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REVENUE ADMINISTRATIVE BULLETIN 2019-21

Approved: December 11, 2019

OVERVIEW OF THE REVENUE ACT PROVISIONS GOVERNING THE COLLECTION OF ASSESSMENTS

(Replaces Revenue Administrative Bulletin 1993-15)

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-2019-21. This Revenue Administrative Bulletin (RAB) explains the statutory conditions governing when the Department of Treasury (Department) can begin to actively collect after a final (non-jeopardy) assessment of a tax liability is issued, how long collection efforts can continue, and the specific collection actions the Department may take. The RAB also describes the procedures the Department must follow to determine if a taxpayer has a deficiency before a final assessment of a tax liability can be issued.

I. Overview of the Issuance of Assessments Under the Revenue Act

The Revenue Act[1] is the primary statute governing the Department's administration and enforcement of tax laws in Michigan and applies to most taxes administered by the Department.[2] The Revenue Act imposes specific rules and procedures related to the determination, assessment, and collection of tax, penalty, and interest.[3]

[1] MCL 205.1 *et seq*.

[2] For example, the individual income tax, sales tax, use tax, corporate income tax, and motor fuel taxes. However, property taxes under the General Property Tax Act are not administered under the Revenue Act.

[3] In the case of taxpayers who are businesses, "responsible persons" or certain successors of that business may be held personally liable for the unpaid taxes in some cases. MCL 205.27a(1),(5). For information related to the procedures for determining whether corporate officer liability is applicable and information on the specific procedures for the assessment of any "responsible person," please refer to RAB 2015-23 – *Officer Liability*. For information related to successor liability, please refer to RAB 2018-19 – *Successor Liability*.

Generally, the Revenue Act prohibits the assessment of any deficiency, interest, or penalty after 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later.[4] This limitations period may be extended for any of the following reasons:

(a) The period pending a final determination of tax through audit, conference, hearing, and litigation of liability for federal income tax and for 1 year after that period.[5]
(b) The period for which the taxpayer and the State Treasurer have consented to in writing that the period be extended.
(c) The period described in section 21(6) and (7) of the Revenue Act, MCL 205.21(6) and (7), or pending the completion of an appeal of a final assessment.
(d) A period of 90 days after a decision and order from an informal conference, or a court order that finally resolves an appeal of a decision of the department in a case in which a final assessment was not issued prior to appeal.[6]

When the Department has, within the limitations period, determined that a taxpayer owes tax, penalty, or interest, the Revenue Act requires that determination to be communicated through the following correspondence issued to the taxpayer:

1. *Letter of Inquiry* - In most cases, the Department must first send to the taxpayer a letter of inquiry stating the Department's opinion that the taxpayer needs to provide further information or that additional tax is owed and the reason for that opinion.[7] In response to that letter, taxpayers may dispute that determination and submit additional information for review. A letter of inquiry is not required to be sent in circumstances where the taxpayer files a return showing a tax due and fails to pay that tax, the deficiency results from an audit of the taxpayer's books and records, or the taxpayer otherwise admits the tax is owed.[8]

2. *Notice of Intent to Assess* – If a letter of inquiry is not required, or if the taxpayer disputes the letter of inquiry and such dispute is not resolved within 30 days after that letter, then the Department must issue a notice of intent to assess tax, further advising the taxpayer of the amount owed, the reason for the deficiency, the right to an informal conference, and the general procedures for requesting

[4] MCL 205.27a(2).
[5] The statute of limitations is extended only as to those items that were the **s**ubject of the audit, conference, hearing, or litigation for federal income tax or a tax the Department administers. "Items that were the subject of the audit" are those that share a common characteristic, such as items reported on the same line of the tax return or grouped by account or by class or type of asset, that the Department auditor examined, irrespective of any adjustment to the tax. MCL 205.27a(4).
[6] MCL 205.27a(3).
[7] MCL 205.21(2)(a).
[8] MCL 205.21(2)(a).

