

Act No. 3  
Public Acts of 2014  
Approved by the Governor  
January 30, 2014  
Filed with the Secretary of State  
February 6, 2014  
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**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2014**

**Introduced by Senators Brandenburg, Robertson, Colbeck, Jones, Marleau, Proos, Nofs, Hansen,  
Pappageorge, Green and Jansen**

**ENROLLED SENATE BILL No. 337**

AN ACT 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 21, 27a, and 30 (MCL 205.21, 205.27a, and 205.30), section 21 as amended by 2006 PA 11, section 27a as amended by 2012 PA 211, and section 30 as amended by 2013 PA 133.

*The People of the State of Michigan enact:*

Sec. 21. (1) If a taxpayer fails or refuses to make a return or payment as required, in whole or in part, or if the department has reason to believe that a return made or payment does not supply sufficient information for an accurate determination of the amount of tax due, the department may obtain information on which to base an assessment of the tax. By its duly authorized agents, the department may examine the books, records, and papers and audit the accounts of a person or any other records pertaining to the tax.

(2) In carrying out this section, the department and the taxpayer shall comply with the following procedure:

(a) The department shall send to the taxpayer a letter of inquiry stating, in a courteous and nonintimidating manner, the department's opinion that the taxpayer needs to furnish further information or owes taxes to the state, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the person may initiate communication with the department to resolve any dispute. This subdivision does not apply in any of the following circumstances:

- (i) The taxpayer files a return showing a tax due and fails to pay that tax.
- (ii) The deficiency resulted from an audit of the taxpayer's books and records by this state.
- (iii) The taxpayer otherwise affirmatively admits that a tax is due and owing.

(b) If the dispute is not resolved within 30 days after the department sends the taxpayer a letter of inquiry or if a letter of inquiry is not required pursuant to subdivision (a), the department, after determining the amount of tax due from a taxpayer, shall give notice to the taxpayer of its intent to assess the tax. The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, and a statement advising the taxpayer of a right to an informal conference, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 60-day time limit for that request.

(c) If the taxpayer serves written notice upon the department within 60 days after the taxpayer receives a notice of intent to assess, remits the uncontested portion of the liability, and provides a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment.

(d) Upon receipt of a taxpayer's written notice, the department shall set a mutually agreed upon or reasonable time and place for the informal conference and shall give the taxpayer reasonable written notice not less than 20 days before the informal conference. The notice shall specify the intent to assess, type of tax, and tax year that is the subject of the informal conference. The informal conference provided for by this subdivision is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, but is subject to the rules governing informal conferences as promulgated by the department in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The taxpayer may appear or be represented by any person before the department at an informal conference, and may present testimony and argument. At the party's own expense and with advance notice to the other party, a taxpayer or the department, or both, may make an audio recording of an informal conference. A taxpayer who has made a timely request for an informal conference may at any time withdraw that request by filing written notice with the department. Upon receipt of the request for withdrawal from the informal conference process, the department shall issue a decision and order of determination and, where appropriate, a final assessment, from which a taxpayer may seek an appeal as provided under section 22.

(e) After the informal conference, the department shall render a decision and order in writing, setting forth the reasons and authority, and shall assess the tax, interest, and penalty found to be due and payable. The decision and order are limited to the subject of the informal conference as included in the notice under subdivision (d).

(f) If the taxpayer does not protest the notice of intent to assess within the time provided in subdivision (c), the department may assess the tax and the interest and penalty on the tax that the department believes are due and payable. An assessment under this subdivision or subdivision (e) is final and subject to appeal as provided in section 22. The final notice of assessment shall include a statement advising the person of a right to appeal.

(3) If as a result of an audit it is determined that a taxpayer is owed a refund, the department shall send a notice to the taxpayer stating the amount of the refund the department believes is owed to the taxpayer as a result of the audit. The notice shall inform the taxpayer of his or her appeal rights. If the taxpayer disputes the findings of the audit, the taxpayer may serve written notice upon the department in the same manner as provided for in subsection (2)(c) and the taxpayer is entitled to the same informal conference and subsequent appeals as provided for in this section.

(4) If a protest to the notice of intent to assess the tax is determined by the department to be a frivolous protest or a desire by the taxpayer to delay or impede the administration of taxes administered under this act, a penalty of \$25.00 or 25% of the amount of tax under protest, whichever is greater, shall be added to the tax.

(5) During the course of the informal conference under subsection (2)(d), the taxpayer by written notice may convert his or her contest of the assessment to a claim for a refund. The written notice shall be accompanied by payment of the contested amount. The informal conference shall continue and the department shall render a decision and issue an order regarding the claim for refund.

