

HOUSE BILL No. 5543

April 19, 2012, Introduced by Reps. Pscholka, Nesbitt, Cotter, Tyler, Bumstead, MacGregor, Jacobsen and Lyons and referred to the Committee on Tax Policy.

A bill to amend 1941 PA 122, entitled

"An act to establish the revenue collection duties of the department of treasury; to prescribe its powers and duties as the revenue collection agency of this state; to prescribe certain powers and duties of the state treasurer; to establish the collection duties of certain other state departments for money or accounts owed to this state; to regulate the importation, stamping, and disposition of certain tobacco products; 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; to prescribe penalties and provide remedies; and to declare the effect of this act,"

by amending section 27a (MCL 205.27a), as amended by 2011 PA 304.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 27a. (1) If a person liable for a tax administered
2 under this act sells out his or her business or its stock of

1 goods or quits the business, the person shall make a final return
2 within 15 days after the date of selling or quitting the
3 business. The purchaser or succeeding purchasers, if any, who
4 purchase a going or closed business or its stock of goods shall
5 escrow sufficient money to cover the amount of taxes, interest,
6 and penalties as may be due and unpaid until the former owner
7 produces a receipt from the state treasurer or the state
8 treasurer's designated representative showing that the taxes due
9 are paid, or a certificate stating that taxes are not due. Upon
10 the owner's written waiver of confidentiality, the department may
11 release to a purchaser a business's known tax liability for the
12 purposes of establishing an escrow account for the payment of
13 taxes. If the purchaser or succeeding purchasers of a business or
14 its stock of goods fail to comply with the escrow requirements of
15 this subsection, the purchaser is personally liable for the
16 payment of the taxes, interest, and penalties accrued and unpaid
17 by the business of the former owner. The purchaser's or
18 succeeding purchaser's personal liability is limited to the fair
19 market value of the business less the amount of any proceeds that
20 are applied to balances due on secured interests that are
21 superior to the lien provided for in section 29(1).

22 (2) A deficiency, interest, or penalty shall not be assessed
23 after the expiration of 4 years after the date set for the filing
24 of the required return or after the date the return was filed,
25 whichever is later. The taxpayer shall not claim a refund of any
26 amount paid to the department after the expiration of 4 years
27 after the date set for the filing of the original return. A

1 person who has failed to file a return is liable for all taxes
2 due for the entire period for which the person would be subject
3 to the taxes. If a person subject to tax fraudulently conceals
4 any liability for the tax or a part of the tax, or fails to
5 notify the department of any alteration in or modification of
6 federal tax liability, the department, within 2 years after
7 discovery of the fraud or the failure to notify, shall assess the
8 tax with penalties and interest as provided by this act, computed
9 from the date on which the tax liability originally accrued. The
10 tax, penalties, and interest are due and payable after notice and
11 hearing as provided by this act.

12 (3) The running of the statute of limitations is suspended
13 for the following:

14 (a) The period pending a final determination of tax,
15 including audit, conference, hearing, and litigation of liability
16 for federal income tax or a tax administered by the department
17 and for 1 year after that period.

18 (b) The period for which the taxpayer and the state
19 treasurer have consented to in writing that the period be
20 extended.

21 (4) The running of the statute of limitations is suspended
22 only as to those items that were the subject of the audit,
23 conference, hearing, or litigation for federal income tax or a
24 tax administered by the department.

25 (5) If a corporation, limited liability company, limited
26 liability partnership, partnership, or limited partnership liable
27 for taxes administered under this act fails for any reason to

1 file the required returns or to pay the tax due, any of its
2 officers, members, managers, or partners who the department
3 determines, based on either an audit or an investigation, have
4 control or supervision of, or responsibility for, making the
5 returns or payments is personally liable for the failure. The
6 signature of any corporate officers, members, managers, or
7 partners on returns or negotiable instruments submitted in
8 payment of taxes is prima facie evidence of their responsibility
9 for making the returns and payments. The dissolution of a
10 corporation, limited liability company, limited liability
11 partnership, partnership, or limited partnership does not
12 discharge an officer's, member's, manager's, or partner's
13 liability for a prior failure of the corporation, limited
14 liability company, limited liability partnership, partnership, or
15 limited partnership to make a return or remit the tax due. The
16 sum due for a liability may be assessed and collected under the
17 related sections of this act.

18 (6) Notwithstanding the provisions of subsection (2), a
19 claim for refund based upon the validity of a tax law based on
20 the laws or constitution of the United States or the state
21 constitution of 1963 shall not be paid unless the claim is filed
22 within 90 days after the date set for filing a return.

