

[No. 168]

(HB 5036)

AN ACT 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 sections 24, 30c, and 31 (MCL 205.24, 205.30c, and 205.31), sections 24 and 31 as amended by 1993 PA 14 and section 30c as amended by 1998 PA 493.

The People of the State of Michigan enact:

205.24 Failure or refusal to file return or pay tax; assessment; notice; penalty; interest; waiver; penalty for failure or refusal to file informational report; failure to pay estimated tax payment; additional penalty.

Sec. 24. (1) If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

(2) Except as provided in subsections (3) and (6), if a taxpayer fails or refuses to file a return or pay a tax within the time specified, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added if the failure is for not more than 1 month, with an additional 5% penalty for each additional month or fraction of a month during which the failure continues or the tax and penalty is not paid, to a maximum of 50%. In addition to the penalty, interest at the rate provided in section 23 for deficiencies in tax payments shall be added on the tax from the time the tax was due, until paid. After June 30, 1994, the penalty prescribed by this subsection shall not be imposed until the department submits for public hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, a rule defining what constitutes reasonable cause for waiver of the penalty under subsection (4), which definition shall include illustrative examples.

(3) If a person is required to remit tax due pursuant to section 19(2) and fails or refuses to pay the tax within the time specified, a penalty of 0.167% of the tax shall be added for each day during which the failure continues or the tax and penalty are not paid, to a maximum of 50% of the tax.

(4) If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the commissioner or an authorized representative of the commissioner shall waive the penalty prescribed by subsection (2).

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(5) For failure or refusal to file an information return or other informational report required by a tax statute, within the time specified, a penalty of \$10.00 per day for each day for each separate failure or refusal may be added. The total penalty for each separate failure or refusal shall not exceed \$400.00.

(6) If a taxpayer fails to pay an estimated tax payment as may be required by the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, a penalty shall not be imposed if the taxpayer was not required to make estimated tax payments in the taxpayer's immediately preceding tax year.

(7) In addition to any other interest or penalty prescribed under this section, a taxpayer who has failed to file a return or pay a tax that was due before June 1, 2001, during a period for which amnesty is available under section 31(2), is liable for an additional penalty equal to 25% of the amount of tax due.

205.30c Voluntary disclosure agreement.

Sec. 30c. (1) The commissioner, or an authorized representative of the commissioner, on behalf of the department, may enter into a voluntary disclosure agreement with a person who makes application, who is a nonfiler, and who meets 1 or more of the following criteria:

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

(b) Has a reasonable basis to contest liability, as determined by the commissioner, for a tax or fee administered under this act.

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

(3) To be eligible for a voluntary disclosure agreement, subject to subsection (1), a person must meet all of the following requirements:

(a) Except as otherwise provided in this subdivision, has had no previous contact by the department or its agents regarding a tax covered by the agreement. For purposes of this subdivision, a letter of inquiry, whether a final letter or otherwise, requesting information under section 21(2)(a) that was sent to a nonfiler shall not be considered a previous contact under this subdivision if the nonfiler sends a written request to the department to enter into a voluntary disclosure agreement not later than June 30, 1999.

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

(c) Is not currently under audit by the department of treasury or under investigation by the department of state police, department of attorney general, or any local law enforcement agency regarding a tax covered by the agreement.

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

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

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

(g) Has agreed to file returns and worksheets for the lookback period as specified in the agreement.

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

(4) If a person satisfies all requirements stated in subsections (1) and (3), the department shall enter into a voluntary disclosure agreement with that person providing the following relief:

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

(b) The department shall not assess any applicable discretionary or nondiscretionary penalties for the lookback period.

(c) The department shall provide complete confidentiality of the agreement and shall also enter into an agreement not to disclose, in accordance with section 28(1)(f), any of the terms or conditions of the agreement to any tax authorities of any state or governmental authority or to any person except as required by exchange of information agreements authorized under section 28(1)(f), including the international fuel tax agreement under chapter 317 of title 49 of the United States Code, 49 U.S.C. 31701 to 31708. The department shall not exchange information obtained under this section with other states regarding the person unless information regarding the person is specifically requested by another state.

(5) The department shall not bring a criminal action against a person for failure to report or to remit any tax covered by the agreement before or during the lookback period if the facts established by the department are not materially different from the facts disclosed by the person to the department.

