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YOUR JOB IN DETROIT WENT REMOTE? HERE'S HOW TO CORRECTLY REPORT YOUR CITY INCOME TAXES

Disclaimer: This article applies only to city individual income taxes for the City of Detroit, which has a tax administration agreement with Treasury.

With the pandemic came the proliferation of remote work, and many employees either temporarily or permanently started working from home. For nonresidents of the City of Detroit who previously worked in the city, teleworking from home brought new questions: will Detroit tax my compensation and how do I report that on my City of Detroit income tax returns?

Since tax year 2015, the Michigan Department of Treasury has administered the City of Detroit's income taxes (see September 2015 Press Release). Beginning with tax year 2017, Treasury also began administering Detroit's income tax withholding. These taxes are administered under the city income tax act, MCL 141.501, et seq., which is a uniform state law adopted in 1964. Individual cities, including Detroit, adopted the income tax by ordinance, subject to referendum upon petition of the city's voters.

The city income tax act allows a city to impose tax on the income of its residents (MCL 141.612) and on certain income of its nonresidents (MCL 141.613). For Detroit, these tax rates are 2.4% and 1.2%, respectively. Nonresidents are taxed on compensation for work performed in the city, income from certain business activities, and certain net capital gains.

In addition, the Act requires that an employer doing business or maintaining an establishment within the city levying an income tax must withhold from each payment to its employees the tax on their taxable compensation, after giving effect to exemptions. For resident employees, the employer must generally withhold tax from all taxable compensation, no matter where earned. For nonresident employees, the employer must generally withhold on compensation paid to the employee only for work done or services performed in the city. MCL 141.651. Because for most employers, the permanence of the remote work situation was unknown or undecided, withholding for most employees continued as normal. In many cases, this resulted in nonresidents having more withholding than was necessary. Treasury has seen an influx of these refund requests and unfortunately, many are not reported correctly.

Nonresidents with taxable income or withholding must file the *City of Detroit Nonresident Income Tax Return* (Form 5119) with the Michigan Department of Treasury. For a part-year resident with taxable income or withholding, use *City of Detroit Part-Year Resident Income Tax Return* (Form 5120). Filers with compensation or withholding must also file *City of Detroit Withholding Tax Schedule, City Schedule W* (Form 5121). In Part 1 of that form, the Box 1 amount (the full amount subject to federal income tax) of W-2 wages and other compensation or 1099 income from which tax was withheld must be reported. If any of the nonresident's or part-year resident's work was

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performed outside of the city, the filer must also allocate their compensation (excluding commissions) by days worked inside and outside the city, using Part 3 of Form 5121. **These steps are required even if the nonresident who had withholding worked 0% of their time inside the city.** The allocated compensation or 1099 income earned in Detroit from Part 3, column H gets carried to the annual return as taxable "Wages, salaries, tips, etc." Treasury sees many of these annual returns with the full amount of compensation reported in error, rather than the "earned in Detroit" amount from Form 5121, Part 3, column H, or with less than 100% of compensation reported as taxable on the annual return with Form 5121 Part 3 incomplete. Both situations may cause taxpayers to receive reduced refunds or bills for tax due.

If a nonresident or part-year resident filed their annual return incorrectly (e.g., over-reported wages as taxable in error), the filer should amend that annual return by using the same form originally used, checking the box on page 1, and including the reason for the amendment and all supplemental forms. If no changes are needed to the annual return but Form 5121 was not fully or correctly completed, the filer may send a corrected Form 5121 directly to:

Michigan Department of Treasury
City Tax Administration
P.O. Box 30741
Lansing, MI 48909

Taxpayers should follow instructions on any notice of adjustment or assessment received from Treasury, if applicable, and call the number on the notice with any questions. In addition, taxpayers should preserve their appeal rights if they disagree with any adjustments. Several venues may be available for appeal, as stated in the notice; however, please note that the informal conference with Treasury's Hearings Division is free. If, instead, a taxpayer wishes to appeal to the Michigan Tax Tribunal, see www.michigan.gov/taxtrib to find the proper petition form and information about the filing fee.

