

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 64

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

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

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

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

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

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

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

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

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

Senate Bill No. 64 (H-2) as amended December 12, 2013

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

1 ASSESSMENT ISSUED TO THE BUSINESS. A RESPONSIBLE PERSON MAY
2 CHALLENGE THE VALIDITY OF AN ASSESSMENT TO THE SAME EXTENT THAT
3 THE BUSINESS COULD HAVE CHALLENGED THAT ASSESSMENT UNDER SECTIONS
4 21 AND 22 WHEN ORIGINALLY ISSUED. THE DEPARTMENT HAS THE BURDEN
5 TO FIRST PRODUCE PRIMA FACIE EVIDENCE OR ESTABLISH A PRIMA FACIE
6 CASE THAT THE PERSON IS THE RESPONSIBLE PERSON UNDER THIS
7 SUBSECTION. IN A SEPARATE PROCEEDING BEFORE THE CIRCUIT COURT, A
8 RESPONSIBLE PERSON FOUND TO BE LIABLE FOR THE ASSESSMENT UNDER
9 THIS SECTION MAY RECOVER FROM OTHER PERSONS AN AMOUNT EQUAL TO
10 THE ASSESSMENT OR PORTION OF THE ASSESSMENT BASED ON THAT
11 PERSON'S PROPORTIONATE LIABILITY FOR THE ASSESSMENT AS DETERMINED
12 IN THAT PROCEEDING. BEFORE ASSESSING A RESPONSIBLE PERSON AS
13 LIABLE UNDER THIS SUBSECTION FOR THE TAX ASSESSED TO THE
14 BUSINESS, THE DEPARTMENT SHALL FIRST ASSESS A PURCHASER OR
15 SUCCEEDING PURCHASER OF THE BUSINESS PERSONALLY LIABLE UNDER
16 SUBSECTION (1) IF THE DEPARTMENT HAS INFORMATION THAT CLEARLY
17 IDENTIFIES A PURCHASER OR SUCCEEDING PURCHASER UNDER SUBSECTION
18 (1) AND ESTABLISHES THAT THE ASSESSMENT OF THE PURCHASER OR
19 SUCCEEDING PURCHASER WOULD PERMIT THE DEPARTMENT TO COLLECT THE
20 ENTIRE AMOUNT OF THE TAX ASSESSMENT OF THE BUSINESS. THE
21 DEPARTMENT MAY ASSESS A RESPONSIBLE PERSON UNDER THIS SUBSECTION
22 NOTWITHSTANDING THE LIABILITY OF A PURCHASER OR SUCCEEDING
23 PURCHASER UNDER SUBSECTION (1) IF THE PURCHASER OR SUCCEEDING
24 PURCHASER FAILS TO PAY THE ASSESSMENT.

25 (6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, UPON
26 REQUEST OF A RESPONSIBLE PERSON WHO WAS ISSUED AN INTENT TO
27 ASSESS BY THE DEPARTMENT UNDER SECTION 21 FOR LIABILITY UNDER

1 SUBSECTION (5), THE DEPARTMENT SHALL DISCLOSE ANY DOCUMENTS
 2 CONSIDERED IN THE DEPARTMENT'S AUDIT OR INVESTIGATION IN
 3 DETERMINING THAT THE PERSON IS A RESPONSIBLE PERSON AND IS
 4 PERSONALLY LIABLE FOR THE ASSESSMENT AND ANY OTHER DOCUMENTS THAT
 5 THE TRIBUNAL OR COURT DETERMINES ARE NECESSARY FOR A FAIR
 6 ADJUDICATION OF A PERSON'S LIABILITY UNDER SUBSECTION (5).

7 (7) ~~(6)~~—Notwithstanding the provisions of subsection (2), a
 8 claim for refund based upon the validity of a tax law based on
 9 the laws or constitution of the United States or the state
 10 constitution of 1963 shall not be paid unless the claim is filed
 11 within 90 days after the date set for filing a return.

