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## NOTICE TO TAXPAYERS REGARDING TAX TREATMENT OF HMOs UNDER THE CORPORATE INCOME TAX

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Health Maintenance Organizations (HMOs) are generally subject to the income tax under the Corporate Income Tax (CIT).<sup>1</sup> However, 2016 PA 276<sup>2</sup> amended the Insurance Code to define HMOs as “insurer[s],” which has raised the issue of whether HMOs are now subject to the tax on gross direct premiums.

Under the CIT, “each insurance company shall pay a tax [1.25% of gross direct premiums written on property or risk located or residing in this state] determined under this chapter.”<sup>3</sup> “‘Insurance company’ means an authorized insurer as defined in section 108 [MCL 500.108] of the insurance code of 1956 . . . .”<sup>4</sup> Determination of whether an entity is an insurance company for CIT purposes depends on the definition of “authorized insurer” in the Insurance Code.

Under the Insurance Code, “[a]uthorized’ insurer means an insurer duly authorized, by a subsisting certificate of authority issued by the commissioner, to transact insurance in this state.”<sup>5</sup> Furthermore, “[i]nsurer’ means an individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds organization, fraternal benefit society, or other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts. Except as otherwise provided in section 3503 and unless the context requires otherwise, insurer includes a health maintenance organization.”<sup>6</sup>

Since HMOs are “insurers” as defined in the Insurance Code, they will be “authorized insurers” subject to the tax on gross direct premiums under the CIT so long as HMOs are also “duly authorized, by a subsisting certificate of authority issued by the commissioner, to transact insurance in this state.” However, the Michigan Department of Insurance and Financial Services (DIFS) concludes that HMOs are not “duly authorized, by a subsisting certificate of authority issued by the commissioner, to transact insurance in this state.” Accordingly, HMOs are not “authorized insurers” and are not subject to the 1.25% tax on gross direct premiums under the CIT. HMOs remain subject to the CIT’s business income tax.

<sup>1</sup> Unless exempt under MCL 206.625.

<sup>2</sup> Effective July 1, 2016.

<sup>3</sup> MCL 206.635(1) (emphasis added).

<sup>4</sup> MCL 206.607(5) (emphasis added).

<sup>5</sup> MCL 200.108(1) (emphasis added).

<sup>6</sup> MCL 500.106 (emphasis added).