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*Archives of Treasury Update can be found on the website at Michigan.gov/Treasury under the **Reports and Legal Resources** tab.*

Update: Insurance Provider Assessment Act (IPAA) Receives Federal Approval

As discussed in prior editions of this newsletter, legislation passed in 2018 fundamentally changed the taxation of insurance and health care providers in Michigan by creating the Insurance Provider Assessment Act (“IPAA”) (2018 PA 175) and repealing the Health Insurance Claims Assessment Act (“HICAA”) (2018 PA 173). That legislation, however, was effective the first day of the calendar quarter in which the federal Center for Medicare and Medicaid Services (“CMMS”) approved a waiver from certain federal provisions applicable to health care-related taxes. On December 10, 2018, CMMS formally approved such a waiver. The IPAA is therefore enacted effective as of October 1, 2018, and, likewise, the HICAA is repealed as of that same date.

The IPAA generally applies to non-Medicaid health insurers, prepaid inpatient health plans (providers of Medicaid behavioral health services), and Medicaid managed-care services. The annual assessment of tax under the IPAA is calculated using varying rates levied on the number of member months reported for the prior calendar year. Treasury is required to notify each insurance provider of the amount of its annual assessment, which is then payable in quarterly installments.

For the initial assessment Treasury will notify insurance providers subject to the IPAA of the total amount of the assessment, prorated for two quarters, based on the number of member months reported for 2017. This prorated assessment is payable in two equal installments due January 30, 2019, and April 30, 2019. Beginning in 2019 and thereafter, the Department is required to notify all taxpayers of the amount of the annual assessment by June 15, which will then be payable in quarterly installments beginning July 30.

Because HICAA has been repealed as of the effective date of the IPAA, the HICAA liability for 2018 is based on all paid claims prior to October 1, 2018. The final quarterly return to be filed by HICAA taxpayers was due on October 30, 2018. The filing date for the 2018 annual HICAA return remains February 28, 2019.

Recently Issued Guidance from Treasury

Revenue Administrative Bulletins

RAB 2018-25

List of Certified Community Foundations for Tax Year 2018 Michigan Business Tax Credit and Income Tax Credit

RAB 2018-26

List of Education Foundations for Tax Year 2018 Michigan Business Tax Credit and Income Tax Credit

RAB 2018-27

Income Tax – Taxability of Personal Service Income Received by a Nonresident Professional Athlete

RAB 2018-28

Alternative Apportionment for the Michigan Business and Income Taxes

RAB 2019-3

Sales and Use Tax Bad Debt Deduction

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

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Treasury has created a dedicated web page covering the IPAA on its website at www.michigan.gov/taxes. Instructions and other guidance for taxpayers subject to the IPAA are available on that page.

New Exemption for Sales to Veterans' Organizations

Passed and signed during last year's lame duck session, 2018 PA 530 (House Bill 5913) amends section 4q of the General Sales Tax Act (MCL 205.54q). Section 4q exempts sales to nonprofit organizations exempt from federal income tax under IRC 501(c)(3) and (4) and to nonprofits with a letter from Treasury issued before July 17, 1998. PA 530 expands that exemption to also apply to sales to veterans' organizations exempt from federal income tax under IRC 501(c)(19). For all sales potentially exempt under section 4q, property must be used by the purchaser primarily to carry out the purposes of the organization or to raise funds or obtain resources necessary to carry out the purposes of the organization as stated in the bylaws or articles of incorporation of the exempt entity.

In addition, there are price limitations for some types of property. The exemption does not apply to the sale of any single item used for fundraising purposes or to obtain resources if the sales price of the item exceeds a specified amount. For organizations exempt under IRC 501(c)(3) or (4) or under an exemption letter issued by Treasury, the amount for any single item is \$5,000. For veterans' organizations, the amount for any single item is \$25,000.

As is the case with other sales tax exemptions, the seller must retain in its records the identifying information of the purchaser and the reason for claiming an exemption. For more information about general sales and use tax exemption claim procedures and formats, please see Revenue Administrative Bulletin 2016-14.