an informal conference.[9] The statute allows the taxpayer a 60-day time period to respond in writing to any notice of intent to assess tax.[10]

3. *Final Notice of Assessment* – After the 60-day period to respond to a notice of intent to assess has lapsed or, if necessary, upon the conclusion of an informal conference, the Department may assess the tax, penalty, and interest through issuance of a final notice of assessment.[11] This assessment is a final decision of the Department and may be appealed to the Michigan Tax Tribunal within 60 days of the final assessment or the Michigan Court of Claims within 90 days of the final assessment.[12]

In cases where the assessment is not timely appealed, the assessment becomes final and not subject to further appeal under Section 22 of the Revenue Act, which provides, in relevant part:

> An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.[13]

Once an assessment becomes final and not subject to further appeal, the Department will initiate collection actions on the assessment of tax and accrued interest and penalty if it remains unpaid, subject to the various limitations generally discussed within this RAB.

II. Overview of Specific Collection Actions

In cases where a final assessment of tax due is not immediately paid, that tax debt may be referred to a private collection agency for attempted collection. The private collection agency is subject to the same statutory conditions under the Revenue Act in carrying out its collection activities as the Department. Upon commencing collection, the taxpayer may be contacted through correspondence or telephone calls to arrange either a lump sum payment or installment payments. In cases where the debt remains unpaid notwithstanding these initial collection efforts, the Revenue Act authorizes additional enforcement mechanisms, including filing liens on the taxpayer's real and personal property, levying and/or garnishment of property, filing civil actions in court, and offsetting tax refunds claimed by the taxpayer.

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[9] MCL 205.21(2)(b).
[10] Upon serving the written notice disputing the assessment to the Department, remitting the uncontested portion of the liability, and providing a statement of the contested amounts and an explanation of the dispute, the taxpayer is entitled to an informal conference on the question of liability for the assessment. MCL 205.21(2)(c); Mich Admin Code, R 205.1008.
[11] MCL 205.21(2)(g); Mich Admin Code, R 205.1011(5).
[12] MCL 205.22(1).
[13] MCL 205.22(5); *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403 (2013).

A. Liens

In general, a state tax lien is a public filing which secures an interest in a taxpayer's property when that taxpayer has unpaid tax debts. For state tax purposes, tax liens are specifically authorized under Section 29 of the Revenue Act, MCL 205.29. Accordingly, any tax administered under the Revenue Act constitutes a lien against all property and rights of property owned or otherwise afterwards acquired by the taxpayer liable for that debt.[14] The lien automatically attaches to property owned by the taxpayer from the date that the return is required to be filed; however, that lien is "perfected" and given priority over other liens only upon the valid recording of a notice of state tax lien in accordance with the provisions of the State Tax Lien Registration Act, MCL 211.681 *et seq.*[15]

Once perfected, state tax liens are generally given priority over all other debts. In some cases, bona fide liens recorded prior to perfection of the state tax lien may be given priority over a state tax lien, but only to the extent of disbursements made under a financing arrangement before the earlier of the 46th day after the date the tax lien is recorded or the date the person making the disbursements has actual knowledge of that tax lien.[16] A perfected tax lien retains priority for 7 years after the original date of attachment, but may be renewed for an additional 7 year period by refiling the notice of state tax lien within 6 months prior to the expiration of that period.[17]

The Department's priority claim to property subject to a state tax lien may voluntarily be relinquished. Indeed, the Department may, in its discretion, determine that a state tax lien should not be renewed upon the conclusion of the original filing period. A lien that is not renewed is no longer effective and, in these cases, the State Tax Lien Registration Act authorizes the filing officer to automatically remove the notice of state tax lien without a lien "release" or any other documentary filings required from the Department.[18] While the decision not to renew a lien may extinguish the Department's priority claim to the taxpayer's property, it does not impact the obligation of the taxpayer to pay the outstanding assessment or the Department's ability to use alternative measures to collect upon that assessment.[19]

While the Department exercises discretion in determining whether to renew a lien, in some cases a lien must be removed. The Revenue Act refers to these particular circumstances as either lien "releases" or lien "withdrawals."

