

Treasury Update

New Laws Will Regulate and Tax Medical Marijuana

In late September, Governor Rick Snyder signed a package of bills that will provide for the regulation and taxation of the growing medical marijuana industry in Michigan. Voters legalized marijuana for medical use in a 2008 referendum, but since that time, registered users and law enforcement have clashed over the limits on the ability to grow and use the drug, as well as to sell and transfer it. In addition, regulation differed from one area to the next, causing widespread confusion. Some cities essentially looked the other way as dispensaries popped up, which were not clearly authorized under the 2008 initiated law. The new bill package was designed to address problems generated by the 2008 law, and set new, statewide standards for all medical marijuana-related activities.

The Medical Marijuana Facilities Licensing Act, [MCL 333.27101 et seq.](#), provides for the state licensing of marijuana growers, processors, secure transporters, provisioning centers (dispensaries), and safety compliance facilities by the Department of Licensing and Regulatory Affairs. Additionally, provisioning centers will be permitted to operate only in municipalities that have specifically authorized them pursuant to local ordinances. All licensees will be subject to extensive disclosure requirements, and will be required to pay an initial application fee as well as an annual regulatory assessment. The amounts of those fees have not yet been determined. In order to allow the various state departments that are part of the new regulatory scheme sufficient time to put necessary systemic and procedural mechanisms in place, no one will be able to apply for a license in any category until 360 days after the December 20, 2016 effective date of the new legislation.

One of the key features of the new legislation is the imposition of a 3% excise tax on licensed medical marijuana provisioning centers. The tax will be imposed on the “gross retail income” of each provisioning center. The new tax is to be remitted on a quarterly basis, using a form prescribed by the Department of Treasury, and taxpayers are required to submit a copy of the tax filing to the Department of Licensing and Regulatory Affairs. The tax will be administered by Treasury under the Revenue Act. The law states that the section imposing the new excise tax will become inapplicable 90 days after the effective date of a law authorizing the recreational or nonmedical use of marijuana in Michigan.

It is expected that retail sales of medical marijuana under the new law will also be subject to the state’s 6% sales tax.

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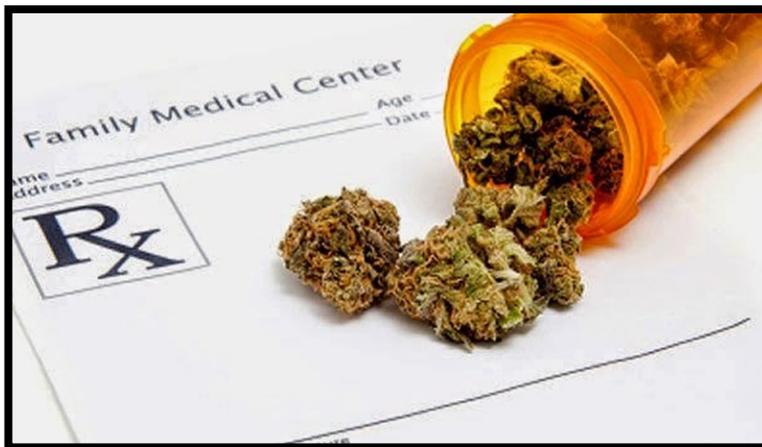


Beginning with the next quarterly edition, “Treasury Update” will have a new look. Editions will still feature all of the latest news from Treasury, and will remain on the Treasury website under the [Reports and Legal Resources](#) tab.

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The companion Marihuana Tracking Act, [MCL 333.27901-27904](#), establishes a statewide, internet-based “seed to sale” monitoring system for integrated tracking, inventory, and verification of marijuana in the state.

Treasury expects to publish guidance for taxpayers regarding the implementation and administration of the new 3% excise tax as well as the sales tax treatment of retail sales of medical marijuana sometime in 2017.



Homestead Property Tax Credit Formula Changed for Claimants in Special Housing

The homestead property tax credit formula has changed for claimants who live in licensed nursing homes, foster care homes, homes for the aged, or apartments that charge a lump sum for room and board (collectively, “special housing”). Cooperatives are not defined as special housing.

Treasury has rescinded administrative rule R 206.28(6) and (7), which required claimants who lived in special housing to calculate the standard homestead property tax credit using a percentage of the real estate property taxes owed by the landlord instead of a percentage of their rent. In addition, Treasury will now allow senior claimants who live in special housing to claim the alternate senior homestead property tax credit.

