

Treasury Update

Offer-in-Compromise Program Provides Relief for Taxpayers

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On January 1, 2015, the Michigan Department of Treasury began administering an Offer-in-Compromise (OIC) program, enabling taxpayers to submit offers to Treasury to settle tax debts for less than the full amount owed. The OIC program was established under Public Act 240 of 2014. Prior to the enactment of this legislation, Treasury had no authority to compromise tax debts. The program is intended to give taxpayers relief from tax burdens in certain circumstances prescribed by statute.

Under the OIC program, a taxpayer may submit an offer to compromise tax debt based on one or more of the following grounds: (1) the taxpayer has received an accepted federal offer-in-compromise from the Internal Revenue Service; (2) the taxpayer can demonstrate that there is a doubt as to the collectability of the tax debt; and (3) the taxpayer can demonstrate that there is a doubt as to the taxpayer's liability for the tax debt even though the appeal rights have lapsed.

An offer-in-compromise based on receipt of an accepted federal offer-in-compromise may only be submitted for tax debt attributed to individual income tax or corporate income tax under part 1 or part 2 of the Michigan Income Tax Act, MCL 206.1 to 206.699, for the same tax years as the federal offer-in-compromise accepted by the IRS. A taxpayer submitting an offer-in-compromise based on doubt as to collectability must show: (1) that the amount offered is the most that can be expected to be paid or collected from the taxpayer's present assets and sources of income; and (2) that the taxpayer does not have reasonable prospects for acquiring more income or assets within a reasonable period of time that would enable the taxpayer to pay a greater amount of the tax debt than the amount offered. A taxpayer submitting an offer based on doubt as to liability must demonstrate that the taxpayer would have prevailed in a contested case if the taxpayer had in fact appealed the assessment.

A taxpayer seeking an offer-in-compromise must complete and file the applicable forms developed by Treasury for the program. The taxpayer is also required to remit with its

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Treasury's new OIC Program is intended to offer relief to taxpayers who (1) have an accepted offer-in-compromise from the IRS; (2) can demonstrate doubt as to the collectability of their tax debt; and/or (3) can demonstrate doubt as to liability for the tax debt, even though appeal rights have lapsed.

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submitted offer an initial payment on the offer of \$100 or 20% of the amount of the offer, whichever is greater. This initial payment amount is nonrefundable and will be applied to the outstanding balance of the taxpayer's tax liability. Also, certain conditions must have been satisfied or exist before a taxpayer is eligible to submit an offer-in-compromise. For example, a taxpayer is not eligible to participate in the OIC program if the taxpayer is in bankruptcy or currently contesting its tax liability in court. In addition, a taxpayer in most circumstances must file all required returns prior to submitting an offer-in-compromise. Upon determining a taxpayer is eligible to submit an offer-in-compromise, Treasury will evaluate the offer and issue to the taxpayer a written decision accepting or rejecting the offer.

An overall description of the OIC program, the conditions pursuant to which a taxpayer is eligible to submit an offer-in-compromise, how Treasury evaluates and decides upon an offer-in-compromise, and generally how the OIC program is administered by Treasury are all contained in guidelines issued by Treasury. The forms and guidelines, as well as FAQs and other information regarding the OIC program, can be accessed online by visiting the website for the OIC Program, www.michigan.gov/oic.

Virtual Currency

Convertible virtual currency is a digital representation of value that has an equivalent value in real currency, such as the United States Dollar (USD), and/or acts as a substitute for real currency. A prominent example of convertible virtual currency is Bitcoin, a form of e-currency that has been around since 2008.

The General Sales Tax Act and the Use Tax Act impose tax at a rate of 6% on the value of consideration given in exchange for tangible personal property. Taxpayers are required to remit sales and use tax liabilities based on the dollar value of the consideration exchanged for taxable property. If the consideration given in exchange for the property is not USD the taxpayer must convert the value of the consideration to USD as of the date and at the time of the transaction; this requirement includes convertible virtual currency exchanged for taxable property. Therefore, a taxpayer accepting virtual currency in a retail sale transaction must convert the value of the virtual currency to USD as of the day and the exact time of the transaction. The taxpayer accepting virtual currency must also maintain documentation demonstrating the value of the virtual currency on the day and at the exact time of the transaction.



