

# Tax-Related Obligations When Establishing, Selling, or Closing a Business in the State of Michigan

## Tax Clearance Request

A business owner may request that the Department of Treasury conduct a review of the business tax account for tax clearance purposes. The Department's review will provide the taxpayer with information regarding any outstanding tax liabilities. If there are no outstanding liabilities, the Department will issue a Tax Clearance Certificate stating that no taxes are due. This certificate should be provided to the buyer of a business.

## Contact Information

For questions related to obtaining a Tax Clearance certificate, contact the Collections Division, Tax Clearance Unit at:

Web site: [www.michigan.gov/taxclearance](http://www.michigan.gov/taxclearance)

Tax Clearance phone: 517-636-5260

Tax Clearance Fax: 517-636-5393

## Establishing a New Business

There are many things involved in establishing a new business. One of the important steps is to protect yourself from hidden liabilities. The following information is intended to provide you with some guidelines regarding tax-related obligations when establishing a new business in Michigan. The Michigan Department of Treasury encourages you to obtain sound professional assistance from an accountant or an attorney to assist you with the process of establishing a new business.

Taxpayers are required to meet certain obligations under Michigan law, including filing tax returns on time and with the correct payment when required. You are responsible for the accuracy of your returns, no matter who you hire to prepare them. You must also keep accurate and complete records for determining tax liability, as required by law or department rule.

## Purchasing a Business

As a purchaser of even a portion of a business (including stock of goods or even the transfer of a liquor license), you may be held responsible for the previous owner's liabilities, regardless of any contractual language to the contrary. This is known as Successor Liability.

### Tax Debts

As a successor in the business, you must withhold sufficient purchase money to cover any business tax debts incurred by the previous owner. These funds may be released when the previous owner produces a receipt showing the taxes have been paid, or a Tax Clearance Certificate from the Michigan Department of Treasury stating that no taxes are due. Note that only the seller can request this information from the Department of Treasury.

For unemployment tax purposes, successors may also be held liable for tax debts incurred by the previous owner. By law, the seller must provide the buyer with certain unemployment insurance information at least two days before an offer to purchase is accepted. For more information about unemployment tax debts, visit the Unemployment Insurance Agency website at [www.michigan.gov/uia](http://www.michigan.gov/uia).

## Other Liabilities

To protect yourself from other hidden liabilities, it is important that you thoroughly research the business you are purchasing. Some of the steps you can take to protect yourself are:

- Obtain sound professional assistance from an accountant or an attorney.
- To become acquainted with your rights and responsibilities relative to Sales, Use and Withholding taxes view the New Business Webinar Presentation on the [www.michigan.gov/businessstaxes](http://www.michigan.gov/businessstaxes) website.
- For more information about Starting a Business in Michigan, visit the Michigan Business One Stop website at [www.michigan.gov/business](http://www.michigan.gov/business).
- Visit the Uniform Commercial Code website at [www.michigan.gov/SOS](http://www.michigan.gov/SOS) to obtain financing statements about the business, such as information about tax liens and security interest in collateral.
- Check with the County Register of Deeds for possible liens against the property.

Visit the IRS website at [www.IRS.gov](http://www.IRS.gov) for information about Starting, Operating, or Closing a Business.

## Selling or Closing Your Business

There are several steps you must take when you sell a business that is covered under the Michigan Employment Securities Act.

- You must complete the [Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate, form UIA 1027](#) and deliver the completed form to the purchaser of the business at least two business days before the transfer of the business. This obligation extends to the seller's real estate broker, other agent or attorney. For more information regarding Unemployment Tax obligations, visit the Unemployment Insurance Agency website at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- You must notify the Registration Section of the Michigan Department of Treasury by completing a [Notice of Change or Discontinuance, Form 163](#), or by sending a letter that includes all discontinuance and account information. Mail Form 163 or your letter to:  
Michigan Department of Treasury  
Registration Unit  
P.O. Box 30778  
Lansing, MI 48909-8278
- You must pay any **delinquent taxes** due to the Department of Treasury. When making payment, submit a letter identifying the business name, address, Federal Employer Identification Number (FEIN), type of tax being paid and the period(s) the tax was due. Payment should include tax, penalty and interest owed. Contact the specific tax division for help calculating penalty and interest.
- Upon dissolution of a limited liability company registered with the State of Michigan, Department of Licensing and Regulatory Affairs (LARA), a Certificate of Dissolution shall be filed. For further information contact LARA at [www.michigan.gov/lara](http://www.michigan.gov/lara), Corporations Division.
- The seller should request a Tax Clearance Certificate to verify that all taxes have been paid. For more information about requesting a Tax Clearance, see below.

 **Delinquent Tax Debts** - The Department of Treasury and the Unemployment Insurance Agency (UIA) may both file tax liens against any taxpayer's real and personal property and issue a tax warrant or levy to seize and sell the property to satisfy a delinquent tax debt. **Corporate officers** may also be held liable for Treasury tax debts incurred by their corporations.





**REVENUE DIVISION OF DEPARTMENT OF TREASURY (EXCERPT)**  
**Act 122 of 1941**

**205.27a Selling or quitting business; final return; escrow account for payment of taxes; liability for taxes, interest, and penalties; assessment of deficiency, interest, or penalty; claim for refund; fraud or failure to notify of alteration or modification of federal tax liability; assessment and payment of tax, penalties, and interest; extension of statute of limitations; assessing responsible person; conditions to paying claim for refund; schedule; filing claim under former act; assessing tax or reducing overpayment; approval of tax refund; conditions; filing as combined, consolidated, or composite return; taxes to which subsection (5) applicable; definitions.**

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</u>	<u>Payable on</u>
<u>tax year:</u>	<u>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.

**History:** Add. 1986, Act 58, Eff. May 1, 1986;—Am. 1990, Act 285, Imd. Eff. Dec. 21, 1990;—Am. 1990, Act 344, Imd. Eff. Dec. 21, 1990;—Am. 1993, Act 14, Imd. Eff. Apr. 1, 1993;—Am. 2002, Act 657, Imd. Eff. Dec. 23, 2002;—Am. 2003, Act 23, Imd. Eff. June 24, 2003;—Am. 2010, Act 38, Imd. Eff. Mar. 31, 2010;—Am. 2011, Act 304, Imd. Eff. Dec. 27, 2011;—Am. 2012, Act 211, Imd. Eff. June 27, 2012;—Am. 2014, Act 3, Imd. Eff. Feb. 6, 2014.

**Compiler's note:** Section 2 of Act 58 of 1986 provides: "The changes in penalties and interest affected by this amendatory act shall take effect July 1, 1986."

Section 3 of Act 58 of 1986 provides: "Except for section 31 and the provisions of enacting section 2, this amendatory act shall take effect May 1, 1986."

Enacting section 1 of Act 23 of 2003 provides:

"Enacting section 1. This amendatory act takes effect for returns and remittances for those returns that are due or filed on or after the effective date of this amendatory act."

Enacting section 1 of Act 38 of 2010 provides:

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

Enacting section 1 of Act 304 of 2011 provides:

"Enacting section 1. This amendatory act shall be retroactively applied."

In subsection (11), the phrase "or 1 more persons" evidently should read "or 1 or more persons."

Enacting section 1 of Act 211 of 2012 provides:

"Enacting section 1. Section 27a(12) of 1941 PA 122, MCL 205.27a, as added by this amendatory act, is retroactive and is effective for all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122, MCL 205.27a, for all matters regarding the filing of a return under this section. However, this amendatory act is not intended to affect a refund required by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired before May 1, 2012."

**Popular name:** Revenue Act