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## Council on State Taxation (COST) Gives Michigan an A- for Sales Tax Administration

The Council on State Taxation (COST) recently recognized Michigan as one of the best states in the nation for Sales Tax Administration in its April 19, 2018 report, "The Best and Worst of Sales Tax Administration." COST is a nonprofit trade association made up of nearly 600 multistate corporations whose goal is to promote fair state and local taxation for multistate businesses

In its report, COST created a scorecard that evaluated how states administer sales tax using the following criteria: (1) exemptions for business inputs; (2) fair sales tax administrative practices; (3) centralized administration of state and local sales taxes; (4) sales tax simplification and transparency, (5) fair tax payment and credits administration; and (6) reasonable audit and refund procedures. Michigan scored high on fair audit and refund processes, and earned better than average scores on the exemption of business inputs. The state also ranked favorably due to its Streamlined Sales and Use Tax Agreement membership and scored high on parts of COST's scorecard related the adoption of that agreement.



Archives of Treasury Update can be found on the website at [Michigan.gov/Treasury](http://Michigan.gov/Treasury) under the **Reports and Legal Resources** tab.

**No Appeal Taken on  
D'Agostini decision  
regarding the Small  
Business  
Alternative Credit  
Disqualifiers for UBGs  
under the MBT**

In *D'Agostini Land Company, LLC v Dep't of Treasury*, \_\_\_ Mich App \_\_\_ (2018) the Michigan Court of Appeals determined that the income/distributive share disqualifiers of the small business alternative credit do not apply to a unitary business group (UBG) claiming the credit under the Michigan Business Tax (MBT) Act. The published decision only affects UBG taxpayers who file MBT. The CIT expressly identifies UBGs as subject to the income/distributive share disqualifiers. The Department did not seek leave to appeal the decision, and it is now final.

# Amendments to the Taxpayer Bill of Rights Rules

Amendments to the Taxpayer Bill of Rights Rules were promulgated on May 4, 2018, when the Office of Regulatory Reinvention filed the amendments with the Secretary of State Office of the Great Seal.

The amended rules serve three primary purposes. First, the amended rules complete the rulemaking mandated in MCL 205.4(3). Specifically, the amended rules provide: (1) standards for the fair and courteous treatment of taxpayers by Treasury's contractors and agents; (2) standards to ensure fair and consistent application of statutes and rules to taxpayers; and (3) a requirement that Treasury not use collection goals or quotas during audits under the Revenue Act or the Uniform Unclaimed Property Act.

Second, the amended rules update the requirements for designating an authorized representative (also known as a "power of attorney" or "POA") so that Treasury may work with – and disclose otherwise confidential taxpayer information to – third parties.

Finally, the amended rules specify the requirements for a taxpayer to designate a representative to receive copies of certain letters and notices relating to a dispute under section 8 of the Revenue Act.

These amendments are the result of a lengthy collaborative effort with taxpayers and practitioners.

To review the amended rules in their entirety, please see the Michigan Administrative Code at the Office of Regulatory Reinvention's web site at [www.michigan.gov/opt](http://www.michigan.gov/opt). Also, to see the updated "POA" and "section 8" requirements in action, please see the Authorized Representative Declaration form (Form 151).

MICHIGAN TRANSPARENCY

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## Searching the Michigan Administrative Code

Methods to Search the Michigan Administrative Code.

There are two ways to view the Michigan Administrative Code and proposed changes on the Office of Regulatory Reinvention website. Users can view the Michigan Administrative Code organized by the department and numerically.

## Search MI Administrative Code by Department

Select the Department

If you know the Michigan department or agency that promulgated the administrative rule

# New Agricultural Production Exemption Statutes

Michigan recently enacted 2018 Public Acts 113 and 114 (Acts). The Acts expand the sales and use tax exemptions for agricultural production in a number of ways and also provide a new exemption for certain aquatic vegetation harvesting equipment.

First, the Acts expand the agricultural production exemption by exempting property indirectly used in agricultural production. Prior to the Acts, only property used directly in certain enumerated agricultural operations were eligible for the exemption.

Generally, the agricultural production exemption excludes property that is permanently affixed to and becomes a structural part of real estate. However, the Acts now provide that tangible personal property used in agricultural production installed as a component part of a structure that can be disassembled and removed without affecting the “physical structural functionality of the original structure” and reassembled for reuse elsewhere is exempt if it is otherwise permanently affixed to real estate. This includes water supply systems, heating and cooling systems, lighting systems, milking systems, and other similar property.

Likewise, prior to the Acts, greenhouses permanently affixed to and becoming a structural part of real estate were excluded from the agricultural production exemption. The Acts provide that a greenhouse is now exempt if it is used for an exempt agricultural purpose and is “assembled and installed in a manner that it can be disassembled and reassembled without affecting the functionality of the greenhouse upon being reassembled” even if it would otherwise be considered to be affixed to real estate.

