

Act No. 285
Public Acts of 1990
Approved by the Governor
December 13, 1990
Filed with the Secretary of State
December 14, 1990

STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990

Introduced by Reps. Berman and Munsell

Reps. Alley, Bandstra, Barns, Bartnik, Bender, Bennane, Bennett, Willis Bullard, Camp, Clack, DeBeaussaert, DeMars, Dunaskiss, Emmons, Gagliardi, Giese, Gilmer, Gire, Gnodtke, Gubow, Hart, Hertel, Hillegonds, Hoekman, Hoffman, Honigman, Hunter, Jacobetti, Jaye, Johnson, Jondahl, Jonker, Kosteva, Krause, Kulchitsky, Leland, London, Martin, Maynard, Middaugh, Miller, Murphy, Muxlow, Niederstadt, Ostling, Ouwinga, Owen, Oxender, Palamara, Pitoniak, Porreca, Pridnia, Profit, Rocca, Runco, Scott, Sikkema, Sofio, Spaniola, Sparks, Stabenow, Stallworth, Stopczynski, Strand, Stupak, Terrell, Trim, Van Regenmorter, Varga, Wallace, Webb and Richard A. Young named co-sponsors

ENROLLED HOUSE BILL No. 4634

AN ACT to amend section 27a of Act No. 122 of the Public Acts of 1941, entitled as amended "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 provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act," as added by Act No. 58 of the Public Acts of 1986, being section 205.27a of the Michigan Compiled Laws; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Section 27a of Act No. 122 of the Public Acts of 1941, as added by Act No. 58 of the Public Acts of 1986, being section 205.27a of the Michigan Compiled Laws, is amended to read as follows:

Sec. 27a. (1) If a person liable for a tax administered under this act sells out his or her business or its stock of goods or quits the business, the person shall make a final return within 15 days after the date of selling or quitting the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or its stock of goods shall escrow sufficient money to cover the amount of taxes, interest, and penalties as may be due and unpaid until the former owner produces a receipt from the commissioner or the commissioner's designated representative showing that the taxes due are paid, or a certificate stating that taxes are not due. Upon the owner's written waiver of confidentiality, the commissioner may release to a purchaser a business' known tax liability for the purposes of establishing an escrow account for the payment of taxes. If the purchaser or succeeding purchasers of a business or its stock of goods fail to comply with the escrow requirements of this subsection, the purchaser is personally liable for the payment of the taxes, interest, and penalties accrued and unpaid by the business of the former owner. The purchaser's or succeeding purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds that are applied to balances due on secured interests that are superior to the lien provided for in section 29(1).

(2) A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return. A person who has failed to file a return is liable for all taxes due for the entire period for which the person would be subject to the taxes. If a person subject to tax fraudulently conceals any

liability for the tax or a part of the tax, or fails to notify the department of any alteration in or modification of federal tax liability, the department, within 2 years after discovery of the fraud or the failure to notify, shall assess the tax with penalties and interest as provided by this act, computed from the date on which the tax liability originally accrued. The tax, penalties, and interest are due and payable after notice and hearing as provided by this act.

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

(a) The period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department.

(b) The period for which the taxpayer and the commissioner have consented to in writing that the period be extended.

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

(5) If a corporation liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for, making the returns or payments is personally liable for the failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for a liability may be assessed and collected under the related sections of this act.

(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.

(7) Subsection (6) 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:

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

Section 2. Section 441 of Act No. 281 of the Public Acts of 1967, being section 206.441 of the Michigan Compiled Laws, is repealed.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 473 of the 85th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.