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New for Customer Refund Requests: Form 5633

In the September 2018 issue of Treasury Update, *Simplified Sales and Use Tax Refund Procedures Coming in 2019*, we informed readers about new, simplified sales and use tax refund procedures. As a result of Public Act 168 of 2018 and effective January 1, 2019, a purchaser may request a refund directly from Treasury in circumstances where that purchaser failed to present a claim of exemption or otherwise notify the seller of an available exemption from sales or use tax at the time of purchase.

The new law requires Treasury to develop a form for purchasers to claim a refund under these circumstances, which will be Form 5633, *Purchaser Refund Request for Sales and Use Tax Exemptions*. On the form a purchaser will provide the identifying information of the purchaser, the seller, and the purchase for which a refund of tax is claimed. Form 5633 also contains a statement—which must be signed by the seller—indicating that the seller paid tax on the original transaction and has not, and will not, seek a refund of that tax. In addition, a record of the purchase (e.g., a receipt, invoice, or purchase order) as well as a proper exemption claim must be included with Form 5633 or the claim will be considered incomplete.

Form 5633, *Purchaser Refund Request for Sales and Use Tax Exemptions*, will be available on Treasury’s website beginning January 1, 2019.

Recently Issued Guidance from Treasury

Revenue Administrative Bulletins

RAB 2018-19
Successor Liability

RAB 2018-21
Individual Income Tax
Deduction of Retirement
and Pension Benefits
Received from a Public
Retirement System of
Another State

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

Deemed Dividend Income from Repatriation of Foreign Earnings - No Deferred Tax Payments for Individuals and Trusts

The federal Tax Cuts and Jobs Act moves the United States from a worldwide tax system to a territorial tax system. As part of the transition, the previously untaxed earnings and profits of certain foreign corporations owned by U.S. persons must be repatriated. Under IRC 965, repatriation occurs through a deemed dividend of the earnings and profits. Individuals and trusts may owe Michigan income tax on the income either as dividend income attributed to the state of residence or as business income allocated or apportioned to Michigan. Corporations will not be taxed on deemed dividend income because the Michigan Corporate Income Tax excludes foreign sourced dividends from taxable income.

An IRC 965(h) election allows taxpayers to pay the federal tax on deemed dividends over 8 years. For S corporation owners, IRC 965(i)(1) allows deferral of the tax payment until the occurrence of a “triggering event” such as termination or liquidation of the entity. However, neither IRC 965(h) nor 965(i)(1) apply to the Michigan tax. Under section 311 of the Michigan Income Tax Act (MITA), the entire tax is due by the date the original return is due, without regard to any filing extension. The intent of MITA is to have Michigan taxable income and federal taxable income be the same except for certain statutory adjustments. MITA adopts the Internal Revenue Code to calculate adjusted gross income, not for determining the date that payment is due on that income.

CIT Tax Rate Changes for Some Insurance Companies

The Corporate Income Tax (Part 2 of the Income Tax Act) levies a tax on insurance companies equal to 1.25% of gross direct premiums written on risk located or residing in Michigan. MCL 206.635. Public Act 222 of 2018 amends section 635 to tax a portion of that tax base at a different rate. Beginning January 1, 2019, gross direct premiums attributable to qualified health insurance premiums are taxed at 0.95%. PA 222 defines “qualified health insurance policies.”

Beginning with calendar year 2020, the rate for premiums attributable to qualified health insurance policies is subject to change annually. A calculation is included in PA 222 whereby Treasury computes the preceding year’s “savings” to all insurance companies as a result of the reduced rate and sets the rate for qualified health policy premiums

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for the current tax year so that the annual savings do not exceed \$18,000,000. If a year's savings ultimately exceeds \$18,000,000, the following year's qualified health insurance policy premiums rate will be increased enough to make up for that overage. Treasury's rate calculation must be completed by October 1 of each year.

Insurance companies and their tax professionals may need to evaluate the types of insurance they write in Michigan to determine if they will be impacted by the new rate. The effect on estimated payments should also be considered since the annual liability of an affected company may change significantly from tax year 2018 to 2019.

