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LETTER RULING 2015-2

LR 2015-2. The effect on audits of changes made to statute of limitations extensions by Public Act 3 of 2014.

You ask what effect Public Act 3 of 2014 (PA 3) has on the statute of limitations as it relates to: 1) audits commenced before February 6, 2014, (the effective date of PA 3); 2) audits commenced on or after February 6, 2014, but before October 1, 2014, and; 3) audits commenced on or after October 1, 2014.

Before the enactment of PA 3, a state audit “suspended” or tolled the 4-year statute of limitations for the period of the audit plus an additional year.¹ In addition, there was no requirement to conclude an audit within a specified timeframe, because an audit stopped the statute of limitations from running and restarted it only at the conclusion of the audit. Once restarted, the statute of limitations continued to run for the balance of time that was left in the 4-year statute when it was suspended. The expiration of the statute of limitations was then calculated by taking the date that an audit was completed and adding to that date the number of days that remained in the 4-year statute of limitations at the time the audit commenced, and then adding an additional year.²

PA 3, although enacted on February 6, 2014, amended the Revenue Act to require that audits commenced after September 30, 2014, be completed and a preliminary audit determination provided within 1 year of the expiration of the 4-year statute of limitations, and that the Department must also issue the final assessment within 9 months of the preliminary audit determination unless the Department and the taxpayer otherwise agree in writing or the taxpayer seeks reconsideration of the preliminary audit determination. See MCL 205.21(6) and (7).

This changes pre-PA 3 procedures in that audits can no longer continue indefinitely, and a state audit no longer stops and restarts the limitations period, eliminating tolling effective February 6, 2014. But the new state audit extension provision of PA 3 only applies to audits commenced after September 30, 2014, thereby creating a “gap” period where no tolling or extension applies. See MCL 205.21(6) and (7). Final assessments resulting from audits commenced in this “gap” period must therefore be issued within the 4-year statute of limitations, unless the taxpayer and the Department otherwise agree.³

¹ See Public Act 211 of 2012 for a pre-PA 3 version of section 27a(3)(a).

² This calculation method arose as a result of the Michigan Court of Appeals’ interpretation of MCL 205.27a(3)(a) in *Krueger v Dep’t of Treasury*, 296 Mich App 656 (2012).

³ Refund requests must also be made within the statute of limitations. PA 3 did not create extensions after September 30, 2014, for refund claims as it did for assessments.

Michigan law applies changes to the statute of limitations prospectively absent a clear and unequivocal expression of a contrary intent. *Davis v State Employees' Retirement Bd*, 272 Mich App 151, 161-162 (2006). PA 3 did not amend the statute of limitations itself, but it did significantly alter the circumstances which lengthen that limitation period, which has the same effect upon parties' rights. PA 3's elimination of tolling of the statute of limitations for Department audits affects the Department's right to assess tax liability and the taxpayer's right to claim a refund – both substantive rights. Because the Legislature did not clearly express an intent to apply PA 3 retroactively, Michigan law dictates that it be applied prospectively only.

Prospective application of PA 3 requires that audits commenced before February 6, 2014 fall under the statute of limitations suspension provisions as they existed in MCL 205.27a(3) prior to PA 3: the statute of limitations remains suspended until the conclusion of the audit, and the limitations period for those audits is calculated by adding one year to the date the audit concluded and then adding to that the balance of time that remained in the 4-year statute of limitations when the audit was commenced. For state audits commenced in the “gap” period between February 6, 2014, and September 30, 2014, no tolling or extension of the statute of limitations is available. For state audits commenced on or after October 1, 2014, the statute of limitations extension provisions of PA 3 apply.

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