



STATE OF MICHIGAN
DEPARTMENT OF TREASURY

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

REVENUE ADMINISTRATIVE BULLETIN 2016-20

Approved: October 5, 2016

**ISSUANCE OF BULLETINS, LETTER RULINGS, AND OTHER GUIDANCE
FOR TAXPAYERS**

(Replaces RAB 1989-34 and supersedes the definition of Letter Ruling in RAB 2000-6)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2016-20.

The Michigan Revenue Act empowers and authorizes the Department of Treasury (“Department”) to periodically issue bulletins that index and explain the Department’s interpretation of current state tax laws.¹ In addition, the Department periodically issues other types of written tax guidance.

The purpose of this Revenue Administrative Bulletin is to: (i) define and describe the various types of guidance currently issued by the Department; (ii) explain the process pursuant to which the Department issues Revenue Administrative Bulletins and Letter Rulings that constitute position statements of the Department in accordance with MCLA 205.6a; (iii) establish and set forth the procedures taxpayers must follow in order to request the issuance of Letter Rulings or Technical Advice Letters, and; (iv) address the Department’s issuance of informal advice and guidance to taxpayers, including Technical Advice Letters, Internal Policy Directives, Frequently Asked Questions, Notices, and other informal guidance.

I. FORMS OF GUIDANCE

A. Revenue Administrative Bulletins and Letter Rulings

The issuance by the Department of Revenue Administrative Bulletins (“Bulletins”) and Letter Rulings is governed by MCL 205.6a(1). That section provides:

¹ See MCL 205.3(f).

A taxpayer may rely on a bulletin or letter ruling issued by the department after September 30, 2006 and shall not be penalized for that reliance until the bulletin or letter ruling is revoked in writing. However, that reliance by the taxpayer is limited to issues addressed in the bulletin or letter ruling for tax periods up to the effective date of an amendment to the law upon which the bulletin or letter ruling is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin or letter ruling is based.

The purpose of Bulletins and Letter Rulings is to provide advice and guidance to taxpayers and others regarding the Department's official interpretation and application of current Michigan tax laws, in accordance with both MCL 205.3(f) and MCL 205.6a. Bulletins and Letter Rulings are not subject to the Administrative Procedures Act of 1969.²

1. Bulletins

A Bulletin is a formal directive issued by the Department through the Bureau of Tax Policy. Its purpose is to promote and ensure uniform application of Michigan tax laws by Department personnel and to provide information and guidance to taxpayers. A Bulletin states the official position of the Department with respect to a specific and identified tax topic that the Department will follow and apply in the disposition of matters unless and until the Bulletin is revoked or modified. As provided in MCL 205.6a(1), a taxpayer may rely on the position of the Department as stated in a Bulletin issued by the Department after September 30, 2006, until the Bulletin is revoked in writing. Accordingly, Bulletins are published on the Department's website and are binding upon the Department. Reliance by taxpayers, however, is limited to issues addressed in the Bulletin for tax periods up to the effective date of an amendment to the law upon which the Bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the Bulletin is based. Therefore, a taxpayer must necessarily consider the effects of subsequent legislation, regulations, court decisions, and Bulletins when relying on a Bulletin.

"Reliance" in the context of a Bulletin means that a taxpayer can cite to an applicable, unrevoked Bulletin to assert successfully that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. However, if a legal interpretation or position taken by the Department in a Bulletin is found by an appellate court, in a decision having precedential effect, to be contrary to or inconsistent with applicable law, that Bulletin is automatically and retroactively revoked to the extent that the Bulletin is inconsistent with the court's final interpretation of the law.³ In such cases, taxpayers who acted in accordance with the legal interpretation or position expressed in the Bulletin will be liable for any increased tax liability and associated interest resulting from the Department's changed interpretation or position, but penalty will not be imposed.

² MCL 24.201 *et seq.*

³ The Department is required to give precedential judicial decisions full and complete retroactive effect. *See Syntex Laboratories v Dept of Treasury*, 233 Mich App 286 (1998).