All Things Advocate: Individual Income Tax Helpful Hints

As we all jump into the 2018 tax filing season, here are some helpful hints to make this year's individual income tax season a bit smoother for tax professionals and their clients.

1. We cannot stress this enough – read the instructions. There are several new and complex changes this tax year. It is imperative for those preparing tax returns to carefully read the new instructions.

2. There are changes to exemption allowances and tax rates for tax year 2018. They are:

- **\$4,050 for personal and dependent exemptions**
- **\$2,700 for special exemptions**
- **\$400 for qualified disabled veterans**
- **4.25% tax rate**

3. The federal 2017 Tax Cuts and Jobs Act tax reform provided a limitation on business losses that are included in AGI. Federal tax law limits business losses in excess of business income to \$250,000 for filers who are single or married filing separately or \$500,000 for joint filers. Those with a business loss limitation who filed a federal form 461 are required to file a MI-461.

4. The allowances and income ceilings for the Home Heating Credit have changed – please note those changes in the booklets or on Treasury's website. What hasn't changed is the deadline, yet many taxpayers miss this each year. The last day to file a 2018 Home Heating Credit is September 30, 2019. No filing extensions are allowed.

5. Remember that an extension of time to file is NOT an extension of time to pay. If you file an extension without paying your liability, you will be assessed penalties and interest.

6. Before checking the status of a tax return, please allow 2 full weeks from the date a confirmation is received that Treasury accepted the return and 6-8 weeks if the return was paper-filed. Status updates are done once a day, so if the status was "Pending" at 8 am, it will not be any different at noon. Please be patient.

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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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

New Sales & Use Tax Exemption for Businesses Providing School Buses and Transportation-Related Services to K-12 Public Schools

Many public schools use private-sector contractors to provide transportation for their students to/and from school and school-authorized activities. Some school transportation contracts involve the provision of the school bus and the school bus driver by the private-sector contractors. It is common for these contractors to purchase the buses used under these contracts exempt from sales tax and make the lessor election under MCL 205.95(4). Under this election, the contractors elect to pay any use tax due on receipts from the "rental or lease" of the buses in lieu of payment of sales or use tax on the full cost of the buses at the time they were purchased.

Because public schools are exempt entities, these contractors anticipate owing no use tax on the lease rental stream. However, as explained in Revenue Administrative Bulletin 2015-25, if an operator (e.g., driver) is supplied along with equipment (e.g., bus), and the operator is necessary for the equipment to perform as designed, then the transaction is a service and not a lease. Therefore, the elections made by the contractors are invalid (as there is no "lease" involved) and they would be liable for use tax on the full purchase price of the buses since the retailers of the buses would not have collected sales tax when the sales to the contractors were made.

2018 PAs 673 and 679 (the "Acts"), which become effective March 29, 2019, are primarily intended to eliminate the use tax liability that arises under these circumstances as well as to make the initial sale of the school buses to these private contractors exempt from sales tax. To accomplish those ends, the Acts amend MCL 205.54a and MCL 205.94 to provide exemptions for the "purchase," "sale," or "lease" of a "school bus or transportation-related services" and "parts or adaptive equipment affixed or to be affixed to a school bus which are used in the repair, maintenance, accommodation, or modification of a school bus" so long as the school bus or services "are primarily used in the performance of a contract entered into with an authorized representative of a school for the transportation of pre-primary, primary, or secondary school pupils to or from a school or school-related events authorized by the administration of the school."

The Acts contain their own definitions for the term "lease" so that the general definitions in MCL 205.51a(m) and MCL 205.92b(m) do not apply to these exemptions. Under the Acts, a "lease" simply means "any transfer of possession or control for a fixed or indeterminate term for consideration and may include future options to purchase or extend." The term "school" is defined by the Acts to mean "a public

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school or public school academy as those terms are defined in ... MCL 380.5” and a “school bus” is defined to mean “that term as defined in ... MCL 257.1807.” If the school bus is used to provide transportation-related services “other than to or from a school or school-related event authorized by the administration of the school to a nonexempt entity, then the amount paid for those services by the nonexempt entity is not exempt” under these new provisions.