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[14] MCL 205.29(1).
[15] MCL 205.29(2); MCL 211.682(b)(2).
[16] MCL 205.29(2).
[17] MCL 205.29(1).
[18] MCL 211.684(5) ("If a refiled notice of a state tax lien is not presented to the filing officer for filing within 7 years and 60 days after the date on which a notice of a state tax lien or the latest refiled notice of that state tax lien is filed, the filing officer may remove the notice of a state tax lien and any related refiled notice of a state tax lien or any certificate described in subsection (2) from the file.").
[19] See *Nagle v Dep't of Treasury*, unpublished opinion of the Court of Appeals, issued August 8, 2017 (Docket No. 333850), p 3. ("[D]efendant's failure to exercise [sue plaintiff to collect on tax assessment] does not lead to the conclusion that defendant forfeited its other rights with regard to collection of plaintiff's outstanding tax debt.").

a. Lien release

A lien "release" refers to the certificate of release that is filed in order to remove any liens attached to the debtor's real and personal property. Importantly, the Revenue Act requires a release to be filed in only one specific circumstance – satisfaction of the underlying assessment.[20] Because satisfaction of the debt is statutorily required, there is no obligation to file a release in cases involving partial payments, installment agreements, and promises to pay the assessment in the future. Similarly, a release is not required to be filed when the Department has abandoned other collection actions and the assessment remains unpaid. For example, a lien release is not required to be filed in cases where the lien has not been renewed through a timely filed certificate of renewal or in cases where the Department has administratively written off the debt as uncollectible.

A release must be filed within 20 business days after the payment has been applied to the assessment.[21] Because a certificate of release is typically filed with and recorded by the applicable Register of Deeds, the filing is a public record. As such, both the existence of the original lien and its subsequent release are available for public inspection, even though the lien itself no longer preserves the Department's priority claim to any property. Although the Department does not report any information directly to public credit agencies, the public nature of a lien filing means that the existence of a prior state tax lien may be included in credit reports generated by those agencies.

b. Lien withdrawal

A lien "withdrawal" refers to the removal of the public lien filing so as to ensure that the Department is no longer competing with other potential creditors for property. As contrasted against a lien release, a withdrawal formally acknowledges that the lien was originally recorded in error and therefore removes the adverse credit consequences from the lien's erroneous public filing. In other words, withdrawal of a lien effectively treats the original lien filing as if it had never existed. In this regard, the Revenue Act generally limits lien withdrawals to one scenario — where a lien is determined by the Department to have been recorded in error after the Department received money in satisfaction of the debt or received information that would cancel the tax liabilities subject to the lien. A lien is withdrawn by the Department by filing, within 5 business days after having determined the lien was erroneously filed, a certificate of withdrawal which states that the recorded lien was filed in error. [22]

B. Levy/Garnishment

A levy is a specialized form of warrant and is generally used to withdraw funds from a taxpayer's financial institution account or to garnish a taxpayer's wages for payment of a tax. However, the Department may levy on all property and rights to property, real and personal, tangible and intangible, belonging to the taxpayer or on which a lien is provided by law for the amount of the

[20] MCL 205.29a(1) (If "the department determines that the tax liability out of which the lien arose is satisfied, the department shall file for recording a release regarding the property or rights of property.").
[21] *Id.*
[22] MCL 205.29a(6).

tax debt. The Department may sell the real and personal property of the taxpayer found within the state for the payment of the amount due.[23] For an unpaid tax, the type of property as described in section 6334 of the Internal Revenue Code is exempt from levy.[24] This property may be generally described as "necessities," e.g., clothes, tools of a trade, and child support payments.

