

**SUBSTITUTE FOR
HOUSE BILL NO. 5036**

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 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.

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

2

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

8 (2) Except as provided in subsections (3) and (6), if a tax-
9 payer fails or refuses to file a return or pay a tax within the
10 time specified, a penalty of \$10.00 or 5% of the tax, whichever
11 is greater, shall be added if the failure is for not more than 1
12 month, with an additional 5% penalty for each additional month or
13 fraction of a month during which the failure continues or the tax
14 and penalty is not paid, to a maximum of 50%. In addition to the
15 penalty, interest at the rate provided in section 23 for defi-
16 ciencies in tax payments shall be added on the tax from the time
17 the tax was due, until paid. After June 30, 1994, the penalty
18 prescribed by this subsection shall not be imposed until the
19 department submits for public hearing pursuant to the administra-
20 tive procedures act of 1969, ~~Act No. 306 of the Public Acts of~~
21 ~~1969, being sections 24.201 to 24.328 of the Michigan Compiled~~
22 ~~Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, a rule defining what
23 constitutes reasonable cause for waiver of the penalty under sub-
24 section (4), which definition shall include illustrative
25 examples.

H04767'01 (H-1)

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

3

1 (3) If a person is required to remit tax due pursuant to
2 section 19(2) and fails or refuses to pay the tax within the time
3 specified, a penalty of 0.167% of the tax shall be added for each
4 day during which the failure continues or the tax and penalty are
5 not paid, to a maximum of 50% of the tax. ~~For reporting periods~~
6 ~~beginning after August 31, 1991 and before November 1, 1991, the~~
7 ~~commissioner shall not impose the penalty under this subsection~~
8 ~~if the tax is remitted within 2 banking days of the date speci-~~
9 ~~fied and the taxpayer demonstrates that the taxpayer's account at~~
10 ~~their financial institution was charged for the tax owed on or~~
11 ~~before the date the remittance was due.~~

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

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

23 (6) If a taxpayer fails to pay an estimated tax payment as
24 may be required by the income tax act of 1967, ~~Act No. 281 of~~
25 ~~the Public Acts of 1967, being sections 206.1 to 206.532 of the~~
26 ~~Michigan Compiled Laws~~ 1967 PA 281, MCL 206.1 TO 206.532, a
27 penalty shall not be imposed if the taxpayer was not required to

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

4

1 make estimated tax payments in the taxpayer's immediately
2 preceding tax year.

3 (7) IN ADDITION TO ANY OTHER INTEREST OR PENALTY PRESCRIBED
4 UNDER THIS SECTION, A TAXPAYER WHO HAS FAILED TO FILE A RETURN OR
5 PAY A TAX THAT WAS DUE BEFORE JUNE 1, 2001, DURING A PERIOD FOR
6 WHICH AMNESTY IS AVAILABLE UNDER SECTION 31(2), IS LIABLE FOR AN
7 ADDITIONAL PENALTY EQUAL TO 25% OF THE AMOUNT OF TAX DUE.

8 Sec. 30c. (1) ~~Through December 31, 2003, the~~ THE commis-
9 sioner, or an authorized representative of the commissioner, on
10 behalf of the department, may enter into a voluntary disclosure
11 agreement with a person who makes application, who is a nonfiler,
12 and who meets 1 or more of the following criteria:

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

15 (b) Has a reasonable basis to contest liability, as deter-
16 mined by the commissioner, for a tax or fee administered under
17 this act.

18 (2) All taxes and fees administered under this act are eli-
19 gible for inclusion in a voluntary disclosure agreement.

20 (3) To be eligible for a voluntary disclosure agreement,
21 subject to subsection (1), a person must meet all of the follow-
22 ing requirements:

23 (a) Except as otherwise provided in this subdivision, has
24 had no previous contact by the department or its agents regarding
25 a tax covered by the agreement. For purposes of this subdivi-
26 sion, a letter of inquiry, whether a final letter or otherwise,
27 requesting information under section 21(2)(a) that was sent to a

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

5

1 nonfiler shall not be considered a previous contact under this
2 subdivision if the nonfiler sends a written request to the
3 department to enter into a voluntary disclosure agreement not
4 later than June 30, 1999.

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

7 (c) Is not currently under audit by the department of trea-
8 sury or under investigation by the department of state police,
9 department of attorney general, or any local law enforcement
10 agency regarding a tax covered by the agreement.

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

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

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

21 (g) Has agreed to file returns and worksheets for the look-
22 back period as specified in the agreement.

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

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

6

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

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

9 (b) The department shall not assess any applicable discre-
10 tionary or nondiscretionary penalties for the lookback period.