2. Letter Rulings

A Letter Ruling is formal correspondence that expresses the position of the Department on one or more specific, identified tax matters. A Letter Ruling is issued by the Treasurer or Deputy Treasurer through the Bureau of Tax Policy in response to a request from a named taxpayer. A Letter Ruling sets forth the Department's position on a particular tax issue related to a specific future transaction involving the taxpayer, and not a hypothetical transaction. The position of the Department as set forth in a Letter Ruling is based on authority such as statutes, rules, regulations, and court decisions having precedential value. By statute, a Letter Ruling is prospective in nature.⁴ It provides the requesting taxpayer with assurance regarding the tax consequences of a specific future transaction. The requesting taxpayer may rely upon the Letter Ruling only if the facts provided to the Department are accurate and complete and the described transaction is carried out as proposed. As provided in MCL 205.6a(1), other taxpayers may rely on the position of the Department as stated in a Letter Ruling issued by the Department after September 30, 2006, until the Letter Ruling is revoked in writing. Such reliance, however, is limited to the specific issues addressed in the Letter Ruling, and the relying taxpayer's facts and circumstances must be substantially similar to those described in the Letter Ruling. Further, reliance is limited to the tax period up to the effective date of an amendment to the law upon which the Letter Ruling is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the Letter Ruling is based. Letter Rulings are published on the Department's website, although they are edited to remove any identifying taxpayer information.

"Reliance" in the context of a Letter Ruling means that a taxpayer can cite to an applicable, unrevoked Letter Ruling to assert successfully that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. However, if a legal interpretation or position taken by the Department in a Letter Ruling is found by an appellate court, in a decision having precedential effect, to be contrary to or inconsistent with applicable law, that Letter Ruling is automatically and retroactively revoked to the extent that the Letter Ruling is inconsistent with the court's final interpretation of the law.⁵ In such cases, taxpayers who acted in accordance with the legal interpretation or position expressed in the Letter Ruling will be liable for any increased tax liability and associated interest resulting from the Department's changed interpretation or position, but penalty will not be imposed.

B. Technical Advice Letters

A Technical Advice Letter is informal correspondence released by a Division or Bureau of the Department. It is issued in response to a request from an identified taxpayer for technical assistance with respect to a discrete tax issue. Technical Advice Letters can be, but are not necessarily, prospective in nature. The position of the Department as set forth in a Technical Advice Letter is based on authority such as statutes, rules, regulations, and court decisions having precedential value. If the taxpayer has not been identified in the request, a Technical Advice Letter will not be issued. Because of the volume of Technical Advice Letters issued each

⁴ MCL 205.6a(2)(b).

⁵ See footnote 3, *supra*.

year and their more informal nature, only Technical Advice Letters issued by the Tax Policy Division of the Bureau of Tax Policy will be published on the Department's website. Published Technical Advice Letters will be edited to remove any identifying taxpayer information. Only the specific taxpayer identified in a Technical Advice Letter may rely upon the letter and the position of the Department as set forth therein.

"Reliance" in this context means that only the requesting taxpayer can cite to the Technical Advice Letter received from the Department to assert successfully that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. However, if a legal interpretation or position taken by the Department in a Technical Advice Letter is found by an appellate court, in a decision having precedential effect, to be contrary to or inconsistent with applicable law, that Technical Advice Letter is automatically and retroactively revoked to the extent that the Technical Advice Letter is inconsistent with the court's final interpretation of the law.⁶ In such cases, the requesting taxpayer will be liable for any increased tax liability and associated interest resulting from the Department's changed interpretation or position, but penalty will not be imposed.

C. Internal Policy Directives

Internal Policy Directives are prepared in order to provide internal guidance to Department personnel to insure uniformity in tax administration. They explain how Department personnel should handle matters involving a specific and typically narrow tax issue; for instance, an Internal Policy Directive might explain the basis of eligibility for a statutory exemption from tax and outline the type of documentation that a taxpayer must produce in order to demonstrate entitlement to the exemption. Internal Policy Directives are available to the public on the Department's website; however, these documents are provided for general informational purposes only. Because Internal Policy Directives have an internal focus, they are not designed to be relied upon by taxpayers. Accordingly, a taxpayer may not validly cite to an Internal Policy Directive in asserting that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. Whether it is reasonable for a taxpayer to have relied upon guidance set forth in an Internal Policy Directive and thereby avoid the imposition of penalty will depend upon the facts and circumstances of each case. Internal Policy Directives may be modified by the Department and any such modification may be applied to all open tax periods.