(6) For audits commenced after September 30, 2014, the department must complete fieldwork and provide a written preliminary audit determination for any tax period no later than 1 year after the period provided for in section 27a(2) without regard to the extension provided for in section 27a(3). The limitation described in this subsection does not apply to any tax period in which the department and the taxpayer agreed in writing to extend the statute of limitations described in section 27a(2).

(7) For audits commenced after September 30, 2014, unless otherwise agreed to by the department and the taxpayer, the final assessment issued under subsection (2)(f) must be issued within 9 months of the date that the department provided the taxpayer with a written preliminary audit determination unless the taxpayer, for any reason, requests reconsideration of the preliminary audit determination or the taxpayer requests an informal conference under subsection (2)(c). A request for reconsideration by a taxpayer permits, but does not require, the department to delay the issuance of a final assessment under subsection (2)(f).

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 state treasurer or the state treasurer'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 department shall, within 60 days of receipt of the request, release to a purchaser a business's known or estimated tax liability for the purposes of establishing an escrow account for the payment of taxes. The department may estimate tax liability based on prior returns and payments. If the department believes that a return made or payment does not supply sufficient information for an accurate determination, the department may make an estimate based on other available information. 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. If the purchaser or succeeding purchasers of a business or its stock of goods comply with the escrow requirements of this subsection, the purchaser shall not be held liable for more than the known or estimated tax liability disclosed by the department and held in escrow. However, the purchaser shall not be held liable if the department has failed to provide the information requested within 60 days. For a purchaser or succeeding purchaser that has not complied with the escrow requirements of this section, 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 statute of limitations shall be extended for the following if the period exceeds that described in subsection (2):

(a) The period pending a final determination of tax through audit, conference, hearing, and litigation of liability for federal income tax and for 1 year after that period.

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

(c) The period described in section 21(6) and (7) or pending the completion of an appeal of a final assessment.

(d) A period of 90 days after a decision and order from an informal conference, or a court order that finally resolves an appeal of a decision of the department in a case in which a final assessment was not issued prior to appeal.

(4) The statute of limitations is extended 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. As used in this subsection, "items that were the subject of the audit" means items that share a common characteristic that were examined by an auditor even if there was no adjustment to the tax as a result of the examination. Items that share a common characteristic include items that are reported on the same line on a tax return or items that are grouped by ledger, account, or record or by class or type of asset, liability, income, or expense.

(5) If a business liable for taxes administered under this act fails, for any reason after assessment, to file the required returns or to pay the tax due, any of its officers, members, managers of a manager-managed limited liability company, or partners who the department determines, based on either an audit or an investigation, is a responsible person is personally liable for the failure for the taxes described in subsection (14). The dissolution of a business does not discharge a responsible person's liability for a prior failure of the business to file a return or pay the tax due. The sum due for a liability may be assessed and collected under the related sections of this act. The department shall provide a responsible person assessed under this section with notice of any amount collected by the department from any other responsible person determined to be liable under this subsection or purchaser determined to be liable under subsection (1) that is attributable to the assessment. The department shall not assess a responsible person under this section more than 4 years after the date of the assessment issued to the business. A responsible person may challenge the validity of an assessment to the same extent that the business could have challenged that assessment under sections 21 and 22 when originally issued. The department has the burden to first produce prima facie evidence as described in subsection (15) or establish a prima facie case that the person is the responsible person under this subsection through establishment of all elements of a responsible person as defined in subsection (15). In a separate proceeding before the circuit court, a responsible person found to be liable for the assessment under this section may recover from other responsible persons an amount equal to the assessment or portion of the assessment based on that person's proportionate liability for the assessment as determined in that proceeding. Before assessing a responsible person as liable under this subsection for the tax assessed to the business, the department shall first assess a purchaser or succeeding purchaser of the business personally liable under subsection (1) if the department has information that clearly identifies a purchaser or succeeding purchaser under subsection (1) and establishes that the assessment of the purchaser or succeeding purchaser would permit the department to collect the entire amount of the tax assessment of the business. The department may assess a responsible person under this subsection notwithstanding the liability of a purchaser or succeeding purchaser under subsection (1) if the purchaser or succeeding purchaser fails to pay the assessment.

(6) Notwithstanding any other provision of this act, upon request of a responsible person who was issued an intent to assess by the department under section 21 for liability under subsection (5), the department shall disclose any documents considered in the department's audit or investigation in determining that the person is a responsible person and is personally liable for the assessment and any other documents that the tribunal or court determines are necessary for a fair adjudication of a person's liability under subsection (5).

(7) 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.

(8) Subsection (7) 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

(9) 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 its tax return filed under former 1975 PA 228.