It should be noted, however, that virtual currency itself is not tangible personal property for purposes of the General Sales Tax Act or the Use Tax Act. Therefore, purchases of virtual currency — as contrasted with purchases made with virtual currency — are not subject to sales or use tax.

A major draw of virtual currency is that it can be used to buy merchandise anonymously. In addition, international payments are easy and cheap because virtual currency is not tied to any country or subject to regulation. Many governments are keeping a careful eye on virtual currency because of its role in transactions involving illegal goods.

Treasury Promulgates New Administrative Rules and Implements New Internal Procedures for Field Audits

On May 13, 2015, Treasury promulgated new administrative rules regarding the professional conduct of its auditors. These new rules apply to field audits of taxes administered under the Revenue Act (sales and use taxes, income taxes, etc.).

During the rulemaking process, Treasury worked closely with the Michigan Association of Certified Public Accountants (MICPA) to resolve concerns and clarify the rules. MICPA supported Treasury's rules when they came up for review before the legislature's Joint Committee on Administrative Rules. The new administrative rules generally follow the Code of Professional Conduct of the American Institute of Certified Public Accountants (AICPA). The AICPA code, to the extent applicable to tax audits, was followed by Treasury auditors even before the new rules were promulgated.

The rules address technical training and educational requirements, confidentiality, independence, objectivity, due professional care, reasonable assurance, planning and supervision, understanding internal controls and assessment of risk, evidence, sampling, and elements of an audit report. The rules are stated as broad principles that require auditors to resolve matters in an ethical manner. Auditors should always seek resolutions that encourage public trust in the tax audit process.

The new field audit rules can be found in their entirety on the website of the Department of Licensing and Regulatory Affairs (www.michigan.gov/lara).

In addition to the new administrative rules, Treasury's Tax Compliance Bureau has recently implemented a number of new internal procedures designed to enhance audit fairness and efficiency. These procedures include:

- Standardizing opening conference requirements in order to better communicate the audit scope and mutual expectations of the parties with respect to the audit process;
- Implementation of an audit project management tool to establish mutually agreed upon audit milestones for shorter audits and better communication with taxpayers;
- Publication of audit manuals; and
- Establishment of a dedicated training and quality assurance unit to improve consistency and predictability of audits.

Current audit manuals can be found on Treasury's website at http://www.michigan.gov/taxes/0,4676,7-238-43519_43524---.00.html.

Cloud Computing: A Clearer Horizon

“Cloud computing” is a generic phrase that refers to a multiplicity of delivery models over the internet. These models range from the mere storage of data to the outsourcing of a customer’s information technology department. Included in this spectrum is the delivery of software products to customers, whether by electronic download or remote access.

The Department of Treasury’s position as to whether a transaction involving the use of software is subject to Michigan sales or use tax depends on the facts and circumstances of each transaction. In general, “prewritten computer software” is distinguished from “custom software.” Custom software is software that is designed for the exclusive use and special needs of a single purchaser and is exempt from both sales tax and use tax. However, if a transaction involves a fee (license or subscription) for the use of prewritten computer software, the transaction would be considered a taxable use of prewritten computer software. Furthermore, it is Treasury’s position that under Michigan law it is not relevant how prewritten computer software is delivered, specifically, whether it is accessed remotely or downloaded.

In some instances both services and the right to use software may be integrated or combined into one transaction. For example, if a company offers a product that includes both taxable tangible personal property (right to use prewritten software)



and an exempt service (a hosting environment), Treasury will apply the “incidental to service” test outlined by the Michigan Supreme Court in *Catalina Marketing Sales Corp v Department of Treasury*, 470 Mich 13 (2004), to determine the nature and taxability of the transaction.

