

## **INTERNAL POLICY DIRECTIVE 2016-2**

March 30, 2016

### **APPEAL EXTENSION WHEN TAXPAYER'S REPRESENTATIVE WAS OR IS NOT PROVIDED THE REQUIRED COPY OF A LETTER OR NOTICE PURSUANT TO MCL 205.8**

#### **POLICY ISSUES:**

1. Who is entitled to an appeal extension?
2. What documentation or other evidence will the Department of Treasury (the "Department") accept in order to determine a taxpayer's entitlement to an appeal extension?
3. What actions the Department will take under the following circumstances:
  - a. A taxpayer has filed a valid written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department sent subsequent letters or notices regarding the dispute only to the taxpayer and not also to the taxpayer's representative.
  - b. A taxpayer has been denied its appeal rights by the Department, the Court of Claims or the Tax Tribunal because of an untimely appeal arising from the Department's failure to provide the taxpayer's representative with a required copy of a letter or notice.
  - c. A taxpayer has been denied its appeal rights by the Department, the Court of Claims or the Tax Tribunal because of an untimely appeal arising from the Department's receipt of an invalid written request that copies of letters and notices regarding a dispute be sent to the taxpayer's representative, and its subsequent failure to advise the taxpayer that such written request was not valid.
4. When the appeal period begins to run in each of the following circumstances:
  - a. A taxpayer has filed a valid written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send a copy of the Bill for Taxes Due (Intent to Assess) to the taxpayer's representative with respect to that dispute.
  - b. A taxpayer has filed a valid written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send a copy of the Final Bill for Taxes Due (Final Assessment) to the taxpayer's representative with respect to that dispute.

- c. A taxpayer has filed a valid written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send a notice of refund denial or notice of refund adjustment to the taxpayer's representative regarding that dispute.
- d. A taxpayer has filed a valid written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send to the taxpayer's representative another type of letter or notice with respect to that dispute giving rise to appeal rights.

### **DISCUSSION:**

MCL 205.8 provides that a taxpayer may file a written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative. Upon receipt of such a request, the Department is required to send to that representative, at the address provided by the taxpayer in the written request, a copy of each subsequent letter or notice sent to the taxpayer regarding that specific dispute.

This Internal Policy Directive outlines the actions to be taken by the Department where it did not comply with a taxpayer's valid written request made pursuant to MCL 205.8 and, as a direct consequence of the Department's non-compliance, the taxpayer's appeal period has expired and/or the taxpayer was denied the right to appeal.

### **POLICY DETERMINATIONS:**

1. Any taxpayer that has filed a valid written request with the Department pursuant to MCL 205.8 that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative is entitled to an extension of time to appeal if the Department failed to provide the taxpayer's representative with a copy of a letter or notice regarding the specific dispute that gives rise to appeal rights.
2. In order to determine a taxpayer's entitlement to an appeal extension under any of the circumstances set forth in this Internal Policy Directive, one of the following types of documentary evidence must be on file with the Department or, if not on file with the Department, the taxpayer must demonstrate that it filed the documentary evidence with the Department (such as by providing a signed and dated copy of the pertinent document): (i) a current Form 151 (Rev. 11-15, or a later revision) – Authorized Representative Declaration (Power of Attorney) with Parts 1, 3, and 5 properly completed, or; (ii) a clear, written request in another format (such as a letter) that copies of all letters and notices regarding a specific dispute be sent to the taxpayer's named representative at an address specified in the written request.
3. The Department will take the following actions under the indicated circumstances:
  - a. If a taxpayer has filed a valid written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but

the Department sent subsequent letters or notices regarding the dispute only to the taxpayer and not also to the taxpayer's representative, the Department will deem the time period in which to request an informal conference, or to otherwise appeal to the Court of Claims or the Tax Tribunal, to commence when a copy of the pertinent letter or notice is subsequently furnished to the taxpayer's representative. The representative's copy of the pertinent letter or notice will be accompanied by a letter from the Department stating the new appeal period.