D. Notices

Periodically, the Department publishes Notices to taxpayers on its website. Notices are typically brief, and are intended to notify taxpayers in a rapid and efficient manner about a specific tax issue, such as a recent change in tax law or the immediate ramifications of a recent court decision. Often, but not always, the information contained in a Notice is subsumed in a later, more formal piece of guidance, such as a Bulletin or a promulgated rule. Notices are provided for informational purposes only and are not designed to be relied upon by taxpayers. Furthermore, Notices are not to be construed as promulgated rules, Bulletins or Letter Rulings

⁶ See footnote 3, *supra*.

issued by the Department, and are subject to revision pursuant to the effect of legislation, court decisions, regulations and official statements of the Department. A taxpayer may not validly cite to a Notice in asserting that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. Whether it is reasonable for a taxpayer to have relied upon guidance set forth in a Notice and thereby avoid the imposition of penalty will depend upon the facts and circumstances of each case.

E. Brochures Explaining Taxpayers' Rights and Responsibilities

In accordance with MCL 205.5, the Department prepares brochures that explain taxpayers' rights and responsibilities with respect to actions of the Department in administering or enforcing Michigan tax laws. These brochures, which are sent to taxpayers at the commencement of an audit and with certain communications from the Department regarding the determination of taxes due, are prepared for informational purposes only. The brochures summarize important provisions of the Michigan Revenue Act, and are intended to help clarify taxpayer rights and responsibilities. While the brochures are updated to reflect relevant statutory changes, the brochures do not take the place of the law. A taxpayer may not validly cite to a departmental brochure in asserting that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. Whether it is reasonable for a taxpayer to have relied upon information set forth in a departmental brochure and thereby avoid the imposition of penalty will depend upon the facts and circumstances of each case.

F. Frequently Asked Questions (FAQs)

FAQs are issued periodically on various topics. Many are prepared in response to general questions received from taxpayers. FAQs are provided for informational purposes only. Furthermore, FAQs are not to be construed as promulgated rules, Bulletins or Letter Rulings issued by the Department, and are subject to revision pursuant to the effect of legislation, court decisions, regulations and official statements of the Department. A taxpayer may not validly cite to an FAQ in asserting that the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. Whether it is reasonable for a taxpayer to have relied upon guidance set forth in an FAQ and thereby avoid the imposition of penalty will depend upon the facts and circumstances of each case.

G. Other Informal Guidance

The Department may also issue or provide other types of informal guidance to taxpayers. Such informal guidance includes: (i) responses to correspondence that fails to meet the requirements for the issuance of a Letter Ruling or a Technical Advice Letter; (ii) seminar presentations and similar talks given by Department personnel, together with written materials used or distributed in connection with such presentations; (iii) e-mail or other written responses from Department personnel to inquiries received from taxpayers via e-mail (such as inquiries sent to one of the Department's electronic mailboxes); (iv) other general correspondence from the Department; and (v) oral responses to telephone inquiries. These types of informal guidance are provided for general informational purposes only and are not intended to be relied upon by taxpayers. A taxpayer may not validly cite to informal guidance of the types described herein in asserting that

the taxpayer owes less in tax liability than the Department has stated that the taxpayer owes, or to assert the validity of a claim for refund. Whether it is reasonable for a taxpayer to have relied upon such informal guidance and thereby avoid the imposition of penalty will depend upon the facts and circumstances of each case.

II. OBTAINING A LETTER RULING

A. Procedure for Obtaining a Letter Ruling

In order to obtain a Letter Ruling, a taxpayer must follow these procedures:

A taxpayer or the taxpayer's representative must submit a written request for a Letter Ruling to the Bureau of Tax Policy at 430 West Allegan Street, Lansing, MI 48922. The request must contain a complete and accurate account of the facts relating to a particular tax issue arising with respect to a planned future transaction. The request must include a written affirmation by the taxpayer that the issue in question is not currently being litigated or challenged in an informal conference of the Department or in any tribunal or court in this State, and that the issue is not currently being considered as part of an open audit of the taxpayer. Based upon this request, the Bureau of Tax Policy, in its sole discretion, will determine whether a Letter Ruling is the necessary and appropriate means to clarify the issue and whether the taxpayer has provided sufficient information for a Letter Ruling to be issued.