Finally, taxpayers may be able to correct any over withholding for future returns. If a person is a nonresident of Detroit and estimates going forward that anything less than 100% of their work for their Detroit-based employer will be within city limits, the nonresident may need to adjust their withholding. MCL 141.654 and 655. A Detroit filer should use Form 5527 to provide an updated withholding certificate to their employer. Of course, if additional work in the city resumes, the withholding certificate should be updated accordingly. Further instructions and frequently asked questions about telecommuting and other topics for all filers are available on Treasury's website.

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, contact your tax professional.

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FLEETCOR TECHNOLOGIES OPERATING CO, LLC V TREASURY, UNPUBLISHED OPINION OF THE COURT OF APPEALS, ISSUED NOVEMBER 10, 2022 (DOCKET NO. 359404)

In an unpublished opinion dated November 10, 2022, a unanimous panel of the Michigan Court of Appeals affirmed the Court of Claims' summary dismissal of Fleetcor Technologies Operating Company's complaint as untimely filed. Treasury audited Petitioner's sales tax liability for the years 2015 through 2017. Petitioner alleged that the auditor sent a request for documents to Petitioner through the secure portal (to which Petitioner responded) and that Petitioner received no further communication from Treasury about the audit. Upon completion of the audit, Treasury sent final assessment notices by certified mail to Petitioner at its last known address. USPS tracking information indicated that the assessment notices were delivered to the town where Petitioner's offices were located and left at the "Front Desk/Reception/Mail Room." Petitioner alleged that it did not receive the assessments and – further – that its building has no front desk, reception area, or mail room. Petitioner maintained that it first learned about the assessments from its discovery of collection activity on its bank account. Upon learning of the collection activity, Petitioner contacted Treasury and was provided copies of the final assessments. At this point, Petitioner was out of time to appeal its assessment because more than 90 days had elapsed since the issuance of the assessment as provided by MCL 205.22(1).

Ruling on a motion for summary disposition in lieu of an answer, which argued that the complaint was time-barred under MCL 205.22(1), the Court of Claims granted Treasury summary disposition dismissing the case, and Petitioner appealed.

On appeal, the Court of Appeals held that Treasury had met the statutory notice requirements for the issuance of the final assessments. The court also held that allegations of non-receipt did not place certified mailing into dispute. This decision is consistent with the prior published, and thus binding, Court of Appeals decision in *PIC Maintenance, Inc v Dept of Treasury*, 293 Mich App 403 (2011).

Taxpayer did not seek leave to appeal.

CHANGES TO BOTTLE DEPOSIT LAW TAKE EFFECT

The Michigan Beverage Container Law, more commonly known as the Bottle Law, was amended in October 2022, and the resulting changes to the law take effect beginning January 1, 2023.

Public Act 198 of 2022 amended the Bottle Law to address an issue that has long been faced by certain beverage distributors. Primarily due to their geographical location, some distributors are consistent "over-redeemers" of returnable container deposits. This means that the affected distributors refund to their customers more money in deposits on returned containers than they collect on beverages sold. In some cases, the difference on even a quarterly basis amounts to a significant amount of money. Prior to this legislation, no formal mechanism existed under the law to directly reimburse over-redeemers for excess deposits paid out. Instead, the law previously provided for an imperfect system of credits and carry forwards.

The recent amendments to the Bottle Law aim to solve the problem of over-redemption in a more direct and more effective manner. Beginning in 2023, the Bottle Law permits over-redeemers to request a refund from Treasury for any calendar quarter in which the total value of the deposit refunds made by that entity to participating customers exceeds the total value of deposits collected in that quarter from participating customers. Additionally, Treasury is now required to automatically pay refunds to all over-redeemers on an annual basis, and those funds are then subtracted from the amount that Treasury must deposit into the statutory bottle deposit fund.