Standard credit: use percentage of rent. Special housing claimants should calculate the standard homestead property tax credit the same way as all other general claimants, by using 20% of rent for tax years through 2017 and 23% of rent beginning in 2018. The claimant’s landlord should provide the claimant with a written breakdown of the portion of the monthly payment used for rent, meals, services and other items. Treasury may ask the claimant to provide the landlord’s breakdown to substantiate the claim.

Alternate credit: now available for senior claimants. A senior claimant who lives in special housing may now claim the alternate senior homestead property tax credit. The credit under the alternate formula is the amount by which the claimant’s rent exceeds 40% of total household resources.

Amended claims. Special housing claimants may amend prior year returns that are within the statute of limitations. Generally, the statute of limitations is four years.

Please refer to [Internal Policy Directive 2016-3](#) for more information and examples.

Taxes and Fees Included in the Pump Price per Gallon of Motor Fuel

The final pump price of a gallon of motor fuel that consumers pay is affected by numerous factors such as the costs of crude oil, refining, transportation, and marketing, as well as by several taxes and fees – both federal and state. In Michigan, the following taxes and fees are imposed by the State: (i) the motor fuel excise tax imposed under the Motor Fuel Tax Act (MFTA), [MCL 207.1003 et seq.](#); (ii) the prepaid sales tax imposed under the General Sales Tax Act, [MCL 205.56a](#), and; (iii) the Environmental Protection Regulatory Fee (EPRF) imposed under the Natural Resources and Environmental Protection Act, [MCL 324.21508](#).

Currently, and through December 31, 2016, the motor fuel excise tax reflected in the pump price of each gallon of gasoline and diesel fuel will be fixed at \$0.19 and \$0.15, respectively. With the enactment of [2015 PA 176](#), beginning January 1, 2017, the motor fuel excise tax will increase to \$0.263 per gallon on both gasoline and diesel fuel and will remain at that rate through December 31, 2021. Beginning January 1, 2022, however, the motor fuel excise tax rate will be adjusted annually to increase by the lesser of 5% or the rate of inflation, rounded up to the nearest 1/10 of a percent. The Michigan sales tax reflected in the pump price of each gallon of gasoline and diesel fuel is prepaid to the State prior to the retail sale of the fuel; therefore, the tax rates for each fuel are calculated as an estimate based on 6% of the monthly statewide average retail price of a gallon of gasoline and diesel fuel. The Environmental Protection Regulatory Fee reflected in the pump price of each gallon of gasoline and diesel fuel is fixed at \$0.00875. In addition to the Michigan taxes noted above, a Federal Excise Tax (FET) is also included in the pump price of each gallon of gasoline and diesel fuel at the rates of \$0.184 and \$0.244, respectively.

The illustration below shows the state and federal taxes and fees that are currently included in the price of each gallon of gasoline and diesel fuel, and the new rates that will apply from January 1, 2017 through December 31, 2021 if the current laws remain unchanged:

	<i>Until Dec 31, 2016</i>	<i>Jan 1, 2017 to Dec 31, 2021</i>
GASOLINE		
	 FET (\$0.184)  MFTA (\$0.19)  Sales Tax (\$0.116)*  EPRF (\$0.00875)	 FET (\$0.184)  MFTA (\$0.263)  Sales Tax (\$0.116)*  EPRF (\$0.00875)
	TOTAL (\$0.49875)	TOTAL (\$0.57175)
DIESEL FUEL		
	 FET (\$0.244)  MFTA (\$0.15)  Sales Tax (\$0.127)*  EPRF (\$0.00875)	 FET (\$0.244)  MFTA (\$0.263)  Sales Tax (\$0.127)*  EPRF (\$0.00875)
	TOTAL (\$0.52975)	TOTAL (\$0.64275)

** Based on the prepaid sales tax for November 2016 as published in RAB 2016-19*

Multistate Compact Apportionment Litigation in Michigan Continues

Through *Treasury Update*, the Department of Treasury has kept readers informed regarding the various appeals concerning apportionment election under the Multistate Tax Compact. The long, circuitous path of litigation surrounding the apportionment election under the Compact appears to be nearing its end. Michigan appellate courts have largely resolved the various issues surrounding the election as well as the Compact's retroactive repeal by Public Act 282 of 2014 (PA 282).

In its July 14, 2014 opinion in [*IBM v Dep't of Treasury*, 496 Mich 642 \(2014\)](#), the Michigan Supreme Court held that the Michigan Business Tax (MBT) Act did not impliedly repeal the Compact and that, in light of an earlier amendment to the Compact and the MBT, the Michigan Legislature intended to provide a window for taxpayers to elect the Compact's apportionment provision for the years prior to January 1, 2011. In the wake of that decision, the Michigan Legislature enacted PA 282 to retroactively repeal the Compact to January 1, 2008, the effective date of the MBT Act. The Legislature expressly stated that its enactment of PA 282 was to effect the Legislature's original intent to eliminate the Compact's election provision and to further express the Legislature's original intent regarding apportionment under the MBT.

