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REVENUE ADMINISTRATIVE BULLETIN 2008-8

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REVENUE ACT - AUDITS AND THE SUSPENSION OF THE STATUTE OF LIMITATIONS

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 2008-8 This Revenue Administrative Bulletin explains the period for which an audit conducted by the Michigan Department of Treasury suspends the running of the statute of limitations pursuant to the Revenue Act¹, MCL 205.27a(3)(a).

ISSUES

1. The Revenue Act provides at MCL 205.27a(3)(a) a suspension of the running of the statute of limitations for “the period pending the final determination of tax, including an audit” Accordingly, what is the period of an audit for purposes of establishing when the statute of limitations is suspended?
2. Will the Department discontinue the use of written “waivers” to suspend the statute of limitations?
3. When is this bulletin effective?

CONCLUSIONS

1. An audit begins on the AUDIT COMMENCEMENT DATE specified in the “Audit Confirmation Letter” and is completed on the date of the “FINAL AUDIT DETERMINATION LETTER.” Assuming that the taxpayer does not seek review via an informal conference, appeal to the Michigan Tax Tribunal or Michigan Court of Claims, the statute of limitations will expire at the conclusion of one year after the date of the “FINAL AUDIT DETERMINATION LETTER” plus any remaining balance from the four year limitation period that was suspended by audit.

¹ 1941 PA 122, MCL 205.1 et seq

2. The Department will discontinue the routine use of written waivers of the statute of limitations, including their use in audit situations, consistent with the effective date of this bulletin.

3. This bulletin is effective for Audit Confirmation Letters with a commencement date on or after January 1, 2009.

LAW AND ANALYSIS

The Revenue Act provides the Department with a four year general statute of limitations period in which to assess a taxpayer. Further, a taxpayer has four years from the filing date of an original return to request a refund. The act provides in part:

A deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return.²

This four year statute of limitations period however may be suspended or tolled. Subsection (3)(a) of section 27a of the Revenue Act reads:

The running of the statute of limitations is suspended for the following: (a) the period pending a final determination of tax, including audit, conference, hearing, and litigation of liability for federal income tax or a tax administered by the department and for 1 year after that period.³

The running of the statute of limitations is only suspended for those items that were the subject of the audit.⁴

If during the course of an audit it is determined that a taxpayer has a refund opportunity, the Department will provide notice to the taxpayer of the refund opportunity believed available. The auditor, however, is not required to calculate the amount of the refund or perform a review beyond that necessary to carry out the intended scope of the audit.⁵

Many “refunds” are contained within audit adjustments offsetting credits. Sometimes these credits fully offset taxes due resulting in an overall credit audit finding. These “refund” amounts will be incorporated into the Final Audit Determination expressed in a letter provided to the taxpayer, which will also provide information concerning the taxpayer’s appeal rights. The statute of limitations for these credits is tolled pending the final determination of tax as a result of audit or appeal.

² MCL 205.27a(2)

³ MCL 205.27a(3)(a)

⁴ MCL 205.27a(4)

⁵ MCL 205.6

While the statute of limitations for claiming a refund is tolled pending the final determination of tax as a result of audit or appeal, only those refunds that are determined to be owed to the taxpayer as a result of audit adjustments, or that are otherwise contained within the subject of the audit will be suspended. The statute of limitations for claiming a refund for any item that is not the subject of the audit continues to run for any refund amount claimed by the taxpayer that was not determined as a result of an audit. The Department must receive timely written notice of any claim for refund.

Historically, the Department has sought waivers to suspend the running of the statute of limitations when auditing taxpayers. The waivers contained the date upon which they expired.⁶

Because the running of the statute of limitations is suspended during an audit by statute, a waiver is not required to toll the statute of limitations. Accordingly, the Department will no longer routinely seek waivers, but will instead rely on the statutory authority that suspends the running of the statute of limitations for the period of an audit.⁷

To delineate the period of an audit, it is necessary to identify when an audit begins and ends. To provide consistency in application and notice, an audit will be deemed to commence on the AUDIT COMMENCEMENT DATE specified in the "Audit Confirmation Letter" that the Department will provide to taxpayers. The "Audit Confirmation Letter" will contain a paragraph titled "Suspension of the Running of the Statute of Limitations" that will contain a statement similar to the following that will identify the AUDIT COMMENCEMENT DATE:⁸

Suspension of the Running of the Statute of Limitations

The running of the Statute of Limitations will be suspended for the duration of the audit, beginning on the AUDIT COMMENCEMENT DATE of **July 1, 2007** and will be reinstated on the date that the FINAL AUDIT DETERMINATION LETTER is issued. Reference MCL 205.27a(3) and (4) and Revenue Administrative Bulletin 2008-8

Further, the Audit Confirmation Letter will inform the taxpayer of the subject of the audit and include the names and telephone numbers of the Area Manager, Team Manager and Auditor so that any concerns or questions a taxpayer may have can be addressed with the Department.⁹

An audit will be deemed completed on the date of the "FINAL AUDIT DETERMINATION LETTER" that will be provided to the taxpayer. This letter will contain a statement similar to the following that will notify the taxpayer that the statute of limitations has been reinstated:

⁶ MCL 205.27a(3)(b)

⁷ MCL 205.27a(3)(a)

⁸ The dates referenced in the sample Audit Confirmation Letter and Final Audit Determination Letter statements are for demonstration purposes only.

⁹ The Final Audit Determination Letter will also include the names and phone numbers of the Area Manager, Team Manager and Auditor.

