

**SENATE BILL NO. 1012**

March 12, 1998, Introduced by Senator BOUCHARD and referred to the Committee on Finance.

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 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; and to declare the effect of this act,"

by amending section 21 (MCL 205.21), as amended by 1993 PA 13.

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

1       Sec. 21. (1) If a taxpayer fails or refuses to make a  
2 return or payment as required, in whole or in part, or if the  
3 department has reason to believe that a return made or payment

**SB 1012, As Passed Senate, April 28, 1998**

SB 1012 as amended April 21, 1998

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1 does not supply sufficient information for an accurate  
2 determination of the amount of tax due, the department may obtain  
3 information on which to base an assessment of the tax. THE  
4 DEPARTMENT, BY its  
5 duly authorized agents AND WITH NOT LESS THAN 24 HOURS' NOTICE TO  
6 A PERSON, ~~the department~~ may examine the books, records, and  
7 papers and audit the accounts of ~~a~~ THAT person or any other  
8 records pertaining to the tax. HOWEVER, THE DEPARTMENT IS NOT  
9 REQUIRED TO GIVE THE NOT-LESS-THAN-24-HOUR NOTICE TO A PERSON TO  
10 EXAMINE BOOKS, RECORDS, AND PAPERS OR TO AUDIT THE ACCOUNTS OR  
11 RECORDS IF THE COMMISSIONER OR THE COMMISSIONER'S DESIGNATED  
12 REPRESENTATIVE REASONABLY BELIEVES THAT A PERSON LIABLE FOR A TAX  
13 ADMINISTERED UNDER THIS ACT DOES OR INTENDS TO DO 1 OR MORE OF THE  
14 FOLLOWING:

- (A) QUICKLY DEPART FROM THIS STATE.
- (B) REMOVE PROPERTY FROM THIS STATE.
- (C) CONCEAL A PERSON OR PROPERTY IN THIS STATE.
- (D) COMMIT FRAUD.
- (E) UNDERREPORT TAX.

8 (2) In carrying out this section, the department and the  
9 taxpayer shall comply with the following procedure:

10 (a) The department shall send to the taxpayer a letter of  
11 inquiry stating, in a courteous and unthreatening manner, the  
12 department's opinion that the taxpayer needs to furnish further  
13 information or owes taxes to the state, and the reason for that  
14 opinion. A letter of inquiry shall also explain the procedure by  
15 which the person may initiate communication with the department  
16 to resolve any dispute. This subdivision does not apply in any  
17 of the following circumstances:

18 (i) The taxpayer files a return showing a tax due and fails  
19 to pay that tax.

20 (ii) The deficiency resulted from an audit of the taxpayer's  
21 books and records by this state.

22 (iii) The taxpayer otherwise affirmatively admits that a tax  
23 is due and owing.

24 (b) If the dispute is not resolved within 30 days after the  
25 department sends the taxpayer a letter of inquiry or if a letter  
26 of inquiry is not required pursuant to subdivision (a), the  
27 department, after determining the amount of tax due from a



1 taxpayer, shall give notice to the taxpayer of its intent to  
2 assess the tax. The notice shall include the amount of the tax  
3 the department believes the taxpayer owes, the reason for that  
4 deficiency, and a statement advising the taxpayer of a right to  
5 an informal conference, the requirement of a written request by  
6 the taxpayer for the informal conference that includes the  
7 taxpayer's statement of the contested amounts and an explanation  
8 of the dispute, and the 30-day time limit for that request.

9 (c) If the taxpayer serves written notice upon the depart-  
10 ment within 30 days after the taxpayer receives a notice of  
11 intent to assess, remits the uncontested portion of the liabili-  
12 ty, and provides a statement of the contested amounts and an  
13 explanation of the dispute, the taxpayer is entitled to an infor-  
14 mal conference on the question of liability for the assessment.

15 (d) Upon receipt of a taxpayer's written notice, the depart-  
16 ment shall set a mutually agreed upon or reasonable time and  
17 place for the informal conference and shall give the taxpayer  
18 reasonable written notice not less than 20 days before the infor-  
19 mal conference. The notice shall specify the intent to assess,  
20 type of tax, and tax year that is the subject of the informal  
21 conference. The informal conference provided for by this subdi-  
22 vision is not subject to the administrative procedures act of  
23 1969, ~~Act No. 306 of the Public Acts of 1969, as amended, being~~  
24 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws 1969~~  
25 PA 306, MCL 24.201 TO 24.328, but is subject to the rules govern-  
26 ing informal conferences as promulgated by the department in  
27 accordance with ~~Act No. 306 of the Public Acts of 1969~~ THE

1 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
2 24.328. The taxpayer may appear or be represented by any person  
3 before the department at an informal conference, and may present  
4 testimony and argument. At the party's own expense and with  
5 advance notice to the other party, a taxpayer or the department,  
6 or both, may make an audio recording of an informal conference.

7 (e) After the informal conference, the commissioner shall  
8 render a decision and order in writing, setting forth the reasons  
9 and authority, and shall assess the tax, interest, and penalty  
10 found to be due and payable. The decision and order are limited  
11 to the subject of the informal conference as included in the  
12 notice under subdivision (d).

13 (f) If the taxpayer does not protest the notice of intent to  
14 assess within the time provided in subdivision (c), the depart-  
15 ment may assess the tax and the interest and penalty on the tax  
16 that the department believes are due and payable. An assessment  
17 under this subdivision or subdivision (e) is final and subject to  
18 appeal as provided in section 22. The final notice of assessment  
19 shall include a statement advising the person of a right to  
20 appeal.

21 (3) If a protest to the notice of intent to assess the tax  
22 is determined by the commissioner to be a frivolous protest or a  
23 desire by the taxpayer to delay or impede the administration of  
24 taxes administered under this act, a penalty of \$25.00 or 25% of  
25 the amount of tax under protest, whichever is greater, shall be  
26 added to the tax.