The taxability of certain forms of “cloud computing” is currently being litigated. To date, there have not been any precedential decisions on this issue. The Michigan Tax Tribunal adopted Treasury’s position in *Great Lakes Home Health Services, Inc., v Department of Treasury*, Michigan Tax Tribunal, 410962, (10/23/2012). Treasury also prevailed in *Thomson Reuters Inc., v Department of Treasury* at the trial court level, but lost in the Michigan Court of Appeals. 313825, 05/13/2014 (Unpublished). Treasury is currently appealing *Thomson Reuters*, along with several other cases, including *Auto-Owners Insurance Company v Department Of Treasury*, 12-000082-MT, 03/20/2014. In September, oral arguments took place in the *Auto-Owners* case at the Court of Appeals, and a decision is expected this year. Stay tuned for future updates!

For questions, ideas for future newsletter or Revenue Administrative Bulletin topics, or suggestions for improving Treasury Update, please contact:

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Sales and Use Tax Nexus for Remote Sellers

Beginning October 1, 2015, an out-of-state seller will be presumed to be engaged in business in Michigan if the seller has nexus with Michigan under new sections 2b of the General Sales Tax Act and 5a of the Use Tax Act (MCL 205.52b and 205.95a).

The new statutory sections will:

⇒ Create a presumption that a seller is engaged in the business of making sales at retail in Michigan, or has nexus with Michigan and is required to collect the use tax, if the seller or an affiliated person engages in or performs certain sales-related activities in Michigan.

Such activities include:

- selling a similar line of products as the seller under the same or a similar name;
- using a place of business in Michigan to facilitate the delivery or sale of goods sold by the seller to purchasers in Michigan;
- facilitating sales to Michigan purchasers by allowing them to pick up or return goods sold by the seller at a place of business maintained in Michigan;
- delivering, installing, assembling, or performing maintenance or repair services for the seller's purchasers in Michigan;
- sharing management, business systems or practices, or employees with the seller or, in the case of an affiliated person, engaging in intercompany transactions related to the establishment or maintenance of the seller's market in Michigan; and
- conducting any other activities in Michigan that are significantly associated with the seller's ability to establish and maintain a market in Michigan.

⇒ Create a presumption that a seller is engaged in the business of making sales at retail in Michigan, or has nexus with Michigan and is required to collect the use tax, if the seller enters into agreements with one or more Michigan residents under which the resident, for consideration, refers potential purchasers to the seller, whether by a link on a website, an in-person presentation, or otherwise, but only if (i) the seller has more than \$10,000 in gross receipts in the previous 12 months from sales to Michigan purchasers referred to the seller by residents of Michigan with agreements with the seller, and (ii) the seller's total cumulative gross receipts from sales to Michigan purchasers exceed \$50,000 for the preceding 12 months.

Mere advertising will not give rise to the presumption unless the revenue paid to the person is based on commissions or other consideration tied to completed sales of goods in Michigan.

⇒ Allow either presumption to be rebutted by a demonstration that the activity or agreement was not or is not significantly associated with the seller's ability to establish or maintain a market in Michigan.

In the near future, Treasury expects to issue an RAB containing a more detailed discussion of the application of the new presumptions to out-of-state sellers. The RAB will also contain sample documentation a seller can use to rebut the presumption that an out-of-state seller that has an agreement with a Michigan resident is engaged in the business of making sales at retail in Michigan.

Special Note:

If you are a seller that will have nexus with Michigan on or after October 1, 2015, and you are not already registered with the Department of Treasury and remitting sales or use tax, you will need to register. For information regarding Michigan's tax registration and remittance requirements, please visit our website at <http://www.michigan.gov/taxes> or call 517-636-4357.



Shotwell v Treasury: Changes to Corporate Officer Liability are Retroactive

With the enactment of 2014 PA 3 (PA 3), effective February 6, 2014, the Michigan Legislature significantly revised the corporate officer liability program authorized under section 27a (5) of the Revenue Act, MCL 205.27a(5). Among the key changes to corporate officer liability are the following: (i) fewer taxes within the purview of corporate officer liability; (ii) statutorily defined parameters as to what constitutes a “responsible person” subject to corporate officer liability, and; (iii) more stringent requirements for Treasury to establish a prima facie case that an individual is a “responsible person.”

