



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
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Michigan House of Representatives
State Capitol Building
Lansing, MI 48909-7514

Representatives,

As you know, on March 17 of this year, the Internal Revenue Service (IRS) and the federal Department of Treasury notified taxpayers that the income tax filing date for Tax Year 2020 would be extended from April 15, 2021 to May 17, 2021. The Michigan Department of Treasury followed suit on March 19, 2021. The department's waiver of penalties and interest for 2020, however, did not automatically extend to city income taxes. To extend the extra filing time to city tax filers, today I signed Enrolled House Bill 4569.

However, HB 4569 goes beyond the 2020 tax year. Rather than extending the city income tax filing deadline to a date certain, it attempts to make future extensions of the filing deadline for city tax filers automatic whenever the IRS extends the filing deadline for federal taxpayers. That attempt is very likely unlawful.

As our Court of Appeals explained in 1973, "state legislation which adopts by reference future legislation, rules, or regulations, or amendments thereof, which are enacted, adopted, or promulgated by another sovereign entity, constitutes an unlawful delegation of legislative power." *People v. Urban*, 45 Mich App 255, 262 (1973). And in 1994, the Court of Appeals clarified that even where the legislature intended to incorporate future changes in federal law into Michigan law, it "could not constitutionally incorporate subsequent amendments of the federal Internal Revenue Code." *Radecki v. Director of Bureau of Worker's Disability Compensation*, 208 Mich App 19, 23 (1994).

To be clear, the result of this constitutional defect is simply to freeze the reference to federal law as of the time of the original state statute. That means the city income tax extension is valid for Tax Year 2020. I am delighted to sign legislation giving Michigan taxpayers an extra month to file—especially in light of the ongoing disruption caused by the COVID-19 pandemic.

Respectfully,

Gretchen Whitmer
Governor