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NOTICE TO TAXPAYERS REGARDING *LABELLE MANAGEMENT INC v DEPARTMENT OF TREASURY*

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I. Summary of *LaBelle Management Inc v Department of Treasury*

On March 31, 2016, the Michigan Court of Appeals issued a decision in *LaBelle Management Inc v Department of Treasury* (“*LaBelle*”).¹ At issue in *LaBelle* was the meaning of indirect ownership as used in the unitary business group (“UBG”) definition under section 117(6) of the Michigan Business Tax Act (“MBTA”).²

A UBG is a group of related United States persons, other than a foreign operating entity, whose business activities or operations are interdependent. Specifically, it is two or more persons that satisfy both a control test and one of two relationship tests. The control test is satisfied when one person owns or controls, directly *or indirectly*, more than 50% of the ownership interest with voting or comparable rights of the other person or persons.³ *LaBelle Management* challenged the Department’s interpretation of the control test, as set forth in Revenue Administrative Bulletin (“RAB”) 2010-1. Specifically, *LaBelle* challenged the Department’s reliance upon IRC 318 to define indirect ownership to include constructive ownership, or ownership through attribution.

Reversing the Court of Claims, the Court of Appeals found in favor of *LaBelle Management*, holding that indirect ownership as used in the MBT definition of a UBG means ownership “through an intermediary.”

II. Impact of *LaBelle Management Inc v Department of Treasury* Decision

Because the *LaBelle* decision is published, it is binding on the Department. In accordance with *LaBelle* and consistent with a series of cases⁴ that require the Department to give judicial decisions full retroactive effect – even in the presence of contrary guidance issued by the Department prior to the date of the decision – *LaBelle* will be applied to all open tax years.

¹ ___ Mich App ___ (2016).

² MCL 208.1117(6).

³ MCL 208.1117(6).

⁴ *Syntex Laboratories v Dep’t of Treasury*, 233 Mich App 286 (1998); *Rayovac Corp v Dep’t of Treasury*, 264 Mich App 441 (2004); *JW Hobbs v Dep’t of Treasury*, 268 Mich App 38 (2005); *Int’l Home Foods Inc v Dep’t of Treasury*, 477 Mich 983 (2007).

Consequently, UBGs should review their membership to determine whether the requisite level of control applies under *LaBelle*. If it does not, amended returns may be required; potential statute of limitations impacts should be considered. In addition, entities that are no longer members of their current UBG under *LaBelle* must determine whether they are now members of another UBG or separate filers.

The Department is evaluating the decision and reviewing the actions that must be taken by it and taxpayers to comply. Compliance instructions will be forthcoming when the Department completes its evaluation.

III. Update (May 11, 2016)

On May 5, 2016, the Court of Appeals entered an order staying the effect of its March 31, 2016, decision until the Department's appeal rights have been exhausted. Thus, until the stay is lifted, the *LaBelle* decision is not considered binding precedent.