In its September 20, 2015 decision in [*Gillette Commercial Operations, N Am & Subsidiaries, v Dep't of Treasury*, 312 Mich App 394 \(2015\)](#), a consolidated group of about 50 cases, the Michigan Court of Appeals upheld PA 282 as constitutional. The court ruled that PA 282's retroactive effect did not violate the Due Process Clauses of either the federal or Michigan's constitutions, finding that the taxpayers in the subject cases had no vested right in the continuation of the Compact's apportionment provision. The court further found that the Michigan Legislature had a legitimate purpose for giving PA 282 retroactive effect, given the significant fiscal impact projected on the state budget. The court ruled that the Compact was lawfully repealed, and that taxpayers had no right to elect apportionment under the Compact in lieu of the method prescribed under the MBT. The court held similarly in appeals brought by dozens of other taxpayers. Many of these taxpayers sought leave to appeal the rulings to the Michigan Supreme Court. The Michigan Supreme Court denied the appeals, allowing the legal effect of the decisions to stand. On November 21, 2016, several of these taxpayers petitioned the U.S. Supreme Court to grant certiorari review of these decisions.

Although the Court of Appeals upheld the retroactive repeal of the Compact and the legal effect on taxpayers, it recently ruled that IBM itself, for its MBT 2008 tax year that was the subject of the July 14, 2014 Michigan Supreme Court decision, was entitled to election under the Compact. In a decision issued July 21, 2016, in [*IBM v Dep't of Treasury*, Mich App \(COA Docket No. 327359\)](#) ("*IBM II*"), the Court of Appeals ruled that the Supreme Court's July 14, 2014 remand directing the

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lower court to enter an order in favor of IBM prohibited the lower court from taking any action other than performing the ministerial task of entering that judgment.

Referring to a judicial principle the court termed the “rule of mandate,” the *IBM II* court ruled that the Supreme Court’s mandate on remand left no authority or discretion to the lower court, and foreclosed all other actions it could have taken, including consideration of PA 282, an intervening change in law subsequent to the Supreme Court’s decision.



Treasury determined not to seek leave to appeal the Court of Appeals’ decision in *IBM II*. However, the Attorney General, pursuant to discrete statutory authority and not on behalf of Treasury, separately sought leave to appeal the decision to the Michigan Supreme Court as an intervening party. IBM responded to the Attorney General’s filing by seeking to strike his status as an intervenor. On November 23, 2016, the Michigan Supreme Court issued an [Order](#) granting IBM’s motion to strike, concluding that the “losing party below did not file an application for leave to appeal and the Attorney General does not represent an aggrieved party.” This Order likely ends the *IBM II* litigation.

Holiday Alert: Online Shoppers Should Keep Receipts and Report Use Tax on 2016 Return

As the holiday shopping season goes into full swing, the Department of Treasury is reminding shoppers that purchases made online are not tax-free during holiday season, or at any other time of year. Michigan’s use tax generally applies to transactions in which the retailer does not collect Michigan sales tax. This happens most frequently when individuals make purchases from online retailers, through mail-order outlets, or from television shopping networks that do not have physical locations in Michigan. When out-of-state vendors do not collect sales tax on purchases, under Michigan law the purchasers must report and pay the use tax. Taxpayers can report their use tax when completing and filing their 2016 Michigan income tax return.

Michigan’s use tax is calculated at the rate of 6%. Purchases subject to the use tax include appliances, books, clothing, computers, DVDs/CDs, electronics, furniture, and pre-written computer software.

For more information, visit www.michigan.gov/taxes.

Treasury Update is a periodic publication of the Tax Policy Division of the Michigan Department of Treasury. It is distributed for general informational purposes only, and discusses topics of broad applicability. It is not intended to constitute legal, tax, or other advice. For information or advice regarding your specific tax situation, please contact your tax professional.

Dr. Eric Scorsone Joins Treasury

Treasurer Nick Khouri recently announced the appointment of Dr. Eric Scorsone as Senior Deputy State Treasurer for Finance. Dr. Scorsone will oversee the Bureau of State and Authority Finance, the Bureau of Student Financial Services, and the Bureau of Local Government Services. He will be a key part of the creation of a long-term, sustainable fiscal framework for local governments, and will have a broad range of responsibilities in his new position, including monitoring the fiscal health of the State's local governments and school districts, and overseeing state and local debt financing as well as higher education student financial assistance.

