the department for a  
12 tax administered by the department. A person may disclose infor-  
13 mation described in this subdivision if the disclosure is  
14 required for the proper administration of a tax law administered  
15 under this act, pursuant to a judicial order sought by an agency  
16 charged with the duty of enforcing or investigating support obli-  
17 gations pursuant to an order of a court in a domestic relations  
18 matter as that term is defined in section 31 of the friend of the  
19 court act, ~~Act No. 294 of the Public Acts of 1982, being section~~  
20 ~~552.531 of the Michigan Compiled Laws~~ 1982 PA 294, MCL 552.531,  
21 or pursuant to a judicial order sought by an agency of the feder-  
22 al, state, or local government charged with the responsibility  
23 for the administration or enforcement of criminal law for pur-  
24 poses of investigating or prosecuting criminal matters or for  
25 federal or state grand jury proceedings or a judicial order if  
26 the taxpayer's liability for a tax administered under this act is  
27 to be adjudicated by the court that issued the judicial order.

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1 However, the commissioner or a person designated by the  
2 commissioner may divulge information set forth or disclosed in a  
3 return or report or by an investigation or audit to any depart-  
4 ment, institution, or agency of state government upon receipt of  
5 a written request from a head of the department, institution, or  
6 agency of state government if it is required for the effective  
7 administration or enforcement of the laws of this state, to a  
8 proper officer of the United States department of treasury, and  
9 to a proper officer of another state reciprocating in this  
10 privilege. The commissioner may enter into reciprocal agreements  
11 with other departments of state government, the United States  
12 department of treasury, local governmental units within this  
13 state, or taxing officials of other states for the enforcement,  
14 collection, and exchange of data after ascertaining that any  
15 information provided will be subject to confidentiality restric-  
16 tions substantially the same as the provisions of this act.

17 (2) A person who violates subsection (1)(e) or (1)(f) is  
18 guilty of a felony, punishable by a fine of not more than  
19 \$5,000.00, or imprisonment for not more than 5 years, or both,  
20 together with the costs of prosecution. In addition, if the  
21 offense is committed by an employee of this state, the person  
22 shall be dismissed from office or discharged from employment upon  
23 conviction.

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

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1 SEC. 30C. (1) THROUGH DECEMBER 31, 2003, THE COMMISSIONER,  
2 OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER, ON BEHALF OF  
3 THE DEPARTMENT, MAY ENTER INTO A VOLUNTARY DISCLOSURE AGREEMENT  
4 WITH A PERSON WHO IS A NONFILER AND WHO MEETS 1 OR MORE OF THE  
5 FOLLOWING CRITERIA:

6 (A) HAS A FILING RESPONSIBILITY UNDER NEXUS STANDARDS ISSUED  
7 BY THE DEPARTMENT AFTER DECEMBER 31, 1997.

8 (B) CONTESTS LIABILITY FOR A TAX OR FEE ADMINISTERED UNDER  
9 THIS ACT AS DETERMINED BY THE COMMISSIONER.

10 (2) ALL TAXES AND FEES ADMINISTERED UNDER THIS ACT ARE ELI-  
11 GIBLE FOR INCLUSION IN A VOLUNTARY DISCLOSURE AGREEMENT.

12 (3) TO BE ELIGIBLE FOR A VOLUNTARY DISCLOSURE AGREEMENT,  
13 SUBJECT TO SUBSECTION (1), A PERSON MUST MEET ALL OF THE FOLLOW-  
14 ING REQUIREMENTS:

15 (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, HAS  
16 HAD NO PREVIOUS CONTACT BY THE DEPARTMENT OR ITS AGENTS REGARDING  
17 A TAX COVERED BY THE AGREEMENT. A LETTER OF INQUIRY, WHETHER A  
18 FINAL LETTER OR OTHERWISE, REQUESTING INFORMATION UNDER  
19 SECTION 21(2)(A) THAT WAS SENT TO A NONFILER SHALL NOT BE CONSID-  
20 ERED A PREVIOUS CONTACT UNDER THIS SUBDIVISION IF THE NONFILER  
21 SENDS A WRITTEN REQUEST TO THE DEPARTMENT TO ENTER INTO A VOLUN-  
22 TARY DISCLOSURE AGREEMENT WITHIN 180 DAYS AFTER THE ENACTMENT OF  
23 THE AMENDATORY ACT THAT ADDED THIS SECTION.