Finally, the Acts provide a new exemption for machines designed and directly used to harvest aquatic vegetation for ultimate use in exempt agricultural production.

The Acts are retroactive to all periods open under the Revenue Act, MCL 205.27a. However the Acts do not apply to refund claims filed before April 9, 2018.

For more information regarding the Acts, see the Acts on the Legislature’s web page at [www.legislature.mi.gov](http://www.legislature.mi.gov).

## Recently Issued Guidance from Treasury

### *Revenue Administrative Bulletins*

#### **RAB 2018-4**

Sales and Use Tax Apportionment of the Industrial Processing Exemption for Electric and Gas Providers

#### **RAB 2018-5**

Use Tax Exemption on the Transfer of Motor Vehicles, Off-Road Vehicles, Manufactured Homes, Aircraft, Snowmobiles, or Watercraft Between Relatives and Others

#### **RAB 2018-8**

Individual Income Tax-Eliminating the Income and Expenses of Producing Oil and Gas

### *Notice*

Retroactive Federal Extender Legislation May Affect Some 2017 Income Tax Filers, Issued March 29, 2018

2018 Public Acts 113 & 114 Agricultural Production Exemption, Issued April 27, 2018

*Revenue Administrative Bulletins (RAB) can be found on the website at [Michigan.gov/Treasury](http://Michigan.gov/Treasury) under the Reports and Legal Resources tab.*

## About *Treasury Update*

*Treasury Update* is a periodic publication of the Tax Policy Division of the Michigan Department of Treasury.

*It is distributed for general information purposes only and discusses topics of broad applicability. It is not intended to constitute legal, tax or other advice. For information or advice regarding your specific tax situation, please contact your tax professional.*

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*For questions, ideas for future newsletter or Revenue Administrative Bulletin (RAB) topics, or suggestions for improving Treasury Update, please contact:*

*Mike Eschelbach,  
Director, Tax Policy Bureau  
517-373-3210*

*Lance Wilkinson, Administrator,  
Tax Policy Division  
517-373-9600*

*Email address:  
[Treas\\_Tax\\_Policy@michigan.gov](mailto:Treas_Tax_Policy@michigan.gov)*

# Treasury Evaluating Impact to CIT from Federal Tax Reform Legislation

On December 22, 2017, President Trump signed Public Law 115-97, commonly known as The Tax Cut and Jobs Act (TCJA). A significant component of the legislation involves changes to the taxation of income earned internationally by U.S. corporations and their foreign subsidiaries. Before the TCJA, the U.S. imposed tax on corporate income on a worldwide basis, with income earned in other countries subject to U.S. taxation but generally not taxed until the income was distributed as dividends to the U.S. corporation. The TCJA moves the U.S. toward a territorial tax system, with taxation of income earned by a foreign subsidiary based on the country in which the income is derived irrespective of it actually being distributed as dividends to the U.S. owner. Two significant foreign-sourced income provisions of the TCJA are the deemed repatriation of accumulated deferred foreign sourced earnings of a U.S. shareholder and the inclusion in income of U.S. shareholders of “global intangible low-taxed income” earned by certain of its Controlled Foreign Corporation (CFC) subsidiaries.

The TCJA amended IRC 965 which mandates a deemed repatriation of deferred foreign income of a specified foreign corporation (as defined in the IRC). The TCJA requires that accumulated deferred post-1986 foreign-sourced earnings and profits (E&P) of a U.S. shareholder owning at least 10% of a specified foreign corporation be recognized (via a deemed repatriation dividend) and added to the U.S. shareholder’s pro rata share of its foreign subsidiary’s Subpart F income. The E&P deemed repatriated is measured as of November 2, 2017, or December 31, 2017. The new law imposes a one-time repatriation transition tax at a rate of 15.5% on repatriated cash and cash equivalents and 8% on repatriated illiquid assets. The use of a separate deduction (a participation exemption) for a portion of the foreign E&P produces the lower tax rates. The income must be recognized in the deferred foreign income corporation’s last taxable year beginning before January 1, 2018, with the option to pay the net tax liability over 8 years. For tax years beginning after December 31, 2017, a 10% or greater U.S. shareholder may deduct 100% of the foreign-source portion of dividends received from its foreign corporate subsidiaries.

While TCJA requires that this IRC 965 income be added to a taxpayer’s Subpart F income, in guidance issued in March 2018 the IRS has instructed that a taxpayer who has IRC 965 income not report this income in its Subpart F income on its federal tax return.

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Instead, the IRS is requiring the taxpayer to separately report that income in an IRC 965 Transition Tax Statement to be filed with its federal tax return, with the taxpayer instructed to make two separate federal payments: one reflecting the federal tax owed without regard to IRC 965 and a second, separate payment reflecting the amount of IRC 965 tax owed.

