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DEPARTMENT OF TREASURY
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NOTICE TO TAXPAYERS REGARDING THE CONCLUSION OF MULTISTATE TAX COMPACT ELECTION LITIGATION

Issued: July 12, 2017

Background

Public Act 282 of 2014 (“PA 282”) repealed the Multistate Tax Compact (“Compact”) retroactive to January 1, 2008. The repeal of the Compact eliminated the provision that permitted taxpayers to elect to apportion using the Compact’s three-factor apportionment method in lieu of the single sales factor method required by the Michigan Business Tax and the Corporate Income Tax. *Gillette Operations N. Am & Subsidiaries v Dep’t of Treasury*, 312 Mich App 394 (2015), upheld PA 282 and the retroactive repeal of the Compact. *Gillette* is binding precedent with full retroactive effect.

Taxpayers filed applications for leave to appeal *Gillette* and dozens of other three-factor cases to the Michigan Supreme Court. On June 24, 2016, the Michigan Supreme Court denied taxpayers’ applications for leave to appeal.

Taxpayers subsequently petitioned the U.S. Supreme Court for certiorari review of the Michigan Court of Appeals’ decisions. Although the *Gillette Operations* decision was legally binding with respect to all matters concerning the Compact election, the Department did not act on any cases that were pending in audit, informal conference or in litigation before the Michigan Tax Tribunal or the courts while the appeals of these court decisions were awaiting final resolution.

On May 22, 2017, and June 19, 2017, the U.S. Supreme Court declined to review taxpayers’ petitions for certiorari review of the Michigan Court of Appeals’ decisions upholding the validity of the retroactive repeal of the Compact.¹ Accordingly, the legal issues regarding PA 282’s retroactive repeal of the Compact are now fully resolved. Consequently, the Department will proceed as follows:

Audit

The Tax Compliance Bureau will now process all audits in which the use of the Compact’s three-factor apportionment method is at issue that were held in abeyance pending the final outcome of the Compact litigation. This may result in Intents to Assess or refund denials, as applicable, which reflect the use of the apportionment methodology required by statute and consistent with *Gillette*.

¹ There were 7 separate dockets representing taxpayers’ petitions for certiorari review, with the most commonly cited docket representing these actions being *Sonoco Products Co et al v Mich Dep’t of Treasury*, U.S. Supreme Court Docket No. 16-687.

Informal Conference

Taxpayers that timely requested (and were acknowledged for) an informal conference which is in abeyance will be contacted in writing by the Department to determine whether the matter is fully resolved by the application of the decision in *Gillette*. The Department will ask the taxpayer if it wishes to withdraw from informal conference or proceed despite *Gillette*; there may be issues in dispute in addition to the Compact election, and the taxpayer may wish the informal conference process to proceed pursuant to MCL 205.21. The Department will endeavor to contact taxpayers as expeditiously as possible. Due to the high volume of three-factor matters currently pending in the informal conference process, it may be several months before all taxpayers are contacted.

Litigation before the Tax Tribunal and Courts

In cases pending before the Tax Tribunal or the Court of Claims, whether in abeyance or on remand, the Department intends to file motions for summary disposition with regard to the Compact election, unless the taxpayer stipulates to dismiss. Cases in which there are issues in dispute besides the Compact election will proceed towards resolution in the normal course of litigation. Taxpayers that wish to discuss the status of their case with the Department are invited to have their legal counsel or representative contact the Assistant Attorney General representing the Department.