Previously, over-redeemers were eligible to keep an over-redemption amount as a credit for the following three years to be applied toward any year in which they under-redeemed. Because consistent over-redeemers now have the ability to request refunds on a quarterly basis, and all over-redeemers will receive automatic refunds on an annual basis, the previous system of credits and carry forwards will be phased out. The new legislation limits over-redemption credits to years prior to 2022, meaning that no new credits may be incurred by over-redeemers, beginning with the filing of the annual report for 2022. Instead, as noted, over-redeemers will now have any overage amounts refunded to them directly. However, filers with existing credits that were previously carried forward to 2022 will still have the maximum three years to apply those credits against any shortages reported on the annual form. This is because refunds cannot be requested or claimed for any period prior to 2022; accordingly, existing credits may continue to be carried forward until their three-year expiration date is reached.

All parties who file the annual *Michigan Unredeemed Beverage Container Deposit Report* (Form 2666) with Treasury should recently have received an informational postcard alerting them to the changes in the Bottle Law, and directing filers to Treasury's website (go to www.michigan.gov/misctaxes) for additional information. Additionally, Treasury has recently issued a public Notice, regarding the changes, which can be found at Notice Regarding Amendment to Michigan Beverage Container Law. If you have additional questions, please contact the Miscellaneous Taxes and Fees Unit at 517-636-0515.

RECENTLY ISSUED GUIDANCE FROM TREASURY

Revenue Administrative Bulletins

RAB 2022-16 The Effect of Michigan Catastrophic Claims Association Refunds of Surplus Amounts on the Gross Direct Premiums Tax Base of Motor Vehicle Insurers, Approved Nov 22, 2022.

RAB 2022-22 Treatment of Gambling Gains, Losses, Expenses, Approved December 5, 2022.

RAB 2022-23 Computing Pro-forma Federal Taxable Income for Unitary Business Group Members that File a Federal Consolidated Return, Approved December 6, 2022.

RAB 2022-24 Penalty Provisions, Approved December 9, 2022.

RAB 2022-25 Tobacco Products Tax Act: Interpretive Bulletin Concerning 2022 PA 171 and Acquisition of Tobacco Products by a Retailer from an Authorized Representative of a Licensed Manufacturer, Approved December 20, 2022.

RAB 2022-26 Treatment of Ordinary and Necessary Expenses for Certain Marihuana Establishments, Approved December 21, 2022.

Notices

- STC Bulletin 18 of 2022-Qualified Heavy Equipment Rental Property – Published November 15, 2022.
- Notice to Taxpayers Regarding Public Act 207 of 2022 (Adoption Leave Tax Credit), Issued December 29, 2022.
- Notice Regarding Amendment to Michigan Beverage Container Law, Issued January 5, 2023.

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

- Treasury acquiesces in the unpublished opinions, *Priority Health and Priority Health Ins Co v Dept of Treasury*, unpublished opinion of the Court of Appeals, issued October 30, 2018 (Docket Nos. 341120) and *Priority Health v Department of Treasury*, unpublished opinion of the Court of Appeals, issued April 14, 2022 (Docket No. 356769).
- Non-Acquiescence – no cases this quarter.

AUDITS OF SINGLE ENTITY TAXPAYERS THAT LATER FILE A UNITARY RETURN DOES NOT EXTEND STATUTE OF LIMITATIONS FOR THE LATE UNITARY FILING

In this Michigan Business Tax (MBT) case, *Anthony L Soave and Unitary Affiliates v Dept of Treasury* (Court of Claims Docket No. 21-000156-MT, issued November 7, 2022), the central question was whether an audit of the tax returns of single entity taxpayers who are later included in an untimely unitary business group (UBG) return filing extends the statute of limitations for the UBG to request a refund. Petitioner owned a number of affiliated companies during the MBT audit years at issue but did not treat those companies as members of a UBG. When some of those entities, which had originally filed returns as separate entities, were selected for an audit and found to owe additional tax due to the denial of the small business alternative credit, Petitioner concluded that he should have been filing as the designated member of a UBG on behalf of his many companies.