The TCJA also added section 951A to the IRC, which requires a U.S. shareholder of a CFC to include its pro rata share of the CFC's "global intangible low-taxed income" (GILTI) into gross income each year, starting in taxable years beginning after December 31, 2017. GILTI means the U.S. shareholder's excess (if any) of its "net CFC tested income" over its net deemed intangible income return, as defined under IRC 951A. The GILTI is included without regard to whether the CFC actually distributed the amount to the U.S. shareholder. While GILTI is treated in a manner similar to Subpart F for certain IRC purposes, it is not itself considered Subpart F income. The U.S. corporate shareholder is eligible for a deduction equal to 50% of the GILTI amount plus a deduction equal to 37.5% of its foreign-derived intangible income (FDII) for its tax year.

Since a Michigan corporate income taxpayer's CIT tax base is based on federal taxable income, the manner in which these changes to the federal

taxation of income affect the federal income tax base may, in turn, impact the taxpayer's CIT tax base. To date, the IRS has not issued definitive guidance on how these tax changes will affect the determination of federal taxable income. Treasury, however, has been analyzing these changes and formulating preliminary conclusions regarding their impact on Michigan's CIT.

As to the previously untaxed E&P added to Subpart F income, it is arguable that this additional income, characterized as a deemed dividend to the U.S. shareholder, is part of the shareholder's federal taxable income – notwithstanding that the IRS in its March 2018 guidance has directed that this income be separately identified and the taxes separately paid. If this additional deemed distributed income is included as the U.S. shareholder's pro rata share of Subpart F income, then the taxpayer would deduct it to determine its CIT tax base. Section 623(2)(d) of the CIT provides that to the extent included in federal taxable income, dividends from foreign persons and foreign operating entities be deducted in calculating CIT tax base, including amounts determined under Subpart F (IRC 951 to 964, and by extension, 965).

If the separate reporting and payment of tax on this income is deemed outside of federal taxable income, then it would not even be included in the taxpayer's CIT tax base.

Consequently, Treasury's preliminary understanding is that there will be no effect on a CIT taxpayer's liability from this provision.

As to the so-called GILTI included in a taxpayer's gross income, Treasury preliminarily concludes that this income also would be excluded from a taxpayer's CIT tax base. While not considered to be Subpart F income, the TCJA explicitly states that GILTI is treated in the same manner as Subpart F income. Consequently, section 623(2)(d) of the CIT would also result in this GILTI being deducted from the tax base to the extent included in federal taxable income. Treasury would view the amount of GILTI included in federal taxable income to be net of the 50% GILTI deduction and the 37.5% FDII deduction provided under the IRC.

There is still some ambiguity regarding the new federal legislation, and little guidance from the IRS on how these new provisions impact federal taxpayers and federal administration. Treasury continues to closely monitor IRS guidance, will work with external shareholder groups on these complex issues, and will issue further formal guidance on the CIT.

## Statement of Acquiescence/ Non-Acquiescence Regarding Certain Court Decisions

*In each issue of the quarterly Treasury Update, Treasury will publish a list of final (unappealed), non-binding, adverse decisions issued by the Court of Appeals, the Court of Claims and the Michigan Tax Tribunal, and state its acquiescence or non-acquiescence with respect to each. The current quarterly list applying Treasury's acquiescence policy appears below. "Acquiescence" means that Treasury accepts the holding of the court in that case and will follow it in similar cases with the same controlling facts. However, "acquiescence" does not necessarily indicate Treasury's approval of the reasoning used by the court in that decision. "Non-acquiescence" means that Treasury disagrees with the holding of the court and will not follow the decision in similar matters involving other taxpayers.*

**ACQUIESCENCE:**  
No cases this quarter.

**NON-ACQUIESCENCE:**  
No cases this quarter.

## The General Impact of Federal Tax Reform in Michigan

As highlighted throughout this newsletter, the federal Tax Cuts and Jobs Act (TCJA) brought forth sweeping changes to the Internal Revenue Code (IRC). These changes have prompted many questions from the taxpayer community regarding their impact on Michigan taxes. Despite the complexity of many provisions within the TCJA, in most cases their impact in Michigan can be determined by considering Michigan's general conformity to the IRC.

The computation of income under the Michigan Income Tax Act (Act) generally follows the basic provisions of the IRC. Section 2(3) of the Act, MCL 206.2(3), specifically provides that "[i]t is the intention of this part that the income subject to tax be the same as taxable income as defined and applicable to the subject taxpayer in the internal revenue code." For this reason, individual taxpayers are required to use the federally-determined Adjusted Gross Income (AGI) as the beginning point in computing their state tax liability. The same is true for corporate taxpayers, whose income tax computation begins with the federal computation of Federal Taxable Income (FTI). In this context, any federal amendments impacting the determination of either AGI or FTI will be automatically incorporated into the computation of income on a Michigan taxpayer's return.

