

SENATE BILL No. 337

May 1, 2013, Introduced by Senators BRANDENBURG, ROBERTSON, COLBECK, JONES, MARLEAU, PROOS, NOFS, HANSEN, PAPPAGEORGE, GREEN and JANSEN 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 sections 27a and 30 (MCL 205.27a and 205.30), section 27a as amended by 2012 PA 211 and section 30 as amended by 1993 PA 14.

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 **SHALL, WITHIN 30 DAYS OF THE REQUEST, TIMELY** release to a
14 purchaser a business's known tax liability for the purposes of
15 establishing an escrow account for the payment of taxes. If the
16 purchaser or succeeding purchasers of a business or its stock of
17 goods fail to comply with the escrow requirements of this
18 subsection, the purchaser is personally liable for the payment of
19 the taxes, interest, and penalties accrued and unpaid by the
20 business of the former owner. **HOWEVER, THE PURCHASER SHALL NOT BE**
21 **HELD LIABLE IF THE DEPARTMENT HAS FAILED TO PROVIDE THE**
22 **INFORMATION REQUESTED WITHIN 30 DAYS.** The purchaser's or
23 succeeding purchaser's personal liability is limited to the fair
24 market value of the business less the amount of any proceeds that
25 are applied to balances due on secured interests that are
26 superior to the lien provided for in section 29(1).

27 (2) A deficiency, interest, or penalty shall not be assessed

1 after the expiration of 4 years after the date set for the filing
2 of the required return or after the date the return was filed,
3 whichever is later. The taxpayer shall not claim a refund of any
4 amount paid to the department after the expiration of 4 years
5 after the date set for the filing of the original return. A
6 person who has failed to file a return is liable for all taxes
7 due for the entire period for which the person would be subject
8 to the taxes. If a person subject to tax fraudulently conceals
9 any liability for the tax or a part of the tax, or fails to
10 notify the department of any alteration in or modification of
11 federal tax liability, the department, within 2 years after
12 discovery of the fraud or the failure to notify, shall assess the
13 tax with penalties and interest as provided by this act, computed
14 from the date on which the tax liability originally accrued. The
15 tax, penalties, and interest are due and payable after notice and
16 hearing as provided by this act.

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

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

23 (b) The period for which the taxpayer and the state
24 treasurer have consented to in writing that the period be
25 extended.

26 (4) The running of the statute of limitations is suspended
27 only as to those items that were the subject of the audit,

1 conference, hearing, or litigation for federal income tax or a
2 tax administered by the department.

3 (5) IF THE DEPARTMENT INITIATES AN EXAMINATION OF A
4 TAXPAYER'S RECORDS TO VERIFY RETURNS MADE AND THE TAXPAYER HAS
5 BEEN NOTIFIED IN WRITING OF THE EXAMINATION, THE DETERMINATION OF
6 THE CORRECT TAX LIABILITY SHALL BE MADE BY THE DEPARTMENT WITHIN
7 1 YEAR AFTER THE EXPIRATION OF THE 48-MONTH EXAMINATION PERIOD.
8 HOWEVER, THE LIMITATION DESCRIBED IN THIS SUBSECTION DOES NOT
9 APPLY TO ANY OF THE FOLLOWING:

10 (A) ANY TAX PERIOD FOR WHICH THE TAXPAYER FAILED TO FILE A
11 RETURN.

12 (B) ANY TAX PERIOD IN WHICH THE TAXPAYER FILED A FALSE OR
13 FRAUDULENT RETURN WITH THE INTENT TO EVADE TAX.

14 (C) ANY TAX PERIOD IN WHICH THE DEPARTMENT AND THE TAXPAYER
15 AGREED IN WRITING TO EXTEND THE STATUTE OF LIMITATIONS DESCRIBED
16 IN SUBSECTION (2).

