



# HOUSE BILL No. 5403

November 9, 1995, Introduced by Reps. Baade, Yokich, Harder, Leland, Freeman, Hanley, Anthony, DeMars, Curtis, Gire and Agee and referred to the Committee on Tax Policy.

A bill 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 amended by Act No. 116 of the Public Acts of 1995, being section 205.30a of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 30a of Act No. 122 of the Public Acts of  
2 1941, as amended by Act No. 116 of the Public Acts of 1995, being

1 section 205.30a of the Michigan Compiled Laws, is amended to read  
2 as follows:

3       Sec. 30a. (1) If a taxpayer claims a refund that the  
4 department determines is valid ~~as provided in~~ UNDER  
5 section 30(2), and the department identifies a liability of the  
6 taxpayer described in subsection (2), the department shall first  
7 apply the amount of the refund as provided in subsections (2) and  
8 ~~(3)~~ (4), and the excess, if any, shall be refunded or credited  
9 as provided in section 30.

10       (2) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (3), THE amount  
11 of a refund described in subsection (1) shall be applied to the  
12 following in the order of priority stated:

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

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

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

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

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

1 (iii) A levy of the internal revenue service to satisfy a  
2 liability of the taxpayer.

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

9 (3) A REFUND AMOUNT THAT IS EQUAL TO EITHER OF THE FOLLOWING  
10 CREDITS SHALL NOT BE APPLIED TO A WRIT OF GARNISHMENT UNDER SUB-  
11 SECTION (2):

12 (A) THE PRESCRIPTION DRUG CREDIT ALLOWED UNDER SECTION 273  
13 OF THE INCOME TAX ACT OF 1967, ACT NO. 281 OF THE PUBLIC ACTS OF  
14 1967, BEING SECTION 206.273 OF THE MICHIGAN COMPILED LAWS.

15 (B) THE HOME HEATING CREDIT ALLOWED UNDER SECTION 527A OF  
16 ACT NO. 281 OF THE PUBLIC ACTS OF 1967, BEING SECTION 206.527A OF  
17 THE MICHIGAN COMPILED LAWS.

18 (4) ~~(3)~~ If the claim for refund is reflected on a joint  
19 tax return, the department shall allocate to each joint taxpayer  
20 his or her share of the refund. The amount allocated to each  
21 taxpayer shall be applied to his or her respective liabilities in  
22 the order of priority stated in subsection (2).

23 (5) ~~(4)~~ If the department determines that all or a portion  
24 of a refund claimed on a joint tax return is subject to applica-  
25 tion to a liability of an obligated spouse, the department shall  
26 notify the joint taxpayers by first-class mail sent to the  
27 address shown on the joint return. The notice shall be

1 accompanied by a nonobligated spouse allocation form. The notice  
2 shall state all of the following:

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

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

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

12 (d) A statement of the penalties under subsection ~~(7)~~  
13 (8).

14 (6) ~~(5)~~ A nonobligated spouse who wishes to claim his or  
15 her share of a tax refund shall file with the department a nonob-  
16 ligated spouse allocation form. The nonobligated spouse alloca-  
17 tion form shall be in a form specified by the department and  
18 shall require the spouses to state the amount of income or other  
19 tax base and all adjustments to the income or other tax base,  
20 including all subtractions, additions, deductions, credits, and  
21 exemptions, stated on their joint income tax return or other  
22 joint tax return that is the basis for the claimed refund, and an  
23 allocation of those amounts between the obligated and nonobli-  
24 gated spouse. In allocating these amounts, all of the following  
25 apply:

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

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

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

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

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

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

21 (7) ~~(6)~~ A nonobligated spouse allocation form shall be  
22 signed by both joint taxpayers. However, the form may be submit-  
23 ted without the signature of the obligated spouse if his or her  
24 signature cannot be obtained. The nonobligated spouse shall cer-  
25 tify that he or she has made a good faith effort to obtain the  
26 signature and shall state the reason that the signature was not  
27 obtained.

1           (8) ~~(7)~~ A person who knowingly makes a false statement on  
2 a nonobligated spouse allocation form shall be subject to a pen-  
3 alty of \$25.00 or 25% of the excessive claim for his or her share  
4 of the refund, whichever is greater, and other penalties as pro-  
5 vided in this act.

6           (9) ~~(8)~~ A nonobligated spouse to whom the department has  
7 sent a notice under subsection ~~(4)~~ (5), who fails to file a  
8 nonobligated spouse allocation form within 30 days after the date  
9 the notice was mailed, shall be barred from commencing any action  
10 against this state or the state treasurer to recover an amount  
11 withheld to satisfy a liability of the obligated spouse to which  
12 a joint tax refund is applied under this section. The payment by  
13 this state of any amount applied to a liability of a taxpayer  
14 under this section shall release this state and the state trea-  
15 surer from all liability to the obligated spouse, the nonobli-  
16 gated spouse, and any other person having or claiming any inter-  
17 est in the amount paid.

18           (10) ~~(9)~~ The department shall promulgate rules under the  
19 administrative procedures act of 1969, Act No. 306 of the Public  
20 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
21 Compiled Laws, as necessary to implement this section. The rules  
22 shall include a procedure for assuring that a taxpayer subject to  
23 application of a refund under this section and section 30 has  
24 received or will receive notice and an opportunity for a hearing  
25 with respect to the liability to which the refund is to be  
26 applied.

1 (11) ~~(10)~~ As used in this section:

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

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

10 (c) "Office of child support" means the agency created in  
11 section 2 of the office of child support act, Act No. 174 of the  
12 Public Acts of 1971, being section 400.232 of the Michigan  
13 Compiled Laws.