- b. If a taxpayer has been denied appeal rights by the Department, the Court of Claims or the Tax Tribunal because of an untimely appeal arising from the Department's failure to provide the taxpayer's representative with a required copy of a letter or notice, the Department will reinstate the taxpayer's appeal rights upon the taxpayer's written request to the Department for an informal conference, and the taxpayer's provision of name, FEIN or other identification number, and any relevant assessment number. In the case of a denied or reduced refund, the taxpayer should provide the tax type and tax year, or other identifying information. If decided adversely to the taxpayer, the informal conference will result in a decision (generally a final assessment or refund denial) that may then be appealed to the Court of Claims or the Tax Tribunal. If the matter has been to informal conference, and the denial of appeal rights is based upon a Final Bill for Taxes Due (Final Assessment), the taxpayer should contact the Office of the Taxpayer Advocate, and that office will issue the representative a copy of the pertinent letter or notice, which will be accompanied by a letter stating the new appeal period.\*
- c. If a taxpayer has been denied appeal rights by the Department, the Court of Claims or the Tax Tribunal because of an untimely appeal arising from the Department's receipt of an invalid written request that copies of letters and notices regarding a dispute be sent to the taxpayer's representative, and its subsequent failure to advise the taxpayer that such written request was not valid, the Department will reinstate the taxpayer's appeal rights upon the taxpayer's written request to the Department for an informal conference, and the taxpayer's provision of name, FEIN or other identification number, and any relevant assessment number. In the case of a denied or reduced refund, the taxpayer should provide the tax type and tax year, or other identifying information. If decided adversely to the taxpayer, the informal conference will result in a decision (generally a final assessment or refund denial) that may then be appealed to the Court of Claims or the Tax Tribunal. If the matter has been to informal conference, and the denial of appeal rights is based upon a Final Bill for Taxes Due (Final Assessment), the taxpayer should contact the Office of the Taxpayer Advocate, and that office will issue the representative a copy of the pertinent letter or notice, which will be accompanied by a letter stating the new appeal period.\*

4. The appeal period begins to run as follows:

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\* If the taxpayer's appeal rights were denied by the Court of Claims or the Tax Tribunal and the related opinion or order denying relief to the taxpayer addresses the merits of any notice issues arising under MCL 205.8, the taxpayer is not entitled to administrative relief pursuant to the provisions of this IPD.

- a. If a taxpayer has filed a written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send a copy of the Bill for Taxes Due (Intent to Assess) with respect to that dispute to the taxpayer's representative, the time period to request an informal conference begins when the Department furnishes the taxpayer's representative with a copy of the Bill for Taxes Due (Intent to Assess), along with a letter stating the new appeal period.
- b. If a taxpayer has filed a written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send a copy of the Final Bill for Taxes Due (Final Assessment) with respect to that dispute to the taxpayer's representative, the time period to file an appeal in the Court of Claims or the Tax Tribunal begins when the Department furnishes the taxpayer's representative with a copy of the Final Bill for Taxes Due (Final Assessment), along with a letter stating the new appeal period.
- c. If a taxpayer has filed a written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send a notice of refund denial or notice of refund adjustment with respect to that dispute to the taxpayer's representative, the time period to request an informal conference begins when the Department furnishes the taxpayer's representative with a copy of the notice of refund denial or notice of refund adjustment, along with a letter stating the new appeal period.
- d. If a taxpayer has filed a written request with the Department that copies of all letters and notices regarding a dispute be sent to the taxpayer's representative, but the Department failed to send to the taxpayer's representative another type of letter or notice with respect to that dispute giving rise to appeal rights, the time period to request an informal conference or to otherwise commence an appeal begins when the Department furnishes the taxpayer's representative with a copy of the letter or notice giving rise to appeal rights, along with a letter stating the new appeal period.