Dr. Scorsone is an Associate Professor and founding Director of the Extension Center for Local Government Finance and Policy at Michigan State University, and has taken a leave of absence from MSU in order to take on his new role with the Department. Dr. Scorsone has been widely cited on state and local government finance issues in various media outlets including Time magazine, the Washington Post, Bloomberg and Reuters news services, the Wall Street Journal, National Public Radio, and the New York Times. He is also a co-editor of the "Handbook of Local Government Fiscal Health," released in 2013.

Previously, Dr. Scorsone was an Assistant Professor in the Department of Agricultural Economics at the University of Kentucky. He has also served as an Economist for the Colorado Governor's Office of State Planning and Budget, as Senior Economist for the City of Aurora, Colorado, and as Chief Economist for the Michigan Senate Fiscal Agency. Dr. Scorsone holds a Ph.D. in Agricultural Economics from Colorado State University, an M.S. from Michigan State University, and a Bachelor's Degree in Economics from Loyola University of Chicago.

Computation of Lookback Period for Financial Institutions Changed

Under both the Michigan Business Tax (MBT) and the Corporate Income Tax (CIT), financial institutions with nexus in Michigan are subject to a franchise tax on their net capital, as averaged over five years.* Where two or more financial institutions combine, both the MBT and the CIT require that in the year of the combination and for each tax year after, the combined institutions are to be treated as a single financial institution. The books and records of the acquired and the surviving financial institutions are merged for purposes of computing the tax base in the year of merger or acquisition and for all subsequent years.

Statutory silence as to how the entities are treated in the years prior to the combination for purposes of calculating net capital during the five-year lookback period was previously interpreted to require that net capital for both the surviving and acquired entities for tax years prior to the year of combination should be included in the calculation of the tax base. Treasury's policy was reflected in MBT FAQ F5 and CIT Insurance Companies/Financial Institutions FAQ 6.

As explained more fully in a recent [Notice to Taxpayers](#), Treasury will no longer calculate net capital for years prior to the combination year using both the surviving and acquired entities' net capital. Instead, when two or more financial institutions combine, only the surviving financial institution's net capital for the years prior to the combination will be used to calculate the surviving entity's tax base. Treasury has rescinded both MBT FAQ F5 and CIT Insurance Companies/Financial Institutions FAQ 6 because they no longer reflect its current statutory interpretation.

Treasury will give this change in policy full retroactive effect, and will apply it to all open tax years. Whether a period is open under the statute of limitations may depend on whether and when an audit of a taxpayer's books and records commenced. See [MCL 205.27a\(2\) and \(3\)](#), and [Letter Ruling 2015-2](#).

* If the financial institution has been in existence less than five years, the tax base average is based upon the number of years in existence.

Statement of Acquiescence/Non-Acquiescence Regarding Certain Court Decisions

In each issue of the quarterly *Treasury Update*, Treasury will publish a list of final (unappealed), non-binding, adverse decisions issued by the Court of Appeals, the Court of Claims and the Michigan Tax Tribunal, and state its acquiescence or non-acquiescence with respect to each. The current quarterly list applying Treasury's acquiescence policy appears below. "Acquiescence" means that Treasury accepts the holding of the court in that case and will follow it in similar cases with the same controlling facts. However, "acquiescence" does not necessarily indicate Treasury's approval of the reasoning used by the court in that decision. "Non-acquiescence" means that Treasury disagrees with the holding of the court and will not follow the decision in similar matters involving other taxpayers.

ACQUIESCENCE:

No cases this quarter

NON-ACQUIESCENCE:

Cambrex Charles City v Dep't of Treasury, COC Docket 12-44-MT.

RECENTLY ISSUED GUIDANCE FROM TREASURY

REVENUE ADMINISTRATIVE BULLETINS:

[RAB 2016-18](#) Sales and Use Taxation of the Construction Industry (Excluding Manufacturer/Contractor)

[RAB 2016-20](#) Issuance of Bulletins, Letter Rulings, and Other Guidance for Taxpayers

INTERNAL POLICY DIRECTIVES:

[IPD 2015-1](#) Use Tax Exemption for Transfers of Certain Property to an "In-Law" (updated)

LETTER RULINGS:

[LR 2016-1](#) Taxability of Workers' Compensation Self-Insurer Group Funds under the Michigan CIT Act

NOTICES:

[NOTICE](#) Notice to Taxpayers Regarding Five-Year Averaging Calculation of Net Equity Capital for Financial Institutions Combining with Other Financial Institutions (November 21, 2016)