

HOUSE BILL No. 5909

June 4, 1998, Introduced by Rep. Profit and referred to the Committee on Tax Policy.

A bill to amend 1941 PA 122, entitled

"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 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; and to declare the effect of this act,"

by amending section 27a (MCL 205.27a), 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

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

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

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

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

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

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

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

23 (5) If a corporation OR LIMITED LIABILITY COMPANY liable for
24 taxes administered under this act fails for any reason to file
25 the required returns or to pay the tax due, any of its CORPORATE
26 officers OR MEMBERS OR MANAGERS OF A LIMITED LIABILITY COMPANY,
27 having control or supervision of, or charged with the

1 responsibility for, making the returns or payments ~~is~~ ARE
2 personally liable for the failure. The signature of any corpo-
3 rate officers OR MEMBERS OR MANAGERS OF A LIMITED LIABILITY
4 COMPANY on returns or negotiable instruments submitted in payment
5 of taxes is prima facie evidence of their responsibility for
6 making the returns and payments. The dissolution of a corpora-
7 tion OR LIMITED LIABILITY COMPANY does not discharge ~~an~~ A
8 CORPORATE officer's liability OR A MEMBER'S OR MANAGER'S LIABIL-
9 ITY OF A LIMITED LIABILITY COMPANY for a prior failure of the
10 corporation OR LIMITED LIABILITY COMPANY to make a return or
11 remit the tax due. The sum due for a liability may be assessed
12 and collected under the related sections of this act.

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

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

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