Thereafter, Petitioner filed UBG combined returns for the 2008 and 2009 tax years for the first time in October 2014 and for the 2010 and 2011 tax years for the first time in November 2014. Treasury initially accepted and processed the returns, granting a refund for tax year 2011. The taxpayer disputed the liability contending that Treasury failed to properly credit the UBG with all of its members' payments. The parties resolved the payment discrepancies and settled the 2010 and 2011 years, but Treasury rejected the UBG's 2008 and 2009 returns as untimely, and the taxpayer appealed those tax years to the Court of Claims.

The taxpayer asserted that because a UBG is the sum of all of its members, an audit of one member extends the statute of limitations for the UBG as a whole. Alternatively, Petitioner argued that Treasury's auditors had agreed to extend the statute of limitations for a UBG filing during the audit of the single entities. The court disagreed with both arguments.

As to the first argument, the court concluded that resolution of the issue depended on whether a UBG and its member entities were one and the same under the MBT. On this issue, the court determined that the MBT's definition of taxpayer as a person or a unitary business group distinguishes the UBG as a separate and distinct taxpayer. Therefore, an audit of single entity taxpayers could not extend the statute of limitations as to the UBG.

As to the second argument, the court found that the offer by the Treasury's auditor to hold processing of any changes to a single company's tax return until the taxpayer gathered information and determined the propriety of a unitary filing did not constitute a promise to extend the statute of limitations for such filing.

The UBG's motion for reconsideration was denied on December 20, 2022. The UBG filed its appeal to the Court of Appeals on January 4, 2023.

ALL THINGS ADVOCATE: 2022 IIT TAX FILING SEASON HELPFUL HINTS & WHAT'S NEW

The Office of Advocacy Services offers the following reminders, helpful hints, and information on what's new to help make the 2022 Individual Income Tax (IIT) filing season run a bit smoother.

1. Read the online IIT instruction booklet as there are several new items or changes. Knowing what is new or changed from previous years is important and will save you time.
2. Before checking the status of an IIT return remember – allow 2 full weeks from the date a confirmation is received that Treasury accepted the e-filed return and allow 6-8 weeks from the date you mailed a paper-filed tax return before checking on the status.
3. Highlights of some of the changes from tax years 2021 to 2022:
    - Visual changes to Treasury's website
    - Filing due date is April 18, 2023
    - $5,000 for personal and dependent exemptions
    - $2,900 for special exemptions
    - MI Homestead Property Tax Credit (HPTC), Form 1040CR
        - Taxable value maximum increased to $143,000
        - Total Household Resources maximum increased to $63,000
        - New Credit maximum is $1,600
    - MI Home Heating Credit (HHC), Form 1040CR-7
        - 2022 HHC, multiple Line 46 by 90%
        - Maximum heating cost is $3,430 (Line 42)
        - Last day to file a 2022 HHC is September 30, 2023
    - MI Earned Income Tax Credit (EITC) maximum is $416
    - Historic Preservation Tax Credit, New Form 5803 replaces Form 3581.
    - New First-Time Home Buyers Savings Program, Form 5792.

IIT instructions, forms, educational videos, and other helpful resources are available at www.michigan.gov/taxes/iit.

COURT OF CLAIMS HOLDS THAT A TAXPAYER HOLDING INVESTMENTS IN REAL ESTATE MORTGAGE INVESTMENT CONDUITS (REMICS) CANNOT EXCLUDE EXCESS INCLUSION INCOME (EII) FROM FEDERAL TAXABLE INCOME (FTI) USED IN COMPUTING TAX BASE UNDER THE CORPORATE INCOME TAX (CIT)

On November 30, 2022, the Court of Claims ruled in favor of Treasury in the matter of *Credit Suisse Holdings (USA) and Subsidiaries v Michigan Dept of Treasury*, Docket Nos. 20-000186 and 22-000013-MT, holding the taxpayer could not exclude EII from FTI that is the starting point for computing the tax base under the CIT and amended returns filed were properly rejected.