24 (B) HAS HAD NO NOTIFICATION OF AN IMPENDING AUDIT BY THE  
25 DEPARTMENT OR ITS AGENTS.

26 (C) IS NOT CURRENTLY UNDER AUDIT BY THE DEPARTMENT OF  
27 TREASURY OR UNDER INVESTIGATION BY THE DEPARTMENT OF STATE

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1 POLICE, DEPARTMENT OF ATTORNEY GENERAL, OR ANY LOCAL LAW  
2 ENFORCEMENT AGENCY REGARDING A TAX COVERED BY THE AGREEMENT.

3 (D) IS NOT CURRENTLY THE SUBJECT OF A CIVIL ACTION OR A  
4 CRIMINAL PROSECUTION INVOLVING ANY TAX COVERED BY THE AGREEMENT.

5 (E) HAS AGREED TO REGISTER, FILE RETURNS, AND PAY ALL TAXES  
6 DUE IN ACCORDANCE WITH ALL APPLICABLE LAWS OF THIS STATE FOR ALL  
7 TAXES ADMINISTERED UNDER THIS ACT FOR ALL PERIODS AFTER THE LOOK-  
8 BACK PERIOD.

9 (F) HAS AGREED TO PAY ALL TAXES DUE FOR EACH TAX COVERED  
10 UNDER THE AGREEMENT FOR THE LOOKBACK PERIOD, PLUS STATUTORY  
11 INTEREST AS STATED IN SECTION 23, WITHIN THE PERIOD OF TIME AND  
12 IN THE MANNER SPECIFIED IN THE AGREEMENT.

13 (G) HAS AGREED TO FILE RETURNS AND WORKSHEETS FOR THE LOOK-  
14 BACK PERIOD AS SPECIFIED IN THE AGREEMENT.

15 (4) IF A PERSON SATISFIES ALL REQUIREMENTS STATED IN SUBSEC-  
16 TION (3), THE DEPARTMENT MAY ENTER INTO A VOLUNTARY DISCLOSURE  
17 AGREEMENT WITH THAT PERSON PROVIDING THE FOLLOWING RELIEF:

18 (A) NOTWITHSTANDING SECTION 28(1)(E) OF THIS ACT, THE  
19 DEPARTMENT SHALL NOT ASSESS ANY TAX, DELINQUENCY FOR A TAX, PEN-  
20 ALTY, OR INTEREST COVERED UNDER THE AGREEMENT FOR ANY PERIOD  
21 BEFORE THE LOOKBACK PERIOD IDENTIFIED IN THE AGREEMENT.

22 (B) THE DEPARTMENT SHALL NOT ASSESS ANY APPLICABLE DISCRE-  
23 TIONARY OR NONDISCRETIONARY PENALTIES FOR THE LOOKBACK PERIOD.

24 (C) THE DEPARTMENT SHALL PROVIDE COMPLETE CONFIDENTIALITY OF  
25 THE AGREEMENT AND SHALL ALSO ENTER INTO AN AGREEMENT NOT TO DIS-  
26 CLOSE, IN ACCORDANCE WITH SECTION 28(1)(F), ANY OF THE TERMS OR  
27 CONDITIONS OF THE AGREEMENT TO ANY TAX AUTHORITIES OF ANY STATE

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1 OR GOVERNMENTAL AUTHORITY OR TO ANY PERSON EXCEPT AS REQUIRED BY  
2 EXCHANGE OF INFORMATION AGREEMENTS AUTHORIZED UNDER SECTION  
3 28(1)(F), INCLUDING THE INTERNATIONAL FUEL TAX AGREEMENT UNDER  
4 CHAPTER 317 OF TITLE 49 OF THE UNITED STATES CODE, 49  
5 U.S.C. 31701 TO 31708. THE DEPARTMENT SHALL NOT EXCHANGE INFOR-  
6 MATION OBTAINED UNDER THIS SECTION WITH OTHER STATES REGARDING  
7 THE PERSON UNLESS INFORMATION REGARDING THE PERSON IS SPECIFI-  
8 CALLY REQUESTED BY ANOTHER STATE.