12 (8) ~~(7)~~—Subsection ~~(6)~~—(7) does not apply to a claim for the
 13 refund of a tax paid for the 1984 tax year or a tax year after
 14 the 1984 tax year on income received as retirement or pension
 15 benefits from a public retirement system of the United States
 16 government if the claimant waives any claim for the refund of
 17 such a tax paid for a tax year before 1984. Claims for refunds to
 18 which this subsection applies shall be paid in accordance with
 19 the following schedule:

20	Refunds for	Payable on
21	<u>tax year:</u>	<u>or after:</u>
22	1988 and 1987	July 1, 1990
23	1986	July 1, 1991
24	1985	July 1, 1992
25	1984	July 1, 1993

26 (9) ~~(8)~~—Notwithstanding any other provision in this act, for

1 a taxpayer that filed a tax return under former 1975 PA 228 that
2 included in the tax return an entity disregarded for federal
3 income tax purposes under the internal revenue code, both of the
4 following shall apply:

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

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

12 (10) ~~(9)~~—Notwithstanding any other provision in this act, if
13 a taxpayer filed a tax return under former 1975 PA 228 that
14 included in the tax return an entity disregarded for federal
15 income tax purposes under the internal revenue code, then the
16 taxpayer shall not claim a refund based on the entity disregarded
17 for federal income tax purposes under the internal revenue code
18 filing a separate return as a distinct taxpayer.

19 (11) ~~(10)~~—Notwithstanding any other provision in this act,
20 the department shall not assess a tax or reduce an overpayment,
21 and shall approve a claim for a refund of any tax paid, under
22 former 1975 PA 228 and subject to the statute of limitations for
23 an individual, estate, or person organized for estate or gift
24 planning purposes for amounts received, income, or gain other
25 than those from transactions, activities, and sources in the
26 regular course of the person's trade or business. For purposes of
27 this subsection, all of the following apply:

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

5 (i) Tangible and intangible property if the acquisition,
6 rental, lease, management, or disposition of the property
7 constitutes integral parts of the person's regular trade or
8 business operations.

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

12 (iii) Isolated sales, leases, assignments, licenses,
13 divisions, or other infrequently occurring dispositions,
14 transfers, or transactions involving tangible, intangible, or
15 real property if the property is or was used in the person's
16 trade or business operation.

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

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

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

24 (i) Investment activity, including interest, dividends,
25 royalties, and gains from an investment portfolio or retirement
26 account, if the investment activity is not part of the person's
27 trade or business.

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

4 (12) ~~(11)~~ Notwithstanding any other provision in this act,
5 the department shall not assess a tax or reduce an overpayment,
6 and shall approve a claim for a refund for any tax paid, under
7 former 1975 PA 228 and subject to the statute of limitations for
8 receipts, income, or gain derived from investment activity other
9 than receipts, income, or gain from transactions, activities, and
10 sources in the regular course of the person's trade or business
11 by a person that is organized exclusively to conduct investment
12 activity and that does not conduct investment activity for any
13 person other than an individual or a person related to that
14 individual or by a common trust fund established under the
15 collective investment funds act, 1941 PA 174, MCL 555.101 to
16 555.113. For purposes of this subsection, a person is related to
17 an individual if that person is a spouse, brother or sister,
18 whether of the whole or half blood or by adoption, ancestor,
19 lineal descendant of that individual or related person, or a
20 trust benefiting that individual or 1 OR more persons related to
21 that individual.

22 (13) ~~(12)~~ The filing of a return includes the filing of a
23 combined, consolidated, or composite return whether or not any
24 tax was paid and whether or not the taxpayer reported any amount
25 in the tax line including zero.

26 (14) **SUBSECTION (5) APPLIES TO ALL OF THE FOLLOWING TAXES**
27 **ADMINISTERED UNDER THIS ACT:**

Senate Bill No. 64 (H-2) as amended December 12, 2013

1 [(A) FOR ASSESSMENTS ISSUED TO RESPONSIBLE PERSONS BEFORE JANUARY
2 1, 2014, TAXES ADMINISTERED UNDER THIS ACT.