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

(10) Notwithstanding any other provision in this act, if a taxpayer 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, then the taxpayer shall not claim a refund based on the entity disregarded for federal income tax purposes under the internal revenue code filing a separate return as a distinct taxpayer.

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

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

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

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

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

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

(v) The lease or rental of real property.

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

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

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

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

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

(14) Subsection (5) applies to all of the following taxes administered under this act:

(a) For assessments issued to responsible persons before January 1, 2014, taxes administered under this act.

(b) For assessments issued to responsible persons after December 31, 2013, all of the following:

(i) Taxes levied under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(ii) Taxes levied under the use tax act, 1937 PA 94, MCL 205.91 to 205.111, that are required to be collected or were collected from or on behalf of a third person for remittance to the state.

(iii) Taxes levied under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436.

(iv) Taxes levied under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170.

(v) Taxes levied under the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234.

(vi) Withholding and remittance of income taxes levied under the 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.

(15) As used in subsections (5) and (6):

(a) "Business" means a corporation, limited liability company, limited liability partnership, partnership, or limited partnership.

(b) "Responsible person" means an officer, member, manager of a manager-managed limited liability company, or partner for the business who controlled, supervised, or was responsible for the filing of returns or payment of any of the taxes described in subsection (14) during the time period of default and who, during the time period of default, willfully failed to file a return or pay the tax due for any of the taxes described in subsection (14). The signature, including electronic signature, of any officer, member, manager of a manager-managed limited liability company, or partner on returns or negotiable instruments submitted in payment of taxes of the business during the time period of default, is prima facie evidence that the person is a responsible person. A signature, including electronic signature, on a return or negotiable instrument submitted in payment of taxes after the time period of default alone is not prima facie evidence that the person is a responsible person for the time period of default but may be considered along with other evidence to make a prima facie case that the person is a responsible person. With respect to a return or negotiable instrument submitted in payment of taxes before the time period of default, the signature, including electronic signature, on that document along with evidence, other than that document, sufficient to demonstrate that the signatory was an officer, member, manager of a manager-managed limited liability company, or partner during the time period of default is prima facie evidence that the person is a responsible person.

(c) "Time period of default" means the tax period for which the business failed to file the return or pay the tax due under subsection (5) and through the later of the date set for the filing of the tax return or making the required payment.

(d) "Willful" or "willfully" means the person knew or had reason to know of the obligation to file a return or pay the tax, but intentionally or recklessly failed to file the return or pay the tax.

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

(2) A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a. If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund. If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability. Claims for refunds, other than those made under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, that have not been approved, denied, or adjusted within 1 year of the date received may be treated as denied at the election of the taxpayer, and may be appealed by the taxpayer in accordance with section 22.

(3) The department shall certify a refund to the state disbursing authority who shall pay the amount out of the proceeds of the tax in accordance with the accounting laws of the state. Interest at the rate calculated under section 23 for deficiencies in tax payments shall be added to the refund commencing 45 days after the claim is filed or 45 days after the date established by law for the filing of the return, whichever is later. Interest on refunds intercepted and applied as provided in section 30a shall cease as of the date of interception. Refunds for amounts of less than \$1.00 shall not be paid.

(4) Beginning January 1, 2014, in addition to and separate from the interest added to a refund under subsection (3), for refunds for taxes imposed under part 1 of the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, the state disbursing authority shall add interest to refunds that are not paid within 1 of the following dates for the applicable tax year:

(a) May 1, for returns received by the department on or before March 1 of the applicable tax year.

(b) Sixty days from the date the return was received by the department for returns received by the department after March 1 of the applicable tax year.

(5) Interest described in subsection (4) shall be paid at a rate of 3% per annum, calculated from the date the original return was due under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315, and until the refund is paid, if all of the following conditions are met:

(a) The refund is due on an original return which was timely filed under section 315(1) of the income tax act of 1967, 1967 PA 281, MCL 206.315.

(b) The refund is not adjusted by the department.

(c) The return is not subject to section 27a(3) or (4) except for audit by the department.

(d) The return is complete for processing purposes with no calculation errors and contains all required information as prescribed by the department under section 315(1)(d) of the income tax act of 1967, 1967 PA 281, MCL 206.315, including any state and federal returns, forms, or schedules necessary to process the return.

(e) The taxpayer who has filed a complete return under subdivision (d) has complied with the department's request, if any, for additional documentation or information within 30 days of that request.

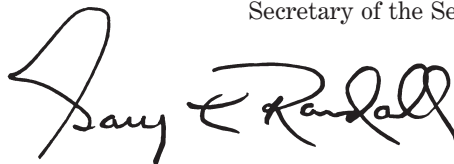
(f) No portion of the refund is subject to interception under section 30a.

(g) The amount to be refunded is more than \$1.00.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor