

Taxpayer Rights During an Audit

Working Together

Tax audits are performed to verify that a taxpayer has properly accrued and paid all applicable taxes. Statutory authority to conduct audits for the taxes administered by the Michigan Department of Treasury (Treasury) is provided in Section 205.3(a) of the Revenue Act, Public Act 122 of 1941.

Treasury auditors are expected to provide:

- Prompt, fair, and courteous service
- Confidentiality.

Taxpayers have a responsibility to:

- File returns on time with the correct payment (if necessary).
- Make sure returns are correct, regardless of who prepares them.
- Provide documentation as requested to complete an audit or review.

This brochure is intended to help clarify taxpayer rights and responsibilities; it does not take the place of the law.

General Audit Overview

It is not possible to audit all of the taxpayers in Michigan with the limited resources that are available. Instead, computer-generated risk assessment models are used to evaluate taxpayers for audit.

If a taxpayer is chosen for an audit, generally, an interview or visit to the taxpayer's business is required. In some cases, the taxpayer may receive a tax audit questionnaire and a request to submit copies of certain records by mail in advance of the audit start date. This is done to give the auditor a better understanding of the business activities which, in turn, can minimize the time needed to complete the audit.

Taxpayers have the right to:

- Ask that the audit take place at a reasonable time in a convenient location.
- Represent oneself, have someone accompany him or her or, with authorization, have a third party represent the taxpayer in his or her absence.
- Receive copies of the audit schedules that show how the auditor determined any changes to taxes due or applicable refunds.
- Meet with the auditor or the audit supervisor to discuss the audit findings.

During the course of the audit, the auditor must adhere to the following provisions of the Jobs Provider Bill of Rights of 2006:

1. Notify the taxpayer in writing of any refund opportunity the auditor may have identified. The taxpayer may then claim that refund under the provisions of the Revenue Act. Neither the auditor nor Treasury is required to provide detailed transactional support for refund claims or to perform any review beyond that necessary to satisfy the intended scope of the audit.
2. A taxpayer subject to a use tax audit of purchases may offset the use tax liability determined in the audit by the sales tax paid annually to Michigan vendors in error or the use tax paid annually to vendors outside Michigan in error on an amount up to \$5,000 in purchases.
3. **If the audit results determine that the taxpayer has an overpayment, a Notice of Adjustments will be issued identifying the amount of overpayment Treasury believes is on the taxpayer's account. The letter informs the taxpayer of any appeal rights.**

The Audit Process

Auditor

Section 205.3(a) of the Revenue Act authorizes the examination of the books and records of a taxpayer to determine if the correct tax was reported and paid. Treasury auditors are professionals, familiar with the application of Michigan tax law in the business environment. The auditor assigned to an audit will conduct a fair and impartial examination of the taxpayer's records. While the audit is in progress, the auditor will answer any questions that may arise. When the audit is finished, the auditor will explain the audit findings and the alternatives available to the taxpayer if the taxpayer disagrees with the audit results.

Examination of Records

To perform an audit, the auditor must examine certain records. These may include, but are not limited to:

- Sales invoices
- Purchase invoices for supplies
- Capital asset invoices and journals
- Resale and exemption certificates
- General ledgers, subsidiary ledgers and journals, and supporting books and records
- Tax returns
- Bank statements
- Workpapers and accounting data used to prepare tax returns
- Electronic records.

The size and complexity of a business determines the scope of the audit and what records will be examined during the audit.

The Revenue Act requires taxpayers to furnish all records requested by the auditor that are necessary for performing a fair and impartial audit.

Treasury auditors employ methods that use electronic or computer-readable data files. Using records in computer-readable form is accurate and generally results in reduced audit time.

Audit Methods: Detail vs. Sample

Generally, the auditor's first step is to review the accounting, tax accrual, and reporting systems and evaluate the internal controls within each. If tax errors are identified, either of two types of audits can be performed:

1. Detail audit: The auditor may examine all business records for the entire audit period.

2. Sample audit: The auditor may use sampling methods. Errors found in representative samples of business records are projected over the entire audit period. Sampling provides accurate results with significant savings of time and manpower for the State and the taxpayer. In either method, if the records are inadequate, the audit is based on the best information available.

Statute of Limitations

Generally, the statute of limitations is four years for the taxes administered by Treasury. An audit normally covers the most recent four-year period. However, tax may be assessed for any period if a return was not filed.

Questions

The taxpayer should direct questions to the auditor who performs the audit. If assistance is needed before the audit begins or if concerns arise during the audit, the taxpayer should contact the auditor or audit supervisor.

Confidentiality

Treasury employees honor a taxpayer's right to confidentiality. Except where required by law, taxpayers must authorize the disclosure of tax information to any third party before it can be released. To authorize, use the *Authorized Representative Declaration (Power of Attorney)* (Form 151), available on Treasury's Web site.

Notification of Audit Determination

1. Determined Audit Adjustments Letter: Taxpayer will be presented with a *Determined Audit Adjustments (DAA)* letter, along with audit schedules that substantiate the audit determination. If the taxpayer is in agreement with the amount due, payment should be submitted by the response date identified in the *DAA* letter. If the taxpayer disagrees with the audit determination, the auditor must be contacted by the date identified in the *DAA* letter

2. Preliminary Audit Determination: Treasury will issue a *Preliminary Audit Determination (PAD)* that identifies the tax, penalty and interest, amount due or any refund owed to the taxpayer. Once the *PAD* is issued, the taxpayer must make a *Request for Reconsideration of a Preliminary Audit Determination* (Form 5244) if requesting an opportunity to provide additional audit document(s). Please refer to MCL 205.21(6) and 205.21(7). If the taxpayer agrees with the *PAD*, and a balance is still due, payment should be submitted by the response date identified in the *PAD*.

3. Final Audit Notification: After an internal review process, the audit adjustments will be processed and a *Final Audit Notification (FAN)* will be issued. If a balance is still due after receiving the *PAD*, a *Bill for Taxes Due – Intent to Assess* (Form 168) will be issued. If the taxpayer disagrees with the liability amount, a written request for an informal conference may be submitted to Treasury within 60 days of the date on that notice (instructions are provided on the *Intent*).

If the audit results in an overpayment or includes adjustments that result in no additional amount due and the taxpayer disagrees with the determination, a *Notice of Adjustments* will be issued and will have instructions for requesting an informal conference.

4. Final Bill for Taxes Due - Final Assessment (Form 169): Sixty days after the *Notice*, Treasury will issue a *Final Bill for Taxes Due – Final Assessment* (Form 169) unless the amount due is paid in full, an informal conference has been requested, or the taxpayer has filed a valid Form 5244.

Paying the Tax

Payments may be made any time during the billing process. If full payment cannot be made, a payment arrangement may be requested from the Office of Collections after receiving the *Notice*.

Penalty and Interest

Interest and/or penalty will apply as long as there is a tax balance due. Penalty on an assessment may be waived if reasonable cause for failure to pay on time is demonstrated. Reasonable cause may be serious illness or death, a fire or natural disaster, or criminal acts against the taxpayer. The penalty waiver will apply only to periods directly affected by the circumstances. Waiver requests must be made in writing. Refer to Revenue Administrative Bulletin 2005-3 *Penalty Provisions* for additional details.

The Appeals Process

Taxpayers have the right to the following:

Informal Conference

1. An informal conference may be requested in writing to Treasury within 60 days of the date on the *Notice*. The following information must be included in the request:

- The amount of tax disputed
- An explanation of the complaint
- Payment of the undisputed portion of the tax bill.

2. A conference with an impartial referee will be established at a date and place that is convenient for all parties. Taxpayers may bring an attorney or appoint a representative in their absence. Informal Conference may be recorded with prior notification.

3. The referee will make a recommendation to a Treasury Executive who will issue a final decision.

Tax Tribunal or Court of Claims

The final decision from the informal conference or a *Final Assessment* may be appealed to either:

- The Michigan Tax Tribunal within 60 days, which requires payment of the undisputed amount, **or**
- The Michigan Court of Claims within 90 days, which requires payment of the undisputed amount.

Decisions of the Tax Tribunal or the Court of Claims may be appealed to the Court of Appeals and ultimately to the Michigan Supreme Court.

Non-Payment of Tax Balance

Failure to make payment in full or to enter into an approved payment arrangement will initiate collection action by Treasury. Collection action will not be taken before appropriate notice has been given and due process has been provided. The collection process may be stopped at any time by paying the balance in full or entering into an approved payment arrangement. Treasury may take collection action to secure payment of the debt, including:

Liens: Treasury will file liens on real and personal property to protect the interest of the State. Liens will be filed regardless of whether an approved payment arrangement is in place. *Liens become a public record and may affect the credit rating of the taxpayer. In most cases, property cannot be sold or transferred until the past-due tax is paid and the lien is released.*

Wage Levy: A wage levy requires a specific deduction from a taxpayer's compensation to be applied toward the past-due debt. A filing fee of \$55 will be added to the delinquent amount due for each levy served.

Financial Institution Levy: Treasury may serve a levy against a taxpayer's account(s) at financial institutions which requires the financial institution to send Treasury any funds up to the total past due balance. A filing fee of \$55 will be added to the delinquent amount due for each levy served.

Offsets: Treasury may offset any income tax refunds or payments owed to a taxpayer by the State and apply it to the debt.

Other Actions: Treasury has the authority to take immediate action to freeze assets and restrict the transfer of property.

Taxpayer Identification

It is important to include the correct name and Social Security Number or Federal Employer Identification Number on all correspondence and payments to Treasury.

Contact Information

Treasury makes every effort to make tax forms and instructions clear and easy to follow. Forms are available at www.michigan.gov/taxes.

For questions about tax debts that have been assessed, taxpayers should contact the Office of Collections at 517-636-5265 or contact the appropriate tax unit below.

Cigarette/Tobacco Tax	517-636-4630	Corporate Income Tax	517-636-6925
Health Insurance Claims Assessment ...	517-636-0515	IFTA.....	517-636-4580
Individual Income Taxes	517-636-4486	Michigan Business Tax.....	517-636-6925
Motor Fuel Taxes	517-636-4600	Sales, Use, and	
Single Business Tax	517-636-6925	Withholding Taxes.....	517-636-6925

Taxpayers experiencing difficulty in resolving tax matters may contact the Taxpayer Advocate Office by writing to:

Michigan Department of Treasury
Taxpayer Advocate Office
Lansing, MI 48922

For complete information, visit:
www.michigan.gov/taxes