Credit Suisse, the taxpayer, held interests in REMICS and reported EII on its federal returns as required under the internal revenue code (IRC). On its 2018 CIT return, the taxpayer reported a business loss deduction that reversed out the EII. Treasury disallowed the deduction because the 2015-2017 CIT returns previously filed, reported no CIT business losses. The taxpayer argued the 2018 deduction was required because it was following federal law when it completed its CIT return. Treasury informed the taxpayer that if the 2015-2017 returns were improperly filed, it should file amended returns.

Before filing amended returns, the initial case was filed by the taxpayer that argued it made the adjustment because the FTI included EII pursuant to IRC 860E(c) that requires taxpayers to report an amount no less than the EII rather than actual net operating losses that might otherwise be recognized. Almost a year into the case the taxpayer filed amended returns for 2015-2017 to report losses equal to the adjustment that was reported on the 2018 return under MCL 206.623(4). Treasury rejected the 2015 return as outside the 4-year statute of limitations provided in MCL 205.27a. Treasury also rejected the 2016 and 2017 returns because the returns failed to start with FTI that is the starting point for calculating tax base and it failed to addback any net operating loss as required under MCL 206.623(2)(c). The taxpayer then filed the second complaint requesting the amended returns be processed.

Both parties filed motions for summary disposition in the first case requesting the court to decide the legal issues presented. Treasury argued the taxpayer's EII adjustments to FTI are not supported by statute and net operating losses are not business losses under the CIT. The business loss reported on the 2018 CIT return was unsupported. In its brief, the taxpayer effectively conceded the CIT did not require or permit the adjustment for EII. The taxpayer then moved to amend its complaint in the second case alleging the business losses reported on the amended returns support the adjustment on the 2018 return. The court granted the taxpayer's motion to amend, and it consolidated the two cases. Treasury then filed a motion for summary disposition in the second case arguing the two cases were duplicative. The taxpayer disagreed claiming the first case concerned only the 2018 tax year and the second case involved amended returns for 2015-2017 that Treasury failed to process.

The court agreed with Treasury and granted it summary disposition in 20-000186-MT. The court found that both parties agreed the CIT did not provide for a REMIC adjustment. Because that case resolved the issues in the second case, summary disposition for Treasury was also granted. The court held, business income and FTI were clearly defined terms in MCL 206.603(3) and 206.607(1). The court held CIT begins with FTI and employs its own business loss adjustment. Business loss under the CIT is different from federal NOL that are a required add-back. MCL 206.623(2)(c) and 623(4). In this case, the taxpayer reported no business losses on the 2015-2017 returns, and it was required to start the tax base calculation with FTI. The court further noted, despite numerous reconciliation schedules, the taxpayer did not dispute that the numbers used on the amended returns did not agree with the FTI reported on its federal returns.

Specifically, the court noted that the taxpayer conceded it had reversed the REMIC income by deleting the EII on line 21 of its amended returns and reported federal NOL on line 12. The court noted the tax base should start with federal FTI that includes EII and NOL is not equal to business loss under the CIT. Because the taxpayer improperly adjusted FTI, the court found the many reconciliations were unsupported and there was no legal support that any alleged NOL apportionment errors could alter the business loss taxpayer was claiming for 2018.

Finally, because the issues involved the same parties and the same claims and, the 2015-2017 amended returns were filed to support the improperly claimed 2018 business loss, the court granted Treasury summary disposition in the second case concluding Treasury properly rejected the amended returns.

The Court of Claims denied taxpayer's motion for reconsideration on January 10, 2023.