One of the legal questions that arose in the wake of PA 3 was whether the changes made by the legislation were to be applied retroactively to tax assessments issued to responsible persons prior to January 1, 2014. In a May 27, 2014, published decision, the Michigan Court of Appeals answered this question by concluding that PA 3 “has retroactive effect.” See *Deena Shotwell v Dep’t of Treasury*, 305 Mich App 360, 369 (2014). Applying PA 3, and having found no material question of fact in existence as to whether the taxpayer could be held liable under MCL 205.27a(5), the Court of Appeals affirmed the Michigan Tax Tribunal’s grant of summary disposition in favor of the taxpayer.

Significantly, the Court of Appeals also rejected Treasury’s argument that a person constituting a *de facto* officer qualifies as an “officer” for purposes of corporate officer liability. Although the Court of Appeals conceded that Michigan’s jurisprudence has a long history of recognizing *de facto* officers, it ultimately held that a *de facto* officer could not constitute a “responsible person” subject to corporate officer liability. The Court of Appeals reasoned that only “those individuals who hold corporate positions in truth under the law, not merely with apparent authority” are subject to corporate officer liability under MCL 205.27a(5).

In response to the appellate court’s adverse holding concerning *de facto* officers, Treasury sought leave to appeal the decision to the Michigan Supreme Court on two narrow questions: (i) whether the common law *de facto* officer doctrine applies for purposes of corporate officer liability under MCL 205.27a(5); and (ii) whether Deena Shotwell held herself out as and engaged in duties as a *de facto* officer in the closely held corporation.

On March 25, 2015, the Michigan Supreme Court issued an Order that ultimately determined that the findings of the trial court (the Michigan Tax Tribunal) were supported by competent, material, and substantial evidence on the whole record. See *Deena Shotwell v Dep’t of Treasury*, ____ Mich ____; 860 NW2d 623 (2015). As such, the Order denied Treasury’s leave to appeal with respect to the second question presented. With respect to the first question presented, however, the Order stated that “in lieu of granting leave to appeal, we VACATE that part of the Court of Appeals judgment concerning *de facto* officers.”

Dombrowski v Treasury:

Rolling the Dice with Facts and Circumstances



In the recent case *Dombrowski v Michigan Dep't of Treasury*,* the Michigan Court of Appeals affirmed the Tax Tribunal's determination that Karen Dombrowski was a professional gambler, giving her the benefit of a more favorable tax deduction at the federal level and reducing her adjusted gross income, the starting point for Michigan taxable income. The Court followed legal precedent set by the U.S. Supreme Court in the 1987 case *Comm'r of Internal Revenue v Groetzinger*, 480 U.S. 23 (1987), a case holding that a gambler claiming professional status must prove that he or she is "involved in the activity with continuity and regularity" for the primary purpose of earning income or profit. Under *Groetzinger*, an examination of the facts and cir-

cumstances is required in each case to determine whether a taxpayer is engaged in a trade or business as a professional gambler.

Though Treasury adheres to the *Groetzinger* facts and circumstances test (see RAB 1987-3), the *Dombrowski* case demonstrates that witness credibility and the weight assigned to particular facts or circumstances can produce unpredictable outcomes. Ms. Dombrowski lacked any documentation or records of her gambling activities other than those generated by the casinos, which the Tribunal considered inadequate. The Tribunal, however, assigned little weight to this fact and much greater weight to the testimony of the taxpayer's witnesses in concluding that Ms. Dombrowski was a full-time gambler. Additionally, despite the fact that Ms. Dombrowski's primary gambling activity was slot machine play, little weight was given to expert witness testimony establishing that slot machine outcomes are programmed to be random but with a built-in mathematical advantage for the casino, such that no amount of gambling skill can impact the likelihood of long-term winnings.

The Court of Appeals declined to interfere with either the Tribunal's credibility assessments of the witnesses or the weight it assigned to the evidence presented, and upheld Ms. Dombrowski's victory. Nevertheless, Treasury will continue to scrutinize assertions of professional gambling status made by gamblers whose primary activity is slot machine play, because regular and continuous gambling against a machine programmed to produce losses over the long term seriously undermines a taxpayer's good-faith assertion of a profit motive.

Despite her victory in the Court of Appeals, Karen Dombrowski rolled the dice by relying solely on witness testimony and casino-generated records of her gambling activities to establish her professional gambler status. Credibility assessments are inherently subjective and casino records alone are inadequate. The safest bet a professional gambler can make is to keep an accurate diary or other contemporaneous record of his or her gambling activities, supplemented by verifiable documentation to substantiate winnings and losses. For more information on this topic, see Internal Revenue Service Procedure 77-29.

* *Dombrowski v Michigan Dep't of Treasury* is an unpublished opinion per curiam of the Court of Appeals, issued October 21, 2014 (Docket No. 316888).

Business Tax Apportionment: *IBM v Treasury* and Its Aftermath

Litigation regarding the application of the Multistate Tax Compact (Compact) apportionment method in Michigan continues in the wake of the Michigan Supreme Court's decision in *IBM v Dep't of Treasury* and the passage of 2014 PA 282 (PA 282), which repealed the Compact retroactive to January 1, 2008. On July 14, 2014, the Court ruled, in a plurality opinion, that the Michigan Business Tax Act (MBTA) did not impliedly repeal the Compact provision permitting a multistate income tax taxpayer to elect to apportion its income tax base using the Compact's equal-weighted three-factor (property, payroll, and sales) apportionment formula.

The Department of Treasury had rejected IBM's use of the three-factor method to calculate its 2008 MBT liability on the grounds that the MBTA required IBM to use single sales factor apportionment and that this statutorily-required method superseded any election otherwise available under the Compact. On appeal, the Court of Claims ruled in Treasury's favor. This decision was affirmed by the Court of Appeals, which held that the Legislature had impliedly repealed the Compact's election provision when it enacted the MBTA, and rejected the argument that the Compact was a binding contract which could not be legislatively amended. The Supreme Court overturned the Court of Appeals' decision, holding that the Legislature intended for both the MBTA and the Compact's election provision to remain in effect. The Court found that by repealing the Compact election provision beginning January 1, 2011, the Legislature had created a window from the effective date of the MBTA through December 31, 2010, within which the use of the Compact apportionment method was not prohibited.

Treasury requested a rehearing, as well as a stay of the Court's decision on the many similar cases pending in the lower courts. While the rehearing request was pending, the Legislature on September 10, 2014, passed PA 282, which expressly repeals the Compact retroactively to January 1, 2008.

The legal effect of PA 282 on taxpayers' ability to apportion their MBT tax bases using the Compact's three-factor method in the wake of the Supreme Court's decision in *IBM* was addressed by the Court of Appeals in its September 29, 2015 decision in *Gillette Commercial Operations N.A. v Dep't of Treasury*, a consolidated docket comprised of 50 Compact three-factor cases. The appellate court held that PA 282 lawfully repealed the Compact effective January 1, 2008, and thereby extinguished any right to three-factor Compact apportionment. The court found that the Compact was not a contract binding on the Michigan Legislature, and that the Legislature was free to repeal the Compact, as it did with PA 282. The Court of Appeals also upheld the retroactive effect of PA 282, finding that taxpayers' due process rights were not violated, since taxpayers had no vested right in the continuance of any tax law and there was a legitimate purpose for the law's retroactive effect in correcting the perceived misinterpretation of the MBTA and the Compact and in protecting the public fisc by eliminating the estimated \$1.1 billion of revenue loss due to that misinterpretation. The court also rejected various claims that the enactment of PA 282 violated the Michigan Constitution. (continued)



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Gillette Commercial Operations N.A is a published opinion of the Court of Appeals. Consequently, it is binding on the MBTA and Corporate Income Tax three-factor apportionment cases pending before the lower courts, as well as on all future cases involving the issue of apportionment under the Compact election.

Whether a taxpayer can elect the Compact's three-factor apportionment under the Single Business Tax (SBT), which was not affected by PA 282, is also the subject of pending litigation. The issue was addressed by the Court of Claims on April 21, 2015, in *EMCO Enterprises, Inc v Dep't of Treasury*. The court ultimately ruled that the taxpayer was required to use the SBT's apportionment method – a three-factor formula heavily weighted towards sales – and was not entitled to elect the Compact's three-factor apportionment formula. The court's decision was appealed, and the matter is currently pending review by the Court of Appeals.

RECENTLY ISSUED GUIDANCE FROM TREASURY

[Letter Ruling 2015-1](#) Sales Tax on the Difference

[Letter Ruling 2015-2](#) The Effect on Audits of Changes Made to Statute of Limitations Extensions by PA 3 of 2014

[Letter Ruling 2015-3](#) Non-Tobacco Products with Nicotine and the Tobacco Products Tax Act

[Letter Ruling 2015-4](#) Tobacco Tax Payment Requirements for Unclassified Acquirers

[Internal Policy Directive 2015-1](#) Use Tax Exemption for Transfers of Certain Property to an "In-Law"

[Administrative Rules 205.2001-205.2011](#) Audit Standards for Field Audits

[Revenue Administrative Bulletin 2015-11](#) Environmental Protection Regulatory Fee

[Revenue Administrative Bulletin 2015-13](#) Exemption for Foreign Diplomatic Personnel

[Revenue Administrative Bulletin 2015-14](#) Filing and Remitting "Same Day" Returns and Payments When There is an Electronic Funds Transfer for Michigan Treasury Online System Failure

[Revenue Administrative Bulletin 2015-15](#) Taxability of Income to Estates, Trusts, or Beneficiaries

[Revenue Administrative Bulletin 2015-17](#) Sales Tax Treatment of Delivery Services Provided by Retailers

[Revenue Administrative Bulletin 2015-18](#) Total Household Resources Defined

Treasury Update is a periodic publication of the Tax Policy Division of the Michigan Department of Treasury. It is distributed for general informational purposes only, and discusses topics of broad applicability. It is not intended to constitute legal, tax, or other advice. For information or advice regarding your specific tax situation, please contact your tax professional.

MILogin: Fighting Tax-Related Identity Theft

Identity theft is a global and growing problem. The Department of Treasury is committed to combatting fraud and tax-related identity theft in Michigan. Each year Treasury, through its discovery division, selects tens of thousands of returns for verification due to potential tax-related identity theft.

Treasury will always begin the identity verification process by sending a Letter of Inquiry. A return envelope with the return address "PO Box 30771" will be included. Treasury will not initiate any requests for information via email, telephone, text, or fax, and will only follow up with taxpayers by telephone or other means after having sent the initial Letter of Inquiry. A taxpayer who has filed a form MI-1040, Individual Income tax return, may receive a letter requesting a copy of their picture ID, copies of W2s, 1099s, K1s, and other documents. These documents are needed by Treasury to confirm a taxpayer's identity. Treasury will not use a social security number in any letter that we send, and we will not ask a taxpayer to provide a copy of their social security card via U.S. mail. After successful authentication of a taxpayer's identity, Treasury will begin processing that taxpayer's tax return.

If a taxpayer did NOT file a return and receives a Letter of Inquiry, this means that a Michigan tax return was filed using that taxpayer's name and address. Treasury cannot confirm that a taxpayer's identity was stolen, but will provide concerned taxpayers with information regarding how to take precautions and what steps to take in order to file a return.

