

SENATE BILL No. 1329

September 27, 2012, Introduced by Senator BRANDENBURG and referred to the Committee on Finance.

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 2012 PA 211.

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

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

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

14 (3) The running of the statute of limitations is suspended
15 for the following:

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

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

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

27 (5) If a ~~corporation, limited liability company, limited~~

1 ~~liability partnership, partnership, or limited partnership~~
2 **BUSINESS** liable for taxes administered under this act **COLLECTS A**
3 **TAX FROM ANOTHER PERSON BUT** fails, ~~for any reason~~ **AFTER**
4 **ASSESSMENT**, to ~~file the required returns or to pay the~~ **COLLECTED**
5 tax due **TO THIS STATE**, any of its officers, members, managers **OF**
6 **A MANAGER-MANAGED LIMITED LIABILITY COMPANY**, or partners who the
7 department determines, based on either an audit or an
8 investigation, ~~have control or supervision of, or responsibility~~
9 ~~for, making the returns or payments~~ **WAS THE RESPONSIBLE PERSON** is
10 personally liable ~~for the failure~~ **TO THIS STATE FOR THE AMOUNT OF**
11 **TAXES COLLECTED AND UNPAID**. ~~The signature of any corporate~~
12 ~~officers, members, managers, or partners on returns or negotiable~~
13 ~~instruments submitted in payment of taxes is prima facie evidence~~
14 ~~of their responsibility for making the returns and payments. The~~
15 ~~dissolution of a corporation, limited liability company, limited~~
16 ~~liability partnership, partnership, or limited partnership does~~
17 ~~not discharge an officer's, member's, manager's, or partner's~~
18 ~~liability for a prior failure of the corporation, limited~~
19 ~~liability company, limited liability partnership, partnership, or~~
20 ~~limited partnership to make a return or remit the tax due. The~~
21 sum due for a liability may be assessed and collected under the
22 related sections of this act. **THE DEPARTMENT MAY NOT ASSESS A**
23 **RESPONSIBLE PERSON UNDER THIS SECTION MORE THAN 4 YEARS AFTER THE**
24 **DATE OF THE ASSESSMENT ISSUED TO THE PERSON'S BUSINESS. IF A**
25 **RESPONSIBLE PERSON UNDER THIS SUBSECTION AND A PURCHASER UNDER**
26 **SUBSECTION (1) ARE BOTH LIABLE FOR THE TAX ASSESSED TO THE**
27 **BUSINESS, THE DEPARTMENT SHALL FIRST ASSESS THE PURCHASER LIABLE**

1 UNDER SUBSECTION (1) BEFORE ASSESSING THE RESPONSIBLE PERSON
2 UNDER THIS SUBSECTION. IF THERE IS MORE THAN 1 RESPONSIBLE PERSON
3 UNDER THIS SUBSECTION, THE DEPARTMENT SHALL NOT COLLECT MORE THAN
4 THE AMOUNT OF THE COLLECTED TAX THAT WAS NOT REMITTED BY THE
5 BUSINESS, AND THE DEPARTMENT SHALL REPORT ALL PAYMENTS OF THE
6 COLLECTED TAX MADE BY ANY RESPONSIBLE PERSON OR PURCHASER ON THE
7 MONTHLY BILLING STATEMENT ISSUED TO EACH RESPONSIBLE PERSON AND
8 PURCHASER AND SHALL CORRECT THE TOTAL AMOUNT OF UNPAID COLLECTED
9 TAX THAT REMAINS DUE AND OWING. AT ANY CONFERENCE, CONTESTED CASE
10 HEARING, OR TRIAL, THE DEPARTMENT HAS THE BURDEN TO FIRST PRODUCE
11 PRIMA FACIE EVIDENCE OR ESTABLISH A PRIMA FACIE CASE THAT A
12 PERSON IS A RESPONSIBLE PERSON UNDER THIS SUBSECTION AND THAT THE
13 DEPARTMENT PROVIDED NOTICE OF THE ASSESSMENT UNDER SECTIONS 8 AND
14 28(1)(B) TO THE BUSINESS AND TO THE RESPONSIBLE PERSON ASSESSED
15 UNDER THIS SUBSECTION. A RESPONSIBLE PERSON MAY CHALLENGE THE
16 VALIDITY OF AN ASSESSMENT TO THE SAME EXTENT THAT THE BUSINESS
17 COULD HAVE CHALLENGED THAT ASSESSMENT UNDER SECTIONS 21 AND 22
18 WHEN ORIGINALLY ISSUED.