Treasury Publishes Tobacco Tax Information Guide

In Michigan, tobacco products are subject to a pervasive set of regulations including those established by the Tobacco Products Tax Act, 1993 PA 327 (Act). The primary feature of the Act is the establishment of an excise tax imposed on the consumer of the tobacco products and collected from tobacco tax licensees at the time those products are imported, acquired, or sold for consumption in (or into) Michigan.

To facilitate collection of the excise tax and overall compliance with the Act, the Act also: (i) regulates the importation, transportation, export, distribution, possession, and sale of tobacco products in, into, and/or from Michigan; (ii) creates recordkeeping requirements regarding those products;

(iii) authorizes administrative inspections of licensees and retailers; and (iv) imposes significant consequences on those who violate the Act (e.g., seizure and forfeiture of contraband tobacco products, license denial, suspension or revocation, civil fines, and criminal charges).

To assist the various stakeholders with their compliance with the Act, Treasury recently published a 28-page Michigan Tobacco Tax Information Guide. The Guide is broken down into three sections – Licensee, Retailer, and General/Other – and uses color coding, subject headings, and other organizational cues to highlight or distinguish areas that have general applicability and those specifically tailored toward tobacco tax licenses and retailers.

Among the topics covered by the Guide are Tax Rates, Tax Return Filings and Payments, Licensing, Stamping, Recordkeeping, Audits, Administrative Inspections, Acquisition and Transportation of Tobacco Products, and Hearings (Licensure and Seizure). In addition, the Guide summarizes (on a single page) Treasury-issued Rules, Bulletins, and other guidance regarding the tobacco tax.

Treasury intends to update the Guide periodically to reflect changes in applicable legislation, case law, or department policy.

The current Guide (August 2018) is available online at: www.michigan.gov/tobaccotaxes

New Procedures Established for Alternative Apportionment Requests

Treasury recently released Revenue Administrative Bulletin 2018-28, which details the procedures and standards for applying an alternative method of apportioning income. Alternative apportionment is a remedy that either taxpayers or Treasury can seek when the application of the statutory apportionment formula fails to fairly reflect a taxpayer’s business activities in the state. Most states have enacted some form of an alternative apportionment relief provision, but the method to obtain that relief varies widely from state to state.

Treasury’s bulletin establishes the procedures applicable to both Treasury and taxpayers for use of an alternative apportionment method. The bulletin includes information on:

- how to file a proper request for alternative apportionment
- when the request must be submitted relative to the filing of the return
- when a response can be expected
- the presumptions and burdens of proof
- the legal and factual criteria required
- the disclosures that must be made
- the documentary support required
- the factors Treasury will consider in evaluating whether an alternative method should be applied

To learn more about the new procedures and guidelines, please review the [full bulletin](#).

Letter Rulings

LR 2018-1, Sourcing of Gains from the Sale of a Government-Issued License.

Technical Advice Letters

Use Tax on Loaners During Vehicle Repairs Under Recall or Warranty

Notices

Health Insurance Claims Assessment Act (HICAA) Repealed, Insurance Provider Assessment Act (IPAA) Enacted, Effective October 1, 2018

Notice to Taxpayers Regarding the Regulation and Taxation of Marihuana Act

Notice to Taxpayers Regarding the Repeal of the Health Insurance Claims Assessment Act

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RAB 2018-27: Nonresident Professional Athletes and “Duty Days”

The Michigan Income Tax Act (MCL 206.110(2)(a)) requires nonresidents to pay tax on income earned for personal services performed in Michigan. Historically, Revenue Administrative Bulletin (RAB) 1988-48 instructed nonresident professional athletes who compete in Michigan to compute the Michigan share of compensation using two separate methods. Professional football players were instructed to use a “duty days” method, which generally computed Michigan income based on the proportionate number of days that services were performed in Michigan. Professional basketball, baseball, and hockey players, in contrast, were instructed to compute Michigan income according to the proportionate number of games played in Michigan, termed the “games played” method.

