

SENATE BILL No. 421

April 29, 2003, Introduced by Senator EMERSON 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 the state; to prescribe certain powers and duties of the state treasurer; 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 2002 PA 657.

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

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

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

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

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

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

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

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

24 (5) If a corporation, **limited liability company, limited**
25 **liability partnership, partnership, or limited partnership** liable
26 for taxes administered under this act fails for any reason to
27 file the required returns or to pay the tax due, any of its

1 officers, **members, managers, or partners** having control or
2 supervision of, or charged with the responsibility for, making
3 the returns or payments is personally liable for the failure.
4 The signature of any corporate officers, **members, managers, or**
5 **partners** on returns or negotiable instruments submitted in
6 payment of taxes is prima facie evidence of their responsibility
7 for making the returns and payments. The dissolution of a
8 corporation, **limited liability company, limited liability**
9 **partnership, partnership, or limited partnership** does not
10 discharge an officer's, **member's, manager's, or partner's**
11 liability for a prior failure of the corporation, **limited**
12 **liability company, limited liability partnership, partnership, or**
13 **limited partnership** to make a return or remit the tax due. The
14 sum due for a liability may be assessed and collected under the
15 related sections of this act.

16 (6) Notwithstanding the provisions of subsection (2), a claim
17 for refund based upon the validity of a tax law based on the laws
18 or constitution of the United States or the state constitution of
19 1963 shall not be paid unless the claim is filed within 90 days
20 after the date set for filing a return.

21 (7) Subsection (6) does not apply to a claim for the refund
22 of a tax paid for the 1984 tax year or a tax year after the 1984
23 tax year on income received as retirement or pension benefits
24 from a public retirement system of the United States government
25 if the claimant waives any claim for the refund of such a tax
26 paid for a tax year before 1984. Claims for refunds to which
27 this subsection applies shall be paid in accordance with the

1 following schedule:

2	Refunds for	Payable on
3	<u>tax year:</u>	<u>or after:</u>
4	1988 and 1987	July 1, 1990
5	1986	July 1, 1991
6	1985	July 1, 1992
7	1984	July 1, 1993

8 Enacting section 1. This amendatory act takes effect for
9 tax years that begin on and after January 1, 2003.