19 (6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, UPON
20 REQUEST OF A RESPONSIBLE PERSON ASSESSED UNDER SUBSECTION (5),
21 THE DEPARTMENT SHALL DISCLOSE ALL OF THE FOLLOWING:

22 (A) THE NAME OF ANY OTHER PERSON DETERMINED TO BE LIABLE
23 UNDER SUBSECTION (5) AND THE NAME OF ANY PURCHASER DETERMINED TO
24 BE LIABLE UNDER SUBSECTION (1), THE DESCRIPTION OF ITS COLLECTION
25 ACTIVITIES ATTEMPTED AGAINST EACH RESPONSIBLE PERSON AND
26 PURCHASER AND THE ASSESSMENTS ISSUED TO EACH RESPONSIBLE PERSON
27 AND PURCHASER.

1 (B) ALL BACKGROUND FILE DOCUMENTS CONSIDERED IN THE
2 DEPARTMENT'S AUDIT OR INVESTIGATION, INCLUDING ALL TAX RETURNS,
3 NEGOTIABLE INSTRUMENTS, AND CORRESPONDENCE MADE BY THE BUSINESS
4 AND ASSESSMENTS ISSUED TO THE BUSINESS FOR THE SAME TAXES AND
5 PERIODS ASSESSED TO THE RESPONSIBLE PERSON UNDER SUBSECTION (5),
6 AND ANY OTHER DOCUMENTS THAT THE TRIBUNAL OR COURT DETERMINES ARE
7 NECESSARY FOR A FAIR ADJUDICATION OF A PERSON'S LIABILITY UNDER
8 SUBSECTION (5).

9 (7) IF MORE THAN 1 RESPONSIBLE PERSON UNDER SUBSECTION (5)
10 IS LIABLE FOR THE TAX ASSESSED TO THE BUSINESS, EACH RESPONSIBLE
11 PERSON SHALL BE ENTITLED TO THE FOLLOWING REMEDIES:

12 (A) FOLLOWING AN INFORMAL CONFERENCE REQUESTED BY THE
13 RESPONSIBLE PERSON UNDER SECTION 21, THE DEPARTMENT SHALL, BASED
14 ON THE INFORMATION AVAILABLE, DETERMINE AND APPORTION LIABILITY
15 TO AN AMOUNT EQUAL TO THE RESPONSIBLE PERSON'S PROPORTIONATE
16 SHARE OF THE TAX ASSESSED.

17 (B) IN A PROCEEDING IN WHICH THE RESPONSIBLE PERSON'S
18 LIABILITY IS TO BE ADJUDICATED, THE TRIBUNAL OR COURT SHALL LIMIT
19 THE AMOUNT OF TAXES ASSESSED TO THE RESPONSIBLE PERSON TO AN
20 AMOUNT EQUAL TO THE PERSON'S PROPORTIONATE SHARE OF THE TAX
21 ASSESSED.

22 (C) IN A SEPARATE PROCEEDING IN CIRCUIT COURT, THE
23 RESPONSIBLE PERSON MAY RECOVER FROM OTHER PERSONS, WHETHER OR NOT
24 THOSE PERSONS WERE ALSO ASSESSED UNDER SUBSECTION (5), AN AMOUNT
25 EQUAL TO THE EXCESS OF THE AMOUNT PAID BY THE PERSON OVER THE
26 PERSON'S PROPORTIONATE SHARE OF THE TAX ASSESSED.

27 (8) ~~(6)~~—Notwithstanding the provisions of subsection (2), a

claim for refund based upon the validity of a tax law based on the laws or constitution of the United States or the state constitution of 1963 shall not be paid unless the claim is filed within 90 days after the date set for filing a return.

(9) ~~(7)~~—Subsection ~~(6)~~—(8) does not apply to a claim for the refund of a tax paid for the 1984 tax year or a tax year after the 1984 tax year on income received as retirement or pension benefits from a public retirement system of the United States government if the claimant waives any claim for the refund of such a tax paid for a tax year before 1984. Claims for refunds to which this subsection applies shall be paid in accordance with the following schedule:

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

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

(a) The department shall not assess the taxpayer an additional tax or reduce an overpayment because the taxpayer included an entity disregarded for federal income tax purposes on

1 its tax return filed under former 1975 PA 228.

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

5 (11) ~~(9)~~ Notwithstanding any other provision in this act, if
6 a taxpayer filed a tax return under former 1975 PA 228 that
7 included in the tax return an entity disregarded for federal
8 income tax purposes under the internal revenue code, then the
9 taxpayer shall not claim a refund based on the entity disregarded
10 for federal income tax purposes under the internal revenue code
11 filing a separate return as a distinct taxpayer.