11 (c) The department shall provide complete confidentiality of
12 the agreement and shall also enter into an agreement not to dis-
13 close, in accordance with section 28(1)(f), any of the terms or
14 conditions of the agreement to any tax authorities of any state
15 or governmental authority or to any person except as required by
16 exchange of information agreements authorized under section
17 28(1)(f), including the international fuel tax agreement under
18 chapter 317 of title 49 of the United States Code, 49
19 U.S.C. 31701 to 31708. The department shall not exchange infor-
20 mation obtained under this section with other states regarding
21 the person unless information regarding the person is specifi-
22 cally requested by another state.

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

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

7

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

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

16 (8) The department may audit any of the taxes covered by the
17 agreement within the lookback period or in any prior period if,
18 in the department's opinion, an audit of a prior period is neces-
19 sary to determine the person's tax liability for the tax periods
20 within the lookback period or to determine another person's tax
21 liability.

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

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

8

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

4 (11) As used in this section:

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

6 (i) The most recent 48-month period as determined by the
7 department or the first date the person subject to an agreement
8 under this section began doing business in the state if less than
9 48 months.

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

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

26 (iv) If there is doubt as to liability for the tax during
27 the lookback period, another period as determined by the

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

9

1 commissioner to be in the best interest of this state and to
2 preserve equitable and fair administration of taxes.

3 (b) "Nonfiler" for a particular tax ~~is~~ MEANS, BEGINNING
4 JULY 1, 1998, a person that has ~~never~~ NOT filed a return for
5 the particular tax being disclosed FOR PERIODS BEGINNING AFTER
6 DECEMBER 31, 1988. NONFILER ALSO INCLUDES A PERSON WHOSE ONLY
7 FILING WAS A SINGLE BUSINESS TAX ESTIMATED TAX RETURN FILED
8 BEFORE JANUARY 1, 1999.

9 (c) "Person" means an individual, firm, bank, financial
10 institution, limited partnership, copartnership, partnership,
11 joint venture, association, corporation, limited liability com-
12 pany, limited liability partnership, receiver, estate, trust, or
13 any other group or combination acting as a unit.

14 (d) "Previous contact" means any notification of an impend-
15 ing audit pursuant to section 21(1), review, notice of intent to
16 assess, or assessment. Previous contact also includes final let-
17 ters of inquiry pursuant to section 21(2)(a) or a subpoena from
18 the department.

19 (e) "Unjust enrichment" includes the withholding of income
20 tax under the income tax act of 1967, 1967 PA 281, MCL 206.1 to
21 206.532, and the collection of any other tax administered by this
22 act that has not been remitted to the department.

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

25 Sec. 31. (1) If a taxpayer does not satisfy a tax liability
26 or makes an excessive claim for a refund as a result of reliance
27 on erroneous current written information provided by the

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

10

1 department, the commissioner shall waive all criminal and civil
2 penalties provided by law for failing or refusing to file a
3 return, for failing to pay a tax, or for making an excessive
4 claim for a refund for a tax administered by the revenue division
5 of the department of treasury pursuant to this act if the tax-
6 payer makes a written request for a waiver, files a return or an
7 amended return, and makes full payment of the tax and interest.

8 (2) FOR A PERIOD TO BE DESIGNATED BY THE STATE TREASURER OF
9 NOT LESS THAN 30 DAYS AND NOT MORE THAN 60 DAYS, AND ENDING
10 BEFORE SEPTEMBER 30, 2002, THERE SHALL BE AN AMNESTY PERIOD
11 DURING WHICH THE COMMISSIONER SHALL WAIVE ALL CRIMINAL AND CIVIL
12 PENALTIES PROVIDED BY LAW FOR FAILING OR REFUSING TO FILE A
13 RETURN, FOR FAILING TO PAY A TAX, OR FOR MAKING AN EXCESSIVE
14 CLAIM FOR A REFUND FOR A TAX ADMINISTERED BY THE REVENUE DIVISION
15 OF THE DEPARTMENT OF TREASURY UNDER THIS ACT IF THE TAXPAYER
16 MAKES A WRITTEN REQUEST FOR A WAIVER, FILES A RETURN OR AN
17 AMENDED RETURN, AND MAKES FULL PAYMENT IN EITHER A LUMP SUM OR
18 INSTALLMENTS AS PROVIDED UNDER SUBSECTION (9), OF THE TAX AND
19 INTEREST DUE FOR ANY PRIOR TAX YEAR.

