

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE  
OF FINANCIAL AND INSURANCE  
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL  
INSURANCE COMPANY,

Respondent.

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Christopher L. Kerr (P57131)  
Allison M. Dietz (P73612)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

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**EX PARTE PETITION FOR APPROVAL TO SETTLE  
OUTSTANDING MICHIGAN TAX LIABILITY OF AMERICAN COMMUNITY**

Kevin Clinton,<sup>1</sup> Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through his attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr, Assistant Attorney General, petitions this Court pursuant to MCL 500.8114(2) and 500.8121(f)(ii) to approve the settlement of the outstanding Michigan business tax liability of

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<sup>1</sup> Governor Snyder duly appointed Kevin Clinton to succeed Ken Ross as the Commissioner of OFIR effective April 18, 2011. Consequently, Commissioner Clinton became the Rehabilitator of American Community on that date.

American Community Mutual Insurance Company ("American Community"). In support of this Ex Parte Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. Under the Rehabilitation Order and MCL 500.8114(2), the Rehabilitator "shall have and exercise the full and complete power" of American Community's directors, officers, and managers, whose authority was suspended upon entry of the Rehabilitation Order.

3. MCL 500.8114(2) further vests the Rehabilitator with "full power to . . . deal with the property and business of" American Community and authorizes the Rehabilitator to "take such action as he or she considers necessary or appropriate to reform and revitalize [American Community] including, but not limited to, the powers in section 8121(1)(f), (l), (m), (r), and (u)."

4. Section 8121(1)(f), MCL 500.8121(1)(f), empowers the Rehabilitator:

(f) To collect all debts and money due and claims belonging to the insurer, wherever located, and for the following purposes:

\* \* \*

(ii) To do other acts as are necessary or expedient to collect, conserve, or protect the assets or property, including the power to sell, compound, *compromise*, or assign debts for purposes of collection upon terms and conditions as he or she considers best. (emphasis added)

5. Consistent with the foregoing statutes, the Rehabilitation Order granted the Rehabilitator: "(a) all the powers contained in MCL 500.8114 and 500.8115; (b) all applicable

powers set forth in Chapter 81; and (c) such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator."

6. The broad powers granted to the Rehabilitator to reform and revitalize American Community under MCL 500.8114(2), MCL 500.8121(1)(f)(ii), and the Rehabilitation Order include the authority, with this Court's approval, to compromise the company's outstanding debts and liabilities.

7. Through this petition, the Rehabilitator seeks the Court's approval to settle American Community's outstanding tax liability owed to the State of Michigan, Department of Treasury, for certain unpaid business taxes and interest.

8. Specifically, American Community underpaid business taxes in 2008 and now has an outstanding tax liability owed to the State of Michigan in the total amount of \$192,386.89.<sup>2</sup> Pursuant to 2010 PA 198, however, the Legislature has enacted a tax amnesty program which provides Michigan taxpayers, including American Community, a one-time opportunity to pay in full certain delinquent taxes and accrued interest without penalty.<sup>3</sup>

9. Pursuant to the Notice of Tax Amnesty sent by the Department of Treasury to American Community on April 15, 2011, American Community may now settle its total outstanding tax liability in the amount of \$192,386.89 for the penalty-free, reduced amount of \$41,806.00.<sup>4</sup> As a result of this settlement, American Community could "save" and remove a liability in the amount of \$150,580.89 from its balance sheet, increasing the company's net worth in the same amount.

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<sup>2</sup> See Exhibit A, Notice of Tax Amnesty dated April 15, 2011.

<sup>3</sup> Exhibit A; see also <http://www.michigan.gov/taxes/0,1607,7-238-57091-253506--,00.html>.

<sup>4</sup> Exhibit A.

10. The Court's approval is needed to enter into this settlement agreement with the Department of Treasury. The Rehabilitation Order only provides for the Rehabilitator to: (a) pay for goods and services provided on or after the date of the Order as they become due in the ordinary course of business; and (b) pay for any other normal administrative expenses incurred on or after the date of the Order that are necessary for the continued operation and/or rehabilitation of American Community as they become due in the ordinary course of business. Because the outstanding tax liability owed to the State of Michigan relates to an expense/liability incurred in 2008, thereby pre-dating the Rehabilitation Order, these provisions do not authorize the Rehabilitator's payment of the settlement amount without Court approval.

11. The Rehabilitator believes that the settlement of American Community's \$192,386.89 outstanding Michigan tax liability for the penalty-free, reduced amount of \$41,806.00 is necessary and appropriate to reform and revitalize American Community and will promote the protection of American Community's creditors, policyholders, and the public. A comparison of the settlement amount to the amount of American Community's total tax liability evidences that this settlement is reasonable and will remove a significant liability from American Community's balance sheet, thereby improving the company's total net worth.

12. Time is of the essence to enter into this settlement agreement, as the tax amnesty program is only in effect from May 15 through June 30, 2011. To complete the settlement, the Rehabilitator must complete the Tax Amnesty Application, any appropriate tax returns (if necessary), and remit the settlement amount to the Department of Treasury.