9 (5) THE DEPARTMENT SHALL NOT BRING A CRIMINAL ACTION AGAINST  
10 A PERSON FOR FAILURE TO REPORT OR TO REMIT ANY TAX COVERED BY THE  
11 AGREEMENT BEFORE OR DURING THE LOOKBACK PERIOD IF THE FACTS  
12 ESTABLISHED BY THE DEPARTMENT ARE NOT MATERIALLY DIFFERENT FROM  
13 THE FACTS DISCLOSED BY THE PERSON TO THE DEPARTMENT.

14 (6) A VOLUNTARY DISCLOSURE AGREEMENT IS EFFECTIVE WHEN  
15 SIGNED BY THE PERSON SUBJECT TO THE AGREEMENT, OR HIS, HER, OR  
16 ITS LAWFUL REPRESENTATIVE, AND RETURNED TO THE DEPARTMENT WITHIN  
17 THE TIME PERIOD SPECIFIED IN THE AGREEMENT. THE DEPARTMENT SHALL  
18 ONLY PROVIDE THE RELIEF SPECIFIED IN THE EXECUTED AGREEMENT. ANY  
19 VERBAL OR WRITTEN COMMUNICATION BY THE DEPARTMENT BEFORE THE  
20 EFFECTIVE DATE OF THE AGREEMENT SHALL NOT AFFORD ANY PENALTY  
21 WAIVER, LIMITED LOOKBACK PERIOD, OR OTHER BENEFIT OTHERWISE  
22 AVAILABLE UNDER THIS SECTION.

23 (7) A MATERIAL MISREPRESENTATION OF THE FACT BY AN APPLICANT  
24 RELATING TO THE APPLICANT'S CURRENT ACTIVITY IN THIS STATE  
25 RENDERS AN AGREEMENT NULL AND VOID AND OF NO EFFECT. A CHANGE IN  
26 THE ACTIVITIES OR OPERATIONS OF A PERSON AFTER THE EFFECTIVE DATE

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1 OF THE AGREEMENT IS NOT A MATERIAL MISREPRESENTATION OF FACT AND  
2 SHALL NOT AFFECT THE AGREEMENT'S VALIDITY.

3 (8) THE DEPARTMENT MAY AUDIT ANY OF THE TAXES COVERED BY THE  
4 AGREEMENT WITHIN THE LOOKBACK PERIOD OR IN ANY PRIOR PERIOD IF,  
5 IN THE DEPARTMENT'S OPINION, AN AUDIT OF A PRIOR PERIOD IS NECES-  
6 SARY TO DETERMINE THE PERSON'S TAX LIABILITY FOR THE TAX PERIODS  
7 WITHIN THE LOOKBACK PERIOD OR TO DETERMINE ANOTHER PERSON'S TAX  
8 LIABILITY.

9 (9) NOTHING IN THIS SECTION SHALL BE INTERPRETED TO ALLOW OR  
10 PERMIT UNJUST ENRICHMENT AS THAT TERM IS DEFINED IN SUBSECTION  
11 (10). ANY TAX COLLECTED OR WITHHELD FROM ANOTHER PERSON BY AN  
12 APPLICANT SHALL BE REMITTED TO THE DEPARTMENT WITHOUT RESPECT TO  
13 WHETHER IT WAS COLLECTED DURING OR BEFORE THE LOOKBACK PERIOD.

14 (10) AS USED IN THIS SECTION:

15 (A) "LOOKBACK PERIOD" MEANS 1 OR MORE OF THE FOLLOWING:

16 (i) THE MOST RECENT 48-MONTH PERIOD AS DETERMINED BY THE  
17 DEPARTMENT OR THE FIRST DATE THE PERSON SUBJECT TO AN AGREEMENT  
18 UNDER THIS SECTION BEGAN DOING BUSINESS IN THE STATE IF LESS THAN  
19 48 MONTHS.

