

Act No. 116
Public Acts of 1995
Approved by the Governor
June 28, 1995
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June 29, 1995

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1995**

**Introduced by Reps. DeLange, Horton, Dalman, Voorhees, Llewellyn, Hill, Bullard, Perricone, Crissman,
Bush and Gernaat**

ENROLLED HOUSE BILL No. 4151

AN ACT to amend section 30a of Act No. 122 of the Public Acts of 1941, entitled as amended "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 provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act," as added by Act No. 211 of the Public Acts of 1985, being section 205.30a of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 30a of Act No. 122 of the Public Acts of 1941, as added by Act No. 211 of the Public Acts of 1985, being section 205.30a of the Michigan Compiled Laws, is amended to read as follows:

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 levy of the internal revenue service to satisfy a liability of the taxpayer.

(iv) A liability to repay benefits obtained under the Michigan employment security act, Act No. 1 of the Public Acts of the Extra Session of 1936, being sections 421.1 to 421.75 of the Michigan Compiled Laws, to which the taxpayer was not entitled, upon a request for tax refund offset from the Michigan employment security commission.

(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, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, 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, Act No. 174 of the Public Acts of 1971, being section 400.232 of the Michigan Compiled Laws.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.