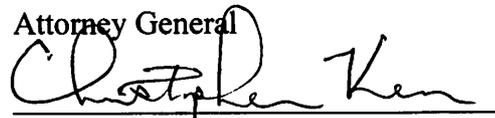
13. Providing personalized notice of this Ex Parte Petition and any resulting Order to all parties that may have an interest in this matter is impossible at this time because there has been no claims submission or other process to identify such parties. Moreover, attempting to

identify and personally notify parties in interest would be time-intensive and costly to American Community's Rehabilitation Estate. As stated, the tax amnesty settlement is also time-sensitive. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the OFIR website, [www.michigan.gov/ofir](http://www.michigan.gov/ofir), under the section "Who We Regulate" and the subsection "American Community." Service in this manner is reasonably calculated to give interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, for the reasons stated above, the Rehabilitator respectfully requests this Court to approve the settlement of American Community's \$192,386.89 outstanding Michigan tax liability for the penalty-free, reduced amount of \$41,806.00, consistent with the terms of the Notice of Tax Amnesty attached as Exhibit A. The Rehabilitator further requests the Court to authorize and ratify service of this Ex Parte Petition and any resulting Order by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted

Bill Schuette  
Attorney General



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Assistant Attorney General  
Michigan Department of Attorney General  
Corporate Oversight Division  
Attorneys for Petitioner  
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Dated: May 26, 2011

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STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RICK SNYDER  
GOVERNOR

ANDY DILLON  
STATE TREASURER

AMERICAN COMMUNITY MUTUAL  
INSURANCE CO  
39201 7 MILE RD  
LIVONIA MI 48152

04/15/2011

**NOTICE OF TAX AMNESTY**

You could save \$ 150,580.89

Account Number: F38-1290976

Dear Taxpayer:

The State Legislature enacted Public Act 198 of 2010 which provided for Tax Amnesty. Tax Amnesty is a one-time opportunity for taxpayers to pay, in full, certain delinquent taxes and assessed tax liability and interest without penalty or prosecution. Tax Amnesty will be in effect from May 15 through June 30, 2011. Tax Amnesty is available for all tax return periods ending on or before December 31, 2009, regardless of the due date.

Below is Treasury's calculation of your eligible tax and interest liabilities along with your penalty savings under the Tax Amnesty program:

The Balance of Your Eligible Liabilities	\$192,386.89
Tax	\$0.00
Interest	\$41,806.00
If You Pay Tax and Interest of	\$41,806.00
<b>YOU SAVE the PENALTY of</b>	<b>\$150,580.89</b>

Enclosed is a *Michigan Tax Amnesty Application* (Form 3855) listing your eligible assessment(s). You must complete and file the appropriate returns, if necessary, record the amounts (Tax Due, Interest, and Total) on the Tax Amnesty application and pay the tax and interest owed.

**NOTE:** You may have other assessments not eligible for Tax Amnesty.

If you have questions, contact the Collection Division at (517) 636-5265 or visit [www.mitaxamnesty.org](http://www.mitaxamnesty.org).

Sincerely,

Ann E. Good, Administrator  
Collection Division

Enclosures

# Michigan Tax Amnesty Application

Issued under authority of Public Act 198 of 2010. Filing is voluntary.

Amnesty will not be granted if this form is not filed. See instructions on Page 2.

## PART 1: TAXPAYER IDENTIFICATION (Type or Print)

1. Taxpayer Name (Last, First, Middle Initial)		2. Taxpayer's Social Security Number	
3. Spouse's Name (Last, First, Middle Initial)		4. Spouse's Social Security Number	
FOR INDIVIDUALS ONLY			
5. Mailing Address (No., Street, P.O. Box)		City	
State		ZIP Code	
6. Business Name (DBA)			
AMERICAN COMMUNITY MUTUAL			
8. Business Contact Person		9. Business Title	
10. State Where Incorporated		11. Mailing Address (No., Street, P.O. Box)	
State		City	
MI		LIVONIA	
ZIP Code		39201 7 MILE RD	
48152			

## PART 2: TAX PAYMENT DETAIL

If additional space is needed, refer to Michigan Tax Amnesty Supplemental Schedule (Form 3874).

A	B	C	D	E	F	G	H
Tax Type Code	Assessment Number	(C) Taxable Period (MM/YYYY)	(D) Taxable Period	(E) Amount of Tax Due	(F) Amount of Interest Due	(G) Total Tax and Interest Due	(H) (X)
12. MBR	1C90444	12/2008		0.00	41,806.00	41,806.00	
13.							
14.							
15.							
16.							
17.							
18.							

19. Enter total of Column G. SUBTOTAL 41,806.00

20. Check here if you have continued Part 2 on the Supplemental Schedule (Form 3874) and enter the Schedule total here.

21. TOTAL. Add lines 19 and 20. PAY THIS AMOUNT. 41,806.00

22. PAYMENT. TOTAL AMOUNT PAID WITH THIS FORM. 41,806.00

23. Check here if you have included a tax return that claims a refund with this amnesty application.

## PART 3: CERTIFICATION

I declare under penalty of perjury that I am eligible for amnesty under the conditions listed on page 2 of this form and that the information on this form and any accompanying returns and schedules is, to the best of my knowledge, true, correct and complete.

Signature of Taxpayer or Authorized Business Official		Date	Taxpayer Telephone Number
Taxpayer's Spouse's Signature		Date	Taxpayer Telephone Number
I authorize Treasury to discuss this application with my Tax Preparer.		Tax Preparer's Name	Tax Preparer's Telephone Number
Yes <input type="checkbox"/> No <input type="checkbox"/>			

Mail the Amnesty application with returns and payment to: Michigan Department of Treasury, Tax Amnesty, P.O. Box 30710, Lansing, MI 48909. For additional information, visit [www.mtaxamnesty.org](http://www.mtaxamnesty.org) or call toll-free (855) 466-4829.