(6) A voluntary disclosure agreement is effective when signed by the person subject to the agreement, or his, her, or its lawful representative, and returned to the department within the time period specified in the agreement. The department shall only provide the relief specified in the executed agreement. Any verbal or written communication by the department before the effective date of the agreement shall not afford any penalty waiver, limited lookback period, or other benefit otherwise available under this section.

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

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

(9) Nothing in this section shall be interpreted to allow or permit unjust enrichment as that term is defined in subsection (11). Any tax collected or withheld from another person by an applicant shall be remitted to the department without respect to whether it was collected during or before the lookback period.

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

(11) As used in this section:

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

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

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

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

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

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

(c) "Person" means an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, receiver, estate, trust, or any other group or combination acting as a unit.

(d) "Previous contact" means any notification of an impending audit pursuant to section 21(1), review, notice of intent to assess, or assessment. Previous contact also includes final letters of inquiry pursuant to section 21(2)(a) or a subpoena from the department.

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

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

205.31 Waiver of criminal and civil penalties; conditions; amnesty program; prohibition; notice; payment in installments.

Sec. 31. (1) If a taxpayer does not satisfy a tax liability or makes an excessive claim for a refund as a result of reliance on erroneous current written information provided by the department, the commissioner shall waive all criminal and civil penalties provided by law for failing or refusing to file a return, for failing to pay a tax, or for making an excessive claim for a refund for a tax administered by the revenue division of the department of treasury pursuant to this act if the taxpayer makes a written request for a waiver, files a return or an amended return, and makes full payment of the tax and interest.

(2) For a period to be designated by the state treasurer of not less than 30 days and not more than 60 days, and ending before September 30, 2002, there shall be an amnesty period during which the commissioner shall waive all criminal and civil penalties provided by law for failing or refusing to file a return, for failing to pay a tax, or for making an

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excessive claim for a refund for a tax administered by the revenue division of the department of treasury under this act if the taxpayer makes a written request for a waiver, files a return or an amended return, and makes full payment in either a lump sum or installments as provided under subsection (9), of the tax and interest due for any prior tax year.

(3) This section applies to the nonreporting and underreporting of tax liabilities and to the nonpayment of taxes previously determined to be due, but only to the extent of the penalties attributable to the taxes that were previously due and that are paid during the amnesty period provided for in subsection (2).

(4) The commissioner shall administer this section.

(5) Subsection (2) does not apply to taxes due after June 1, 2001.

(6) There is appropriated from the revenues generated by taxes paid under subsection (2) the sum of \$1,500,000.00 to the department of treasury for administration of the amnesty program created by the amendatory act that added this subsection. This appropriation is allotted for expenditure on and after October 1, 2001. Only general purpose revenue generated by the amendatory act that added this subsection may be used to finance this appropriation.

(7) The commissioner shall not waive criminal and civil penalties applicable to a tax under subsection (2) if 1 or more of the following circumstances apply:

(a) If the taxpayer is eligible to enter into a voluntary disclosure agreement under section 30c for that tax.

(b) If the tax is attributable to income derived from a criminal act, if the taxpayer is under criminal investigation or involved in a civil action or criminal prosecution for that tax, or if the taxpayer has been convicted of a felony under this act or the internal revenue code of 1986.

(8) The department shall provide reasonable notice to taxpayers that may be eligible for the amnesty program at least 30 days before the start of the designated amnesty period. Notification shall include, but is not limited to, a description of the amnesty program on appropriate tax instruction forms and on the internet.

(9) Under the amnesty program described in subsection (2), a taxpayer may pay tax and interest due in installments if the taxpayer meets 1 of the following:

(a) The taxpayer is an individual and submits the greater of \$10,000.00 or 50% of the tax and interest due with the request for waiver under subsection (2) and pays the remaining tax and interest due in 2 equal installments, the first installment due no later than August 15, 2002 and the second installment due no later than September 15, 2002.

(b) A taxpayer that is not an individual submits the greater of \$100,000.00 or 50% of the tax and interest due with the request for waiver under subsection (2) and pays the remaining tax and interest due in 2 equal installments, the first installment due no later than August 15, 2002 and the second installment due no later than September 15, 2002.

This act is ordered to take immediate effect.

Approved November 26, 2001.

Filed with Secretary of State November 27, 2001.