The procedure related to a levy commences with the Department issuing a demand letter to the taxpayer for the payment of the tax. If the liability remains unpaid for 10 days after that demand letter is issued and proceedings are not taken to review the liability, then the Department may issue a warrant.[25] Once issued, a levy is typically released only upon satisfaction of the tax liability. If the tax liability is satisfied, then the levy must be released not more than 10 business days after funds to satisfy the tax liability have been applied to the taxpayer's account.[26] However, a levy may also be released in limited cases where the Department determines that the property or rights of property of a person were improperly subject to the levy. In that case, the Department must release that levy not more than 5 business days after that determination.[27]

C. Personal Actions/Judgments

Section 28(1)(c) of the Revenue Act, MCL 205.28(1)(c), authorizes the Department to initiate civil actions against taxpayers to obtain a judgment against the debtor or otherwise collect upon a debt.[28] An action initiated under this provision is subject to the general provisions of theRevised Judicature Act (RJA), MCL 600.101 *et seq*, Section 5813 of which specifies that, unless otherwise tolled, any civil action initiated must be commenced within 6 years after the date the claims accrue.[29] Critically, the expiration of the time period of the RJA does not limit or otherwise abrogate any rights with regard to collection of the underlying tax debt or any other alternative collection actions available to the Department.[30]

D. Administrative Actions

The Department also has certain administrative remedies to collect upon delinquent assessments. The Department generally retains a common law right to setoff any outstanding tax debts as to amounts due to the taxpayer that come within the Department's possession.[31] This common law right of setoff for creditors is not abrogated or limited by the RJA or the Revenue Act and exists even where the period to pursue collection actions under those Acts have lapsed.[32] For example, the Department may apply unclaimed property claimed by a taxpayer against the outstanding tax debts of that claimant, even though the Department would have been barred from initiating a civil

[23] MCL 205.25(1).
[24] MCL 205.25(5)(a).
[25] MCL 205.25(1).
[26] MCL 205.29a(3).
[27] MCL 205.29a(4).
[28] MCL 205.28(1)(c).
[29] MCL 600.5813.
[30] See *Nagle*, unpub op at 3.
[31] Cf. *Whispering Pines AFC, Home, Inc v Dep't of Treasury*, 212 Mich App 545, 553 (1995); 1 OAG, 1980, No. 794 (October 7, 1980).
[32] See *Nagle*, unpub op at 3.

action pursuant to the RJA to collect upon that debt.[33] In other words, the right to setoff exists until a tax debt is paid in full.

For refund claims payable to a taxpayer, excluding any portion of such claims specifically exempted by statute,[34] the right to setoff extends to other liabilities owed to the state. Indeed, the Department, as the agency vested with authority over the collection of all past due money and accounts owed to the state,[35] is statutorily required to offset pending tax refunds against tax *and* non-tax debts owed to the state.[36] Any pending tax refund claim must be offset against debts in the following statutory order of priority:

a. Any other known tax liability of the taxpayer to this state.
b. Any other known liability of the taxpayer to this state, including a liability to pay support if the right to receive the support has been assigned to the state and the liability is the basis of a request for tax refund offset from the office of child support.
c. Any of the following in the order of priority received, unless otherwise provided by law:
    i. A support liability of the taxpayer that is the basis of a request for tax refund offset from the office of child support, other than as provided by subdivision (b).
    ii. A writ of garnishment or other valid court order issued by a court of competent jurisdiction and directed to this state or the state treasurer to satisfy a liability of the taxpayer.
    iii. A known city income tax liability for a tax administered by the Department through an agreement entered into under section 9 of chapter 1 of the City Income Tax Act, 1964 PA 284, MCL 141.509.
    iv. A levy of the Internal Revenue Service to satisfy a liability of the taxpayer.
    v. A liability to repay benefits obtained under the Michigan Employment Security Act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, to which the taxpayer was not entitled, upon a request for tax refund offset from the Michigan unemployment insurance agency.[37]

As an example, assume a taxpayer has an $800 state tax refund claim and a $200 Michigan home heating credit. That taxpayer has unpaid debts eligible for offset under Section 30a, including a liability (non-tax) owed to the state in the amount of $750 and a liability for a city income tax administered by the Department in the amount of $500. In this case, because the home heating credit is statutorily exempt from offset, the $800 tax refund will first offset the entire $750 state

[33] See *Nagle*, unpub op at 3 ("[W]e reject plaintiff's claim that it would be an "absurdity" if defendant had the right to seek the recovery of his outstanding tax debt beyond the six-year time period set forth in MCL 600.5813.").
[34] See e.g., MCL 206.527a(2) (exempting the Michigan Home Heating Credit from being applied as an offset to any liability of the claimant under Section 30a of the Revenue Act).
[35] MCL 205.1(1)(g).
[36] MCL 205.30a(1).
[37] MCL 205.30a(2).

tax liability, with the remaining $50 of that refund applied as an offset against the city income tax liability. Consequently, a $450 city income tax liability will remain upon processing of the state tax refund claim.

III. Limitations on Collection Actions

Although the Revenue Act allows for a variety of collection actions that the Department may use, certain limitations on that authority exist. The source of these limitations include external sources, such as those imposed under other state and federal laws, and internal sources, such as those from administrative holds or debt write-offs.

A. Revised Judicature Act (RJA)

MCL 600.5813 expressly directs that "[a]ll other personal actions shall be commenced within the period of 6 years after the claims accrue and not afterwards unless a different period is stated in the statutes." In other words, the Department cannot bring a civil suit to collect a debt after 6 years after the final assessment becomes final. If the Department pursues a civil action and is successful, the Department has an additional 10 years from the date of the court judgment to collect on the judgment. The Department may bring an action to renew the judgment before the original judgment expires.[38] The 6-year limitations period under the RJA only applies to civil suits commenced by the Department and does not otherwise prohibit the Department from using other collections actions that may be available, such as the enforcement of liens or administrative setoffs.[39]

The 6-year limitations period to collect a final assessment under the RJA is extended by a taxpayer's voluntary partial payment of the debt,[40] or by written acknowledgment of the debt.[41]

B. Matters subject to Offer-in-Compromise (OIC)

Under Section 23a(7) of the Revenue Act, MCL 205.23a(7), the Department is required to suspend levy activities related to matters included in a pending OIC submission, but will generally suspend most collection activities upon a valid OIC submission.[42] An OIC submission will not affect the status of liens filed prior to that submission; however, if the offer is accepted and subsequently paid in full, those liens will be released in accordance with the provisions of the Revenue Act.[43] Once suspended, collection activity may resume upon the final conclusion of the OIC matter, such

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[38] MCL 600.5809(3).
[39] See *Nagle*, unpub op at 3
[40] MCL 600.5865. See e.g., *Yeiter v Knights of St Casimir Aid Society*, 461 Mich. 493, 497 (2000) ("[P]artial payment restarts the running of the limitation period unless it is accompanied by a declaration or circumstance that rebuts the implication that the debtor by partial payment admits the full obligation."); *Wayne County Social Servs Dir v Yates*, 261 Mich App 152, 156 (2004) ("Although *Yeiter* did not involve a child support arrearage, the holding is clear that any payment on a debt, whether before or after the running of the period of limitations, acts to extend the limitations period.").
[41] MCL 600.5866.
[42] MCL 205.23a(7). The Department may continue to file liens for an accepted OIC submission based on the terms of the offer. Refer to the instructions on the relevant OIC submission form for further information.
[43] MCL 205.29a(1).

as upon a formal rejection of the offer, at the conclusion of the independent administrative review, if requested, if the Department determines that the offer was intended to delay collection of the tax, or if the Department issued a jeopardy assessment.[44] Additional information regarding the specific procedures for an OIC submission, including suspension and resumption of collection activities, may be found in the published guidelines for the OIC program.

C. Administrative Suspension of Collection Actions

There are also administrative limitations on collection actions recognized by the Department. For example, assessments which are timely appealed to either the Michigan Court of Claims or Michigan Tax Tribunal will automatically be subject to an administrative hold that suspends all adjustments and collection activity on that assessment. Only upon a final resolution of that matter will the hold be resolved and the assessment be subject to collection actions.

