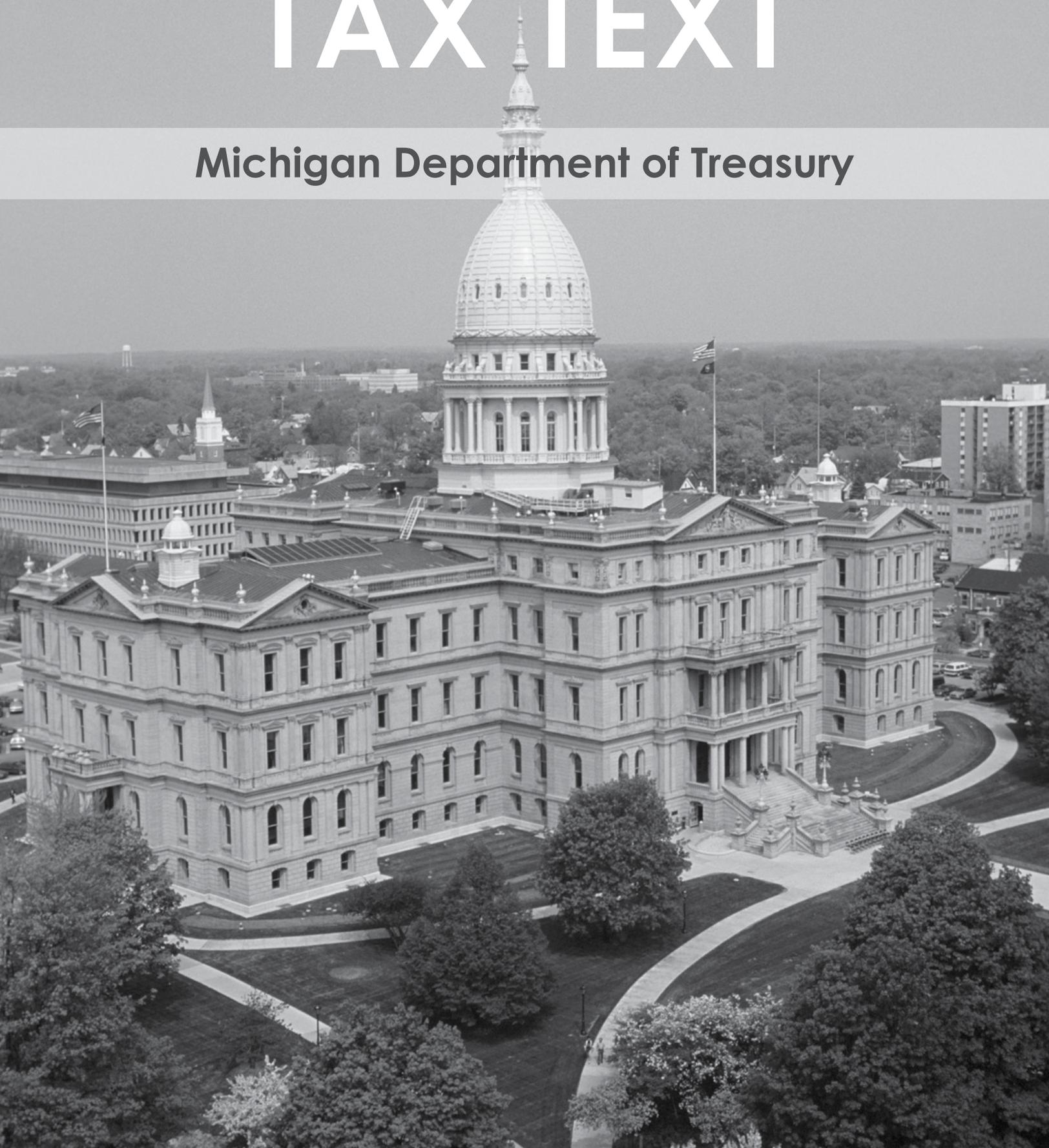


# 2019 TAX TEXT

**Michigan Department of Treasury**



**Disclaimer:** This publication is intended for general education on tax laws enforced by the Michigan Department of Treasury. It does not constitute a revenue administrative bulletin or a letter ruling. While every attempt has been made to ensure the accuracy of this book, it is not an exhaustive review of all applicable local, State, and federal statutes that could affect taxes. In addition, new legislation, regulations, court decisions, notices, and announcements could affect the accuracy of this book. Please be aware that Treasury's interpretation of the law may change because of legislation, court cases, and other events. Readers are advised to monitor Treasury's Web site and other authoritative sources for changes that may affect taxes.

# 2019 TAX TEXT



## TABLE OF CONTENTS

### ADMINISTRATIVE INFORMATION

	<u>Page</u>
Overview .....	1
Administrative Information .....	1
Web Services .....	1
Individual Income Tax (IIT) Web Services .....	2
IIT Terms .....	2
Why Web Services Might Indicate Treasury Has Not Received an Income Tax Return .....	3
Business Taxes Web Services .....	3
E-Registration for Michigan Taxes .....	4
Michigan Treasury Online Services (MTO) .....	4
Online Filing and Payment Options in 2019 .....	5
Disclosure Guidelines .....	5
Identity Theft .....	6
Warning Signs of Identity Theft .....	6
Taxpayer Rights and Responsibilities .....	7
The Billing Process .....	7
Payment of the Additional Tax .....	8
Jeopardy Assessments for Extreme Cases .....	8
Refunds .....	8
Refund Denied or Different Than Expected .....	9
The Appeals Process .....	9
Informal Conference .....	9
Michigan Tax Tribunal (MTT) .....	10
Court of Claims .....	10
Appeals Process Flow Chart .....	11
Offer In Compromise Program .....	13
Alternative Dispute .....	13
Office of Taxpayer Advocate .....	14
Forms .....	15
Availability of Tax Forms .....	15
Penalty and Interest .....	15
Interest .....	16
Waiver of Penalty .....	17
Intercepting Refunds .....	17
Web Site .....	17
Contact Numbers .....	17
Contact Information Online .....	18
Protect Taxpayer's Privacy .....	18
Helpful Information .....	18
Calling .....	18
Writing .....	18
Making a Payment .....	19
Treasury Letters .....	19
E-mail LISTSERV for Tax Professionals .....	19

	<b><u>Page</u></b>
Summary of Unclaimed Property Law .....	20
Who Must Report .....	20
What Must Be Reported .....	20
Reporting Due Date and Penalty for Noncompliance .....	20
How to Report .....	20
Noncompliance With Unclaimed Property Reporting Requirements.....	21
Voluntary Disclosure Program .....	21
How Owners Locate Unclaimed Property Reported to the SOM.....	21

## ELECTRONIC FILING PROGRAMS

	<u>Page</u>
Individual Income Tax (IIT).....	22
How Fed/State (Linked) E-File Works.....	23
How State Unlinked E-File Works .....	24
Who May Participate .....	24
Application and Acceptance Process.....	24
Michigan Portion of the Electronic Return.....	25
Electronic Michigan Returns .....	25
Nonelectronic Portion of Michigan Returns.....	29
Michigan E-File Signature Process .....	30
Fiduciary Income Tax.....	31
How Fed/State (Linked) E-File Works.....	31
How State Unlinked E-File Works .....	32
Who May Participate .....	32
Application and Acceptance Process.....	32
Michigan Portion of the Electronic Return.....	33
Electronic Michigan Returns .....	33
Nonelectronic Portion of Michigan Returns.....	34
Michigan Fiduciary E-File Signature Process .....	34
Corporate (CIT) and Michigan Business Tax (MBT) .....	35
Application and Acceptance Process.....	35
Electronic Michigan Returns .....	37
Attachments to CIT and MBT Returns.....	38
Attachments to MBT Returns.....	38
CIT and MBT Fed/State E-File Programs.....	39
How Fed/State (Linked) E-File Works.....	39
How State Standalone (Unlinked) E-File Works.....	39
Application and Acceptance Process.....	40
Acceptance Process .....	40
Michigan E-File Signature Process .....	40
For More Information.....	41
City of Detroit Corporate Income Tax.....	41
Sales, Use and Withholding.....	41
How SUW E-File Works .....	42
Application and Acceptance Process.....	43
Type of Filings Accepted.....	43
Electronic Michigan Data .....	43
Exclusions from E-File .....	44
Nonelectronic Documents .....	44
E-File Signature Process.....	44
Payments Methods.....	44
Refunds .....	45
City of Detroit Income Tax Withholding .....	45

INDIVIDUAL INCOME TAX

	<u>Page</u>
What's New .....	46
Legislation .....	46
Increased Exemption .....	46
Changed Forms .....	46
New Forms .....	47
Revenue Administrative Bulletins (RABs) .....	47
Forms .....	47
Individual Income Tax Forms .....	47
Mailing Addresses .....	48
Substitute Forms Must Be Approved .....	48
Tax Refund and Payment Information .....	49
State Tax Returns Claiming Refunds .....	49
State Tax Returns With Tax Due .....	49
City of Detroit Tax Returns Claiming Refunds .....	50
City of Detroit Tax Returns With Tax Due .....	50
Post-Filing Information .....	51
Mailing Addresses .....	51
Amended Michigan Income Tax Return (Schedule AMD) .....	52
Summary of Changes for 2019 .....	53
Summary of Changes for Prior Years .....	54
Filing Requirements .....	54
Filing an MI-1040 Return .....	54
Factors to Determine Domicile .....	55
Nonresident Aliens .....	55
Taxability of Income Derived Within Indian Country .....	55
Estimated Income Tax .....	56
E-Payments .....	58
Seafarers, Farmers, and Commercial Fishermen .....	58
Exemptions .....	58
Definitions of Michigan Special Exemptions .....	59
Qualified Disabled Veteran Exemption .....	59
Part-Year and Nonresident .....	59
Claimed as a Dependent .....	59
Michigan Income Tax Treatment of Child's Unearned Income .....	60
Additions/Deductions .....	60
Eliminating Income and Expenses of Producing Oil and Gas .....	60
Renaissance Zones .....	60
Retirement and Pension Benefits .....	61
Employer Plans .....	61
Individual Plans .....	62
Pension Limitations Based on Date of Birth .....	63
Income Tax for Retirement Benefits Effective for Tax Year 2019 .....	65
Unlimited Public Pension Subtraction .....	66
Private Pensions .....	67
Railroad Pension Benefits .....	67

	<u>Page</u>
Pension Subtraction Examples .....	68
Individual Retirement Accounts (IRAs).....	69
2019 Pension Subtraction Table for Tier 1 Retirees.....	69
1099 R Distribution Codes .....	69
Deferred Compensation.....	70
Interest, Dividends, and Capital Gains Deduction For Senior Citizens Born Before 1946 .....	71
529 Education Plans .....	72
Michigan Education Savings Program (MESP) .....	72
Michigan Education Trust (MET) .....	72
Coverdell Educational Savings Account .....	73
Michigan Achieving a Better Life Experience Program (MiABLE).....	73
Nonresidents' Taxable Income .....	74
Withholding for Nonresidents .....	75
Flow-Through Entity (FTE) Distribution of Income and Losses .....	75
Business, Rental, and Royalty Activity Worksheet.....	76
Composite Individual Income Tax Return for Nonresident Partners/Shareholders/Members.....	76
Apportionment of Income From Flow-Through Entities Under the Unitary Business Principle.....	77
Single Entity Apportionment.....	77
Combined Multiple Entity Apportionment.....	78
Adjustments of Capital Gains and Losses .....	78
Net Operating Loss (NOL).....	79
Gambling Income .....	79
Military Pay .....	80
Principal Residence Exemption.....	81
Principal Residence Exemption Records Review.....	82
Nonrefundable Credits.....	82
Credit for Income Tax Imposed by Qualified Government Units Outside Michigan.....	82
Historic Preservation Income Tax Credit .....	83
Refundable Credits .....	83
Homestead Property Tax Credit .....	83
Senior Credit Reduction .....	84
Homestead Property Tax Credit Phase Out.....	85
Special Situations .....	87
Agricultural Gross Receipts.....	87
Farmland Preservation Tax Credit.....	95
Tips to Expedite Processing.....	95
Sale of Land.....	100
Reinstatement of a Development Rights Agreement.....	100
Farmland Preservation Tax Credit When Land Is Inherited.....	100
Taxable Portion of Farmland Preservation Tax Credit.....	101
Farmland Taxes Eligibility Chart .....	102
Repayments Under the Claim of Right Doctrine.....	102
Earned Income Tax Credit.....	103

	<b><u>Page</u></b>
Home Heating Credit.....	103
Cancellation of Debt.....	105
Relief From Tax Liability.....	105
Nonobligated Spouse Allocation .....	105
Relief From Joint and Several Liability on Joint Returns .....	105
Taxability of Federal Obligations.....	105
Income Allocation Chart .....	108
Income and Deductible Items, Summary Chart.....	109
Michigan Cities Levying an Income Tax .....	115

CORPORATE INCOME TAX and  
MICHIGAN BUSINESS TAX

	<b><u>Page</u></b>
Corporate Income Tax .....	116
What's New .....	116
Overview .....	116
Definitions .....	116
Filing Requirements .....	117
Tax Base .....	122
Nexus .....	123
Apportionment .....	123
Credits .....	124
Unitary Business Groups (UBGs) .....	126
Insurance Companies .....	128
Financial Institutions .....	129
Contacting Treasury .....	129
Michigan Business Tax .....	130
Overview .....	130
Filing Requirements .....	130
Tax Base .....	132
Credits .....	133
UBG .....	135
Helpful Hints for Filing the MBT Return .....	137
Contacting Treasury .....	138
MBT Credits .....	139
Unitary Business Group Credit Information .....	141

SALES, USE, AND WITHHOLDING TAXES

	<b><u>Page</u></b>
What's New .....	142
Nexus for Remote Sellers (including online retailers) .....	142
2018 Public Act (PA) 249 – Limit on Exempt Sales by Nonprofits for Fundraising Purposes .....	142
2018 PA 530 – Exemption for Sales to Veteran's Organizations, Fundraising Dollar Limits .....	142
Ally Financial Inc. et. al. v. Department of Treasury, 502 Mich 484 (2018).....	142
Jim's Body Shop, Inc. v. Department of Treasury, Mich App (2019).....	143
Sales Tax.....	143
Use Tax .....	144
Nexus .....	145
Exemptions .....	146
Claiming Exemptions.....	154
Sourcing.....	155
Administrative.....	156
Registration Information .....	156
Changes to Accounts.....	156
Filing Returns .....	157

SPECIAL TAXES, FEES AND ASSESSMENTS

	<u>Page</u>
Overview .....	158
MFTA Fuel Taxes .....	159
Background.....	159
Fuel Types .....	159
Inventory (Floor Stock) Tax .....	161
Exemptions and Refunds .....	161
Licensing Information (Motor Fuel).....	163
Application .....	164
Account Number.....	164
Bonding .....	164
Licenses .....	164
Motor Fuel and Alternative Fuel License Types and Entities Are Required to be Registered .....	165
Motor Fuel Tax Reporting.....	166
MFTA Tax Return Filing Schedule.....	167
MFTA Tax Reporting (Alternative Fuel).....	168
General Information .....	169
Penalty and Interest .....	169
Bad Debt Deduction for Licensed Suppliers .....	169
Dyed Diesel .....	170
Eligible Purchaser.....	170
Fuel Diversions.....	171
Fuel Diversion Numbers.....	171
Fuel Imported From Outside the United States .....	172
Invoicing.....	173
Record Keeping .....	173
Right to Examine Records .....	174
Retail Marine Diesel Dealers.....	174
Who Must be Licensed as a Retail Marine Diesel Dealer .....	175
General Information on Marine Retail Sales of Motor Fuel.....	175
Returns and Schedules.....	175
Motor Carrier Fuel Tax Act (MCFTA) and International Fuel Tax Agreement (IFTA).....	176
Highlights .....	176
Ammex Facility .....	176
Dyed Diesel Fuel .....	177
Who Must Be Licensed as an IFTA Motor Carrier .....	177
IFTA Base Jurisdiction.....	177
IFTA Account Number.....	178
IFTA New and Renewal Applications.....	178
IFTA Temporary Decal Permits .....	178
Trip Permits .....	179
IFTA Grace Period for Licensing .....	179
Bonding .....	179
License Revocation.....	179
IFTA Fuel Tax Returns and Schedules.....	179
Electronic Filing of IFTA Returns.....	180

	<u>Page</u>
IFTA Record Keeping Requirements .....	180
Due Date of Return .....	180
Penalty and Interest Provisions.....	180
Lease Agreements.....	181
Discontinuance of Business .....	182
Oil and Gas Severance Tax .....	182
General Information .....	182
Definition of Key Terms.....	183
Oil and Gas Severance Tax Rates.....	183
Tax Returns and Schedules.....	184
General Rules Regarding Marketing Costs .....	185
Oil and Gas Fee .....	186
Administration of the Oil and Gas Severance Tax .....	186
Nonferrous Metallic Minerals Extraction Severance Tax .....	186
Administration of Nonferrous Metallic Minerals Severance Tax .....	189
Contact Information.....	189
Tobacco Products Tax Act (TPTA).....	189
General Information .....	189
Tax Rates .....	190
Definition of Key Terms Used .....	190
Licensing .....	192
Stamping Packages of Cigarettes and Shipping Containers of OTP .....	193
OTP .....	194
Contraband.....	196
Tobacco Tax Reporting and Electronic Filing Mandate.....	196
Tobacco Master Settlement Agreement.....	196
Health Insurance Claims Assessment.....	199
Insurance Provider Assessment .....	200
Marihuana Excise Tax .....	201
Contact Information.....	202

# MICHIGAN DEPARTMENT OF TREASURY



The Tax Text manual is prepared by the Michigan Department of Treasury (Treasury) to assist tax preparers in understanding Michigan taxes and preparing tax returns. In addition to the information in this publication, updates are regularly made to Treasury's Web site to reflect any changes in the tax law. For the most recent guidance go to [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

Treasury aspires to become the best operated treasury department in the United States by creating a culture of taxpayer service, focusing on speedy responses to taxpayer inquiries, consistency of answers, transparency in decision-making, and simplicity of compliance. Employees are encouraged to continuously improve their work areas. For more information on Treasury Aspirations, go to [www.michigan.gov/treasury](http://www.michigan.gov/treasury) and choose "About Treasury."

## ADMINISTRATIVE INFORMATION

### Web Services

Treasury's Web site offers the most easily accessible and fastest way for taxpayers and authorized representatives to check the status of tax returns, get a summary of estimated payments, or ask questions about tax accounts.

Treasury has stringent security measures in place for customers to access account information. Taxpayers are asked to authenticate by entering a combination of shared secrets for security reasons (e.g., Adjusted Gross Income (AGI), Total Household Resources (THR), Household Income (HHI), Gross Receipts, Account/Social Security number (SSN), etc.) before information can be accessed.

Taxpayers may choose the service they wish to access from the home page of any tax type. Additional shared secrets may be required depending on the request.

***Note: For additional information on topics in this manual, visit Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes) select "Individual Income Tax" and "Reports and Legal" tabs for a list of resources.***

## **Individual Income Tax (IIT) Web Services**

For direct access to IIT account information, call 517-636-4486 or visit Treasury's IIT page at [www.michigan.gov/iit](http://www.michigan.gov/iit) and choose "Check Your Tax Refund Status." Information available includes:

- Dates of returns currently being processed
- If and when a refund, credit claim, or energy draft has been issued for the current year and three prior years
- If a refund, credit, or energy draft has been returned to Treasury, direct deposited into an account, or offset against a debt
- Estimated tax payments
- Status of a letter sent to Treasury
- Status of a service request related to the account
- Tax preparation questions.

### **IIT Terms**

**Current Tax Year:** The current tax year is 2019.

**Date Processed:** The date Treasury posted the return to its computer system. This does not indicate the return has been completed.

**Completed:** Treasury has completed processing the return. The transaction screen will indicate what the taxpayer can expect from Treasury. This includes refund information and whether a refund was direct deposited, applied as a credit to the following year, or offset and applied to a debt.

**Issued:** A check or Direct Deposit has been issued. Please allow ten to 14 business days for mail to be received. Direct Deposits can take up to five days from the completed date to post to the taxpayer's account. Verify the refund amount is the amount Treasury has indicated. If the refund amount is not in the account after five days, the taxpayer should contact their financial institution. If there is a problem with the Direct Deposit, Treasury will normally issue a refund check.

**Manual or Pending Review:** By law (Michigan Compiled Law (MCL) 205.28(1)(f)), Treasury cannot disclose to anyone why a return has been selected for manual review. Treasury has established procedures for selecting returns for manual review both to protect taxpayers and to ensure appropriate amounts are being refunded. If a taxpayer's return has been selected for review, additional time for processing is required.

**Pending Response:** Treasury is unable to complete the return without additional information from the taxpayer. It could take an additional 12 weeks from the date a response is received by Treasury for the return to be completed. If more than 12 weeks have passed, contact Practitioner Web Services.

**State Debt or Third-Party Debt:** If Treasury indicates a refund was used to pay a State debt or third-party debt, it could take three to four months (depending on the type of debt) for the refund amount to be applied to the debt. The message on Web-Services will provide taxpayers with a phone number to call and they will also receive a letter.

**Emergency Refunds or Hardship Cases:** Taxpayers requesting an expedited refund due to a hardship situation must provide documentation of foreclosure, eviction, or utility shutoff with their requests.

### **Why Web Services Might Indicate Treasury Has Not Received an Income Tax Return**

Web Service may indicate an Income Tax return has not been received due to the following reasons:

- SSN provided may not match Treasury records.
- Taxpayer filed an amended return. Amended returns are reviewed late in the year; they should be entered into Treasury's computer system within eight weeks of receipt.
- Taxpayer's information is in the process of being posted. The system is updated once every business day. It is possible to call on Monday and find no record of a taxpayer's return and then call on Tuesday and learn the return posted overnight.
- It can take eight weeks for paper return information to be entered into Treasury's computer system. If the Web site or Customer Contact number does not state a return has been received ten weeks after the return was mailed, contact Practitioner Web Services through e-Service.

**Note:** Timelines are approximate.

### **Business Taxes Web Services**

For direct access to business tax account information, visit Treasury's Web site at [www.michigan.gov/bustax](http://www.michigan.gov/bustax) choose a tax type on the left and choose "Check my Account Information." You can also call 517-636-6925 for Sales Use and Withholding (SUW) taxes (including payroll withholding, pension withholding, and flow-through withholding), Michigan Business Tax (MBT), Corporate Income Tax (CIT) or Business Tax Registration. Information available includes:

- Tax payments
- Change of address
- Information about payments made by Electronic Funds Transfer
- Request for additional copies of SUW returns
- Request for additional copies of Sales Tax Licenses
- Sales Tax License number
- Status of a letter sent to Treasury
- Status of returns
- Status of a service request related to the account
- Tax preparation questions.

## **E-Registration for Michigan Taxes**

E-Registration is a fast, easy, convenient, and secure way to register a business online for taxes in Michigan. The site allows taxpayers to perform a variety of tasks involved in starting and operating a business, including applying for permits and licenses. Businesses must have a Federal Employer Identification Number (FEIN) to register and may register for most Michigan business taxes, as well as an Unemployment Insurance Agency (UIA) account number, or a Sales Tax License using the online e-Registration application at [www.michigan.gov/treasury](http://www.michigan.gov/treasury), click on Taxes, then New Business Registration.

After completing the online application, taxpayers will receive a confirmation number for their electronic submission. Businesses can receive:

- Sales/Use Tax license within seven to ten days.
- New UIA employer account number within three business days.

Use e-Registration when acquiring all or any part of the assets, organization, trade, or business of an existing business having employees in Michigan or when starting a new business that will:

- Sell or lease tangible personal property in Michigan to the final consumer
- Owe SUW, Motor Fuel, MBT, IIT, or Tobacco taxes
- Have employees performing services in Michigan
- Have employees working in Michigan.

***Note: A taxpayer cannot continue to use the FEIN of a prior owner; the taxpayer must register for their own FEIN.***

**Do not** use e-Registration to register if the business has previously mailed a paper copy of Form 518 to Treasury.

Begin the process by setting up a User Account. Business representatives can create their own User Accounts enabling them to complete and store multiple applications. Completed tax registration applications will be stored for viewing for 30 days; incomplete applications will be stored for six months.

## **Michigan Treasury Online Services**

Michigan Treasury Online (MTO) e-services has replaced the Michigan Business One Stop, for registering a Michigan business. MTO users need only one username and password to enter the site, file a return, and make a payment. Authorized users have the ability to self-delegate to a business by selecting an appropriate user role and answering respective security questions.

Users may now view the following:

**Tax Types:** A taxpayer/representative will be allowed to view the taxes for which the account is registered. Taxpayers can also register for a new tax, discontinue any or all tax types, and/or edit the estimated monthly payment amount (e.g., to register for a new tax, businesses simply click the “new” button and fill in the appropriate fields).

**Correspondence:** A user is able to view any outgoing mail from the Michigan Integrated Tax Administration System. Users will not see any correspondence issued from other processes such as the Collection Services Bureau. Selecting the correspondence opens it in a new window in PDF format. If an additional copy of a sales tax license is needed, it is now only a few clicks away.

**Track Updates:** A confirmation or submission number is given for any submission that is made on the account. Users can check the status of the item to see if it is pending or completed.

### **Online Filing and Payment Options in 2019**

Online filing and payment options became available to SUW taxpayers in 2015. These enhanced services became available for filing periods beginning January 2015 and later. The user will not be able to use MTO for periods prior to January 2015 and will need to file using the prior filing method. Payment history will also be available to assist users in managing their Treasury accounts. Users with a tax period that is being serviced by the Collection Services Bureau may access account information at [www.michigan.gov/treasury](http://www.michigan.gov/treasury) by selecting the link for Collection Payments e-Service.

***Note: With the availability of online filing and payment services, preprinted SUW forms will no longer be generated and mailed. For further information and updates on MTO, visit [www.michigan.gov/mtobusiness](http://www.michigan.gov/mtobusiness).***

## **DISCLOSURE GUIDELINES**

Treasury employees are bound by disclosure laws as stated in Michigan Compiled Laws and the federal penal code. Employees of the Michigan Accounts Receivable Collection System, an agency under contract with Treasury, are bound by the same disclosure requirements as Treasury employees. The law prohibits the disclosure of confidential tax information to any person other than the taxpayer of record, unless the taxpayer authorizes the disclosure of their information to another individual.

Acceptable disclosure authorizations are:

- *Request and Consent for Disclosure of Michigan Tax Return Information* (Form 4095).
- Correctly completing Form 151 for businesses, adding an authorized representative declaration through MTO.
- Checking the authorization box on the Michigan income tax return(s). This applies only to the individual named as the preparer on the return and does not extend to others in the preparer's office or firm. In addition, it authorizes the tax preparer to provide Treasury with missing information, contact Treasury to obtain information about processing or status of refunds and payment, and request copies of notices related to the return.
- Written consent that meets the requirements of Michigan Admin Code R 205.1006b.
- Verbal/implied consent (e.g., conference call, interpreter, translator).

Form 151 is available on Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes), by calling 517-636-4486, or by writing to:

Michigan Department of Treasury  
P.O. Box 30757  
Lansing, MI 48909

Address disclosure related inquiries by calling 517-636-4239, faxing 517-636-5340, or by writing to:

Michigan Department of Treasury  
Office of Privacy and Security  
Disclosure Unit  
430 W. Allegan  
Lansing, MI 48922

Additional Disclosure Forms that may be used when submitting a disclosure request are located on Treasury's Web site at [www.michigan.gov/treasury](http://www.michigan.gov/treasury). Click on "About Treasury" and "Forms" for the link to the Disclosure Forms and Instructions.

## **IDENTITY THEFT**

Treasury works closely with, and participates in, the IRS Security Summit. For more information go to [www.irs.gov/uac/security-summit](http://www.irs.gov/uac/security-summit).

When filing electronically, provide the additional information requested such as driver's license number with the expiration date. Providing the information could help process your return more quickly.

In an effort to protect Michigan taxpayers, Treasury continues to implement security measures to prevent tax-related identity theft. As a result, some Individual Income Tax (IIT) returns may be selected for identity confirmation.

If an IIT return has been selected for identity confirmation, the taxpayer will receive a letter seeking to confirm identity through the completion of a short online ID confirmation quiz or by submitting paperwork. If a taxpayer does receive an ID confirmation quiz letter, it is not because they are suspected of identity theft. The purpose of the quiz is to protect their identity as the filer and prevent loss of taxpayer dollars. After passing the quiz, the return will be processed.

### **Warning Signs of Identity Theft**

- The IRS or the State of Michigan (SOM) notifies the taxpayer that more than one tax return was filed using your name and/or SSN or that of a spouse or dependent(s).
- The taxpayer has been notified of income or government assistance that they did not receive.

- The taxpayer has a tax balance due, refund offset, or has had collection actions taken against them for a tax year the taxpayer did not file a return.
- The taxpayer receives an unexpected or incorrect 1099-G from Treasury.

The victim of stolen-identity tax fraud has the ability to assist greatly in resolving the situation. It is very important to act quickly and assertively to minimize the impact of loss or injury that results from unauthorized access to personal information.

If a taxpayer or a preparer's client receives any indication that the original return is rejected as a duplicate tax return, please submit any information requested by Treasury.

Visit Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes), choose "Individual Income Tax" and then choose "Identity Theft."

## **TAXPAYER RIGHTS AND RESPONSIBILITIES**

Treasury employees comply with Michigan law by providing:

- Prompt, fair, and courteous service
- Confidentiality
- Timely processing of returns
- Copies of tax returns and related documents from a taxpayer's file.

If Treasury fails to provide these services, taxpayers have the right to file a complaint. Taxpayers should note the name of the Treasury representative they dealt with so the complaint can be handled properly. It is the taxpayer's responsibility to:

- File returns on time with the correct payment (if necessary)
- Make sure returns are correct, no matter who prepares them.

### **The Billing Process**

If Treasury believes additional tax is owed, the following actions will be taken:

1. A Letter of Inquiry is sent stating the amount due and why it is due. If the taxpayer agrees with the amount due, it should be paid immediately. If the taxpayer has questions or disagrees with the amount due, they should contact Treasury right away using the address or telephone number listed in the letter.
2. If the taxpayer does not respond to the letter or if their response does not resolve the matter, then Treasury will issue a Notice of Intent to Assess (Notice). If the taxpayer disagrees with the amount due, they may request an informal conference within 60 days of this notice (refer to The Appeals Process section).
3. If an informal conference is not sought or if the Notice is upheld in the informal conference, Treasury will issue a Final Assessment (Bill for Taxes Due). A Final Assessment may be appealed to the Michigan Tax Tribunal (MTT) within 60 days of the Notice or the Michigan Court of Claims within 90 days of the Notice (refer to The Appeals Process section).

## **Payment of the Additional Tax**

1. Payments may be made at any time during the billing process. If all the taxes due cannot be paid, contact the Collection Services Bureau at the telephone number on the notice to request an installment agreement.
2. Payment **must** be made within 35 days of the Final Assessment. If full payment is not made, the following actions may be taken by Treasury (whether or not there is an installment agreement):
  - Intercept paychecks or levy bank accounts
  - Place liens on home, business, or personal property to protect the State's interest as a creditor
  - Refer the account to Treasury Field staff or MARCS to actively pursue collection of the debt
  - Intercept any money the State owes a taxpayer (such as an income tax refund or overpayment) and apply it to the debt
  - Apply penalty and interest for as long as there is a tax balance.

**Note:** All payments are applied first to interest, then to penalty, then to tax.

## **Jeopardy Assessments for Extreme Cases**

If, at any time, Treasury believes a taxpayer plans to sell, remove, and/or hide property to avoid seizure, a jeopardy assessment will be issued making the tax immediately due and payable, and lien(s) will be issued to freeze assets. This means the taxpayer will not be able to withdraw money from bank accounts or transfer the title of any property. If a taxpayer wishes to sell property, Treasury will send a representative to the sale to accept payment of the liability. The actions of levy and jeopardy assessment are severe. Give prompt attention to resolving a debt when contacted.

## **Refunds**

Income tax refund claims filed on or before the applicable due date that are accurate and complete are usually processed by June 1. Interest is added to the refund beginning 45 days after the claim is filed, or 45 days after the due date established by law for filing the return, whichever is later.

1. Taxpayers have four years from the date the original return is due to claim a refund.
2. Filing a tax return that shows an overpayment is a claim for refund. A claim for refund can be made on an original return, an amended return, or by filing a petition with Treasury.

3. If Treasury disagrees with a claimed refund, the taxpayer will receive a statement explaining the reason the refund amount is different. For adjustments to IIT and CIT/MBT returns, letters will include line changes to assist taxpayers in understanding adjustments.

### **Refund Denied or Different Than Expected**

Treasury will send a statement explaining the reason the refund amount is different than expected. If a taxpayer disagrees with the adjustment, they may request an informal conference by writing to the Hearings Division within 60 days of the date of the Notice of Refund Adjustment or Denial, or seek relief in the MTT within 60 days, or file suit in the Court of Claims within 90 days .

### **The Appeals Process**

Taxpayers are provided with several forums to appeal Treasury determinations. The time periods for exercising these opportunities are set forth in statute, and the failure to timely exercise a right to appeal may result in the denial of an appeal without consideration of its merits.

Assessments, orders, or decisions of Treasury are appealable to the MTT within 60 days or to the Michigan Court of Claims within 90 days. The discussion presented here addresses a taxpayer's appeal rights for the most common types of disputes which are:

- Efforts by Treasury to seek additional tax (refer to The Billing Process section), and
- Refund denials, including adjustments to refunds (refer to Refunds section).

### **Informal Conference**

An Informal Conference is available to a taxpayer who has received a Notice of Intent to Assess or a Notice of Refund Denial or Adjustment. As the name suggests, the Informal Conference is informal. There is no fee and any person a taxpayer chooses may assist them by filing Form 151. No form is needed if the assisting person appears with the taxpayer.

A taxpayer may seek an Informal Conference by serving a written notice to Treasury within 60 days of the date of the Notice of Intent to Assess or Notice of Refund Denial or Adjustment. If the 60-day deadline is near and a taxpayer needs additional time to gather information, they should immediately send a request for an Informal Conference. This will preserve the right to an Informal Conference. Additional information may be sent at a later date.

A written request should include:

- A statement explaining that an Informal Conference is being requested
- The taxpayer's name
- The taxpayer's SSN or FEIN for a business
- A brief explanation of the taxpayer's position
- Remittance of the uncontested portion of the liability
- Copies of any documents that support the taxpayer's position, and
- A copy of the notification received by the taxpayer.

Written requests for Informal Conferences are received only by U.S. mail or facsimile. E-mail and telephone requests are not accepted.

Send the Informal Conference request to:

Michigan Department of Treasury  
Hearings Division  
430 W. Allegan St.  
Lansing, MI 48922  
Fax: 517-636-4115

Treasury will respond to all requests for an Informal Conference. The response will indicate if the request was received within the 60-day timeframe and qualifies for an Informal Conference. The response may also provide an additional explanation of the adjustment to the refund or ask for additional information from the taxpayer. If the request for an Informal Conference is not made within the 60-day timeframe, the taxpayer will not receive an Informal Conference.

### **Michigan Tax Tribunal (MTT)**

Taxpayers may appeal a decision, order, Notice of Final Assessment or a Notice of Refund Denial or Adjustment by filing an appeal with the MTT within 60 days of the date of a Notice of Final Assessment or a Notice of Refund Adjustment or Denial. Appeal of a Notice of Final Assessment to the MTT requires that any uncontested portion be paid. Visit the Tribunal's Web site at [www.michigan.gov/taxtrib](http://www.michigan.gov/taxtrib) for rules, petition forms and filing fees.

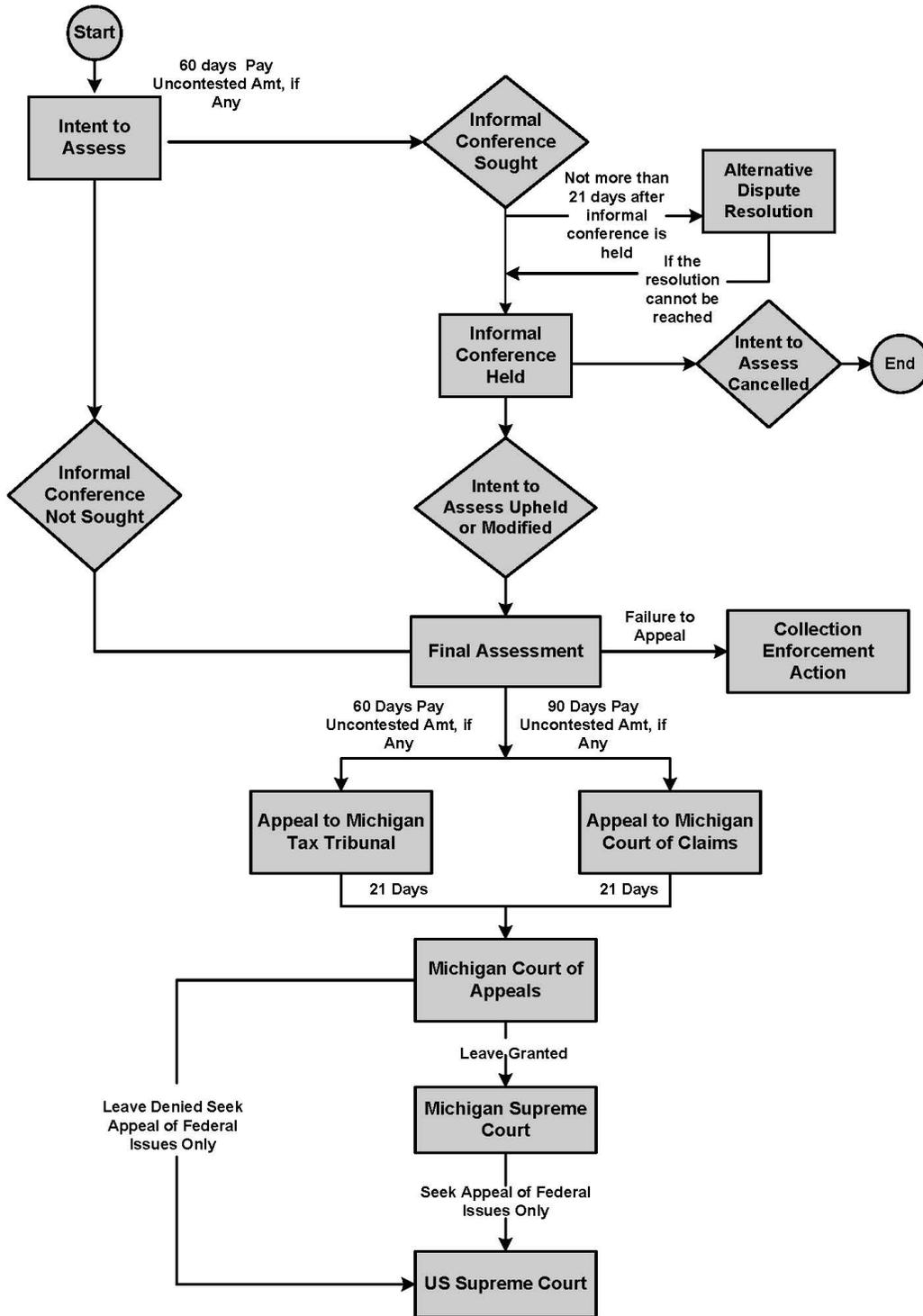
### **Court of Claims**

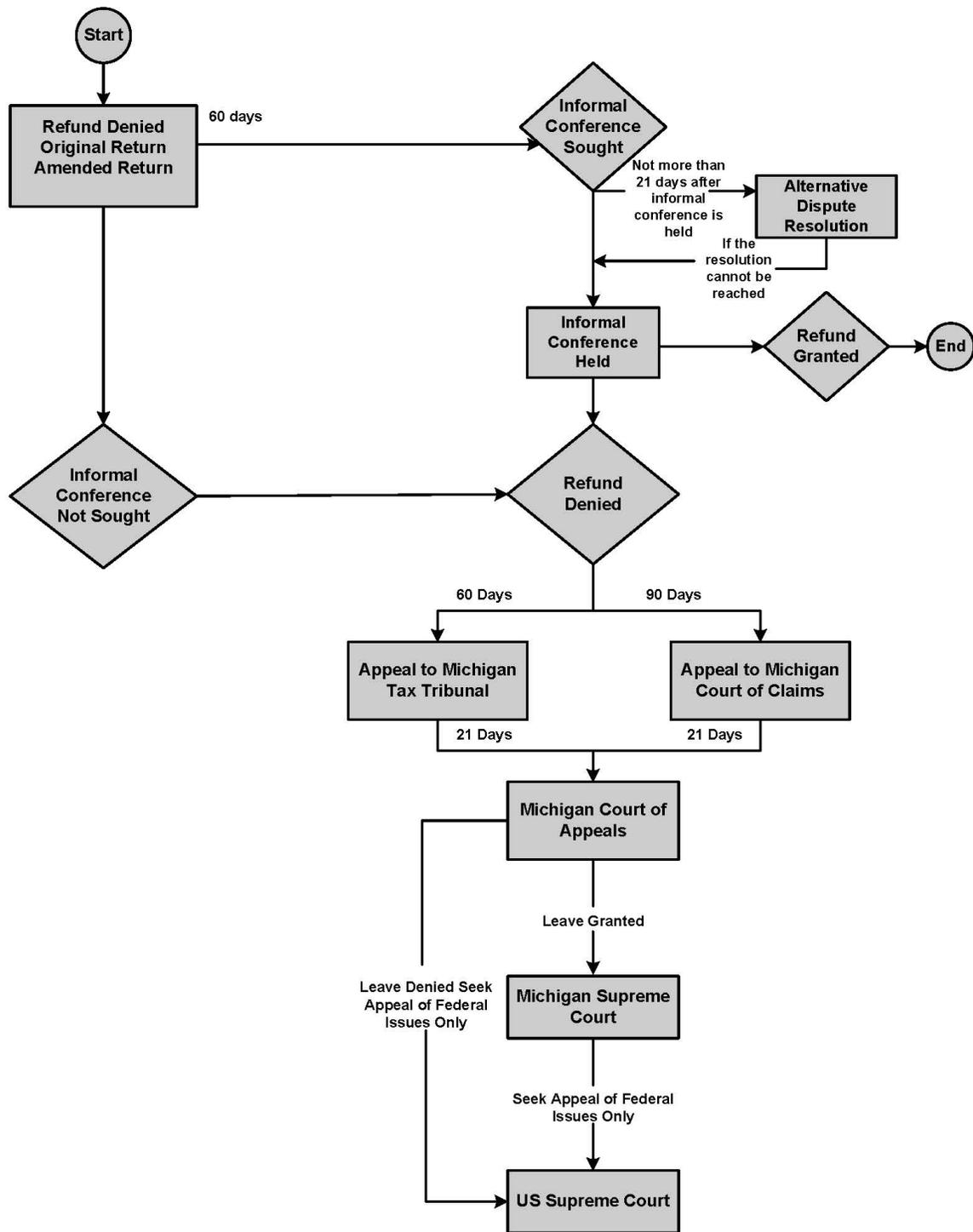
Taxpayers may appeal a decision, order, Notice of Final Assessment or a Notice of Refund Denial or Adjustment by filing suit in the Court of Claims within 90 days of the date of a Notice of Final Assessment or Notice of Refund Adjustment or Denial. Appeal of a Notice of Final Assessment requires that any uncontested portion of the assessment be paid.

Contact information for the Court of Claims District Office is available at [www.courts.mi.gov/courts/coc](http://www.courts.mi.gov/courts/coc).

This overview represents the most common appeal paths for taxpayers. For more information on appeals, visit [www.michigan.gov/taxes](http://www.michigan.gov/taxes), click on "Collections, Audits & Appeals," then "Audits."

## Appeals Process Flow Chart





## OFFER IN COMPROMISE PROGRAM

Treasury provides an Offer In Compromise program that allows taxpayers to submit an offer to compromise a tax debt for less than the amount due based on one or more of these specific criteria:

- A doubt exists as to the liability based on evidence provided by the taxpayer
- A doubt exists as to the collectability of the tax due based on the taxpayer's financial condition
- A federal offer in compromise has been given for the same tax year(s).

To submit an offer in compromise, all of the following must be true:

- The taxpayer must have filed returns for all tax periods
- The taxpayer must have been assessed and the time period for all appeals must have expired
- The taxpayer must have no open bankruptcy proceedings.

When submitting an offer in compromise, taxpayers **must** submit a non-refundable initial offer payment of \$100.00 or 20 percent of the offer, whichever is greater, and use the official Treasury forms and schedules found on the Web site at *www.michigan.gov/oic*.

Treasury is required by law to publish on its Web site a written report of each accepted offer in compromise.

Treasury is also required by law, upon request, to disclose return information to members of the general public to the extent necessary to permit inspection of any accepted offer in compromise relating to the liability for a tax imposed by the SOM.

## ALTERNATIVE DISPUTE

In addition to, but distinct from its Offer in Compromise program, Treasury also offers an Alternative Dispute Resolution program. The program allows Treasury and the taxpayer to settle disputes regarding taxes administered under the Revenue Act at an earlier point in the dispute process than previously allowed by Michigan law: after a valid (timely) request for informal conference is made but, no later than 21 days after the conference is held. Unlike the Offer In Compromise program, collectability of the tax is not a basis for settlements.

To be valid under this program, a settlement offer must:

- Be the offering party's best, good-faith offer
- Identify the issues and amounts in dispute
- Include the factual and legal bases supporting the offer
- Identify the issues to be settled and the amount of the proposed settlement
- Be signed by the taxpayer, NOT a third-party representative
- Include any supporting documentation.

A settlement offer is tendered by completing and mailing *Alternative Dispute Resolution Settlement Offer* (Form 5573) to:

Michigan Department of Treasury-Executive Office  
Alternative Dispute Resolution Office  
P.O. Box 30716  
Lansing, Michigan 48909

Where the parties agree that a tax is due, Treasury will issue a final assessment that reflects the agreed-upon amount of liability as to the settled issues. The final assessment is not subject to challenge or appeal or reviewable in any court.

More information regarding the Alternative Dispute Resolution program can be found by selecting the Alternative Dispute Resolution button on Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes) and selecting the "Collections/Audits/Appeals" tab and clicking on "Hearings and Appeals" from the dropdown list.

## OFFICE OF TAXPAYER ADVOCATE

Treasury makes every effort to resolve taxpayer account problems/disputes at the lowest possible level. If a taxpayer or tax professional has been unsuccessful in resolving a problem, despite making multiple attempts through Treasury's normal channels, they should contact the Office of the Taxpayer Advocate as a resource of last resort. The office is charged with ensuring taxpayer's rights are protected and Treasury's processes are fairly administered. Along with specific account resolution, the office identifies and communicates systemic policy and operational issues that affect multiple taxpayers.

Tax professionals may contact the Office of the Taxpayer Advocate by telephone through the Tax Professional Hotline and leave a voicemail, or online through the Tax Professional Web Services. Tax professionals **must not** give the Hotline telephone number or Web Services user ID and password to their clients.

Tax professionals may contact the Office of the Taxpayer Advocate through the Hotline, Web Services, or completing and submitting a request for assistance form online through the Advocate Web site at [www.michigan.gov/taxpayeradvocate](http://www.michigan.gov/taxpayeradvocate):

Professional Hotline (**Not for Public Use**)  
Professional Web Services (**Not for Public Use**)

517-636-0616  
[www.michigan.gov/taxes](http://www.michigan.gov/taxes) and  
Choose "Tax Professionals"

**Availability of Tax Forms**

Current and prior year forms are available on Treasury’s Web site at *www.michigan.gov/taxes*.

Address mail orders to:

Michigan Department of Treasury  
Tax Processing Bureau  
P.O. Box 30757  
Lansing, MI 48909

Use personalized forms whenever possible. Personalized forms ensure the correct account is credited. Personalized forms are coded with the taxpayer’s SSN(s) or account numbers (FEIN, Michigan Establishment (ME), or Treasury-assigned (TR) numbers), and are specifically assigned to taxpayers and optically scanned. Never copy personalized forms for someone else’s use and do not use prior year forms. This can result in payments being credited to an incorrect account or the incorrect tax year.

**PENALTY AND INTEREST**

The Revenue Act’s provisions for penalty and interest are as follows:

**Penalties and Interest Imposed  
Under the Revenue Act  
(Public Act 122 of 1941, as Amended)**

<b><u>Section No.</u></b>	<b><u>Condition</u></b>	<b><u>Provision</u></b>
19(3)	Nonnegotiable remittance	\$50
21(4)	Frivolous protest	\$25 or 25% of the amount of tax under protest, whichever is greater
23(2)	Interest	1% above the prime interest rate to be adjusted on January 1 and July 1 of each year
23(3)	Negligence	10% of the deficiency (minimum \$10)
23(4)	Intentional disregard of the law	25% of the deficiency (minimum \$25)
23(5)	Civil fraud	100% of the deficiency
24(2)	Failure or refusal to file a return	5% of the tax due for the first two months, then 5% per month of the tax due (maximum 25%)

<b><u>Section No.</u></b>	<b><u>Condition</u></b>	<b><u>Provision</u></b>
24(2)	Failure or refusal to pay a tax	5% of the tax due for the first two months, then 5% per month of the tax due (maximum 25%)
24(5)	Failure or refusal to file an informational return	\$10 per day (maximum \$400)
30(1)	Interest on refund returns	1% above the prime interest rate to be adjusted on January 1 and July 1 of each year

**Criminal Penalties and Interest Imposed  
Under the Revenue Act  
(Public Act 122 of 1941, as Amended)**

<b><u>Section No.</u></b>	<b><u>Condition</u></b>	<b><u>Provision</u></b>
27(1)(a)(2)	False or fraudulent return or false statement in return	Felony (maximum fine of \$5,000, imprisonment for not more than five years, or both)
27(1)(b)(c)(2)	Aid, abet, or assist another in attempt to evade the payment of a tax, or part of a tax, or file false claim for credit or refund, either in whole or in part	Felony (maximum fine of \$5,000, imprisonment for not more than five years, or both)
27(3)	Perjury (a person knowingly swears to or verifies a false or fraudulent return or a return containing a false or fraudulent statement, with the intent to aid, abet, or assist in defrauding the State)	Fines and/or imprisonment as provided under the general provisions of the Michigan Compiled Laws. This may be imposed in addition to the provisions of Section 27(1) and (2) of the Revenue Act.
27(4)	Person is not guilty under subsection (2) but knowingly violates any other provision of the Revenue Act	Misdemeanor (fine of not more than \$1,000, or imprisonment for not more than one year, or both)

**Interest**

The interest rate for tax due and refunds is the prime rate plus one percent, adjusted on January 1 and July 1. Interest on refunds is computed from 45 days after the return is filed or 45 days after the due date of the return, whichever is later.

## **Waiver of Penalty**

The Revenue Act governs the penalty on tax due. The taxpayer has the option to request waiver of penalty, and Treasury will grant a waiver if the taxpayer demonstrates reasonable cause existed, which prevented timely payment of the tax due. Examples of reasonable cause are: death or serious illness of the taxpayer or the individual primarily responsible for filing returns and making tax payments; extenuating circumstances such as fire, theft, or criminal acts against the taxpayer; or misapplication of payments by Treasury. Lack of funds or poor bookkeeping practices do not constitute reasonable cause for waiving penalty.

All requests for waiver of penalty must be made in writing and must explain why the waiver is being requested. Requests for waiver of penalty should be directed to the Tax Processing Bureau for consideration. (See “Availability of Tax Forms” section for addresses.)

## **INTERCEPTING REFUNDS**

The Revenue Act **requires** Treasury to intercept any monies due to a taxpayer and to apply those funds to outstanding tax debts or certain other State debts. Treasury will intercept and apply tax refunds, overpayments from assessments, and vendor payments. Tax debts or money owed to other agencies such as Department of Health and Human Services, Department of Community Health, or Friend of the Court are collected by Treasury, as are defaulted student loans. Treasury also receives court orders for garnishment of tax refunds, which requires Treasury to intercept tax refunds and send those monies to the garnishing agency. If the taxpayer files jointly and their spouse is not liable for the debt, the taxpayer will receive a form that allows the nonobligated spouse to compute and claim their portion of the tax refund.

## **WEB SITE**

Treasury’s Web sites [www.michigan.gov/treasury](http://www.michigan.gov/treasury) and [www.michigan.gov/taxes](http://www.michigan.gov/taxes) offer information about property taxes, unclaimed/abandoned property, revenue taxes, local governments, and investments. Revenue Administrative Bulletins, tax forms, statutes, court cases, FAQs on a number of issues, and contact names and numbers may also be found by visiting the Web sites.

## **CONTACT NUMBERS**

For answers to specific tax questions, call the appropriate number listed below:

Business Taxes (including Corporate Income Tax, Michigan Business Tax, Single Business Tax)	517-636-6925
Individual Income Tax	517-636-4486
Motor Fuel Tax	517-636-4600
Motor Carrier Tax	517-636-4580
Sales, Use, and Withholding Taxes	517-636-6925
Tobacco and Cigarette Taxes	517-636-4630

Assistance is available using TTY through the Michigan Relay Service by calling 1-800-649-3777 or 711. Printed material in an alternate format may be obtained by calling 517-636-4486.

For assessments, payments, and/or payment arrangements, contact Collection Service Bureau at 517-636-5265.

### **Contact Information Online**

A listing of Treasury Contact Information is available on Treasury's Web site at [www.michigan.gov/treasury](http://www.michigan.gov/treasury) under "Communications." This list is updated as changes occur.

### **Protect Taxpayers' Privacy**

Because the Internet is not a secure environment, **never** send confidential information (e.g., SSNs, tax account numbers) over the Internet. To further protect taxpayers' privacy, Treasury will not send sensitive or confidential information over the Internet in response to e-mail inquiries unless the e-mail is sent using encryption.

To ensure the privacy of account information, mail inquiries to the appropriate tax or administrative division at Michigan Department of Treasury, Lansing, Michigan 48922. Include complete name, address, and SSN (or FEIN for businesses).

Treasury is not responsible for the misdirection or misuse of any information that may be transmitted via e-mail across the Internet.

## **HELPFUL INFORMATION**

### **Calling**

Always have the letter, notice of inquiry, notice of adjustment, assessment, etc., available for reference. Always read the entire letter before calling and then call the number provided. If referring to a notice of adjustment that has been faxed, make sure the back of the notice is included. The back of the notice of adjustment includes an explanation of all adjustments to the return and/or payments.

A phone call does not constitute a response to Treasury letters. A valid response is mailing the documentation requested in the correspondence, along with any necessary explanations.

When calling, please have the following information available:

- Taxpayer's name and phone number
- Taxpayer's TR number, FEIN, or SSN
- Years for which taxpayer is being contacted
- Any other pertinent information.

### **Writing**

Always mail a copy of Treasury's correspondence with the response. This will help route correspondence to the proper person in a timely manner.

- Include TR number, FEIN, or SSN on all correspondence.
- Include daytime telephone number.

- Address correspondence to the name or unit listed on the correspondence.
- Keep a copy if mailing returns. Treasury does not mail back original returns.
- Submit documentation for all the years in question, not just the years for which there is a liability.

### **Making a Payment**

- **Always** write TR number, FEIN, or SSN on the check.
- **Always** indicate the type of tax and the tax year/period being paid (e.g., MBT, CIT, IIT, SUW, etc.). In the event the check gets separated from the return or documentation, the payment can be properly applied to the account.
- Write one check for the total amount due if submitting multiple returns for one particular tax.
- Write a separate check for each tax and mail the checks to the address indicated on the return if paying more than one type of tax.
- Always include documentation with payment to ensure proper application of a payment.

### **Treasury Letters**

Treasury sends letters to taxpayers for a variety of reasons. It is very important for taxpayers to read their letters carefully and respond as directed in the letter. Letters often include information on the front and back of the paper.

Taxpayers should always keep a copy of any correspondence sent to or received from Treasury. For questions regarding a letter, call the number provided on the letter or the number for the specific tax involved to speak with a customer service representative.

### **E-mail LISTSERV for Tax Professionals**

The Treasury Tax Professionals' LISTSERV is a free service that disseminates mass e-mail messages to all subscribers. This includes electronic communications on Treasury's e-file programs and other information of interest. To subscribe to this service, or for additional information, visit [www.Mifastfile.org](http://www.Mifastfile.org) and select Tax Preparer.

## SUMMARY OF UNCLAIMED PROPERTY LAW

Under Michigan's Uniform Unclaimed Property Act (PA 29 of 1995, MCL 567.221, *et. seq.*), holders of unclaimed property are required to report and remit unclaimed property belonging to owners whose last known address is in Michigan. Unknown owner or unknown address property must be escheated (turned over) to the holder's state of incorporation. Most businesses, including financial institutions, have unclaimed property resulting from normal operations such as uncashed checks (e.g., payroll, vendor, dividends, etc.), account receivable credit balances, unredeemed gift certificates, dormant bank accounts, uncashed money orders and travelers checks, unclaimed security deposits, shares of stock and associated dividends, and contents from safe deposit boxes. Businesses must file an annual holder report and remit the property to Treasury, Unclaimed Property.

### **Who Must Report**

Every business or government agency holding unclaimed property belonging to someone whose last known address is in Michigan must report. If the holder is incorporated in Michigan and the owner's last known address is unknown or is in another state or country and the holder does not report under the provisions of that state or country, then the holder must report those interests to Michigan.

### **What Must Be Reported**

Generally, tangible and intangible property belonging to another party that has gone unclaimed for a specified period of time is considered unclaimed property and must be reported. The dormancy period for most property types is three years with some exceptions. For example, uncashed payroll checks must be turned over after one year of dormancy. Government agencies must also turn over unclaimed property after one year of dormancy. Visit Treasury's Web site at [www.michigan.gov/unclaimedproperty](http://www.michigan.gov/unclaimedproperty) for more information about property types and dormancy periods.

### **Reporting Due Date and Penalty for Noncompliance**

All items considered unclaimed as of March 31 must be reported and remitted by July 1 each year. Businesses that fail to pay or deliver unclaimed property timely to the State may be liable for:

1. Interest at the current monthly rate of one percentage point above the adjusted prime rate on the value of the property from the date the property should have been paid or delivered, **and/or**
2. Penalty of 25 percent of the value of the property that should have been paid or delivered.

### **How to Report**

The Manual for Reporting Unclaimed Property and forms required for reporting can be found on Treasury's Web site at [www.michigan.gov/unclaimedproperty](http://www.michigan.gov/unclaimedproperty). A link to free, third-party software for preparing unclaimed property reports of less than 200 properties is available on the Web, in addition to other forms and instructions for remitting payments electronically.

## **Noncompliance With Unclaimed Property Reporting Requirements**

Section 31(2) of the Uniform Unclaimed Property Act gives the State Treasurer the authority to conduct unclaimed property examinations (audits) to determine compliance with the Act. Unclaimed property audits conducted by Treasury will cover the last ten reporting years and penalty and interest will be assessed as a result of the audit. Businesses with a 20 percent or more presence in Michigan are afforded the option of participating in a streamlined audit. A streamlined audit examines the previous four reporting years and is intended to be completed within 18 months.

Entities without unclaimed property to report under the Act are strongly encouraged to file a zero or negative report with Unclaimed Property. All entities have the ability to both report and remit payments electronically.

## **Voluntary Disclosure Program**

Michigan's Voluntary Disclosure Program allows entities to report any property that should have previously been reported without incurring penalty and interest. Under Voluntary Disclosure, a Holder must file unclaimed property reports and remit payments for the current reporting year and the previous four reporting years and remain current going forward. Visit [www.michigan.gov/unclaimedproperty](http://www.michigan.gov/unclaimedproperty) for more information regarding Voluntary Disclosure.

## **How Owners Locate Unclaimed Property Reported to the SOM**

The Unclaimed Property Web site provides an option to search statewide and nationwide for unclaimed property. Persons or entities may also call Unclaimed Property at 517-636-5320. Twice each year, the SOM publishes a notice in a statewide newspaper, which provides information on the number of new unclaimed properties added since the last publication, and how persons and entities can search for and claim property that may belong to them. In addition, Unclaimed Property attempts to locate owners of unclaimed property through its outreach efforts.

# ELECTRONIC FILING PROGRAMS

## INDIVIDUAL INCOME TAX (IIT)

Department of Treasury (Treasury) partners with the Internal Revenue Service (IRS) to provide electronic filing (e-filing) of IIT returns. The Fed/State e-file Program enables taxpayers to e-file both federal and State (including the City of Detroit) returns through tax preparers as part of the program's effort to provide "one-stop shopping" for tax preparation and filing. The State and/or City Unlinked e-file Program enables taxpayers to e-file their State and/or City of Detroit return separately from their federal return.

Nearly 100 million people nationwide know e-filing is the way to go! Over 4 million Michigan taxpayers choose to e-file their tax returns. Thank you for making e-file a success.



Tax preparers who complete 11 or more IIT returns are required to e-file all eligible returns. Software developers producing tax preparation software or computer-generated forms must support e-file for all Michigan and City of Detroit IIT forms that are included in the software package.

Michigan, along with many other state revenue agencies, is requesting additional information in an effort to combat stolen-identity tax fraud to protect taxpayers and their tax refund. If the taxpayer has a driver's license or state-issued identification card, please provide the requested information from it. Providing the information could help process their return more quickly. The return will not be rejected if the taxpayer's driver's license or state-issued identification information is not provided.

There are many benefits to tax preparers who participate in the e-file program:

- **Expanded services offered.** E-file is a valuable addition to a tax preparer's list of client services, which can mean more clients. In addition, prospective clients can find an authorized e-file provider at [www.IRS.gov](http://www.IRS.gov).
- **Faster refunds for e-file returns.** E-filed returns are processed faster than paper returns. **Allow 14 days** before checking the status of the Michigan e-filed return by visiting [www.michigan.gov/iit](http://www.michigan.gov/iit) and clicking on "Check Your Tax Refund Status." Clients can also choose direct deposit and have their State refund deposited directly into their account at the financial institution of their choice. Clients can check the status of their City of Detroit e-filed return by visiting [www.michigan.gov/citytax](http://www.michigan.gov/citytax).
- **Payment with tax due returns.** Payment on a 2017, 2018 or 2019 tax due return can be made using direct debit at the same time the tax return is e-filed, when supported by software.

- **Improved return accuracy.** Treasury processes the same data the tax preparer enters into the computer. When e-filing federal, State, and City of Detroit returns together, much of the same data is used, so information is entered only once, again lessening the possibility of error. Treasury systems automatically check returns for mistakes. When easy-to-fix mistakes like math errors or missing forms are found, the return is sent back for correction. The error can then be fixed and sent back to Treasury, which prevents a simple mistake from holding up a refund.
- **Detailed error conditions.** Modernized e-File (MeF) business rules pinpoint the location of the error in the return and provide complete information in the acknowledgement file that is passed back to the transmitter. MeF business rules use simple wording to clarify each error that triggers a rejection. Treasury will provide up to ten business rule errors per return submission.
- **Increased customer satisfaction.** Only tax preparers and their client see the return. Tax information is encrypted and transmitted directly to the IRS and Michigan. Also, an acknowledgment is sent to verify the return was received and accepted for processing.
- **Prior year and amended returns.** Michigan and City of Detroit tax returns for 2017, 2018, and 2019 will be accepted during the 2020 processing year.
- **Portable Document Format (PDF) attachments.** MeF accepts PDF attachments with e-filed returns. Refer to “Michigan Portion of the Electronic Return” for a listing of PDF attachments accepted by Michigan.

### **How Fed/State (Linked) E-File Works**

Tax preparers and transmitters accepted into the IRS Fed/State 1040 MeF Program may file federal and/or State (including City of Detroit) returns together in one transmission to the IRS Service Center. The State submission can be linked to the IRS submission by including the IRS Submission ID of the federal return. If the State submission is linked to an IRS submission (also referred to as the Fed/State return), the IRS will check to see if there is an accepted IRS submission ID. If there is not an accepted federal return, the IRS will deny the State submission and a rejection acknowledgment will be sent to the transmitter. Treasury has no knowledge that the State return was rejected by the IRS. If there is an accepted federal return under the Submission ID, the IRS will perform minimal validation on the State submission. The State data will then be made available for retrieval by Treasury. After the State data is retrieved, it will be acknowledged and, if accepted, processed by Treasury.

Treasury will acknowledge receipt of all returns retrieved from the IRS. The transmitter should receive the Michigan acknowledgment within three days from the date the return is successfully transmitted to the IRS.

The IRS recommends sending the IRS submission first and, after it has been accepted, sending the State submission.

When filing a Michigan return that includes City of Detroit forms, an error occurring in either the State or City form either will cause the entire submission (State and City) to be rejected.

All returns, whether e-filed or paper-filed, are subject to Treasury audit and can be delayed regardless of the acknowledgment code received. Returns are processed and refunds are issued daily.

### **How State Unlinked E-File Works**

The federal return does not have to be e-filed and accepted before e-filing the state unlinked return. However, the federal tax return should be computed before computing the state tax return.

Tax preparers and transmitters accepted in the IRS e-file program may participate in the State unlinked e-file program when supported by their software. The IRS will perform minimal validation on the State return and issue an acknowledgment. If the return passes validation, the State data will be made available for retrieval by Treasury. After the data is retrieved, it will be acknowledged and, if accepted, processed by Treasury.

When filing a Michigan return that includes City of Detroit forms, an error occurring in either the State or City form will cause the entire submission (State and City) to be rejected.

All returns, whether e-filed or paper-filed, are subject to Treasury audit and can be delayed regardless of the acknowledgment code received. Returns are processed and refunds are issued daily.

### **Who May Participate**

E-filing of Michigan returns is available to all individuals who have been accepted into the IRS e-file program and who transmit returns to an IRS Service Center. The IRS mandates preparers filing 11 or more IIT returns to e-file those returns, with minor exceptions. Michigan would expect any preparer e-filing federal returns to also e-file the Michigan and/or City of Detroit returns.

### **Application and Acceptance Process**

To participate, applicants must first apply to the IRS and be accepted. Individuals must register with IRS e-Services and create a new or revised IRS e-file application. Individuals can contact IRS e-help toll-free at 1-866-255-0654 for assistance.

Publication 3112 IRS e-file Application and Participation specifies the application process and requirements for federal participation. The definitions used by the IRS of the various categories of e-filers, Electronic Return Originators (EROs), transmitters, or software developers also apply for Michigan e-filing purposes.

Once accepted into the IRS e-file program, participation in Michigan's e-file program is automatic. Michigan will use the Electronic Filer Identification Number (EFIN) assigned by the IRS. Michigan does not assign additional identification numbers.

IRS regulations require paid tax preparers to use Preparer Tax Identification Numbers (PTINs) for all tax returns and refund claims. Visit the IRS Web site at [www.irs.gov](http://www.irs.gov) for more information.

To participate in Michigan e-file programs, e-filers must use software that has successfully completed the IRS and Michigan Assurance Testing System (ATS). Confirm that the software chosen has been approved for Michigan and that the Michigan e-file program is operational before transmitting returns.

If, after acceptance, a tax preparer/transmitter or software company has production problems, Treasury reserves the right to suspend that tax preparer or software company until the problems are resolved to Treasury's satisfaction.

Treasury may conduct a suitability check on applicants who have been accepted in the Fed/State e-file program. Participation in the program may be denied if a company is not registered to conduct business in Michigan, or if there is an outstanding tax liability with Michigan.

A list of approved software companies is available on Treasury's Web site. Tax preparers are not required to file test returns with Michigan.

### **Michigan Portion of the Electronic Return**

The Michigan portion of an electronic return consists of data transmitted electronically and the supporting paper documents. The paper documents contain information that cannot be transmitted electronically.

### **Electronic Michigan Returns**

Michigan e-file **supports** the following forms and schedules:

<b><u>Form</u></b>	<b><u>Title</u></b>
3174	Direct Deposit of Refund
4013	Resident Tribal Member Annual Sales Tax Credit
4642	Voluntary Contributions Schedule
4884	Pension Schedule
4973	Pension Continuation Schedule
4976	Home Heating Credit Claim MI-1040CR-7 Supplemental
5049	Married Filing Separately and Divorced or Separated Claimants Schedule
5472	Direct Debit of Individual Income Tax Payment
5595	Excess Business Loss
5674	Net Operating Loss Deduction
5678	Signed Distribution Statement for Joint Owners of Farmland Development Rights Agreements
MI-1040	Individual Income Tax Return
MI-1040CR	Homestead Property Tax Credit Claim
MI-1040CR-2	Homestead Property Tax Credit Claim for Veterans and Blind People
MI-1040CR-5	Farmland Preservation Tax Credit Claim
MI-1040CR-7	Home Heating Credit Claim
MI-1040D	Adjustments of Capital Gains and Losses
MI-1040H	Schedule of Apportionment <b>(e-file limited to six occurrences)</b>
MI-2210	Underpayment of Estimated Income Tax
MI-4797	Adjustments of Gains and Losses from Sales of Business Property
MI-8949	Sales and Other Dispositions of Capital Assets
Schedule 1	Additions and Subtractions
Schedule MI-1045	Net Operating Loss
Schedule AMD	Amended Return Explanations of Changes (Tax Year 2017)

<u>Form</u>	<u>Title</u>
Schedule CR-5	Schedule of Taxes and Allocation to Each Agreement
Schedule NR	Nonresident and Part-Year Resident Schedule
5118	City of Detroit Resident Income Tax Return
5119	City of Detroit Nonresident Income Tax Return
5120	City of Detroit Part-Year Resident Income Tax Return
5121	City of Detroit Withholding Tax Schedule (City Schedule W)
5253	City of Detroit Withholding Tax Continuation Schedule
5338	CITY of Detroit Underpayment of Estimated Income Tax

Information from the W-2 and 1099 forms is entered in the software and transmitted with the e-file return. Do not mail W-2 and/or 1099 forms to Treasury. All W-2 and 1099 information, when applicable, is required when submitting a state unlinked return.

When the following forms are included, the MI-1040 **can be e-filed**, but the following forms must be mailed to the address indicated on the form.

<u>Form</u>	<u>Title</u>
4*	Application for Extension of Time to File Michigan Tax Returns
MI-1310	Claim for Refund Due a Deceased Taxpayer
MI-1040ES*	Michigan Estimated Individual Income Tax Voucher

\* If the taxpayer makes either the extension payment or estimated payments electronically, using Michigan's Individual Income Tax e-Payments System, there is no need to mail each of the identified forms to Treasury.

Michigan will accept e-file returns for deceased taxpayers. If a U.S. 1310 is required, that data must be included within the federal folder of the Michigan e-file return. When e-filing on behalf of a single, deceased taxpayer, with a balance due federal return and a refund Michigan return, the Michigan return can be e-filed and the U.S. 1310 or the MI-1310 (and required documents) included as a PDF attachment when supported by the software or mailed to Treasury.

Following is a list of IIT forms, line references, and filing conditions where PDF attachments are accepted by Michigan.

<u>Form</u>	<u>Line</u>	<u>Description</u>	<u>File Name</u>	<u>Required</u>
State Returns		Power of Attorney	POA.pdf	No
City Returns		Power of Attorney	CityPOA.pdf	No
All Returns		MI-1310	MI-1310.pdf	No
All Forms and Lines		Explanation PDF can be used when Preparer Notes is not sufficient (exceeds 150 characters or contains a document that is not an approved attachment). Must include the form and line number reference.	Explanation.pdf	No
MI-1040	18	Other State Returns	OtherStateReturn.pdf	No

<b>Form</b>	<b>Line</b>	<b>Description</b>	<b>File Name</b>	<b>Required</b>
MI-1040		Grantor Letter	GrantorLtr.pdf	No
MI-1040	26	Worksheet to allow claimants to identify percentages they are allowed to claim for a farmland preservation tax credit.	FarmlandK1.pdf	No
MI-1040	26	A breakdown of the taxable value and property taxes for the farmland preservation tax credit.	Assessor.pdf	No
MI-1040CR MI-1040CR-2 MI-1040CR-7	10 10	Property Tax Statement	PropertyTaxStatement.pdf	No
MI-1040CR MI-1040CR-2 MI-1040CR-7	22 21 24	Custodial Party End of Year Statement	FEN851.pdf	No
MI-1040CR		Letter from the landlord that states the portion of the monthly payment that constitutes rent or if not available, the prorated share of property taxes.	SpecialHousingStmnt.pdf	No
Schedule 1 Schedule NR		Business Activity Worksheet	BusinessActivity.pdf	No
Schedule 1	11	Claiming a subtraction of taxable railroad retirement benefits. This can include income from the RRB-1099 and/or RRB-1099R.	RRB1099R.pdf	No
Schedule 1	22	Claiming subtraction for federal Schedule R but not required to include Schedule R with federal return.	FedSchR.pdf	No
Schedule AMD	6	Amended returns supporting documentation.	AMDSupportingDocs.pdf	No
MI-1040H	12	Unitary Apportionment Calculation	UnitaryCalculation.pdf	Yes
5119	Part 5	Finance Director Approval Letter	ApprovalLetter.pdf	Yes
5121	Part 3	Employer Letter and Work Log	EmployerLetterAndWorkLog.pdf	No
5119 5120	28 23	U.S. Form 2106, Employee Business Expenses	FedForm2106.pdf	No

Software may include a “Preparer Notes” field for the federal, State, and/or City return. The purpose of this field is to capture additional descriptive information from lines that did not have sufficient space. Michigan Preparer Notes can contain up to 150 characters. Tax preparers are encouraged to utilize Preparer Notes and PDF attachments when supported by the software.

Using Preparer Notes and including the recommended PDF attachments may reduce processing delays and the need for Treasury to contact the taxpayer for additional information.

Examples of information that can be included in Preparer Notes and when a PDF attachment is recommended:

- **Combat Zone.** If a taxpayer is serving in a combat zone. Recommend including an explanation in Preparer Notes.
- **Federal Extension granted to MM-DD-YYYY.** If a taxpayer has been granted an extension to file their federal return. Recommend including an explanation in Preparer Notes.
- **Explanation of a large subtraction.** Recommend including an Explanation.pdf when not supported by federal forms and Preparer Notes does not allow enough space for the explanation.
- **Explanation of a miscellaneous subtraction.** Recommend including an Explanation.pdf when not supported by federal forms and Preparer Notes does not allow enough space for the explanation.
- **Explanation of how expenses were met when total household resources are very low.** Recommend including an Explanation.pdf that may include copies of loan documentation.
- **Co-owners share of property taxes.** Recommend including the PropertyTax Statement.pdf.
- **Explanation of taxpayers paying room and board/property tax credits.** Recommend including the SpecialHousingStmnt.pdf.
- **Farmland agreement number reduced for exception by percent.** Recommend including Assessor.pdf.
- **Identify where prior year farmland refund is included on federal return.** Recommend including an explanation in Preparer Notes.
- **Amended MI-1040 due to a federal audit or adjustment.** Recommend including AMDSupportingDocs.pdf.

The taxpayer is **not eligible for e-file** for the 2019 tax year if:

<u>Form</u>	<u>Line</u>	<u>Description</u>
Various		Filing federal returns or forms excluded from MeF
All Michigan forms		Prior year return(s) for tax year 2016 or prior.
MI-1040	19	Claiming the Historic Preservation Tax Credit (Form 3581).
Schedule 1	24	Claiming both the Michigan Standard Deduction (line 24) and the dividend/interest/capital gain deduction (line 26) as the unremarried surviving spouse of someone born before 1946 who was at least 65 at the time of death.  Filing and claiming the Michigan Standard Deduction on line 24 with a birthdate of January 1, 1952.

<u>Form</u>	<u>Line</u>	<u>Description</u>
Schedule 1	25	Claiming a pension/retirement subtraction using form 4884 when the oldest of filer or spouse was born in 1950 and died during the tax year before reaching age 67.
		Claiming a pension/retirement subtraction using Section D of form 4884 when the oldest of the filer or spouse was born January 1, 1958
Schedule 1 4884	25 28	Claiming a pension/retirement subtraction using Section D of form 4884 when the taxpayer is required to reduce the deduction limit due to railroad or military benefits subtracted on Schedule 1, line 11.
MI-1040CR-5	8	Using different total household resources than on the MI-1040CR, MI-1040CR-2 or MI-1040CR-7.
MI-8949	1	Filing with more than 36 short-term capital gains/losses.
	3	Filing with more than 48 long-term capital gains/losses.
MI-4797	2	Filing with more than 16 sales/exchanges of property held more than one year.
	10	Filing with more than 13 ordinary gains/losses of property held one year or less.
	19	Filing with more than 17 gains from disposition of property under Sections 1245, 1250, 1252, 1254 and 1255.
5595		Filing with more than 300 Allowable and Excess Business Loss
MI-1040H	12	Filing with more than 28 entities unitary with one another for which combining apportionment.
Schedule W	Table 3	Reporting Flow-Through Withholding (FTW)
5119	Part 5	Filing with more than one occurrence of business income apportionment.
5121	Part 2	Reporting City Tax Paid by a Partnership

### **Nonelectronic Portion of Michigan Returns**

The nonelectronic portion of the Michigan return consists of the following supporting documents:

- *Michigan Individual Income Tax Declaration for e-file* (Form MI-8453). See the “Michigan E-file Signature Process” section for more information on Form MI-8453.
- *Michigan Individual Income Tax e-file Payment Voucher* (Form MI-1040-V). State tax due returns must submit payment by April 15, 2020. Form MI-1040-V should only be used for e-file payments.
- *City Income Tax e-file Payment Voucher* (Form City-V). City tax due returns must submit payment by April 15, 2020. Form City-V should only be used for e-file payments. For other payment options see the “Tax Refund and Payment Information” section.
- *Michigan Direct Debit of Individual Income Tax* (Form 5472). Provides the taxpayer with a copy of their direct debit request entered in the electronic return submission.

- *Farmland Preservation Tax Credit Claim* (Form MI-1040CR-5). Part 2 of Form MI-1040CR-5 or the signed statement to Treasury was removed from the Form MI-1040CR-5. *Signed Distribution Statement for Joint Owners of Farmland Development Rights Agreements* (Form 5678) should not be used for farmland returns claiming unequal distribution of property taxes on jointly owned land must have a distribution statement signed by all owners.

Do **not** mail a copy of Form 5678 or the signed statement to Treasury. A copy of the signed statement should be retained to avoid reduction and/or denial of the credit. Treasury may request at a later date a copy of the signed statement to verify the unequal distribution claimed.

- **PDF Attachments** when PDF attachments are supported by the software.

### **Michigan E-File Signature Process**

#### **For Fed/State Returns**

Michigan will accept the federal signature of a Self-Selected Personal Identification Number (PIN) or Practitioner PIN. Michigan does not require any additional signature documentation. If the taxpayer chooses to complete Form MI-8453, Treasury recommends that the tax preparer retain it for six years. **Do not** mail Form MI-8453 to Treasury.

#### **For State and/or City Unlinked Returns:**

State and/or City unlinked returns can be signed using “shared secrets” or Form MI-8453 signature document. Shared secrets consist of the SSNs, previous year’s Adjusted Gross Income (AGI) or total household resources, and the previous year’s tax due or refund amount. If Form MI-8453 is used, the tax preparer should retain a copy of Form MI-8453.

The AGI or total household resources and refund or tax due amount must be from the previous year’s return. Treasury can accept this information from the original return, amended return, or return as corrected by Treasury.

If the return is signed using shared secrets and the return is rejected because the shared secrets do not match, the taxpayer/tax preparer may correct the shared secrets information and retransmit. There is no limit on how many times the return can be retransmitted in this circumstance.

#### **For Tax Preparers**

Form MI-8453 may also be used by tax preparers as a preparer certification document to retain in their records. After the return has been prepared and before the return is transmitted electronically, the taxpayer (and spouse, if a joint return) must verify the information on the return, and sign and date Form MI-8453. The tax preparer must provide the taxpayer with a copy of the form. Tax preparers are prohibited from allowing taxpayers to sign a blank Form MI-8453. Tax preparers using the MI-8453 as a signature document for their records, must advise taxpayers **not to** mail the MI-8453 to Treasury.

## **Volunteer Groups**

If the taxpayer chooses to complete Form MI-8453, it should **not** be mailed to Treasury. Volunteer tax preparers must provide taxpayers with the MI-8453 and instruct them to retain a copy with their tax records.

Assistance is available using TTY through the Michigan Relay Service by calling 711. Printed material in an alternative format may be obtained by calling 517-636-4486.

## **FIDUCIARY INCOME TAX**

Beginning with tax year 2018, Michigan accepts *Fiduciary Income Tax Return* (Form MI-1041) through e-file.

Treasury partners with the IRS to provide electronic filing of fiduciary returns. The Fed/State e-file Program enables taxpayers to e-file both federal and State returns through tax preparers as part of the program's effort to provide "one-stop shopping" for tax preparation and filing. The State Unlinked e-file Program enables taxpayers to e-file their State return separately from the federal return.

Fiduciary returns will follow the Individual Income Tax e-file mandate. Tax preparers who complete 11 or more fiduciary returns are required to e-file all eligible returns. Software developers producing tax preparation software or computer-generated forms must support e-file for all fiduciary forms that are included in the software package.

### **How Fed/State (Linked) E-File Works**

Tax preparers and transmitters accepted into the IRS Fed/State 1041 MeF Program may file federal and/or State returns together in one transmission to the IRS Service Center. The State submission can be linked to the IRS submission by including the IRS Submission ID of the federal return. If the State submission is linked to an IRS submission (also referred to as the Fed/State return), the IRS will check to see if there is an accepted IRS submission ID. If there is not an accepted federal return, the IRS will deny the State submission and a rejection acknowledgment will be sent to the transmitter. Treasury has no knowledge that the State return was rejected by the IRS. If there is an accepted federal return under the Submission ID, the IRS will perform minimal validation on the State submission. The State data will then be made available for retrieval by Treasury. After the State data is retrieved, it will be acknowledged and, if accepted, processed by Treasury.

Treasury will acknowledge receipt of all returns retrieved from the IRS. The transmitter should receive the Michigan acknowledgment within three days from the date the return is successfully transmitted to the IRS.

The IRS recommends sending the IRS submission first and, after it has been accepted, sending the State submission.

All returns, whether e-filed or paper-filed, are subject to Treasury audit and can be delayed regardless of the acknowledgment code received. Returns are processed and refunds are issued daily.

## **How State Unlinked E-File Works**

The federal return does not have to be e-filed and accepted before e-filing the state unlinked return. However, the federal tax return should be computed before computing the state tax return.

Tax preparers and transmitters accepted in the IRS e-file program may participate in the state unlinked e-file program when supported by their software. The IRS will perform minimal validation on the state return and issue an acknowledgment. If the return passes validation, the state data will be made available for retrieval by Treasury. After the data is retrieved, it will be acknowledged and, if accepted, processed by Treasury.

## **Who May Participate**

E-filing of Michigan fiduciary returns is available to all individuals who have been accepted into the IRS e-file program and who transmit returns to an IRS Service Center. The IRS mandates preparers filing 11 or more IIT returns to e-file those returns, with minor exceptions. Michigan would expect any preparer e-filing federal returns to also e-file the Michigan returns.

## **Application and Acceptance Process**

To participate, applicants must first apply to the IRS and be accepted. Individuals must register with IRS e-Services and create a new or revised IRS e-file application. Individuals can contact IRS e-help toll-free at 1-866-255-0654 for assistance.

Publication 3112 IRS e-file Application and Participation specifies the application process and requirements for federal participation. The definitions used by the IRS of the various categories of electronic filers, Electronic Return Originators (EROs), transmitters, or software developers also apply for Michigan e-filing purposes.

Once accepted into the IRS e-file program, participation in Michigan's e-file program is automatic. Michigan will use the Electronic Filer Identification Number (EFIN) assigned by the IRS. Michigan does not assign additional identification numbers.

IRS regulations require paid tax preparers to use Preparer Tax Identification Numbers (PTINs) for all tax returns and refund claims. Visit the IRS Web site at [www.irs.gov](http://www.irs.gov) for more information.

To participate in Michigan e-file programs, e-filers must use software that has successfully completed the IRS and Michigan Assurance Testing System (ATS). Confirm that the software chosen has been approved for Michigan and that the Michigan e-file program is operational before transmitting returns.

If, after acceptance, a tax preparer/transmitter or software company has production problems, Treasury reserves the right to suspend that tax preparer or software company until the problems are resolved to Treasury's satisfaction.

Treasury may conduct a suitability check on applicants who have been accepted in the Fed/State e-file program. Participation in the program may be denied if a company is not registered to conduct business in Michigan, or if there is an outstanding tax liability with Michigan.

A list of approved software companies is available on Treasury's Web site. Tax preparers are not required to file test returns with Michigan.

## **Michigan Portion of the Electronic Return**

The Michigan portion of an electronic return consists of data transmitted electronically and the supporting paper documents. The paper documents contain information that cannot be transmitted electronically.

## **Electronic Michigan Returns**

Michigan e-file **supports** the following fiduciary forms and schedules:

<b><u>Form</u></b>	<b><u>Title</u></b>
1041	Fiduciary Income Tax Return
1041D	Adjustments of Capital Gains and Losses
8949	Sales and Other Dispositions of Capital Assets
1040H	Schedule of Apportionment (e-file limited to six occurrences)
5595	Excess Business Loss
2210	Underpayment of Estimated Income Tax
4797	Adjustments of Gains and Losses from Sales of Business Property
5537 Schedule NR	Fiduciary Nonresident Schedule
5029	Fiduciary Withholding Tax Schedule

Following is a list of fiduciary forms, line references, and filing conditions where PDF attachments are accepted by Michigan.

<b><u>Form</u></b>	<b><u>Line</u></b>	<b><u>Description</u></b>	<b><u>File Name</u></b>	<b><u>Required</u></b>
State Returns		Power of Attorney	POA.pdf	No
All Forms and Lines		Explanation. Must include the form and line number reference	Explanation.pdf	No
1041		Grantor Letter	GrantorLtr.pdf	No
	9	ESBT Worksheet	ESBTWorksheet.pdf	Yes
	14B	Other State Returns	OtherStateReturn.pdf	Yes
	31	Income from U.S. Government Obligations and related expenses	USObligations.pdf	No
	34			
	32	Business Activity Worksheet	BusinessActivity.pdf	No
35	Business Activity Worksheet	BusinessActivity.pdf	No	
1041H	13	Unitary Calculation	UnitaryCalcuation.pdf	Yes
Amended Return		Federal 1041X	Fed1041X.pdf	No

The taxpayer is not eligible for fiduciary e-file for the 2019 tax year if:

<u>Form</u>	<u>Title</u>
Various	Filing federal returns or forms excluded in MeF.
All Forms	Filing prior year return for tax year 2017 or prior.
1041	Filing the 1041 and line 12 (taxable income) is calculated using a worksheet. Filing the 1041 with more than 12 beneficiaries claimed on Schedules 1, 2 or 3.
5595	Claiming more than 300 Business Entities on form.
8949	Filing with more than 36 short-term capital gains/losses. Filing with more than 48 long-term capital gains/losses.
4797	Filing with more than 16 sales/exchanges of property held more than one year. Filing with more than 13 ordinary gains/losses of property held one year or less. Filing with more than 17 gains from disposition of property under Section 1245, 1250, 1252, 1254, and 1255
1040H	Filing with more than 28 entities unitary with one another for which combining apportionment.

### **Nonelectronic Portion of Michigan Returns**

The nonelectronic portion of the Michigan fiduciary return consists of the following supporting documents.

- *Estate or Trust Declaration for e-file* (Form MI-8453-FE).
- *Fiduciary Income Tax e-file Payment Voucher* (MI-1041-V). Tax due returns must submit payment by April 15, 2020.
- PDF Attachments listed when PDF attachments are not supported by the software.

### **Michigan Fiduciary E-File Signature Process**

#### **For Fed/State Returns**

Form MI-8453-FE is the declaration and signature document for a Form MI-1041 unlinked return. If the filer e-filed the federal and fiduciary returns, Michigan will accept the federal signature. Michigan does not require any additional signature documentation. If the filer chooses to complete Form MI-8453-FE, Treasury recommends that the tax preparer retain it for six years. **Do not** mail Form MI-8453-FE to Treasury.

#### **For State Unlinked Returns**

If the filer e-filed an unlinked fiduciary return, the Self-Select PIN and the paper Form MI-8453-FE must be used to sign the return. **Do not** send this form to Treasury unless requested to do so. The preparer must complete the fiduciary return before completing Form MI-8453-FE. Form MI-8453-FE must be completed before the filer, or preparer signs it.

## For Tax Preparers

Form MI-8453-FE may also be used by tax preparers as a preparer certification document to retain in their records. After the return has been prepared and before the return is transmitted electronically, the filer must verify the information on the return, sign, and date Form MI-8453-FE. The tax preparer must provide the filer with a copy of the form. Tax preparers are prohibited from allowing filers to sign a blank Form MI-8453-FE. Tax preparers using Form MI-8453-FE as a signature document for their records, must advise filers **not to** mail Form MI-8453-FE to Treasury.

## CORPORATE (CIT) AND MICHIGAN BUSINESS TAX (MBT)

Treasury and the IRS continue to work together to provide tax preparers with an efficient method of filing their clients' business tax returns electronically.

Treasury has an enforced e-file mandate for CIT and MBT. Software developers producing tax preparation software and computer-generated forms must support e-file for all eligible forms that are included in their software package. All eligible returns prepared using tax preparation software or computer-generated forms must be e-filed.

Treasury will be enforcing the e-file mandate. The enforcement includes not processing computer-generated paper returns that are eligible to be e-filed. A notice will be mailed to the taxpayer, indicating that the taxpayer's return was not filed in the proper form and content, and must be e--filed. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed.

### **Application and Acceptance Process**

To participate in CIT and MBT Fed/State e-file Programs, e-filers must use software that has successfully completed the Michigan and IRS testing process, and confirm that the software chosen was approved for Michigan and that the Michigan e-file program is operational before transmitting returns. A list of approved software companies is available on Treasury's Web site at *www.Mifastfile.org*.

An organization or individual interested in participating as a software developer is required to file test returns with Treasury. Tax preparers are **not** required to file test returns with Treasury. If, after acceptance, a tax preparer, transmitter, or software company has production problems, Treasury reserves the right to disapprove the tax preparer, transmitter, or software company for part, or all of the remainder of the filing season.

To avoid posting duplicate returns, a taxpayer filing electronically should not mail copies of federal and State returns and schedules to Treasury unless requested.

When the following forms are included in a filing, the return can be e-filed, but the forms listed below must be mailed.

CIT Forms:

- *Application for Extension of Time to File Michigan Tax Returns* (Form 4)

MBT Forms:

- *Application for Extension of Time to File Michigan Tax Returns* (Form 4)
- *Historic Preservation Credit Assignment and Reassignment* (Form 3614)
- *Film Credit Assignment* (Form 4589).

If tax is due on an e-file return, payments may be mailed along with *MBT e-file Annual Return Payment Voucher (MBT-V)* (Form 4576) or *CIT e-file Annual Return Payment Voucher (CIT-V)* (Form 4901) by the due date. Taxpayers may also make payments by Electronic Funds Transfer (EFT). Application forms for EFT Debit and Credit are available on Treasury's Web site at [www.michigan.gov/biztaxpayments](http://www.michigan.gov/biztaxpayments).

Treasury recognizes that there are conditions that make a return ineligible for e-file. When the computer-generated business tax return meets one or more of the Treasury-recognized e-file exceptions, the taxpayer may have to complete and attach *E-file Exceptions for Business Taxes* (Form 4833) to the front of the return or the paper filing will not be processed. Form 4833 will be generated by the software.

Attach Form 4833 to a computer-generated paper return that meets one or more of the Treasury-recognized e-file mandate exceptions. Treasury-recognized exceptions at the time of this printing include, but are not limited to:

- MBT taxpayer is filing one or more of the following forms:
  - *Qualified Affordable Housing Seller's Deduction* (Form 4579)
  - *Business Tax Tribal Agreement Apportionment* (Form 4597)
  - *Tribal Agreement Ownership Schedule* (Form 4598)
- Return was prepared by a preparer who has been suspended or denied acceptance to participate in the IRS e-file program or does not have an Electronic Filing Identification Number (EFIN).
- Return was prepared by the taxpayer and, because the taxpayer does not have an EFIN and is not using an online software product, they are unable to e-file.
- Return was rejected by Michigan or IRS, there is no way to correct and resubmit the return electronically, and software does not support State Standalone.
- Taxpayer's federal return contains a form that is not eligible for e-file and the software does not support State Standalone e-file.
- Taxpayer is amending their MBT return and is using software that does not support amended filings.

The following are also Treasury-recognized exceptions. However, do not attach Form 4833 to a paper return that meets one or more of the following conditions:

- The taxpayer has an organization type of individual or fiduciary
- The taxpayer does not have a FEIN
- The return is completed by hand (with pen or pencil)
- The return is completed using forms from Treasury’s Web site or Michigan tax instruction books.

### **Electronic Michigan Returns**

The following forms and schedules may be e-filed using the CIT Fed/State e-file Program for tax year 2019.

<b><u>Form</u></b>	<b><u>Title</u></b>
4891	Annual Return
4892	Amended Return
4893	Small Business Alternative Credit
4894	Schedule of Shareholders and Officers (For all Corporations Claiming the Small Business Alternative Credit)
4895	Loss Adjustment for the Small Business Alternative Credit
4896	Unitary Business Group Affiliates Excluded From the Return of Standard Taxpayers
4897	Data on Unitary Business Group Members
4898	Non-Unitary Relationships with Flow-Through Entities
4899	Penalty and Interest Computation of Underpaid Estimated Tax
4900	Unitary Relationships with Flow-Through Entities
4902	Schedule of Recapture of Certain Business Tax Credits
4905	Insurance Company Annual Return for Corporate Income and Retaliatory Taxes
4906	Insurance Company Amended Return for Corporate Income and Retaliatory Taxes
4908	Annual Return for Financial Institutions
4909	Amended Return for Financial Institutions
4910	Unitary Business Group Combined Filing Schedule for Financial Institutions

The following forms and schedules may be e-filed using the MBT Fed/State e-file Program for tax year 2019.

<b><u>Form</u></b>	<b><u>Title</u></b>
3581	Historic Preservation Tax Credit
4567	Annual Return
4568	Nonrefundable Credits Summary
4569	Single Business Tax (SBT) Credit Carryforwards
4570	Credits for Compensation, Investment and Research and Development
4571	Common Credits for Small Business
4572	Charitable Contribution Credits
4573	Miscellaneous Nonrefundable Credits
4574	Refundable Credits
4575	Loss Adjustment for the Small Business Alternative Credit

<u>Form</u>	<u>Title</u>
4577	Schedule of Shareholders and Officers
4578	Schedule of Partners
4580	Unitary Business Group Combined Filing Schedule for Standard Members
4582	Penalty and Interest Computation for Underpaid Estimated Tax
4584	Election of Refund or Carryforward of Credits, and Calculation of Historic Preservation and Brownfield Redevelopment Carryforward
4585	Investment Tax Credit Recapture From Sale of Assets Acquired Under Single Business Tax
4586	Schedule of Business Activity Protected Under Public Law 86-272
4587	Schedule of Recapture of Certain Business Tax Credits and Deductions
4588	Insurance Company Annual Return for Michigan Business and Retaliatory Taxes
4590	Annual Return for Financial Institutions
4594	Farmland Preservation Tax Credit
4595	Renaissance Zone Credit
4596	Miscellaneous Credits for Insurance Companies
4752	Unitary Business Group Combined Filing Schedule for Financial Institutions
4946	Schedule of Corporate Income Tax Liability for a Michigan Business Tax Filer
4947	Schedule of Certification Credits
4966	Schedule of Flow-Through Withholding
4974	Schedule of Corporate Income Tax Liability for a Michigan Business Tax Insurance Filer
4975	Schedule of Corporate Income Tax Liability for a Michigan Business Tax Financial Filer

Michigan will continue to accept certain binary PDF attachments with the e-filed returns for tax year 2019 (as supported by software). A listing of the attachments will be posted to the Treasury Web site at [www.Mifastfile.org](http://www.Mifastfile.org).

### **Attachments to CIT and MBT Returns**

**Corporations.** U.S. 1120 (pages 1 through 4), Schedule D, Forms 851, 4562, and 4797. If filing as part of a consolidated federal return, attach a pro forma or consolidated schedule.

**Unitary Business Groups (UBGs).** For more information on federal return attachments see Form 4580 for MBT and Form 4897 for CIT.

**Do not send copies of K-1s. Treasury will request them, if necessary.**

### **Attachments to MBT Returns**

**S Corporations.** U.S. 1120S (pages 1 through 4), Schedule D, Forms 851, 4562, 4797, and 8825.

**Partnerships.** U.S. 1065 (pages 1 through 5), Schedule D, Form 4797, and Form 8825.

**Individuals.** U.S. 1040 (pages 1 and 2), Schedules C, C-EZ, D, E, and Form 4797 (only when a member of a UBG).

**Fiduciaries.** U.S. 1041 (pages 1 through 4), Schedule D, and Form 4797 (only when a member of a UBG).

LLCs. Attach appropriate schedules shown above based on federal return filed.

### **CIT and MBT Fed/State E-File Program**

Tax preparers and transmitters accepted in the IRS e-file Program may participate in the Fed/State e-file Programs and e-file returns through the IRS MeF Program. (See [www.irs.gov](http://www.irs.gov) for more information.) A list of software developers supporting e-file is available on Treasury's Web site at [www.MIfastfile.org](http://www.MIfastfile.org).

Michigan accepts two kinds of submissions:

1. Fed/State (linked)
2. State Standalone (unlinked).

### **How Fed/State (Linked) E-File Works**

A State submission can be linked to the IRS submission by including the IRS Submission ID of the federal return with the State return filing. If the State submission is linked to an IRS submission (also referred to as a Fed/State return), the IRS will check to see if there is an accepted IRS submission under the Submission ID. If there is not an accepted federal return for that tax type, the IRS will deny the State submission and a rejection acknowledgment will be sent to the transmitter. Treasury has no knowledge that the State return was rejected by the IRS. If there is an accepted federal return under the Submission ID, MeF will perform minimal validation on the State submission. The validation includes verifying that the State is a participating State in the Fed/State Program. MeF will then pass along to the State what the Electronic Return Originator (ERO)/taxpayer sends in the State submission.

***Note: If a State submission is linked to an IRS submission, the IRS recommends sending the IRS submission first and, after it has been accepted, sending the State submission.***

### **How State Standalone (Unlinked) E-File Works**

If the ERO does not link the State return to a previously accepted federal return (also referred to as Unlinked return), Modernized e-File (MeF) will perform minimal validation as stated above (that will include verifying that the State allows Unlinked returns), and then pass along the entire State submission that was sent in by the ERO/taxpayer.

***Note: The State return is made up of a State and federal portion. The taxpayer provides both components based on what is required by the State. The IRS passes to the State just the information that has been provided by the taxpayer.***

The workflow for State returns is as follows:

1. Transmitter sends State returns to IRS.
2. IRS validates the State return.
  - A. If linked return, validates IRS submission and State Participation.
  - B. If unlinked, validates State Participation.

3. If valid, IRS makes the State return available to Treasury.
4. Treasury retrieves State return from IRS.
5. Treasury sends receipt for State return to IRS.
6. Treasury will process the State return and send State acknowledgment to IRS.
7. Transmitter will retrieve the State acknowledgment from IRS.
8. The State will retrieve the Acknowledgment Notification (acknowledging Transmitter retrieved the State acknowledgment).

### **Application and Acceptance Process**

To participate, applicants must first apply to the IRS and be accepted. Individuals must register with IRS e-Services and create a new or revised IRS e-file application. Individuals can contact e-Help toll-free at 1-866-255-0654 for assistance with the IRS e-file Application or if unable to register for e-Services.

Publication 3112 IRS e-file Application and Participation specifies the application process and requirements for federal participation. The definitions used by the IRS of the various categories of e-filers, EROs, transmitters, or software developers also apply for Michigan e-filing purposes.

Upon acceptance, the IRS Service Center assigns an EFIN and, if applicable, an Electronic Transmitter Identification Number (ETIN) to the applicant. After receiving the federal acceptance information, applicants are automatically accepted into the CIT and MBT MeF programs.

IRS regulations require paid tax preparers to use Preparer Tax Identification Numbers (PTINs) for all tax returns and refund claims filed after December 31, 2010. Visit the IRS Web site at [www.irs.gov](http://www.irs.gov) for more information.

### **Acceptance Process**

Treasury may conduct a suitability check on applicants who have been accepted in the MBT and CIT Fed/State e-file programs. Participation in the program may be denied if a company is not registered to conduct business in Michigan, or if there is an outstanding tax liability with Michigan.

### **Michigan E-file Signature Process**

Treasury will use the EFIN assigned by the IRS in the CIT and MBT Fed/State e-file programs. Michigan does not assign any additional identification numbers for the Fed/State e-file programs.

### **For Fed/State (Linked) Returns**

Michigan will accept the federal signature (8453-C, 8453-S, 8453-P, or PIN). The State return may be transmitted with the federal return or at a separate time. As long as there is an IRS Submission ID included with the State submission the two returns are linked together, and it is considered a Fed/State filing. Michigan does not require any additional signature documentation.

## **For State Standalone (Unlinked) Returns**

Unlinked returns must be signed by entering a taxpayer PIN and completing *E-file Authorization for Business Taxes* (Form MI-8879). The taxpayer may authorize the tax preparer to enter the PIN on their behalf. The MI-8879 should be retained by the tax preparer and/or taxpayer and included in the printed copy of the return that is provided to the taxpayer.

## **For More Information**

Visit [www.irs.gov](http://www.irs.gov) and [www.MIfastfile.org](http://www.MIfastfile.org) for more information on the Fed/State e-file programs.

## **City of Detroit Corporate Income Tax**

The City of Detroit Corporate Income Tax is administered by Treasury. Detroit Corporate returns may be e-filed through the MeF system, as supported by software. These returns will be filed as unlinked and may not be transmitted as a combined filing with the State return.

## **SALES, USE AND WITHHOLDING (SUW)**

Treasury accepts e-filed SUW returns using Treasury approved tax preparation software (bulk e-file), submitted using a Web service or the bulk upload feature in Michigan Treasury Online (MTO). E-file is a fast and secure method for submitting monthly, quarterly, and/or annual returns and payments. Treasury does not charge a fee to e-file; however, there may be fees associated with using tax preparation software to prepare and submit returns.

E-file is not required for most accounts; however, it is required for businesses that complete early payment of tax on vehicle sales using the *Vehicle Dealer Supplemental Schedule* (Form 5086), or are fuel suppliers and wholesalers that claim credits for prepaid sales tax charged on gasoline and diesel purchases using the *Fuel Supplier and Wholesaler Prepaid Sales Tax Schedule* (Form 5083) or the *Fuel Retailer Supplemental Schedule* (Form 5085). Businesses who have more than 250 employees are mandated to e-file the *Sales, Use, and Withholding Taxes Annual Return* (Form 5081) and the *Sales, Use and Withholding Taxes Amended Monthly/Quarterly Return* (Form 5092), if amending.

Treasury encourages using e-file when available. There are many benefits to tax preparers who participate in the e-file program:

- **Customer service.** E-filed returns are processed faster than paper returns. Receive electronic proof from Michigan that returns were received.
- **Convenient.** Prepare and transmit SUW submissions using software that has been approved by Treasury.
- **Improved return accuracy.** Treasury processes the same data the tax preparer enters into the computer. Treasury computers automatically check returns for mistakes. When easy-to-fix mistakes like math errors or missing forms are found, the return is sent back for correction. The error can then be corrected and be sent back to Treasury. E-file returns have a significantly less chance of error compared to paper returns.
- **Detailed error conditions.** Business rules pinpoint the location of the error in the submission and provide complete information in the acknowledgement file that is passed back to the transmitter. Business rules use simple wording to clarify each error that triggers a rejection.
- **Secure.** Tax information is encrypted and transmitted directly to Michigan.
- **Payment with tax due returns.** Payment can be made using direct debit at the same time the tax return is e-filed, when supported by the software.
- **Amended returns.** Treasury can process amended SUW returns submitted on the *Sales, Use and Withholding Taxes Amended Annual Return* (Form 5082) and Form 5092.
- **Prior year returns.** Tax year 2018, 2019 and 2020 SUW tax returns may be e-filed during the 2020 processing year. Tax year 2017 returns are ineligible for e-file after February 29, 2020.

Visit Treasury's Bulk E-file Web site at [www.Mifastfile.org](http://www.Mifastfile.org) for a listing of bulk e-file resources, additional online services, and further updates.

### **How SUW E-File Works**

Tax preparers using tax preparation software may participate in the SUW e-file Program if supported by their software. Treasury provides electronic acknowledgments for all e-filed submissions uploaded/transmitted.

The first notification is in the form of a confirmation number (MTO bulk upload) or electronic receipt (Web Service) of the transmission which is received by the uploader/transmitter. Uploaders are those uploading returns through MTO, including individual taxpayers, tax preparers, Payroll Service Providers (PSPs), Third-Party Administrators (TPAs), and software companies. Transmitters using the Web Service usually develop the tax preparation software and are either a software company, PSP or TPA.

Once a submission receives a successful confirmation number or electronic receipt, Treasury will generate an acknowledgement for all submissions received in the transmission. Submissions must be received by noon (ET) to have an acknowledgment generated by 5:00 PM the same day.

All returns, whether e-filed or paper-filed, are subject to Michigan audit and can be delayed regardless of the acknowledgment code received. Returns are processed and refunds are issued daily.

**Application and Acceptance Process**

To participate in the SUW e-file Program, e-filers must use software that has successfully completed the Assurance Testing System (ATS). Confirm that the software chosen has been approved and that the e-file program is operational before uploading/transmitting submissions.

If, after acceptance, an uploader/transmitter or software company has production problems, Treasury reserves the right to suspend them for part or all of the remainder of the filing season.

**Type of Filings Accepted**

SUW allows the flexibility to file a combined SUW return in one filing or to file them separately.

**Example:** If a taxpayer is registered for SUW taxes, but only intends to file their Sales and Use tax return, only the Sales and Use sections of the form should be completed. The Withholding tax return may be submitted later, with only the Withholding section completed.

Only complete the applicable tax section(s) you are filing; do not enter zeroes in sections you are not reporting information for.

**Electronic Michigan Data**

Michigan e-file supports the following forms and schedules:

<u>Form</u>	<u>Title</u>
5080	Sales, Use and Withholding Taxes Monthly/Quarterly Return
5081	Sales, Use and Withholding Taxes Annual Return
5082	Sales, Use and Withholding Taxes Amended Annual Return
5083*	Fuel Supplier and Wholesaler Prepaid Sales Tax Schedule
5085*	Fuel Retailer Supplemental Schedule
5086*	Vehicle Dealer Supplemental Schedule
5092	Sales, Use and Withholding Taxes Amended Monthly/Quarterly Return

\*Form is only eligible for e-file. If a paper form is submitted, the credit(s) will be disallowed.

## **Nonelectronic Documents**

The non-electronic portion of the return consists of the following documents:

<b><u>Form</u></b>	<b><u>Title</u></b>
5094	Sales, Use and Withholding Payment Voucher
5095	Sales, Use and Withholding Taxes Monthly/Quarterly and Amended Monthly/Quarterly Worksheet
5562	Michigan Direct Debit of Business Tax Payment
5636	Sales Tax Rate and Discount Multiplier by State Table

Do **not** mail copies of Form 5095, Form 5562 or Form 5636 to Treasury, unless requested to do so. Treasury recommends the forms be retained in the taxpayer's records for six years.

## **Exclusions from E-File**

Taxpayers are not eligible for SUW bulk e-file if Forms 5083, 5085 and/or 5086 need to be submitted with Forms 5081 or 5082.

Taxpayers are not eligible for SUW bulk e-file if a negative number needs to be reported on lines 2a and/or 2b on Forms 5080 or 5092.

## **E-File Signature Process**

Michigan accepts the agreement that PSPs, Certified Service Providers (CSPs), and paid preparers have with their clients as the signature for e-filing SUW returns and/or payments. The agreement may be a limited power of attorney, IRS Reporting Agent Authorization Form 8655, or company document that mirrors the same type of e-filing authorization. Treasury does not require any additional signature documentation.

The authorization document must not be submitted unless requested by Treasury. Treasury recommends the authorization document be retained in the taxpayer's records for six years.

## **Payments Methods**

### **Electronic Payment Submitted with the E-Filed Return**

Automated Clearing House (ACH) direct debit payments are allowed with e-filed SUW returns as supported by software. Payments made this way can only be submitted along with a return. For timely payment, the return with payment must receive an "Accepted" acknowledgment by Treasury one business day prior to the due date. If the due date falls on a weekend, state holiday, or banking holiday, the due date is the next business day. More information on due dates can be found on the *Sales, Use and Withholding Tax Due Dates for Holidays and Weekends* (Form 3149).

Payments may be scheduled up to 90 days in advance of the settlement date. This is considered warehousing the payment.

Allow three to four business days from the ACH direct debit date for the payment to be withdrawn from the account. Penalty and interest will accrue on any tax due that has not been paid by the due date of the return. The day after the return was accepted by Michigan is considered the received date of the payment, when not warehoused.

If no tax is due, do not send a zero payment. Zero payments are not required when no tax is due and will not be recognized by Treasury as a valid payment.

***Note: Some financial institutions offer a “Debit Blocking” or “Debit Filtering” service to prevent unauthorized debits (withdrawals) from an account. If an account has a debit block or filter, any unauthorized debit transactions will not be processed. The taxpayer should contact their financial institution and have the ACH transaction identified with the Company ID 9244842702 authorized to debit their account. Failure to make these arrangements may result in the payment request being rejected by the financial institution.***

Form 5562 should be completed and retained in the taxpayer’s records for six years; **do not** mail a copy to Treasury unless requested to do so.

### **Paper Payment Voucher**

If tax is due on an e-filed return, the taxpayer may submit payment by check or money order, by the due date, with Form 5094.

### **Refunds**

Direct deposit is not available for SUW returns receiving a refund. All refunds will be issued by paper warrant and mailed to the address on record. The taxpayer mailing address information entered into the software **does not** update Treasury’s records for taxpayer mailings. Changes to address information may be made using Treasury’s Self Service Options.

### **City of Detroit Income Tax Withholding**

The City of Detroit Income Tax Withholding is administered by Treasury. Detroit Withholding returns may be e-filed, as supported by software. These returns will be filed as unlinked and may not be transmitted as a combined filing with the State return.

# INDIVIDUAL INCOME TAX

## WHAT'S NEW

### Legislation

#### **2018 PA 588 Deduction for Wrongful Imprisonment Compensation**

As enacted on December 28, 2018, PA 588 of 2018 amended the calculation of Michigan taxable income to authorize a deduction for compensation received during the tax year under the Wrongful Imprisonment Compensation Act. The deduction is limited to the extent such income is included in federal Adjusted Gross Income (AGI) and only applicable for tax years beginning after December 31, 2018.

#### **2018 PA 589 Additional Personal Exemption for Taxpayers with a Certificate of Stillbirth**

PA 589 of 2018, signed into law on December 28, 2018, allows an additional personal exemption in the tax year for which the taxpayer has a certificate of stillbirth from the Department of Health and Human Services (DHHS). The exemption is in effect for tax years beginning after December 31, 2018. A copy of the Certificate of Stillbirth issued by the DHHS must be included with the *Individual Income Tax Return* (MI-1040) when the exemption is claimed on the MI-1040.

### Increased Exemption

The personal exemption amount for 2019 is \$4,400.

### Changed Forms

*Michigan Schedule 1 Additions and Subtractions* now computes a subtraction subtotal to accommodate potential Net Operating Loss (NOL) deduction limitations established under the recent federal Tax Cuts and Jobs Act.

*Michigan Net Operating Loss Schedule* (MI-1045) must be filed to compute and claim a Michigan NOL. The MI-1045 is now a supporting schedule that is submitted with the loss year MI-1040, including e-filed returns. A completed MI-1045 for the loss year is required if a taxpayer claims an NOL carryforward deduction or a refund from a farming loss carryback.

*Farmland Preservation Tax Credit Claim* (Form MI-1040CR-5) has been modified.

- “Part 2: Signed Distribution Statement for Joint Owners” has been moved to a new form. See “**New Forms**” section below.
- The NOL deduction for a Farmland Preservation tax credit, formerly page 3 of the MI-1045, is now located on Form MI-1040CR-5, Part 4.

*Home Heating Credit Claim* (MI-1040CR-7) now requires the names, Social Security numbers and ages of all household members to comply with federal requirements. In addition, each household member’s status as a U.S. citizen or a qualified alien must be designated on the form.

## **New Forms**

*Michigan Net Operating Loss Deduction* (Form 5674) is used to compute the current year Michigan NOL deduction. Form 5674 is required when claiming an NOL deduction on Schedule 1 and can be included with an e-filed MI-1040.

*Michigan Farming Loss Carryback Refund Request* (Form 5603), formerly page 2 of the MI-1045, is used to claim a refund from a farming loss available for carryback.

*Signed Distribution Statement for Joint Owners of Farmland Development Rights Agreements* (Form 5678), formerly Part 2 on the MI-1040CR-5, must be completed for farmland jointly owned with someone other than the filer's spouse.

## **Revenue Administrative Bulletins (RABs)**

### **RAB 2018-21 Individual Income Tax Deduction of Retirement and Pension Benefits Received from a Public Retirement System of Another State**

Describes the Michigan Income Tax Act (ITA) treatment of retirement and pension benefits received from a public retirement system of another state in accordance with the date of birth limitations on the deduction of retirement or pension benefits that began in 2012 as a result of 2011 Public Act (PA) 38.

### **RAB 2018-27 Income Tax – Taxability of Personal Service Income Received by a Nonresident Professional Athlete**

Describes the Michigan income tax treatment of income earned by a nonresident professional athlete for personal services performed in Michigan for any professional team including, but not limited to, football, baseball, basketball, or hockey teams.

### **RAB 2018-28 Alternative Apportionment for the Michigan Business and Income Taxes**

Describes alternative apportionment allowing for deviation from Michigan's statutorily-mandated apportionment formula when the formula fails to fairly represent a taxpayer's business activity in this state.

## **FORMS**

### **Individual Income Tax Forms**

Most Individual Income Tax (IIT) forms are designed for electronic scanning, which permits faster processing with fewer errors. The IIT Instruction Booklet contains information on how to correctly complete scannable forms to avoid unnecessary delays caused by manual processing.

Direct deposit of the State income tax refunds is available. Information required for requesting the direct deposit of a refund is in the IIT Instruction Booklet.

Direct deposit is only available when Treasury is issuing a state refund and only on the first return filed each year. The Home Heating Credit Program sends the credit in the form of an Energy Draft directly to the energy provider or to the claimant. Only a claimant whose heat is included in rent should use *Direct Deposit of Refund* (Form 3174).

Treasury has seen an increase in the volume of both returns and e-file payment vouchers with masked or truncated Social Security numbers (SSN) and bank account number information. Taxpayers have been mailing the masked copy of their documents instead of the copy with the full account information displayed, which may cause significant delays in processing the returns and payments. Tax preparers should emphasize to their customers the importance of **not** mailing the masked copies.

### **Mailing Addresses**

All **paper-filed individual returns** should be mailed to the following addresses:

#### **MI-1040:**

For refund, credit, or zero returns:

Michigan Department of Treasury  
Lansing, MI 48956

To pay tax due:

Michigan Department of Treasury  
Lansing, MI 48929

#### **MI-1040CR-7:**

Michigan Department of Treasury  
Lansing, MI 48956

### **Substitute Forms Must Be Approved**

**Before** releasing software to tax preparers, software developers must submit forms for review and receive official approval from Forms, Documentation and E-file Services. Approvals are granted for one year only. Software Developers should not release unapproved forms to their customers.

Substitute forms filed with Treasury that are not approved will be returned to the taxpayer.

Substitute forms testing season begins in October and ends the following year in March.

## TAX REFUND AND PAYMENT INFORMATION

### State Tax Returns Claiming Refunds

Michigan taxpayers can elect to have their income tax refunds direct deposited into their checking or savings accounts. When carrying the direct deposit information from the federal return to the Michigan return, verify the information is correct for the Michigan return. This is especially important when taxpayers have a Refund Anticipation Loan and have designated their federal refund to pay their loans. The State refund should not go to pay those loans.

Direct deposit requests associated with a foreign bank account are classified as International Automated Clearing House Transactions. If the income tax refund direct deposit is forwarded or transferred to a financial institution in a foreign country, the direct deposit will be returned to Treasury. If this occurs, the refund will be converted to a check (warrant) and mailed to the address on the tax return. Taxpayers should contact their financial institutions for questions regarding the status of their bank account.

Treasury cannot make any changes to direct deposit information after the return is transmitted.

Refund requests cannot be made by direct deposit for an amended return. A refund check will be mailed to the address on the Michigan return.

### State Tax Returns With Tax Due

In the event that tax is due on the return, the taxpayer must submit payment by April 15, 2020. If full payment of that tax due is not submitted by April 15, the taxpayer will receive a bill with applicable penalty and interest. Payments can be made by:

- **Direct Debit:** Direct debit from a checking or savings account when the return is e-filed and supported by the software. A direct debit is a tax payment electronically withdrawn from the taxpayer's bank account through the tax software used to electronically file the IIT return. Submitting the electronic return with the direct debit information provided, acts as the taxpayer's authorization to withdraw the funds from their bank account. Requesting the direct payment is voluntary and only applies to the electronic return that is being filed.

**Important:** When the State return has tax due and the City return has a refund, the City refund cannot be reduced to cover the State tax due.

Direct debit **will not** be available for the Michigan 2019 amended tax due return. Payment for an e-filed 2019 Michigan amended tax due return should be made using the *Individual Income Tax Payment Voucher* (MI-1040-V).

- **Warehousing a payment.** Warehousing a tax payment allows the taxpayer to designate the date the payment will be withdrawn from their bank account. Treasury will accept a warehoused payment date up to 90 calendar days before, but not beyond, April 15, 2020. Direct debit requests **after** the April 15, 2020 due date cannot be warehoused and must contain a direct debt date that is equal to the transmission date of the e-filed return. Treasury will not withdraw a payment from the designated bank account prior to the requested debit date. Allow three to four business days from the direct debit date of the payment for the funds to be withdrawn from the account.

Penalty and interest will accrue on any tax due that has not been paid by the due date of the return. The day the return was transmitted, if accepted by Michigan, is the received date.

- **Mailing Form MI-1040-V with a check or money order after e-filing the MI-1040 return.** The MI-1040-V should not be included with a copy of the return and should not be used for any other payments made to the State of Michigan (SOM) (such as a City of Detroit tax due). When the payment is made electronically, there is no need to mail the MI-1040-V to Treasury.
- **Michigan IIT e-Payments system by direct debit (eCheck) from a checking or savings account, or by using a credit or debit card.** Michigan IIT filers have the option of making payments electronically using IIT e-Payments system. Paying electronically is easy, fast, and secure. The available payment types include IIT payments (tax due on the MI-1040), quarterly estimated income tax payments, and IIT extension payments. Payments can be made using eCheck from a checking or savings account, or credit or debit card. There is no fee for eCheck payments. Credit and debit payments will be charged a convenience fee of 2.35 percent of the total payment for credit cards and a flat fee of \$3.95 for debit cards, which is paid directly to the payment processing vendor. Visit [www.michigan.gov/iit](http://www.michigan.gov/iit) for more information.

### **City of Detroit Tax Returns Claiming Refunds**

Direct deposit **will not** be available for City of Detroit refunds. All City of Detroit tax refunds will be issued checks and mailed to the address on the return.

### **City of Detroit Tax Returns With Tax Due**

In the event that tax is due on the return, the taxpayer must submit payment by April 15, 2020. If full payment of that tax due is not submitted by April 15, the taxpayer will receive a bill with applicable penalty and interest.

Payments can be made by:

- **Direct Debit for tax year 2017, 2018 and 2019:** Direct debit from a checking or savings account when the return is e-filed and supported by the software. A direct debit is a tax payment electronically withdrawn from the taxpayer's bank account through the tax software used to electronically file the IIT return. Submitting the electronic return with the direct debit information provided acts as the taxpayer's authorization to withdraw the funds from their bank account. Requesting the direct payment is voluntary and only applies to the electronic return that is being filed.

**Important:** When the City of Detroit return has a tax due and the State return has a refund, the State refund cannot be reduced to cover the City tax due.

**Warehousing a payment.** Warehousing a tax payment allows the taxpayer to designate the date the payment will be withdrawn from their bank account. Treasury will accept a warehoused payment date up to 90 calendar days before, but not beyond, April 15, 2020. Direct debit requests **after** the April 15, 2020 due date cannot be warehoused and must contain a direct debit date that is equal to the transmission date of the e-filed return. Treasury will not withdraw a payment from the designated bank account prior to the requested debit date. Allow three to four business days from the direct debit date of the payment for the funds to be withdrawn from the account.

Penalty and interest will accrue on any tax due that has not been paid by the due date of the return. The day the return was transmitted, if accepted by Michigan, is the received date.

- **Mailing the *Income Tax e-file Payment Voucher (City-V)* with a check or money order after e-filing the City of Detroit return.** The City-V should not be included with a copy of the return and should not be used for any other payment made to the SOM (such as a Michigan tax due on Form MI-1040). When the payment is made electronically, there is no need to mail the City-V to Treasury.

Payment using Michigan’s Individual Income Tax e-Payments system is not available for City of Detroit tax due returns.

## POST-FILING INFORMATION

### Mailing Addresses

General income tax correspondence or returning a home heating draft for a check:

Michigan Department of Treasury  
Customer Contact  
P.O. Box 30757  
Lansing, MI 48909

Write “Void” across the draft and include a letter of explanation. When returning home heat drafts, the dollar amount of the check will be 50 percent of the returned draft and there will be further review of the account.

Returning SOM checks:

Michigan Department of Treasury  
Office of Financial Services  
P.O. Box 30788  
Lansing, MI 48909

Write “Void” across the check and include a letter of explanation.

Visit [www.michigan.gov/treasury](http://www.michigan.gov/treasury) for more information.

## **Amended Michigan Income Tax Return (Schedule AMD)**

To correct or amend information reported on Form MI-1040, check the “Amended” box at the top of page 1 of the form. A Schedule AMD must be included when the amended MI-1040 is filed.

If the original return was adjusted by Treasury and the taxpayer disagrees with the adjustments, it is not necessary to file an amended return. Simply respond to the adjustment notice with documentation to support the original claim. Treasury will review the documentation for further adjustment.

**Exceptions:** When correcting a *Homestead Property Tax Credit Claim* (Form MI-1040CR) when no MI-1040 was filed with the original claim, an MI-1040X/MI-1040X-12 is not required. File the MI-1040CR using the corrected figures and check the “Amended” box the top of the form.

When correcting a *Home Heating Credit Claim* (Form MI-1040CR-7), file an MI-1040CR-7 and check the “Amended” box at the top of the form. An amended claim requesting an additional heating credit must be submitted by September 30 following the year of the claim.

When correcting Form MI-1040CR-5, file an MI-1040CR-5 with a new MI-1040 and check the “Amended” box at the top of the form. Submit the amended form along with a description and any documentation needed to explain the change.

When claiming a refund from a Michigan NOL carryback, do not file an amended return. To request a refund from a farming loss carryback, file Form 5603.

An amended return is not required to change an incorrect SSN or incorrect mailing address. Contact Treasury at [www.michigan.gov/iit](http://www.michigan.gov/iit) or call 517-636-4486.

An amended return claiming an additional refund must be filed within four years of the due date of the original return.

## SUMMARY OF CHANGES FOR 2019

Tax Rate	4.25%
Personal Exemption	\$4,400
Special Exemption	\$2,700
Qualified Disabled Veteran Deduction	\$400
Stillbirth Exemption	\$4,400

Pension Deduction:

**Single Filer**

Born before 1946: private pension limit	\$52,808
Born in 1946-1952: Standard deduction against all income	\$20,000
Born after 1952, pension not deductible*	0

**Joint Filers**

Born before 1946: private pension limit	\$105,615
Born in 1946-1952: Standard deduction against all income	\$40,000
Born after 1952, pension not deductible*	0

**Senior Interest, Dividend, and Capital Gains**

Single Filer (not available for senior born after 1945)	\$11,771
Joint Filers (not available for senior born after 1945)	\$23,542

*\*Exception: Taxpayers who have reached age 62 and receive pension benefits from Social Security exempt employment may be eligible for a pension deduction. See Pension and Retirement Benefits.*

## SUMMARY OF CHANGES FOR PRIOR YEARS

	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Tax Rate	4.25%	4.25%	4.25%	4.25%
Personal Exemption	\$4,000	\$4,000	\$4,000	\$4,050
Special Exemption	\$2,600	\$2,600	\$2,600	\$2,700
Qualified Disabled Veteran Deduction	\$400	\$400	\$400	\$400
Pension Deduction				
<b>Single Filer:</b>				
Born before 1946: private pension limit	\$49,811	\$49,861	\$50,509	\$51,570
Born after 1945 and age 67 or older:				
Standard deduction against all income	\$20,000	\$20,000	\$20,000	\$20,000
Born 1946 through 1952 and age 66 or less	\$20,000	\$20,000	\$20,000	\$40,000
Born after 1952, pension not deductible	0	0	0	0
<b>Joint Filers:</b>				
Born before 1946: private pension limit	\$99,623	\$99,723	101,019	\$103,140
Born after 1945 and age 67 or older:				
Standard deduction against all income	\$40,000	\$40,000	\$40,000	\$40,000
Born 1947 through 1952 and age 66 or less	\$40,000	\$40,000	\$40,000	\$40,000
Born after 1952, pension not deductible	0	0	0	0
<b>Senior Interest, Dividend, and Capital Gains</b>				
Single Filer (not available for senior born after 1945)	\$11,104	\$11,115	\$11,259	\$11,495
Joint Filers (not available for senior born after 1945)	\$22,207	\$22,229	\$22,518	\$22,991

*Note: For additional information on topics in this chapter, visit [www.michigan.gov/taxes](http://www.michigan.gov/taxes) select “Individual Income Tax,” and “Reports and Legal” tab for a list of resources.*

## FILING REQUIREMENTS

### Filing an MI-1040 Return

An individual should file a Michigan return if they were a Michigan resident all or part of the year and filed a federal return. A nonresident is required to file a Michigan return if all or part of their income was earned in Michigan or was from Michigan sources.

A nonresident or part-year resident must use *Nonresident and Part-Year Resident Schedule* (Schedule NR) to allocate income between Michigan and other states.

Married taxpayers who filed a joint federal return must also file a joint Michigan return. Taxpayers may file either a separate or joint Michigan return if separate federal returns were filed.

## **Factors to Determine Domicile**

A person who is domiciled in Michigan is a Michigan resident. Domicile means the fixed and permanent home to which a person, wherever temporarily located, always intends to return. A person may have several residences but may have only one domicile.

Domicile, once established, is not lost until there is a concurrence of all the following:

1. The specific intent to abandon the old domicile
2. The intent to acquire a specific new domicile
3. Actual physical presence in the new state of domicile. Generally, the domicile of the wife follows that of the husband.

Factors to be considered in determining a taxpayer's residency or domicile include where they keep their most important possessions, house their family, vote, maintain a club or lodge membership, buy automobile licenses, maintain a mailing address, bank, operate a business, or sue for divorce. However, no one of these factors is controlling.

## **Nonresident Aliens**

Nonresident aliens must file a Michigan income tax return if their federal AGI is more than their Michigan exemption allowance. A copy of federal form U.S. 1040NR, including all schedules and worksheets, must be included with the MI-1040. A MI-1040 can be filed with a nonresident alien U.S. 1040NR return if supported by the tax software program.

Wages or other income received by a nonresident alien working in Michigan are subject to the Michigan income tax as provided for in Michigan Compiled Laws (MCL) 206.110(2). However, due to tax treaty considerations between the U.S. and other countries, wages and other income received by a nonresident alien living and working in Michigan may not be subject to the Michigan income tax if the income is excluded from AGI.

A nonresident alien is not domiciled in Michigan and, therefore, may not claim a homestead property tax credit.

## **Taxability of Income Derived Within Indian Country**

### **Where the Tribal Member's Tribe/Band Does Not Have an Implemented Tax Agreement With the State of Michigan**

An individual who is a resident of Michigan and has income from Michigan sources is required to file a Michigan income tax return in accordance with MCL 206.315(1). This provision requires every person who is required to file a return under the Internal Revenue Code to file a return under the ITA if their AGI is in excess of the personal exemptions allowed under the Act.

An exception exists for an enrolled member of a federally recognized Indian Tribe/Band located in Michigan where the member resides within, and the income generating activity occurs within, the member's own Tribe's/Band's Indian Country (as defined by 18 USC 1151).

Although the state cannot require tribal members to file a Michigan income tax return, if all of their income is earned within their own Indian country and they meet the criteria identified below, it is recommended they file returns to avoid possible contact by Treasury based upon state and federal match programs. A return is required from tribal members if any of the Michigan income is earned outside of their Indian country and/or if any of the criteria below is not met.

Income can be deducted on the Michigan return if **all** the following conditions exist:

1. Individual is a member of a federally recognized Indian Tribe or Band
2. Individual resides within their Tribe or Band's Indian country
3. Activity creating the income in question occurs within the member's own Tribe's or Band's Indian country.

Treasury may require additional documentation to support the above assertions.

The following income is subject to Michigan income tax:

1. Tribal/Band member income earned outside of the member's own Tribe's/Band's Indian country (including income earned within another Tribe's/Band's Indian country).
2. For nontribal members or tribal members not meeting the exemption criteria, all Michigan income is taxable whether earned inside Indian country or not.

### **Where the Resident Tribal Member's Tribe/Band Has an Implemented Tax Agreement With the State of Michigan**

Visit "Frequently Asked Questions" or terms of the agreement posted on Treasury's Web site for details on Resident Tribal Member Treatment where the member's Tribe/Band has entered into a tax agreement with the State. For a list of all implemented tax agreements in Michigan, visit the "Special Filing Situations" banner located at [www.michigan.gov/iit](http://www.michigan.gov/iit) and select the "Tax Information for Native Americans" heading. If the Tribe/Band has an implemented agreement, it will be posted on Treasury's Web site. If the Tribe/Band is not listed, there is no implemented agreement for that Tribe or its members.

### **Estimated Income Tax**

#### **Forms**

Personalized 2020 *Estimated Individual Income Tax Vouchers* (Form MI-1040ES) will be mailed to taxpayers (usually in late January or early February) who paid 2019 quarterly IIT estimates and did not use a tax preparer. Tax preparers should use their clients' personalized forms whenever possible. The personalized forms help ensure the correct account is credited. **Never photocopy** someone else's personalized forms. Personalized forms are coded with taxpayers' SSNs and are optically scanned. Coded information is machine readable on photocopies and through correction tape and fluid.

## Requirements for Filing and Paying

Section 301(1) of the ITA of 1967 states:

“Every person on a calendar year basis, if the person’s annual tax can reasonably be expected to exceed the amount withheld under section 351\* and the credits allowed under this part by more than \$500.00, shall pay to the department installments of estimated tax under this part on or before April 15, June 15, and September 15 of the person’s tax year and January 15 in the following year. Subject to subsection (3), each installment shall be equal to  $\frac{1}{4}$  of the taxpayer’s estimated tax under this part after first deducting the amount estimated to be withheld under section 351\*.”

\* Moved to section 703 under PA 38 of 2011.

Interest is due for each quarter if no payment is made or an underpayment exists. Taxpayers who have previously filed estimated tax payments, *Underpayment of Estimated Income Tax* (Form MI-2210), or were assessed in a prior year for underpayment or failure to file estimates will be assessed penalty as follows:

- 10 percent penalty for underpayment, or
- 25 percent penalty for failure to file estimated tax payments.

### Failure to Make Estimated Payments

Use Form MI-2210 to compute the penalty and interest on the underpayment and file with the 2019 return. If estimated payments are due and have not been paid or are underpaid, Treasury will assess penalty and interest not paid by the taxpayer. The assessment will bill interest on the amount of tax that was due for **each quarter**. An individual may avoid all or part of the penalty and interest if any of the following apply:

1. The individual was not required to file a tax return for 2018.
2. The individual was required to file a return for 2018 but had no tax liability.
3. The amount of tax withheld plus estimated tax payments equal at least:
  - 90 percent of the tax due for 2019, or
  - 100 percent of the tax due for 2018 (110 percent of total tax if your 2018 AGI is more than \$150,000 for single filers or married, filing jointly; or more than \$75,000 for married filing separately).
4. If income is not received evenly during the year, an individual may annualize their income to determine the quarterly estimated payments. (See MI-2210 for instructions.)

### Annual Estimated Tax Returns

An individual may file an annual return of estimated tax rather than quarterly returns. To use this option, the taxpayer must file the first quarter 2020 MI-1040ES and pay the total estimated annual tax by April 15, 2020.

## Overpayments Credited Forward to Year 2019

Treasury will reduce a claimed credit forward to the next year if the return is adjusted. The individual will be notified of the adjustment and the reduction of the credit forward. It is the individual's responsibility to make up any deficiency that may result.

### E-Payments

An individual may choose to make an estimated income tax payment electronically instead of mailing a payment with the personalized form. Paying electronically through the Michigan e-Pay System is easy, fast, and secure. Payment options include direct debit from a checking or savings account, or payment by credit or debit card. If choosing to make a payment electronically, **do not** mail the MI-1040ES form to Treasury. Visit [www.michigan.gov/iit](http://www.michigan.gov/iit) for more information.

### Seafarers, Farmers, and Commercial Fishermen

A seafarer, farmer, or commercial fisherman who receives at least two-thirds of his or her gross income from seafaring, farming, or fishing may file a Michigan annual return of estimated tax no later than January 15 and remit the entire amount of estimated tax with the return. This payment date may be ignored if the seafarer, farmer, or fisherman files his or her income tax return and pays the entire amount of tax due by March 1.

If a joint return is filed, the seafarer, farmer, or fisherman must also consider his or her spouse's gross income in determining if at least two-thirds of gross income is from seafaring, farming, or fishing.

Wages earned and other income received by seafarers domiciled in Michigan and sailing the Great Lakes or other waterways are subject to Michigan income tax as provided for in MCL 206.110(1). As such, seafarers must file an annual Michigan income tax return.

## EXEMPTIONS

The number of exemptions that may be claimed is the number of allowable personal and dependency exemptions plus Michigan special exemptions.

The following chart lists the Michigan exemption allowance.

<u>Tax Year</u>	<u>Personal and Dependency Exemptions</u>	<u>Michigan Special Exemptions</u>
2016	\$4,000	\$2,600
2017	\$4,000	\$2,600
2018	\$4,050	\$2,700
2019	\$4,400	\$2,700

## **Definitions of Michigan Special Exemptions**

Only taxpayers who are deaf, blind, totally and permanently disabled or paraplegic, quadriplegic or hemiplegic may claim a special exemption. If the taxpayer's dependent is eligible for a special exemption, the taxpayer and the dependent may not both claim that exemption.

Support for this exemption is the receipt of any of the following types of income:

- Social Security disability benefits
- Supplemental Security Income disability benefits
- Veterans' Administration disability retirement payments.

A taxpayer who is age 66 or older may not claim a totally and permanently disabled exemption.

**Example 1:** Upon reaching the age of 66, the taxpayer has reached normal retirement age and is no longer considered to be receiving disability income. The taxpayer is considered a retired senior.

## **Qualified Disabled Veteran Exemption**

Qualified disabled veterans or taxpayers who have a dependent who is a qualified disabled veteran are eligible for a \$400 exemption. Qualified disabled veteran means a veteran with a service-connected disability. A service-connected disability means a disability incurred or aggravated in the line of duty in the active military, naval, or air service as described in 38 USC 101(16).

## **Part-Year and Nonresident**

The exemption allowance for a part-year resident or a nonresident is prorated based on the taxpayer's Michigan income subject to tax divided by total AGI.

For a couple filing a joint return, if one spouse is a full-year resident and the other is a part-year resident or nonresident, the full-year resident is entitled to one full \$4,050 exemption. The part-year resident or nonresident must prorate the \$4,050 exemption by the ratio of their Michigan income subject to tax to their AGI from all sources. Exemptions for dependents must be prorated by the ratio of combined (both spouses) Michigan income subject to tax to combined AGI from all sources.

## **Claimed as a Dependent**

An individual cannot claim a personal exemption if another taxpayer (usually a parent) can claim a dependency exemption for that person. This is true even when the individual is not actually claimed as a dependent on the other's return. However, an individual who is eligible to be claimed as a dependent on someone else's return and has an AGI of **\$1,500 or less** is entitled to a **refund** of all Michigan tax withheld. An individual who is eligible to be claimed as a dependent on someone else's return and has an AGI of **more than \$1,500** is entitled to a \$1,500 exemption allowance.

A dependent who may not claim a personal exemption may still claim one or more of the special exemptions. If a dependent claims a special exemption, the same special exemption may not be claimed on another tax return by another taxpayer.

## MICHIGAN INCOME TAX TREATMENT OF CHILD'S UNEARNED INCOME

The Internal Revenue Code (IRC) allows parents to include unearned income of a child on the parents' return. The amount of the child's unearned income included in the parents' AGI is subject to Michigan income tax. The amount must also be included in total household resources when computing the property tax and home heating credits.

### ADDITIONS/DEDUCTIONS

#### **Eliminating Income and Expenses of Producing Oil and Gas**

Taxpayers are required to eliminate all income and expenses for oil and gas production in Michigan to the extent included in federal AGI. Income and expenses are eliminated from AGI by using Michigan Schedule 1. For a broad overview of the income and expenses that must be eliminated, refer to RAB 2018-8 Individual Income Tax - Eliminating the Income and Expenses of Producing Oil and Gas.

#### **Renaissance Zones**

The Michigan Renaissance Zone Act, PA 376 of 1996, permitted the designation of specific regions in Michigan as Renaissance Zones. The Michigan Economic Development Corporation (MEDC) administers the Renaissance Zone program and conducts the zone selection process.

Generally, an individual living in, or a business located and conducting business activities in, a Renaissance Zone certified or renewed before January 1, 2012 will receive an exemption, deduction, or credit from the following State and local taxes:

- |              |  |
|--------------|--|
| Individuals: | Michigan Income Tax<br>Property Tax (except debt mills)<br>City Income Tax (if applicable)<br>Utility Users Tax (Detroit only)             |
| Businesses:  | Property Tax (except debt mills)<br>Portion of Michigan Business Tax and City Income Tax<br>attributable to business activity in the zone. |

Zones began phasing out in 2006. The tax exemption is phased out in 25 percent increments during the zone's final three years of existence. Check with the client's local unit of government to determine if the phase out has begun. The credit is reduced as follows:

- 25 percent for the tax year that is two years before the final year of the designation as a renaissance zone
- 50 percent for the tax year immediately preceding the final year of the designation as a renaissance zone
- 75 percent for the tax year that is the final year of the designation as a renaissance zone.

Individual taxpayers should refer to Schedule 1 for instructions on claiming the Renaissance Zone deduction on the Michigan income tax return. For information regarding the specific zones, visit the MEDC Web site at [www.michiganbusiness.org](http://www.michiganbusiness.org). For tax questions relating to the zones, contact Treasury at 517-636-4280.

### **Retirement and Pension Benefits**

For purposes of this section, the term “pension” will include retirement and pension benefits.

A subtraction may be allowed on the Michigan return for qualifying distributions from pension plans. Pension plans include private and public employer plans, and individual accounts governed by various sections of the IRC.

The pension subtraction involves two steps:

- **First**, the pension distribution must meet certain requirements to be characterized as a qualified distribution.
- **Second**, a qualified distribution may be subject to a dollar limitation on the amount of the subtraction. The subtraction may be further limited based on the date of birth of the retiree on a single return or the date of birth of the oldest spouse on a joint return.

#### **Step 1: Qualified Distribution Requirements**

Employer plans and individual plans each have rules for receiving pension distributions. For a pension distribution to qualify for the Michigan subtraction, it must comply with the specific distribution rules under its plan.

#### **Employer Plans**

Employer plans are created by private companies and by public entities. The employer plan establishes the rules that govern retirement age and the pension formula for their employees. For both public and private employer plans, an employee must retire under the provisions of the plan, the pension benefits must be paid from a pension trust fund, and the payment must be made to either the employee or the surviving spouse. (Payments made to the surviving spouse are only deductible if the employee qualified for the subtraction at the time of death.)

Although traditional employer plans are defined contribution and defined benefit plans, many employers use 401(k) or 403(b) plans that incorporate employee match provisions.

Distributions from a 401(k) or 403(b) plan are qualified distributions to the extent that they are attributable to the employer’s contributions or employee’s contributions that were mandated by the plan. An employee’s contribution required by the plan to elicit an employer match is considered mandated. Amounts distributed from a 401(k) or 403(b) plan that allows the employee to set the amount of compensation to be deferred and does not prescribe retirement age or years of service **do not** qualify as pension benefits.

## **Individual Plans**

Individuals may also have pension accounts created under various sections of the IRC that may or may not be part of an employer plan. To qualify for the Michigan pension subtraction, the distributions must meet the requirements set forth in the relevant section of the IRC.

### **Individual Retirement Account (IRA) IRC 408 Distribution Requirements**

1. 59½ or older, or
2. Disability, or
3. Death - Distributions after the death of the participant may only be subtracted by a surviving spouse, and only if the distributions qualified as a subtraction for the participant at the time of death; or
4. Series of equal periodic payments made for life under IRC Section 72(t)(2)(A)(iv).

Distributions from a Roth IRA are not included in AGI and are not subtractable on the Michigan return.

### **Senior Citizen Annuity IRC 72 Distribution Requirements**

1. Received from a retirement annuity policy, and
2. For life, and
3. To a senior citizen.

For purposes of the retirement annuity subtraction, a senior citizen is defined in MCL 206.514(1) as an “individual . . . who is 65 years of age or older at the close of the tax year. The term also includes the unremarried surviving spouse of a person who was 65 years of age or older at the time of death.”

### **Keogh or HR 10 Plans for the Self-Employed**

Distributions are subject to the same general rules for other retirement plans, usually not made until a participant separates from service, the plan is discontinued, or the participant reaches age 59½.

### **The following distributions do not qualify for the pension subtraction:**

1. Deferred compensation plans that allow the employee to set the amount of compensation to be deferred and do not prescribe retirement age or years of service e.g. 401(k), 403(b), and 457 plans if all the contributions are made by the employee or if the employee makes contributions that do not elicit contributions by the employer
2. Commercial Annuity Policies (unless the payments are made for life to a senior citizen)

3. Premature separation, withdrawal, or discontinuance of a plan prior to the earliest date the recipient could have retired under the provisions of the plan
4. Payments received as an incentive to retire early unless the distributions are from a pension trust
5. Eligible distributions received by a beneficiary of the decedent except for the surviving spouse
6. Distributions that are sourced to rollovers from plans or contributions that do not qualify. (i.e., IRA distributions that are sourced to rollovers from a 457 plan)

## **Step 2: Dollar Limitations on Pension Subtractions**

Once it has been determined that a pension distribution has met the requirements of a qualified distribution set forth in Step 1, the next step is to determine if there are any dollar limitations on the amount of the Michigan pension subtraction.

There are additional limitations on pension deductions based on the year of birth of the retiree who is a single filer or on the year of birth of the oldest spouse for joint filers. The sections that follow first discuss dollar limitations based on year of birth. After the date of birth limitations have been discussed, the private pension limitations will be reviewed.

### **Pension Limitations Based on Date of Birth**

MCL 206.30(8) defines “retirement or pension benefits.” MCL 206.30(9) provides limitations to the deduction, depending upon the birth year of the retiree, as well as filing status and marital status. Retirees are divided into three tiers based on date of birth of the taxpayer or the date of birth of the oldest spouse on a joint return.

**Tier 1:** For a taxpayer born before 1946, the additional restrictions or limitations imposed by PA 38 of 2011 to the deduction allowed under MCL 206.30(1)(f) do not apply.

**Tier 2:** For a taxpayer born in 1946 through 1952, the maximum pension deduction is \$20,000 for a single return or \$40,000 for a joint return. This general deduction is sometimes referred to as a “standard deduction” because it is applied against all income. The standard deduction against all types of income is not available to the extent the deduction for U.S. Armed Forces compensation and pension benefits, Railroad Retirement Act benefits or pension benefits from Michigan National Guard services is claimed. A taxpayer is considered to have reached age 67 on the day before their birthday.

Taxpayers who claim the standard deduction should **not** complete *Pension Schedule* (Form 4884).

Taxpayers who file a joint return and the older spouse was born prior to 1946 (Tier 1) are not eligible for the standard deduction.

If a taxpayer receives a pension from employment with a governmental agency that was not covered by the federal Social Security Act (SSA), the maximum pension deduction is increased. The “uncovered” taxpayer may deduct up to \$35,000 of pension income on a single return and up to \$55,000 of pension income on a joint return (\$70,000 on a joint return only if both spouses were “uncovered”). At age 67, this taxpayer may deduct these increased amounts as the “standard deduction” against all income, however, the deduction against all types of income is not available to the extent the deduction for U.S. Armed Forces compensation and pension benefits, Railroad Retirement Act benefits or pension benefits from Michigan National Guard Services is claimed.

**Tier 3:** For most taxpayers born after 1952, there is no pension deduction in 2019. However, for some taxpayers in Tier 3, at age 62 there is the limited deduction if a taxpayer receives a pension from employment with a governmental agency that was not covered by the federal SSA. The “uncovered” taxpayer, who is at least 62, may deduct up to \$15,000 or up to \$30,000 if both spouses were “uncovered.” If the “uncovered taxpayer” had retired as of January 1, 2013, then beginning in 2018 the deduction increases to \$35,000 of pension income on a single return and up to \$55,000 of pension income on a joint return (\$70,000 on a joint return if both spouses were “uncovered”).

Most taxpayers in Tier 3 are eligible for the \$20,000 single/\$40,000 joint standard deduction upon reaching age 67. For “uncovered taxpayers” who had retired as of January 1, 2013, upon reaching age 67 the taxpayer may claim a standard deduction equal to \$35,000 for single returns, \$55,000 for joint returns, or \$70,000 for joint returns if both spouses are “uncovered.”

**INCOME TAX FOR RETIREMENT BENEFITS  
EFFECTIVE FOR TAX YEAR 2019**

Taxpayers born before 1946 (Tier 1)	Taxpayers born 1946 through 1952 (Tier 2) Before the taxpayer reaches age 67	Taxpayers born after 1952 (Tier 3) Before the taxpayer reaches age 67
<ul style="list-style-type: none"> <li>• Social Security is exempt.</li> <li>• Senior citizen subtraction for interest, dividends, and capital gains up to \$11,771 for single filers and \$23,542 for joint filers.*</li> <li>• Public pensions exempt.</li> <li>• Private pensions, subtract up to \$52,808 for single filers and \$105,615 for joint filers.</li> </ul> <p style="margin-left: 40px;">*Subtraction may be limited if pension benefits are also subtracted.</p>	<ul style="list-style-type: none"> <li>• Social Security is exempt.</li> <li>• Railroad and Michigan National Guard pensions are exempt.</li> <li>• Military compensation and pensions are exempt.</li> <li>• Not eligible for the senior citizen subtraction for interest, dividends, and capital gains.</li> <li>• Public and private pension limited subtraction of \$20,000 for single filers or \$40,000 for joint filers.</li> <li>• Pensions from employment with governmental agencies not covered by the SSA. \$35,000 for single filer, \$55,000 for joint filers, or \$70,000 for joint filers if both spouses worked for an “uncovered” agency.</li> </ul>	<ul style="list-style-type: none"> <li>• Social Security is exempt.</li> <li>• Railroad and Michigan National Guard pensions are exempt.</li> <li>• Military compensation and pensions are exempt.</li> <li>• Not eligible for the senior citizen subtraction for interest, dividends, and capital gains.</li> <li>• Not eligible for public or private pension subtraction.</li> <li>• At age 62, pensions from employment with governmental agencies not covered by the SSA. \$15,000 for single or joint filer or \$30,000 for joint filers if both spouses worked for an “uncovered” agency.</li> <li>• Beginning in 2018, pension from employment with governmental agencies not covered by the SSA for persons retired as of January 1, 2013, \$35,000 for single filer, \$55,000 for joint filer, or \$70,000 for joint filers if both spouses worked for an “uncovered” agency.</li> </ul>

	Tier 2 After the taxpayer reaches Age 67	Tier 3 After the taxpayer reaches Age 67 (will first occur in 2020)
	<ul style="list-style-type: none"> <li>• Social Security is exempt.</li> <li>• Railroad and Michigan National Guard pensions are exempt (see below).</li> <li>• Military compensation and pensions are exempt (see below).</li> <li>• Not eligible for the senior citizen subtraction for interest, dividends, and capital gains.</li> </ul> <p>Eligible for <b>Standard deduction</b>:</p> <ul style="list-style-type: none"> <li>• Subtraction against all income of \$20,000 for single filers and \$40,000 for joint filers.</li> <li>• Subtraction increased to \$35,000 for single filers and \$55,000 for joint filers with pensions from employment with governmental agencies not covered by the SSA, or to \$70,000 for joint filers if both spouses worked for an “uncovered” agency.</li> <li>• Not eligible for this income subtraction to the extent Military income and Railroad/Michigan National Guard pension exemption are claimed.</li> </ul>	<ul style="list-style-type: none"> <li>• Not eligible for the senior citizen subtraction for interest, dividends, and capital gains.</li> <li>• Not eligible for public or private pension subtraction.</li> <li>• Income exemption election: <ul style="list-style-type: none"> <li>– <b>Elect</b> exemption against all income of \$20,000 for single filers or \$40,000 for joint filer</li> </ul> </li> </ul> <p><b>Note:</b> No exemption for Social Security, Military compensation and pension, and Railroad/Michigan National Guard pension. No personal exemptions.</p> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>– <b>Elect</b> to exempt Social Security, Military compensation and pension, and Railroad/Michigan National Guard pension. May claim personal exemptions.</li> </ul> <ul style="list-style-type: none"> <li>• Beginning in 2018, persons retired as of January 1, 2013 and receiving pension from employment with governmental agencies not covered by SSA may claim standard deduction of \$35,000 for single filer, \$55,000 for joint filer, or \$70,000 for joint filers if both spouses worked for an “uncovered” agency.</li> </ul>

### Unlimited Public Pension Subtraction

Applies only to retirees born before 1946 (Tier 1).

### **Michigan and Federal Public Pensions**

Federal or Michigan public pensions are no longer totally exempt for all taxpayers. The amount that may be deducted depends on the year of birth for a retiree who is a single filer or on the year of birth of the oldest spouse for joint filers.

Public pensions include benefits received from the federal civil service, SOM, political subdivisions of Michigan, military, and railroad pensions. If the requirements of the plans under Step 1 are met, these distributions may be deductible depending on the age of the filers.

### **Public Pensions From Other States**

Michigan allows a pension subtraction for public pensions earned in other states by Tier 1 retirees if the other state permits a deduction, or exemption of a retirement or pension benefit received from a Michigan public retirement system.

### **Private Pensions**

Private pensions include employer plans and individual plans such as IRAs and senior citizen annuities. The maximum subtraction allowed for a Tier 1 retiree with a private pension is adjusted annually by the percentage increase in the U.S. Consumer Price Index. The maximum deduction for the 2019 tax year is \$52,808 on a single return and \$105,615 for a joint return.

The following table outlines the annual maximum private pension deductions for retirees born before 1946 (Tier 1):

<b><u>Tax Year</u></b>	<b><u>Single Return</u></b>	<b><u>Joint Return</u></b>
2016	\$49,861	\$99,723
2017	\$50,509	\$101,019
2018	\$51,570	\$103,140
2019	\$52,808	\$105,615

### **Railroad Pension Benefits**

The taxable amount of railroad pension income included in AGI may be subtracted on the Michigan return. Portions of a railroad pension are reported as Social Security on the federal return; however, these benefits should be subtracted as railroad pension on the Michigan return, not as Social Security.

## Pension Subtraction Examples

### **Example 1: Combined Public and Private Pension distributions.**

Sam is retired and single and born before 1946. He has a SOM pension of \$33,000 and a private pension of \$21,000. His total pension deduction for 2019 is determined as follows:

Maximum Private Pension Deduction	\$52,808
Less: Public Pension	<u>-33,000</u>
Allowable Private Pension Subtraction	\$19,808
Sam's total pension subtraction is:	
Public	\$33,000
Private	19,808
<b>Total</b>	<b>\$52,808</b>

If Sam's public pension was more than \$52,808, he would not be able to subtract any of his private pension.

### **Example 2: Employer and Employee contributions to a 401(k) plan.**

Stuart's employer established a 401(k) plan for its employees. The plan provides for a 50 percent employer match of employee contributions up to the maximum employer match of 3 percent of the employee's salary. The plan also allows the employees to make additional unmatched contributions up to the annual percentage rate allowed by the IRC. In 2019, Stuart retired under the provisions of the retirement plan at age 60. At the time of his retirement, Stuart received an annual statement from the 401(k) plan showing total contributions of \$400,000, of which \$100,000 were employer contributions. Stuart took a distribution of \$25,000 in 2019, the year he retired.

Since the plan includes unmatched employee contributions, Stuart must determine what amount of the \$25,000 distribution is attributed to the unmatched contributions. The plan called for a 50 percent employer match; therefore, \$200,000 of the employee contributions was required to elicit \$100,000 employer matching contributions. The remaining account balance of \$100,000 is unmatched employee contributions. The deductible amount of the 2019 distribution is determined as follows:

$$\$100,000/\$400,000 \times \$25,000 = \$6,250 \text{ (distribution attributed to unmatched contributions)}$$

$$\$25,000 - \$6,250 = \mathbf{\$18,750} \text{ (Maximum allowable pension subtraction. Actual subtraction may be further limited based on the date of birth of the retiree.)}$$

## **Individual Retirement Accounts (IRAs)**

Retirement or pension benefits that may be subtracted on the Michigan return includes qualifying distributions from IRAs. For additional information regarding IRAs, refer to RAB 2017-21 Individual Income Tax – Individual Retirement Arrangements.

## **2019 Pension Subtraction Table for Tier 1 Retirees**

The 2019 deductible pension benefits are limited to the lesser of the amount included in AGI or the amounts shown below.

<b><u>Source of Pension Benefits</u></b>	<b><u>Single</u></b>	<b><u>Joint</u></b>
U.S. Civil Service	Amount included in AGI	Amount included in AGI
State of Michigan	Amount included in AGI	Amount included in AGI
Michigan political subdivisions	Amount included in AGI	Amount included in AGI
Private	\$52,808	\$105,615
Public pensions (from other states)	\$52,808 or reciprocal limit, whichever is greater	\$105,615 or reciprocal limit, whichever is greater
Qualified senior citizen retirement annuities	\$52,808	\$105,615
Public and private	Limited to public pension or \$52,808, whichever is greater (cannot exceed actual qualified distributions received).	Limited to public pension or \$105,615, whichever is greater (cannot exceed actual qualified distributions received).

## **1099-R Distribution Codes**

Recipients of a pension distribution receive Form 1099-R. There is a box on Form 1099-R titled “Distribution code(s).” Look in the Distribution code(s) box for the number that describes the condition under which the pension or retirement benefit was paid.

<b>1099-R Dist. Code</b>	<b>Description</b>	<b>Is the condition eligible for Michigan tax exemption? (Dollar and date of birth limits may still apply)</b>
1	Early distribution, no known exception	No
2	Early distribution, exception applies	No, <b>unless:</b> <ul style="list-style-type: none"> <li>• Part of a series of substantially equal periodic payments made for the life of the employee or the joint lives of the employee and employee's beneficiary.</li> <li>• Early retirement under the terms of the plan.</li> </ul>
3	Disability	Yes
4	Death	Yes, <ul style="list-style-type: none"> <li>• For surviving spouse only and only if the decedent would have also qualified for a normal distribution under Distribution Code 7 at the time of death. This may be subject to limitations based on the year of birth of the decedent.</li> </ul> No, <ul style="list-style-type: none"> <li>• For all other beneficiaries.</li> </ul> No, <ul style="list-style-type: none"> <li>• If paid as a death benefit payment made by an employer but not made as part of a pension, profit-sharing, or retirement plan.</li> </ul>
5	Prohibited transaction	No
6	Section 1035 exchange: tax-free exchange of life insurance, endowment insurance, and annuity contracts	No
7	Normal distribution from a plan; distribution from a traditional IRA if the participant is at least 59½; Roth conversion if the participant is at least age 59½; or distribution from a life insurance, annuity, or endowment contract	Yes
8	Taxable excess contribution plus earnings/excess deferrals and/or earnings	No
9	Cost of current life insurance protection	No

## DEFERRED COMPENSATION

Distributions received from deferred compensation plans that allow the employee to set the amount of compensation to be deferred and do not prescribe retirement age or years of service are treated as ordinary income. Deferred compensation distributions are usually **not** considered pension income and may **not** be subtracted on the Michigan return even when a distribution code 7 is indicated on the 1099-R.

Federal law 4 USC 114 prohibits a state from taxing certain deferred compensation distributions received by a nonresident. Therefore, nonresidents are not subject to Michigan income tax on distributions from deferred compensation plans as defined in IRC Sections 401(k), 457, and 3121(v)(2)(c).

## INTEREST, DIVIDENDS, AND CAPITAL GAINS DEDUCTION FOR SENIOR CITIZENS BORN BEFORE 1946

Senior citizens born before 1946 may take a deduction for interest, dividends, and capital gains up to \$11,771 for a single return and \$23,542 for a joint return for the 2019 tax year. The deduction is adjusted by the percent increase in the U.S. Consumer Price Index each year. This maximum deduction must be reduced by the amount of deduction taken for pension income.

### Examples:

**Step 1:** James and Joanne are married and file a joint income tax return. James was born before 1946. A partial listing of their income is as follows:

Pension Income	\$6,000
Capital Gains	\$13,000
Dividend Income	\$1,800
Interest Income	\$3,800

**Step 2:** Calculation of interest, dividend, and capital gains deduction:

Maximum Deduction	\$23,542
Less: Pension Subtraction	<u>6,000</u>
Maximum Allowable Deduction	\$17,542

**Step 3:** Total interest, dividends, and capital gains = \$18,600

**Step 4:** Use the **lesser** of the total interest, dividends, and capital gains (\$18,600) or the maximum allowable deduction (\$17,542).

**Step 5:** The interest, dividends, and capital gains deduction for James and Joanne is **\$17,542**.

The term “senior citizen” for purposes of this deduction, refers to a person 65 years of age or older or an unremarried surviving spouse of an individual who was 65 years of age or older at the time of death. This deduction is available only to taxpayers born before 1946 or the surviving spouse.

## 529 EDUCATION PLANS



### **Michigan Education Savings Program (MESP)**

MESP is administered by Treasury and managed by Teachers Insurance and Annuity Association of America College Retirement Equities Fund (TIAA-CREF). To open an education savings account, an individual must enter into an agreement with the program manager. The total of all account balances on any beneficiary cannot exceed \$500,000.

Distributions from the account must be used to pay qualified higher education expenses incurred after the account is established. A nonqualified distribution will be subject to a penalty of ten percent of the distribution if no federal penalty is imposed on the nonqualified withdrawal.

A deduction may be taken on the Michigan income tax return for contributions made to the MESP on or after October 1, 2000. The maximum deduction is \$5,000 for a single filer (\$10,000 for a jointly filed return). The amount deducted includes total contributions made to the plan less qualified withdrawals made during the tax year. A taxpayer must add to federal AGI any nonqualified withdrawal from the MESP in the year of the withdrawal. Recent federal amendments have expanded IRC 529 to allow a federal tax exemption for distributions used to pay certain public, private, and religious primary and secondary education expenses beginning tax year 2018.

Interest earned on contributions made to an MESP account may be deducted to the extent included in AGI. The beneficiary of the MESP account may deduct qualified withdrawals to the extent included in AGI.

For more information on the MESP contact MESP at 1-877-861-MESP, [info@misaves.com](mailto:info@misaves.com), or [www.misaves.com](http://www.misaves.com).

### **Michigan Education Trust (MET)**



MET allows parents, grandparents, and others to prepurchase undergraduate in-state and in-district tuition for a child at any Michigan public college, university, junior college, or community college.

Payments made under an advance payment contract in MET during the tax year are deductible to the extent they are included in federal AGI on a purchaser's Michigan income tax return. The contract processing fee may also be subtracted on the Michigan return. Interest payments made on loans to finance the contract are not deductible. MET contracts are only set up in specified enrollment periods.

Earnings on the qualified distributions are tax-free on the beneficiary's federal and State income tax returns. A nonqualified distribution is subject to federal and State income tax.

For more information or contract materials, contact MET at 1-800-MET-4-KID, [treasMET@michigan.gov](mailto:treasMET@michigan.gov), or [www.michigan.gov/setwithmet](http://www.michigan.gov/setwithmet).

## **Coverdell Educational Savings Account**

The Coverdell Educational Savings Account (Coverdell ESA) is structured as a trust or a custodial account for the purpose of paying educational expenses of a designated beneficiary and follows the same general rules as other IRAs.

The contributions made to a Coverdell ESA are not tax deductible. The contributions are limited to \$2,000 a year.

The distributions from a Coverdell ESA are tax-free if they do not exceed the beneficiary's qualified educational expenses to an approved educational institution. An approved institution is any accredited postsecondary educational institution offering credit towards an associates, bachelors, graduate level, or professional degree.

Any investment earnings will accrue tax-deferred or tax-free. However, any distribution that is included in AGI is taxable in Michigan.

## **Michigan Achieving a Better Life Experience Program (MiABLE)**

The MiABLE Act, signed into law October 28, 2015 and made effective January 26, 2016, created a new savings program under the authority of Internal Revenue Code Section 529A, which is aimed at encouraging and assisting individuals and families to save private funds to support individuals with disabilities. The program is administered by Treasury and will be similar to Treasury's administration of higher education savings accounts (529 Plans). Treasury has partnered with TSA Consulting Group to manage the program.

Contributions to an MiABLE account are made with after-tax dollars and may not exceed the annual federal gift tax exclusion amount (currently \$15,000) per single contributor for each designated beneficiary. Total aggregate contributions may not exceed \$500,000 for all accounts of the same designated beneficiary.

Distributions from the account must be used to pay for the qualified disability expenses of the eligible designated beneficiary of the account. To the extent that distributions exceed a designated beneficiary's qualified disability expenses, the earnings portion of distributions is includible in the gross income of the designated beneficiary. A taxpayer must add to federal AGI any nonqualified withdrawal from a MiABLE account in the year of the withdrawal to the extent a deduction was claimed for the amount withdrawn.

A deduction may be taken on the Michigan income tax return for contributions made to a MiABLE account. The maximum deduction is \$5,000 for a single filer (\$10,000 for a jointly filed return). The amount deducted includes total contributions made to the plan less qualified withdrawals made during the tax year.

Interest earned on contributions made to an MiABLE account may be deducted to the extent included in AGI. The beneficiary of the MiABLE account may deduct qualified withdrawals to the extent included in AGI.

For more information, visit [www.miable.org](http://www.miable.org).

## NONRESIDENTS' TAXABLE INCOME

The following income of nonresidents is subject to the Michigan income tax:

1. Salary, wages, commissions, and other personal service income for work performed in Michigan.
2. Income allocable or apportionable to Michigan, including portfolio income, from partnerships, S corporations, and limited liability companies having business activity in Michigan, or business or farm income from a sole proprietorship or farm located in Michigan. Significant changes to the apportionment of business income have occurred as a result of legislative changes taking effect in 2012 and the Michigan Supreme Court holding that combined apportionment under the unitary business principle may be used to calculate an individual's taxable income at the election of the taxpayer. *Malpass v Department of Treasury*, 494 Mich 237 (2013). (See "Flow-Through Entity (FTE) Distribution of Income and Losses" and "Apportionment of Income From Flow-Through Entities" under the "Unitary Business Principle" section for more information.)
3. Rent and royalty income from real and tangible personal property located in Michigan.
4. Capital gains/losses from the sale or exchange of real or tangible personal property located in Michigan.
5. Patent or copyright royalties if the patent or copyright is used in Michigan or has a commercial domicile in Michigan.
6. Michigan lottery, raffle, bingo, and charitable gaming winnings.
7. Michigan casino winnings and winnings from pari-mutuel wagering at licensed horse racing meetings in Michigan.
8. Distributable net income received from a trust attributable to Michigan, including business income and gain from property located in Michigan.

Michigan has **reciprocal agreements** with **Illinois, Indiana, Kentucky, Minnesota, Ohio, and Wisconsin** that exempt nonresidents from income taxes imposed by each state on salaries, wages, and other employee compensation. Business income and gambling income are not subject to these reciprocal agreements. Business income is subject to the allocation and apportionment provisions in Chapter 3 of the ITA.

## **Withholding for Nonresidents**

PA 158 of 2016 repealed the nonresident withholding requirement for FTEs with tax years beginning after June 30, 2016.

Nonresidents are required to pay Michigan income taxes on winnings from casinos and pari-mutuel wagering at licensed horse races. Withholding is therefore required for nonresidents on the following winnings:

1. Nonresidents reportable under federal casino law by casinos licensed under the Michigan Gaming Control and Revenue Act, and
2. Nonresidents reportable under the federal law by race meeting licensees and track licensees operating under the Horse Racing law of 1995.

## **FLOW-THROUGH ENTITY (FTE) DISTRIBUTION OF INCOME AND LOSSES**

Business income derived from business activity in Michigan is subject to income tax. Business income can be sourced to a sole proprietorship or to an FTE. Income received from a “C corporation” is not business income if it is received as wages or dividends.

Income flowing through to a shareholder of an S corporation, a partner of a partnership, a member of a limited liability company, or the owner of any other FTE is business income and is subject to the allocation and apportionment provisions of the ITA.

The taxpayer’s distributive share of such income and losses shall be allocated or apportioned to the state where the business activity takes place using the sales factor. The apportionment is computed on the *Schedule of Apportionment* (Form MI-1040H). Business income allocated or apportioned to Michigan is taxable to Michigan.

A Michigan resident may subtract from AGI income that is not allocated or apportioned to Michigan. Conversely, losses not allocated or apportioned to Michigan must be added to AGI.

Portfolio income is business income and is subject to allocation or apportionment. Portfolio income includes interest income, dividend income, royalty income, and net short-term and long-term capital gain (loss) reported on the federal Schedule D. Resident or nonresident individual taxpayers having portfolio income from a multistate partnership, S corporation, or other FTE must apportion this income using the apportionment formula as computed on Form MI-1040H.

A nonresident member of any FTE doing business in Michigan must file a Michigan return to report their distributive share of income from the FTE. To the extent included in AGI, the income is taxable even if it is not actually distributed to the member.

When filing Form MI-1040H, note that the computation of the apportionment percentage is not the same for IIT as for MBT or CIT. When computing the sales factor, throwback sales for IIT follow Public Law (PL) 86-272 standards. Also, foreign sales can be included in the numerator for IIT purposes. The IIT standard for determining if the taxpayer is taxable in another state uses the PL 86-272 nexus criteria. In general, a taxpayer's business must have property in another state or activity that goes beyond solicitation of sales to be taxable in the other state.

An S corporation is permitted to own a qualified subchapter S subsidiary (QSub). The term includes any domestic corporation that qualifies as an S corporation and is 100 percent owned by an S corporation parent, which elects to treat it as a QSub. The assets, liabilities, and items of income, deduction, and credit of the QSub are treated as those of the parent S corporation.

### **Business, Rental, and Royalty Activity Worksheet**

When a taxpayer has non-Michigan business activity and income not subject to tax in Michigan that is included in federal AGI, the taxpayer is required to provide information regarding that income, including the type and location of the business activity and a description of the income not taxable in Michigan. The business activity spreadsheet, Business, Rental and Royalty Activity Worksheet (Business Activity Worksheet), is intended to aid individuals and tax preparers in providing this information and in reconciling the taxpayer's MI-1040 to their federal 1040. The Business Activity Worksheet can be obtained by visiting [www.michigan.gov/iit](http://www.michigan.gov/iit) and selecting "Tax Forms and Instructions." The Business Activity Worksheet is not a required attachment. However, submitting the worksheet could reduce the need for further correspondence and avoid delays in processing the return.

The Business Activity Worksheet allows taxpayers to identify the location of Michigan and non-Michigan business activity and rental activity. It also allows other non-business income to be identified as Michigan or non-Michigan income. To provide the required information, include the Business Activity Worksheet with an e-filed or paper filed return. The Business Activity Worksheet, or any similar worksheet that identifies the type and location of Michigan and non-Michigan business activity and non-business income, may be included as a PDF attachment with an e-filed return using the file name, "BusinessActivity.pdf." The Business Activity Worksheet or similar worksheet may also be included with a mailed paper return.

### **Composite Individual Income Tax Return for Nonresident Partners/Shareholders/Members**

Partnerships, S corporations, limited liability companies, and other FTEs can file a *Composite Individual Income Tax Return* (Form 807) for nonresident partners/shareholders/members. The FTE must have two or more nonresident partners/shareholders/members who participate on Form 807. Form 807 is an individual income tax return ultimately filed on behalf of nonresident individuals or trusts. Member FTEs may participate on behalf of their members who are nonresident individuals. FTEs may not file Form 807 on behalf of C corporation members.

Estimated payments are required if the share of annual income tax liability for any participant is expected to exceed \$500 after exemptions and credits. The estimated payments must be remitted with an *Estimated Income Tax Voucher for Fiduciary and Composite Filers* (Form MI-1041ES) with the name of the FTE and the FTE's Federal Employer Identification Number (FEIN). **Do not** submit estimated payments for members who will not participate in the composite return with Form MI-1041ES. Estimated payments should only be remitted for participants.

Individual participants who have other Michigan income that requires them to file a MI-1040 return may not subtract the income reported on the composite return, but may claim a credit on the MI-1040 for their share of the tax paid on a composite return. The credit should be entered on the MI-1040 as if it were tax withheld.

FTEs using a calendar tax year must file vouchers and pay quarterly estimated tax by April 15, July 15, October 15, and January 15. FTEs that are not using a calendar year must file vouchers and pay quarterly estimated tax on the appropriate due dates that, in the FTEs fiscal year, correspond to the calendar year. Fiscal year filer due dates apply regardless of the tax years of the participants.

## **APPORTIONMENT OF INCOME FROM FLOW-THROUGH ENTITIES UNDER THE UNITARY BUSINESS PRINCIPLE**

The due process and commerce clauses of the U.S. Constitution impose limitations on a state's power to tax activity beyond its borders. However, when a business operates in more than one state, the U.S. Supreme Court permits states to tax the business on an apportionable share of the multistate business based on the proportion of activity that took place in the taxing state. This is known as the unitary business principle. A unitary business is one that has a flow of the value between its various operations or entities. Factors that establish flow of value include functional integration, economies of scale, and centralized management.

If business operations are organized as separate legal entities but still operate as a unitary business, Part 1 of the ITA is silent as to whether the business income of each entity must be apportioned at the single entity level for each entity or whether the business income of all the separate entities may be combined and apportioned using the combined sales factors of all the entities. The Michigan Supreme Court has determined that this legislative silence permits a taxpayer to apportion business income using either the single entity apportionment method or the combined multiple entity apportionment method ("combined apportionment"). Refer to *Malpass v Department of Treasury*, 494 Mich 237 (2013) for more information.

### **Single Entity Apportionment**

A taxpayer may elect to apportion the business income derived from legally separate entities on a separate entity basis or a combined multiple entity basis. If the taxpayer elects to use single entity apportionment, the taxpayer's distributive share of business income from each FTE is multiplied by the sales factor for that FTE. The resultant Michigan apportioned income from each entity is added together to determine the taxpayer's Michigan business income.

## **Combined Multiple Entity Apportionment**

A taxpayer may elect to apportion all unitary entities together if the taxpayer controls the entities included in the combined apportionment filing. This method combines all the sales of all the unitary entities to create a single sales factor. The sales factor is applied to the combined business income of all the unitary entities.

The *MI-1040H Unitary Apportionment Worksheet* (Unitary Worksheet) is a simple worksheet that demonstrates the required information taxpayers must provide when apportioning unitary business income. The Unitary Worksheet, or any similar worksheet that identifies the members in the group and shows the combining calculations, may be included as a PDF file with an e-filed return using the file name "UnitaryCalculation.pdf." The Unitary Worksheet or similar worksheet may also be included with a paper filed return. The Unitary Worksheet is not a required attachment, however, submitting the required information with the worksheet could reduce the need for further correspondence and avoid delays in processing the return. The Unitary Worksheet can be obtained by visiting [www.michigan.gov/iit](http://www.michigan.gov/iit) and selecting "Tax Forms and Instructions."

## **ADJUSTMENTS OF CAPITAL GAINS AND LOSSES**

The purpose of *Adjustments of Capital Gains and Losses* (Form MI-1040D) is to exclude from Michigan taxable income those gains and losses that are not subject to tax by Michigan. If a taxpayer sells property that they owned prior to October 1, 1967, when Michigan enacted the ITA, only that portion of the gain attributable to the time Michigan has had an income tax can be taxed. Similarly, if the gain was attributable to another state and therefore not subject to Michigan tax, it cannot be included in Michigan taxable income. The MI-1040D functions to remove the federal gain or loss and replace it with the Michigan gain or loss to arrive at Michigan taxable income. If the Michigan gain or loss is identical to the federal gain or loss, it is not necessary to file the MI-1040D.

MI-1040D for the adjustment of **capital gains and losses** must be used if any of the following are true:

1. Taxpayer disposes of assets acquired prior to October 1, 1967, and elects to exclude gains or losses under Section 271.

To apportion under Section 271:

Multiply gain or loss by number of months property was held after September 30, 1967. Then divide the result by the total number of months held.

2. Taxpayer has gains or losses from the sale or exchange of U.S. obligations that cannot be taxed by Michigan.
3. Taxpayer has gains or losses from property located in other states that are subject to the allocation and apportionment provisions.

## NET OPERATING LOSS (NOL)

The Michigan NOL deduction, which is statutorily provided for in Section 30(1)(m) and (n) of the ITA, requires that a Michigan NOL be determined by following the general NOL provisions of IRC 172 but applying those provisions only to Michigan-sourced income, losses, and deductions. The Michigan NOL, once created, is carried to other tax periods in the same manner as provided in the IRC. Recent federal tax reform amended two provisions of the IRC which substantially affect the reporting of the Michigan NOL for tax years 2018 through 2025. The deduction of business losses claimed on federal individual returns is now limited to no greater than \$250,000 for single filers (\$500,000 for married filing joint taxpayers). Business losses in excess of the new cap are considered excess business loss and are carried over to future years and treated as an NOL under IRC 172. These limits apply to non-corporate farmers as well.

Additionally, the federal amendments limit a taxpayer's current tax year NOL deduction to the lesser of the total aggregated NOL carryover or 80 percent of taxable income, computed without regard to the NOL deduction. Only NOLs created in tax years 2018 through 2025 are subject to the 80 percent limitation.

Federal reform also eliminated carryback for nonfarmers of any NOL created in tax years 2018 through 2025 and permits indefinite carryforward of NOLs created during these tax years.

A Michigan taxpayer must complete Form MI-1045 to determine if a Michigan NOL has been incurred for the tax year. Form MI-1045 is included with the loss year return and when claiming a deduction from the carryback or carryforward of the NOL. For NOLs incurred in years after 2017 that are being carried forward, include Form 5674 with the MI-1040. For farming NOLs incurred in years after 2017 that are being carried back, file Form 5603. For more information see RAB 2017-14 Income Tax – Computing and Using a Net Operating Loss for Michigan Income Tax and Household Income Purposes.

## GAMBLING INCOME

Income from gambling activities from Indian or privately held casino's games of chance, horse racing, lottery winnings, etc., is subject to Michigan income tax to the extent the winnings are included in federal AGI. The Michigan Income Tax Act's (ITA) use of AGI from the federal return as a starting point in computing Michigan income tax means that the wagering gains of both professional and casual gamblers are reflected on the Michigan return, but only the professional gambler's federally deductible losses carry over to the Michigan return because the losses are a component of the professional gambler's trade or business income and therefore the losses are included in AGI. However, a casual gambler may only report wagering losses as federal itemized deductions, which are not included in AGI and therefore do not carry over to the Michigan return. ITA contains no subtraction from AGI for a casual gambler's wagering losses on the Michigan return, therefore, a casual gambler may not deduct his or her wagering losses to arrive at Michigan taxable income. Treasury will however accept the session method for purposes of computing a casual gambler's gambling income resulting from slot machine wagering transactions and all other casino games.

Both professional and casual gamblers may only deduct wagering losses on the federal return to the extent of wagering gains. Recent federal tax reform expands wagering losses to include expenses incurred in carrying on the trade or business of gambling. Therefore, those non-wagering expenses must be added to the professional gambler's total losses before netting them against winnings for tax years beginning in 2018 through 2025.

Both professional and casual gamblers must keep records sufficient to verify wagering gains and gambling losses claimed on their return. An accurate diary or other daily record should be maintained. A gambler deducting losses on his or her return must be able to provide receipts, tickets, statements or other records showing both the amount of winnings and losses. Statements generated by gambling establishments and produced to the gambler are insufficient by themselves to document a taxpayer's total wagering gains and gambling losses.

For more information see RAB 2016-3 Income Tax Treatment of Gambling Gains, Losses, and Expenses.

## MILITARY PAY

Pay received by members of the U.S. armed forces is not subject to Michigan income tax. The W-2 form will show if the individual's pay is active duty military pay. Eligible military pay includes:

- Active duty pay and military retirement pay, including Michigan National Guard pension/retirement benefits
- Reserve duty pay
- Michigan National Guard pay **only for the following:**
  - Weeknight and regular weekend drills
  - Summer camp
  - Pay received for riot duty **only if nationalized by the President of the U.S.**
  - Public Health Officers pay only for those assigned to the Coast Guard or who are **nonresidents of Michigan.**
  - Retirement/pension benefits.

Military pay does **not** include:

- W-2 forms from an Officer's Open Mess or similar establishment or from the military showing an employer number identifying a civilian employee
- Wages paid to employees of the United States Property and Fiscal Office

- National Guard pay for the following:
  - Riot duty when called to duty by the Governor (paid by the State)
  - Full-time employment for which the taxpayer received a W-2 from the State.
- Resident Public Health Officers (employees of Health and Human Services) for those not assigned to the Coast Guard.

Residency of military personnel and public health officers remains with the state from which the individual entered the service, unless the individual filed a declaration with the service to change it.

Under the Military Spouses Relief Act, the spouse of an individual in the military is a nonresident of a state and consequently not subject to that state's taxation if:

- The service member is present in that state due to military orders
- The spouse is in that state solely to accompany the service member
- The spouse maintains a domicile in another state.

A military spouse who is a Michigan resident and plans to return to Michigan should include income earned in the other state on their Michigan income tax return. A Michigan military spouse may not claim a credit for the income taxes paid to another state. The military spouse must file a nonresident return with the other state to obtain a refund of taxes paid to that state.

The Veterans Benefits and Transition Act of 2018 allows military spouses to choose the legal residence of the service member for state and local tax purposes, regardless of whether the spouse has ever lived in that state. The law is retroactive to tax year 2018.

## PRINCIPAL RESIDENCE EXEMPTION

The Principal Residence Exemption (PRE) statute provides homeowners with an exemption from their local school operating millage, lowering their property tax bills.

To claim a PRE, a homeowner must file a *Principal Residence Exemption Affidavit* (Form 2368) with the local assessor. A homeowner who owns and occupies a property as a principal residence on or before June 1 and submits Form 2368 to the local tax collecting unit on or before June 1 may qualify for a PRE beginning with the summer tax levy or, if there is only one tax levy, the homeowner will be qualified for the entire year. A homeowner who owns and occupies a property as a principal residence prior to November 1 and submits Form 2368 to the local tax collecting unit on or before November 1 may qualify for a PRE beginning with the winter tax levy.

## **Principal Residence Exemption Records Review**

The local unit of government or Treasury may perform administrative audits of the PRE records. As a part of the audit, a homeowner may be contacted to provide information to verify that the property under review was the homeowner's principal residence for the years in question. If a homeowner receives Treasury's request for more information, it is important to respond in writing. The homeowner's response must be received within 30 calendar days from the date on the letter. Failure to respond may result in a denial of the exemption.

Common reasons for Treasury to request more information are:

- Failure to rescind an exemption when the property is sold by filing a *Request to Rescind Principal Residence Exemption* (Form 2602).
- The property in question was not a principal residence during the years in question.
- The homeowner is filing annual income tax returns from an address other than the address of the principal residence.

Factors to be considered in determining a taxpayers' principal residence include where the taxpayer keeps important possessions, houses family, votes, maintains club and lodge memberships, buys automobile licenses, maintains a mailing address and bank, operates a business, or sues for divorce. However, no one of these factors is controlling.

## **NONREFUNDABLE CREDITS**

### **Credit for Income Tax Imposed by Qualified Government Units Outside Michigan**

A Michigan resident is allowed a credit for income taxes imposed by another state of the U.S., a political subdivision (city, county, etc.) of another state, the District of Columbia, or a Canadian province. Only tax imposed on income that is also subject to Michigan tax may be claimed for the credit. A copy of the other state, city, or county income tax return must be included.

The credit cannot exceed the smaller of the amount of tax imposed by another state or the percentage of Michigan tax due on salaries, wages, and other income earned and taxed in the other state. Credit is not allowed for taxes paid on income subtracted on the MI-1040.

A Michigan resident who earned wages in a reciprocal state may pay a city or county tax in that state. The city or county income tax paid in that state may be claimed for the credit; however, the state income tax paid to the reciprocal state cannot be claimed. Instead, the Michigan resident should claim a refund from the other state.

A Canadian credit is allowed only if provincial tax was paid. The credit shall be allowed for that portion of the provincial tax not claimed as a credit for United States income tax purposes. Credit is **not** allowed on the Michigan return for that portion of provincial tax that is a carryover from a previous year or that is being carried over to a future year on the federal return.

## **Historic Preservation Income Tax Credit**

Effective January 1, 2012, historic rehabilitation plans eligible for the Historic Preservation Income Tax Credit are no longer certified by the State Historic Preservation. For plans approved prior to that date, a nonrefundable credit may be taken based on 25 percent of qualified expenditures for the rehabilitation of a historic resource pursuant to a rehabilitation plan. Any unused portion of the credit may be carried forward for a maximum of ten years. Taxpayers that have a carryforward of an unused portion of the credit should file Form 3581.

## **REFUNDABLE CREDITS**

### **Homestead Property Tax Credit**

An individual may claim a Homestead Property Tax Credit (HPTC) if the individual is a resident of Michigan for at least six months of 2019, rents or owns a homestead located in Michigan as their principal residence, and the property is subject to ad valorem property tax or a service fee in lieu of taxes. An individual can have only one principal residence (domicile) at a time and must be the occupant as well as the owner or renter. The maximum credit allowed per claimant cannot exceed \$1,500, regardless of the amount of property taxes levied or rent paid. Domicile is the place where a person has their true, fixed and permanent home and the principal establishment to which they plan to return whenever they go away. Domicile continues until the individual establishes a new permanent home.

An individual may not claim a property tax credit if his or her total household resources exceed \$60,000. In addition, if the taxable value of the homestead exceeds \$135,000 (excluding vacant farmland classified as agricultural), a property owner may not claim an HPTC. The taxable value cap does not apply to renters.

Total household resources are defined as all **income** received by all persons of a **household** in a tax year while members of a household, increased by the following deductions from federal gross income:

- Net business loss after netting all business income and loss
- Net rental or royalty loss
- Carryback or carryforward of an NOL as defined in section 172(b)(2) of the IRC.

A “household” is defined as a claimant and spouse. For additional information about total household resources, see RAB 2015-18.

**Senior Claimants.** Senior claimants are entitled to a 100 percent credit if their total household resources are \$21,000 or less. The credit is reduced by four percent of each additional \$1,000 of income once total household resources exceed \$21,000. For information about an HPTC for a permanent resident of special housing, see RAB 2017-8.

## Senior Credit Reduction

<u>Total Household Resources</u>	<u>Percent of Credit Allowed</u>
\$ 0 - \$21,000	100%
21,001 - 22,000	96
22,001 - 23,000	92
23,001 - 24,000	88
24,001 - 25,000	84
25,001 - 26,000	80
26,001 - 27,000	76
27,001 - 28,000	72
28,001 - 29,000	68
29,001 - 30,000	64
30,001 - 60,000	60

Senior claimants receive a 60 percent property tax credit for total household resources of \$30,001 to \$60,000. The credit phase out applies once a claimant's total household resources exceed \$51,000.

**Disabled and other special claimants.** Claimants who are permanently disabled, paraplegic, hemiplegic, quadriplegic, blind, or deaf will receive a 100 percent credit if household resources are \$51,000 or less. The credit phase out applies once total household resources exceed \$51,000.

**General claimants.** General claimants receive a 60 percent property tax credit subject to the credit phase out once total household resources exceed \$51,000.

**Credit phase out.** All claimants are subject to the credit phase out. The credit is reduced by 10 percent for each \$1,000 of total household resources in excess of \$51,000.

**HOMESTEAD PROPERTY TAX CREDIT  
PHASE OUT**

<u>Total Household Resources</u>	<u>Percent of Credit Allowed</u>
\$51,000 or less	100%
51,001 - 52,000	90
52,001 - 53,000	80
53,001 - 54,000	70
54,001 - 55,000	60
55,001 - 56,000	50
56,001 - 57,000	40
57,001 - 58,000	30
58,001 - 59,000	20
59,001 - 60,000	10
60,001 - above	No Credit

**Example 1:** A senior citizen has total household resources of \$56,000 and property taxes of \$2,500. The property taxes exceed 3.2 percent of total household resources by \$708. The senior citizen’s total household resources exceed \$30,000, therefore, the credit is reduced from 100 percent to 60 percent or \$425. The phase out applies and will further reduce the \$425 credit to 50 percent for a credit of \$213.

**Example 2:** A claimant has total household resources of \$58,500 and property taxes of \$5,000. The property taxes exceed 3.2 percent of total household resources by \$3,128. The credit is first reduced to 60 percent or \$1,877. The credit is then limited to \$1,500, the maximum allowed. After the \$1,500 limit is applied, the phase out to 20 percent further reduces the credit to \$300.

**Taxable Value.** The property taxes on a homestead with taxable value of more than \$135,000 may not be included in the calculation of the property tax credit. If the taxable value of a homestead, excluding the taxable value of the unoccupied farmland classified as agricultural, exceeds \$135,000, the property taxes may not be included in calculating the property tax credit. The 2019 tax bills received from the homeowner’s local government will state the taxable value. The taxable value cap does not apply to renters.

**Eligible property taxes.** The property taxes levied on the homestead for 2019 are the only taxes that can be claimed for credit regardless of when the taxes are paid. These include additional taxes assessed or refunded that are attributable to a prior year because of a Michigan Tax Tribunal decision or the reversal of a homestead affidavit denial. Collection fees of up to one percent of the property taxes and special assessments based on state equalized value and applied to the entire taxing jurisdiction may be included. If the special assessment is for police, fire, or advanced life support, the credit may be taken even if the assessment does not cover the entire taxing jurisdiction. However, these special assessments must be based on the taxable value using a uniform millage rate.

**Do not include:**

- Penalty and interest on late payments of property tax
- Delinquent property taxes
- Delinquent water or sewer bills
- Property taxes on cottages or second homes
- Special assessments (for drains, sewers, etc.) that are not based on taxable value and are not applied to the entire taxing jurisdiction
- 2018 winter taxes paid in 2019.

**Reporting Taxable Value (TV) on MI-1040CR Homestead Property Tax Credit**

The TV of the property must be reported on the MI-1040CR to process property tax credit claims. To avoid possible refund delays, enter the TV on the proper line. Use the following list to determine the correct TV to report in special circumstances.

1. **If the taxpayer moves during the year**, complete the “Homeowners” section showing the TV for each homestead. If there were more than two homesteads during the year, include an additional sheet. Property taxes levied on occupied homesteads having TV greater than \$135,000 may not be included in total property taxes claimed to calculate the credit.
2. **If the taxpayer lives in a nursing home and the spouse lives in a homestead**, use both the property taxes for the homestead and the rent (or prorated share of property taxes) for the nursing home to compute the credit (not applicable with married filing separately status).
3. **If the taxpayer’s homestead is assessed at the non-homestead rate**, use the actual TV that is being assessed at the non-homestead rate on line 9.
4. **If the taxpayer lives in service-fee housing**, leave line 9 blank. A schedule of explanation need not be included.
5. **If a portion of the homestead is rented out or used for business**, show the total homestead TV on line 9. Reduce the property taxes by the greater of 23 percent of the gross rent collected or the amount of property taxes claimed as a business deduction on the U.S. 1040. Show the explanation either on the return or include a schedule.
6. **If the property tax claim includes eligible adjacent and contiguous vacant land**, include on line 9 the sum of the TVs for the homestead and all eligible vacant land.

## Special Situations

### **Farmers**

Farmers may include farmland taxes in the property tax credit claim if any of the following conditions apply:

- If agricultural gross receipts are greater than total household resources, all farmland property taxes including taxes on unoccupied farmland are eligible for the credit. Taxes on farmland that is rented by or leased to another person and is not adjacent or contiguous to taxpayer's home is not eligible for the credit.
- If agricultural gross receipts are less than total household resources and taxpayer has lived in the home more than ten years, the taxes on the home and the adjacent and contiguous farmland are eligible for the property tax credit.
- If agricultural gross receipts are less than total household resources and taxpayer has lived in the home less than ten years, the taxes on the home and five contiguous and adjacent acres of farmland are eligible for the credit.
- If the taxable value of the homestead excluding the taxable value of the unoccupied farmland classified as agricultural exceeds \$135,000, the taxpayer is not eligible for the homestead property tax credit.

### Agricultural Gross Receipts

“Agricultural gross receipts” means income derived from the business of farming. A taxpayer is engaged in the business of farming if they cultivate, operate, or manage a farm for gain or profit, either as owner or tenant. A taxpayer who receives a rental which is based upon farm production is engaged in the business of farming. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the business of farming only if they participate to a material extent in the operation or management of the farm. (Refer to *IRS Reg. 1.175-3*.)

The taxpayer has participated to a material extent in the operation or management of the farm if any one of the following tests are met. (Refer to *IRS Publication No. 225*.)

1. The owner does **three** of the following:
  - Pays, using cash or credit, at least half the direct costs of producing the crops
  - Furnishes at least half the tools, equipment, and livestock used in producing the crops
  - Periodically advises and consults with the tenant
  - Periodically inspects the production activities.
2. The landowner regularly and frequently makes or takes an important part in making management decisions substantially affecting the success of the enterprise.

3. The landowner works 100 hours or more spread over a period of five weeks or more in activities connected with producing the crop.
4. The landowner does things that, considered in their total effect, show that they are significantly and materially involved in the production of farm commodities.

The following decision table may be used to determine the land eligible to be claimed for:

**Homestead Property Tax Credit.** Find the taxpayer column that applies to the particular situation, then see corresponding row under “Eligible Property” for the amount of eligible property.

<b>Taxpayer:</b>					
Owens farm	Y	Y	Y	Y	Y
Meets gross receipts test (see above)	Y	Y	N	N	N
Lives on farm	Y	N	Less than 10 yrs.	10 yrs. or more	N
<b>Eligible Property:</b>					
All farmland (doesn't have to be contiguous unless rented to others)*	X	X			
Home plus 5 acres*+			X		
Home and all contiguous or adjacent unoccupied land*				X	
None					X

\* Does not qualify if the taxable value of the residential area excluding the taxable value of the unoccupied farmland classified as agricultural exceeds \$135,000.

+ Renters also qualify under this category.

A “homestead” for the property tax credit excludes “unoccupied real property that is leased or rented by the owner to another person . . .” MCL 206.508(2). The renter or lessor of farmland may not claim the rent paid when computing a property tax credit.

A Farmland Preservation Tax Credit must be included in total household resources. It should be reported on the schedule of total household resources in net farm income or other taxable income. Homestead Property Tax Credits are not included in total household resources. If the Property Tax Credit was included in taxable farm income, it may be subtracted in determining total household resources. Farm losses may not reduce total household resources.

## Part-Year or Deceased Taxpayers, Annualization of Total Household Resources for Phase Out

A property tax credit claim made by a part-year resident or on behalf of a deceased taxpayer (unless claimed by surviving spouse) requires annualization of total household resources to determine if their annualized total household resources:

1. Exceed the threshold of \$60,000, which phases out a property tax credit, **or**
2. May require a senior citizen or a totally and permanently disabled person to use a higher percentage of total household resources to determine nonrefundable portion of property taxes.

In the final computation, only the claimant's actual total household resources are used.

**Example 1:** A property tax credit is filed on behalf of a **deceased** claimant age 65 with no surviving spouse. Total household resources of \$5,230 and two exemptions are reported. Taxpayer owned a home and lived in Michigan for 155 days in 2019. Taxes levied for 2019 were \$1,865. The taxable value of the home did not exceed \$135,000.

Claimant's annualized total household resources is  $365/155 \times \$5,230 = \$12,316$ .

Prorated property taxes are  $155/365 \times \$1,865 = \$792$ .

Since annualized total household resources is over \$6,000, 3.2 percent of actual total household resources must be used when computing the property tax credit.

Prorated property taxes	\$792
Less 3.2% of \$5,230	<u>167</u>
<b>Property tax credit amount</b>	<b>\$625</b>

**Example 2:** A **part-year** Michigan resident who lived in Michigan for 266 days received Michigan total household resources of \$40,425. Total property taxes of \$2,400 were levied on the Michigan homestead. The homestead's taxable value did not exceed \$135,000.

Claimant's annualized total household resources is  $365/266 \times \$40,425 = \$55,470$ . The phase out is 10 percent after reaching \$51,001 and then 10 percent for every additional \$1,000 in total household resources. The claimant's property tax credit will be reduced by 50 percent.

Prorated property taxes ( $266/365 \times \$2,400$ )	\$ 1,749
Less: 3.2% of <b>actual total household resources</b> (\$40,425)	<u>1,294</u>
Balance	455
Multiply by 60%	273
Less: Percentage of credit subject to Phase out provision ( $50\% \times \$273$ )	-137
<b>Property tax credit</b>	<b>\$ 136</b>

### Separated and Divorced Claimants

Spouses who file separate Michigan income tax returns but share a household are entitled to only one property tax credit. Complete the property tax credit claim jointly, including both spouses' incomes, then divide the credit as desired. If each spouse claims a portion of the credit, include a copy of property tax claim showing the share claimed. Two homesteads may be used for credit only if the couple is separated or divorced, each maintains a separate homestead, and each files separate federal and Michigan income tax returns. If the taxpayers file a joint federal return, they must file a joint Michigan return.

**Example:** Ron and Rosemary were separated March 1, 2019 and divorced December 2, 2019. Rosemary stayed in the marital home all year, and Ron rented an apartment beginning March 1, 2019. Ron paid Rosemary \$300 (half the house payment) from March through December 2019 and 40 weeks of child support at \$160 a week. Property tax bills for 2018 on the marital home were \$2,850. Ron rented his apartment for \$500 a month. Their incomes before and after separation are as follows:

Wages:	<b>Ron</b>	<b>Rosemary</b>
January 1 - February 29	\$ 7,200	\$ 5,000
March 1 - December 31	\$36,000	\$ 25,000

First, calculate the property taxes that can be claimed for credit by each spouse prior to separation.

Income prior to separation:

Wife	\$5,000
Husband	<u>7,200</u>
Total	\$12,200

Percent of income prior to separation:

Wife	\$5,000/\$12,200	=	41%
Husband	\$7,200/\$12,200	=	59%

2019 taxes prorated for two month period  
prior to separation

$$\$2,850 \times 2/12 = \$ 475$$

Percent claimed before separation:

Wife	\$ 475	x	41%	=	\$ 195
Husband	\$ 475	x	59%	=	\$ 280

Wife's total taxes claimed for credit  
(lived in the family home for the entire year):

Before separation	\$ 475	x	41%	=	\$ 195
After separation	100%	x	(\$2,850-\$475)	=	<u>2,375</u>

**\$2,570**

Husband's total taxes claimed for credit:

Before separation	\$ 475	x	59%	=	\$ 280
After separation - Rent paid	\$5,000	x	20%	=	<u>\$1,000</u>

**\$ 1,280**

**Note:** Based on the definition of household resources, Ron may not subtract the child support payments of \$6,400 from his total household resources.

## Shared Housing

When two or more single people share a home, each can file a credit claim if each is contracted to pay rent or owns a share of the home. Each should file an individual claim based on his or her own total household resources and prorated share of the taxes or rent paid. If the home is owned (not rented) the owners would divide the taxable value of the home accordingly and report their portion of the taxable value of the home when filing a credit claim.

**Example 1:** Adam and Andrew own a home in Grand Rapids. Both occupy the home and share the expenses for upkeep of the home. The property taxes on the home for 2019 are \$4,000. Adam and Andrew would each claim \$2,000 of property taxes on their respective property tax credits. They would each report one-half the taxable value of the home and write on the form "shared housing" and the percent of property taxes being claimed.

**Example 2:** Tim owns and occupies his home in Saginaw. He fixed up the basement and rents it for \$400 a month to Linda. His PRE is greater than 50 percent. Tim would be eligible to claim a property tax credit on the taxes billed on his home for 2019; however, he would have to reduce property taxes by the greater of 23 percent of the gross rent received or the amount of property tax claimed as a business expense on his federal return.

**Example 3:** Scott and John rent a home from Renee and both of their names are on the contract. The taxable value of the property exceeds \$135,000. Monthly rental of the home was \$950; the total paid during 2019 was \$11,400. All rent and expenses were split evenly between them. Scott and John would each be eligible to claim a property tax credit on the half of the rent that each paid. Scott and John would be able to claim property tax credits even though the taxable value of the home exceeds \$135,000 because the taxable value limit does not apply to renters.

### **Nursing Home, Home for the Aged, and Adult Foster Care Claimants**

A permanent resident of a nursing home, home for the aged, or adult foster care home is entitled to a homestead property tax credit based on rent if the facility provides an itemized bill identifying the portion charged for rent and for other services such as food, housekeeping, or personal care. The resident may be required to submit the itemized bill or other documentation from the landlord that shows the amount of rent paid. Only rent paid by the resident can be used to compute the property tax credit.

If the facility bills a lump sum for rent and other services and does not provide an itemized statement identifying the amount of rent, the resident may not claim rent, but may claim his or her allocable share of the property taxes assessed on the entire facility. The resident's allocable share is calculated by dividing the facility's property tax by the number of licensed beds.

If the facility receives a direct payment from a State or federal agency for the care of the resident, then the allocable share may be limited. The resident cannot claim an allocable share that is greater than the charges paid by the resident to the facility.

**Example:** Mrs. Redfern's nursing home charges were billed in a lump sum of \$12,500 (for rent, food and other nursing services) to the SOM. Of that sum, \$12,000 was paid directly to the nursing home by the State. Mrs. Redfern paid the balance due of \$500.

Mrs. Redfern's "allocable share" of property taxes on the nursing home, based on 100 beds and \$60,000 in real property taxes, is \$600. Since Mrs. Redfern's total charges paid by her are less than her "allocable share," she may use only the lesser amount of \$500 for calculating a property tax credit.

## **Room and Board**

If the claimant pays room and board in **separate** billings, the claimant must base the credit on the rent. The claimant may be required to submit a copy of the separate billing or other documentation from the landlord showing the amount of rent paid. If the claimant pays room and board in **one** billing and is unable to identify the portion of the bill that constitutes rent, the credit must be based on a prorated share of the property taxes on the facility. If the landlord does not provide this figure, divide the square footage of the claimant's living space by the total square footage of the facility, and multiply the total taxes on the facility by that percentage.

## **Service Fee Housing**

If the claimant lives in housing on which service fees are paid instead of property taxes, the credit must be computed using 10 percent of the rent, rather than the 23 percent generally used by other claimants who rent.

## **Subsidized Housing**

A claimant who lives in subsidized housing must compute his or her homestead property tax credit based on rent if the facility provides an itemized bill identifying the portion charged for rent, separate from charges for other services such as food, housekeeping, or transportation. Only the amount of rent paid by the claimant can be used to compute the property tax credit. Do not consider amounts paid by a government agency on the claimant's behalf. If the facility pays service fees in lieu of property taxes, compute the credit using 10 percent of the rent paid by the claimant, rather than 23 percent. The claimant may be required to submit a copy of the separate billing or other documentation from the facility verifying the amount of rent paid.

If the facility bills a lump sum for rent and services, the resident may not claim rent, but may claim his or her allocable share of the property taxes assessed on the entire facility.

## **Special Housing**

A claimant who resides in housing where the lease includes meals and other services (housekeeping, laundry, transportation, etc.) must base his or her credit on only the portion of the bill that constitutes rent. A senior citizen claimant who can identify the amount of rent separately from other charges may claim his or her credit using the alternate senior method. A claimant may be required to produce a copy of the facility's documentation that identifies the portion of the bill constituting rent to substantiate the claim.

If the claimant is unable to identify the portion of the bill that constitutes rent, the credit must be based on a prorated share of the property taxes on the facility. The facility should provide the claimant with the prorated share of the property taxes for use in the credit calculation.

## **Recipients of Department of Health and Human Services (DHHS) Payments and Child Support Payments**

MCL Section 206.520(7) allows recipients of DHHS payments to reduce the amount of DHHS benefits reported to them when the amounts include child support payments assigned by the Friend of the Court (FOC).

The annual statement from DHHS may include child support payments made through the FOC to DHHS. To determine the child support payments included in the statement, obtain a Fourth Quarter Statement from the Office of Child Support. This statement is mailed to all recipients of DHHS payments. The amount reported as support is child support payments sent to DHHS, and the amount reported as rebates paid is direct child support paid to the recipient.

Since the homestead property tax credit is prorated based on the percentage of income from DHHS benefits, it is to the recipient's advantage to reduce the annual DHHS benefits received by any child support included in this statement and report them separately in total household resources. The Fourth Quarter Statement from the Office of Child Support (Form FEN851) and, if available, a copy of the annual statement from DHHS should be included with the claim.

**Example 1:** A claimant received DHHS benefits of \$12,000 in 2019, which included child support payments of \$3,000 assigned by the FOC to the DHHS. If the claimant's total household resources consisted solely of DHHS benefits, they would not be entitled to a homestead property tax credit. However, since one-quarter of the total DHHS benefits were from child support payments assigned to DHHS, they are entitled to one-quarter of the homestead property tax credit computed.

**Example 2:** Taxpayer receives the following for 2019:

2019 annual statement from DHHS	\$8,165	
Letter from Office of Child Support or FOC:		
Support	\$7,492	
Rebates paid	600	
To compute the total household resources:		
Annual statement from DHHS	\$8,165	
Rebates paid	<u>+ 600</u>	
	8,765	
Less support paid to DHHS	<u>- 7,492</u>	
Annual DHHS benefits actually received	1,273	(FIP/DHHS line)
Child support	<u>+7,492</u>	(Child Support line)
<b>Total household resources</b>	<b>\$8,765</b>	

## **Farmland Preservation Tax Credit**

### **Eligibility**

This credit is provided for under Farmland and Open Space Preservation Act which is part of the Natural Resources and Environmental Protection Act PA 451 of 1994. The Act replaced the repealed farmland preservation act known as “PA 116.” The Act enables a landowner to enter into a development rights agreement (for farmland) with the State. The agreements are designed to ensure the land remains in agricultural use for an agreed-upon period. In return for maintaining the land in agricultural use, the landowner is entitled to certain income or property tax benefits.

The Farmland Preservation Tax Credit refunds to farmland owners the taxes in excess of 3.5 percent of their total household income on property covered by a Farmland Development Rights Agreement (FDRA) with the Michigan Department of Agriculture and Rural Development.

*Schedule of Taxes and Allocation to Each Agreement* (Schedule CR-5) must be completed. Use more than one Schedule CR-5 as needed. The system will not accept a substitute Schedule CR-5 in lieu of the Michigan Schedule CR-5.

### **Tips to Expedite Processing**

- The entire TV for each agreement must be entered on the Schedule CR-5 in the space provided. This is required even if the taxpayer is eligible to claim only a portion of the property taxes because of joint ownership(s), partnership(s), or multiple shareholders. The TV can be found on the property tax statements for each period.
- If farmland is jointly owned with someone other than the filer’s spouse, Form 5678 must be completed. For each agreement, enter the information for each owner. Partners may use Form 5678 to show percentage of income or ownership if no U.S. Return of Partnership Income Form 1065 was required. All partners must sign. The percentage of income or ownership being claimed for credit must be carried to column E of the Schedule CR-5.
- Ownership indicated on property tax statements must also match ownership in farmland development rights agreement(s). If the claimed agreement does not reflect appropriate ownership, the credit may be reduced or denied.
- Multiple names on property tax statements indicate joint ownership. The taxpayer may not claim 100 percent without a signed distribution statement from all other owners. The agreement may be reduced or denied without the signed statement.
- The agreement number (or contract) number is found in the lower-right corner of each agreement. Always use the contract number from the most recently recorded agreement. The actual contract number retains its original series throughout the term of the agreement.

- Farmland agreement numbers consist of three components:
  - **County Code** - indicated by the first two digits of the agreement number.
  - **Contract Number** - indicated by the middle set of characters between the county code and expiration date.
  - **Expiration Date** - indicated by the last six digits of the agreement number. The first four digits are always “1231.” The last two digits are comprised of the year the agreement is to expire (e.g., “123116”). The expiration year may never be earlier than the year of the return being prepared.
- A letter of the alphabet may be added to indicate the agreement was split into multiple agreements. When farmland agreement numbers contain alpha characters, the alpha characters belong after the contract number.
- If the expiration year entered is prior to the current tax return year, the agreement is expired and may no longer be claimed. The taxpayer must extend the agreement and provide the new expiration year before the agreement may be claimed again.
- It may be beneficial to have the taxpayer provide copies of the agreements being claimed for accuracy and to avoid processing delays.
- An MI-1040CR, MI-1040CR-2 or MI-1040CR-7 must be filed to claim a farmland preservation tax credit even if it results in a zero credit. The schedule of total household resources provided on these forms is used to verify the total household income used in computing the farmland preservation tax credit.
- Each agreement should only appear on one line of the Schedule CR-5. Multiple parcels for a single farmland development rights agreement must be combined to determine the entire agreement’s eligible taxable value and the eligible property taxes.

Only the portion of the tax bill used for agricultural purposes may be claimed for credit regardless of the amount of the parcel enrolled in the program. The qualifying portion of the parcel will be indicated on the property tax statement(s) as an agricultural or homestead percentage. Follow the instructions in the MI-1040CR-5 tax booklet under the “Property Taxes That Can Be Claimed for Credit” section to compute the eligible taxes if the bill indicates less than 100 percent exempt.

### **Computation of the Value of the Lien Imposed Upon Removal of Land From Farmland and Open Space Program**

When property is removed from the Farmland and Open Space Program, the State Land Use Agency records a lien against the property. Land may be relinquished from the program for the following reasons:

1. Natural expiration of the agreement
2. Death or permanent disability of the landowner
3. Landowner requests relinquishment of all or a portion of an agreement.

The lien value may be computed differently based on the reason the land was relinquished. The following discussion outlines the computations required by the different ways the FDRA is relinquished.

**1. Natural termination of agreement.**

The value of the lien will be the amount of the farmland preservation tax credits attributable to the terminated agreement received by the owner in the final seven years. The final seven years shall include the year of termination. The value is computed as follows:

**Step 1**

Divide: The ad valorem property tax levied on property subject to the expired FDRA used in determining the farmland preservation tax credit in that year

By: The property taxes levied on property subject to all FDRAs used in determining the farmland preservation tax credit in that year.

**Step 2**

Multiply: The owner's total farmland preservation tax credit on all agreements paid that year

By: The quotient in Step 1.

**Step 3**

Sum: The results of Step 2 may or may not be used for each of the last seven years, depending on agreement number and property taxes assessed.

**2. Landowner dies or becomes permanently and totally disabled, and a request has been granted for the release of all property covered by the FDRA.**

The value of the lien will be the total amount of the farmland preservation tax credit received by the owner for the payback period. The payback period and value of the lien is computed as follows:

**Payback Period**

**Step 1**

Divide: The number of years the land was enrolled in the current FDRA

By: The number of years for which the agreement was written.

**Step 2**

Multiply: Seven years

By: The quotient computed in Step 1.

## **Value of the Lien**

### **Step 1**

Divide: The ad valorem property tax levied on property subject to the FDRA being relinquished used in determining the farmland preservation tax credit

By: The property taxes levied on property subject to all FDRAs used in determining the farmland preservation tax credit in that year.

### **Step 2**

Multiply: The owner's total farmland preservation tax credit on all agreements claimed that year

By: The quotient computed in Step 1.

### **3. Landowner dies or becomes permanently and totally disabled, and a request has been granted for the release of a portion of land covered by the FDRA.**

The value of the lien will be the total amount of the farmland preservation tax credit received by the owner for the payback period. The payback period and value of the lien is computed as follows:

## **Payback Period**

### **Step 1**

Divide: The number of years the land was enrolled in the current FDRA

By: The number of years for which the agreement was written.

### **Step 2**

Multiply: Seven years

By: The quotient computed in Step 1.

## **Allocated Credit of Entire Agreement**

### **Step 1**

Divide: The ad valorem property tax levied in that year on property subject to the FDRA that included the property to be removed

By: The total property taxes levied on property subject to all FDRAs used in determining the farmland preservation tax credit in that year.

### **Step 2**

Multiply: The owner's total farmland preservation tax credit in that year on all agreements

By: The quotient in Step 1.

## **Value of the Lien**

### **Step 1**

Divide: The TV of the property being relinquished from the agreement

By: The total TV of the property subject to the FDRA that included the property being removed from the agreement.

### **Step 2**

Multiply: The “allocated tax credit” of entire agreement

By: The quotient computed in Step 1.

4. **Landowner requests relinquishment of all or a portion of an agreement as provided by Section 36111(a) and 36111(2)(a)(b).**

## **Termination of All Land Covered by an FDRA**

### **Step 1**

Divide: The ad valorem property tax levied on property subject to the FDRA to be relinquished used in determining the farmland preservation tax credit in that year

By: The property taxes levied on property subject to all FDRAs used in determining the farmland preservation tax credit in that year.

### **Step 2**

Multiply: The owner’s total farmland preservation tax credit on all agreements paid that year

By: The quotient in Step 1.

### **Step 3**

Sum: The results of Step 2 plus six percent per annum interest for each of the last seven years.

## **Termination of a Portion of Land Covered by an FDRA**

### **Step 1**

Divide: The ad valorem property tax levied in that year on property subject to the FDRA that included the portion to be relinquished

By: The total property taxes levied on property subject to all FDRAs used in determining the farmland preservation tax credit in that year.

### **Step 2**

Multiply: The owner’s total farmland preservation tax credit in that year on all agreements

By: The quotient in Step 1. This is the “allocated tax credit.”

## **Value of the Lien**

### **Step 1**

- Divide: The TV of the property being released from the agreement
- By: The total TV of the property subject to the FDRA that included the property being released from the agreement.

### **Step 2**

- Multiply: The “allocated tax credit” for the agreement
- By: The quotient computed Step 1.

### **Step 3**

- Sum: The results of Steps 1 and 2 plus 6 percent per annum interest for each of the last seven years.

## **Sale of Land**

From January 1 to the day of closing, the seller (and conceivably their predecessor(s) in title) is the owner of the farmland.

For the period from January 1 to the day of closing, the seller is the person responsible for the ad valorem taxes. For income tax purposes, the IRS concludes the seller, not the buyer, pays the taxes (if the taxes are paid).

The buyer is the owner of the farmland and is responsible for the payment of taxes (if paid) from the period of the “closing day” to December 31.

Based on the above, each owner is entitled to claim the credit for that portion of the calendar year they held title to the farmland.

## **Reinstatement of a Development Rights Agreement**

If there is a lapse of time between the expiration and reinstatement of an agreement, the landowner is not eligible to claim a farmland preservation tax credit for the time the agreement had expired. The lien, which is recorded when an agreement is terminated, is discharged upon reinstatement of the development rights agreement. A subsequent lien will not be less than the lien discharged due to reinstatement.

## **Farmland Preservation Tax Credit When Land Is Inherited**

The taxpayer who inherited the land is not eligible for the credit until they are the owner of record and the FDRA is transferred to them by the State Land Use Agency.

## **Taxable Portion of Farmland Preservation Tax Credit**

Taxable income for Michigan income tax purposes is defined in ITA, MCL 206.30(1), as AGI, as determined in the IRC, subject to certain adjustments. To the extent that a farmland preservation tax credit is includable in an individual's AGI, this income is taxable to the State. There is no statutory provision to exclude this income from the computation of Michigan taxable income.

Income is defined in Michigan's ITA, MCL 206.510(1) as the sum of federal AGI, as established in the IRC, plus all income specifically excluded or exempt from the computation of the federal AGI.

Income does not include payments or credits under MCL 206.510(1). A farmland preservation tax credit is provided for in the Farmland and Open Space Preservation Act, **not the ITA**.

The part of the homestead property tax credit that applies to farm buildings and land is business related. To determine the portion that is business income, multiply the credit by the percentage that the TV of the buildings and land is to the total TV of the property.

The local assessor can provide a breakdown showing how total TV was determined.

$$\begin{array}{r} \text{TV of Farmland} \\ \text{Portion of Homestead} \\ \text{and Buildings} \\ \hline \text{Total TV} \end{array} \quad \times \quad \begin{array}{l} \text{Homestead Property} \\ \text{Credit Amounts} \\ \text{Received This Year} \end{array} = \begin{array}{l} \text{Property Tax Credit} \\ \text{That Is Business Income} \end{array}$$

The farmland preservation tax credit amount and the business portion of the homestead property tax credit received during the year must be included in taxable income.

If the MI-1040 tax refund was greater than the amount of farmland preservation tax credit plus the business portion of the homestead property tax credit, subtract the excess refund amount received during the year to the extent it was included in federal AGI.

### **Including Property Tax Statement(s) When Claiming an MI-1040CR-5**

**For All E-Filers:** Indicate in the space provided on Schedule CR-5 if the property taxes are paid for the year of the return or for the immediately preceding year. No property tax statements are required at this time. Some e-file products may allow the taxpayer to include images of property tax statements, which may reduce correspondence with Treasury and expedite the processing of the return. Keep the statements with the tax records, as there may be a need in the future for Treasury to request them.

**For All Paper Filers:** Indicate in the space provided on Schedule CR-5 if the property taxes are paid for the year of the return or for the immediately preceding year. Property tax statements for the year of the return **must** be included. These statements must include the TV, property taxes levied by millage rate, and the corresponding agreement number(s). If the tax statements do not indicate payment of property taxes and the "Paid" box is checked on the Schedule CR-5, a copy of the previous year's property tax receipt(s) indicating payment is also required.

The “Paid” box is checked if the property taxes are paid for either the year of the return or for the immediately preceding year. If the box is not checked, it will be assumed the property taxes are not paid. This will result in the farmland preservation tax credit being issued jointly payable to the taxpayer and the appropriate county treasurer.

### **Farmland Taxes Eligibility Chart**

The following chart describes who may claim the farmland preservation tax credit and what taxes are to be used in computing the farmland credit based on ownership of the land.

<b><u>Type of Ownership</u></b>	<b><u>Taxes Based On</u></b>	<b><u>Must Include</u></b>	<b><u>Effective Date</u></b>
Partnership	1. Percent of income or ownership, or 2. Statement signed by all partners listing allowable percent for each partner	1. Federal 1065 and K-1, or 2. Partnership agreement, or 3. Signed statement, or 4. Completed part 2 of MI-1040CR-5	1/1/84
S Corporation	1. Percent of stock ownership	1. Federal 1120S and Schedule K-1	1/1/88
<b>*MET filers do not qualify.</b>			
Joint (Other Than Spouse)	1. Equal apportionment among owners, or 2. Statements signed by owners apportioning taxes the same way the revenues and expenses are divided	1. Signed statement, or 2. Completed part 2 of MI-1040CR-5	1/1/84
Life Estate or Life Lease	1. Possession, or apportionment between owner and life estate holder	1. Signed statement, or 2. Completed Part 2 of MI-1040CR-5, or 3. Copy of Life Lease Agreement	1/1/86
Grantor Trust	1. Ownership (if treated as an owner under IRC Sections 671 through 679)	1. Portion of trust that shows owner	1/1/84
Trust Created by Death of Spouse	1. Ownership (if the trust requires 100 percent of the income to be distributed each year to the surviving spouse)	1. Portion of trust that shows owner, or the deed	1/1/84
Limited Liability Company	1. Based on member’s share of ownership or distributive share of ordinary income as reported by the company to IRS	1. Limited liability company’s federal return and Schedule K-1s	1/1/96

### **Repayments Under the Claim of Right Doctrine**

Section 265 of the ITA allows taxpayers to claim a credit against the Michigan income tax equal to the amount of tax paid on amounts included in taxable income in a prior tax year and repaid in the current tax year.

The credit is allowed on amounts that qualify under IRC Section 1341 and are not deducted in arriving at federal AGI for the tax year.

**Example:** Included in Roy's 2012 AGI was \$18,000 in Supplemental Unemployment Benefits (SUB pay) from ABC, Inc. In 2019, Roy repaid the \$18,000, as it was determined he did not have the right to receive the SUB pay. The 2019 repayment qualified under IRC Section 1341 and was taken as an itemized deduction by Roy on his 2019 federal Schedule A. For the 2019 tax year, Roy is allowed a \$779 ( $\$18,000 \times .0433$ ) credit against his Michigan income tax. Calculate the credit using the tax rate in effect for the year the amount was included in Michigan taxable income (4.33 percent), not the rate (4.25 percent) in effect for 2019, the year of the repayment. Report the credit on the line for reporting withholding taxes. Write "Claim of Right/Repayment" next to the withholding line. Include a copy of Roy's federal Form 1040 pages 1 and 2, Schedule A, Schedule 5 and documentation of the repayment, and a calculation showing how the credit was determined on his 2019 MI-1040.

### **Earned Income Tax Credit**

For 2019, a taxpayer may claim a refundable credit against the income tax for an amount equal to six percent of the credit the taxpayer is allowed to claim under IRC Section 32 (i.e., the Earned Income Tax Credit (EITC)) for a tax year on a return filed under the act for the same year.

### **Home Heating Credit**

PA 335 of 2004 amended Section 527(a) of the ITA allowing Treasury to establish a program for direct payments of energy drafts to enrolled heating providers. If a claimant's name has been submitted by the provider (Consumers Energy, DTE Energy Natural Gas Company, or SEMCO Energy Gas Company) and meets the requirements established by Treasury, the energy draft will be paid directly to the provider.

PA 169 of 2001 allows a Home Heating Credit only if there has been a federal appropriation for the federal fiscal year beginning in the tax year for federal low income home energy assistance program block grant funds of any amount. Also, under PA 169 of 2001, no portion of the credit allowed shall be applied as an offset to any liability of the claimant.

The Home Heating Credit form **must be filed and postmarked no later than September 30** of the following year. The amount of the credit may be prorated depending on the amount of federal funds appropriated.

An eligible claimant for a heating credit is defined as a renter or owner of a home. The claimant's income must be within the income limits listed on the eligibility charts in the MI-1040CR-7 instruction booklet. An ineligible claimant is a person who lives in a home and does not pay rent or is not an owner. The standard allowance of heating costs is prorated for eligible claimants if the home is occupied by ineligible claimants. Ineligible claimants include:

1. Full-time students claimed as dependents by another person
2. Residents of a congregate care facility (i.e., nursing home, adult foster care home, home for the aged, substance abuse center, etc.) who resided in the care facility for the entire year.

For individuals who rent their homestead, if, at the time of filing, their heating costs are included in their rent, the credit must be reduced by 50 percent.

**Example:** A Michigan resident whose heat is included in their rent claimed a 2019 home heating credit. Two federal exemptions were reported. The claimant's total household resources of \$7,475 included wages of \$3,025, DHHS benefits of \$1,500, and child support of \$2,950. The claimant may claim a home heating credit of \$187.

To compute the home heating credit:

Standard allowance	\$652
Less THR multiplied by 3.5%	- <u>262</u>
<b>Standard credit</b>	<b>390</b>
Renters reduce credit by 50%	- <u>195</u>
<b>Home Heating Credit</b>	<b>\$195</b> (subject to possible proration)

When two or more taxpayers who are not married to each other share a home, each can claim a home heating credit if each has contracted to pay rent or owns a share of the house. If they share a home but are not the owners or have not contracted to pay rent, then they cannot claim a home heating credit.

To claim a credit, each eligible claimant should file a Home Heating Credit based on their Total Household Resources (THR) and their share of the standard allowance. The standard allowance is determined from Table A in the MI-1040CR-7 instruction booklet by adding the personal exemptions of all the claimants sharing the home.

**Example 1:** Two women share an apartment. Each person has signed a lease and pays one-half of the rent in 2019. The standard allowance for two exemptions is \$652. Each person must use a standard allowance of \$326 ( $\$652/2 = \$326$ ) to compute the credit.

If one of the individuals sharing the home is eligible for a special exemption or a dependent exemption, then she would compute her credit as follows:

The standard allowance as computed above is \$326. Then add the difference between the standard allowance for three (\$822) and the standard allowance for two (\$652) to \$326 ( $\$822 - \$652 = \$170 + \$326 = \$496$ ). \$496 is the standard allowance for the individual with the dependent exemption.

Part-year residents must prorate the standard allowance based on the number of days they were a Michigan resident. Claimants filing on behalf of deceased individuals must prorate the standard allowance based on the date of death. The decedent is not eligible for the alternate credit computation if they died during the tax year.

**Example 2:** A Home Heating Credit\* claim is filed by a **part-year** Michigan resident who resided in Michigan for 198 days. The claim is based on Michigan total household resources of \$3,600 and one exemption.

Prorated standard allowance	
(198/365 x \$482)	\$261
Less: 3.5% of actual total household resources	
(\$3,600)	<u>- 126</u>
<b>Home Heating Credit</b>	<b>\$135</b> (subject to possible proration)

\*No annualizing of total household resources is required when computing a Home Heating Credit.

## CANCELLATION OF DEBT

Any income arising from cancellation of debt included in federal AGI is subject to Michigan income tax. In most cases, income resulting from the cancellation of debt must also be included in THR. For detailed guidance regarding cancellation of debt income required to be reported on the Michigan tax return, visit [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

## RELIEF FROM TAX LIABILITY

### Non-obligated Spouse Allocation

Spouses may apportion a joint refund as though they had filed separate returns when one spouse has a liability. A non-obligated spouse's share of the refund will not, under certain conditions, be used to offset an obligated spouse's debt.

A nonobligated spouse may obtain their share of the refund by completing and filing *Income Allocation for Non-Obligated Spouse* (Form 743). Form 743 is used to determine an overpayment based on separate reporting of income, credits and exemptions. **Form 743 is issued after the processing of the income tax return and CANNOT be obtained in advance.** The non-obligated spouse must follow the instructions related to the completion and filing of Form 743 in order to obtain their share of the refund.

### Relief From Joint and Several Liability on Joint Returns

Innocent spouse relief, separation of liability, and equitable relief may be granted by Treasury for the portion of the tax liability that is attributable to the understatement of tax or the underpayment of tax. Guidance related to relief from joint and several liability can be found within RAB 2000-9 Relief from Joint and Several Liability on Joint Returns.

## TAXABILITY OF FEDERAL OBLIGATIONS

Income from certain U.S. Obligations, reduced by any expenses in carrying the obligation used in arriving at federal AGI, can be subtracted on the Michigan return.

**The following U.S. Obligations are exempt from Michigan Individual Income Tax:**

U.S. Government Bonds	U.S. Saving Bonds - Series E, F, G, and H
U.S. Government Certificates	U.S. Treasury Bills and Notes

**Obligations issued by the following U.S. Agencies are exempt:**

Banks for Cooperatives	Federal Intermediate Credit Banks
Central Banks for Cooperatives	Federal Intermediate Credit Corp.
Commodity Credit Corp.	Federal Land Banks
Consolidated Bonds	Federal Land Banks Association
Consolidated Discount Notes	Federal Savings and Loan Insurance Corporation
Consolidated System Bond, Series L	Home Owner's Loan Corp.
Consolidated Systemwide	Joint Stock Land Banks
Discount Notes	Maritime Administration
District of Columbia	Production Credit Association
Farm Credit Banks	Small Business Administration
Farmers Home Corp.	Student Loan Marketing Association
Federal Deposit Insurance Corp.	Tennessee Valley Authority (bonds only)
Federal Farm Credit Bank	U.S. Housing Authority
Federal Farm Loan Corp.	U.S. Maritime Commission
Federal Farm Mortgage Corp.	U.S. Possessions (obligations Puerto Rico, Virgin Islands, etc.)
Federal Financing Banks	U.S. Postal Service (bonds)
Federal Home Loan Banks	
Federal Housing Administration (General Insurance Fund Debentures)	

**The following debentures issued under the General Insurance Fund are exempt:**

Interest from Armed Services Housing Mortgage Debentures  
Interest from debentures issued under War Housing Insurance Law  
Interest from debentures to acquire rental housing projects

**The following General Services Administration Public Building Trust Participation Certificates are exempt:**

1st series A through E  
2nd series F  
3rd series G  
4th series H and I

**The Guam Obligations issued by Government of Guam are exempt.**

Income from **exempt** U.S. Obligations received by the taxpayer through Money Market Funds, Money Market Certificates, Mutual Funds, Trusts, etc., generally qualifies for a subtraction.

Treasury Bill Futures are **not** U.S. obligations.

**The following U.S. Obligations are taxable:**

Building and Loan Associations  
Credit Union Share Accounts  
District of Columbia Armory Board  
Export-Import Bank of the United States  
Federal Home Loan Mortgage Corporation (Freddie Mac) mortgages and other securities  
Federal Housing Administration (debentures, notes, and participation certificates)  
Federal National Mortgage Association (Fannie Mae) participation and other instruments  
Federal Savings and Loan Associations  
Government National Mortgage Association (Ginnie Mae) (debentures, notes, and participation certificates)  
International Bank for Reconstruction and Development (World Bank)  
Panama Canal Bonds  
Participation Certificates issued by the Federal National Mortgage Association  
Philippine Bonds  
U.S. Department of Agriculture Farmers Home Administration Insured Notes  
U.S. Government Insured Merchant Marine Bonds

**Other examples of taxable interest from federal obligations:**

Debentures issued to mortgages or mortgages foreclosed under the provisions of the National Housing Act  
Farmer's Home Administration  
Federal Home Loan Time deposits  
FSLIC secondary reserve prepayments  
Government National Mortgage Association participation certificates and on Federal Home Loan Mortgage Corporation participation certificates in mortgage pools  
Interest-bearing certificates issued in lieu of tax-exempt securities, such income losing its identity when merged with other funds  
Participating loans in the Federal Reserve System for member banks (Federal Funds)  
Promissory notes of a federal instrumentality  
Refunds of federal income tax  
U.S. Postal Service certificates and savings deposits

## INCOME ALLOCATION CHART

The following chart may be used to determine which types or sources of income are taxable to Michigan. This chart is not inclusive of all types of income, but reflects the most common. Some types of income may be covered in more detail in Treasury’s most current RABs available on the “Reports and Legal Resources” page on Treasury’s Web site.

<u>Type of Income</u>	<u>Allocate To</u>
Salaries, wages, tips, director fees, commissions, etc.	State where earned and state of residence. A Michigan resident may be entitled to a credit if income also taxed by another state.  <b>Exception:</b> Residents of reciprocal states are not taxed by Michigan on this type of income and vice versa.
Deferred compensation:  1. Principal portion  2. Interest portion	State of residence when received.  State of residence when received.
Dividends and interest	State of residence.  <b>Exception:</b> If earned by a partnership or S corporation, allocate or apportion to the state of the business activity if business income.
Business income or loss (Schedule C)	State where business activity takes place. Business income attributable to Michigan and one or more states must be apportioned. (Form MI-1040H.)
Partnerships, S corporations, or other flow-through entities income or loss:  1. Ordinary business income or loss (Schedule E)  2. All other business income or loss  3. Nonbusiness income or loss	State where business activity takes place.  State where business activity takes place.  State of residence.
Capital gain or loss (Schedule D or 4797):  1. Intangible personal property such as stocks, bonds, commodities, futures, etc.  2. Section 1231  3. Real property	State of residence unless business income.  State where property is located unless business income.  State where real property is located unless business income.
Pension, retirement, annuity, qualifying IRA distributions, and Social Security benefits	State of residence when received.
Rent and royalty income or loss (Schedule E):  1. Tangible and intangible personal property  2. Real property (includes royalties for minerals that came from real property such as oil and coal)	Michigan if used in this state, or if a resident and not taxable in the state where property is used.  State where real property is located unless business income.

Estate or trust income or loss	Look to type and source of income and apply guidelines in this chart.
Farm income or loss (Schedule F)	State where farm is located.
Unemployment compensation	State of residence.
Alimony and state and local refunds	State of residence when received.
Gambling winnings from casinos and licensed horse tracks located in Michigan, and winnings from raffle, bingo, and prizes won in Michigan	State where earned and state of residence. (Michigan lottery won by nonresidents is taxable in Michigan.)

## INCOME AND DEDUCTIBLE ITEMS SUMMARY CHART

**Notes:** N = Not included  
Y = Included  
AGI = Adjusted Gross Income  
THR = Total Household Resources

<u>Income Items</u>	<u>AGI</u>	<u>Income</u>	<u>THR</u>
Alimony received for all agreements made, or orders entered, as of January 1, 2019	N	N	Y
Awards, prizes (amount in excess of \$300 for THR)	Y	Y	Y
Bingo:			
First \$300	Y	Y	N
In excess of \$300	Y	Y	Y
Bonuses	Y	Y	Y
Business (Schedule C) income or loss:			
In Michigan (except income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to severance tax)	Y	Y	Y*
From another state and/or income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to severance tax	Y	N	Y*
Capital gains:			
100% taxable	Y	Y	Y
<b>Note:</b> Senior citizens born before 1946 may subtract interest, dividends, and capital gains included in AGI. The maximum deduction must be reduced by the pension subtraction. Allowable deduction is the smaller of the calculation or actual total interest, dividends, and capital gains.			
This subtraction is adjusted by the percentage increase in the U.S. Consumer Price Index for the preceding calendar year. See MI-1040 instruction booklet for the year being reviewed.			
Gains on sale of principal residence	N	N	Y

\* All business income and loss must be netted before considering the effect on THR. If the netting results in a loss, this cannot be used to reduce THR. Exception: Farmland Preservation Tax Credit continues to be based on household income and not THR. Business losses and NOL deductions are allowed in household income. (See MI-1040CR-5 instructions.)

<u>Income Items</u>	<u>AGI</u>	<u>Michigan Taxable Income</u>	<u>THR</u>
Casualty loss reimbursement in excess of loss of property	Y	Y	Y
Child support payments:			
Payer	Y	Y	Y
Receiver	N	N	Y
Chore service payments:			
Provider of service	Y	Y	Y
Receiver of service	N	N	N
Commissions	Y	Y	Y
Compensation for personal services rendered	Y	Y	Y
Damages for personal injury or sickness	N	N	Y
Deferred compensation	Y	Y	Y
Director's fees	Y	Y	Y
Disability income (limited)	Y	Y	Y
Policeman and Fireman On-Duty "J-Days"	N	N	Y
Dividends received (see <b>Note</b> under "Capital gains")	Y	Y	Y
Educational expenses paid by employer	N	N	Y
Employee business expenses: cash allowance or reimbursement	Y	Y	Y
Energy assistance grants or tax credit	N	N	N
Estates or trusts income or loss	Y	Y	Y*
FIP benefits (see "Public assistance . . .")			
Farm income or loss from:			
Michigan	Y	Y	Y*
Another state	Y	N	Y*
Farm portion of homestead property tax credit	Y	Y	N
Farmland preservation tax credits	Y	Y	Y
Foreign earned income exclusion	N	N	Y
Foster care payments	N	N	Y
Gambling:			
Winnings (amount in excess of \$300 for THR)	Y	Y	Y
Losses:			
Professional gamblers (Net losses)	Y	Y	N*
All others (Session netting permitted)	N	N	N

\* All business income and loss must be netted before considering the effect on THR. If the netting results in a loss, this cannot be used to reduce THR. Exception: Farmland Preservation Tax Credit continues to be based on household income and not THR. Business losses and NOL deductions are allowed in household income. (See MI-1040CR-5 instructions.)

<u>Income Items</u>	<u>AGI</u>	<u>Michigan Taxable Income</u>	<u>THR</u>
Gifts cash:			
First \$300	N	N	N
Excess over \$300	N	N	Y
Government grant for home repair or improvement	N	N	N
Government payments made directly to educational institutions or housing projects	N	N	N
Health, life (unless benefits exceed \$50,000), and accident insurance premiums paid by employer	N	N	N
Homestead property tax credits	Y	N	N
Housing allowance for clergy	N	N	Y
Inheritance bequest or devise from:			
Nonspouse	N	N	Y
Spouse	N	N	N
Interest received on:			
Banking, savings and loan assoc., etc., accounts	Y	Y	Y
Insurance dividends	Y	Y	Y
Land contracts	Y	Y	Y
Money market and savings certificates	Y	Y	Y
Municipal bonds issued by another state	N	Y	Y
Municipal bonds issued by Michigan	N	N	Y
Tax refunds	Y	Y	Y
U.S. Obligations (only specific agencies exempt)	Y	N	Y
Interest taxable to Michigan (see <b>Note</b> under “Capital gains”)			
Life insurance proceeds paid to:			
Nonspouse	N	N	Y
Spouse	N	N	N
Life insurance cash in amount in excess of premiums	Y	Y	Y
Living expenses of claimant paid by another person	N	N	Y
Loans received or paid	N	N	N
Long-term disability payments received (if all or part of premium paid by employer)	Y	Y	Y
Lottery:			
100% taxable (amount in excess of \$300 for THR)	Y	Y	Y
Installment winners of Michigan lottery who won prior to 12-30-88	Y	N	Y
Lump sum distribution included in 10-year averaging (for individuals born before 1936)	N	N	Y

<u>Income Items</u>	<u>AGI</u>	<u>Michigan Taxable Income</u>	<u>THR</u>
Medicare payments	N	N	N
Military wages or retirements			
Combat pay not excluded from taxable on federal return	Y	N	Y
Combat pay excluded from taxable on federal return	N	N	Y
Moving expenses, reimbursement:			
Moving into Michigan	Y	Y	Y
Moving out of Michigan	Y	N	N
Net operating loss deduction (the NOL is allowed in household income when computing the Farmland Preservation Tax Credit)	Y	Y	N
Partnership income or loss:			
In Michigan (except income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to Michigan severance tax)	Y	Y	Y*
From another state and/or income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to Michigan severance tax	Y	N	Y*
Pension and retirement benefits for persons born after 1945	Y	Y/N	Y
Private pensions (e.g., qualified annuity plans) up to amount allowed as subtraction for claimed year for persons born before 1946	Y	N**	Y
Private pensions or qualified annuity plans in excess of amount allowed as subtraction for claimed year for persons born before 1946	Y	Y	Y
Public pensions (federal, state, or municipal governments) for persons born before 1946	Y	N	Y

\* All business income and loss must be netted before considering the effect on THR. If the netting results in a loss, this cannot be used to reduce THR. Exception: Farmland Preservation Tax Credit continues to be based on household income and not THR. Business losses and NOL deductions are allowed in household income. (See MI-1040CR-5 instructions.)

\*\* This subtraction is adjusted by the percentage increase in the U.S. Consumer Price Index for the preceding calendar year. (See the MI 1040 instruction book for the year being reviewed.)

<u>Income Items</u>	<u>AGI</u>	<u>Michigan Taxable Income</u>	<u>THR</u>
Public assistance payments from DHHS			
FIP paid to grandparents for care of grandchildren	N	N	Y
FIP paid to parents for care of children	N	N	Y
Public health officer's income:			
Michigan resident	Y	Y	Y
Nonresident	Y	N	N
Railroad sick pay	Y	N	Y
Railroad Tier 1 retirement benefits:			
Taxable amount for persons born before 1946	Y	N	Y
Nontaxable portion	N	N	Y
Railroad Tier 2 retirement benefits for persons born before 1946	Y	N	Y
Railroad unemployment benefits	Y	N	Y
Refunds - Michigan state and local income tax	Y	N	N
Relief in kind	N	N	N
Rents and royalties income or loss:			
In Michigan (except income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to Michigan severance tax)	Y	Y	Y
From another state and/or income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to Michigan severance tax	Y	N	Y
<b>Note:</b> All rent and royalty income and loss must be netted before considering the effect on THR. If the netting results in a loss, this cannot be used to reduce THR.			
Retirement benefits (see "Private and Public pensions . . .")	Y	N/Y	Y
S corporation business activity:			
In Michigan (except income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to Michigan severance tax)	Y	Y	Y*
In another state and/or income and related expenses from oil and gas royalties and nonferrous metallic minerals extraction subject to Michigan severance tax	Y	N	Y*

\* All business income and loss must be netted before considering the effect on THR. If the netting results in a loss, this cannot be used to reduce THR. Exception: Farmland Preservation Tax Credit continues to be based on household income and not THR. Business losses and NOL deductions are allowed in household income. (See MI-1040CR-5 instructions.)

<u>Income Items</u>	<u>AGI</u>	<u>Michigan Taxable Income</u>	<u>THR</u>
Scholarships, stipends, education grants, GI bill benefits  <b>Note:</b> Scholarships must be received and used for qualified tuition and related expenses such as fees, books, supplies, and equipment required for courses of instruction at a qualified organization.	N	N	Y
Scholarships or grants received and used for nonqualified expenses that are included in federal AGI such as room and board	Y	Y	Y
Severance pay	Y	Y	Y
Sick pay other than railroad sick pay	Y	Y	Y
Social Security benefits:			
Taxable amount	Y	N	Y
Nontaxable portion	N	N	Y
Stipends received for benefit of grantor (interns, resident doctors)	Y	Y	Y
Strike pay	Y	Y	Y
Supplemental gain (Form 4797)	Y	Y	Y
Supplemental unemployment benefits	Y	Y	Y
Surplus foods	N	N	N
Unemployment compensation	Y	Y	Y
Unemployment compensation from railroad	N	N	Y
Vacation allowance	Y	Y	Y
Veterans Administration benefits	N	N	Y
Wages, salaries, tips	Y	Y	Y
Workers' compensation	N	N	Y

<u>Deductible Items</u>	<u>AGI</u>	<u>Michigan Taxable Income</u>	<u>THR</u>
Alimony paid	Y	Y	Y
Capital losses:			
Short-term, maximum \$3,000 (THR, maximum \$3,000)	Y	Y	Y
Long-term, maximum \$3,000 (THR, maximum \$3,000)	Y	Y	Y
Casualty loss:			
Claimed as itemized deduction	N	N	N
Claimed as business deduction	Y	Y	Y
“Claim of Right” (repayment of items previously included in income) taken as:			
Itemized deduction (taken as Michigan credit)	N	N	N
Federal tax credit (taken as Michigan credit)	N	N	N
Deduction reflected in AGI	Y	Y	Y
Health and accident insurance paid by taxpayer for self and family (not including pre-tax payroll deductions)	N	N	Y
IRA or Keogh, (payments to)	Y	Y	Y
Moving expenses:			
Moving to Michigan	Y	Y	Y
Moving out of Michigan	Y	N	N
Penalty on early withdrawal of savings	Y	Y	Y
Self-employment tax deduction	Y	N	Y
Venture capital deduction	Y	N	N

## MICHIGAN CITIES LEVYING AN INCOME TAX

The following Michigan cities levy an income tax of **one percent** on residents and **0.5 percent** on nonresidents except those cities where rates are indicated:

Albion	Hudson
Battle Creek	Ionia
Big Rapids	Jackson
Detroit (2.4% on residents, 1.2% on nonresidents)	Lansing
East Lansing (effective January 1, 2019)	Lapeer
Flint	Muskegon
Grand Rapids (1.5% on residents, 0.75% on nonresidents)	Muskegon Heights
Grayling	Pontiac
Hamtramck	Port Huron
Highland Park (2% on residents, 1% on nonresidents)	Portland
	Saginaw (1.5% on residents, 0.75% on nonresidents)
	Springfield
	Walker

# CORPORATE INCOME TAX

## WHAT'S NEW

**Public Act (PA) 38 of 2018** amended the definition of Internal Revenue Code (IRC) to be that in effect on January 1, 2018, to conform the Corporate Income Tax (CIT) to the IRC as amended by the federal Tax Cuts and Jobs Act, PL 115-97.

**PA 222 of 2018** reduced the rate of the gross premiums tax attributable to qualified health insurance policies from 1.25 percent to 0.95 percent beginning January 1, 2019 through December 31, 2019. For the 2020 tax year and subsequent tax years, the tax rate on those gross premiums will be determined by the Michigan Department of Treasury (Treasury) according to a formula set forth in subsection 635(7) of the Act, MCL 206.635(7).

**PA 460 of 2018** amended the franchise tax applied to financial institutions to redefine the tax base to total equity capital, as reported by the financial institutions, or the top-tiered parent entity in the case of a unitary business group of financial institutions, on certain regulatory forms filed with applicable federal regulatory agencies, for tax years beginning after December 31, 2018. The Act also eliminated the five-year averaging of a financial institution's tax base beginning in tax years after December 31, 2020, the equity capital of which will be computed without averaging as of the close of the tax year.

## OVERVIEW

Taxpayers subject to the CIT include C corporations and entities taxed federally as C corporations. Insurance companies and financial institutions are subject to alternative taxation under the CIT. Individuals and Flow-Through Entities (FTEs), including S Corporations, partnerships, and trusts, generally are not taxpayers under CIT unless the FTE elects or is required to file as a C corporation for federal income tax purposes or otherwise constitutes an insurance company or financial institution. The tax rate levied on C corporations is six percent of the tax base after allocation or apportionment. A CIT taxpayer that is not an insurance company or a financial institution is referred to as a **standard taxpayer**.

Insurance companies and financial institutions are taxed separately under the CIT and are taxed regardless of entity type. Insurance companies are taxed at the rate of 1.25 percent of gross direct premiums written on property or risk located or residing in Michigan. However, a discounted rate applies to premiums attributable to qualified health policies. Insurance companies are subject to the CIT premiums tax or the retaliatory tax under MCL 500.476a, whichever is greater. Financial institutions are subject to a tax on apportioned total equity capital. For tax years 2019 and 2020, total equity capital is averaged over five years. Beginning with tax year 2021, total equity capital is determined as of the close of the tax year. Due to their distinct treatment under CIT, insurance companies and financial institutions are addressed separately in this chapter.

### Definitions

**Business Income** means federal taxable income. For a tax-exempt taxpayer, business income means that part of federal taxable income derived from unrelated business activity.

**Corporation** means a person that is required or has elected to file as a C corporation at the federal level. An entity that has elected to file as a C corporation at the federal level will be subject to this tax along with traditional C corporations. Corporation does not include a financial institution or insurance company, as those regulated industries are taxed separately.

**Federal Taxable Income** means taxable income as defined in Section 63 of the IRC, except that federal taxable income shall be calculated as if Section 168(k) and Section 199 of the IRC were not in effect.

**Flow-Through Entity** means an S corporation, general partnership, limited partnership, trust, limited liability partnership, or a limited liability company that is not taxed as a corporation at the federal level for the tax year. An FTE does not include a disregarded entity.

**Gross receipts** means the entire amount received by the taxpayer from any activity, whether in intrastate, interstate, or foreign commerce, carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others, with certain exclusions. For purposes of the filing threshold, gross receipts includes the taxpayer's proportionate share of apportioned or allocated gross receipts attributable to an ownership interest in an FTE.

**Sales** is broadly defined to include the sale of tangible personal property, intangible property, services, and the rental, lease, licensing, or use of tangible or intangible property, including interest that constitutes business activity.

**Taxpayer** means a corporation, insurance company, financial institution, or unitary business group that is liable for tax, interest, or penalty under CIT.

**Unitary Business Group (UBG)** means a group of United States persons that are corporations, insurance companies, or financial institutions, other than a foreign operating entity, one of which owns or controls, directly or indirectly, more than 50 percent of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other members, and that has business activities or operations that result in a flow of value between or among members included in the UBG or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. UBG includes an affiliated group that makes an election under MCL 206.691(2) to be treated, and to file, as a UBG.

## **Filing Requirements**

### **Filing Thresholds**

Any standard taxpayer engaged in business activity in Michigan whose apportioned or allocated gross receipts are \$350,000 or more in a tax year is required to file a tax return. For tax years of less than 12 months, a taxpayer's gross receipts filing threshold is annualized by multiplying \$350,000 by a fraction, the numerator of which is the number of months in the taxpayer's tax year and the denominator of which is 12. Filing threshold for a UBG is determined after intercompany eliminations.

In calculating the filing threshold of a C corporation, the apportioned or allocated gross receipts of an FTE shall be imputed to each of its members based upon the same percentage that each owner's proportionate share of distributive income is to the total distributive income of the FTE. Imputed gross receipts from an FTE in which the taxpayer is a non-unitary owner are not included if the FTE has a valid Michigan Business Tax (MBT) election for a tax year that ends with or within the taxpayer's tax year. See the MBT chapter of this manual for more information on the MBT election.

Any taxpayer with an annual liability of less than or equal to \$100 is not required to file or pay; however, a taxpayer that wishes to claim a refund or to carry forward a credit or business loss must file a return.

Special rules apply to UBGs. The filing requirement for a UBG is determined on a group basis. Therefore, if the filing threshold is met for the group, every member of the group that is a standard CIT taxpayer is included on the UBG's return regardless of the member's gross receipts. A UBG is required to eliminate all intercompany transactions from gross receipts.

**Example 1:** A UBG is comprised of members A, B, C, D, and E, each with \$80,000 in gross receipts. Assuming allocation to Michigan, the gross receipts of the UBG are \$400,000. Since \$400,000 exceeds the \$350,000 filing threshold, the taxpayer is required to file a return and pay the tax. The fact that no member of the UBG would meet the filing threshold if considered individually is immaterial. Members A, B, C, D, and E are all included in the UBG return. If the calculated tax liability is \$100 or less, there is no filing requirement.

**Example 2:** Same facts as in Example 1 except \$60,000 of member A's gross receipts are from transactions with member B. The group must eliminate intercompany transactions from gross receipts, meaning that \$60,000 is removed from total gross receipts of \$400,000. Since \$340,000 does not meet or exceed the filing threshold of \$350,000, the UBG is not required to file a return.

The gross receipts filing threshold does not apply to insurance companies and financial institutions. However, these taxpayers are not required to file or pay if annual liability is less than or equal to \$100.

## **Tax Year**

A CIT taxpayer's tax year is the calendar year or the fiscal year ending during that calendar year. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Generally, a taxpayer's tax year is for the same period covered by its federal income tax return.

A taxpayer that has a 52 or 53 week tax year beginning not more than seven days before the end of any month is considered to have a tax year beginning on the first day of the subsequent month.

For a UBG, the combined unitary return includes all members with tax years ending with or within the Designated Member's (DM) tax year. Refer to the "Unitary Business Groups" section of this chapter for more on DMs. A person included in a UBG that joins or departs the UBG other than at the end of that person's federal tax year shall have a tax year beginning at the start of its federal tax year and ending on the date of joining or departing the UBG and another tax year beginning on the date immediately after joining or departing the UBG and ending with the conclusion of its federal tax year, even as there is no federal tax year change.

### **Due Dates and Extensions**

Generally, an annual or final return must be filed with Treasury by the last day of the fourth month after the end of the taxpayer's tax year. Thus, a return for calendar year 2019 is due April 30, 2020.

Taxpayers seeking an extension of time to file must file an *Application for Extension of Time to File Michigan Tax Returns* (Form 4) by the due date of the CIT annual return. If the taxpayer received a federal extension indicates that information on Form 4, and sends the necessary payment or lists the estimated payments made, then the taxpayer will receive an automatic extension to the last day of the eighth month following the original due date. An extension for good cause may be sought by writing to Treasury. **An extension of time to file is not an extension of time to pay.** An extension of time to file will also extend the statute of limitations.

### **Estimated Returns and Payments**

Corporate, financial institution, and insurance company taxpayers that reasonably expect to have a tax liability of more than \$800 for the tax year must make quarterly estimated payments and returns. Each payment must approximate the taxpayer's tax liability for the quarter or 25 percent of the estimated annual liability. Second-, third-, and fourth- quarter payments should include any necessary adjustments for overpayments or underpayments from a previous quarter. For the taxpayer's year of less than 12 months under CIT, the amounts paid with each quarterly return shall be proportional to the number of payments required. A taxpayer with a tax year of less than four months is not required to file an estimated tax return or remit estimated payments.

*Note: Taxpayers that calculate and pay estimates pursuant to IRC 6655(e) may use the same methodology to make CIT estimated payments.*

In order to avoid interest and penalty, the sum of all estimated payments made must be at least 85 percent of the annual liability and each quarterly payment must reasonably approximate the liability incurred in the quarter.

A taxpayer may qualify for the safe harbor provision under MCL 206.681(3)(b) if the previous year's liability was \$20,000 or less. The taxpayer must have business activity in Michigan in the preceding year to qualify for the safe harbor. An entity that was not in existence or that was without business activity in Michigan in the preceding year would not have a "preceding year's tax liability under CIT" to qualify for the safe harbor and would not be able to avail itself of it. The safe harbor is available to a taxpayer with a previous year's CIT liability of zero as long as the taxpayer had business activity in Michigan in the prior year. The taxpayer must file a return to establish a zero liability to take advantage of the safe harbor. Under the safe harbor, a taxpayer must timely submit four equal estimated payments, the sum of which equals the previous tax year's liability. A taxpayer may choose to make larger payments, including full payment, earlier in the current tax year so the total amount paid equals the immediately preceding tax year's tax liability before the fourth quarter. However, making larger payments on later quarters will not satisfy the safe harbor provision.

**Example 1:** A taxpayer has a prior year tax liability of \$10,000. The taxpayer makes a timely first quarter estimated payment of \$5,000 and a timely second quarter estimated payment of \$5,000. The taxpayer makes no estimated payments for the remainder of the year. The taxpayer will have satisfied the safe harbor based on the prior year tax liability.

**Example 2:** A taxpayer has a prior year tax liability of \$10,000. The taxpayer does not make a first quarter estimated payment, but makes a timely second quarter estimated payment of \$10,000. The taxpayer makes no estimated payments for the remainder of the year. The taxpayer did not satisfy the safe harbor based on the prior year's tax liability because there was no first quarter estimated payment.

When the prior CIT tax year is a period of less than 12 months, the \$20,000 threshold test is applied to the annualized liability of the short year. To annualize the short year liability, take the tax liability for the year, multiply by 12, then divide that result by the number of months in the short tax year. The estimated payments made in four equal installments must equal the annualized prior year's tax liability.

**Example 1:** The taxpayer's prior CIT return was for a period of six months, with a tax liability of \$5,000. To satisfy the safe harbor provision, the taxpayer must make four equal estimated payments for the current year totaling \$10,000 ( $(\$5,000 \times 12)/6 = \$10,000$ ).

**Example 2:** The taxpayer's prior CIT return was for a period of six months, with a tax liability of \$15,000. This taxpayer cannot use the safe harbor based on the prior year's tax liability because the annualized tax liability in the prior year is \$30,000. ( $(\$15,000 \times 12)/6 = \$30,000$ ). Therefore, to avoid penalty and interest charges, the taxpayer must make total estimated payments equal to at least 85 percent of the total liability for the tax year and the amount of each estimated payment must reasonably approximate the tax liability for the quarter.

A taxpayer may pay quarterly estimated payments by check with the *Corporate Income Tax Quarterly Return* (Form 4913) or may direct their bank to electronically pay Treasury monthly or quarterly by Electronic Funds Transfer (EFT). In addition, Treasury accepts payments by credit card, debit card, and electronic check through Michigan Treasury Online at [mto.treasury.michigan.gov](http://mto.treasury.michigan.gov). Log on or create a user profile and follow fast pay instructions to make your payment. Fees apply to credit/debit card transactions. When payments are made by EFT or MTO, Form 4913 is not required.

Estimated returns and payments for calendar year taxpayers are due by April 15, July 15, October 15, and January 15 of the following year. Fiscal year taxpayers should make returns and payments by the appropriate due date which is 15 days after the end of each fiscal quarter.

## **Completing Forms**

Before beginning with the *Corporate Income Tax Annual Return* (Form 4891), all appropriate federal forms should be completed.

An entity should first determine whether a UBG exists. If preparing a UBG return for a standard taxpayer, complete the *Corporate Income Tax Data on Unitary Business Group Members* (Form 4897) for each member first, as this form provides the data that is required on Form 4891.

To determine whether Form 4891 is required to be filed for the tax year, the following steps are suggested:

1. Determine whether the taxpayer had nexus with Michigan. If one or more entities in a UBG had nexus with Michigan, all entities in the UBG must be included in the combined return.
2. Determine whether the taxpayer had \$350,000 or more in gross receipts that are allocated or apportioned to Michigan. Allocated or apportioned gross receipts after intercompany eliminations should be used if the taxpayer is a UBG.
3. Determine whether liability will be less than or equal to \$100, in which case a return is not required to be filed. Determine liability at the UBG level if the taxpayer is a UBG.
4. If Steps 1 through 3 determine that filing Form 4891 is not required, consider whether Form 4891 should be filed to seek a refund or to preserve certain credits and carryforwards.

Insurance companies and financial institutions should review general instructions for the annual returns, *Insurance Company Annual Return for Corporate Income and Retaliatory Taxes* (Form 4905) and *Corporate Income Tax Annual Return for Financial Institutions* (Form 4908).

## **Amending a Return**

Taxpayers file a separate form to amend returns.

- Standard taxpayers use the *Corporate Income Tax Amended Return* (Form 4892)
- Insurance companies use the *Insurance Company Amended Return for Corporate Income and Retaliatory Taxes* (Form 4906)

- Financial institutions use the *Corporate Income Tax Amended Return for Financial Institutions* (Form 4909).

To amend a return to claim a refund, the taxpayer must file within four years of the due date of the original return, including valid extensions, with certain statutory exceptions. Refer to Section 27a of the Revenue Act, MCL 205.27a, for more information on extensions of the statute of limitations. Interest will be paid beginning 45 days after the claim is filed or the due date of the return, whichever is later. If a taxpayer amends a return to report a deficiency, penalty and interest may apply from the due date of the original return.

If changes are made to the federal income tax return that affect the CIT tax base, filing an amended return is required. If an amended return is filed within 120 days after a final determination by the IRS, penalty is avoided.

### **Tax Base**

CIT is levied on corporations with nexus with Michigan at a rate of six percent of the CIT base after allocation or apportionment. The CIT base is business income with certain additions and subtractions before allocation or apportionment and a business loss deduction after allocation or apportionment. Business income is federal taxable income. Federal taxable income is calculated as if IRC 168(k) (bonus depreciation) and IRC 199 (domestic production activities deduction) were not in effect. The business loss deduction is only available for a business loss incurred under CIT after December 31, 2011. A taxpayer that acquires the assets of another corporation through an IRC 381(a)(1) or 381(a)(2) transaction may use any available CIT business loss attributable to the transferor corporation.

For a UBG, the tax base includes business income and loss and additions and subtractions of all standard members included in the UBG, without regard to whether that member has nexus. Transactions between members of the UBG are eliminated in calculating the tax base. Refer to the “Unitary Business Groups” section of this chapter for more on UBGs’ tax bases and eliminations.

### **Exemptions**

Exemptions from tax under the CIT are provided for the following entities:

- Most entities exempt from federal income tax.
- A foreign person domiciled in a subnational jurisdiction of a North American Free Trade Agreement member country that does not impose a business tax on a similarly situated taxpayer domiciled in Michigan. For purposes of this provision, foreign person is defined in MCL 206.625(1)(c).
- A Domestic International Sales Corporation as defined in IRC 992 for the tax year that it has in effect a valid election to be treated as a DISC.
- A self-insurer group operating under an agreement entered into pursuant to Section 611(2) of the Worker’s Disability Compensation Act, MCL 418.611.

If a taxpayer is exempt under the first criteria but has unrelated business taxable income as defined in the IRC, that business activity is subject to CIT and a return is required if the apportioned or allocated gross receipts are \$350,000 or more.

Foreign persons that are not exempt from CIT must calculate business income, gross receipts, CIT tax base, and the sales factor differently than domestic taxpayers. Refer to MCL 206.625(2)-(4) for details.

If a taxpayer is exempt and has no unrelated business taxable income, filing a CIT return is not required, unless the taxpayer wishes to carry forward an overpayment or business loss, or request a refund.

### **Nexus**

A person has nexus with Michigan if the person:

- is physically present in the State for more than one day,
- actively solicits sales in Michigan and has gross receipts of \$350,000 or more sourced to Michigan, or
- has an ownership or beneficial interest in an FTE (directly or indirectly through one or more FTEs) that has nexus.

**Physical presence** means any activity conducted by the taxpayer or someone acting in a representative capacity for the taxpayer. Physical presence does not include the activities of professionals providing services in a professional capacity if that activity is not associated with the taxpayer's ability to establish and maintain a market.

**Actively solicits** means:

- Speech, conduct, or activity that is purposefully directed at or intended to reach persons in Michigan and that explicitly or implicitly invites an order for a purchase or sale, or
- Speech, conduct, or activity that is purposefully directed at or intended to reach persons in Michigan that neither explicitly nor implicitly invites an order for a purchase or sale, but is entirely ancillary to requests for an order for a purchase or sale.

### **Apportionment**

For a taxpayer whose business activities are confined solely to Michigan, the tax base is allocated entirely to Michigan. A taxpayer that has business activities subject to tax within and without Michigan will apportion its tax base using the sales factor. Business activity is subject to tax outside Michigan if the taxpayer is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or if the other state has jurisdiction to tax the taxpayer, whether or not that state does subject the taxpayer to a tax.

The sales factor is a fraction, the numerator of which is total sales of the taxpayer in Michigan during the tax year and the denominator of which is total sales everywhere.

Sales of tangible personal property are sourced to where the property is shipped or delivered to any purchaser based on the ultimate destination at the point that the property comes to rest. Property stored in transit for 60 days or more, or in the case of a dock sale not picked up for 60 days or more, is deemed to have come to rest. Sales from the lease/rental of tangible personal property and royalties or other income received for the use of intangible property are sourced based on where the property is used. Sales of services are sourced according to where the benefit of the service is received.

Additional sourcing rules exist for securities brokerage services, regulated investment companies, mortgages, other loans, credit card receivables, loan servicing fees, investment and trading activities, transportation services, telecommunications service, and private communication services. Refer to MCL 206.665 for more on sourcing of sales.

For a UBG, “sales” includes sales in Michigan of every entity included in the UBG without regard to whether the entity has nexus. However, sales between entities included in a UBG must be eliminated in calculating the sales factor.

If a taxpayer has a direct or indirect ownership or beneficial interest in an FTE, the distributive share of business income directly attributable to the business activity of that FTE is apportioned using the sales factor of the FTE, unless the FTE is unitary with the taxpayer. If an FTE is unitary with the taxpayer, the taxpayer’s sales factor includes its proportionate share of the sales of the FTE. Sales between the taxpayer and FTEs unitary with the taxpayer, and sales between FTEs unitary with the taxpayer, must be eliminated to the extent of the taxpayer’s interest in the FTE.

A taxpayer is unitary for apportionment purposes with an FTE if the taxpayer owns or controls, directly or indirectly, more than 50 percent of the ownership interests with voting rights (or ownership interests that confer comparable rights to voting rights) of the FTE, and the taxpayer and the FTE:

- have activities or operations that result in a flow of value between the taxpayer and the FTE or between the FTE and another FTE unitary with the taxpayer, or
- have business activities or operations that are integrated with, dependent upon, or contribute to each other.

There is an alternative apportionment provision contained in the statute; however, a taxpayer must first obtain Treasury’s approval prior to its use.

## Credits

### **Small Business Alternative Credit**

The small business alternative credit is the only credit offered under the CIT. The credit is available to a taxpayer, excluding an insurance company and a financial institution, with gross receipts that do not exceed \$20,000,000 and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000, as adjusted annually for inflation using the Detroit consumer price index. **Adjusted business income** is defined in MCL 206.671(9)(b).

The taxpayer is disqualified for the credit if an officer or shareholder receives more than \$180,000 in compensation and directors' fees (compensation disqualifier), or if compensation and directors' fees plus share of modified business income after loss adjustment exceeds that amount (allocated income disqualifier).

The credit will be reduced by 20 percent for every \$5,000 that an officer's or a shareholder's total of compensation, director's fees, and share of modified business income after loss adjustment exceeds \$160,000. The credit is also phased out by a fraction based on the amount by which the taxpayer's gross receipts exceed \$19 million.

A UBG may qualify for the credit, but a disqualifier or reduction percentage applies to the entire group if it applies to any one member of the group. For example, the entire UBG is disqualified from taking the credit if the UBG includes a member that is a Limited Liability Company (LLC) taxed as a corporation (for purposes of this example, "member LLC") and any one owner of member LLC receives more than \$180,000 in shareholder compensation.

The gross receipts and adjusted business income used in determining disqualifiers are those of the UBG and are calculated at the group level. The compensation and allocated income disqualifiers are calculated for an officer or shareholder using all amounts paid or allocable to the officer or shareholder by all members of the UBG. The reduction percentages of the credit are calculated in the same manner. Intercompany eliminations are required in the calculation of the gross receipts and adjusted business income credit disqualifiers, as well as the loss adjustment.

**Example 1:** UBG XY is comprised of an LLC taxed as a corporation, X, and a C corporation, Y. Shareholder 1 is a shareholder of Y whose compensation, director's fees, and share of modified business income from Y total \$150,000. Shareholder 1 is also an owner of X with compensation, director's fees, and share of modified business income from X totaling \$12,000. There is no loss adjustment for the period. Shareholder 1 has the largest allocated income of all shareholders/officers of UBG XY. For purposes of the allocated income disqualifier, the total amount of allocated income to Shareholder 1 by all members of the UBG is \$162,000. The UBG may claim 80 percent of the total credit because total allocated income is more than \$160,000 but less than \$165,000.

**Example 2:** Assume in the above example that the combined gross receipts of UBG XY total \$19,500,000. Intercompany transactions between X and Y generated \$600,000 of gross receipts that must be eliminated for purposes of the gross receipts reduction percentage. Total gross receipts net of eliminations equals \$18,900,000; therefore, the credit is not subject to reduction.

## Credit Recapture

A taxpayer that claimed a credit under either Single Business Tax (SBT) or MBT that had a recapture provision will have to recapture under the CIT if the taxpayer fails to comply with any terms of the credit agreement or if the taxpayer sells or otherwise moves the property for which the credit was claimed fewer than five years after the year in which the credit was originally claimed. In the case of recapture, a taxpayer must, in the tax year the taxpayer failed to satisfy or breached the conditions of the credit agreement, add back to its tax liability under CIT the amount of the credit or a percentage of the amount of the credit claimed.

For a taxpayer that claimed an Investment Tax Credit under the SBT or MBT, recapture will occur under CIT and at the rate and to the extent the credit was used under either of the previous taxes. Recapture is required when the tangible asset for which the credit was claimed is sold, transferred out of state, or otherwise disposed of during the tax year. The recapture amount is added back to the taxpayer's CIT liability. Most importantly, a taxpayer is required to file and report recapture even if the taxpayer is below the filing threshold.

### **Certificated MBT Credits**

A taxpayer that has been approved to receive, has received, or has been assigned a certificated credit under the MBT before January 1, 2012, but has not fully claimed or exhausted the credit before that date, may make an election to continue paying tax under MBT and claim that credit. Refer to the MBT chapter for more information regarding the MBT election.

### **Unitary Business Groups (UBGs)**

Entities that meet the definition of a UBG under MCL 206.611(6) are required to file a combined return under CIT. A UBG exists when two or more qualifying United States persons satisfy both a control test and relationship test. If a UBG exists, the group is treated as a single taxpayer and individual members do not file separate returns. See Revenue Administrative Bulletin 2018-12.

### **The Designated Member (DM)**

Every UBG must appoint a DM that is responsible for filing the return on behalf of the group. Only the DM is responsible for registering for CIT with Michigan and all CIT returns are filed under the DM's taxpayer identification number. Only the DM may file a valid extension request for the UBG. Treasury maintains the UBG's CIT tax data under the DM's name and account number. Each member of the UBG is listed on the group's annual return.

If the member that owns or controls the other members of the UBG has nexus with Michigan, the controlling member must be the DM. Otherwise, the controlling member must appoint any group member with nexus to serve as the DM.

### **Calculation of Liability**

Unitary returns are filed by taxpayer type: either standard (not owned by and unitary with a financial institution) or financial institution. Insurance companies do not file combined returns. Transactions between members of the group are eliminated from the filing threshold, tax base, apportionment factor, and small business alternative credit disqualifiers. In general, components used to determine tax liability relate to the group as a single taxpayer, not to the individual members that comprise the group.

The tax base of a UBG is the sum of the business income of each group member adjusted for any income and related deductions arising from intra-group transactions. Certain additions and subtractions to business income are outlined in MCL 206.623(2) and must be made before allocation or apportionment to arrive at the unitary group's income tax base. After the tax base is allocated or apportioned, the tax base is adjusted by available business loss. There are specific rules for calculation of a UBG's available business loss when a member to whom a business loss is attributable joins or leaves the group mid-year, which can be found within the instructions for Form 4891. The business income of each member should reflect the accounting method that member used to compute its federal taxable income.

## Eliminations

Eliminations apply to transactions between any members of the UBG. If the UBG includes standard taxpayers, an insurance company, and a financial institution, transactions between the standard taxpayer member and an insurance or financial member are eliminated.

Eliminations are not permitted for transactions with an otherwise-related entity if the related entity is not included in the UBG. However, if a taxpayer is unitary with an FTE for apportionment purposes, sales between the taxpayer and that FTE must be eliminated from the apportionment factor to the extent of the taxpayer's ownership percentage in the FTE. Sales between an FTE unitary with the taxpayer and another FTE unitary with that same taxpayer must be eliminated to the extent of the taxpayer's ownership interest in the selling FTE.

Timing differences can arise from differing year-ends or differing accounting methods of UBG members. If a transaction between two members of a UBG is reported on the group's current return by one member but reported on the preceding or succeeding group return by the other member, the group is required to eliminate the side of the transaction included on the group's current return. The other side of the same transaction will be eliminated on the group return for the filing period in which the other member reports the transaction.

**Example 1:** A UBG is comprised of members A and B. Member A has a calendar year-end of December 31, 2022, and B has a fiscal year-end of June 30, 2022. Member A is the DM. Member A pays member B rent in the amount of \$2,000 per month for the 2021 calendar year and \$4,000 per month for the 2022 calendar year. For the 2022 tax filing, member B eliminates from gross receipts six months' rent at \$2,000 and six months' rent at \$4,000, for a total of \$36,000.

Member B also eliminates \$36,000 from business income. Member A eliminates from business income 12 months of rental expense at \$4,000, for a total of \$48,000. This will cause a timing difference for intercompany elimination that will reverse when a member ceases to exist or is no longer a part of the UBG.

## Affiliated Group Election

Under the affiliated group election, a group of persons may elect to be treated as a UBG for purposes of filing CIT. The group does not have to satisfy the relationship test in MCL 206.611(6). The group of persons need not request permission from Treasury to make the election but must provide information on its annual return – standard filers, in box 7b on Form 4891, and financial institutions, in box 8a of Form 4908. Each person in the affiliated group is deemed to have agreed to be bound by the election and any person who subsequently enters the affiliated group during the period of the election is deemed to have consented and is bound by the election. The election is irrevocable and binding for the tax year for which it is made and the subsequent nine tax years. The election may be renewed at the expiration of the ten-year period; however, if the group chooses not to renew the election at that time, it will be prohibited from creating a new election for three tax years.

## **Insurance Companies**

An insurance company is an insurer authorized by a certificate of authority from the Department of Insurance and Financial Services to engage in the business of making insurance or surety contracts in Michigan. Insurance companies are subject to a premiums tax under CIT and file the Form 4905.

An insurance company is subject to tax under the gross direct premiums tax or, for a foreign insurance company, the retaliatory tax under MCL 500.476a, whichever is greater.

The premiums tax is calculated at 1.25 percent of gross direct premiums written on property or risk located or residing in Michigan. However, beginning January 1, 2019, gross direct premiums attributable to qualified health insurance policies are taxed at 0.95 percent. For the 2020 tax year and each tax year thereafter, the tax rate for those gross direct premiums attributable to qualified health insurance policies is determined by Treasury pursuant to subsection 635(7) of the Act, MCL 206.635(7).

Direct premiums do not include premiums on policies not taken, returned premiums on canceled policies, receipts from the sale of annuities, and receipts on reinsurance premiums if the tax has been paid on the original premiums. Direct premiums also do not include the first \$190,000,000 of disability insurance premiums written in Michigan, other than credit insurance and disability income insurance premiums, of each insurance company subject to the tax. The exemption is reduced by \$2.00 for each \$1.00 by which the insurance company's gross direct premiums everywhere (both within and outside Michigan) exceed \$280,000,000.

Insurance companies are permitted insurance-specific credits. Under MCL 206.637(1), an insurance company may claim a credit against amounts paid to the:

- Michigan Worker's Compensation Placement Facility
- Michigan Basic Property Insurance Association
- Michigan Automobile Insurance Placement Facility, except for payments attributable to the Michigan Assigned Claims Plan
- Michigan Property and Casualty Guaranty Association
- Michigan Life and Health Insurance Guaranty Association.

Insurance companies are also allowed a credit for up to 50 percent of the examination and regulatory fees paid by an insurance company during the tax year. An insurance company may also claim a credit against the tax imposed in an amount equal to the amount paid during that tax year by the insurance company, as certified by the director of the Bureau of Worker's Disability Compensation. If the amount of this particular credit exceeds the tax liability of the insurance company, the excess shall be refunded, without interest, to the insurance company within 60 calendar days of receipt of a properly completed Form 4905.

The tax year for an insurance company is the calendar year. The annual return for calendar year 2019 is due on or before February 29, 2020. An insurance company does not qualify for an automatic extension of time to file.

## **Financial Institutions**

**Financial Institution** is generally defined as a bank holding company, national bank, state-chartered bank, state-chartered savings bank, federally chartered savings association, or a federally chartered farm credit system institution. A financial institution also includes an entity owned by and unitary with a financial institution.

Every financial institution with substantial nexus with Michigan is subject to a franchise tax and files Form 4908. The franchise tax is imposed at the rate of 0.29 percent upon the tax base after allocation or apportionment. The tax base, determined under section 655, MCL 206.655, is total equity capital, which is reported on certain regulatory forms designated by the Federal Financial Institutions Examination Council (FFIEC) and filed with applicable regulatory agencies. Certain deductions are allowed. For tax years 2019 and 2020, total equity capital is averaged over five years. Beginning in tax year 2021, total equity capital is determined as of the close of the one tax year. Apportionment of the franchise tax base is determined using gross business.

For a UBG of financial institutions, the tax base is total equity capital of the top-tiered parent entity. A top-tiered parent entity is the highest-level entity within the UBG that is required to file with a regulatory agency under FFIEC standards.

## **Contacting Treasury**

### **General or Account-Specific CIT questions:**

Phone: 517-636-6925

Visit [www.michigan.gov/taxes](http://www.michigan.gov/taxes) for information, such as Frequently Asked Questions. Select from the list the applicable business tax and then select the link for “Check My Account Information” to send a general or account-specific question.

### **Technical Services Section:**

Phone: 517-636-4230, Option 2

Fax: 517-636-4254

### **Correspondence may be mailed to:**

Michigan Department of Treasury  
Customer Contact Division, CIT Unit  
P.O. Box 30059  
Lansing, MI 48909

### **Business Registration questions:**

Phone: 517-636-6925

Fax: 517-636-4520

# MICHIGAN BUSINESS TAX

## OVERVIEW

Beginning January 1, 2012, the MBT became an election. A taxpayer, including a Unitary Business Group (UBG), that has been approved to receive, has received, or has been assigned a certificated credit, as defined in MCL 208.1107(1), may elect to be subject to the MBT in lieu of the Corporate Income Tax (CIT) in order to claim the certificated credit. Throughout the CIT and MBT chapters, this election is referred to as the **MBT election**.

*Note: The election must be made for the taxpayer's first tax year ending after December 31, 2011, with certain exceptions for qualifying traditional Brownfield Redevelopment and Historic Preservation Certificated Credits.*

Once a taxpayer files an MBT return, the taxpayer has made the election and must continue to file and pay under the MBT until the certificated credit and any carryforward of the credit is used up. The election is made by filing *Business Tax Annual Return* (Form 4567) or by filing a *Request for Accelerated Payment for the Brownfield Redevelopment Credit and the Historic Preservation Credit* (Form 4889) to request a refund of an accelerated credit. Filing an estimate or extension will not make the election. A taxpayer must make the election in accordance with the particular certificated credit claimed, but an annual return is required regardless of the type of certificated credit claimed. Once a taxpayer elects to be subject to the MBT, it is subject to all provisions and requirements of the tax and is eligible for all available credits under the MBT.

### **Filing Requirements**

#### **Tax Year**

An MBT taxpayer's tax year is the calendar year or the fiscal year ending during that calendar year. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Generally, a taxpayer's tax year is for the same period covered by its federal income tax return.

A taxpayer that has a 52 or 53 week tax year beginning not more than seven days before the end of any month is considered to have a tax year beginning on the first day of the subsequent month.

For a UBG, the combined unitary return includes all members with tax years ending with or within the Designated Member's (DM) tax year. Refer to the "Unitary Business Groups" section of this chapter for more on DMs. A person included in a UBG that joins or departs the UBG other than at the end of that person's federal tax year shall have a tax year beginning at the start of its federal tax year and ending on the date of joining or departing the UBG and another tax year beginning on the date immediately after joining or departing the UBG and ending with the conclusion of its federal tax year, even as there is no federal tax year change.

#### **Due Dates and Extensions**

Generally, an annual or final return must be filed with Michigan Department of Treasury (Treasury) by the last day of the fourth month after the end of the taxpayer's tax year. Thus, a return for calendar year 2019 is due April 30, 2020.

Taxpayers seeking an extension of time to file must file an *Application for Extension of Time to File Michigan Tax Returns* (Form 4) by the due date of the annual return. If the taxpayer received a federal extension, and indicates that information on Form 4 and sends the necessary payment or lists the estimated payments made, then the taxpayer will receive an automatic extension to the last day of the eighth month following the original due date. An extension for good cause may be sought by writing to Treasury. **An extension of time to file is not an extension of time to pay.** An extension of time to file will also extend the statute of limitations. An extension of time to file for a UBG must be made by the UBG's DM.

### **Estimated Returns and Payments**

If the reasonably estimated combined MBT liability for the year is over \$800, a taxpayer that made the election to remain in the MBT must file estimated returns quarterly.

In order to avoid interest and penalty, the sum of all estimated payments must equal at least 85 percent of the total liability for the tax year and each quarterly payment must reasonably approximate the liability incurred in the quarter. If the prior year's liability was \$20,000 or less under the MBT, estimated tax payments may be based on the prior year's total tax liability paid in four equal payments. The taxpayer must have business activity in Michigan in the preceding year to qualify for the safe harbor. The safe harbor is available to a taxpayer with a previous year's MBT liability of zero only if the taxpayer had business activity in Michigan in the prior year. The taxpayer must file a return to establish a zero liability to take advantage of the safe harbor. The safe harbor remains available to a taxpayer electing to continue under the MBT.

If the prior MBT tax year was less than 12 months (e.g., the business was opened or closed during the year), the taxpayer will need to annualize the tax to see if estimates need to be filed. For more information on annualizing the tax, see the "Estimated Returns and Payments" section in the CIT chapter.

A taxpayer may pay quarterly estimated payments by check with the *Corporate Income Tax Quarterly Return* (Form 4913) or may direct their bank to electronically pay Treasury monthly or quarterly by Electronic Funds Transfer (EFT). When payments are made by EFT, Form 4913 is not required.

Estimated returns and payments for calendar year taxpayers are due by April 15, July 15, October 15, and January 15 of the following year. Fiscal year taxpayers should make returns and payments by the appropriate due date which is 15 days after the end of each fiscal quarter.

### **Completing Forms**

Before beginning Form 4567, all appropriate federal forms should be completed.

An entity that has made a valid MBT election should determine whether a UBG exists. If preparing a UBG return for a standard taxpayer, complete the *Business Tax Unitary Business Group Combined Filing Schedule for Standard Members* (Form 4580) first, as this form provides the data that is required on Form 4567.

Insurance companies and financial institutions should review general instructions for the annual returns, *Insurance Company Annual Return for Michigan Business and Retaliatory Taxes* (Form 4588) and *Michigan Business Tax Annual Return for Financial Institutions* (Form 4590), respectively.

## **Amending a Return**

A taxpayer may not amend the MBT return to revoke the election to remain in the MBT. A taxpayer may amend its MBT return for other reasons, subject to the statute of limitations.

Taxpayers do not use separate forms for amending MBT returns. To amend an MBT return, complete the lead annual return form appropriate for the taxpayer type and check the box indicating an amended return in the upper-right corner of the return. To properly file an amended return, the entire return must be filed again, including all attachments and schedules - not just the form or schedule that changed.

- Standard taxpayers use Form 4567
- Insurance companies use Form 4588
- Financial institutions use Form 4590.

To amend a return to claim a refund, the taxpayer must file within four years of the due date of the original return, including valid extensions with certain statutory exceptions. Refer to Section 27a of the Revenue Act, MCL 205.27a, for more information on extensions of the statute of limitations. Interest will be paid beginning 45 days after the claim is filed or the due date of the return, whichever is later. If a taxpayer amends a return to report a deficiency, penalty and interest may apply from the due date of the original return.

If changes are made to the federal income tax return that affect the MBT tax bases, filing an amended return is required. If an amended return is filed within 120 days after a final determination by the IRS, penalty is avoided.

## **Tax Base**

MBT is comprised of two tax bases: the business income tax base and the modified gross receipts tax base. The business income tax is levied at a rate of 4.95 percent on business income, subject to statutory additions and subtractions, and after allocation or apportionment. Business income is defined as federal taxable income without regard to Internal Revenue Code (IRC) sections 168(k) and 199. For a partnership or S corporation, business income includes payments and items of income and expense attributable to the business activity of the partnership or S corporation and separately reported to the partners or shareholders. The modified gross receipts tax is levied at a rate of 0.8 percent of gross receipts (defined in the MBT Act), subject to statutory adjustments and less purchases from other firms, after allocation or apportionment.

An MBT taxpayer calculates MBT liability and hypothetical CIT liability less certificated credits determined as part of its MBT liability and pays the greater of:

- The taxpayer's MBT liability after application of all credits, deductions, and exemptions and any carryforward of any unused credit as prescribed in the MBT. The amount of certificated credit allowed here is the amount of nonrefundable credit needed to offset MBT liability and the entire amount of a refundable credit.

- The taxpayer's liability computed under the CIT, after application of all credits, deductions, and exemptions under the CIT, as if the taxpayer were subject to the CIT, less the amount of the taxpayer's certificated credits, including any unused carryforward of a certificated credit, that the taxpayer was allowed to claim for the tax year under the MBT.

If the result of both steps of the calculation is a negative number, the taxpayer receives a refund of the lower number; however, a nonrefundable credit cannot be used to reduce liability below zero. If a nonrefundable credit has a carryforward provision, any remaining nonrefundable certificated credit may be carried forward to succeeding tax years.

**Example 1:** Partnership calculates MBT liability of \$600 and a hypothetical CIT liability of \$750 before credit. Partnership holds a nonrefundable certificated credit of \$1,000.

**Step 1:** Partnership applies \$600 of the certificated credit amount to the \$600 liability, resulting in an MBT liability of zero.

**Step 2:** Partnership applies \$600 of the certificated credit to the CIT liability of \$750, resulting in a CIT liability after credit of \$150. Because Partnership must pay the higher of the two, its tax liability is \$150. \$400 of certificated credit carryforward is available to Partnership the following tax year (assuming the credit has a carryforward provision).

**Example 2:** Corporation calculates MBT liability of \$500 and hypothetical CIT liability of \$750 before credit. Corporation has a refundable credit of \$2,000.

Applying the credit to the MBT liability produces a liability of negative \$1,500.

Applying the same amount to the hypothetical CIT liability creates a liability of negative \$1,250.

Corporation owes the higher liability and thus receives a refund of \$1,250.

A taxpayer is not permitted to use a CIT business loss in the calculation of MBT liability, and vice versa. Once the taxpayer is no longer an eligible MBT taxpayer, it loses any remaining business loss—both actual MBT business loss and hypothetical CIT loss as a result of the comparison calculation—and may not carry a business loss into the CIT upon becoming a CIT taxpayer.

### **Credits**

A taxpayer that has been approved to receive, has received, or has been assigned a certificated credit under MBT before January 1, 2012, but has not fully claimed or exhausted the credit before that date, may make an election to continue paying tax under MBT and claim that credit. See the Overview section of this chapter for more information about the MBT election.

The certificated credits that qualify are:

- Anchor Company Credits
- Brownfield Redevelopment Credit
- Farmland Preservation Credit
- Film Production and Film Infrastructure Credits
- Historic Preservation Credit
- Hybrid Technology Research and Development Credit
- MEGA Battery Pack Credits
- MEGA Employment Tax Credit
- MEGA Federal Contract Credit
- MEGA Photovoltaic Technology Credit
- MEGA Poly-silicon Energy Cost Credit
- Select Renaissance Zone Credits:
  - The agricultural processing facility, border crossing facility, forest products processing facility, Michigan Strategic Fund (MSF) designated and renewable energy renaissance zones for which a taxpayer has entered into a development agreement, or tool and die renaissance zones for which the taxpayer has a collaborative agreement with the MSF by January 1, 2012.
  - Tax vouchers for the Michigan Early Stage Venture Investment Act.

A timely MBT election must have been made for most certificated credits for the taxpayer's first tax year ending after December 31, 2011. However, certain exceptions exist. First, certain trusts or estates with a certificated Farmland Preservation Credit may make an election in the year in which the ownership of the property transfers to the trust or estate upon the death of the individual income taxpayer who held that credit prior to death. Second, a taxpayer with a qualifying traditional Brownfield or Historic Preservation Credit may make the election for the year in which a credit is available and must remain in the election for the life of the Brownfield or Historic Preservation Credit for the years in which credit is available. A taxpayer with a multiphase Brownfield Credit under MCL 208.1437(10) that makes the election is required to continue to file and pay the MBT until the project is complete and the credit is used up.

A taxpayer with a qualifying Brownfield or Historic Preservation Credit that makes the election in a year in which credit is available may also elect to claim any other certificated credit for which the taxpayer is eligible in the same year, as long as eligibility for the other credit begins no earlier than the year of the claim. However, once the Brownfield or Historic Credit is exhausted, the taxpayer may no longer remain in the MBT and loses the remainder of any other credit elected in this manner.

A taxpayer may claim a Brownfield or Historic Preservation Credit as an accelerated credit where a taxpayer is approved to receive or has received a certificated credit before January 1, 2012, and for which the certificate of completion or assignment certificate is issued for a credit for a tax year beginning after December 31, 2011. The accelerated credits are claimed on a special purpose Form 4889 available on Treasury's Web site. A taxpayer may claim an accelerated credit at any point in the tax year but must also file Form 4567 for the tax period in which the claim is made. Accelerated credits are required to be paid to the taxpayer within 60 days of Treasury receiving the request.

## **Assignees of Certificated Credits**

Assignees holding a certificated credit may also make the election to remain in the MBT. Both the assignment and election to remain in the MBT must be completed in accordance with the requirements of the particular credit.

If a taxpayer had a preapproval letter for a Brownfield Credit by January 1, 2012, and a certificate of completion, assignment certificate, or component completion certificate is issued for a tax year beginning after December 31, 2011, the taxpayer may assign the credit in the tax year in which the certificate of completion is issued and the assignee may make the election to remain in the MBT based on the assignment. The assignee must make the election for the tax year in which the assignment is made.

## **UBG**

### **Filing Requirements**

If a member of a UBG has a qualifying certificated credit, the group, and not the member, must make the election to file under the MBT. If a UBG makes the election, the return filed by the group must include all members of the group regardless of whether a member is a corporation or a flow-through entity (FTE). The election should be made by the “Designated Member” (DM) of the UBG by filing an MBT return. However, if a member of the group other than the DM files a return and makes the election, such filing will be treated as if the group made the election and all members of the group will be required to file and pay the MBT. Note that the entire group is required to remain in the MBT for the time period required for the claimed certificated credit(s).

Except for a UBG with a Brownfield, Historic Preservation, or limited type of Farmland Preservation Certificated Credit, the election must have been made “for the taxpayer’s first tax year ending after December 31, 2011.” Because the group’s tax year is the tax year of the DM, the election must be made for the DM’s first tax year ending after December 31, 2011. For taxpayers with a traditional qualifying Brownfield or Historic Preservation Credit, the DM may make the election in the year in which a credit is available. The DM may claim an accelerated credit beginning on or after January 1, 2012.

### **The Designated Member**

The DM is the member of a UBG that has nexus with Michigan under MCL 208.1200 that files the combined return for the UBG. As noted, the DM makes the election to continue under the MBT on behalf of the group. If the member that owns or controls the other members of the UBG has nexus with Michigan, the controlling member must be the DM. Otherwise, the controlling member must appoint any group member with nexus to serve as the DM.

## Calculation of Liability

All members of a UBG—including FTE members—must be included on the combined return. The group calculates liability using all members for both steps of the comparison calculation.

**Example 1:** For the 2011 tax year, UBG ABC has three members; member A is a corporation and is the DM, member B is an S Corporation, and member C is an LLC taxed as a partnership. On December 1, 2011, member A is awarded a qualifying Renaissance Zone Credit. In order to use that credit, member A must file an MBT return for the group's first tax year ending after December 31, 2011. Assuming no change in ownership or control for this example, members A, B, and C must be included on the MBT return.

**Example 2:** UBG XYZ has three members. Member X has a certificated Michigan Economic Growth Authority credit of \$2,000. The group, meaning all three members, calculates total MBT liability under step one of the comparison calculation as \$900 before credits. The group may use \$900 of credit for an MBT liability of zero. The group calculates hypothetical CIT of \$1,000 before credits. The group offsets the liability with \$900 of certificated credit and reaches total liability of \$100. The group will pay the higher liability and carries forward \$1,000 in certificated credit to the next tax year.

## Eliminations

Eliminations apply to transactions occurring between members of a UBG. If a UBG includes standard taxpayers, an insurance company, and a financial institution, transactions between a standard taxpayer member and an insurance or financial member are eliminated whenever elimination is required, despite the fact that the insurance and financial members are not reported on the combined return with standard taxpayer members.

**Example 1:** A UBG is comprised of members L, M, and N. Members L and M are both standard taxpayers, and member N is an insurance company. Even though member N files a separate tax return for insurance companies, the intercompany transactions between all three entities would be eliminated in preparing the combined standard tax return of L and M.

Eliminations are not permitted for transactions with an otherwise-related entity if the related entity is not included in the UBG.

Timing differences can arise from differing year-ends or differing accounting methods of UBG members. If a transaction between two members of a UBG is reported on the group's current return by one member but reported on the preceding or succeeding group return by the other member, the group is required to eliminate the side of the transaction included on the group's current return. The other side of the same transaction will be eliminated on the group return for the filing period in which the other member reports the transaction.

**Example 2:** A UBG is comprised of members O and P. Member O has a calendar year-end of December 31, 2022, and member P has a fiscal year-end of June 30, 2022. Member O is the DM. Member O pays member P rent in the amount of \$2,000 per month for the 2021 calendar year and \$4,000 per month for the 2022 calendar year. For the 2022 tax filing, member P eliminates from gross receipts six months' rent at \$2,000 and six months' rent at \$4,000, for a total of \$36,000. Member P also eliminates \$36,000 from business income.

Member O eliminates from business income 12 months of rental expense at \$4,000, for a total of \$48,000. This will cause a timing difference for intercompany eliminations that will reverse when a member ceases to exist or is no longer a part of the UBG.

### **Helpful Hints for Filing the MBT Return**

1. The election to remain in the MBT is made by a taxpayer (or the DM of a UBG) by filing either an MBT Form 4567 or Form 4889. Form 4889 may be filed by a taxpayer seeking to claim an accelerated refundable Brownfield or Historic Preservation Credit payment pursuant to MCL 208.1510. The certificate that substantiates the certificated credit must be attached to Form 4567 or the accelerated credit form. If a valid agreement with which a taxpayer may make an election is in place, but the credit certificate has not yet been issued and will not be claimed until a future year, substantiation of that agreement must be attached to MBT returns filed in years before the certificated credit is claimed. Once a taxpayer files Form 4567 or Form 4889 claiming a certificated credit, the taxpayer must remain in the MBT until certificated credits are exhausted.
2. All estimated payments, extension payments, and tax returns must be filed under the UBG's DM account.
3. If making monthly or quarterly estimated payments by EFT, Form 4913 is not required to be submitted.

## **Contacting Treasury**

### **General or Account-Specific MBT questions:**

Phone: 517-636-6925

Visit [www.michigan.gov/taxes](http://www.michigan.gov/taxes) for more information, such as Frequently Asked Questions. To send a general or account-specific questions to Treasury, select from the list the applicable business tax and then select the link for “Check My Account Information.”

### **Technical Services:**

Phone: 517-636-4230, option 2

Fax: 517-636-4254

### **Correspondence may be mailed to:**

Michigan Department of Treasury  
Customer Contact Section, MBT Unit  
P.O. Box 30059  
Lansing, MI 48909

### **Business Registration questions:**

Phone: 517-636-6925

Fax: 517-636-4520

## MBT Credits

Credit	MCL	Form	Refundable	Assignable	Recapture	Carry Forward	Certification Required
<b>NON-REFUNDABLE CREDITS</b>							
SBT Carryforward	<a href="#">208.1401</a>	4569	N	N	N	-	N
SBT Investment Tax		4569	N	N	Y	(b)	N
SBT Historic Preservation		4569	N	N	Y	(c)	N
Low-grade Hematite Pellet		4569	N	N	N	(b)	N
SBT Pharmaceutical		4569	N	N	N	(b)	N
SBT Credit Job		4569	N	N	N	(b)	N
SBT "Old" Brownfield		4569	N	N	N	(b)	N
SBT " New" Brownfield		4569	N	N	N	(c)	N
SBT MEGA Business Activity		4569	N	N	N	(b)	N
Compensation	<a href="#">208.1403(2)</a>	4570	N	N	N	-	N
Investment Tax	<a href="#">208.1403(3)</a>	4570	N	N	Y	-	N
Research and Development	<a href="#">208.1405</a>	4570	N	N	N	-	N
Small Business Alternative	<a href="#">208.1417</a>	4571	N	N	N	-	N
Gross Receipts Filing Threshold	<a href="#">208.1411</a>	4571	N	N	N	-	N
Community or Education Foundation	<a href="#">208.1425</a>	4572	N	N	N	-	(a)
Homeless Shelter/Food Bank	<a href="#">208.1427</a>	4572	N	N	N	-	N
NASCAR Speedway Infrastructure	<a href="#">208.1409(1)</a>	4573	N	N	N	-	N
Start-up Business	<a href="#">208.1415</a>	4573	N	N	Y	-	Y
Public Contributions	<a href="#">208.1421</a>	4572	N	N	N	-	N
Arts and Culture	<a href="#">208.1422</a>	4572	N	N	N	-	N
Next Energy Business	<a href="#">208.1429</a>	4573	N	N	N	-	Y
Renaissance Zone	<a href="#">208.1433</a>	4595	N	N	N	-	N
Historic Preservation	<a href="#">208.1435</a>	4573	N	Y	Y	10	Y
Low grade Hematite	<a href="#">208.1439</a>	4573	N	N	N	5	N
New Motor Vehicle Inventory	<a href="#">208.1445</a>	4573	N	N	N	-	N
Large Food Retailer	<a href="#">208.1447</a>	4573	N	N	N	-	N
Mid Size Food Retailer	<a href="#">208.1449</a>	4573	N	N	N	-	N
Bottle Deposit Administration	<a href="#">208.1451</a>	4573	N	N	N	-	N
MEGA Federal Contract	<a href="#">208.1431b</a>	4584	Y**	N	Y	10	Y
Bonus Depreciation Carryforward	<a href="#">208.1461</a>	4573	N	N	Y	10	N
Individual or Family Development Account	<a href="#">208.1426</a>	4573	N	N	N	10	N
International Auto Show	<a href="#">208.1446</a>	4573	N	N	N	-	N
Brownfield Redevelopment	<a href="#">208.1437</a>	4584	Y**	Y	Y	10	Y
Private Equity Fund	<a href="#">208.1453</a>	4573	N	N	N	-	N
Film Job Training	<a href="#">208.1459</a>	4573	N	N	N	10	Y
Film Infrastructure	<a href="#">208.1457</a>	4573	N	Y	Y	10	Y
MEGA Poly-Silicon Energy Cost	<a href="#">208.1432</a>	4584	Y**	N	N	10	Y
MEGA Plug-In Traction Battery Manufacturing	<a href="#">208.1434(2)</a>	4584	Y**	N	N	10	Y
MEGA Plug-In Traction Battery Integration	<a href="#">208.1434(3)</a>	4584	Y**	N	N	10	Y
MEGA Advanced Battery Engineering Credit	<a href="#">208.1434(4)</a>	4584	Y**	N	N	10	Y
MEGA Battery Manufacturing Facility	<a href="#">208.1434(5)</a>	4584	Y**	N	Y	10	Y
Large Scale Battery Credit	<a href="#">208.1434(6)</a>	4584	Y**	N	Y	10	Y
MEGA Anchor Company Payroll	<a href="#">208.1431a</a>	4584	Y**	N	Y	10	Y
MEGA Anchor Company Taxable Value	<a href="#">208.1431c</a>	4584	Y**	N	Y	5	Y
MEGA Advanced Lithium Ion Battery	<a href="#">208.1434(7)</a>	4584	Y**	N	Y	10	Y
MEGA Battery Cell Sourcing	<a href="#">208.1434(9)</a>	4584	Y**	N	N	10	Y

**REFUNDABLE CREDITS**

MEGA Research and Development	<a href="#">208.1407</a>	4574	Y	N	Y	-	Y
Personal Property Tax	<a href="#">208.1413</a>	4574	Y	N	N	-	N
Worker's Disability Supplemental Benefit	<a href="#">208.1423</a>	4574	Y	N	N	-	Y
Next Energy Payroll	<a href="#">208.1429</a>	4574	Y	N	N	-	N
MEGA Employment Tax	<a href="#">208.1431</a>	4574	Y	N	Y	-	Y
Historic Preservation	<a href="#">208.1435</a>	4573	N	Y	Y	10	Y
Hybrid Technology Research & Development	<a href="#">208.1450</a>	4574	Y	N	N	-	Y
Farmland Preservation	<a href="#">324.36109(2)</a>	4594	Y	N	N	-	N
MEGA Federal Contract	<a href="#">208.1431b</a>	4584	Y**	N	Y	10	Y
MEGA Photovoltaic	<a href="#">208.1430</a>	4574	Y	Y	Y	-	Y
Brownfield Redevelopment	<a href="#">208.1437</a>	4584	Y**	Y	Y	10	Y
Tobacco Excise Credit	<a href="#">208.1471</a>	4574	Y	N	N		N
Film Production	<a href="#">208.1455</a>	4574	Y	Y	N	-	Y
MEGA Poly-Silicon Energy Cost	<a href="#">208.1432</a>	4584	Y**	N	N	10	Y
MEGA Plug-In Traction Battery Manufacturing	<a href="#">208.1434(2)</a>	4584	Y**	N	N	10	Y
MEGA Plug-In Traction Battery Integration	<a href="#">208.1434(3)</a>	4584	Y**	N	N	10	Y
MEGA Advanced Battery Engineering Credit	<a href="#">208.1434(4)</a>	4584	Y**	N	N	10	Y
MEGA Battery Manufacturing Facility	<a href="#">208.1434(5)</a>	4584	Y**	N	Y	10	Y
Large Scale Battery Credit	<a href="#">208.1434(6)</a>	4584	Y**	N	Y	10	Y
MEGA Anchor Company Payroll	<a href="#">208.1431a</a>	4584	Y**	N	Y	10	Y
MEGA Anchor Company Taxable Value	<a href="#">208.1431c</a>	4584	Y**	N	Y	5	Y
MEGA Advanced Lithium Ion Battery	<a href="#">208.1434(7)</a>	4584	Y**	N	Y	10	Y
MEGA Battery Cell Sourcing	<a href="#">208.1434(9)</a>	4584	Y**	N	N	10	Y

\* As assignee only

\*\* Refundable or non-refundable at the election of the taxpayer

(a) - Community or education foundation must be certified by the Department

(b) - May be carried forward until 2009

(c) - Initial life span of the credit

## UNITARY BUSINESS GROUP-CREDIT INFORMATION

Credit	MCL	Form	A	B	C	D	E
Arts and Culture	208.1422	4572	G	G	N	G	G
Bonus Depreciation Carryforward	208.1461	4573	E	E	N	G	G
Bottle Deposit Administration	208.1451	4573	E	E	N	G	G
Brownfield Redevelopment	208.1437	4584	E	E	N	G	G
Community or Education Foundation	208.1425	4572	G	G	N	G	G
Compensation	208.1403(2)	4570	G	G	N	G	G
Farmland Preservation	324.36109(2)	4594	E	E	N	G	E
Film Infrastructure	208.1457	4573	E	E	N	G	G
Film Job Training	208.1459	4573	E	E	N	G	G
Film Production	208.1455	4574	E	E	N	G	G
Gross Receipts Filing Threshold	208.1411	4571	G	G	N	G	G
Historic Preservation	208.1435	4573	E	E	N	G	G
Homeless Shelter/Food Bank	208.1427	4572	G	G	N	G	G
Hybrid Technology Research & Development	208.1450	4574	E	E	N	G	G
Individual or Family Development Credit	208.1426	4573	G	G	N	G	G
International Auto Show Credit	208.1446	4573	E	E	N	G	G
Investment Tax	208.1403(3)	4570	G	G	*	G	G
Large Food Retailer	208.1447	4573	G	G	N	G	G
Low grade Hematite	208.1439	4573	G	G	N	G	G
MEGA Advanced Lithium Ion Battery	208.1434(7)	4584	E	E	N	G	G
MEGA Anchor Company Payroll	208.1431a	4584	E	E	N	G	G
MEGA Anchor Company Taxable Value	208.1431c	4584	E	E	N	G	G
MEGA Battery Manufacturing Facility	208.1434(5)	4584	E	E	N	G	G
MEGA Employment Tax	208.1431	4574	E	E	N	G	G
MEGA Federal Contract	208.1431b	4584	E	E	N	G	G
MEGA Large Scale Battery	208.1434(6)	4584	E	E	N	G	G
MEGA Photovoltaic Technology	208.1430	4574	E	E	N	G	G
MEGA Plug-In Traction Battery Integration	208.1434(3)	4584	E	E	N	G	G
MEGA Plug-In Traction Battery Manufacturing Carryforward	208.1434(2)	4584	E	E	N	G	G
MEGA Poly-Silicon Energy Cost	208.1432	4584	E	E	N	G	G
Mid Size Food Retailer	208.1449	4573	G	G	N	G	G
New Motor Vehicle Inventory	208.1445	4573	E	E	N	G	G
Next Energy Business Activity	208.1429(2)	4573	E	E	N	G	G
Next Energy Payroll	208.1429(5)	4574	E	E	N	G	G
Personal Property Tax	208.1413	4574	G	G	N	G	G
Private Equity Fund	208.1453	4573	E	E	N	G	G
Public Contributions	208.1421	4572	G	G	N	G	G
Renaissance Zone	208.1433	4595	E	E	N	G	E
Research and Development	208.1405	4570	G	G	N	G	G
SBT Carryforward	208.1401	4569				G	G
SBT Investment Tax							
SBT Historic Preservation							
Low-grade Hematite Pellet							
SBT Pharmaceutical							
SBT Credit Job							
SBT "Old" Brownfield							
SBT " New" Brownfield							
SBT MEGA Business Activity							
Small Business Alternative	208.1417	4571	G	G	N	G	G
Start-up Business	208.1415	4573	E	E	N	G	G
Worker's Disability Supplemental Benefit	208.1423	4574	G	G	N	G	G

\* Assets transferred between members of a UBG are not capital investments in qualifying assets for purposes of the ITC and intercompany eliminations are irrelevant to the calculation of the ITC.

- A - The test or criteria to qualify for the credit should be applied on a group basis (G) or a separate entity basis (E)
- B - If the qualification test is satisfied, the calculation of the credit amount should be on a group basis (G) or a separate entity basis (E).
- C - Calculation of the credit should be done after elimination of intercompany transactions (Y or N).
- D - Credit should be applied against the tax liability of the group (G) or the entity (E).
- E - The credit form is completed on a group basis (G) or a separate entity basis (E).

## SALES, USE, AND WITHHOLDING TAXES

### WHAT'S NEW

#### **Nexus for Remote Sellers (including online retailers)**

In light of the 2018 U.S. Supreme Court ruling in *South Dakota v. Wayfair*, the Department of Treasury (Treasury) implemented registration and payment requirements for sellers without physical presence in Michigan (“remote sellers”) that have sales exceeding \$100,000 to – or 200 or more transactions with – purchasers in Michigan in the previous calendar year. The new standards went into effect October 1, 2018. For more information, visit [www.michigan.gov/remotesellers](http://www.michigan.gov/remotesellers).

#### **2018 Public Act (PA) 249 - Limit on Exempt Sales by Nonprofits for Fundraising Purposes**

PA 249 amends section 4o of the General Sales Tax Act (GSTA), MCL 205.54o. It increases the limit on exempt sales by a school, church, hospital, parent cooperative preschool, or nonprofit organization exempt under section 4q(1)(a) or (b), MCL 205.54q, (collectively, “eligible nonprofit entity”) and creates a separate limit on aggregate sales. Now, an eligible nonprofit entity qualifies for the exemption if it has aggregate sales at retail of less than \$25,000 in the calendar year. If a nonprofit qualifies, its first \$10,000 of sales of tangible personal property for fundraising purposes is exempt. If tax is collected from a customer, even erroneously, it must be remitted to Treasury or refunded to the customer, regardless of whether the sale is exempt or not. This exemption is taken on the line for “Other exemptions and/or deductions” on Sales, Use, and Withholding (SUW) returns.

#### **2018 PA 530 - Exemption for Sales to Veterans’ Organizations, Fundraising Dollar Limits**

PA 530 amends section 4q of the GSTA, MCL 205.54q, to exempt sales *to* veterans’ organizations exempt from federal income tax under IRC 501(c)(19). To qualify for this exemption, property must be used primarily to carry out the purposes of the organization or to raise funds or obtain resources necessary to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt entity.

In addition, the exemption does not apply to the sale of any single item used for fundraising purposes or to obtain resources if the sales price of the item exceeds \$25,000. This exemption is taken on the line for “Other exemptions and/or deductions” on SUW returns.

#### **Ally Financial, Inc. et. al. v. Department of Treasury, 502 Mich 484 (2018)**

In *Ally*, the Michigan Supreme Court held that the bad debt deduction includes the unrecovered value of repossessed property that would otherwise qualify for the deduction. Further, the Court held that Treasury may require a validated RD-108 to establish that sales tax was paid on a motor vehicle for purposes of meeting the tax paid requirement of the bad debt deduction. Finally, the Court held that the written election, specifying the party entitled to claim the bad debt deduction (i.e., retailer or third-party lender), need not be executed before the debts to be deducted are incurred. In light of this decision, Treasury will accept written elections that are executed before a bad debt refund or deduction is taken.

### **Jim's Body Shop, Inc. v. Department of Treasury, Mich App (2019)**

The court held that indirect audits conducted under Section 14a(4) of the Use Tax Act (UTA), MCL 205.104a(4), and Section 18(4), MCL 205.68(4) of the GSTA, are entitled to a presumption of correctness, which imposes a burden on the taxpayer to provide evidence of actual inaccuracy in challenging audit results. The procedural requirements of MCL 205.104a(4)(a)-(d) and MCL 205.68(4)(a)-(d) are relevant to the taxpayer's burden only insofar as the taxpayer can prove that a violation of those procedures results in inaccuracy in the underlying audit.

The court also applied the incidental to the service test to determine that the taxpayer was engaged in the provision of a service and not a "sale at retail" for purposes of the industrial processing exemption, and therefore, was liable for use tax on the property it consumed in performing its service.

## **SALES TAX**

The GSTA, 1933 PA 167, imposes a 6 percent excise tax on the gross proceeds of "persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration." A "sale at retail" is "a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent." Therefore, sales for purposes of resale are exempt from sales tax.

"Tangible personal property" is defined as, "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software." All tangible personal property is subject to sales tax unless otherwise exempted. Sales tax is also imposed on the transmission and distribution of electricity, the sale of a prepaid telephone calling card or prepaid authorization number for telephone use, and a conditional sale, installment sale, or other transfer of property, if title is retained as security for the purchase but is intended to be transferred later.

Sales tax is imposed at a rate of 6 percent of the "sales price" of the property. Sales price includes any consideration, including cash, credit, property, and services, given in exchange for tangible personal property. It also includes all of the following:

- The seller's cost of the property sold, cost of materials used, labor or service cost, interest, losses, cost of transportation to the seller, and taxes imposed on the seller other than by the GSTA.
- Charges by the seller for any services necessary to complete the sale except gratuity or tips for an employee, or labor or service charges involved in maintenance and repair work if separately itemized.
- Delivery and installation charges incurred or to be incurred prior to the completion of transfer of ownership of the property. See Revenue Administrative Bulletin (RAB) 2015-17 on Treasury's Web site for more information.
- Credit for any trade-in, except trade-in for the agreed-upon value if separately stated on the invoice or similar document of core charges or titled watercraft, recreational vehicles, or motor vehicles (currently a limited amount) purchased from a dealer.

- Consideration received by the seller from a third party in certain circumstances (certain manufacturer/wholesaler reimbursements).

***Note: For additional information on topics in this chapter, visit Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes) select "Business Taxes," or "Reports and Legal" for a list of resources.***

In general, sales tax on fuel is prepaid before the fuel is sold to a retailer, meaning the sales tax is already built into their purchase price. For purposes of the prepaid sales tax, the term "fuel" refers to "gasoline" and "diesel fuel" as those terms are defined by MCL 205.56a(11)(f) and (m). Fuel retailers pass the tax on to consumers and receive credit for prepaid tax by filing monthly sales tax returns using rates set monthly by Treasury, based on statewide average retail prices. The rates of prepayment for each of these fuel types are published in an RAB no later than the 10<sup>th</sup> day of the month immediately preceding the month in which the new prepayment rates will be in effect. See the latest RAB Notice of Prepaid Sales Tax Rates on Fuel on Treasury's Web site for more information.

## USE TAX

The Use Tax Act (UTA), 1937 PA 94, imposes tax on the use, storage, or consumption of tangible personal property and certain services at a rate of 6 percent of the "purchase price" of the property or service. Purchase price is defined identically to "sales price," therefore, the tax base for use tax is the same as it is for sales tax (see above). Most often, use tax liability arises when property is purchased on the internet or through mail order where the seller does not have nexus in Michigan, and therefore, has no duty to collect the tax on behalf of the state. Other instances where use tax liability is incurred is when property is purchased exempt from sales tax but is later converted to a taxable use.

Use tax and/or Equalization tax is also imposed on transfers of motor vehicles, off-road vehicles, manufactured homes, aircraft, snowmobiles, or watercraft between non-dealers, though exemptions may apply to transfers to relatives. The tax base for the non-dealer transfer of a vehicle, off-road vehicle, manufactured home, aircraft, snowmobile, and watercraft is the retail dollar value of the property or the purchase price, whichever is greater. Visit Treasury's Web site for RABs 2017-26 and 2018-5.

The UTA is complimentary and supplementary to the GSTA. If Michigan sales tax was due and paid on property, it is not subject to use tax. The purchaser bears the burden of proving that the sales tax was paid to the vendor. Additionally, if property is purchased in another state, credit is given for sales or use tax paid on that property to the other state or local unit of government within that state, up to 6 percent, if that state or local government also provides a credit or exemption for sales or use tax paid to Michigan; if less than 6 percent tax was paid to the other state or local government on the property, the person bringing the property into Michigan owes use tax on the difference. Credit is not given for excise tax paid to any foreign government, including, but not limited to, Canada and Mexico.

**Use** is defined as the exercise of a right or power over tangible personal property incident to ownership of the property, including, but not limited to, transactions in which possession is given. This includes leases of tangible personal property. A lessor has the option of paying sales or use tax on the full cost of tangible personal property acquired for lease or paying use tax on the stream of lease/rental receipts. However, the lessor must first be registered for use tax and timely make the election. Visit Treasury's Web site for RAB 2015-27 for more information concerning leases.

**Storage** is defined as the keeping or retention of property in Michigan for any purpose (other than resale) after the property loses its interstate character.

Consumers of tangible personal property or certain services are subject to use tax. A "consumer" for purposes of use tax means the person who has purchased tangible personal property or services for storage, use, or other consumption in this state. Additionally, contractors are consumers of any property they purchase for affixation to real estate; this includes instances where property is purchased by a tax-exempt entity and given to a contractor for affixation to nonexempt real estate. For example, if a local government purchased construction materials on an exempt basis and then gave the materials to a contractor to construct office space for the local government, the contractor is the consumer of the property, and therefore, liable for use tax based on the purchase price of the property. However, a contractor is not liable for use tax for property acquired from another person that is not tax-exempt, to the extent the property was purchased by that other person and was acquired for the sole purposes of affixing that property to real estate on behalf of that other person. Visit Treasury's Web site for updated information, including RABs and Letter Rulings.

Certain services are also subject to use tax in the same manner as tangible personal property. These services include: intrastate telecommunications, interstate telecommunications that either originate or terminate in Michigan when billed to a Michigan address, ancillary services, conference bridging services, 900 services, pay telephone services other than coin-operated telephone services, paging services, value-added nonvoice data services, accommodations (hotel, motel, bed and breakfast, vacation home, cottage rental, etc.) of up to 30 continuous days, and the laundering or cleaning of textiles under a rental agreement with a term of at least five days.

The *Individual Income Tax Return* (Form MI-1040) has a separate line for individuals to report and pay their use tax liability for purchases on which they have not paid sales tax. This includes mail order and Internet purchases made from out-of-state sellers that do not collect and remit Michigan sales or use tax, as well as purchases in foreign countries or states that do not impose a sales tax.

Businesses should report use tax liability on the appropriate sales, use, and withholding taxes return as discussed below.

## NEXUS

Only persons with nexus with Michigan are required to collect and remit sales and/or use tax from their customers. Generally, a person has nexus for purposes of sales and use tax if that person has a "physical presence" in Michigan, which is a fact intensive inquiry. See RABs 1999-1 and 2015-22.

In addition, on June 21, 2018, the U.S. Supreme Court decided *South Dakota v Wayfair*, 138 S Ct 2080 (2018), upholding “economic presence” nexus for sales tax. Therefore, effective October 1, 2018, remote sellers with sales exceeding \$100,000 to – or 200 or more transactions with – Michigan purchasers in the previous calendar year must remit sales tax. Details of this nexus standard for remote sellers are published in RAB 2018-16. Visit [www.michigan.gov/remotesellers](http://www.michigan.gov/remotesellers) for additional information.

## EXEMPTIONS

Sales and use tax exemptions are based on what the item is (product-based exemptions), who purchases the item (entity-based exemptions), or how the item is used (use-based exemptions). Absent an applicable exemption, all sales of tangible personal property are subject to sales or use tax.

There are currently over 100 distinct exemptions in the sales and use tax acts. Exemptions in one law are typically mirrored in the other, but there are instances when an exemption is not in both acts. Taxpayers bear the burden of proving they are entitled to an exemption. Below is a list of the more commonly used sales and/or use tax exemptions. If not otherwise noted in the exemption, the exemption does not include property that is affixed to and becomes a structural part of real estate. See RABs 2016-4 and 2018-2 for more information.

For many, but not all, sales and use tax exemptions, property that is used for both an exempt purpose and a taxable purpose is only exempt to the extent that it is used for an exempt purpose. Typically, when property is used for both a taxable and exempt purpose, the exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by Treasury. If the exemption is not apportioned and the property is used for a taxable purpose (e.g., property purchased on a resale exemption), the entire purchase price is subject to use tax.

**Sales to nonprofit organizations.** The sale of services or tangible personal property not for resale to certain nonprofit, religious, or other organizations, including nonprofit schools, nonprofit hospitals, and regularly organized churches, is exempt. To qualify for the exemption, any income or benefit from the sale cannot inure to any individual or member of the nonprofit entity, and the activities of the entity must be carried on exclusively for the benefit of the public at large and not any of its members or any restricted group. Further, the sale of property is only exempt to the extent that the property is used to carry out the purposes of the organization or to raise funds or obtain resources necessary to carry out the purposes of the organization.

Sales of tangible personal property not for resale to the following are exempt:

1. A health, welfare, educational, cultural arts, charitable, or benevolent organization not operated for profit that has been issued an exemption ruling letter to purchase items exempt from tax before July 17, 1998, for purposes of the GSTA, and before June 13, 1994, for purposes of the UTA, signed by the administrator of the Sales, Use, and Withholding Taxes division of Treasury. The exemption for any single item used to raise funds or obtain resources is limited to \$5,000.
2. An organization not operated for profit and exempt under IRC 501(c)(3) or 501(c)(4). The exemption for any single item used to raise funds or obtain resources is limited to \$5,000.

3. An organization not operated for profit and exempt under IRC 501(c)(19) (a veterans' organization). The exemption for any single item used to raise funds or obtain resources is limited to \$25,000.

**Fundraising exemption.** The sale of the first \$10,000 of tangible personal property sold for fundraising purposes by certain nonprofit organizations that have aggregate sales at retail in the calendar year of less than \$25,000 are exempt. Nonprofit organizations that may claim the fundraising exemption include: schools, churches, hospitals, parent cooperative preschools, or other nonprofit entities possessing an exemption ruling letter prior to July 17, 1998, IRC 501(c)(3) entities and IRC 501(c)(4) entities.

**Veterans' organizations.** Tangible personal property sold by a veteran's organization exempt under IRC 501(c)(19), for the purpose of raising funds for the benefit of an active duty service member or a veteran, is exempt. The exemption is limited to \$25,000 in aggregate sales for each individual fundraising event.

**Nonprofit hospitals and housing, affixed property.** Tangible personal property sold to, or acquired by, a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others (i.e., contractors) is exempt to the extent that the property is affixed to and made a structural part of a nonprofit hospital or certain qualified nonprofit housing entities. This exemption is limited to certain areas of the buildings. Any property affixed to areas of the real estate that are not exempt is taxable.

**Property affixed to or made a structural part of a sanctuary.** Tangible personal property purchased or acquired by a contractor if the property is to be affixed to or made a structural part of a sanctuary is exempt. A sanctuary refers to only that portion of a building owned and occupied by a religious organization qualified under 501(c)(3), that is used predominantly and regularly for public worship. Sanctuary includes a sanctuary to be constructed that will be owned and occupied by a 501(c)(3) religious organization and that will be used predominantly and regularly for public worship.

**Food sold to students.** The sale of food to bona fide enrolled students by a school or other educational institution not operated for profit is exempt.

**Agricultural production exemption.** The sale of tangible personal property to a person engaged in a business enterprise that uses the property (directly or indirectly) in an agricultural production activity is exempt. Agricultural production means the commercial production for sale of crops, livestock, poultry, and other products by persons regularly engaged in business as farmers, nurserymen, or agriculturists. This exemption does not include property and equipment used on homes or other noncommercial gardens, lawns, or other non-agricultural activities. The exemption includes agricultural land tile, subsurface irrigation pipe, portable grain bins, and grain drying equipment, even if affixed to real estate. There is also a limited exemption for tangible personal property installed in a manner that it can be disassembled without affecting the physical structural functionality of the original structure and reassembled and reused for an exempt agricultural purpose (e.g., water supply lines, heating and cooling systems, lighting systems, milking systems). In addition, the exemption includes a greenhouse (except a greenhouse used to grow marihuana) used for an exempt agricultural purpose if it is assembled and installed in a manner that it can be disassembled and reassembled without affecting the functionality of the greenhouse upon being reassembled. A “greenhouse” is defined as a structure covered with transparent or translucent materials for the purpose of admitting natural light and controlling the atmosphere for growing horticultural products. Refer to Treasury’s Notice Regarding 2018 PAs 113 and 114 Agricultural Production Exemption issued April 27, 2018, for more information.

**Films, newspapers, and periodicals.** The sale of copyrighted motion picture films or certain newspapers or periodicals is exempt. Qualifying requirements for newspapers or periodicals are set forth in MCL 205.54a(1)(i) and MCL 205.94(1)(l).

Tangible personal property used or consumed in producing certain newspapers, periodicals, and that portion or percentage of tangible personal property used or consumed in producing an advertising supplement that becomes a component part of a newspaper or periodical is also exempt from tax.

**Aquatic Vegetation.** The sale of tangible personal property specifically designed for, and directly used in, the harvesting of aquatic vegetation from waters in Michigan is exempt to the extent that the harvested aquatic vegetation is ultimately used in exempt agricultural production.

**Prosthetic devices.** Prosthetic devices are exempt from tax. A prosthetic device is a replacement, corrective, or supportive device, other than contact lenses and dental prosthesis (covered by a separate exemption, discussed below), dispensed pursuant to a prescription, including repair or replacement parts for that device, worn on or in the body to do one or more of the following:

1. Artificially replace a missing portion of the body,
2. Prevent or correct a physical deformity or malfunction of the body, or
3. Support a weak or deformed portion of the body.

**Durable medical equipment.** Durable medical equipment is exempt from tax. Durable medical equipment is equipment for home use, other than mobility enhancing equipment, dispensed pursuant to a prescription, including durable medical equipment repair or replacement parts, that does all of the following:

1. Can withstand repeated use,
2. Is primarily and customarily used to serve a medical purpose,
3. Is not useful generally to a person in the absence of illness or injury, and
4. Is not worn in or on the body.

**Mobility enhancing equipment.** Mobility enhancing equipment is exempt from tax. Mobility enhancing equipment is equipment, other than durable medical equipment or a motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, dispensed pursuant to a prescription, including repair or replacement parts for that equipment, that is both of the following:

1. Primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use at home or on a motor vehicle, and
2. Not generally used by a person with normal mobility.

**Vehicles sold to ambulance or fire department service providers.** Vehicles not for resale are exempt if sold to or used by a nonprofit corporation organized exclusively to provide a community with ambulance or fire department services.

**Textbooks.** Textbooks are exempt if sold by a public or nonpublic school to or for the use of students enrolled in any part of a kindergarten through twelfth grade program.

**Property installed as a part of certain pollution control facilities.** The sale of tangible personal property purchased and installed as a component part of a certified water and air pollution control facility is exempt.

**Industrial laundries.** The sale, purchase, lease, use, or consumption of several types of tangible personal property, specified in MCL 205.54a(1)(p) and MCL 205.94(1)(y), to or by an industrial laundry is exempt.

However, the service of laundering or cleaning of textiles under a sale, rental, or service agreement with a term of at least five days is a taxable service, excluding laundering services for restaurants or retail sales businesses.

**Direct pay permits.** Sales to persons holding direct pay permits authorized under MCL 205.98 are exempt from sales and use tax. Under the UTA, Treasury may allow certain taxpayers to self-accrue and directly remit use tax due on taxable purchases or leases of tangible personal property or services. In order to qualify for direct pay, the following conditions must be met:

1. The authorization is to be used for the purchase or lease of tangible personal property or services;

2. The authorization is necessary because it is either impractical at the time of acquisition to determine the manner in which the tangible personal property or services will be used, or it will otherwise facilitate tax compliance, and
3. The person requesting authorization for direct payment maintains accurate and complete records of all purchases or lease of tangible personal property or services.

Direct pay permits are issued solely at Treasury's discretion. See Treasury's Notice to Taxpayers with Direct Pay Authorization and Nonprofit Entities Claiming Exemption from Sales and Use Tax, issued February 8, 2018.

**Lessors.** The sale of tangible personal property to a lessor whose rental receipts are taxed under the UTA is exempt from sales tax (i.e., lessor election). Rental receipts received by a lessor are exempt from use tax if the tangible personal property rented or leased was subject to either sales or use tax at the time the property was purchased. See RAB 2015-25 for more information.

**Water.** The sale of water is constitutionally exempt from sales and use tax.

**Property used for demonstration.** Tangible personal property purchased for demonstration purposes is exempt. For new vehicle dealers, this exemption is limited to a specific number of units based on the dealer's annual sales volume. New vehicle dealers should refer to MCL 205.54d(e) and MCL 205.94(1)(c)(iii) to determine the allowable number of demonstrators.

**Adapting or modifying prewritten computer software.** Specific charges, if those charges are separately stated and identified, for (i) technical support or, (ii) adapting or modifying prewritten computer software programs to a purchaser's needs or equipment, are exempt from sales and use tax.

**Custom computer software.** The sale of computer software originally designed for the exclusive use and special needs of the purchaser is not subject to sales and use tax.

**Commercial advertising element.** The sale of a commercial advertising element is exempt if the following conditions are met:

1. The element is used to create or develop a print, radio, television, or other advertisement;
2. The commercial advertising element is discarded or returned to the provider after the advertising message is completed; and
3. The commercial advertising element is custom developed by the provider for the purchaser.

**Casual sales and isolated transactions.** Casual sales and isolated transactions are exempt. A casual sale is made outside the ordinary course of the seller's business. An isolated transaction is a sale by a person not licensed or required to be licensed under the Act, in which tangible personal property is offered for sale, sold, or transferred and delivered by the owner.

**Oxygen for human use.** The sale of oxygen for human use dispensed pursuant to a prescription is exempt.

**Insulin.** The sale of insulin for human use is exempt.

**Vehicles to members of armed forces.** The sale of a vehicle from a Michigan retailer to a nonresident person of Michigan actually serving in the United States armed forces, for titling and registration in his or her home state of residency or domicile, is exempt. The purchaser must provide a sworn statement from their immediate commanding officer, certifying that the purchaser is a member of the armed forces on active duty and certifying the recorded domiciliary or home address of the purchaser.

**Prescription drugs.** Sales of drugs for human use that can only be legally dispensed by prescription and sales of over-the-counter drugs for human use that are legally dispensed by prescription are exempt. Over-the-counter drugs refers to drugs that are labeled in accordance with the format and content requirements required for labeling over-the-counter drugs under 21 CFR 201.66. A prescription is defined as an “order, formula, or recipe, issued in any form of oral, written, electronic, or other means of transmission by a licensed physician or other health professional as defined in Section 3501 of the Insurance Code of 1956, PA 218 of 1956, and MCL 500.3501.” Sales of medical marihuana are not eligible for this exemption and are subject to tax.

**Food or food ingredients.** The sale of food or food ingredients, except for prepared food, is exempt. For purposes of this exemption, prepared food is one or more of the following:

1. Food sold in a heated state or that is heated by the seller;
2. Two or more food ingredients mixed or combined by the seller for sale as a single item;  
or
3. Food sold with eating utensils provided by the seller, including knives, forks, spoons, glasses, cups, napkins, straws, or plates, but not including a container or packaging used to transport the food. See RAB 2009-8 for more information.

If more than 75 percent of a seller’s sales are prepared food, eating utensils are provided by the seller if the utensils are made available to purchasers. If a seller’s prepared food sales are 75 percent or less, eating utensils are provided by the seller if the seller’s practice is to physically give or hand utensils to purchasers. An “eating utensil” is a tool, instrument, or item used or intended to be used to facilitate the eating of food. Eating utensils includes, but is not limited to, knives, forks, spoons, ice cream/popsicle sticks, skewers, glasses, cups, napkins, straws, and plates. Sales of medical marihuana are not eligible for this exemption and are subject to tax.

**Returnable container deposits.** The deposit on a returnable container for a beverage or the deposit on a carton or case that is used for returnable containers is exempt.

**Property purchased under the federal food stamp program.** Food or tangible personal property that is purchased under the federal food stamp program is exempt. Meals that are sold by a person who is exempt from tax where those meals are eligible to be purchased under the federal food stamp program are exempt.

**Fruits or vegetables.** Seeds or plants of fruits or vegetables are exempt if purchased at a place of business authorized to accept food stamps or a place of business that has made a complete and proper application for authorization to accept food stamps but has been denied authorization and provides proof of that denial.

**Live animals.** Live animals purchased with the intent to be slaughtered for human consumption are exempt.

**Sales to governmental instrumentalities.** Sales to the United States government, agencies, instrumentalities, and this State and any of its political subdivisions, departments, and institutions are exempt. To be exempt, the transaction must be paid for directly from government funds. For sales to the Federal Government using GSA SmartPay cards, individually billed accounts should not be used.

**Bad debt deduction.** A bad debt deduction may generally be claimed by a qualifying third-party lender or a retailer. To deduct bad debt, the debt must be:

1. Written off on the taxpayer's books and records as uncollectible at the time the debt becomes worthless;
2. Deducted on the return for the period the bad debt is written off as uncollectible in the taxpayer's books and records; and
3. Eligible (or could be eligible, for an accrual-basis taxpayer) to be deducted for federal income tax purposes.

Additionally, for a third-party lender to qualify, the retailer and lender must timely execute and maintain a written agreement designating the party that may claim the deduction. See RAB 2019-3 for more information concerning the bad debt deduction.

**Drop shipments.** Tangible personal property sold as part of a drop shipment is exempt. A drop shipment is a three-party transaction in which a retailer/seller accepts an order from an end purchaser/consumer, places this order with a third party, and directs that third party to ship the tangible personal property directly to the end purchaser/consumer. The taxpayer must provide the following information:

1. The name, address, and, if readily available, the federal taxpayer ID number of the person to whom the property is sold for resale, and
2. The name, address, and, if readily available, the federal taxpayer ID number of the person to whom the property is shipped in Michigan.

**Residential utilities.** The residential use of electricity, natural or artificial gas, or home heating fuel is exempt from 2 percent of sales tax (is subject to only a 4percent rate of sales tax).

**Rolling stock.** The sale, use, storage, or consumption of rolling stock purchased by an interstate motor carrier that is used in interstate commerce is exempt. For property to qualify for this exemption it must meet three requirements:

1. The property must be rolling stock;
2. The rolling stock must be purchased, rented, or leased by an interstate motor carrier; and,
3. The rolling stock must be used in interstate commerce.

An “interstate motor carrier” (or “interstate fleet motor carrier” as it is referred to in the UTA), is a person that is particularly engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire, across state lines whose fleet mileage is at least 10 percent outside of Michigan in the immediately preceding tax year. Mere incidental hauling of persons or property for others is insufficient to satisfy the rolling stock exemption. Rolling stock only includes qualified trucks (i.e., a commercial motor vehicle power unit that has two axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has three or more axles), trailers designed to be drawn behind a qualified truck, and parts or other property affixed or to be affixed to and directly used in the operation of a qualified truck or a trailer. See RAB 2016-2 for more information.

**Investment coins and bullion.** The sale, use, storage, or consumption of investment coins and bullion is exempt.

**Industrial processing.**

The sale or lease of tangible personal property ultimately used in industrial processing by an industrial processor is exempt. “Industrial processing” is the activity of converting or conditioning tangible personal property by changing its form, composition, quality, combination, or character. In general, all of the following must be met:

- Property must be used in producing a product for ultimate sale at retail;
- Property must be sold or leased to an “industrial processor,” including a person that performs industrial processing on behalf of another industrial processor or performs industrial processing on property that will be incorporated into a product for ultimate sale at retail, and
- Activity starts when property begins moving from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory.

If property is used for both an exempt and a taxable purpose, the property is only exempt to the extent that it is used for an exempt purpose. In such cases, the exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved (but not required to be pre-approved) by Treasury. For exceptions and exclusions, see MCL 205.54t and 205.94o.

**Extractive operations.** The sale of tangible personal property to an extractive operator for use or consumption in extractive operations is exempt. Extractive operations is the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. This exemption includes all necessary processing operations and movement of the natural resource material until it comes to rest in finished goods inventory storage at the extraction site.

**Data centers.** There is a *very limited* exemption for the sale of data center equipment that is deployed in a qualified data center, including certain property that is affixed to and becomes a structural part of a qualified data center. See Treasury’s Notice Regarding Data Center Exemption (updated March 14, 2016) for more information.

**Foreign Diplomatic Personnel.** Some sales to certain foreign diplomatic personnel are exempt. See RAB 2015-13 for more information.

**Dental Prostheses.** Dental prostheses are exempt from sales and use tax. Dental prostheses include bridges, crowns, dentures, or other similar artificial devices used to repair or replace intraoral defects such as missing teeth, missing parts of teeth, and missing soft or hard structures of the jaw or palate. See Treasury's Notice Regarding Dental Prosthesis Exemption (issued February 9, 2018) for more information.

## CLAIMING EXEMPTIONS

When a purchaser claims an exemption, the seller must obtain all of the following information:

1. The identifying information of the purchaser, including the purchaser's name and address;
2. The reason for claiming the exemption;
3. The purchaser's sales tax license number, if the purchaser has one, for a claim of exemption based on resale.
4. Any other information required for the specific exemption being claimed.

Treasury will accept claims of exemption in a variety of formats as long as all of the required data elements are present. Acceptable formats include:

1. *Sales and Use Tax Certificate of Exemption* (Form 3372).
2. Any exemption certificate format contained in a current Sales and Use Tax Administrative rule.
3. The Uniform Sales and Use Tax Certificate approved by the Multistate Tax Commission.
4. A purchase order issued by the purchaser.
5. The Streamlined Sales and Use Tax Agreement Certificate of Exemption.
6. The required statutory information in another format, such as in a signed letter on the purchaser's letterhead.

A purchaser is not required to provide a signature to claim an exemption, unless the purchaser uses a paper Certificate of Exemption.

A seller that receives and maintains a record of a properly completed exemption certificate, or the required data elements, is not liable for tax even if the purchaser improperly claimed the exemption, assuming the seller did not participate in a fraud. The purchaser is liable for use tax if it improperly claims an exemption.

Exemption certificates should not be sent to Treasury, rather, the seller must maintain a record of the claim according to statute.

See RAB 2016-14 for more information.

### **Purchaser Refunds**

Beginning January 1, 2019, a purchaser that fails to claim an exemption at the time of purchase by notifying the seller of the exemption and providing a complete and proper exemption claim may submit a claim for refund to Treasury for the tax paid on that purchase. The following conditions must be met for a purchaser to claim a refund:

1. The claim for refund is made within four years of the date of purchase;
2. The purchaser submits to Treasury an accurate record of the purchase that identifies the date of the purchase and the amount of sales or use tax paid to the seller;
3. The purchaser submits to Treasury *Purchaser Refund Request for a Sales or Use Tax Exemption* (Form 5633) signed by the seller, that contains information required by Treasury to substantiate the refund claim;
4. The purchaser submits to Treasury a proper exemption claim; and
5. The purchaser submits to Treasury any additional information that Treasury may require related to the refund claim.

However, this process does not apply to all potential refund claims by purchasers. For example, refund claims related to returns of taxable property to a seller or refund claims related to retroactive changes in law are not eligible to use Form 5633.

### **SOURCING**

Sales of taxable tangible personal property are taxable in the state the sale is “sourced.” For purposes of the GSTA and UTA, sales are sourced to a state pursuant to statute MCL 205.69 and MCL 205.110, respectively, according to the following:

1. If a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;
2. If a product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where the product is received by the purchaser or the purchaser’s designee, including the location indicated by instructions for delivery to the purchaser, known to the seller;
3. If 1 or 2 above does not apply, the sale is sourced to the location indicated by an address for the purchaser available from the seller's business records maintained in the ordinary course of the seller's business, provided use of the address does not constitute bad faith.

4. If 1, 2, or 3 above does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained at the completion of the sale, including the address of the purchaser's payment instrument if no other address is available, provided use of the address does not constitute bad faith.
5. If 1, 2, 3, or 4 does not apply or the seller has insufficient information to apply 1,2, 3, or 4 above, the sale will be sourced to the location indicated by the address from which the tangible personal property was shipped or from which the computer software delivered electronically was first available for transmission by the seller.

Leasing and rental of tangible personal property has its own sourcing regimen:

1. For leases and rentals requiring periodic payments, each payment is sourced to the primary location of the property as indicated by the address of the property provided by the lessee.
2. For leases and rentals not requiring periodic payments, the payment is sourced in the same manner as the sale of tangible personal property, above.

## ADMINISTRATIVE

In addition to the administrative information found here, more on forms, electronic filings, payments, and Michigan Treasury Online (MTO) can be found in the Administrative Information section of the Administrative Information chapter and the Electronic Filing Programs chapter.

### **Registration Information**

When a taxpayer registers a business with Michigan to obtain a sales tax license, a use tax registration, or to register as an employer for withholding, they are assigned a filing frequency of monthly, quarterly or annually. It is imperative that the taxpayer files and pays their taxes based on the filing frequency assigned; failure to file at the assigned frequency will result in a letter of inquiry being issued. Additional action, including the issuance of computed assessments, may result if payments and/or returns are not received as instructed by Treasury.

A taxpayer may also register for sales tax through the Streamlined Sales Tax Registration System (SSTRS). This system also allows a taxpayer to register in any of the 22 other SSTRS member states at the same time. Visit [www.streamlined.salestax.org/for-businesses/registration](http://www.streamlined.salestax.org/for-businesses/registration) for more information.

### **Changes to Accounts**

MTO is a self-service tool that allows registered businesses the ability to access, view, and make changes account information. A registered business can submit account-specific changes via MTO in lieu of sending a form. MTO is available 24/7 at [www.michigan.gov/mtobusiness](http://www.michigan.gov/mtobusiness).

## **Filing Returns**

Persons making retail sales in Michigan are required to file a SUW return. Treasury requires a filing frequency, dependent on the amount of tax liability the taxpayer has. Taxpayers required to file SUW returns on a monthly or quarterly basis must file a *Sales, Use and Withholding Taxes Monthly/Quarterly Return* (Form 5080) and remit the tax by the 20<sup>th</sup> of the month following the return period. Taxpayers required to file SUW returns on an annual basis are required to file an annual *Sales, Use and Withholding Taxes Annual Return* (Form 5081), and remit the tax, annually by February 28<sup>th</sup>. Monthly and quarterly filers must also file Form 5081 for reconciliation purposes, and pay any remaining tax, annually by February 28<sup>th</sup>.

To amend a monthly/quarterly return, a taxpayer must complete and file *Sales, Use and Withholding Taxes Amended Monthly/Quarterly Return* (Form 5092), or to amend an annual return, a taxpayer must complete and file *Sales, Use and Withholding Taxes Amended Annual Return* (Form 5082). A monthly or quarterly filer must amend the affected monthly/quarterly return in addition to and before filing an amended annual return.

Annual returns may not be amended when the withholding on a corrected Wage and Tax Statement (W-2) is for less than on the original W-2. Corrections must be handled between the employer and the employee or by the employee on Form MI-1040. Refund requests submitted on an amended Form 5082 for a W-2 adjustment will not be accepted.

Fuel retailers may claim a credit for prepaid sales tax charged on their gasoline and diesel purchases from suppliers or wholesalers by filing a *Fuel Retailer Supplemental Schedule* (Form 5085). Likewise, fuel wholesalers may claim a credit for prepaid sales tax charged on their gasoline and diesel purchases from suppliers by filing *Fuel Supplier and Wholesaler Prepaid Sales Tax Schedule* (Form 5083).

A taxpayer making taxable sales at retail of aviation fuel in Michigan and every person storing, using, or consuming aviation fuel in Michigan (the storage, use, or consumption of which is subject to use tax) must file an *Aviation Fuel Informational Report* (Form 5422) with Treasury on a quarterly basis.

Some taxpayers are required to file on an accelerated basis. Visit Treasury's Accelerated EFT Filers Web site for information.

## SPECIAL TAXES, FEES, AND ASSESSMENTS

### OVERVIEW

In addition to more commonly known taxes, such as Individual Income Tax and Sales and Use Tax, Michigan Department of Treasury (Treasury) also administers various special taxes, fees, and assessments. These include:

- Motor Fuel Tax Act (MFTA)
- Excise Tax levied under Motor Carrier Fuel Tax Act (MCFTA)
- Terms of the International Fuel Tax Agreement (IFTA)
- Oil and Gas Severance Tax
- Tobacco taxes under the Tobacco Products Tax Act (TPTA)
- Nonferrous Metallic Minerals Extraction Severance Tax
- Airport Parking Tax
- Bottle Deposit
- Convention Facility Tax
- Insurance Provider Assessment
- Excise Tax levied under Michigan Regulation and Taxation of Marihuana Act (MRTMA)
- State 911 County Payments
- State Real Estate Transfer Tax (SRETT).

Treasury also administers the equity assessment established by Michigan law and certain aspects of the escrow under the tobacco Master Settlement Agreement (MSA) and related Michigan laws.

The purpose of this section is to provide taxpayers and tax preparers with a general overview of these taxes, fees, and assessments including, but not limited to, licensing, taxable and non-taxable transactions, reporting requirements, and tax filing procedures as well as the requirements under the MSA or related Michigan laws for certain tobacco product manufacturers concerning escrow accounts and equity assessments. This section is **not** intended to provide all-inclusive guidance concerning these taxes, fees, and assessments.

See the “Contacts” section of this chapter for additional contact information.

## MFTA FUEL TAXES

### BACKGROUND

The MFTA, MCL 207.1001 *et seq.*, imposes an excise tax on various fuels imported into, or sold, delivered, or used in Michigan for the purpose of propelling motor vehicles on Michigan's public roads and highways. Prior to January 1, 2017, the excise tax imposed on motor fuel varied depending on whether the motor fuel was gasoline or diesel fuel. For gasoline, the tax was imposed at the rate of 19.0 cents per gallon and for diesel tax was imposed at the rate of 15.0 cents per gallon. In addition, the excise tax on liquefied petroleum gas that was delivered into storage, sold, or used for propelling motor vehicles on Michigan's public roads and highways was imposed by the MFTA at the rate of 15.0 cents per gallon.

**Effective January 1, 2017**, the MFTA excise tax on motor fuel (i.e., gasoline and diesel fuel) was increased to 26.3 cents per gallon and the excise tax was expanded to cover not just liquefied petroleum gas, but all "alternative fuels" defined under the MFTA that are delivered into storage, sold, or used for propelling motor vehicles on Michigan's public roads and highways. The 26.3 cents per gallon rate will remain in effect through December 31, 2021. Beginning January 1, 2022, and for each calendar year thereafter, the tax rate for that calendar year will be calculated by adjusting the rate in effect during the prior calendar year by the lesser of 5 percent or the inflation rate as that term is defined in the MFTA, rounded up to the nearest 1/10 of 1 cent. This increase in the rate, as with the increase that became effective on January 1, 2017, will trigger an inventory (floor stock) tax as discussed in more detail below.

For more information see "Notice Concerning Changes to Motor Fuel Taxation" under "News and Notices" available at [www.michigan.gov/motorfueltax](http://www.michigan.gov/motorfueltax).

**Note:** *A person who blends motor fuel with untaxed products or materials is subject to MFTA tax on the untaxed products or materials. The applicable rate of tax on the untaxed products or materials is the rate imposed on the motor fuel that is blended with the untaxed product or materials. MCL 207.1020. For example, ethanol denatured by gasoline and any biodiesel/fuel blend (i.e., any biodiesel other than B00) is taxable as motor fuel under the MFTA. B00 biodiesel is exempt from the MFTA tax as an excluded liquid. Biodiesel blends containing any motor fuel, such as B99, are taxable.*

**Effective February 27, 2019**, various rules issued under the authority of 1927 PA 150 were rescinded as obsolete or superseded by the MFTA. For more information see "Notice of Rescission of Obsolete Motor Fuel Tax Rates" available at [www.michigan.gov/motorfueltax](http://www.michigan.gov/motorfueltax).

### Fuel Types

**Alternative Fuel:** a gas, liquid, or other fuel that, with or without adjustment or manipulation such as adjustment or manipulation of pressure or temperature, is capable of being used for the generation of power to propel a motor vehicle, including, but not limited to, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, hydrogen compressed natural gas, or hythane. Alternative fuel does **not** include motor fuel, electricity, leaded racing fuel, or an excluded liquid.

**Compressed Natural Gas:** a mixture of hydrocarbon gases and vapors that consists primarily of methane in gaseous form that has been compressed for use as a fuel to propel a motor vehicle.

**Diesel Fuel:** any liquid other than gasoline that is capable of use as a fuel or a component of a fuel in a motor vehicle that is propelled by a diesel-powered engine or in a diesel-powered train. Diesel fuel includes number 1 and number 2 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel fuel also includes any blendstock or additive that is sold for blending with diesel fuel, any liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a diesel-powered engine, airplane, or marine vessel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for diesel fuel. Diesel fuel does **not** include an excluded liquid.

**Excluded Liquid:** as defined in 26 CFR 48.4081-1.

**Gasoline:** gasoline, alcohol, gasohol, casing head or natural gasoline, benzol, benzine, naphtha, and any blendstock additive, or other product including methanol that is sold for blending with gasoline or for use on the road other than products typically sold in containers of less than five gallons. Gasoline also includes a liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel, including a product obtained by blending together any one or more products of petroleum, with or without another product, and regardless of the original character of the petroleum products blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, airplane, or marine vessel. The blending of named products, regardless of their name or characteristics, shall conclusively be presumed to have been done to produce motor fuel, unless the product obtained by the blending is entirely incapable of use as motor fuel. Gasoline also includes transmix. Gasoline does **not** include diesel fuel or leaded racing fuel. An additive or blendstock is presumed to be sold for blending unless a certification is obtained for federal purposes that the substance is for a use other than blending for gasoline.

**Liquefied Natural Gas:** methane or natural gas in the form of a cryogenic or refrigerated liquid that is suitable for use or used as fuel to propel a motor vehicle.

**Liquefied Petroleum Gas:** gases derived from petroleum or natural gases that are in the gaseous state at normal atmospheric temperature and pressure, but that may be maintained in the liquid state at normal atmospheric temperature by suitable pressure. Liquefied petroleum gas includes products predominately composed of propane, propylene, butylene, butane, and similar products. Liquefied petroleum gas does **not** include compressed natural gas, liquefied natural gas, hydrogen, or hythane.

**Motor Fuel:** gasoline, diesel fuel, kerosene, a mixture of gasoline, diesel fuel, or kerosene, or a mixture of gasoline, diesel fuel, or kerosene and any other substance. Motor fuel does **not** include leaded racing fuel.

*Note: These definitions contain other terms defined in the MFTA which should be reviewed to capture the full scope of liquids, gases, and other substances that fall within these defined fuel types.*

## INVENTORY (FLOOR STOCK) TAX

Whenever the tax rate(s) on motor fuel are increased, the MFTA's inventory (floor stock) tax is triggered, making a specific amount of previously taxed fuel held in storage subject to the tax increase, and requiring the reporting and payment of the incremental tax to Treasury. MCL 207.1010. For end users, the tax applies to motor fuel held in storage in excess of 3,000 gallons. For those holding fuel for sale (e.g., retail stations), the tax applies to motor fuel in excess of dead storage. Dead storage equals either 200 gallons for a tank with a capacity less than 10,000 gallons, or 400 gallons for a tank with a capacity of 10,000 gallons or more. The most recent triggering of this inventory tax occurred on January 1, 2017 when the tax on motor fuel increased to 26.3 cents per gallon. For more information on the inventory tax, please see Treasury's Newsletter, Vol 1, Issue 2 dated February 2016 available at [www.michigan.gov/taxes/reports\\_and\\_legal](http://www.michigan.gov/taxes/reports_and_legal) under "Reports and Legal," "Tax Policy Newsletters."

## EXEMPTIONS AND REFUNDS

The MFTA contains various exemptions from the imposition of the fuel tax as well as opportunities for a refund of fuel taxes paid either directly or indirectly as part of the cost of the fuel purchased.

### **Motor Fuel Exemptions**

Dyed diesel fuel and dyed kerosene as exempt fuels.

Gasoline or diesel fuel sold directly by the supplier to the federal government, the state government, or a political subdivision of the state, for use in a motor vehicle owned and operated, or leased and operated, by the federal government, or the state government, or a political subdivision of the state.

Motor fuel sold directly by the supplier to a nonprofit, private, parochial, or denominational school, college, or university and used in a school bus owned and operated or leased and operated by the educational institution that is used in the transportation of students to and from the institution or to and from school functions authorized by the administration of the institution.

Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper under any of the following circumstances:

- The motor fuel is exported by a supplier who is licensed in the destination state.
- The motor fuel is sold by a supplier to another person for immediate export to a state for which the destination state fuel tax has been paid to the supplier who is licensed to remit tax to that destination state.

Gasoline removed from a pipeline or marine vessel by a taxable fuel registrant with the Internal Revenue Service (IRS) as a fuel feedstock user.

Motor fuel sold for use in aircraft if the purchaser paid the tax imposed by the Michigan Aeronautics Code, 259.1 to 259.208, and the purchaser is registered, if required to be registered, under MCL 207.1094.

Aviation fuel upon which tax is not due under MCL 259.203 and the purchaser has certified in writing to the seller that the aviation fuel is being purchased solely for the purpose of formulating leaded racing fuel (LRF). Aviation fuel qualifying under this subsection must be identified on shipping papers and invoices as “aviation fuel exempt for LRF.”

Motor fuel acquired by an end user outside of Michigan and brought into Michigan in the fuel supply tank of a motor vehicle that is not a commercial motor vehicle, if the fuel is retained within and consumed from that same fuel supply tank.

Motor fuel that is number 5 fuel oil, number 6 fuel oil, or fuel oil commonly sold or referred to as bunker C or navy special, as determined by Treasury.

### **Motor Fuel Refunds**

Motor fuel or leaded racing fuel used by an end user in an implement of husbandry or for any other non-highway purpose excluding motor fuel used in a snowmobile, off-road vehicle, or vessel as defined in the Natural Resources and Environmental Protection Act, MCL 324.101 to 324.90106.

Motor fuel acquired by a licensed exporter if the MFTA tax has previously been paid or accrued and the motor fuel was subsequently exported by transport truck by or on behalf of the licensed exporter in a diversion reported under MCL 207.1108.

Motor fuel that the person exported out of a bulk plant in Michigan in a tank wagon if proof of reporting of import to the destination state and proof of payment of the MFTA tax have been provided to Treasury. This refund is subject to conditions established by Treasury.

K-1 kerosene that is sold tax-free through a blocked pump.

Contaminated, lost, or destroyed motor fuel.

Motor fuel used by: (i) an end user in a passenger vehicle of a capacity of five or more under a municipal franchise, license, permit, agreement, or grant; (ii) a person operating a passenger vehicle for the transportation of school students under a certificate of authority issued by the Michigan Department of Transportation (MDOT) pursuant to MCL 476.5, and; (iii) a community action agency.

Diesel fuel used in a passenger vehicle of a capacity of ten or more under a certificate of authority issued by MDOT, or under a municipal franchise, license, permit, agreement, or grant, respectively, and operating over regularly traveled routes expressly provided for in the certificate of convenience and necessity, or municipal franchise, license, permit, agreement, or grant.

Motor fuel placed into storage in Michigan and subsequently exported by transport truck or tank wagon by or on behalf of a licensed exporter.

Motor fuel purchased by the end user for consumption for an exempt use described under MCL 205.30 on which the MFTA tax imposed was previously paid and for which a refund was not previously issued.

Motor fuel used both to propel the vehicle and to operate “attached equipment” (standard percentage is 15 percent and may be decreased or increased based on evidence presented).

## **Alternative Fuel Exemptions**

Alternative fuel sold directly by an alternative fuel dealer to, or alternative fuel consumed by, the federal government, the state government, or a political subdivision of this state, for use in a motor vehicle owned and operated or leased and operated by the federal government, state government, or a political subdivision of this state.

Alternative fuel sold directly by an alternative fuel dealer to, or alternative fuel consumed by, a nonprofit, private, parochial, or denominational school, college, or university and is used in a school bus owned and operated or leased and operated by the educational institution that is used in the transportation of students to and from the institution or to and from school functions authorized by the administration of the institution.

Alternative fuel imported into this state in the fuel supply tank of a motor vehicle used solely for noncommercial purposes, if the aggregate capacity of the motor vehicle's fuel supply tank does **not** exceed 30 gallons or the equivalent of 30 gallons.

## **Alternative Fuel Refunds**

Alternative fuel used both to propel the vehicle and to operate attached equipment standard percentage is 15 percent and may be decreased or increased based on evidence presented.

Alternative fuel used for any purpose other than to operate a motor vehicle on Michigan public roads or highways if that person has already paid the tax imposed under section 152 on that alternative fuel.

***Note: To obtain a refund for MFTA tax paid on motor fuel or alternative fuel for a non-taxable use, a person must file a claim with Treasury within 18 months after the date of purchase, as shown on the invoice, and otherwise comply with the requirements set forth in MCL 207.1048. For refunds based on the decision in Auto Alliance International, Inc v Department of Treasury, 282 Mich App 492 (2009), refer to Treasury's Notice (effective July 1, 2019) regarding the rescission of the 3.2 gallon per vehicle allowance and the requirements to substantiate such refund claims available at [www.michigan.gov/taxes](http://www.michigan.gov/taxes).***

## **LICENSING INFORMATION (MOTOR FUEL)**

The MFTA requires various persons to obtain a license before they may lawfully engage in specified activities concerning fuel including the sale, distribution, importation, storage, and exportation of motor fuel.

## **Application**

Applicants for a motor fuel tax license must electronically submit an application through the Michigan Motor Fuel and Tobacco Tax System (MiMATS). To access the MiMATS and completed the application process, the applicant will first need to create a login available at <https://mimats.michigan.gov/tap/>. An applicant must include with the electronic application a completed and signed *Motor Fuel Tax License Application Signature Page* (Forms 5576) prior to submission of the application. Form 5576 is available at [www.michigan.gov/motorfueltax](http://www.michigan.gov/motorfueltax). The applicant must also submit other required documentation upon completion of the application. License fees are listed in the online license application.

*Note: Audited financial statements are required for Terminal Operator, Supplier, Permissive Supplier, Alternative Fuel Commercial Users, Alternative Fuel Dealers, Blenders, and Bonded, Tax Wagon, or Occasional Importer licenses.*

Once issued, a license remains in effect unless or until it is discontinued by the licensee, or revoked, canceled, or suspended for cause by Treasury. Although the license does not need to be renewed annually, Treasury may, at any time, request that a licensee provide updated information including, but not limited to, audited financial statements.

## **Account Number**

The licensee's account number is the licensee's Federal Employer Identification Number (FEIN). If a licensee does not have a FEIN, Treasury will issue a Treasury (TR) number.

## **Bonding**

All Licensees **must** submit surety bonds unless they provide proof of financial responsibility and there are no indications of risk to the State of Michigan.

If bonding is required, Treasury will notify the licensee in writing and will specify the amount of the bond required. A bonding company licensed to do business in Michigan must issue the bond. It is the responsibility of the licensee to locate a bonding company. In lieu of a surety bond, Treasury may accept a cash bond.

## **Licenses**

Licenses are **not** transferable. Written notice must be provided within 30 days if there is a change of at least 20 percent of beneficial ownership. Treasury will advise if a new license is required.

If a business is sold, discontinued, or transferred, written notification must be provided within **three** business days.

Within **15 days** after the discontinuance, sale, or transfer of a business, or the cancellation, revocation, or termination of a license, the licensee shall provide Treasury with a final return and shall include with the return a payment of all motor fuel taxes, penalties, and interest due.

## MOTOR FUEL AND ALTERNATIVE FUEL LICENSE TYPES AND ENTITIES ARE REQUIRED TO BE REGISTERED

**Alternative Fuel Commercial User:** a commercial or other business enterprise or entity excluding licensed Alternative Fuel Dealers that is a consumer or end user of alternative fuel to propel a motor vehicle on Michigan public roads and highways.

**Alternative Fuel Dealer:** a person who: (i) is licensed (or required to be licensed) as an Alternative Fuel Dealer under MCL 207.1153, (ii) is in the business of selling alternative fuel at retail, and (iii) “uses” alternative fuel as that term is defined in MCL 207.1151(j).

**Aviation Fuel Registrant:** a person who purchases aviation fuel for resale must be registered with Treasury. An Aviation Fuel Registrant is required to pay the aviation fuel tax at the time of purchase.

**Blender:** a person who produces blended motor fuel outside of the bulk transfer/terminal system in Michigan. A person must be licensed as a blender if they blend a taxable product with a non-taxable product below the rack. A person must also be licensed as a blender if they blend diesel fuel and B00 biodiesel or ethanol and gasoline below the rack.

**Bonded or Occasional Importer:** a person who imports motor fuel from outside the United States by transport truck, tank wagon, pipeline, or marine vessel for delivery into a storage facility other than a qualified terminal. The Importer must also be licensed in the Canadian Province or Territory, or foreign country from which the fuel is imported to qualify for an MFTA Importer license.

**Carrier:** a person who operates a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack. While Treasury does not issue a physical document (license) to these accounts, they must be registered with Treasury.

**Exporter:** a person who exports motor fuel from Michigan to another state or country. The Exporter may be required to be licensed in the other state or province.

**Permissive Supplier:** a position holder in a terminal outside of Michigan, or one who acquires motor fuel from a position holder in a terminal outside of Michigan in a two-party exchange and is registered under IRC Section 4101.

**Position Holder:** a person who has a contract with a terminal operator for the use of storage facilities and other terminal services for motor fuel at the terminal. A Position Holder is the owner of the fuel in the terminal and may or may not be the terminal operator.

**Retail Marine Diesel Dealer:** a person sells or distributes diesel fuel to an end user in Michigan for use in boats or other marine vessels.

**Supplier:** a position holder in a terminal or refinery in Michigan and is registered under IRC Section 4101 for motor fuel transactions in the bulk transfer/terminal system; a position holder in a terminal or refinery outside of Michigan from which fuel is removed and delivered to Michigan; a person who acquires fuel at a terminal or refinery in Michigan from a position holder in a two-party exchange; **or** a person who imports fuel grade ethanol or produces alcohol or alcohol derivative substances in Michigan or outside of Michigan for delivery to a terminal in Michigan, or acquires alcohol or alcohol derivative substances upon importation. **Biodiesel producers who own fuel in the terminal must also be licensed as suppliers.**

**Tank Wagon Operator - Importer:** Imports motor fuel from a bulk plant in another state by tank wagon or transport truck.

*Note: A person may purchase fuel from a MFTA-licensed supplier or permissive supplier outside of the State for delivery into Michigan and pre-pay the MFTA tax to that supplier or permissive supplier without an importer license.*

**Terminal Operator:** a person who owns, operates, or controls a terminal. All facilities in Michigan that produce motor fuel and distribute the fuel from a rack, for purposes of the MFTA are considered a terminal.

**Transporter:** a person who is an operator of a railroad or rail car, tank wagon, transport truck, or other fuel transportation vehicle engaged in the business of transporting motor fuel for another person into or out of Michigan below the terminal rack.

## MOTOR FUEL TAX REPORTING

Most motor fuel tax returns must be filed electronically. Returns filed electronically must be transmitted by the due date. Electronic payments must generally be initiated the day prior to the due date to be received timely. For licensees who are not required to file electronically, returns with full payment, are due on the 20<sup>th</sup> of the month following the close of the reporting period. If a quarterly return reporting period is from January 1 through March 31, the return is due on April 20. If the 20<sup>th</sup> falls on a weekend or a legal holiday, the return is due on the next business day. If the U.S. Postal Service postmark is dated on or before the due date of the return, the return is considered timely.

**Tax returns must be filed even if no tax is due.** Failure to file will result in Treasury issuing computed assessments against a licensee's account.

Detailed instructions are provided with all tax returns and schedules. **The instructions should be read carefully prior to filling out the returns and schedules.** When preparing returns and schedules, it is imperative that the appropriate product codes be used, including codes for fuel grade ethanol, methanol, gasohol, biodiesel, biodiesel blends, and dyed diesel/biodiesel fuels.

**Suppliers, Permissive Suppliers, and Terminal Operators are required to file returns electronically.** Suppliers and Permissive Suppliers are required to pay the tax due on their returns by either Automated Clearing House (ACH) debit or credit. Applications are available on the Motor Fuel Web site. Other licensees may be required to file fuel tax returns electronically if they have received timely notice as required by MCL 207.1068(4). Aviation Fuel Registrants do not file MFTA tax returns. Additional electronic filing information can be found at [www.michigan.gov/motorfuelefile](http://www.michigan.gov/motorfuelefile).

**Note: The Michigan Automated Tax System (MiMATS), Treasury’s new system for Motor Fuel Tax reporting became effective July 30, 2018.**

<b>MFTA Tax Return Filing Schedule</b>	
Blenders	Monthly
Carriers	Monthly
Permissive Suppliers	Monthly
Suppliers	Monthly
Terminal Operators*	Monthly and Annually
Bonded Importers**	Quarterly
Exporters	Quarterly
Occasional Importers***	Quarterly
Retail Marine Diesel Dealers	Quarterly
Tank Wagon Operator Importers	Quarterly
Transporters	Quarterly

- \* Monthly informational reports are filed by terminal operators. The annual report is a reconciliation report and payment is due on any discrepancies.
- \*\* Bonded Importers file monthly estimated payments with *Motor Fuel Tax Payment/Proposed Adjustments Coupon* (Form 4020) and then file a quarterly return to reconcile all activity for the reporting quarter.
- \*\*\* Occasional Importers must remit tax on each load imported from outside the United States within three business days after either the date the taxable fuel was delivered into Michigan or the date that a valid import verification number was obtained from Treasury, whichever is earlier. *Three Day Payment Voucher* (Form 3778) must accompany the payments. The quarterly return is filed to reconcile all activity for the reporting quarter.

An original or amended return resulting in a refund due to the licensee must be filed within four years from the due date of the original return. A return resulting in a deficiency will be assessed for a period of four years from the due date of the return or the date the return was filed, whichever is later.

## MFTA TAX REPORTING (ALTERNATIVE FUEL)

Beginning January 1, 2017, the MFTA tax rate on each gallon or gallon equivalent of Alternative Fuel, as applicable, delivered into storage, sold, or used for propelling motor vehicles on Michigan's public roads and highways is the same rate as applied to motor fuel.

- Alternative Fuel Dealers are required to collect the MFTA tax from the consumer at the point of sale and remit the tax on a monthly basis beginning January 1, 2017 and file an *Alternative Fuel Dealer's Monthly Tax Return* (Form 5494) with Treasury.
- Alternative Fuel Commercial Users are required report and pay the tax for Alternative Fuel not purchased at retail from an Alternative Fuel Dealer and used for propelling motor vehicles on Michigan public roads or highways to Treasury on a monthly basis beginning on January 1, 2017 by filing an *Alternative Fuel Commercial User Monthly Tax Return* (Form 5495) with Treasury. MFTA Tax is **not** imposed for such uses prior to January 1, 2017.
- Other users or consumers of Alternative Fuel (i.e., not Alternative Fuel Dealers or Alternative Fuel Commercial Users) who use such fuel for propelling motor vehicles on Michigan public roads or highways, have to report and pay the MFTA tax on a quarterly basis beginning January 1, 2018 by filing an *Alternative Fuel Untaxed Products Return* (Form 5560) with Treasury. MFTA Tax is **not** imposed for such uses prior to January 1, 2018.

Under the MFTA, a "gallon equivalent" means 1 of the following or its metric equivalent:

- For **compressed natural gas**, 5.660 pounds or 126.67 cubic feet at 60 degrees Fahrenheit and one atmosphere of pressure.
- For **hydrogen**, the volume or weight that is equal to 128,450 BTUs. For purposes of this subdivision, there are 27,000 BTUs per 100 standard cubic feet, and 480.11 standard cubic feet per gallon equivalent.
- For **hydrogen compressed natural gas**, the volume or weight that is equal to 128,450 BTUs. For purposes of this subdivision, there are 79,800 BTUs per 100 standard cubic feet, and 162.44 standard cubic feet per gallon equivalent.
- For **liquefied natural gas**, 6.060 pounds.

**Effective January 1, 2017**, certain Alternative Fuel Commercial Users may report and pay the MFTA tax on compressed natural gas based on a gallon equivalent of 6.384 pounds or 142.78 cubic feet at 60 degrees Fahrenheit and one atmosphere of pressure rather than the gallon equivalent of 5.660 pounds or 126.67 cubic feet at 60 degrees Fahrenheit and one atmosphere of pressure that is otherwise applicable. See MCL 207.1154(2). To qualify to report and pay the MFTA tax on compressed natural gas at this alternative gallon equivalent, an Alternative Fuel Commercial User must file an affidavit acceptable to Treasury, or return a signed copy of Treasury's "Taxpayer Acknowledgment (for Use of the Alternative Gallon Equivalent under MCL 207.1154(2))," which is available upon request, certifying that **all** of the following conditions are met:

- The compressed natural gas was placed into the fuel supply tank of a motor vehicle owned by the alternative fuel commercial user through the use of an alternative fuel filling station.

- The alternative fuel filling station described above is owned or leased by the alternative fuel commercial user, is located at the place of business of the alternative fuel commercial user and is unavailable for public use.
- The motor vehicle described above is **not** any of the following:
  - Subject to the IFTA described in MCL 207.212a.
  - Required to have two decals affixed to each qualified motor vehicle under MCL 207.215.
  - Operated under a trip permit issued by Treasury under MCL 207.217.

**Alternative Fuel Filling Station** means a machine or other device located within this state that is supplied with alternative fuel and that is designed or used for placing or delivering alternative fuel into the fuel supply tank of a motor vehicle. The phrase located within this state includes, but is not limited to, all of the following locations:

- An alternative fuel dealer’s place of business.
- A commercial or industrial establishment or facility.
- A residence or residential property.
- A landfill licensed or required to be licensed under part 115 of the Natural Resources and Environmental Protection Act, MCL 324.11501 to 324.11554.

## GENERAL INFORMATION

### **Penalty and Interest**

MFTA provides for both civil and criminal penalties for violations of the Act. Penalty and interest for late payment of the tax may be imposed in accordance with the Revenue Act, MCL 205.1 *et seq.*

### **Bad Debt Deduction for Licensed Suppliers**

Licensed Suppliers are entitled to a credit against the MFTA tax due on their return when they have remitted MFTA tax that was not ultimately collected from an eligible purchaser, presuming the MFTA tax has remained uncollected for **90 days** after the date the eligible purchaser should have paid the MFTA tax.

The Supplier must advise Treasury in writing of a failure to collect the MFTA tax within ten days of the date the eligible purchaser should have paid the MFTA tax to the Supplier.

Credit must be claimed on the first return filed by the Supplier after the 90-day period has expired. The claim must identify the defaulting eligible purchaser and be accompanied by any documentation Treasury requires.

If the Supplier subsequently collects any tax from the eligible purchaser for which credit has been claimed, the Supplier is required to remit the MFTA tax on the return filed for the period during which the payment was received. The Supplier must provide a statement of explanation that identifies the period for which the MFTA tax was paid and any other information or documentation Treasury requires.

## Dyed Diesel

Dyed diesel fuel is exempt from the MFTA tax unless it is used for taxable purposes.

Persons licensed as Terminal Operators, Suppliers, Permissive Suppliers, Occasional, Bonded or Tank Wagon Operator Importers, Exporters, Transporters, or Carriers are required to report the removal, importation, or exportation of dyed diesel/biodiesel fuel even though it is not taxable in most cases.

Dyed diesel fuel can be used in marine vessels, however, the tax must be collected and reported on transactions that are not exempt.

*Note: It is against both State and federal law to operate a motor vehicle on public roads of the State using dyed diesel fuel. Violations include penalties of \$1,000 for the first offense and \$5,000 for each subsequent offense.*

## Eligible Purchaser

An eligible purchaser meeting the requirements in MCL 207.1075 may delay payment of the motor fuel tax to the Supplier to one business day before the MFTA tax is due as described in MCL 207.1074.

## **Exports**

Although the MFTA imposes the excise tax on motor fuel upon importation or upon removal across a terminal rack, there are some situations in which the motor fuel is exported where the MFTA tax does not apply.

Licensed Suppliers are **not** required to remit MFTA tax when they remove motor fuel across a terminal rack in Michigan for delivery to a location outside of Michigan **if they are licensed for motor fuel tax in the destination state**. Licensed Suppliers who sell motor fuel at a rack in Michigan to other licensed Suppliers for immediate export are **not** required to collect MFTA tax from the licensed Supplier to whom they are selling **if the Supplier purchasing the fuel is licensed for motor fuel tax in the destination state**.

Suppliers who sell motor fuel to MFTA-licensed Exporters or to other persons for immediate export are **not** required to collect the MFTA tax if proof of export is available in the form of a terminal-issued shipping paper, and the Supplier has pre-collected the destination state motor fuel tax.

Not all states have the statutory provisions to allow pre-collection of their motor fuel tax by Suppliers. If motor fuel is sold by Michigan Suppliers to MFTA-licensed Exporters or other persons for delivery to a state that does not allow such pre-collection, the **MFTA tax must be charged**. Suppliers are required to issue, or instruct the terminal operator to issue, shipping papers that meet the requirements listed in MCL 207.1103(d) indicating the state to which the motor fuel is to be delivered and specifying that MFTA tax has been paid or accrued by the Supplier. If the purchaser subsequently pays motor fuel tax to the destination state, the purchaser may submit proof to Treasury and request refunds of the MFTA tax using the refund claims process.

There are also instances where the destination state does not impose motor fuel tax on a particular type of fuel that is being purchased for export to their state. When this occurs, Suppliers will **not** charge the MFTA tax **if the purchaser is a MFTA-licensed Exporter**. The Suppliers must issue, or instruct the terminal operators to issue, shipping papers that meet the requirements listed in MCL 207.1103(d) indicating the state to which the motor fuel is to be delivered, specifying the delivery is subject to the statutory requirements of the destination state, and MFTA tax has **not** been paid or accrued.

*Note: If the purchaser is not a MFTA-licensed Exporter, Suppliers must charge the MFTA tax.*

### **Fuel Diversions**

MFTA requires payment of the MFTA tax when motor fuel is diverted to Michigan from its original state of destination. The MFTA further provides for refunds under certain circumstances when motor fuel is diverted from Michigan to a location outside of Michigan. In either instance, specific requirements must be met.

### **Fuel Diversion Numbers**

When motor fuel is diverted from its original state of destination, the owner of the motor fuel, or the shipper if other than the owner, must obtain a fuel diversion number no later than the **next business day** after the diversion takes place. An owner can become a member and log in to report future diversions of MFTA tax-paid motor fuel to another state or Canada or motor fuel diverted to Michigan by visiting [www.trac3.net](http://www.trac3.net), under Fueltrac, select “Become a Member” and enter the required company information. The company identification information only has to be entered once.

A diversion number can also be obtained by calling Treasury at 517-636-4600, Monday through Friday, 8 a.m. to 4:30 p.m.

### **Diversions In**

Importers are required to report and pay MFTA tax on motor fuel diverted to Michigan when the shipping paper indicates a different state of destination.

Licensed Bonded Importers must remit MFTA tax on motor fuel diverted from an original state of destination other than Michigan to a location in Michigan on *Motor Fuel Tax Payment/Proposed Adjustments Coupon* (Form 4020). The transactions are then reported quarterly on *Fuel Importer Return* (Form 3992).

Licensed Occasional Importers must remit MFTA tax on diverted motor fuel within three business days on Form 3778. The transactions are then reported quarterly on Form 3992.

Licensed Tank Wagon Operator-Importers must report the transactions on Form 3992 and remit tax.

When **unlicensed** importers divert motor fuel to Michigan from the original state of destination, payment is required within three business days after the date taxable motor fuel is delivered into Michigan. The collection cost allowance is **not** available.

Licensed Exporters who divert motor fuel from its original state of destination to Michigan must also pay the MFTA tax within three business days after the date the taxable motor fuel is delivered into Michigan. If an Importer or licensed Exporter purchased the diverted motor fuel from a Michigan licensed Supplier, the Importer or licensed Exporter may enter into an agreement with the Supplier to have the Supplier collect and remit the MFTA tax. The agreement must include, at a minimum, the names of the parties to the agreement, the date the agreement was made, the motor fuel type, and the number of gallons of motor fuel. The Supplier must fax or mail a copy of the agreement to Special Taxes Division, Motor Fuel Unit, by the due date of the return period in which the diversion took place.

### **Diversions Out**

Exporters may seek a refund of the MFTA tax, less the collection cost allowance, when MFTA tax-paid motor fuel originally destined for Michigan is diverted to a location outside of the State. Licensed and unlicensed exporters must submit a written request for refund along with a copy of the diversion, invoice, bill of lading, and proof of destination state motor fuel tax paid.

The Exporter is required to obtain a fuel diversion number **by the next business day** after the diversion takes place.

### **Fuel Imported From Outside the United States**

If motor fuel upon which MFTA tax was **not** prepaid to a MFTA-licensed Supplier or Permissive Supplier is to be imported from another country, an import verification number **must** be obtained from Treasury within **24 hours before entering** Michigan for each load imported. The person bringing the motor fuel into Michigan from another country must call the toll-free line at 1-888-213-0676 to obtain the import verification number. The automated system is available 24 hours a day, seven days a week.

*Note: If a person diverting motor fuel into Michigan has obtained the required fuel diversion number, they do not need to contact Treasury for an import verification number. Bonded Importers are required to remit monthly estimated tax payments with Form 4020 or by Electronic Funds Transfer on or before the 20<sup>th</sup> day of the month following the close of the previous month. Electronic payments must generally be initiated the day prior to the due date to be received timely. A quarterly return must then be filed to reconcile activity for the full reporting quarter. The estimated payments are deducted from the calculated tax due on the return. The quarterly return is due on the 20<sup>th</sup> of the month following the close of the reporting quarter.*

**Occasional Importers** are required to remit MFTA tax on motor fuel imported from outside the United States on Form 3778 within three business days after the date taxable motor fuel is delivered into Michigan or after the date the valid import verification number is obtained from Treasury, whichever is earlier. A quarterly return is then filed to reconcile all activity for the full reporting quarter. Payments are deducted from the calculated MFTA tax due on the return. The quarterly return is due on the 20<sup>th</sup> of the month following the close of the reporting quarter.

## **Invoicing**

Motor fuel retailers and Alternative Fuel Dealers should properly invoice the sales of motor fuel and alternative fuel. Proper invoicing facilitates the customers' ability to file refund claims and prepare any MFTA tax returns that may be due.

A properly prepared invoice should contain the following information:

1. Seller's name, address, and account number (FEIN or TR)
2. Date of sale
3. Name of purchaser. For motor carrier fuel tax purposes, if the purchaser is in a lease agreement, a receipt will be accepted in either name (lessor or lessee), provided a legal connection can be made between the party
4. Type of fuel sold
5. Number of gallons or gallon equivalents sold
6. MFTA tax rate charged to the customer (if practical)
7. Signature of the purchaser or purchaser's agent and the seller or seller's agent
8. Invoices must be prepared in duplicate, with the original invoice furnished to the purchaser and the copy kept by the seller for four years.

## **Record Keeping**

### **Shipping Papers**

Refineries, terminal operators, and operators of bulk plants, with the exception of bulk plant operators who deliver motor fuel into tank wagons, must issue **automated machine-generated** shipping papers. The papers are to be provided to the driver of the fuel transportation vehicle or operator of a train pulling a rail car transporting fuel, and must include all of the following:

1. Address and terminal number of the facility from which the motor fuel is removed or the address of the bulk plant from which the motor fuel is withdrawn
2. Date the motor fuel is removed or withdrawn
3. Gross **and** net gallons removed or withdrawn
4. State of destination as represented by the transporter, shipper, or shipper's agent
5. Notices required by MFTA. MCL 207.1103, 207.1112, and 207.1113 impose requirements for the placement of notices on shipping papers (e.g., Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use).

When unforeseen circumstances prevent the issuance of automated machine-generated shipping papers, the refinery, terminal, or bulk plant operator may issue a *manually* prepared shipping paper provided the following requirements are met:

- The refinery, terminal, or bulk plant operator is required to contact Treasury to obtain a Service Interruption Authorization Number, which will be valid for a period of not more than 24 hours. If the cause of the service interruption is not corrected within 24 hours, the refinery, terminal, or bulk plant operator must contact Treasury's Shipment Authorization Service for another number at 1-888-213-0676.
- The Service Interruption Authorization Number must be included on the shipping papers.

**Shipping papers must be maintained at the delivery location for a 30-day period.**

All records must be kept for a period of four years from the due date of the return or the date the return was filed, whichever is later. These records may be kept at the delivery location or another business location of the licensee.

Accurate and complete records of all transactions must be maintained for no less than four years.

**Right to Examine Records**

Treasury has the authority to audit and examine records, books, papers, and equipment of any person, including, but not limited to, licensees and bulk end users, to ensure that the MFTA tax has been paid.

Treasury will request the person to make the records, books, or papers available at the person's place of business in Michigan, or at Treasury's location if the records are maintained at a location outside Michigan, within three business days.

Failure to comply may result in civil and/or criminal penalties.

**RETAIL MARINE DIESEL DEALERS**

Retail Marine Diesel Dealers are required to license and file quarterly fuel tax returns. Retail Marine Diesel Dealers can purchase undyed diesel fuel tax paid. Dyed diesel can be purchased tax free, but tax is due on the quarterly returns for all fuel sold to nonexempt entities.

***Note: It is the responsibility of the Retail Marine Diesel Dealer to collect the marine diesel fuel tax from any vessel that is not exempt from the tax, whether the fuel is dyed or undyed diesel fuel.***

***Please see above reference to Dyed Diesel Fuel and B00 Biodiesel for additional clarification.***

## **Who Must Be Licensed as a Retail Marine Diesel Dealer**

Any person who engages in the business of selling or distributing diesel fuel into boats or other marine vessels or into the bulk storage of an unlicensed end user of marine fuel must be licensed as a Retail Marine Diesel Dealer.

## **General Information on Marine Retail Sales of Motor Fuel**

PA 451 of 1994 imposes tax on gasoline and diesel fuel sold in Michigan that is used to generate power for the operation or propulsion of vessels on Michigan waterways at the same rate as the tax imposed under the MFTA. PA 451 further requires that the tax be collected in the same manner and at the same time as the MFTA. MCL 324.71102.

Based on the definition of “vessel” in MCL 324.71101, gasoline and diesel fuel consumed in the following watercraft is exempt from the marine waterways tax:

- Watercraft used for commercial fishing;
- Watercraft used by Sea Scouts department of the Boy Scouts of America;
- Watercraft used in interstate or foreign commerce;
- Watercraft used by the Federal, State, or Local Government;
- Watercraft owned by a railroad or railroad car ferry company; or
- Watercraft used in trade, including watercraft used in connection with an activity that constitutes a person’s chief business or livelihood.

The MFTA prohibits the use of dyed diesel fuel on Michigan public roads and highways; however, it does **not** prohibit the use of dyed diesel fuel in marine vessels.

Dyed diesel is exempt from the tax under the MFTA so Retail Marine Diesel Dealers can acquire dyed diesel fuel without payment of the MFTA tax to their fuel supply source. If untaxed dyed diesel fuel is sold for a taxable purpose, Retail Marine Diesel Dealers must collect the marine fuel tax from the customer and remit the tax with the return.

A Retail Marine Diesel Dealer cannot take credit for dyed diesel fuel acquisitions on the returns, as the fuel supply source should not have charged the tax.

A Retail Marine Diesel Dealer can also acquire undyed (clear) diesel fuel. If undyed diesel fuel is acquired, the Retail Marine Diesel Dealer must pay the full MFTA tax rate to the fuel supply source.

When sales of undyed (clear) diesel fuel are made, the Retail Marine Diesel Dealer will receive a credit on the return for the MFTA tax paid to the fuel supply source.

## **Returns and Schedules**

A licensed Retail Marine Diesel Dealer may file the following forms electronically using Web direct fillable forms or on paper:

*Retail Marine Diesel Dealer Schedule of Receipts (Form 3767)*

*Retail Marine Diesel Dealer Return (Form 3769)*

*Retail Marine Diesel Dealer Schedule of Disbursements (Form 4429)*

## MOTOR CARRIER FUEL TAX ACT (MCFTA) AND INTERNATIONAL FUEL TAX AGREEMENT (IFTA)

IFTA is an agreement between all of the contiguous states in the United States and most Canadian provinces. Interstate motor carriers are regulated under the MCFTA and the IFTA. Intrastate motor carriers are **not** required to license or report for fuel tax purposes under the MCFTA or IFTA.

Under IFTA and the MCFTA, motor carriers file a fuel tax license application with their base jurisdiction and the base jurisdiction issues the motor carrier credentials. Credentials consist of a license and a set of decals for each power unit. Credentials are valid for licensing purposes in all participating IFTA jurisdictions through the end of the calendar year in which they are issued. Credentials must be renewed annually.

IFTA motor carriers must file quarterly returns with their base jurisdiction, reporting fuel purchases and miles traveled in all jurisdictions. Prior to January 1, 2017, the MCFTA only applied to diesel fuel, however, the MCFTA now applies to motor fuel and alternative fuels as those terms are defined under the MFTA:

Motor fuel means gasoline, diesel fuel, kerosene, a mixture of gasoline, diesel fuel, or kerosene, or a mixture of gasoline, diesel fuel, or kerosene and any other substance. Motor fuel does **not** include leaded racing fuel.

Alternative fuel means a gas, liquid, or other fuel that, with or without adjustment or manipulation such as adjustment or manipulation of pressure or temperature, is capable of being used for the generation of power to propel a motor vehicle, including, but not limited to, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, hydrogen compressed natural gas, or hythane. Alternative fuel does **not** include motor fuel, electricity, leaded racing fuel, or an excluded liquid.

Prior to January 1, 2017, the tax rate was 15 cents per gallon. However, after January 1, 2017, the rate is the same as the rate provided for under the MFTA.

### HIGHLIGHTS

#### **Ammex Facility**

The U.S. Customs Service has granted Class 9 Customs Bonded Warehouse status to the Ammex, Inc. facility adjacent to the Ambassador Bridge at 3400 W. Fort Street, Detroit, Michigan.

Court decisions granted the Ammex, Inc. facility the right to sell gasoline and diesel fuel tax free.

Diesel fuel purchased at the Ammex, Inc. facility does not include the MFTA tax and may not be claimed as a tax-paid purchase on the IFTA return.

## **Dyed Diesel Fuel**

The use of dyed diesel fuel in vehicles on the public roads and highways is prohibited, and violators are subject to severe penalties.

A motor carrier may designate a bulk storage tank for dyed diesel fuel for use in off-road equipment. The motor carrier is required to keep a log of fuel disbursements from this tank. This log must have the date of the disbursement, gallons disbursed, and the identification of the equipment being fueled. See the “Contact” section of this chapter for more information.

## **Who Must Be Licensed as an IFTA Motor Carrier**

Persons operating interstate “qualified motor vehicles” must be licensed as IFTA motor carriers. IFTA defines a “qualified motor vehicle” as a motor vehicle used, designed, or maintained for transportation of persons or property and:

- Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or
- Having three or more axles regardless of weight; or
- Is used in combination when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight.

When counting the axles to determine if a vehicle or combination of vehicles qualify for licensing, the axles on the trailing unit are not counted, only the axles on the power unit are counted.

In order for recreational vehicles to qualify for IFTA purposes, they must meet the requirements and be used in connection with a business endeavor.

A qualified commercial motor vehicle does **not** include a recreational vehicle, a road tractor, truck, or truck tractor used exclusively in this state, a road tractor, truck, or truck tractor owned by a farmer and used in connection with the farmer’s farming operation and not used for hire, a school bus, a bus defined and certificated under the motor bus transportation act, 1982 PA 432, MCL 474.101 to 474.141, or certain buses operated by a public transit agency.

## **IFTA Base Jurisdiction**

R212 of the IFTA Articles of Agreement defines base jurisdiction as “the jurisdiction where qualified motor vehicles are based for vehicle registration purposes” and

- .100 Where the operational control and operational records of the licensee’s qualified motor vehicles are maintained or can be made available; and
- .200 Where some travel is accrued by qualified motor vehicles within the fleet. The commissioners of two or more affected jurisdictions may allow a person to consolidate several fleets that would otherwise be based in two or more jurisdictions.

## **IFTA Account Number**

The account number for an IFTA motor carrier is the FEIN. If the IFTA carrier does not have an FEIN, the IFTA Articles of Agreement require that the motor carrier use an owner's, partner's, or corporate officer's Social Security number (SSN) for identification purposes. The account number printed on the license and returns will be the FEIN or SSN preceded by "MI" and followed by a fleet designator (usually "00"). If several fleets are involved, the last two digits may be 01, 02, 03, etc.

If an interstate motor carrier does not have a FEIN, Treasury will issue a TR number for general tax purposes, however, this number will not be printed on the license or as the IFTA account number on the tax return. A TR number will only be used for refunds or tax assessments.

IFTA carriers are encouraged to contact the IRS to obtain a FEIN if they do not already have one. The IRS can be reached at 1-800-829-4933 or at [www.irs.gov](http://www.irs.gov).

## **IFTA New and Renewal Applications**

Michigan IFTA Fuel Tax License Application must be completed by a new applicant, or a prior licensee who has been discontinued for more than one quarter. To ensure prompt processing of the IFTA application, applicants must complete all sections, including the corporate officer information. Applications with missing information cannot be processed.

Renewal Application for Michigan IFTA Fuel Tax License for the upcoming year is available online beginning November 1 of the current year to all IFTA carriers who are currently licensed. The IFTA license year is January 1 through December 31. Renewal applications should be filed as soon as possible to ensure credentials will be received by the carrier on time. There is no fee associated with renewal.

***Note: Renewal applications will not be processed unless all required IFTA tax returns have been filed and outstanding IFTA tax liabilities have been paid or payment arrangements have been made.***

Carriers that do not leave the State or file zero reports for three consecutive quarters may not be renewed and must complete a new application. Vehicles that qualify for IFTA licensing cannot legally leave the State without valid IFTA credentials or trip permits.

## **IFTA Temporary Decal Permits**

A **licensed IFTA Motor Carrier** can obtain a temporary decal permit for a qualified motor vehicle(s). Temporary decal permits are valid for a period of 30 days. This allows enough time for Treasury to process the motor carrier's request for **additional decals** and for the motor carrier to affix decals to the vehicle(s). Temporary decal permits are vehicle-specific and temporarily take the place of the motor carrier's additional decals. To qualify for a temporary decal permit, the motor carrier **must already be licensed for the tax year**. Temporary permits are **not** issued to applicants who are filing their first application or first renewal application for the tax year.

## **Trip Permits**

A motor carrier located outside of the State may obtain a five-day fuel tax trip permit that allows the motor carrier to operate a “qualified motor vehicle” in Michigan that has **not** been licensed for IFTA fuel tax purposes. These permits are vehicle-specific and valid **for five consecutive days**. Permits can be obtained from the various permitting services and the fee is \$20 per permit plus any fees the permitting service may charge. Michigan limits the purchase of fuel tax trip permits to **three per calendar year**.

## **IFTA Grace Period for Licensing**

The IFTA license year runs from January 1 through December 31. Renewal applications are due by December 31 each year. A licensed IFTA carrier has until the last day in February of the new license year to **display** that year’s decals. While this gives motor carriers who have applied a two-month grace period after the license year ends, they are encouraged to apply for the next year’s license and decals as soon as possible. IFTA carriers waiting until December 31 to apply for their next year’s license run the risk of not receiving their credentials prior to the expiration of the grace period. This lapse in licensing may result in the motor carrier being cited by law enforcement agencies for not having a current fuel tax license. All activity conducted under the prior year decals must be reported.

## **Bonding**

Treasury may require bonding as a condition of licensing. If bonding is required, Treasury will notify the IFTA carrier in writing and will specify the amount of the required bond. A bonding company licensed to do business in Michigan must issue the bond. It is the responsibility of the motor carrier to locate a bonding company. In lieu of a surety bond, Treasury may accept a cash bond.

## **License Revocation**

IFTA carriers may have their licenses revoked if they fail to file IFTA fuel tax returns and pay the tax when due. If an IFTA carrier’s license is being reviewed for revocation, Treasury will notify the motor carrier in writing of the time and place for a “show cause” hearing. At the hearing, the IFTA carrier will have the opportunity to discuss the delinquency with Treasury and arrange for corrective action. Failure to appear at the “show cause” hearing or failure to comply with conditions set forth in the hearing will result in the immediate revocation of the IFTA carrier’s fuel tax license. Once an IFTA carrier’s fuel tax license is revoked, the IFTA carrier, or the IFTA carrier’s representative, may **not** operate the “qualified vehicles” until the reason for the revocation has been remedied. If an IFTA carrier does operate a “qualified vehicle” with a revoked fuel tax license, law enforcement agencies may impound the vehicle. This can become costly for the IFTA carrier as they will be held liable for storage fees and any other fees involved in impounding the vehicle.

## **IFTA Fuel Tax Returns and Schedules**

The following returns and schedules must be filed by licensed IFTA carriers:

- *IFTA Quarterly Fuel Use Tax Return* (Form IFTA-100)
- *IFTA Quarterly Fuel Use Tax Schedule* (Form IFTA-101)

The following forms are used in preparing the IFTA fuel tax return and are revised quarterly because of rate changes in the participating jurisdictions:

- *IFTA Final Fuel Use Tax Rate and Rate Code Table* (Form IFTA-105)
- *Continuation of The IFTA-105 - IFTA Final Fuel Use Tax Rate and Rate Code Table* (Form IFTA-105.1)

**Be sure to use the correct rate code tables for the quarterly return being filed.** Visit Treasury's Web site at [www.michigan.gov/ifta](http://www.michigan.gov/ifta) for updated rate codes.

### **Electronic Filing of IFTA Returns**

Michigan requires all IFTA quarterly tax returns to be filed electronically. Credit and debit EFTs may also be made after an application has been completed and approved. Visit Treasury's Web site at [www.michigan.gov/ifta](http://www.michigan.gov/ifta) for further information.

### **IFTA Record-Keeping Requirements**

IFTA carriers must keep records of all fuel purchases and mileage. IFTA carriers must report fuel purchases and miles traveled in each jurisdiction. The motor carrier is required to keep a log of fuel disbursements from bulk storage tanks into IFTA qualified vehicles. This log must have the date of the disbursement, gallons disbursed, and the identification of the equipment being fueled. Records must be kept for a minimum of four years from the due date of the return or the date the return was filed, whichever is later.

Farm plated vehicles have special reporting requirements. See the April 2010 IFTA Farm Plate Notice on Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes), "IFTA/Motor Carrier Notices" for additional information.

Inadequate record keeping is a primary reason fuel tax deficiencies are discovered in a field audit. If an IFTA carrier fails to keep adequate fuel purchase and mileage records, the statute requires that Treasury adjust the fleet average mileage to four miles per gallon.

### **Due Date of Return**

IFTA returns are due quarterly on January 31, April 30, July 31, and October 31. If the due date of the return falls on a weekend or legal holiday, the return is due on the next business day. If the U.S. Postal Service postmark date is on or before the due date of the return, the return is considered timely.

### **Penalty and Interest Provisions**

**Penalty** is charged pursuant to the IFTA Articles of Agreement R1220. The penalty charge is \$50 or 10 percent of the tax due, whichever is greater. IFTA carriers are also subject to the penalty provisions in MCL 205.23 or 205.24 for failure to pay taxes in a timely manner when assessed.

In addition, Treasury, on a case-by-case basis, may charge discretionary penalties as provided for in MCL 205.23.

**Interest** is also charged for late payment of tax on a return. R1230 of the IFTA Articles of Agreement provide an annual interest rate of two percentage points above the underpayment rate established under Section 6621(a)(2) of the IRC, adjusted on an annual basis on January 1 of each year for carriers based in U.S. jurisdictions. Canadian IFTA carriers pay a rate equal to the Canadian Federal Treasury Bill rate plus two percent and the rate is adjusted every calendar quarter.

Interest for IFTA carriers is calculated separately for each jurisdiction. An overpayment in one jurisdiction shall not affect the interest calculation for any other jurisdiction. Because interest is charged on an individual jurisdictional basis and not on the net amount of tax due, the interest may sometimes exceed the amount of tax due.

### **Lease Agreements**

Lease agreements are a common practice in the motor carrier industry. This practice complicates the filing and processing of fuel tax returns. Many IFTA carriers have found themselves facing large tax liabilities because they failed to understand who has the tax reporting responsibility under a lease agreement.

Before signing a lease agreement, be sure the fuel tax licensing and reporting requirements for both the lessor and the lessee are acknowledged in writing.

- Lessors should not assume the other party is filing the fuel tax returns on their behalf.
- Lessors should cancel their IFTA fuel tax license if they are in a lease agreement where all of the following conditions have been met:
  - Lessee has provided the fuel decals and a copy of the license for the vehicle and the license and decals are in the lessee's name.

***Note: If the license and decals are not in lessee's name, contact the Special Taxes Division, IFTA Tax Unit, at 517-636-4580 for instructions.***

- Lessee has agreed, in writing, to file for the activity of the lessor on the lessee's fuel tax returns.
- Lessee has exclusive use of the equipment.
- IFTA licensees are required to file quarterly returns as long as they maintain an active account. This is true even if the licensee is in a lease agreement where another party has provided the credentials and agreed to report all activity. If the licensee is in a long-term lease agreement, the licensee's individual account should be canceled.
- If a licensee decides to maintain an individual account while in a lease agreement, a "no activity" return must be filed. A legible copy of the lease agreement should be attached to the return.
- If no return is filed, estimated assessments will be issued against the licensee.

- The lease agreement should clearly state who has the fuel tax licensing and tax reporting responsibility. If the lessee does not have exclusive use of the equipment, the lessor must account for the use of the equipment when the lessee is not using it. Sometimes equipment has multiple lessees and the lessor must account for the activity of each lessee.
- It is important to remember the lessor and lessee may be held **jointly and severally liable** for any liability created by the operation of the leased vehicle.

### **Discontinuance of Business**

If a motor carrier ceases to engage in business in Michigan, the motor carrier shall notify Treasury in writing within **15 days** after discontinuance. When filing a final fuel tax return, the motor carrier should check the box marked “Cancel License.” If the motor carrier fails to check the box, Treasury may issue estimated tax assessments for failure to file fuel tax returns as it is presumed the motor carrier is still operating.

## **OIL AND GAS SEVERANCE TAX**



### **General Information**

The Michigan Oil and Gas Severance Tax Act, PA 48 of 1929, MCL 205.301 *et seq.*, levies a severance tax upon each producer (including both working and royalty interest owners) engaged in the business of severing oil or gas from the soil in Michigan. MCL 205.303 generally places the responsibility of reporting and paying the oil and gas severance tax on the producer of Michigan oil and gas. However, this severance tax may be paid by a pipeline company, common carrier, or common purchaser, for and on behalf of a producer at the time of rendering the monthly report described below. MCL 205.303(1). If a common purchaser deducts the tax from payments paid to the producer, the common purchaser is required to remit the tax to Treasury.

If the production is sold or delivered to a pipeline company and is transported by the pipeline company through lines connected with the oil or gas well of the owner, or of a common purchaser, the pipeline company or common purchaser must receive and accept all the oil and gas, subject to a lien, and the pipeline company must withhold out of the proceeds or price to be paid for the products severed, the proportionate parts of the tax due by the respective owners of the oil and gas at the time of severance and, at the time required for the filing of the monthly reports discussed below, must pay to Treasury all the tax money collected or withheld.

In general, the oil and gas severance tax is in lieu of all other state or local taxes upon the oil or gas, the property rights attached to (or inherent in) the oil or gas, or the value created by such property rights (including all leases or the rights to develop and operate any Michigan lands for oil and gas). However, the **in lieu of** provision does **not** apply to: (i) machinery, appliances, pipe lines, tanks and other equipment used in the development or operation of such leases, or used to transmit or transport such oil and gas, and (ii) any franchise or privilege taxes imposed against corporations or associations under Michigan corporations laws.

## **Definition of Key Terms**

**Carbon Dioxide Secondary or Enhanced Recovery Project.** Operations designed to increase the amount of oil or gas recoverable from a reservoir by injection of carbon dioxide, either alone or as a primary component of a mixture with other substances, provided the project has been approved as a secondary or enhanced recovery project by order of the supervisor of wells under MCL 324.61501 to 324.61527 or MCL 324.61701 to 324.61738.

**Gas.** Natural gas, methane (excluding methane gas extracted from a landfill), and native gas.

**Oil.** Petroleum oil, mineral oil, or other oil taken from the earth.

**Marginal Well (Marginal Property) Crude Oil.** Oil severed from a property whose average daily production (excluding condensate recovered in nonassociated production) per well during any preceding consecutive 12-month period did not exceed the number of barrels shown in the following table for the average completion depth:

<b><u>Average Completion Depth</u></b>	<b><u>Barrels Per Day</u></b>
2,000 or more, but less than 4,000	20 or less
4,000 or more, but less than 6,000	25 or less
6,000 or more, but less than 8,000	30 or less
8,000 or more	35 or less

For more information, see the “Stripper Well/Marginal Property Information” on Treasury’s Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

**Person.** Any person, firm, concern, receiver, receivers, trustee, executor, administrator, agent, institution, association, partnership, company, corporations, and persons acting under declarations of trust.

**Producer.** A person who owns or is entitled to delivery of a share in kind or a share of the monetary proceeds from the sale of gas or oil at the time of its production or severance.

**Stripper Well Crude Oil.** Oil produced and sold from property whose maximum average daily production of crude oil per well during any consecutive 12 month period does not exceed ten barrels.

## **Oil and Gas Severance Tax Rates**

Oil and Gas severance tax rates are as follows:

Oil - General	6.6 percent of gross cash market value.
Oil - Marginal properties or stripper wells	4 percent of gross cash market value.
Gas	5 percent of gross cash market value.
Oil & Gas - Carbon Dioxide Secondary or Enhanced Recovery Project (approved after March 30, 2014)	4 percent of gross cash market value.

The value of all production is to be computed as of the time when and at the place where the production was severed or taken from the soil immediately after the severance. If under the terms of a contract, the pipeline company, common carrier, or common purchaser is required to reimburse a producer of oil or gas for the amount of the severance tax or a part of the severance tax, the tax reimbursement shall **not** be considered a part of the gross cash market value of the total production of the oil or gas. Fees paid to a producer to cover the costs of putting gas in a marketable condition are included in the calculation of “gross cash market value” to the extent they are in excess of the actual marketing costs.

### **Oil and Gas Severance Tax Returns and Reporting**

Monthly oil and gas severance tax returns are due on the 25<sup>th</sup> of each month following the preceding month of production of the severed oil or gas. Tax returns not filed by this due date are subject to the late filing penalty and interest provisions of the Revenue Act, MCL 205.1 *et seq.* Due to the nature of the industry of severing gas and oil from the soil, a taxpayer may elect to file an estimated liability and payment.

In addition to the filing of oil and gas severance tax returns, every corporation, association, person, common carrier, pipe line company or common purchaser, who receives, purchases, or transports such oil or gas, must file a report on or before the 25<sup>th</sup> day of each month, in the form and manner required by Treasury, showing the total amount of such oil and gas received, purchased, stored or transported during the preceding month, and the actual market value thereof at the time it is received, purchased, stored or transported, and such other information as may be required by Treasury. Each producer, when requested by Treasury, shall file such report in the form and manner required by Treasury. The report must show in detail the disposition made of any such oil or gas and show: (i) to whom any such oil or gas was sold or delivered and; (ii) the name and location of the person, refinery, pipe line establishment, plant, factory, railroad, institution or place to which or to whom delivery was made.

### **Tax Returns and Schedules**

Severance tax returns and schedules are also available on Treasury’s Web site.

- *Oil Severance Tax Return* (Form 381)
- *Gas Severance Tax Return* (Form 382)
- *Production Report - Gross Production By Well Schedule* (Form 383)
- *Exempt Production and Value Report By Well Schedule* (Form 384)
- *Gas Storage Field Report* (Form 385).

### **Statute of Limitations**

The general statute of limitations applicable to the oil and gas severance tax is four years after the date set for the filing of the required return or the date the return was filed, whichever is later. Likewise, a taxpayer may **not** claim a refund of any amount of oil and gas severance tax paid to Treasury after the expiration of four years after the date of the payment. If a person subject to the oil and gas severance tax fraudulently conceals any liability for the tax or a part of the tax, Treasury, upon discovery of the fraud and within two years thereafter, may assess the tax with penalties and interest as provided, computed from the date on which the tax liability originally accrued and the tax, penalties, and interest become due and payable after notice and hearing as provided.

## **Exemptions from the Oil and Gas Severance Tax and Allowable Deductions**

Production or proceeds from the production attributable to the State of Michigan (SOM), the federal government, or a local Michigan government are exempt from the Michigan oil and gas severance tax.

A producer is **not** required to pay a severance tax on income received from the hydrocarbons produced from devonian or antrim shale qualifying for the nonconventional fuel credit contained in 26 USC 45k and acquired pursuant to a royalty interest sold by the SOM under MCL 324.503. MCL 205.303(3).

Severed gas used in a gas injection operation is exempt from the oil and gas severance tax so long as the gas does not enter the market between severance and reinjection. See RAB 1992-6 for more information regarding the application of the oil and gas severance tax to gas used in gas injection operations.

Treasury will allow certain deductions for marketing costs to arrive at the wellhead value related to the production of gas.

### **General Rules Regarding Marketing Costs**

- Does not include any costs associated with producing gas or with the separation of natural gas from oil, condensate and water (i.e., lease separation).
- The cost must be necessary and essential to marketing the gas.
- The cost must be directly related to the physical handling of the gas.

See RAB 1992-5 and 1992-9 for more information regarding deductible marketing costs.

***Note: Treasury will allow a producer to provide the common purchaser with the allowable deductions for marketing costs to be used in completing the common purchaser's severance tax report. Such notice may also inform the common purchaser of any exempt interest holders as provided in MCL 205.303. The purchaser shall not accept any deductions or exempt interest claims by the producer without prior approval by Treasury. Such approval is to be obtained by submitting a separate letter (detailing the request for deductions or exemptions from the sales/purchase price per thousand cubic feet or per million British thermal units.***

### **Recordkeeping**

Each corporation, association, or person engaged in the business of severing oil or gas in Michigan, and every corporation, association, person, common carrier, pipeline company or common purchaser who receives, purchases, or transports such oil or gas, must make, keep, and preserve a full and complete record of all such oil produced in Michigan during the time so engaged in its production, and these records must be open at all times to inspection by Treasury. Any corporation, association or person failing to comply with this requirement is subject to a penalty of not less than \$500 and not more than \$1,500, and such penalty shall accrue for each 20 days of failure to comply with reference to each separate oil or gas well. Although taxpayers are not required to be licensed under the Oil and Gas Severance Tax Act, additional information may be required by Treasury to determine the reporting responsibility for each well.

## Oil and Gas Fee

There is a maximum fee of 1 percent of the gross cash market value on gas and oil. This fee may vary annually. Severed gas used in a gas injection operation is exempt from this fee so long as the gas does not enter the market between severance and reinjection. See “Contact” section of this chapter for more information.

## Administration of the Oil and Gas Severance Tax

Except where the Oil and Gas Severance Tax Act controls, the oil and gas severance tax is administered by Treasury in accordance with the Revenue Act, MCL 205.1 *et seq.*

# NONFERROUS METALLIC MINERALS EXTRACTION SEVERANCE TAX

The Nonferrous Metallic Minerals Extraction Severance Tax Act, MCL 211.781 *et seq.* (“Act”), levies a specific tax on certain nonferrous metallic minerals that a taxpayer extracts from the earth in Michigan or beneficiates in Michigan. Property classified by Treasury as “mineral producing property” subject to the tax levied under the Act is exempt from the **ad valorem** property taxes levied under 1893 PA 206, MCL 211.1 to 211.155 (beginning on December 31 in the calendar year in which property is determined by Treasury to be “mineral-producing property”), and remains exempt from those property taxes for the duration of the “mineral producing property” classification. However, surface property, rights in the surface property, surface improvements, or personal property located at an open mine, remain subject to **ad valorem** taxation under 1893 PA 206. A mineral extracted from the earth in Michigan by a taxpayer, which is shipped outside Michigan for beneficiation outside Michigan (or otherwise removed from Michigan prior to actual sale or transfer) is considered to have been sold by the taxpayer immediately prior to the shipment or removal and is subject to the tax levied under the Act.

In addition to the exemptions from **ad valorem** property taxes levied under 1893 PA 206, targeted exemptions are also available under 2012 PA 412, 2012 PA 413, and 2012 PA 414, with respect to: (i) Michigan Sales Tax pertaining to sales of tangible personal property to a qualifying taxpayer for use as or at mineral-producing property [MCL 205.54dd]; (ii) Michigan Use Tax pertaining to the storage, use, or consumption of tangible personal property sold to a qualifying taxpayer for use as or at mineral-producing property [MCL 205.94aa]; and (iii) Michigan individual and corporate income taxes pertaining to certain income derived from minerals [MCL 206.31b, 206.623(2)(h)]. These exemptions are available for mineral producing property beginning on the date the open mine becomes a “producing mine.”

## **Definitions for Key Terms**

**Beneficiation.** Milling, processing, grinding, separating, concentrating, pelletizing, and other processes necessary to prepare nonferrous metallic mineral ore for sale or transfer.

**Mineral.** A naturally occurring solid substance that is extracted from the earth in Michigan primarily for its nonferrous metallic mineral content for commercial, industrial, or construction purposes.

Mineral does **not** include gypsum, lime, limestone, salt, dolomite, basalt, granite, sandstone, shale, clay, stone, gravel, marl, peat, sand, gemstones, coal, substances extracted from potable water or brine, substances extracted from oil or natural gas, low-grade iron ore that is defined and taxed under 1951 PA 77, MCL 211.621 to 211.626, any property that is defined and taxed under 1963 PA 68, MCL 207.271 to 207.279, or any other substance not extracted primarily for its nonferrous metallic mineral content.

**Mineral-producing property.** Real and personal property in Michigan that is part of a producing mine or utilized directly in association with a producing mine on a parcel on which the shaft, incline, or adit is located, or a parcel contiguous (contiguity is not broken by a road, an easement, a right-of-way, or property occupied by power transmission lines or buffer zones) or appurtenant to a parcel on which the shaft, incline, or adit is located. In general, “mineral-producing property” includes, but is not limited to: (i) real and personal property in Michigan that is part of a producing mine (or utilized directly in association with a producing mineral mine on a parcel on which the shaft, incline, or adit is located); (ii) mineral rights, leases, options, and mining rights in or on mineral-producing property and; (iii) certain property used for beneficiation of extracted minerals.

See MCL 211.782(d)-(e) for full details as to what is (and is not) considered mineral-producing property under the Act.

**Open mine.** A mine at which a shaft, incline, or adit has been started or overburden has been stripped.

**Person.** An individual, firm, limited partnership, limited liability partnership, co-partnership, partnership, joint venture, corporation, association, subchapter S corporation, limited liability company, receiver, estate, trust, or any other legal entity or combination of legal entities acting as a unit.

**Producing mine.** A mineral mine in Michigan at which a taxpayer is producing one or more minerals and excludes a mine operated primarily for tourism purposes or a mine in which the minerals produced are used for artistic purposes and are incidental to the business operation of the owner.

**Taxable mineral.** The first marketable mineral or mineral product sold or transferred by the taxpayer that is taxable under the Act. “Taxable mineral” also includes a mineral that has been sold or transferred by a taxpayer following beneficiation in Michigan and a mineral that is otherwise taxable under the Act.

**Taxable mineral value.** The total value received by a taxpayer for the sale or transfer of taxable minerals, whether or not in a beneficiated state, including premiums, bonuses, subsidies, or noncash consideration, with no deductions. The taxable mineral value of taxable minerals sold or transferred by a taxpayer following beneficiation must reflect the total value of the taxable mineral in its beneficiated state. For taxable minerals that are to be shipped or transported outside Michigan for beneficiation outside Michigan (or otherwise removed by a taxpayer from Michigan and which are considered to have been sold under the Act), the taxable mineral value must reflect the total value of the minerals immediately prior to the shipment or removal based on the average daily price of the mineral as quoted on published market indices as determined by Treasury.

There is a rebuttable presumption that the purchase price of a taxable mineral under a bona fide arm's-length contract of sale or transfer between unrelated persons reflects the taxable mineral value. In determining the taxable mineral value of a taxable mineral for contracts of sale or transfer between related persons, there is a rebuttable presumption that taxable mineral value for related party sales or transfers shall be based on the average daily price of the mineral as quoted on published market indices as of the date of sale or transfer.

**Transfer.** An in-kind exchange or other disposition of an interest in minerals, whether or not benefited, other than through a sale.

### **Classification of Property as Mineral Producing Property**

Treasury determines when property is classified under the Act as mineral-producing property and the triggering event is when the taxpayer notifies Treasury, by filing *Request for Minerals Severance Tax Exemption and Credit* (Form 5223), that it has begun operation of a producing mine.

This notification must be filed within 30 days of beginning operations of the producing mine. Form 5523 is available at Treasury's Web site, under the "Business Taxes" tab, at [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

Upon making this determination, Treasury will notify all local assessing authorities of those properties that are classified as "mineral-producing property" and are subject to the minerals severance tax under the Act. If Treasury determines that property previously determined to be "mineral-producing property" is no longer "mineral-producing property," Treasury will notify the taxpayer and the local assessing authorities that the property is no longer subject to the minerals severance tax (beginning December 31 in the year that determination is made) and that the property shall be subject to the collection of *ad valorem* property taxes under 1893 PA 206.

The local tax collecting unit in which the property is located is responsible for assessment of that property as of the date of Treasury's notification to the local assessing authority. Ten days after the date of Treasury's notification to the taxpayer is the date on which the minerals severance tax will cease to be levied and all related tax exemptions described in section MCL 211.784(1)(b), (c), and (d) will cease.

If a taxpayer ceases operation of a producing mine for 30 or more consecutive days, the taxpayer must notify Treasury, in writing, that it has ceased operations within seven business days.

### **Nonferrous Metallic Minerals Severance Tax Rate**

In general, the nonferrous metallic minerals severance tax is levied at a rate of 2.75 percent of the taxable mineral value computed at the time of sale or transfer of a taxable mineral. However, in the first year that the minerals severance tax is levied against a particular taxpayer, the minerals severance tax for that year is **the greater of:** (i) the tax previously described at the 2.75 percent rate, or (ii) the amount of **ad valorem** property taxes paid pursuant to 1893 PA 206 on the taxpayer's mineral-producing property for that year.

A taxpayer who purchases taxable minerals from another taxpayer may claim a credit against the minerals severance tax for the minerals severance tax paid by the seller or transferor for those minerals (as itemized on the invoice).

## **Annual Reporting by Taxpayers**

Each year, taxpayers must prepare and submit to Treasury (and to the local tax collecting unit) a report in the time, form, and manner required, showing the total amount of minerals sold, transferred, or beneficiated during the preceding year, the taxable mineral value of the minerals sold, transferred, or beneficiated, and any other information required for valuation purposes. This information is to be reported on *Annual Reporting of Mineral Valuation for Mineral Producing Property* (Form 5238), which is available under the “Business Taxes” tab on Treasury’s Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

## **Recordkeeping Requirement and Treasury Inspection**

Each taxpayer must prepare, keep, and preserve a full and complete record for each tax year of all minerals extracted from the earth in Michigan or beneficiated in Michigan, and that record shall be open at all times to inspection by Treasury.

## **Administration of the Nonferrous Metallic Minerals Severance Tax**

The Nonferrous Metallic Minerals Severance Tax is administered by Treasury in accordance with the Revenue Act, MCL 205.1 *et seq.*

## **Contact Information**

Specific questions concerning the Nonferrous Metallic Minerals Extraction Severance tax or the Act should be directed to:

Michigan Department of Treasury  
Property Services Division  
P.O. Box 30760  
Lansing, Michigan 48909  
517-335-4410  
[PTE-section@michigan.gov](mailto:PTE-section@michigan.gov)

# **TOBACCO PRODUCTS TAX ACT (TPTA)**

## **General Information**

The TPTA imposes an excise tax on tobacco products, which is levied on the consumer of the tobacco products. In addition, it closely regulates the purchase, acquisition, sale, importation, transportation, exportation, and distribution of tobacco products in, into, and/or from Michigan. Because the TPTA imposes serious and significant consequences on those who violate this law, including, but not limited to seizures, civil penalties, criminal charges, and license suspension, revocation, or non-renewal, it is important to understand and follow the laws and rules that apply when engaging in activities governed by the TPTA. More information concerning the TPTA, including Treasury’s “Michigan Tobacco Tax Information Guide,” available in the “Tobacco Tax” section on Treasury’s Web site at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes). Products that do **not** contain any tobacco, even if they contain nicotine, are **not** subject to the TPTA. See Letter Ruling (LR) 2015-3 for more information.

## **Tax Rates**

Effective July 1, 2004, the tax rate for cigarettes is 100 mills (\$0.10) per cigarette. A deduction of 1.5 percent of the total TPTA tax due is provided for Wholesalers and Unclassified Acquirers to allow for the cost of remitting the tax on cigarettes.

The tax rate for other tobacco products (OTP) is 32 percent of the “wholesale price.” A deduction of 1 percent of the total TPTA tax due is provided for Wholesalers and Unclassified Acquirers to allow for the cost of remitting the tax on tobacco products other than cigarettes.

*Note: Effective November 1, 2012 and continuing until October 31, 2021, the tax rate on cigars is capped at 50 cents per individual cigar, even if the calculated tax at 32% of the wholesaler price is greater than 50 cents (MCL 205.427(1)(G)). For more information see “Notice Regarding Premium Cigars” at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes).*

## **Definition of Key Terms Used**

**Cigarette.** A roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any ingredient, which roll has a wrapper or cover made of paper or any other material.

**Manufacturer.** A person that produces or manufactures cigarettes or other tobacco products. To “manufacture” means to make into a product suitable for use or to make from raw materials by hand or by machinery and to “produce” means to give being, form or shape to.

A “manufacturer” also includes a person who operates or who permits any other person to operate a cigarette making machine in Michigan for the purpose of producing, filing, rolling, dispensing, or otherwise generating cigarettes. A person meeting this description shall constitute a non-participating manufacturer.

Important guidance as to who constitutes a “manufacturer” under the TPTA for which a Manufacturer License is required can be found in the decision by the Michigan Supreme Court in the case *People v. Shami*, 501 Mich 243 2018.

**Noncigarette Smoking Tobacco.** Tobacco sold in loose or bulk form that is intended for consumption by smoking and includes roll-your-own cigarette tobacco.

**Retailer.** A person, other than a transportation company, who operates a place of business for the purpose of making sales of a tobacco product at retail. A person who directs or manages (or has control over the day-to-day operations of) the place of business for the purposes of making sales of tobacco products at retail constitutes a retailer under the TPTA even if that person does not own the place of business.

Important guidance as to who is considered a “retailer” under the TPTA can be found in the published decisions by the Michigan Court of Appeals in cases *People v. Assy*, 316 Mich App 302 (2016).

**Secondary Wholesaler.** A person who sells a tobacco product for resale, who purchases a tobacco product from a TPTA-licensed wholesaler or unclassified acquirer, and who maintains an established place of business in Michigan where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale, and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale.

Secondary Wholesalers may only purchase and sell TPTA tax-paid and, if applicable, pre-stamped tobacco products.

**Smokeless Tobacco.** Snuff, chewing tobacco, and any other tobacco that is intended to be consumed by means other than smoking.

**Stamp.** A distinctive character, indication, or mark, as determined by Treasury, attached or affixed to an individual package of **cigarettes** by mechanical device or other means authorized by Treasury to indicate that the TPTA tax has been paid.

**Stamping Agent.** A licensed wholesaler or unclassified acquirer other than a manufacturer who is authorized by Treasury to affix stamps to individual packages of cigarettes on their own behalf, or on behalf of another licensed wholesaler or unclassified acquirer other than a manufacturer.

**Tobacco Products.** Cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco.

**Unclassified Acquirer.** A person other than a transportation company or purchaser at retail from a retailer who imports or acquires tobacco products from a source other than a TPTA-licensed wholesaler or secondary wholesaler for use, sale, or distribution. Also includes a person who receives cigars, noncigarette smoking tobacco, or smokeless tobacco directly from a TPTA-licensed manufacturer or from another source outside Michigan who is not licensed under the TPTA. A wholesaler is not an unclassified acquirer.

*Note: An unclassified acquirer, including a Direct Buy Vendor, is responsible for affixing stamps to individual packages of cigarettes or placing the prescribed marking on shipping containers of OTP, prior to delivery, sale, or distribution, and for remitting the TPTA tax.*

*Direct Buy Vendors purchase some or all of the tobacco products to be placed in their vending machines from manufacturers.*

Treasury has invoked the authority under MCL 205.427(6) to require unclassified acquirers to report and pay the tobacco tax on or before the 20<sup>th</sup> day of the month following the month in which the tobacco product as imported into or acquired in Michigan by the unclassified acquirer. See Letter Ruling 2015-4.

**Wholesale Price.** The actual price paid for a tobacco product by a wholesaler or unclassified acquirer to a manufacturer, **including** any tax, but **excluding** any discounts or reductions.

**Wholesaler.** A person who purchases all or part of the tobacco products from the manufacturer, sells 75 percent or more to others for resale, and maintains a business where substantially all of the business is the sale of tobacco products or cigarettes and related merchandise at wholesale and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale. A Wholesaler may also be a chain store retailing tobacco products to consumers if 75 percent of their tobacco products are purchased from manufacturers.

A Wholesaler is responsible for affixing stamps to individual packages of cigarettes or placing the prescribed marking on shipping containers of OTP, prior to delivery, sale, or distribution, and for remitting TPTA tax.

### **Licensing**

Wholesalers, secondary wholesalers, transporters, transportation companies, and unclassified acquirers, including Direct Buy Vendors and manufacturers, must be licensed to report and remit tax, if applicable, directly to Treasury.

Secondary wholesalers and vending machine operators, other than Direct Buy Vendors, must be licensed, and may only purchase TPTA tax paid tobacco products. Vending machine operators do not file tobacco products tax returns and must obtain vending machine markers to be placed on all machines from which tobacco products are dispensed. The markers need to be updated annually.

The license year under the TPTA runs from July 1 through June 30. Licenses must be renewed annually. *All tobacco tax license applications, whether for a new license or license renewal, must be filed/submitted electronically through e-Services (MiMATS) unless permission is granted by Treasury to file the paper Tobacco Tax License Application (Form 336), which is available upon request. Applicants must also include a completed and signed Tobacco Tax License Application Signature Page (Form 5575) as an attachment to the electronic application prior to submission. Refer to the Tobacco Tax License Application Instructions (Form 337), available at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes), for more details on what to include with the license application.*

Applicants for new or renewed wholesaler, secondary wholesaler, and unclassified acquirer licenses must submit current financial statements, including the balance sheet, income statement, and accountant's notes with their applications. Wholesalers and unclassified acquirers may be required to provide surety bonds in amounts to be determined by Treasury.

Applicants for vending machine operator's licenses, either new or renewed, must attach vending machine location lists to their license applications.

First-time applicants and those previously licensed who are applying for a new license are required to submit evidence of a minimum net worth of \$25,000, proof that the applicant owns or leases a secure nonresidential facility for the purpose of receiving and selling tobacco products, proof of United States citizenship or eligibility to obtain employment, and any other information Treasury may deem necessary.

First-time applicants must also submit the following forms:

- *Application For Non-Cigarette Tobacco Products Stamp* (Form 323) Wholesalers and unclassified acquirers of OTP.
- *Stamping Agent Agreement* (Form 3371) Wholesalers and unclassified acquirers of cigarettes who wish to have an agent affix stamps for them, if license application is approved.

### **License Fees**

Wholesaler	\$100
Secondary Wholesaler	\$25
Unclassified Acquirer*	
Manufacturer	\$100
Retail importer/mail order buyer - OTP	\$10
Retail importer - cigarettes	\$100
Direct buy vendor	\$100
Michigan retailer buying OTP	
from out-of-state distributors not licensed in Michigan	
or manufacturers licensed in Michigan*	\$10
Transportation Company	\$5
Transporter	\$50
Vending Machine Operator (other than direct buy vendor)	
First vending machine	\$25
Each additional vending machine	\$6.25

\*The TPTA requires importers to be licensed as unclassified acquirers and to pay the tax upon importation. Many of the tobacco products other than cigarettes are specialty items for which there is no distributor in Michigan. Retailers are only able to purchase these products from supply sources located outside Michigan. To ensure that TPTA tax is remitted, Treasury will license retailers who wish to purchase **OTP** from unlicensed out-of-state distributors or licensed manufacturers as unclassified acquirers.

### **Stamping Packages of Cigarettes and Shipping Containers of OTP**

#### **Cigarettes**

In general, cigarettes sold, offered for sale, or possessed in Michigan must be stamped.

- Each individual package offered for sale in Michigan must have the Michigan authorized stamp affixed to it (affixed = 90 percent or more of the stamp on the individual pack).
- Wholesalers and unclassified acquirers must place, or cause to be placed, a stamp on the bottom of each individual pack to be sold in Michigan before delivery, sale, or transfer to any person in Michigan.

- Retailers and Licensees (other than wholesalers or unclassified acquirers) may not acquire an individual pack of cigarettes or a cigarette from an individual pack for resale unless that individual pack has the Treasury authorized stamp affixed to it. This prohibition does **not** apply to a person acting as a transporter for a wholesaler or unclassified acquirer.
- Retailers and vending machine operators may not sell (or offer for sale) an individual pack to the public that does not have the Treasury authorized stamp affixed to it. An individual package of cigarettes without a stamp may not be placed or stored in a vending machine.

Stamping Agents, who must be TPTA-licensed wholesalers or unclassified acquirers, may be appointed by licensed wholesalers or unclassified acquirers who do not choose to stamp their own tobacco products. To do so, a completed *Stamping Agent Agreement* (Form 3371) must be submitted to Treasury for approval.

## OTP

Unlike cigarettes, individual packages of OTP are not stamped or marked. Certain cases, boxes, and containers containing OTP must be marked with the Treasury authorized stamp. The authorized stamp may take the form of the name and address of the first purchaser in Michigan (e.g., a shipping label) or the marking applied by the Treasury authorized OTP roller/hand stamper depending on the circumstances.

Below are specific rules regarding OTP:

**Shipping Cases, Boxes, or Containers Generally.** Every shipping case, box, or container of OTP found in a place of business or otherwise in the possession of a retailer, secondary wholesaler, transporter, unclassified acquirer, vending machine operator, or wholesaler must bear the Treasury authorized marking except as otherwise explained below.

**Original Manufacturer Shipping Cases.** Each original manufacturer shipping case that is received or acquired in Michigan by a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, or retailer, must bear at least one of the following “markings”:

- Name and address of person making first purchase in Michigan (e.g., a shipping label).
- Any “marking” applied by the Treasury authorized OTP roller/hand stamper.

Licensed wholesalers and unclassified acquirers typically receive OTP in original manufacturers’ shipping cases directly from manufactures or unlicensed out-of-state distributors. Once an original manufacturer’s shipping case of OTP is received or acquired in Michigan, these wholesalers and unclassified acquirers **must** affix the stamp applied by the Treasury authorized OTP roller/hand stamper to each original manufacturer’s shipping case if it does not already bear the name and address of the first purchaser in Michigan.

If an original manufacturer’s shipping case is purchased or otherwise acquired by a secondary wholesaler or retailer from a licensed wholesaler or unclassified acquirer, the shipping case must bear one of the above markings or it will be presumed to be contraband and subject to seizure and forfeiture.

Each original manufacturer shipping case of OTP is not required to have either prescribed marking (i.e., name and address of first purchaser in Michigan or marking applied with the Treasury authorized OTP roller/hand stamp) while being transported into Michigan so long as the case is not received or acquired in Michigan by the licensee. Therefore, labeling or marking the shrink-wrap or other material covering a pallet or group of these cases is acceptable. However, once received or acquired in Michigan by the licensee, each original manufacturer shipping case must bear either of the markings described above or it will be in violation of the TPTA; regardless whether there is a marking on the shrink-wrap or other material covering the pallet or group of these cases. Whether a case is deemed to be received or acquired in Michigan will be based on the particular facts and circumstances. Relevant factors include, but are not limited to, ownership of the cases at the time they enter Michigan, the risk of loss, and the use of a common carrier versus the licensee's own vehicle.

**Other Shipping Cases, Boxes, or Containers.** Wholesalers and unclassified acquirers typically ship OTP to their customers (e.g., secondary wholesalers, vending machine operators, and retailers) in smaller cases, boxes, or containers after the OTP has been broken down from the original manufacturers' shipping cases. Before shipping any such case, box, or other container of OTP (regardless whether a case, box, or container also contains other (non-tobacco) items), each must be marked by the wholesaler or unclassified acquirer using the Treasury authorized OTP roller/hand stamper.

Secondary wholesalers may further break down cases, boxes, or containers purchased or received from wholesalers and unclassified acquirers into other cases, boxes, or containers for their customers (e.g., retailers). Because secondary wholesalers are not permitted to possess or use the Treasury authorized OTP roller/hand stamper, OTP shipped in these cases, boxes, or containers by secondary wholesalers to their customers will **not** bear any markings. Accordingly, as long as, the customer purchased or acquired these unmarked cases, boxes, or containers from a licensed secondary wholesaler and maintains the proper invoices and other records required by the TPTA to substantiate the purchase or acquisition, the unmarked cases, boxes, or containers will not be considered contraband and will not be subject to seizure or forfeiture.

The TPTA provides for civil and criminal penalties for noncompliance. Treasury and its authorized agents may seize tobacco products that are not stamped in accordance with the TPTA.

**Shipping Tobacco Products to Locations Outside of Michigan.** Licensees located in Michigan who ship (export) tobacco products to locations outside Michigan **must** place the name and address of the consignee or purchaser to whom the shipment is made outside Michigan on **each** shipping case or other container in which the tobacco product is shipped.

*Note: Labeling or marking shrink-wrap or other material covering a pallet or group of cases or containers, rather than on each individual case or container, does not satisfy this requirement.*

## **Contraband**

A tobacco product held, owned, possessed, transported, or in control of a person in violation of the TPTA, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of the TPTA and any related books and records are contraband and may be seized and confiscated by Treasury. The seizure and forfeiture of a tobacco product or other property does not relieve a person from a fine, imprisonment, or other penalty for violation of the TPTA.

A person, other than a licensee, who is in control or possession of a tobacco product in violation of the TPTA (e.g., and individual package of cigarettes without a stamp), or offers to sell or does sell a tobacco product for purposes of resale without the requisite license is personally liable for the TPTA tax plus a penalty of 500 percent of the amount of the TPTA tax due. See *Vulic v. Dep't of Treasury*, 321 Mich App 471 (2017).

## **Tobacco Tax Reporting and Electronic Filing Mandate**

Treasury has an electronic reporting system. Taxpayers prepare and file their returns online and make payment electronically. MiMATS, Treasury's new system for Tobacco Tax reporting became effective July 30, 2018.

Wholesalers, secondary wholesalers, unclassified acquirers, and Direct Buy Vendors are required to file monthly TPTA tax returns **electronically**, with full payment of the tax due, if applicable, for sales of tobacco products. The report must account for all tobacco products and stamping activity for each reporting period. Returns are due on the 20<sup>th</sup> of the month following the close of the report month and must be filed even if no TPTA tax is due.

Manufacturers who are only responsible for tax on promotional products for which their customers have not been charged, must be licensed as unclassified acquirers and must file a monthly return even if no TPTA tax is due. A manufacturer's report, listing all sales to TPTA licensees, must also be filed monthly.

## **Tobacco Master Settlement Agreement**

On November 23, 1998, Michigan signed the Master Settlement Agreement (MSA) along with 45 other states, the District of Columbia, several territories, and a number of tobacco product manufacturers. Under the MSA, tobacco product manufacturers that have signed the MSA have agreed to make payments to the settling states. The purpose of the payments is to settle existing and potential suits filed by the states against the tobacco product manufacturers.

## Escrow Requirement

To implement the MSA, the Michigan Legislature enacted 1999 PA 244, MCL 445.2051 to MCL 445.2052. This act requires tobacco product manufacturers to either participate in the MSA or, as a non-participating manufacturer (NPM), deposit funds into an escrow account based on the number of cigarettes constituting “units sold” in Michigan in each calendar year. For purposes of 1999 PA 244, the definition of cigarette includes roll-your-own (RYO) tobacco (0.09 ounces of RYO tobacco equals one cigarette). The amount of escrow due is the sum of \$.0188482 per unit sold multiplied by an inflation adjustment that Treasury provides annually.

The definition of tobacco product manufacturer under 1999 PA 244 includes the manufacturer of cigarettes, including RYO tobacco, intended to be sold in the United States (including cigarettes to be sold through an importer), and the first purchaser for resale in the United States of cigarettes that were not intended for United States sale. MCL 445.2051(i). To determine the number of units sold in a given calendar year, Treasury requires licensed wholesalers and unclassified acquirers to file a monthly Schedule K with their TPTA tax returns. The Schedule K is used to report the number of cigarette sticks and volume of RYO tobacco acquired or imported, name of the NPM, brand code, and brands of products acquired or imported. Returns of tobacco product to the NPM or exports to other states are also reported and deducted from acquisitions and imports to arrive at the units sold for which escrow is due by the NPM.

Escrow deposits for “units sold” are required to be made in quarterly installments following the quarter in which sales took place and in accordance with the following schedule set forth under MCL 445.2052(2):

- (a) Deposits for sales occurring in the first quarter, January 1 through March 31, are due April 30 of the same year. A certification of the first quarter deposit must be filed with Treasury no later than May 15 of the same year.
- (b) Deposits for sales occurring in the second quarter, April 1 through June 30, are due July 31 of the same year. A certification of the second quarter deposit must be filed with Treasury no later than August 15 of the same year.
- (c) Deposits for sales occurring in the third quarter, July 1 through September 30, are due October 31 of the same year. A certification of the third quarter deposit must be filed with Treasury no later than November 15 of the same year.
- (d) Deposits for sales occurring in the fourth quarter, October 1 through December 31, are due January 31 of the following year. A certification of the fourth quarter deposit must be filed with the Treasury no later than February 15 of the year following the year in which the cigarettes were sold.

These quarterly deposits are reported by filing a *Quarterly Statement of Deposit by Non-Participation Manufacturer* (Form 5465).

In addition to these quarterly deposits, an annual reconciliation deposit must be made on or before April 15 of the year following the year in which the cigarettes were sold to account for the actual annual inflation adjustment. A statement of the reconciliation deposit and the final reconciled deposit figures must be included with the annual certification, due on or before April 30 of the year following the year in which the cigarettes were sold in Michigan.

- *Quarterly Certifications of Compliance by Non-Participating Manufacturer* (Form 3762)
- *Annual Certification of Compliance by Non-Participating Manufacturer* (Form 5531)
- *Annual Reconciliation for 2019 Escrow Deposit* (Form 5532).

### **Equity Assessment**

In addition to the escrow requirement, section 6d of the TPTA, MCL 205.426d, imposes an equity assessment on all cigarettes sold by NPMs in Michigan at the rate of 17.5 mils per cigarette. The equity assessment is to be paid by NPMs as follows:

- **Prepayment.** No later than March 1 of each year, NPMs must prepay the equity assessment anticipated to be sold in the current calendar year. The prepayment is the greater of, (i) the number of cigarettes Treasury reasonably determines that the NPM will sell in Michigan in the current calendar year multiplied by 17.5 mills, and (ii) \$10,000.
- **Reconciliation Payment.** No later than April 15 of calendar year following the calendar year in which the cigarettes were sold, NPMs must make a reconciliation payment based on the actual number of cigarettes sold in that calendar year.

A cigarette for purposes of the equity assessment has the same meaning as cigarette in 1999 PA 244.

As with the escrow, NPMs must file annual certifications with Treasury regarding their compliance with the equity assessment requirements. The certification is filed using Form 4126.

### **PM and NPM Directory and Prohibition on Selling Non-compliant Brands**

The TPTA requires that Treasury maintain a list of all PM and NPMs that have complied with the requirements of MCL 205.426c, MCL 205.426d, and 1999 PA 244. The NPM Directory and the list of PMs, compiled by the National Association of Attorney's General (NAAG), can be found under "Manufacturers" on Treasury's Web site at [www.michigan.gov/tobacco taxes](http://www.michigan.gov/tobacco%20taxes).

If a tobacco product manufacturer or tobacco brand family is not listed on the NPM Directory or the list of PMs compiled by NAAG, a person, including a TPTA licensee, is subject to civil and criminal penalties if the person purchases, stamps or sells that manufacturer's cigarettes or RYO in or into Michigan. Furthermore, a cigarette or tobacco brand appearing on the NPM Directory or the NAAG list of PMs may not be sold for consumption in Michigan if it is manufactured by anyone other than the party identified on the NPM Directory or NAAG list as the manufacturer of that brand family.

## **Health Insurance Claims Assessment**

The Health Insurance Claims Assessment (HICA) Act was created by Public Act 142 of 2011. The Insurance Provider Assessment (IPA) Act, a new health care-related tax levied on insurance providers in Michigan, was enacted in June of 2018 to replace the HICA Act. Accordingly, PA 173 of 2018 repealed the HICA Act as of the effective date of the IPA Act, which was October 1, 2018. Please refer to the section addressing the IPA Act for additional information.

## INSURANCE PROVIDER ASSESSMENT

PA 175 of 2018 created the Insurance Provider Assessment (IPA) Act as a successor to the HICA. The IPA is a new health care-related tax incorporating both a fixed and variable rate structure. A companion act, 2018 PA 173, repealed the HICA as of the date that the assessment under the IPA Act began to be levied, which was October 1, 2018. A second companion act, 2018 PA 174, eliminated a provision of the Use Tax Act that would have reinstated the Medicaid managed care use tax on July 1, 2020, the date that the HICA was previously scheduled to sunset.

The IPA applies at varying rates to non-Medicaid health insurers, prepaid inpatient health plans (providers of Medicaid behavioral health services) and Medicaid managed care services. The revenue produced by the IPA supports Michigan's Medicaid program.

Under federal law related to Medicaid funding, state taxes levied on health insurers are required to meet certain broad-based and uniformity requirements. States may, however, request a waiver of those requirements in certain circumstances. The DHHS requested and received such a waiver from the federal Centers of Medicare and Medicaid Services for the IPA, as written approval of that waiver request was required for the IPA to take effect.

The tax imposed by the IPA Act is levied upon the number of "member months" reported by each "insurance provider" for the previous calendar year. The IPA Act defines a "member month" as the total number of individuals for whom an insurance provider has recognized revenue for one month. An "insurance provider" is defined as a Medicaid managed care organization or a health insurer. "Health insurer" means an insurer authorized under Michigan's insurance code to issue health insurance policies in this state. The definition includes health maintenance organizations but specifically excludes self-insured entities. The new tax is levied at both variable and fixed rates, according to three rate tiers. The Tier 1 rates apply to the member months of Medicaid contracted health plans supported with federal Medicaid funds, the Tier 2 rate applies to health insurers' member months not supported with federal Medicaid funds, and the Tier 3 rate applies to the member months of specialty prepaid health plans supported with federal Medicaid funds.

Information with respect to the insurance providers subject to the tax, the number of member months to be assessed, and the rate to be imposed on those member months is provided to Treasury by Department of Health and Human Services and by the Department of Insurance and Financial Services and is based upon regulatory filings made by the providers, as well as other information. For the initial year of assessment as well as succeeding years, the IPA Act mandates that Treasury calculate the actual assessment due from each insurance provider based on that provider's reported member months from the previous calendar year. Treasury is required to notify each insurance provider by June 15 of the assessment amount that will be due the following year. Assessments are payable in quarterly installments beginning July 30. All payments under the IPA Act are required to be remitted to Treasury by ACH Debit (e-check).

For additional information about the IPA, including FAQs, please see the dedicated webpage on Treasury's website, located under the "Business Taxes (Miscellaneous Taxes and Fees)" tab. Specific questions regarding the IPA should be directed to the Miscellaneous Taxes and Fees Unit at 517 636-0515.

## MARIHUANA EXCISE TAX

On November 6, 2018, Michigan voters approved a ballot initiative legalizing the recreational use and possession of marihuana for adults 21 years of age and older and enacting an excise tax on retail marihuana sales. The resulting legislation is known as the Michigan Regulation and Taxation of Marihuana Act (MRTMA). Marihuana sold under MRTMA is referred to as “recreational” or “adult-use” marihuana.

MRTMA establishes a comprehensive regulatory system for the issuance of licenses for the cultivation, processing, testing, transportation and retail sales of marihuana for use by Michigan adults 21 years of age and older. All regulatory aspects of MRTMA, including specific requirements and standards for marihuana cultivation, processing, testing, packaging, labeling, and transportation, as well as for the licensing of marihuana establishments, will be administered through the Michigan Department of Licensing and Regulatory Affairs.

The legislation provides for a “ramping up” period for the state to put necessary regulations and procedures into place. Therefore, although MRTMA became effective on December 6, 2018, it is not expected that the first retail marihuana establishments will be licensed until approximately early fall 2019. The licensing of those retailers will usher in the first commercial sales of recreational marihuana.

MRTMA imposes a 10 percent excise tax on marihuana sales at the retail level, which will be administered by Treasury. The 10 percent excise tax is levied in addition to any other applicable state taxes, including the existing 6 percent state sales tax. Specifically, the legislation provides that the excise tax is imposed “at the rate of 10 percent of the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment.” The term “sales price” is not defined in the legislation.

MRTMA further provides that taxable marihuana “may not be bundled in a single transaction with a product or service” that is not subject to the 10 percent excise tax. This provision prohibits marihuana from being sold in single-mixed or bundled transactions. Consequently, the “incidental to service” test established by the Michigan Supreme Court in *Catalina Mktg Sales Corp v. Dept of Treasury*, 470 Mich 13 (2005), with which many retailers may be familiar, is not applicable to sales of recreational marihuana.

For additional information, see the Notice to Taxpayers Regarding the Michigan Regulation and Taxation of Marihuana Act, which was published on Treasury’s website early in 2019. Specific taxpayer guidance regarding remittance of the 10 percent excise tax will be available on Treasury’s website shortly before actual retail sales of recreational marihuana are expected to commence. Among other things, Treasury will specify the frequency for the filing of excise tax returns (i.e., quarterly), which will be submitted electronically through MTO.

Treasury will also issue additional taxpayer guidance, including a Revenue Administrative Bulletin, establishing the definition of “sales price” for purposes of the marihuana excise tax and clarifying the tax result of retail marihuana sales made in violation of the no-bundling provision. Taxpayers should check Treasury’s website for the most up-to-date information on the taxation of recreational marihuana.

## **Contact Information**

Questions concerning the filing of Schedule Ks, and the escrow and equity assessments and related certifications may be directed to the Special Taxes Division, Tobacco Tax Unit, at 517-636-4630.

Specific questions concerning taxes and fees (except the severance tax levied under the Nonferrous Metallic Minerals Extraction Severance Tax Act) should be directed to:

Michigan Department of Treasury  
Special Taxes Division  
Lansing, Michigan 48909-7974

<b><u>Taxing Unit within Special Taxes Division</u></b>	<b><u>Telephone</u></b>	<b><u>Fax</u></b>
International Fuel Tax Agreement (IFTA) Motor Carrier Fuel Tax Act	517-636-4580	517-636-4593
Motor Fuel Tax Act /Oil and Gas Severance Taxes	517-636-4600	517-636-4593
Tobacco Products Tax Act	517-636-4630	517-636-4631
Misc. Taxes and Fees (including HICA and SRETT)	517-636-0515	517-636-4593

Frequently asked questions and other information can be found on Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes) under the "Special Taxes and Fees" link.

Any questions on Bonding should be directed to the Special Taxes Division, Motor Fuel Unit, at 517-636-4600.

Questions concerning motor carrier licensing and tax reporting requirements can be e-mailed to [IFTA\\_licensing@michigan.gov](mailto:IFTA_licensing@michigan.gov), or write to Treasury at:

Michigan Department of Treasury  
Special Taxes Division – IFTA Tax Unit  
P.O. Box 30474  
Lansing, Michigan 48909-7974  
517 636-4580

For the latest oil and gas fee information, visit Treasury's Web site at [www.michigan.gov/taxes](http://www.michigan.gov/taxes) or call the Special Taxes Division, Severance Tax Unit, at 517-636-4600.