In accordance with MCL 205.6a(2)(b), the taxpayer or the taxpayer's representative must include, at a minimum, the following information⁷ in its request for a Letter Ruling:

- The name, address, telephone number, and taxpayer identification number of the taxpayer requesting the Letter Ruling.
- A completed Authorized Representative Declaration (Power of Attorney) (Form 151) if the taxpayer is represented by a third party and such form/authorization is not currently on file with the Department.
- A statement of the specific question(s) to be answered or issue(s) to be addressed in the Letter Ruling.
- A complete and accurate statement of the facts relating to the identified transaction, including:
 - a detailed description of the transaction;
 - the names, addresses, telephone numbers, and taxpayer identification numbers of the primary parties to the transaction;
 - a description of the taxpayer's business operations, and;

⁷ The Department recognizes that, with respect to certain transactions, it may not be appropriate or necessary for the taxpayer or the taxpayer's representative to provide all of the listed items. For example, with respect to a request for a Letter Ruling regarding a future transaction that is expected to recur, such as the proper sales and use tax treatment of a product being sold by the taxpayer, it would not be possible to include specific identifying information about the purchaser. In such cases, the taxpayer or the taxpayer's representative should include those items that are applicable to the particular request; however, the Bureau of Tax Policy may request additional information from the taxpayer as it deems necessary or appropriate.

- a statement of the business reason(s) for the transaction.
- Copies of all contracts, agreements, instruments, and other documents pertinent to the transaction.
- An analysis of the facts and their bearing on the issue(s). If documents attached to the request contain material facts, these facts must be included in the taxpayer's analysis of facts in the request, rather than merely incorporated by reference.
- Citations to or copies of relevant statutes, rules, court decisions, advisory opinions, or other primary authorities that support or appear to support the position of the taxpayer requesting the Letter Ruling.
- A statement attesting:
 - whether the taxpayer requesting the Letter Ruling has the same issue currently under audit or appeal with the Department or with any other taxing or revenue authority;
 - whether the taxpayer requesting the Letter Ruling has been notified that an examination or audit is pending;
 - whether the taxpayer requesting the Letter Ruling is litigating or challenging the issue in question in any tribunal or court of this state or in an informal conference granted by the Department under MCL 205.21;
 - whether the Department, or any other taxing or revenue authority, has previously issued an advisory opinion on the tax issue(s) to be determined, the planned transaction, or any other part of the subject matter discussed in the request for the Letter Ruling (with copy attached, if so);
 - whether the Attorney General's Office has been, or will be, requested to issue an opinion concerning the issue(s), and;
 - that the requesting taxpayer agrees that, prior to the issuance of the Letter Ruling, if the taxpayer is notified of a pending examination or audit by the Department or other taxing or revenue authority, the taxpayer will promptly notify the Department of the pending examination.

The request for a Letter Ruling must be signed and dated by the requesting taxpayer or the taxpayer's representative. The request must be accompanied by the following attestation, *verbatim*, which must be signed and dated by the taxpayer:

“Under penalties of perjury, I declare that I have examined this request for a Letter Ruling, including all accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”

The person signing for a corporation must be an officer who has personal knowledge of the facts as presented in the request. The person signing for a trust or partnership must be, respectively, a trustee or general partner who has personal knowledge of the facts as presented in the request. The person signing for a limited liability company must be a member or manager who has personal knowledge of the facts as presented in the request.

A Letter Ruling issued through the Bureau of Tax Policy will be forwarded to the party requesting the Letter Ruling. All Letter Rulings will be published on the Department's website

after deletion of any matter identifying the taxpayer. A Letter Ruling will be clearly labeled “Letter Ruling.” If it is determined that a Letter Ruling is not the necessary and appropriate means to resolve or clarify the issue presented in the request, or that the taxpayer has not provided sufficient information for a Letter Ruling to be issued, the Bureau of Tax Policy may, in its sole discretion, (i) issue a Technical Advice Letter or more informal correspondence addressing the issue, rather than a Letter Ruling, or (ii) request more information from the taxpayer.

B. Time for Issuance of Letter Ruling

In general, the Department will endeavor to issue Letter Rulings within 60 days from the date that the request for Letter Ruling is received by the Department, or 60 days from the date that additional information, if requested, is provided by the taxpayer. This is only a guideline, however, as Letter Rulings addressing complex matters may take longer than 60 days to be issued.

III. OBTAINING A TECHNICAL ADVICE LETTER

A. Procedure for Obtaining a Technical Advice Letter

In order to obtain a Technical Advice Letter, a taxpayer must follow these procedures:

A taxpayer or the taxpayer’s representative must submit a written request for a Technical Advice Letter to the Bureau of Tax Policy at 430 West Allegan Street, Lansing, MI 48922. The request must contain a complete and accurate account of the facts relating to a particular tax issue. The request must include a written affirmation by the taxpayer that the issue in question is not currently being litigated or challenged in an informal conference of the Department or in any tribunal or court in this State, and that the issue is not currently being considered as part of an open audit of the taxpayer. Based upon this request, the Bureau of Tax Policy, in its sole discretion, will determine whether the taxpayer has provided sufficient information for a Technical Advice Letter to be issued.

