

HOUSE BILL NO. 5645

April 23, 2024, Introduced by Rep. Shannon and referred to the Committee on Tax Policy.

A bill to amend 1973 PA 186, entitled
"Tax tribunal act,"
by amending section 46 (MCL 205.746).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 46. (1) In a proceeding before the tribunal, all parties
2 may submit evidence. The tribunal shall make its decision in
3 writing. The tribunal may admit and give probative effect to
4 evidence of a type commonly relied ~~upon~~**on** by reasonably prudent
5 ~~men~~**persons** in the conduct of their affairs. Irrelevant,
6 immaterial, or unduly repetitious evidence may be excluded. Effect
7 ~~shall~~**must** be given to the rules of privilege recognized by law. An

1 objection to an offer of evidence may be made.

2 (2) A proceeding before the tribunal ~~shall~~**must** be officially
3 reported. ~~A~~**Except as otherwise provided in this section, a** writing
4 prepared, owned, used, in the possession of, or retained by the
5 tribunal in the performance of an official function ~~shall~~**must** be
6 made available to the public in compliance with ~~Act No. 442 of the~~
7 ~~Public Acts of 1976, being sections 15.231 to 15.247 of the~~
8 ~~Michigan Compiled Laws.~~**the freedom of information act, 1976 PA**
9 **442, MCL 15.231 to 15.246.** Costs assessed for transcripts ~~shall~~
10 **must** be collected by the clerk and paid into a revolving fund to be
11 used solely to defray the costs of preparing transcripts.

12 (3) **The tribunal shall issue protective orders to protect the**
13 **confidentiality of confidential information, subject to all of the**
14 **following:**

15 (a) If the parties to a tribunal proceeding agree to entry of
16 a protective order for confidential information or if a party moves
17 the tribunal to protect confidential information and no other party
18 objects to the granting of the motion, the tribunal shall issue a
19 protective order to reasonably protect that information. The
20 issuance of a protective order under this subdivision does not
21 subject the tribunal to liability for failing to disclose the
22 information subject to the protective order under the freedom of
23 information act, 1976 PA 442, MCL 15.231 to 15.246, or to conduct a
24 closed session to consider the information under the open meetings
25 act, 1976 PA 267, MCL 15.261 to 15.275.

26 (b) If a party moves the tribunal to protect confidential
27 information and another party objects to granting the motion, the
28 tribunal shall hold an in camera proceeding that is a closed
29 session under the open meetings act, 1976 PA 267, MCL 15.261 to

1 15.275, to determine whether the information for which the
2 protective order is sought is confidential information.

3 (c) If the tribunal determines the information for which a
4 protective order is sought is not confidential information and
5 denies the motion filed under subdivision (b), the party seeking
6 the protective order may, within 21 days after the issuance of the
7 tribunal's order, do either of the following:

8 (i) Seek appellate review of the tribunal's order before being
9 required to produce the information.

10 (ii) Notify the tribunal and other parties that it has decided
11 not to produce the information and to accept any consequences for
12 failing to produce the information, in which case the information
13 must be returned to the party that submitted it for purposes of the
14 in camera proceeding.

15 (d) If the tribunal determines the information for which a
16 protective order is sought is confidential information and grants
17 the motion filed under subdivision (b) over the objection of
18 another party, the objecting party may, within 21 days after the
19 issuance of the tribunal's order, seek appellate review of the
20 order.

21 (e) If the tribunal determines, after the issuance of a
22 protective order under subdivision (a), that information for which
23 the protective order was issued is not confidential information, in
24 whole or in part, the tribunal shall vacate or amend the protective
25 order to reasonably protect only the confidential information.

26 (f) A protective order issued under this section must be
27 narrowly written to reasonably protect the confidentiality of the
28 confidential information without inhibiting disclosure of all other
29 information in a tribunal matter. When possible, confidential

1 information must be separated from information that is not
2 confidential information so that the records and documents
3 containing both confidential information and information that is
4 not confidential may be disclosed with the confidential information
5 excerpted or redacted. If a tribunal opinion is based on
6 confidential information, the tribunal shall attempt to balance the
7 public's right to know the basis of the tribunal's opinion with the
8 right of the person or persons who might be harmed by the
9 disclosure of confidential information.

10 (g) Information for which the tribunal has issued a protective
11 order under this section is not subject to disclosure by a public
12 body under the freedom of information act, 1976 PA 442, MCL 15.231
13 to 15.246, and hearings at which such information is discussed must
14 be held in closed session under the open meetings act, 1976 PA 267,
15 MCL 15.261 to 15.275, unless the protective order is vacated or
16 amended under subdivision (e). If the protective order is amended,
17 the information determined to be confidential information in the
18 amended protective order is not subject to disclosure by a public
19 body under the freedom of information act, 1976 PA 442, MCL 15.231
20 to 15.246, and hearings at which such information is discussed must
21 be held in closed session under the open meetings act, 1976 PA 267,
22 MCL 15.261 to 15.275. Hearings and other proceedings may be closed
23 only for the portion and to the extent needed to protect
24 confidential information.

25 (4) As used in this section, "confidential information"
26 includes, but is not limited to, parts of correspondence, reports,
27 testimony, audio or video recordings, photos, documents, or stored
28 information that contain particular data, statements, locational
29 information, information about manufacturing processes or other

1 operational information, trade secrets, financial information,
2 personal information, information relating to safety or security,
3 information generated by using proprietary software developed by
4 the person attempting to protect its confidentiality, or other
5 information, that has been kept confidential and is 1 or more of
6 the following:

7 (a) Information that is protected by a Michigan court rule, by
8 a federal or state constitutional provision, by a federal or state
9 law, rule, or regulation, or by the order of a court of competent
10 jurisdiction.

11 (b) Information that, if disclosed, reasonably could
12 compromise the security or safety of a place, 1 or more persons, or
13 property.

14 (c) Information that, if disclosed, either individually or in
15 conjunction with other information, could cause a competitive
16 disadvantage to the person seeking to protect its confidentiality.

17 (d) Information, including electronically stored information
18 in its native format, that is subject to a preexisting
19 confidentiality or licensing agreement entered into in the normal
20 course of business.

21 (e) Information that is subject to a privilege existing under
22 state law, the Michigan court rules, or the Michigan rules of
23 evidence.

24 (f) Information of a personal nature if public disclosure of
25 the information would constitute a clearly unwarranted invasion of
26 an individual's privacy.

27 (g) A tax return or portion of a tax return containing
28 taxpayer information that was filed with either the Michigan
29 department of treasury or the Internal Revenue Service.