3 (B) FOR ASSESSMENTS ISSUED TO RESPONSIBLE PERSONS AFTER DECEMBER
4 31, 2013, ALL OF THE FOLLOWING:

5 (i) TAXES LEVIED UNDER THE GENERAL SALES TAX ACT, 1933 PA 167, MCL
6 205.51 TO 205.78.

7 (ii) TAXES LEVIED UNDER THE USE TAX ACT, 1937 PA 94, MCL 205.91 TO
8 205.111, THAT ARE REQUIRED TO BE COLLECTED OR WERE COLLECTED FROM OR ON
9 BEHALF OF A THIRD PERSON FOR REMITTANCE TO THE STATE.

10 (iii) TAXES LEVIED UNDER THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327,
11 MCL 205.421 TO 205.436.

12 (iv) TAXES LEVIED UNDER THE MOTOR FUEL TAX ACT, 2000 PA 403, MCL
13 207.1001 TO 207.1170.

14 (v) TAXES LEVIED UNDER THE MOTOR CARRIER FUEL TAX ACT, 1980 PA 119,
15 MCL 207.211 TO 207.234.

16 (vi) WITHHOLDING AND REMITTANCE OF INCOME TAXES LEVIED UNDER THE
17 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713.

(vii) ANY OTHER TAX ADMINISTERED UNDER THIS ACT THAT A PERSON IS
REQUIRED TO COLLECT FROM OR ON BEHALF OF A THIRD PERSON, TO TRUTHFULLY
ACCOUNT FOR AND TO PAY OVER TO THIS STATE.]

18 (15) AS USED IN SUBSECTIONS (5) AND (6):

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

22 (B) "RESPONSIBLE PERSON" MEANS AN OFFICER, MEMBER, MANAGER
23 OF A MANAGER-MANAGED LIMITED LIABILITY COMPANY, OR PARTNER FOR
24 THE BUSINESS WHO CONTROLLED, SUPERVISED, OR WAS RESPONSIBLE FOR
25 THE FILING OF RETURNS OR PAYMENT OF TAXES ADMINISTERED UNDER THIS
26 ACT DURING THE TIME PERIOD OF DEFAULT AND WHO, DURING THE TIME
27 PERIOD OF DEFAULT, WILLFULLY FAILED TO FILE A RETURN OR PAY THE

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1 TAX DUE FOR ANY OF THE TAXES DESCRIBED IN SUBSECTION (14). THE
2 SIGNATURE [, INCLUDING ELECTRONIC SIGNATURE,] OF ANY OFFICER, MEMBER,
3 MANAGER OF A MANAGER-MANAGED
4 LIMITED LIABILITY COMPANY, OR PARTNER ON RETURNS OR NEGOTIABLE
5 INSTRUMENTS SUBMITTED IN PAYMENT OF TAXES OF THE BUSINESS DURING
6 THE TIME PERIOD OF DEFAULT, IS PRIMA FACIE EVIDENCE THAT THE
7 PERSON IS A RESPONSIBLE PERSON, EXCEPT THAT A SIGNATURE ON A
8 DOCUMENT PREPARED AFTER THE PERIOD OF DEFAULT SHALL NOT BE USED
9 AS [PRIMA FACIE] EVIDENCE OF HIS OR HER RESPONSIBILITY FOR MAKING THE
10 RETURNS
11 AND PAYMENTS DURING THE TIME PERIOD OF DEFAULT BY THE BUSINESS.

12 (C) "TIME PERIOD OF DEFAULT" MEANS THE TAX PERIOD FOR WHICH
13 THE BUSINESS FAILED TO FILE THE RETURN OR PAY THE TAX DUE UNDER
14 SUBSECTION (5) AND THROUGH THE DATE UPON WHICH PENALTY OR
15 INTEREST ACCRUES FOR THE TAX PERIOD.

16 (D) "WILLFUL" OR "WILLFULLY" MEANS THE PERSON KNEW OR HAD
17 REASON TO KNOW OF THE OBLIGATION TO FILE A RETURN OR PAY THE TAX,
18 BUT INTENTIONALLY OR RECKLESSLY FAILED TO FILE THE RETURN OR PAY
19 THE TAX.

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