

Act No. 553
Public Acts of 2018
Approved by the Governor
December 27, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Rep. Byrd

ENROLLED HOUSE BILL No. 5025

AN ACT 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 section 30a (MCL 205.30a), as amended by 1995 PA 116.

The People of the State of Michigan enact:

Sec. 30a. (1) If a taxpayer claims a refund that the department determines is valid as provided in section 30(2), and the department identifies a liability of the taxpayer described in subsection (2), the department shall first apply the amount of the refund as provided in subsections (2) and (3), and the excess, if any, shall be refunded or credited as provided in section 30.

(2) The amount of a refund described in subsection (1) shall be applied to the following in the order of priority stated:

(a) Any other known tax liability of the taxpayer to this state.

(b) Any other known liability of the taxpayer to this state, including a liability to pay support if the right to receive the support has been assigned to the state and the liability is the basis of a request for tax refund offset from the office of child support.

(c) Any of the following in the order of priority received, unless otherwise provided by law:

(i) A support liability of the taxpayer that is the basis of a request for tax refund offset from the office of child support, other than as provided by subdivision (b).

(ii) A writ of garnishment or other valid court order issued by a court of competent jurisdiction and directed to this state or the state treasurer to satisfy a liability of the taxpayer.

(iii) A known city income tax liability for a tax administered by the department through an agreement entered into under section 9 of chapter 1 of the city income tax act, 1964 PA 284, MCL 141.509.

(iv) A levy of the internal revenue service to satisfy a liability of the taxpayer.

(v) A liability to repay benefits obtained under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, to which the taxpayer was not entitled, upon a request for tax refund offset from the Michigan unemployment insurance agency.

(3) If the claim for refund is reflected on a joint tax return, the department shall allocate to each joint taxpayer his or her share of the refund. The amount allocated to each taxpayer shall be applied to his or her respective liabilities in the order of priority stated in subsection (2).

(4) If the department determines that all or a portion of a refund claimed on a joint tax return is subject to application to a liability of an obligated spouse, the department shall notify the joint taxpayers by first class mail sent to the address shown on the joint return. The notice shall be accompanied by a nonobligated spouse allocation form. The notice shall state all of the following:

(a) That all or a portion of the refund claimed by the joint taxpayers is subject to interception to satisfy a liability or liabilities of 1 or both spouses.

(b) The nature of the other liability or liabilities and the name of the obligated spouse or spouses.

(c) That a nonobligated spouse may claim his or her share of the refund by filing a nonobligated spouse allocation form with the department of treasury not more than 30 days after the date the notice was mailed.

(d) A statement of the penalties under subsection (7).

(5) A nonobligated spouse who wishes to claim his or her share of a tax refund shall file with the department a nonobligated spouse allocation form. The nonobligated spouse allocation form shall be in a form specified by the department and shall require the spouses to state the amount of income or other tax base and all adjustments to the income or other tax base, including all subtractions, additions, deductions, credits, and exemptions, stated on their joint income tax return or other joint tax return that is the basis for the claimed refund, and an allocation of those amounts between the obligated and nonobligated spouse. In allocating these amounts, all of the following apply:

(a) A federal deduction for 2-income married persons shall be allocated to the spouse with the lower income who claims the deduction.

(b) Individual income shall be allocated to the spouse who earned the income. Joint income shall be allocated equally between the spouses. The tax base appropriate to tax other than income tax shall be similarly allocated.

(c) Each spouse shall be allocated the personal exemptions he or she would be entitled to claim if separate federal returns had been filed, except that dependency exemptions shall be prorated according to the relative income of the spouses.

(d) Adjustments resulting from a business shall be allocated to the spouse who claimed income from the business.

(e) A homestead property tax credit shall be allocated to the spouse who owned the title or held the leasehold interest in the property claimed as a homestead. A homestead property tax credit for property jointly owned or leased shall be allocated jointly between the spouses.

(f) Ownership of other assets relevant to the allocation shall be disclosed upon request of the department.

(6) A nonobligated spouse allocation form shall be signed by both joint taxpayers. However, the form may be submitted without the signature of the obligated spouse if his or her signature cannot be obtained. The nonobligated spouse shall certify that he or she has made a good faith effort to obtain the signature and shall state the reason that the signature was not obtained.

(7) A person who knowingly makes a false statement on a nonobligated spouse allocation form shall be subject to a penalty of \$25.00 or 25% of the excessive claim for his or her share of the refund, whichever is greater, and other penalties as provided in this act.

(8) A nonobligated spouse to whom the department has sent a notice under subsection (4), who fails to file a nonobligated spouse allocation form within 30 days after the date the notice was mailed, shall be barred from commencing any action against this state or the state treasurer to recover an amount withheld to satisfy a liability of the obligated spouse to which a joint tax refund is applied under this section. The payment by this state of any amount applied to a liability of a taxpayer under this section shall release this state and the state treasurer from all liability to the obligated spouse, the nonobligated spouse, and any other person having or claiming any interest in the amount paid.

(9) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement this section. The rules shall include a procedure for assuring that a taxpayer subject to application of a refund under this section and section 30 has received or will receive notice and an opportunity for a hearing with respect to the liability to which the refund is to be applied.

(10) As used in this section:

(a) "Nonobligated spouse" means a person who has filed a joint income tax return or other joint state tax return and who is not liable for an obligation of his or her spouse described in subsection (2).

(b) "Obligated spouse" means a person who has filed a joint income tax return or other joint state tax return and who is liable for an obligation described in subsection (2) for which his or her spouse is not liable.

(c) "Office of child support" means the agency created in section 2 of the office of child support act, 1971 PA 174, MCL 400.232.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4618 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor