

# HOUSE BILL No. 5937

March 9, 2010, Introduced by Reps. Kandrevas and Calley and referred to the Committee on Tax Policy.

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 2003 PA 23.

**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 release to a purchaser a business's known tax liability for the  
14 purposes of establishing an escrow account for the payment of  
15 taxes. If the purchaser or succeeding purchasers of a business or  
16 its stock of goods fail to comply with the escrow requirements of  
17 this subsection, the purchaser is personally liable for the  
18 payment of the taxes, interest, and penalties accrued and unpaid  
19 by the business of the former owner. The purchaser's or  
20 succeeding purchaser's personal liability is limited to the fair  
21 market value of the business less the amount of any proceeds that  
22 are applied to balances due on secured interests that are  
23 superior to the lien provided for in section 29(1).

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

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

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

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

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

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

27 (5) If a corporation, limited liability company, limited

1 liability partnership, partnership, or limited partnership liable  
2 for taxes administered under this act fails for any reason to  
3 file the required returns or to pay the tax due, any of its  
4 officers, members, managers, or partners who the department  
5 determines, based on either an audit or an investigation, have  
6 control or supervision of, or responsibility for, making the  
7 returns or payments is personally liable for the failure. The  
8 signature of any corporate officers, members, managers, or  
9 partners on returns or negotiable instruments submitted in  
10 payment of taxes is prima facie evidence of their responsibility  
11 for making the returns and payments. The dissolution of a  
12 corporation, limited liability company, limited liability  
13 partnership, partnership, or limited partnership does not  
14 discharge an officer's, member's, manager's, or partner's  
15 liability for a prior failure of the corporation, limited  
16 liability company, limited liability partnership, partnership, or  
17 limited partnership to make a return or remit the tax due. The  
18 sum due for a liability may be assessed and collected under the  
19 related sections of this act.

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

25 (7) Subsection (6) does not apply to a claim for the refund  
26 of a tax paid for the 1984 tax year or a tax year after the 1984  
27 tax year on income received as retirement or pension benefits

1 from a public retirement system of the United States government  
 2 if the claimant waives any claim for the refund of such a tax  
 3 paid for a tax year before 1984. Claims for refunds to which this  
 4 subsection applies shall be paid in accordance with the following  
 5 schedule:

6	Refunds for	Payable on
7	<u>tax year:</u>	<u>or after:</u>
8	1988 and 1987	July 1, 1990
9	1986	July 1, 1991
10	1985	July 1, 1992
11	1984	July 1, 1993

12 (8) NOTWITHSTANDING ANY OTHER PROVISION IN THIS ACT, FOR A  
 13 TAXPAYER THAT 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, BOTH OF THE  
 16 FOLLOWING SHALL APPLY:

17 (A) THE DEPARTMENT SHALL NOT ASSESS THE TAXPAYER AN  
 18 ADDITIONAL TAX OR REDUCE AN OVERPAYMENT BECAUSE THE TAXPAYER  
 19 INCLUDED AN ENTITY DISREGARDED FOR FEDERAL INCOME TAX PURPOSES ON  
 20 ITS TAX RETURN FILED UNDER FORMER 1975 PA 228.

21 (B) THE DEPARTMENT SHALL NOT REQUIRE THE ENTITY DISREGARDED  
 22 FOR FEDERAL INCOME TAX PURPOSES ON THE TAXPAYER'S TAX RETURN  
 23 FILED UNDER FORMER 1975 PA 228 TO FILE A SEPARATE TAX RETURN.

24 (9) NOTWITHSTANDING ANY OTHER PROVISION IN THIS ACT, IF A  
 25 TAXPAYER FILED A TAX RETURN UNDER FORMER 1975 PA 228 THAT  
 26 INCLUDED IN THE TAX RETURN AN ENTITY DISREGARDED FOR FEDERAL

1 INCOME TAX PURPOSES UNDER THE INTERNAL REVENUE CODE, THEN THE  
2 TAXPAYER SHALL NOT CLAIM A REFUND BASED ON THE ENTITY DISREGARDED  
3 FOR FEDERAL INCOME TAX PURPOSES UNDER THE INTERNAL REVENUE CODE  
4 FILING A SEPARATE RETURN AS A DISTINCT TAXPAYER.

5 Enacting section 1. This amendatory act is curative, shall  
6 be retroactively applied, and is intended to correct any  
7 misinterpretation concerning the treatment of an entity  
8 disregarded for federal income tax purposes under the internal  
9 revenue code under former 1975 PA 228 that may have been caused  
10 by the decision of the Michigan court of appeals in Kmart  
11 Michigan Property Services v Michigan Department of Treasury, No.  
12 282058, May 12, 2009. However, this amendatory act is not  
13 intended to affect a refund resulting from a final order of a  
14 court of competent jurisdiction for which all rights of appeal  
15 have been exhausted prior to February 12, 2010 to a taxpayer who  
16 is a party to that proceeding.