23 (7) Subsection (6) does not apply to a claim for the refund
24 of a tax paid for the 1984 tax year or a tax year after the 1984
25 tax year on income received as retirement or pension benefits
26 from a public retirement system of the United States government
27 if the claimant waives any claim for the refund of such a tax

1 paid for a tax year before 1984. Claims for refunds to which this
 2 subsection applies shall be paid in accordance with the following
 3 schedule:

4	Refunds for	Payable on
5	<u>tax year:</u>	<u>or after:</u>
6	1988 and 1987	July 1, 1990
7	1986	July 1, 1991
8	1985	July 1, 1992
9	1984	July 1, 1993

10 (8) Notwithstanding any other provision in this act, for a
 11 taxpayer that filed a tax return under former 1975 PA 228 that
 12 included in the tax return an entity disregarded for federal
 13 income tax purposes under the internal revenue code, both of the
 14 following shall apply:

15 (a) The department shall not assess the taxpayer an
 16 additional tax or reduce an overpayment because the taxpayer
 17 included an entity disregarded for federal income tax purposes on
 18 its tax return filed under former 1975 PA 228.

19 (b) The department shall not require the entity disregarded
 20 for federal income tax purposes on the taxpayer's tax return
 21 filed under former 1975 PA 228 to file a separate tax return.

22 (9) Notwithstanding any other provision in this act, if a
 23 taxpayer filed a tax return under former 1975 PA 228 that
 24 included in the tax return an entity disregarded for federal
 25 income tax purposes under the internal revenue code, then the
 26 taxpayer shall not claim a refund based on the entity disregarded

1 for federal income tax purposes under the internal revenue code
2 filing a separate return as a distinct taxpayer.

3 (10) Notwithstanding any other provision in this act, the
4 department shall not assess a tax or reduce an overpayment, and
5 shall approve a claim for a refund of any tax paid, under former
6 1975 PA 228 and subject to the statute of limitations for an
7 individual, estate, or person organized for estate or gift
8 planning purposes for amounts received, income, or gain other
9 than those from transactions, activities, and sources in the
10 regular course of the person's trade or business. For purposes of
11 this subsection, all of the following apply:

12 (a) Receipts, income, and gain that are from transactions,
13 activities, and sources in the regular course of the person's
14 business include, but are not limited to, amounts derived from
15 the following:

16 (i) Tangible and intangible property if the acquisition,
17 rental, lease, management, or disposition of the property
18 constitutes integral parts of the person's regular trade or
19 business operations.

20 (ii) Transactions in the course of the person's trade or
21 business from stock and securities of any foreign or domestic
22 corporation and dividend and interest income.

23 (iii) Isolated sales, leases, assignments, licenses,
24 divisions, or other infrequently occurring dispositions,
25 transfers, or transactions involving tangible, intangible, or
26 real property if the property is or was used in the person's
27 trade or business operation.

1 (iv) The sale of an interest in a business that constitutes
2 an integral part of the person's regular trade or business.

3 (v) The lease or rental of real property.

4 (b) Receipts, income, and gain that are not from
5 transactions, activities, and sources in the regular course of
6 the person's trade or business include, but are not limited to,
7 amounts derived from the following:

8 (i) Investment activity, including interest, dividends,
9 royalties, and gains from an investment portfolio or retirement
10 account, if the investment activity is not part of the person's
11 trade or business.

12 (ii) The disposition of tangible, intangible, or real
13 property held for personal use and enjoyment, such as a personal
14 residence or personal assets.

15 (11) Notwithstanding any other provision in this act, the
16 department shall not assess a tax or reduce an overpayment, and
17 shall approve a claim for a refund for any tax paid, under former
18 1975 PA 228 and subject to the statute of limitations for
19 receipts, income, or gain derived from investment activity other
20 than receipts, income, or gain from transactions, activities, and
21 sources in the regular course of the person's trade or business
22 by a person that is organized exclusively to conduct investment
23 activity and that does not conduct investment activity for any
24 person other than an individual or a person related to that
25 individual or by a common trust fund established under the
26 collective investment funds act, 1941 PA 174, MCL 555.101 to
27 555.113. For purposes of this subsection, a person is related to

1 an individual if that person is a spouse, brother or sister,
2 whether of the whole or half blood or by adoption, ancestor,
3 lineal descendant of that individual or related person, or a
4 trust benefiting that individual or 1 more persons related to
5 that individual.

6 (12) THE FILING OF A RETURN INCLUDES THE FILING OF A
7 COMBINED, CONSOLIDATED, OR COMPOSITE RETURN WHETHER ANY TAX WAS
8 PAID AND WHETHER THE TAXPAYER INCLUDED ANY AMOUNT IN THE TAX LINE
9 INCLUDING ZERO.

10 Enacting section 1. It is the intent of the legislature that
11 subsection (12) of section 27a of 1941 PA 122, MCL 205.27a, as
12 added by this amendatory act, is intended to clarify the original
13 intent of the legislature.