12 (12) ~~(10)~~ Notwithstanding any other provision in this act,
13 the department shall not assess a tax or reduce an overpayment,
14 and shall approve a claim for a refund of any tax paid, under
15 former 1975 PA 228 and subject to the statute of limitations for
16 an individual, estate, or person organized for estate or gift
17 planning purposes for amounts received, income, or gain other
18 than those from transactions, activities, and sources in the
19 regular course of the person's trade or business. For purposes of
20 this subsection, all of the following apply:

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

25 (i) Tangible and intangible property if the acquisition,
26 rental, lease, management, or disposition of the property
27 constitutes integral parts of the person's regular trade or

1 business operations.

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

5 (iii) Isolated sales, leases, assignments, licenses,
6 divisions, or other infrequently occurring dispositions,
7 transfers, or transactions involving tangible, intangible, or
8 real property if the property is or was used in the person's
9 trade or business operation.

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

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

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

17 (i) Investment activity, including interest, dividends,
18 royalties, and gains from an investment portfolio or retirement
19 account, if the investment activity is not part of the person's
20 trade or business.

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

24 (13) ~~(11)~~ Notwithstanding any other provision in this act,
25 the department shall not assess a tax or reduce an overpayment,
26 and shall approve a claim for a refund for any tax paid, under
27 former 1975 PA 228 and subject to the statute of limitations for

1 receipts, income, or gain derived from investment activity other
2 than receipts, income, or gain from transactions, activities, and
3 sources in the regular course of the person's trade or business
4 by a person that is organized exclusively to conduct investment
5 activity and that does not conduct investment activity for any
6 person other than an individual or a person related to that
7 individual or by a common trust fund established under the
8 collective investment funds act, 1941 PA 174, MCL 555.101 to
9 555.113. For purposes of this subsection, a person is related to
10 an individual if that person is a spouse, brother or sister,
11 whether of the whole or half blood or by adoption, ancestor,
12 lineal descendant of that individual or related person, or a
13 trust benefiting that individual or 1 OR more persons related to
14 that individual.

15 (14) ~~(12)~~—The filing of a return includes the filing of a
16 combined, consolidated, or composite return whether or not any
17 tax was paid and whether or not the taxpayer reported any amount
18 in the tax line including zero.

19 (15) AS USED IN SUBSECTIONS (5), (6), AND (7):

20 (A) "BUSINESS" MEANS A CORPORATION, LIMITED LIABILITY
21 COMPANY, LIMITED LIABILITY PARTNERSHIP, PARTNERSHIP, OR LIMITED
22 PARTNERSHIP.

23 (B) "RESPONSIBLE PERSON" MEANS THE PERSON LEGALLY DESIGNATED
24 OR APPOINTED FOR THE BUSINESS AS AN OFFICER, MEMBER, MANAGER OF A
25 MANAGER-MANAGED LIMITED LIABILITY COMPANY, OR PARTNER DURING THE
26 TIME PERIOD OF DEFAULT BY THE BUSINESS AND THAT CONTROLLED OR
27 SUPERVISED THE COLLECTION, ACCOUNTING, OR FILING OF TAX RETURNS

1 FOR THE COLLECTED TAXES DURING THE TIME PERIOD OF DEFAULT AND
2 WILLFULLY FAILED TO PAY THE COLLECTED TAXES FOR THE BUSINESS. THE
3 SIGNATURE OF ANY CORPORATE OFFICERS, MEMBERS, MANAGERS OF
4 MANAGER-MANAGED LIMITED LIABILITY COMPANIES, OR PARTNERS OF THE
5 BUSINESS ON RETURNS OR NEGOTIABLE INSTRUMENTS SUBMITTED IN
6 PAYMENT OF THE COLLECTED TAXES DURING THE TIME PERIOD OF DEFAULT
7 IS PRIMA FACIE EVIDENCE OF THEIR RESPONSIBILITY FOR MAKING THE
8 RETURNS AND PAYMENTS, EXCEPT THAT A SIGNATURE ON AN INSTALLMENT
9 AGREEMENT, ON A COLLECTION STATEMENT, OR ON AN AMENDED RETURN
10 PREPARED AFTER THE PERIOD OF DEFAULT SHALL NOT BE USED AS
11 EVIDENCE OF THEIR RESPONSIBILITY FOR MAKING THE RETURNS AND
12 PAYMENTS DURING THE TIME PERIOD OF DEFAULT BY THE BUSINESS.
13 (C) "TIME PERIOD OF DEFAULT" MEANS THE TIME PERIOD ON WHICH
14 DATE THE RETURN WAS DUE TO BE FILED AND THE COLLECTED TAX WAS DUE
15 TO BE PAID TO THIS STATE.