20 (3) THIS SECTION APPLIES TO THE NONREPORTING AND UNDERRE-
21 PORTING OF TAX LIABILITIES AND TO THE NONPAYMENT OF TAXES PREVI-
22 OUSLY DETERMINED TO BE DUE, BUT ONLY TO THE EXTENT OF THE PENAL-
23 TIES ATTRIBUTABLE TO THE TAXES THAT WERE PREVIOUSLY DUE AND THAT
24 ARE PAID DURING THE AMNESTY PERIOD PROVIDED FOR IN SUBSECTION
25 (2).

26 (4) THE COMMISSIONER SHALL ADMINISTER THIS SECTION.

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

11

1 (5) SUBSECTION (2) DOES NOT APPLY TO TAXES DUE AFTER JUNE 1,
2 2001.

3 (6) THERE IS APPROPRIATED FROM THE REVENUES GENERATED BY
4 TAXES PAID UNDER SUBSECTION (2) THE SUM OF \$1,500,000.00 TO THE
5 DEPARTMENT OF TREASURY FOR ADMINISTRATION OF THE AMNESTY PROGRAM
6 CREATED BY THE AMENDATORY ACT THAT ADDED THIS SUBSECTION. THIS
7 APPROPRIATION IS ALLOTTED FOR EXPENDITURE ON AND AFTER OCTOBER 1,
8 2001. ONLY GENERAL PURPOSE REVENUE GENERATED BY THE AMENDATORY
9 ACT THAT ADDED THIS SUBSECTION MAY BE USED TO FINANCE THIS
10 APPROPRIATION.

11 (7) THE COMMISSIONER SHALL NOT WAIVE CRIMINAL AND CIVIL PEN-
12 ALTIES APPLICABLE TO A TAX UNDER SUBSECTION (2) IF 1 OR MORE OF
13 THE FOLLOWING CIRCUMSTANCES APPLY:

14 (A) IF THE TAXPAYER IS ELIGIBLE TO ENTER INTO A VOLUNTARY
15 DISCLOSURE AGREEMENT UNDER SECTION 30C FOR THAT TAX.

16 (B) IF THE TAX IS ATTRIBUTABLE TO INCOME DERIVED FROM A
17 CRIMINAL ACT, IF THE TAXPAYER IS UNDER CRIMINAL INVESTIGATION OR
18 INVOLVED IN A CIVIL ACTION OR CRIMINAL PROSECUTION FOR THAT TAX,
19 OR IF THE TAXPAYER HAS BEEN CONVICTED OF A FELONY UNDER THIS ACT
20 OR THE INTERNAL REVENUE CODE OF 1986.

21 (8) THE DEPARTMENT SHALL PROVIDE REASONABLE NOTICE TO TAX-
22 PAYERS THAT MAY BE ELIGIBLE FOR THE AMNESTY PROGRAM AT LEAST 30
23 DAYS BEFORE THE START OF THE DESIGNATED AMNESTY PERIOD.
24 NOTIFICATION SHALL INCLUDE, BUT IS NOT LIMITED TO, A DESCRIPTION
25 OF THE AMNESTY PROGRAM ON APPROPRIATE TAX INSTRUCTION FORMS AND
26 ON THE INTERNET.

HB5036, As Passed House, September 25, 2001

House Bill No. 5036

12

1 (9) UNDER THE AMNESTY PROGRAM DESCRIBED IN SUBSECTION (2), A
2 TAXPAYER MAY PAY TAX AND INTEREST DUE IN INSTALLMENTS IF THE
3 TAXPAYER MEETS 1 OF THE FOLLOWING:

4 (A) THE TAXPAYER IS AN INDIVIDUAL AND SUBMITS THE GREATER OF
5 \$10,000.00 OR 50% OF THE TAX AND INTEREST DUE WITH THE REQUEST
6 FOR WAIVER UNDER SUBSECTION (2) AND PAYS THE REMAINING TAX AND
7 INTEREST DUE IN 2 EQUAL INSTALLMENTS, THE FIRST INSTALLMENT DUE
8 NO LATER THAN AUGUST 15, 2002 AND THE SECOND INSTALLMENT DUE NO
9 LATER THAN SEPTEMBER 15, 2002.

10 (B) A TAXPAYER THAT IS NOT AN INDIVIDUAL SUBMITS THE GREATER
11 OF \$100,000.00 OR 50% OF THE TAX AND INTEREST DUE WITH THE
12 REQUEST FOR WAIVER UNDER SUBSECTION (2) AND PAYS THE REMAINING
13 TAX AND INTEREST DUE IN 2 EQUAL INSTALLMENTS, THE FIRST INSTALL-
14 MENT DUE NO LATER THAN AUGUST 15, 2002 AND THE SECOND INSTALLMENT
15 DUE NO LATER THAN SEPTEMBER 15, 2002.