In the coming months, Treasury will begin asking taxpayers who have been selected for identity verification to use MILogin. This is a Michigan-wide service that will also be used by other departments in the future. In order to use MILogin, taxpayers will be asked to first create an account, and then enter certain information found on Treasury's Letter of Inquiry, as well as information from the taxpayer's tax return. Taxpayers will then be asked to enter their name and the last 4 digits of their social security number. This information will not be stored on the website. Taxpayers will then need to correctly answer 4 or 5 questions that pertain only to them. These questions are similar to the questions that are asked in order to obtain a free credit report. Once implemented, the MILogin service will help speed up the verification process, yet will require minimal effort from taxpayers. The implementation of the new system will allow tax refunds to get to the correct taxpayers more quickly.

Identity theft affects us all, from governments to businesses to citizens. Everyone should be aware of what they can do to help combat this important and growing problem. For more information on this subject visit the Federal Trade Commission's website at www.ftc.gov.

 LifeLock

The Cost of Identity Theft



* Federal Trade Commission press release, Feb. 27, 2010
** Identity Theft Study, a commissioned survey conducted by Forrester Consulting on behalf of LifeLock, April-May 2014. Results are based on survey participants' identity theft and life events of past 12 months.
*** The Bureau of Justice Statistics, Victims of Identity Theft, 2012 (December 2013)

**** 2013 Data Protection and Breach, Global Trust Alliance, Pro-Release Draft (January 29, 2013) Based on first nine months of 2014.

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Please report any suspected tax fraud to ReportTaxFraud@michigan.gov

Please report any suspected Tax-Related Identity Theft to Treasury-ReportIDTheft@michigan.gov

Service Fee Housing Information Forthcoming

Earlier this year, Governor Snyder signed Public Act 10 of 2015 (“PA 10”), which allows Treasury to provide a list of service fee housing properties to assist taxpayers and preparers in calculating the homestead property tax credit for income tax returns. Treasury is currently determining the most effective way to publish this information.



Background: Certain taxpayers may claim a homestead property tax credit on their individual income tax returns. To qualify for the credit, the claimant must own or rent and occupy the homestead on which property taxes are levied. However, some taxpayers reside in multiple-unit dwellings which are tax-exempt or subject to a service charge in lieu of taxes, also known as service fee housing. Service fee housing is created by city or township ordinance. The ordinance allows the property owner to pay a service fee (a reduced property tax) instead of property taxes. The properties subject to service fee ordinances may change from year to year because of the time limitations of the individual ordinances.

In order to correctly calculate the property tax credit, a taxpayer must know whether the housing is subject to property taxes or a service fee. A claimant living in housing that is assessed property tax uses 20% of the annual rent to calculate the property tax credit, while a service fee housing claimant uses 10% of the annual rent to calculate the credit. In some instances, both claimants and property managers may be unsure whether the home is subject to property tax or service fees. The list will help clear up any confusion and enable taxpayers to calculate their homestead property tax credits correctly.

Prior to the enactment of PA 10, information obtained by Treasury about properties that are service fee housing was confidential and could not be disclosed.

Tax Appeals: Changes to “Pay to Play” Rules

Public Act 79 of 2015 amended Section 22 of the Revenue Act by making two procedural changes to appealing assessments to the Court of Claims and the Tax Tribunal. First, the Act repeals the requirement that the taxpayer pay any amounts it disputes within 90 days of assessment as a prerequisite to appeal to the Court of Claims (commonly referred to as “pay-to-play”); the Act does not change the requirement that the appeal be filed and all undisputed amounts be paid within 90 days of the final assessment. Prior to the effective date of the Act (see below), in order to invoke the jurisdiction of the Court of Claims, taxpayers are required to pay the entire assessment, including disputed amounts, and file petitions within 90 days of the issuance of the final assessment. The Act also increases the time period in which a taxpayer may appeal an assessment to the Michigan Tax Tribunal from 35 to 60 days.

Finally, the Act appropriates \$200,000 from the general fund to the Court of Claims in anticipation of the increase in filings with the Court of Claims that is expected to result from the removal of the “pay to play” requirement.

Public Act 79 of 2015 is effective 90 days after the Legislature adjourns from its 2015 session. The Legislature is tentatively scheduled to adjourn on December 17, 2015; if that is the date of adjournment, the Act will be effective on March 17, 2016.