The Department may also choose to permanently abandon certain collection actions on a debt by "writing off" that liability. When a debt is written off, the Department has determined the debt to be uncollectible such that any ongoing collection activities on behalf of the Department should be suspended on that account. However, taxpayers remain obligated to pay the assessment and may be subject to alternative collection actions even after the debt has been written off by the Department.[45] To illustrate, if a taxpayer owing a state tax debt which the Department has written off subsequently claims an income tax refund, then the Department may apply that state tax refund as an offset to the outstanding debt.

D. Other state and federal laws

In some cases, other state and federal laws may prohibit or otherwise restrict the Department's ability to collect upon an unpaid assessment. This commonly includes matters subject to the automatic stay in a bankruptcy proceeding and state and federal laws regulating collection practices used against debtors.

a. Bankruptcies

Filing a bankruptcy petition pursuant to the United States Bankruptcy Code may, in some cases, discharge the taxpayer from liability for state tax debts.[46] In particular, for bankruptcy petitions filed under Chapter 7 of the Bankruptcy Code, an "automatic stay" applies to most collection

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[44] *Id.*

[45] *Ally Financial Inc v State Treasurer*, 502 Mich 484, 507 (2018) ("A write-off is simply an internal recognition by a lender that an account is worthless after attempts at collection have failed. . . A 'write off' does not mean that the institution has forgiven the debt or that the debt is not still owing."); See also *Nagle*, unpub op at 3 ("Plaintiff has failed to name any kind of debt — tax or otherwise — that is discharged or extinguished merely because it is ignored and unpaid by the debtor for a specific period of time.").

[46] 11 USC 523(a)(14A) (exempting from discharge any tax due to a governmental unit other than the United States that is defined in 11 USC 507(a)(8)). Generally, pre-petition tax liens that have been perfected are treated as secured claims and remain enforceable against the debtor's property notwithstanding the discharge of the underlying tax liability. See e.g., 11 USC 522(c)(2)(b); *Internal Revenue Service v Isom*, 95 BR 148, 151 (BAP 9th Cir 1988) ("The *in personam* liability may be discharged in bankruptcy, as was the case in this proceeding, but . . . the tax lien remains in force.")

actions against the debtor immediately upon the filing of the petition. The automatic stay precludes creditors from engaging in collection activities during the pendency of the bankruptcy proceeding, including initiating or continuing lawsuits, filing new liens, garnishments, and contacting the taxpayer to collect upon the debt.[47] Like other creditors, the Department is generally subject to the preclusions of the automatic stay; however, the Department may perform certain actions without violating the automatic stay, including:

1. Performing an audit to determine tax liability;
2. Issuing a notice of tax deficiency;
3. Demanding tax returns be filed; and
4. Assessing a tax and issuing a notice and demand for payment of that assessment.[48]

For any tax assessments that are discharged pursuant to a bankruptcy filing, a general discharge injunction prevents any further attempts at collection of those assessments.[49]

b. State and Federal Collections Regulations

The Department's collection efforts are also subject to general state and federal regulations of collection practices.[50] For example, the Department and any private collection agency is generally prohibited under state law from making certain misrepresentations to the debtor or from making inaccurate or misleading statements to debtors in communications to collect a debt.[51] The Department must also comply with the Michigan "Taxpayer Bill of Rights Rules" when taking collection action.[52] These rules further govern collection efforts, with limitations such as the times of the day and place at which the Department can communicate with the taxpayer regarding the collection of a debt.[53]

[47] 11 USC 362.
[48] 11 USC 362(b)(9)(A)-(D).
[49] 11 USC 524(a)(2).
[50] MCL 445.251 *et seq*; 15 USC 1692 *et seq*.
[51] MCL 445.252(f)(ii).
[52] Mich Admin Code, R 205.1001 *et seq*.
[53] Mich Admin Code, R 205.1002(3).