

REVENUE DIVISION OF DEPARTMENT OF TREASURY (EXCERPT)
Act 122 of 1941

***** 205.21.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 1, 2006 *****

205.21.amended Failure or refusal to make return or payment; obtaining information on which to base assessment; procedure; determination of refund as result of audit; appeal; frivolous protest; penalty; claim for refund.

Sec. 21. (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax.

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

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

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

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

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

(b) If the dispute is not resolved within 30 days after the department sends the taxpayer a letter of inquiry or if a letter of inquiry is not required pursuant to subdivision (a), the department, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to assess the tax. The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, and a statement advising the taxpayer of a right to an informal conference, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 60-day time limit for that request.

(c) If the taxpayer serves written notice upon the department within 60 days after the taxpayer receives a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.

(d) Upon receipt of a taxpayer's written notice, the department shall set a mutually agreed upon or reasonable time and place for the informal conference and shall give the taxpayer reasonable written notice not less than 20 days before the informal conference. The notice shall specify the intent to assess, type of tax, and tax year that is the subject of the informal conference. The informal conference provided for by this subdivision is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, but is subject to the rules governing informal conferences as promulgated by the department in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The taxpayer may appear or be represented by any person before the department at an informal conference, and may present testimony and argument. At the party's own expense and with advance notice to the other party, a taxpayer or the department, or both, may make an audio recording of an informal conference. A taxpayer who has made a timely request for an informal conference may at any time withdraw that request by filing written notice with the department. Upon receipt of the request for withdrawal from the informal conference process, the department shall issue a decision and order of determination and, where appropriate, a final assessment, from which a taxpayer may seek an appeal as provided under section 22.

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

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

(3) If as a result of an audit it is determined that a taxpayer is owed a refund, the department shall send a notice to the taxpayer stating the amount of the refund the department believes is owed to the taxpayer as a

result of the audit. The notice shall inform the taxpayer of his or her appeal rights. If the taxpayer disputes the findings of the audit, the taxpayer may serve written notice upon the department in the same manner as provided for in subsection (2)(c) and the taxpayer is entitled to the same informal conference and subsequent appeals as provided for in this section.

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

(5) During the course of the informal conference under subsection (2)(d), the taxpayer by written notice may convert his or her contest of the assessment to a claim for a refund. The written notice shall be accompanied by payment of the contested amount. The informal conference shall continue and the department shall render a decision and issue an order regarding the claim for refund.

History: Add. 1980, Act 162, Eff. Sept. 17, 1980;—Am. 1986, Act 58, Eff. May 1, 1986;—Am. 1991, Act 83, Imd. Eff. July 18, 1991;—Am. 1993, Act 13, Imd. Eff. Apr. 1, 1993;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2006, Act 8, Eff. Oct. 1, 2006;—Am. 2006, Act 9, Eff. Oct. 1, 2006;—Am. 2006, Act 10, Eff. Oct. 1, 2006;—Am. 2006, Act 11, Eff. Oct. 1, 2006.

Compiler's note: P.A. 1980, No. 162, section 4, provides: "This amendatory act shall take effect 90 days after signature by the Governor. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective with the effective date of this act. An appeal to the state board of tax appeals filed prior to the effective date of this act shall proceed as follows:

"(a) A matter which has not been heard on or before January 1, 1981, shall be transferred to the tax tribunal as of January 1, 1981.

"(b) A matter which has been heard on or before January 1, 1981 shall be completed by the board and a decision issued before December 31, 1981.

"(c) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

Act 138 of 1981 purported to amend enacting sections 3 and 4 of Act 162 of 1980 to read as follows: "Section 3. Sections 7, 8, and 9 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.7, 205.8, and 205.9 of the Compiled Laws of 1970, are repealed effective September 30, 1982.

"Section 4. (1) This amendatory act shall take effect September 16, 1980. All new appeals from an assessment, decision or order of the department shall be made to the tax tribunal effective September 16, 1980. An appeal to the state board of tax appeals filed prior to September 16, 1980 shall proceed as follows:

"(a) A matter which has not been heard, and submitted to the board for decision, on or before January 1, 1982 shall be transferred to the tax tribunal as of January 1, 1982.

"(b) A matter which has been heard, and submitted to the board for decision, on or before January 1, 1982 shall be completed and a decision issued before September 30, 1982.

"(2) An appeal having been filed in any court of record in this state prior to January 1, 1981 shall proceed in those courts until a decision is rendered. Appeals filed after January 1, 1981 shall be in accordance with this amendatory act."

However, the provisions of Act 162 of 1980 had already taken effect prior to October 29, 1981, the effective date of Act 138 of 1981.

Section 2 of Act 58 of 1986 provides: "The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986."

Section 3 of Act 58 of 1986 provides: Section 2 of Act 58 of 1986 provides: "The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986. "Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Popular name: Revenue Act