In some cases, Michigan's conformity to the IRC yielded unexpected results. The most notable of these results was the federal repeal of the personal and dependent exemptions. 2018 PA 38 ("PA 38") was quickly enacted in February to restore the Michigan personal exemption for individual taxpayers beginning in 2018. PA 38 also ensures that corporate and individual taxpayers are using the post-TCJA version of the IRC in computing their Michigan tax liability. Thus, through PA 38, the Legislature clarified the particular amendments to the IRC to which the Income Tax Act will not conform.

As a practical matter, however, the Department recognizes that the technical implementation of many of the TCJA provisions at the federal level is ongoing. The IRS is currently in the process of developing and publishing its own guidelines, regulations, forms, and instructions for many technical provisions within the TCJA. While federal implementation is likely to provide much needed clarity on some technical issues, it may also reveal other issues that may be relevant to Michigan taxpayers.

In this regard, the Department will continue to closely monitor and analyze the federal implementation of the TCJA provisions

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throughout 2018. The Department is also working closely with internal and external stakeholder groups to identify possible state-level issues and, if necessary, will issue responsive guidance. These initiatives underlie the Department's continued commitment to provide taxpayers with accurate, timely, and relevant information regarding the effect of federal tax reform in Michigan.

Taxpayers should follow future editions of this newsletter and the Department's website for updates and other information related to federal tax reform. All notices, updates, and other pertinent guidance from the Department will be published on its website at [www.michigan.gov/taxes](http://www.michigan.gov/taxes).

## You Filed Your Michigan Individual Income Tax Return, Now What?

Before checking the status of your Michigan individual income tax return allow for the timeframes based on the following filing methods:

- **E-filed returns:** Allow 2 weeks from the date you received confirmation that your e-filed return was accepted before checking for information. After 2 weeks, if your return is not showing on the system, please contact your tax preparer to confirm that the return was accepted. If rejected, the preparer should resubmit the return.
- **Paper Filed Returns:** Allow 6-8 weeks from the date you mailed your return before checking for information. After 6-8 weeks, if your return is not showing on the system, please confirm the mailing address to which you mailed the return.

Once the above timeframes have passed, check the status of your Michigan individual income tax return at [www.michigan.gov/treasury](http://www.michigan.gov/treasury) by selecting "WHERE'S MY REFUND?" or by calling Treasury's Income Tax Information line at 517-636-4486.

Please be aware that if your Adjusted Gross Income listed on line 10 of the Michigan Individual Income Tax Return, MI-1040, is negative or zero, the self-service options will not recognize the return and you must speak to a customer service representative at Treasury's Income Tax Information line.

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**ADMINISTER**  
individual and  
business taxes



**PROVIDE**  
online, public  
financial  
information for  
local government  
and schools



**ENHANCED**  
online experience for  
business taxpayers



**CONNECT**  
student and families  
with scholarships,  
grants and college  
savings programs



**RECONNECT**  
individuals and  
businesses with their  
money and other  
properties through  
Unclaimed Property



**COLLECT, DISBURSE**  
and **INVEST** all state  
monies



## Need Assistance?

For further assistance on reissuing refunds or rectifying other issues, contact Treasury's Income Tax Information line at 517-636-4486.

Please note the Office of the Taxpayer Advocate does not check the status of current year tax returns.

For other Frequently Asked Questions, please refer to [www.michigan.gov/treasury](http://www.michigan.gov/treasury).

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## Status Types:

When reviewing the status of a State of Michigan income tax return, your return may be classified as one of the following common status types:

- “Pending Review”: If the return is in “pending review” status, this is not to be confused with an official audit. This simply indicates that the return has been received and is still being processed. If additional information is required, a written notice will be mailed to your current address.
- “Pending Correspondence”: If the return is in “pending correspondence” status, we have sent a written request for additional information to your current address. Please carefully review any correspondence received and respond as instructed. We must receive the specific information before the return can be properly processed. Examples of information that may be requested are a copy of a lease agreement which can be obtained from your landlord, a copy of your W-2 statement which can be obtained from your employer, and a copy of your SSA-1099 which can be obtained from the Social Security Administration.
- “Completed”: If the return is in “completed” status, we have fully processed the return and you should receive any applicable refund within 10-14 business days of the “issue” date. If your expected refund has been adjusted, you will receive an “Explanation of Change” notice including a breakdown of the change(s). If you have not received the expected refund amount 30 days after the issue date, please review your return to verify your current address, direct deposit information, and the total refund amount listed on line 36 of the Michigan Individual Income Tax Return, MI-1040.



Check Your State Income Tax Refund Status