Reinstatement of the Running of the Statute of Limitations

This FINAL AUDIT DETERMINATION LETTER reinstates the running of the Statute of Limitations that was suspended on **July 1, 2007**, the AUDIT COMMENCEMENT DATE. Reinstatement of the running of the Statute of Limitations is **May 1, 2008**. The statute of limitation will expire at the conclusion of one year after **May 1, 2008** plus any remaining balance from the four year limitation period that was suspended by the audit. Reference MCL 205.27a(3) and (4) and Revenue Administrative Bulletin 2008-8

If a final determination is not appealed by the taxpayer, the running of the statute of limitations will expire one year after the date of the "FINAL AUDIT DETERMINATION LETTER," as prescribed by subsection 3(a), plus any days remaining from the four year statute of limitations period that were tolled or suspended during audit.

A timely appeal of the audit determination will extend **expiration** of the statute of limitations to one year from the final resolution of the appeal, plus any days remaining from the four year statute of limitations period that were suspended upon commencement of the audit and remained suspended until the appeal process was concluded.

In summary, the statute of limitations will be applied as follows:

1. In those instances where the audit is conducted prior to the date the four year statute of limitations otherwise would have run, the statute of limitations will be extended to a date one year after the conclusion of the audit, plus any days remaining from the four year statute of limitations period that had not run prior to the AUDIT COMMENCEMENT DATE.
2. In those instances where the audit is conducted prior to the date the four year statute of limitations otherwise would have run, and the audit determination is appealed, the statute of limitations will be extended to a date one year after the conclusion of the appeal, plus any days remaining from the four year statute of limitations period that had not run prior to the AUDIT COMMENCEMENT DATE and remained suspended during the appeal period. The running of the four year general statute of limitations recommences when the audit determination that was appealed has been finalized.

EXAMPLES

Example 1:

Company XYZ files its calendar year 2008 Michigan Business Tax (MBT) return on April 30, 2009. The general four year statute of limitations runs April 30, 2013. An MBT audit of XYZ for the period January 1, 2008 through December 31, 2008 is commenced by the Department on November 15, 2012, the AUDIT COMMENCEMENT DATE specified in the Audit Confirmation Letter issued to the company. The audit was commenced with 166 days remaining before the general statute of limitations has run. The Department completes the audit and issues XYZ a FINAL AUDIT DETERMINATION LETTER on May 15, 2013. The running of the statute of limitations is suspended as of November 15, 2012, and recommences on May 15, 2013, when the audit is concluded. The running of the statute of limitations expires on October 28, 2014, one year and 166

days from the end of the audit. The audit prevents the general statute of limitations from expiring as it normally would, four years after the date set for the filing of the MBT annual return, which was April 30, 2013.

Example 2:

Same example as one above but XYZ timely appeals the Final Audit Determination on May 30, 2013. The appealed assessment is finalized May 15, 2015. The running of the statute of limitations expires on October 28, 2016, one year and 166 days from the date the appealed assessment was finalized.

Example 3:

The Department conducts a 2007 SBT and 2008 MBT audit of company XYZ for the period January 1, 2007 through December 31, 2008. Company XYZ files its 2007 SBT return on December 26, 2008 under a timely extension. The company timely files its 2008 MBT return on April 30, 2009. The Department begins the audit by issuing XYZ an Audit Confirmation Letter with an AUDIT COMMENCEMENT DATE of November 15, 2012. The commencement of the audit “suspends” the running of the general four year statute of limitations. The AUDIT COMMENCEMENT DATE was 41 days before the running of the four year statute of limitations for year 2007 that would have expired on December 26, 2012, and 166 days before the running of the four year statute of limitations for year 2008 that would have expired on April 30, 2013. The Department completes the audit and issues XYZ a FINAL AUDIT DETERMINATION LETTER on May 15, 2014. The running of the statute recommences May 15, 2014 for both tax years when the audit is concluded. The running of the statute of limitations for the 2007 tax year expires on June 25, 2015 one year and 41 days from the end of the audit. The statute of limitations for the 2008 tax year expires on October 28, 2015 one year and 166 days from the end of the audit.

Example 4:

Company XYZ files its 2007 calendar year SBT return on April 30, 2008. The four year statute of limitations runs on April 30, 2012. An SBT audit of XYZ for the period January 1, 2007 through December 31, 2007 begins on November 15, 2011, the AUDIT COMMENCEMENT DATE specified in the Audit Confirmation Letter. The Audit Confirmation Letter specifies that the Small Business Credit claimed on the 2007 SBT return is the subject of the audit. The audit was commenced with 167 days remaining before the statute of limitations has run (Note: the number of days in this example differs from those in the previous example due to 2012 being a leap year). The Department completes the audit and issues XYZ a FINAL AUDIT DETERMINATION LETTER on May 15, 2012 disallowing the entire Small Business Credit claimed in the amount of \$12,000. The taxpayer appeals the audit determination on May 30, 2012. In the petition, the taxpayer alleges that they are entitled to the \$12,000 Small Business Credit as originally claimed on their SBT return. In addition, the taxpayer also alleges they are entitled to a refund claim of \$5,000 resulting from subtraction of royalty income that was erroneously omitted from their 2007 SBT return. The royalty income subtraction that is the basis for the \$5,000 refund claim was not within the subject of the audit.

The statute of limitations for the additional \$5,000.00 refund expired on April 30, 2012 four years from the due date of the original return. The audit and subsequent appeal do not toll this refund claim as the subject of the audit did not cover this claim.