RAB 2018-27 recently published on December 17, 2018, to unify the computation of nonresident professional athlete income across all professional sports. That is, all nonresident professional athletes are now instructed to compute their share of Michigan taxable income using the “duty days” method. This method computes the share of compensation earned in Michigan through a fraction that is based on the number of “duty days” performed in Michigan and elsewhere. A “duty day” generally refers to any day in which the player is required to perform services for a team under the terms of that player’s employment contract including, for example, practices, meetings, regular and postseason games, promotional appearances, and off-season training activities.

RAB 2018-27 supersedes the guidance previously included within RAB 1988-48. As such, taxpayers who are nonresident professional athletes should consult RAB 2018-27 when computing Michigan taxable income. Particular topics included within the RAB include:

- Personal services income subject to the “duty days” method;
- “Michigan” and “total” duty days; and
- Estimated income tax and withholding obligations.

For additional information, a copy of RAB 2018-27 is available on the Department’s website, www.michigan.gov/treasury.

Spotlight on Treasury's Tribal Affairs Office

Michigan is home to twelve federally-recognized Indian tribes that have a special status under federal law and treaties. Federally-recognized tribes are sovereign governments that exercise direct jurisdiction over their members and territory. Michigan acknowledges the sovereignty of federally-recognized tribes and generally does not have legal authority over tribal governments and tribal members when they are inside the tribe's territory – those lands designated as the tribe's reservation or trust lands. Instead, Michigan interacts with tribes on a government-to-government basis.

Because of this unique relationship between Michigan and the tribes, each executive branch department has a designated tribal liaison who coordinates all activity related to federally-recognized Indian tribes on behalf of that department. Treasury's Bureau of Tax Policy, Tribal Affairs Unit serves this role at Treasury. For many years, Walt Fratzke was the designated tribal liaison; he worked closely with the Governor's office and the tribes to negotiate tax agreements with ten of Michigan's twelve tribes, which he then administered until his retirement in 2018. Tax Policy's Dave Matelski and Julie Jensen are now Treasury's liaisons for tribal affairs.

Information regarding taxation of a Michigan tribe or tribal member, including copies of the tax agreements, can be found under the Special Filing Situations button on either Treasury's Individual Income Tax webpage or its Business Taxes webpage. The Tribal Affairs liaisons and staff can be reached at (517) 241-2185.

New Income Tax Exemptions and Deductions

2018 PA 589, amended the Michigan Income Tax Act to include an exemption for stillbirths and a deduction for certain wrongful imprisonment compensation. Beginning with tax year 2019, a taxpayer may claim an additional personal exemption in the tax year for which the taxpayer has a certificate of stillbirth from the Department of Health and Human Services.

Also beginning with tax year 2019, qualifying individuals who receive compensation for wrongful imprisonment under the Wrongful Imprisonment Compensation Act may deduct that compensation from adjusted gross income (AGI) if the compensation is included in their federal AGI for that year.

Changes to Financial Institution Taxation

2018 PA 460, makes significant changes to the definition and calculation of the tax base for financial institutions under the Corporate Income Tax. Under former law, a financial institution's tax base, its "net capital," was computed by averaging its net capital over a five-year period. For unitary business groups of financial institutions, each member's net capital was computed and summed to determine the group's tax base.

PA 460 redefines the tax base as "total equity capital," generally determined by the amount reported by the financial institution on certain federal regulatory reports or, in the case of a unitary business group of financial institutions, the amount reported by the top-tiered parent entity on its federal regulatory reports. The top-tiered parent entity is the highest-level entity within the unitary business group that is required to file certain federal regulatory reports. This provision of the legislation applies to tax years beginning after December 31, 2018.

The second significant change effected by PA 460 is to require that the tax base be calculated as of the close of the tax year rather than calculating it on a five-year average. This provision does not take effect until tax years beginning after December 31, 2020.

For more information and changes to taxpayer forms, instructions, and additional guidance, taxpayers should monitor Treasury's website at www.michigan.gov/taxes.