The taxpayer or the taxpayer’s representative must include in its request for a Technical Advice Letter the same items of information required of a taxpayer requesting a Letter Ruling, as listed in Section II.A. of this Bulletin.⁸

⁸ The Department recognizes that, with respect to certain transactions, it may not be appropriate or necessary for the taxpayer or the taxpayer’s representative to provide all of the listed items. For example, with respect to a request for a Letter Ruling regarding a future transaction that is expected to recur, such as the proper sales and use tax treatment of a product being sold by the taxpayer, it would not be possible to include specific identifying information about the purchaser. In such cases, the taxpayer or the taxpayer’s representative should include those items that are applicable to the particular request; however, the Bureau of Tax Policy may request additional information from the taxpayer as it deems necessary or appropriate.

The request for a Technical Advice Letter must be signed and dated by the requesting taxpayer or the taxpayer's representative. The request must be accompanied by the following attestation, *verbatim*, which must be signed and dated by the taxpayer:

“Under penalties of perjury, I declare that I have examined this request for a Technical Advice Letter, including all accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”

The person signing for a corporation must be an officer who has personal knowledge of the facts as presented in the request. The person signing for a trust or partnership must be, respectively, a trustee or general partner who has personal knowledge of the facts as presented in the request. The person signing for a limited liability company must be a member or manager who has personal knowledge of the facts as presented in the request.

A Technical Advice Letter will be forwarded to the party requesting the Technical Advice Letter, and will be clearly labeled “Technical Advice Letter.” If it is determined that the taxpayer has not provided sufficient information for a Technical Advice Letter to be issued, the issuing Division or Bureau may, in its sole discretion, (i) issue a more informal piece of correspondence addressing the issue, rather than a Technical Advice Letter, or (ii) request more information from the taxpayer. If the taxpayer has not been identified in the request, a Technical Advice Letter will not be issued.

B. Time for Issuance of Technical Advice Letter

In general, the Department will endeavor to issue Technical Advice Letters within 60 days from the date that the request for Technical Advice Letter is received by the Department, or 60 days from the date that additional information, if requested, is provided by the taxpayer. This is only a guideline, however, as Technical Advice Letters addressing complex matters may take longer than 60 days to be issued.

IV. REVOCATION OF BULLETINS AND LETTER RULINGS

A Bulletin or Letter Ruling may be revoked by the Department, in whole or in part, under the following conditions:

- The statutory provision supporting the Bulletin or Letter Ruling has been amended or repealed, or has been authoritatively construed by an appellate court decision having precedential effect.
- The substance of the Bulletin or Letter Ruling has been incorporated into a statute, or into a rule promulgated by the Department.
- The Department determines that another pertinent reason exists to revoke the Bulletin or Letter Ruling.

When a determination is made to revoke a Bulletin or Letter Ruling, the Department will publish a Notice on its website announcing the revocation, and its effective date. The revoked Bulletin or Letter Ruling will subsequently be removed from the Department's website, with a notation (if applicable) identifying the Bulletin or Letter Ruling that replaces the revoked document. The Treasurer is authorized to determine the retrospective application of Bulletins and Letter Rulings, and the effective date for any changes or modifications to, or revocations of, Bulletins and Letter Rulings. An appellate court decision having precedential effect that has rendered invalid a legal interpretation or position taken by the Department in a Bulletin or Letter Ruling will automatically and retroactively revoke that Bulletin or Letter Ruling to the extent that the Bulletin or Letter Ruling is inconsistent with the court's final interpretation of the law.⁹

As of the effective date of revocation of a Bulletin or Letter Ruling, that Bulletin or Letter Ruling will cease to represent the official position of the Department with respect to the tax matter identified in the Bulletin or Letter Ruling, and the revoked Bulletin or Letter Ruling will have no further force or binding effect, except as may otherwise be provided by statute.

V. ACQUIESCENCE BY THE TREASURER

If the Treasurer acquiesces to an adverse Tax Tribunal, Court of Claims, or unpublished Court of Appeals decision, any contrary Bulletin or Letter Ruling will be revoked according to the procedure set forth in Part IV of this Bulletin. Furthermore, the determination to acquiesce will be published by the Department.

⁹ See footnote 3, *supra*.