20 (ii) FOR SINGLE BUSINESS TAXES LEVIED UNDER THE SINGLE BUSI-  
21 NESS TAX ACT, 1975 PA 228, MCL 208.1 TO 208.145, THE LOOKBACK  
22 PERIOD SHALL BE THE 4 MOST RECENT COMPLETED FISCAL OR CALENDAR  
23 YEARS OVER A 48-MONTH PERIOD OR THE FIRST DATE THE PERSON SUBJECT  
24 TO AN AGREEMENT UNDER THIS SECTION BEGAN DOING BUSINESS IN THIS  
25 STATE IF LESS THAN 48 MONTHS.

26 (iii) NOTWITHSTANDING SUBPARAGRAPHS (i), (ii), AND (iv), THE  
27 MOST RECENT 36-MONTH PERIOD AS DETERMINED BY THE DEPARTMENT OR



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1 THE FIRST DATE THE PERSON SUBJECT TO AN AGREEMENT UNDER THIS  
2 SECTION BEGAN DOING BUSINESS IN THIS STATE IF LESS THAN 36  
3 MONTHS, IF TAX RETURNS FILED IN ANOTHER STATE FOR A TAX BASED ON  
4 NET INCOME THAT INCLUDED SALES IN THE NUMERATOR OF THE APPORTION-  
5 MENT FORMULA THAT NOW MUST BE INCLUDED IN THE NUMERATOR OF THE  
6 APPORTIONMENT FORMULA UNDER THE SINGLE BUSINESS TAX ACT, 1975 PA  
7 228, MCL 208.1 TO 208.145, AND THOSE SALES INCREASED THE NET TAX  
8 LIABILITY PAYABLE TO THAT STATE.

9 (iv) IF THERE IS DOUBT AS TO LIABILITY FOR THE TAX DURING  
10 THE LOOKBACK PERIOD, ANOTHER PERIOD AS DETERMINED BY THE COMMIS-  
11 SIONER TO BE IN THE BEST INTEREST OF THIS STATE AND TO PRESERVE  
12 EQUITABLE AND FAIR ADMINISTRATION OF TAXES.

13 (B) "NONFILER" FOR A PARTICULAR TAX IS A PERSON THAT HAS  
14 NEVER FILED A RETURN FOR THE PARTICULAR TAX BEING DISCLOSED.

15 (C) "PERSON" MEANS AN INDIVIDUAL, FIRM, BANK, FINANCIAL  
16 INSTITUTION, LIMITED PARTNERSHIP, COPARTNERSHIP, PARTNERSHIP,  
17 JOINT VENTURE, ASSOCIATION, CORPORATION, LIMITED LIABILITY COM-  
18 PANY, LIMITED LIABILITY PARTNERSHIP, RECEIVER, ESTATE, TRUST, OR  
19 ANY OTHER GROUP OR COMBINATION ACTING AS A UNIT.

20 (D) "PREVIOUS CONTACT" MEANS ANY NOTIFICATION OF AN IMPEND-  
21 ING AUDIT PURSUANT TO SECTION 21(1), REVIEW, OR ANY TYPE OF  
22 NOTICE OR ASSESSMENT. PREVIOUS CONTACT ALSO INCLUDES FINAL LET-  
23 TERS OF INQUIRY PURSUANT TO SECTION 21(2)(A) OR A SUBPOENA FROM  
24 THE DEPARTMENT.

25 (E) "UNJUST ENRICHMENT" INCLUDES THE WITHHOLDING OF INCOME  
26 TAX UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO

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1 206.532, AND THE COLLECTION OF ANY OTHER TAX ADMINISTERED BY THIS  
2 ACT THAT HAS NOT BEEN REMITTED TO THE DEPARTMENT.

3 (F) "VOLUNTARY DISCLOSURE AGREEMENT" OR "AGREEMENT" MEANS  
4 THE ENTIRETY OF THE WRITTEN AGREEMENT BETWEEN A PERSON AND THE  
5 DEPARTMENT.

6 Enacting section 1. This amendatory act does not take  
7 effect unless House Bill No. 4910 of the 89th Legislature is  
8 enacted into law.