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In this issue:

Tax Relief for Individuals & Businesses Due to Natural Disasters.....	1
Due Dates for Estimated Tax Payments.....	1
The “Bottle Bill” - More Than Just a 10¢ Refund	2
<i>Vulic v Michigan Dep’t of Treasury</i>	3
Statement of Acquiescence/Non-Acquiescence Regarding Certain Court Decisions	4
Certain Certificated Credits Require Recapture	4
Motor Fuel Tax Act Advisory for Suppliers and Terminal Operators.....	5-6
<i>Labelle</i> Interest Waiver Deadline Drawing Near.....	6
All Things Advocate: Benefits of Michigan Treasury Online (MTO).....	7
About Treasury Update	8
Streamlining of Power of Attorney Process Enters Rulemaking Phase.....	8
<i>Garfield Mart, Inc v Dep’t of Treasury</i>	9
Recently Issued Guidance from Treasury.....	9

Tax Relief for Individuals and Businesses Due to Natural Disasters

Treasury is providing state tax relief to businesses and individuals affected by recent natural disasters. Individual and business taxpayers who were affected by the June 22-23 severe storms and flooding in Bay, Gladwin, Isabella, and Midland counties in Michigan, as well as Hurricane Harvey and Hurricane Irma victims now have additional time to file state tax returns, with penalties and interest (incurred due to disaster-related delays) waived. Additional information can be found at <http://www.michigan.gov/treasury/0,4679,7-121--447338--,00.html>

Due Dates for Estimated Tax Payments

When are quarterly payments not due every three months? When a taxpayer makes quarterly estimated tax payments, which are not – in fact – every three months.

You may pay your estimated 2018 tax in full by April 17, 2018, or you may pay in equal installments. Estimated installment payments for tax year 2018 are due on April 17, 2018, June 15, 2018, September 17, 2018, and January 15, 2019. If you are a fiscal year filer, the installment payment due dates are the same as your federal estimated payment due dates.

If you made estimated payments for your 2017 tax year, Treasury will send you personalized vouchers for your 2018 tax year, unless you used a tax preparer or commercial software. If you do not receive personalized vouchers, you can obtain a Michigan Estimated Individual Income Tax Voucher (MI-1040ES) when you visit www.michigan.gov/taxes. Or you may choose to make your estimated payments electronically instead of mailing a payment with the personalized form. To make electronic payments, visit www.michigan.gov/iit.

The “Bottle Bill” - More Than Just a 10¢ Refund

Michigan’s Beverage Containers Act, more commonly known as the “Bottle Bill” law, prohibits Michigan retailers from selling consumers certain beverages in nonreturnable beverage containers for any off-premises consumption. MCL 445.572(1).

Beverage:

[A] soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic, carbonated drink; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink. MCL 445.571(1)(a).

Of significant note, the definition of beverage in the above-referenced statute excludes hard cider, as cider does not meet any of the criteria listed there.

Beverage Container:

[A]n airtight metal, glass, paper or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains 1 gallon or less of a beverage.

A purchaser must pay a ten-cent deposit on each returnable beverage container and the retailer is required to refund the purchaser’s ten-cent deposit for any returns of clean, empty beverage containers of the same size, kind, and brand of beverage that the retailer offers for sale. MCL 445.571(d). A dealer may, but is not required to, accept from a person empty returnable containers for a refund in excess

of \$25.00 on any given day. MCL 445.572(10). The statute leaves it up to the dealer whether to enforce a daily limit.

While a dealer may choose to set a “daily limit” on refunds from a single purchaser, they must provide return opportunities for the brands they sell or offer for sale.

MCL 445.572(2) directs that:

[A] dealer who regularly sells beverages for consumption off the dealer’s premises shall provide on the premises... a convenient means whereby the containers of any kind, size, and brand sold or offered for sale by the dealer may be returned by, and the deposit refunded in cash to, a person whether or not the person is the original customer of that dealer, and whether or not the container was sold by that dealer.

In other words, if the returnable is a brand sold by that dealer, it must redeem the returnable and refund the deposit in cash.

Returnable Containers

How will you know whether a container is returnable? Returnable containers are marked “MI - 10¢.” The statute prohibits the attempted return of beverage containers that the purchaser knows or should have known were not purchased within this state. Depending on the extent of the violation, punishment ranges from fines to

prison time.

Some interesting facts that you may not have known about the Bottle Bill:

1 The Michigan Liquor Control Commission determines the size and shape of the containers acceptable for use within this state and will only certify one beverage container per manufacturer in each size classification.

2 Seventy-five percent of the money generated by paid deposits that are never refunded goes to a cleanup and redevelopment fund to fight community pollution, such as ensuring safe drinking water and facilitating educational programs for the general public as well as businesses on the safe handling of hazardous material (to keep them out of our water supply).

3 The Bottle Bill has been credited with:

- Preventing litter
- Promoting recycling and reducing waste
- Creating jobs
- Providing financial incentives for recycling
- Helping the environment
- Producing high-quality recyclable materials
- Encouraging producer and consumer responsibility

In a published opinion issued

Vulic v Michigan Dep't of Treasury

Purchaser of untaxed cigarettes received in Michigan from out-of-state and then shipped out of Michigan held personally liable for tobacco tax on those cigarettes

September 26, 2017, *Vulic v Dep't of Treasury*, ___ Mich App ___ (Docket No. 333255), the Michigan Court of Appeals held that Mr. Vulic was personally liable for taxes imposed under the Tobacco Products Tax Act (TPTA) for the 359,800 untaxed and unstamped cigarettes he purchased from an out-of-state business, had delivered to his Michigan residence, and ultimately exported to a friend in another country. Holding Mr. Vulic personally liable for these taxes, the Court of Appeals ultimately upheld the Michigan Tax Tribunal's grant of summary disposition in favor of Treasury, but did so for different reasons than those cited by the Tax Tribunal.

From December 1, 2005, until November 27, 2009, Mr. Vulic purchased 1,799 cartons of cigarettes from an out-of-state, unlicensed distributor who delivered those cigarettes to his home in Michigan. Mr. Vulic purchased these cigarettes with funds from an account bearing his name (he was either reimbursed or paid in advance by his friend) and then shipped them to his friend in Bosnia-Herzegovina for sale at retail in that country. No taxes were paid for these cigarettes, the cigarettes were not stamped, and neither Mr. Vulic nor his friend were licensed under the TPTA to sell or receive cigarettes in Michigan. Therefore, Treasury determined that Mr. Vulic

imported, acquired, sold and was in control or possession of the cigarettes in violation of the TPTA – making Mr. Vulic personally liable for the \$2.00/pack TPTA tax under MCL 205.428(1).

On appeal, Mr. Vulic argued that he was not a “consumer” of the cigarettes as defined by MCL 205.427a because he bought and exported all of the cigarettes within 24 hours of receipt, for his friend in Bosnia-Herzegovina to resell them and pay all applicable taxes there. He also argued that he did not engage in the “sale” for resale of the cigarettes because there was no consideration involved, he was a “gratuitous bailee,” who passed along the cigarette on to his friend at cost and did not own them.

The Court of Appeals rejected both of these arguments. The TPTA defines a “sale” as a transaction “by which the ownership of tangible personal property is transferred for

consideration and applies also to use, gifts, exchanges, barter, and theft.” MCL 205.422(r). The Court further stated that TPTA taxes may be imposed “not only on the ‘ultimate’ consumer of cigarettes, but on licensees and

other persons. MCL 205.427(3), (8).” The Court explained that the “legislative intent expressed in MCL 205.427a is merely that the persons assessed taxes under the TPTA will ultimately pass those taxes along to consumers.” Therefore, the fact that Mr. Vulic was, at a minimum, in “control or possession” of the cigarettes contrary to the TPTA, made him liable for the

TPTA tax under MCL 205.428(1). The Court found Mr. Vulic liable for the tax and remanded the case to the Tax Tribunal to enter an order granting the Department's motion for summary disposition.



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

Certain Certificated Credits Require Recapture

Treasury reminds taxpayers with certificated credits (defined in MCL 208.1107(1)) under the Michigan Business Tax Act (MBTA) that some of these credits are subject to recapture or "claw back" if the taxpayer fails to comply with the conditions pursuant to which the credit was awarded or sells or disposes of certain property prematurely. For example:

The Historic Preservation Credit, MCL 208.1435

This credit is available to a taxpayer that has rehabilitated a historic resource pursuant to a plan approved by the Michigan State Housing Development Authority (MSHDA). However, if the historic resource is sold or disposed of within 5 years after the historic resource is placed in service, the taxpayer may be required to add back to its Michigan Business Tax (MBT) liability a specified percentage of the credit amount previously claimed. MCL 208.1435(12).



The Brownfield Redevelopment Credit, MCL 208.1437

For multiphase projects, if all components of the project are not completed within 10 years of the preapproval letter, the taxpayer may be required to pay back all credit amounts claimed or assigned for all components. MCL 208.1437 (10).

Taxpayers should check the MBTA to determine if their certificated credit is subject to recapture. Additionally, taxpayers should regularly communicate with their state partners to the plan or agreement, (MSHDA, Michigan Economic Development Corporation, etc.) to avoid missing a deadline or failing to comply with criteria upon which the certificated credit was issued.

Motor Fuel Tax Act Advisory for Suppliers and Terminal Operators

Fuel suppliers play a vital role in the tax and regulatory scheme established under the Motor Fuel Tax Act (“MFTA”), 2000 PA 403. For this reason, the MFTA declares that a person shall NOT operate in Michigan as a “supplier” (defined in MCL 207.1005(i)) unless licensed as a supplier under the MFTA. MCL 207.1070(1).

A person MUST be licensed as a supplier when the person is a position holder in a terminal. MCL 207.1005(i)(iii)(A), 207.1008(7), and 207.1053(4)(a). The MFTA defines a “position holder” as a “person who has a contract with a terminal operator for use of storage facilities and other terminal services for motor fuel at the terminal, as reflected in the records of the terminal.” MCL 207.1004(j).

Licensed suppliers must collect and remit the 26.3 cents per gallon excise tax imposed by the MFTA on gasoline and diesel fuel under section 8 of the MFTA, MCL 207.1008, and the 3 cents per gallon privilege tax imposed on aviation fuel under the Aeronautics Code of the State of Michigan, MCL 259.203. Although not imposed under the MFTA, the aviation fuel privilege tax is collected and remitted in the same manner and method and at the same time as the MFTA tax on motor fuel. MCL 259.203(1).

The licensed supplier must collect and remit both of these taxes from marine vessels, refineries or terminals in Michigan when fuel is disbursed across the “rack”. MCL 207.1008, 207.1071, and 259.203. Accordingly, these taxes are NOT imposed, collected, billed, or remitted on fuel that is within the “bulk transfer/terminal system” (e.g., a refinery, terminal, or pipeline) as defined in MCL 207.1002(i). MCL 207.1008(2).

The MFTA includes various sanctions for those who operate as suppliers without a supplier license including, but not limited to, civil penalties and criminal felony and misdemeanor charges. MCL 207.1053(8) and (9), 207.1070(3).

Unlicensed Suppliers - Exposure for Terminal Operators

Terminal operators also have significant exposure under the MFTA when suppliers with whom they transact do not maintain the required supplier license. For example, a terminal operator in Michigan is jointly and severally liable with the supplier for the tax imposed under MCL 207.1008 if the owner of the motor fuel (e.g., position holder), other than the terminal operator, is not a licensed supplier. MCL

207.1084(1)(a). Likewise, a terminal operator may be liable for the MFTA tax not allocable to any licensed supplier (e.g., fuel disbursed from a terminal over the rack to an unlicensed supplier) including, but **not** limited to, lost or unaccounted for motor fuel. MCL 207.1084(3). In addition, if the number of gallons lost or unaccounted for exceeds 5% of the total gallons removed from a terminal across the rack, the terminal operator is liable for a penalty of 100% of the tax due. MCL 207.1084(5). Misdemeanor charges may also be brought against a terminal operator for these violations. MCL 207.1136.

Returning Tax-Paid Fuel to Terminal Storage

Occasionally, a supplier may have tax-paid fuel that will be returned to a Michigan terminal for disbursement over the rack at a later date.

EXAMPLE:

Supplier ABC purchases fuel from another state, imports it into Michigan and incurs the obligation to remit the MFTA tax. MCL 207.1008(1)). Supplier ABC sells that fuel to Supplier XYZ at a price that includes the tax. Supplier XYZ then disburses that fuel into terminal storage.

(Continued on page 6)

The parties must file the appropriate schedules to report these transactions and convert the fuel from tax-paid to tax-unpaid fuel to avoid unlawful commingling:

- **Supplier ABC:** Supplier Schedule of Receipts, Schedule 3 (gallons imported from another state) and Supplier Schedule of Disbursements, Schedule 5 (gallons of taxable fuel removed, sold or imported).
- **Supplier XYZ:** Supplier Schedule of Receipts, Schedule 1 (gallons of fuel imported/acquired Michigan tax paid to supply source) and Supplier Schedule of Disbursement, Schedule 10F (gallons delivered into tax-free terminal storage).
- **Terminal:** Terminal Operator Schedule of Receipts, Schedule 15A.

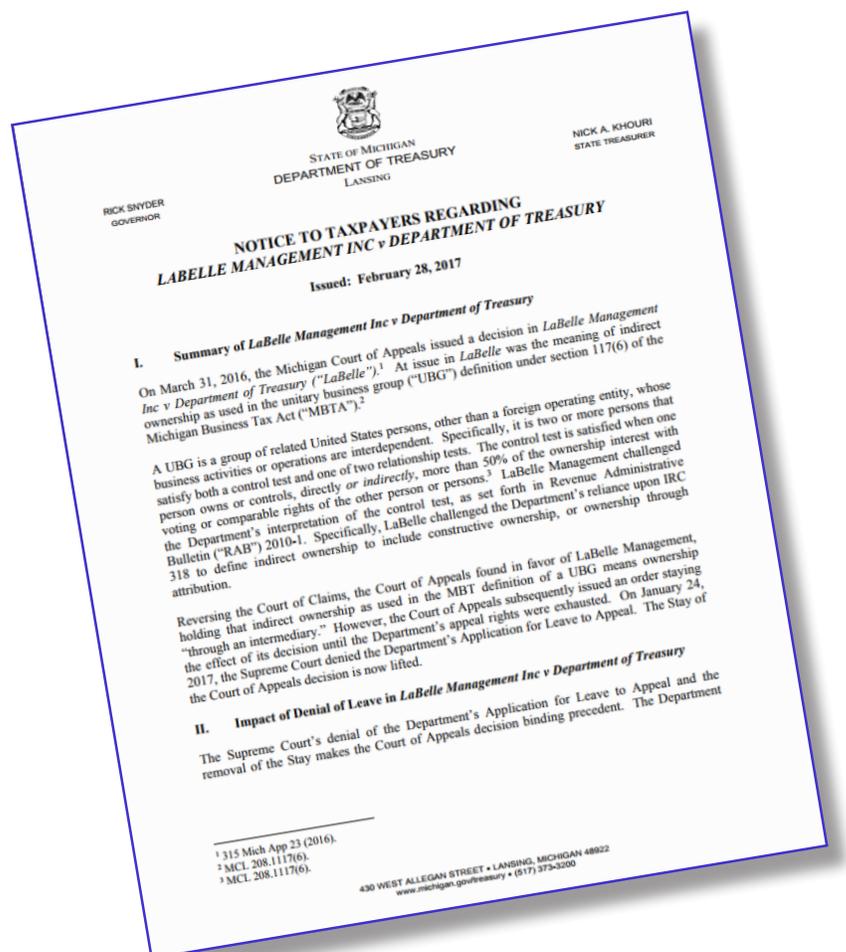
Supplier XYZ's filing of Schedule 1 will generate a credit to Supplier XYZ for the tax. Schedule 10F must be reported with Schedule 1 to generate the credit on Supplier XYZ's return.

LaBelle Interest Waiver Deadline Drawing Near

On March 31, 2016, the Michigan Court of Appeals decision, *LaBelle Management Inc v Dep't of Treasury (LaBelle)* 315 Mich App 23 (2016), eliminated constructive ownership and ownership through attribution as a means to satisfy the unitary business group (UBG) control test, potentially affecting the filing status of entities under both the Michigan Business Tax (MBT) and the Corporate Income Tax (CIT).

In a Treasury Notice dated February 28, 2017, affected entities were directed to file amended UBG or original stand-alone returns for those tax periods within the statute of limitations period, correcting their filing status. Although no penalties will be imposed upon these corrected filings, interest must be paid on any deficient tax liability.

The Department has agreed to waive the associated interest for taxpayers who file *LaBelle*-corrected returns on **or before December 31, 2017**. This deadline is fast-approaching and will expire at the end of this calendar year. Taxpayers are encouraged to take advantage of this window of opportunity before it's too late.



All Things Advocate: Benefits of Michigan Treasury Online (MTO)

By the Office of the Taxpayer Advocate

If you are not already using Michigan Treasury Online (MTO), now is an excellent time to start. Since 2016, MTO staff have made a number of enhancements to the services available to business taxpayers and practitioners, with many of the ideas for those improvements coming from customers. Additionally, in January 2018, MTO will get a facelift, enhancing the online services available. One of the biggest benefits to MTO is that it provides REAL TIME access 24/7, 365 days a year – anytime, anywhere.

Benefits of MTO:

- Single sign-on application to navigate and access all MTO - related functions.
- Full business registration access to view and edit registration information.
- Retrieve and print Treasury correspondence and Sales Tax License.
- Ability to electronically submit Authorized Representative Declaration, Form 151.
- File new or amended SUW returns for tax years 2015 and beyond.
- View and print SUW returns, payment histories, and Treasury correspondence for tax years 2015 and beyond.
- Flexibility in making payments as early as the next business day or post-dating payments.
- “Fast File SUW” is the electronic equivalent of mailing an original paper return and/or payment with

the advantage of being fast, free, easy and verifiable.

- “Fast Pay” is available for processing not only SUW payments but is also now able to accept MBT/CIT payments.

Save Time and Money

If you’re not sold yet, consider this: using MTO will avoid common SUW reporting errors that cost time and money.

Errors such as:

- Not filing the required reconciliation annual return which results in assessments.
- Subtotaling Sales Tax & Use Tax (Sales & Rentals) incorrectly on the Use Tax Purchases section of a return resulting in processing delays.
- Using the incorrect tax year return. For example, you cannot file 2016 tax information on a 2015 tax year return even if you cross-out, white-out or otherwise change the tax year that is printed on

the form. Submitting returns on incorrect forms results in the form being processed to the tax year originally listed on the form.

- Submitting an “additional” return instead of using the “amended” return resulting in previously reported tax figures being added to the new tax figures rather than replacing them.

Still not sold on using MTO? I encourage you to check out the MTO web page at: www.michigan.gov/mtobusiness and the Treasury Outreach Events Calendar at: www.michigan.gov/treasury for future MTO outreach events being held throughout the state.

Regards,
Robin L. Norton
Taxpayer Advocate

We’re listening!

Since our launch in 2015, MTO users have been providing us with valuable feedback on how to make it better. With MTO you can:

- Manage your business registration 24/7**
- File and pay Sales, Use and Withholding (SUW) taxes and Essential Services Assessment (ESA)
- Bulk E-file** SUW returns/payments
- Pay Michigan Business Tax (MBT) and Corporate Income Tax (CIT) online
- COMING January 2018:** Enhanced navigation and improved website!

Michigan Treasury Online (MTO)
mto.treasury.michigan.gov

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

Streamlining of Power of Attorney Process Enters Rulemaking Phase

As reported in the March 2017 issue of Michigan Department of Treasury *Update*, Treasury is working to streamline the power of attorney process to better facilitate taxpayers' authorization of representation before Treasury. Treasury has revised Form 151, Authorized Representative Declaration (Power of Attorney), which taxpayers can download from Treasury's webpage www.michigan.gov/taxes. Treasury is also revising Taxpayer Bill of Rights rules that generally govern the designation of an authorized representative.

The revised rules clarify and add flexibility to implied and express authorization for disclosure of taxpayers' confidential information, modify the scope and manner in which Treasury may discuss tax return information with return preparers, and set forth the procedures taxpayers follow to request Treasury to send copies of letters and notices to representatives concerning tax disputes under MCL 205.8. The proposed rules also explain the remedies available to taxpayers who requested that Treasury send copies of letters and notices to representatives, but were denied appeal rights because of Treasury's failure to do so.

Treasury has filed the proposed rules with the Michigan Office of Regulatory Reinvention. The proposed rules are available for review, at www.michigan.gov/orr. A public hearing to receive comments on the proposed rules will occur December 21, 2017, between 9a.m. - noon at the Richard H. Austin building, 430 West Allegan St, Lansing, MI 48922 (in the State Treasurers Board Room).



Garfield Mart, Inc v Dep't of Treasury

In *Garfield Mart, Inc v Dep't of Treasury*, __ Mich App __ (Aug 8, 2017), the Michigan Court of Appeals held that the sale of personal identification numbers (PIN) for prepaid telephone minutes constitutes the taxable sale of a prepaid authorization or reauthorization number for telephone use pursuant to MCL 205.52(2)(b). However, the court also held that the sale of “top-up” prepaid telephone minutes did not constitute the taxable sale of “a prepaid telephone calling card or a prepaid authorization (or reauthorization) number for telephone use” pursuant to MCL 205.52(2)(b). Finally, the court upheld Treasury’s use of an indirect audit under MCL 205.68(4) and found that Garfield Mart had not provided sufficient evidence to prove Treasury’s audit or resulting assessment incorrect.

In the top-up transactions at issue, the customer or the clerk entered the customer’s phone number into a terminal and the customer purchased minutes to add to their account. The court held that a telephone number cannot constitute either a prepaid telephone card or a prepaid authorization or reauthorization number for telephone use as a matter of law. The court used a combination of dictionary definitions to define “prepaid authorization number for telephone use” as “a number representing a prepaid account used by the owner to assess the purchased telephone services.” Based on this definition, the court concluded that a prepaid cell phone number is a number assigned to a phone to call or communicate with it, and not a number that is used to authorize prepaid cell phone minutes.

Treasury assessed *Garfield Mart* a negligence penalty for the entire assessment, but because the court found that the top-up transactions were not taxable, it remanded the case back to the Michigan Tax Tribunal to adjust the penalty.

Garfield Mart is a published decision; therefore, it is binding on Treasury and taxpayers. Treasury has sought leave to appeal this decision to the Michigan Supreme Court.

Recently Issued Guidance from Treasury

Revenue Administrative Bulletins

- **RAB 2017 – 16**
Individual Income Tax – Treatment of Rental Income as Business or Nonbusiness Income
- **RAB 2017 – 21**
Individual Income Tax – Individual Retirement Arrangements

Other Guidance

- Notice to Taxpayers Regarding the Conclusion of Multistate Tax Compact Election Litigation

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