17 (6) ~~(5)~~—If a corporation, limited liability company, limited
18 liability partnership, partnership, or limited partnership liable
19 for taxes administered under this act fails for any reason to
20 file the required returns or to pay the tax due, any of its
21 officers, members, managers, or partners who the department
22 determines, based on either an audit or an investigation, have
23 control or supervision of, or responsibility for, making the
24 returns or payments is personally liable for the failure. The
25 signature of any corporate officers, members, managers, or
26 partners on returns or negotiable instruments submitted in
27 payment of taxes is prima facie evidence of their responsibility

1 for making the returns and payments. The dissolution of a
 2 corporation, limited liability company, limited liability
 3 partnership, partnership, or limited partnership does not
 4 discharge an officer's, member's, manager's, or partner's
 5 liability for a prior failure of the corporation, limited
 6 liability company, limited liability partnership, partnership, or
 7 limited partnership to make a return or remit the tax due. The
 8 sum due for a liability may be assessed and collected under the
 9 related sections of this act.

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

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

23	Refunds for	Payable on
24	tax year:	or after:
25	1988 and 1987	July 1, 1990
26	1986	July 1, 1991

1	1985	July 1, 1992
2	1984	July 1, 1993

3 (9) ~~(8)~~ Notwithstanding any other provision in this act, for
4 a taxpayer that filed a tax return under former 1975 PA 228 that
5 included in the tax return an entity disregarded for federal
6 income tax purposes under the internal revenue code, both of the
7 following shall apply:

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

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

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

22 (11) ~~(10)~~ Notwithstanding any other provision in this act,
23 the department shall not assess a tax or reduce an overpayment,
24 and shall approve a claim for a refund of any tax paid, under
25 former 1975 PA 228 and subject to the statute of limitations for
26 an individual, estate, or person organized for estate or gift

1 planning purposes for amounts received, income, or gain other
2 than those from transactions, activities, and sources in the
3 regular course of the person's trade or business. For purposes of
4 this subsection, all of the following apply:

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

9 (i) Tangible and intangible property if the acquisition,
10 rental, lease, management, or disposition of the property
11 constitutes integral parts of the person's regular trade or
12 business operations.

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

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

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

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

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

1 (i) Investment activity, including interest, dividends,
2 royalties, and gains from an investment portfolio or retirement
3 account, if the investment activity is not part of the person's
4 trade or business.

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

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

26 (13) ~~(12)~~ The filing of a return includes the filing of a
27 combined, consolidated, or composite return whether or not any

1 tax was paid and whether or not the taxpayer reported any amount
2 in the tax line including zero.

3 Sec. 30. (1) The department shall credit or refund an
4 overpayment of taxes; taxes, penalties, and interest erroneously
5 assessed and collected; and taxes, penalties, and interest that
6 are found unjustly assessed, excessive in amount, or wrongfully
7 collected with interest at the rate calculated under section 23
8 for deficiencies in tax payments.

9 (2) A taxpayer who paid a tax that the taxpayer claims is
10 not due may petition the department for refund of the amount paid
11 within the time period specified as the statute of limitations in
12 section 27a. If a tax return reflects an overpayment or credits
13 in excess of the tax, the declaration of that fact on the return
14 constitutes a claim for refund. If the department agrees the
15 claim is valid, the amount of overpayment, penalties, and
16 interest shall be first applied to any known liability as
17 provided in section 30a, and the excess, if any, shall be
18 refunded to the taxpayer or credited, at the taxpayer's request,
19 against any current or subsequent tax liability. **CLAIMS FOR**
20 **REFUNDS THAT HAVE NOT BEEN APPROVED WITHIN 1 YEAR OF THE DATE**
21 **RECEIVED MAY BE TREATED AS A DENIAL OF THAT CLAIM, AND MAY BE**
22 **APPEALED BY THE TAXPAYER TO THE TAX TRIBUNAL OR THE COURT OF**
23 **CLAIMS IN ACCORDANCE WITH SECTION 22.**

24 (3) The department shall certify a refund to the state
25 disbursing authority who shall pay the amount out of the proceeds
26 of the tax in accordance with the accounting laws of the state.
27 Interest at the rate calculated under section 23 for deficiencies

1 in tax payments shall be added to the refund commencing 45 days
2 after the claim is filed or 45 days after the date established by
3 law for the filing of the return, whichever is later. Interest on
4 refunds intercepted and applied as provided in section 30a shall
5 cease as of the date of interception. Refunds for amounts of less
6 than \$1.00 shall not be paid.