New Limits for Fund-Raising Sales by Nonprofits

Public Act 249 of 2018 amends MCL 205.54o (section 4o) in the General Sales Tax Act, which provides an exemption for sales made by certain nonprofit entities. Prior to the Act, sales of tangible personal property for fund-raising purposes by a school, church, hospital, parent cooperative preschool, or nonprofit organization exempt under section 4q(1)(a) or (b) ("eligible nonprofit entities") that had aggregate sales at retail in a calendar year of less than \$5,000 were exempt from tax. If the entity's annual sales exceeded \$5,000, tax was due on all sales, including the first \$5,000.

PA 249 increases the limit on exempt sales and creates a separate limit on aggregate sales. Now, an eligible nonprofit entity may qualify for the exemption only if it has aggregate sales at retail in the calendar year of less than \$25,000. However, if a nonprofit entity qualifies, only its first \$10,000 in sales of tangible personal property for fund-raising purposes is exempt. As was the case before PA 249, tax collected from a customer on an exempt sale must be remitted to Treasury or refunded to the customer.

Example: Nonprofit A makes the following sales for the 2018 tax year: \$6,000 for fund-raising in January through August, \$3,000 for fund-raising in September through December, and aggregate sales at retail for the entire year of \$10,000. Nonprofit A's \$9,000 of sales for fund-raising are exempt. Conversely, if Nonprofit B makes \$4,000 of sales for fund-raising in 2018 but has aggregate sales of \$30,000, Nonprofit B is required to pay tax on all \$30,000 of sales.

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

Court of Appeals Upholds Treasury Assessments in Recent Unpublished *Pinnacle Greenbriar et al* Opinion

In the recent unpublished Court of Appeals case, *Pinnacle Greenbriar v Dep't of Treasury*, (October 16, 2018)(COA Docket No. 340646) the Court of Appeals affirmed the Michigan Tax Tribunal's opinion upholding Treasury's assessments for unpaid taxes and interest due under the State Real Estate Transfer Tax (SRETT) Act. In general, the transferor of an interest in real property must pay SRETT when the written instrument of conveyance (deed) is recorded.

In the *Pinnacle Greenbriar* opinion, the petitioner, real estate owner/ developer purchased and developed land, selling vacant parcels to buyers via land contracts. Simultaneously, buyers also entered into a construction contract with a builder that was affiliated with the developer company for the construction of a residence. The land contract incorporated by reference the construction contract and conditioned conveyance of full legal title and execution of a warranty deed on the payment of both the land contract and the construction contract. The land contracts were never recorded. When construction of a residence was complete, and the buyer fully paid both the land contract and construction contract, a warranty deed was issued by the developer company to the buyer. The warranty deeds were then recorded, but SRETT was paid based only on the value of the vacant land.

Treasury audited the developer and determined that the SRETT was underpaid. For each conveyance, the transfer tax should have been paid on the total of the amounts listed on both the land contract and the construction contract. Treasury issued assessments to the developer for the underpayments, the developer contested these assessments, and litigation ensued.

The developer argued that the tax should be based only on the value of the vacant parcels. The court rejected that argument, concluding that the transfer tax base is the value of the property transferred by the taxable instrument. In this case, the value of the properties transferred by the developer paid in exchange for the warranty deeds included the cost of both the vacant parcels and the homes.

Update on the Insurance Provider Assessment Act

As reported in the September 2018 issue of Treasury Update, *Health Insurance Claims Assessment Act Replaced by Insurance Provider Assessment Act*, legislation creating a new multi-tiered health insurance tax was signed into law on June 11, 2018. That legislation, 2018 PA 175, created the Insurance Provider Assessment Act (“IPAA”), which institutes a new health care-related tax incorporating both a fixed and variable rate structure. Public Act 173 of 2018 repeals the current Health Insurance Claims Assessment Act (“HICAA”) as of the date that the assessment under the IPAA begins to be levied.

The IPAA will apply at varying rates to non-Medicaid health insurers, prepaid inpatient health plans (providers of Medicaid behavioral health services), and Medicaid managed care services. The revenue produced by the IPAA will support Michigan’s Medicaid program.

Federal law requires that state health care-related taxes used to support Medicaid reimbursement be both “broad-based” and “imposed uniformly.” However, states are permitted to submit waiver applications requesting that a specified health care-related tax be treated as broad-based and uniform if the tax at issue can meet certain complex statistical thresholds. If the tax at

issue is shown to meet the stated statistical thresholds, the waiver will be approved.

Because the IPAA was designed to meet the statistical thresholds, PA 175 requires the Michigan Department of Health and Human Services (“DHHS”) to request a waiver of the broad-based and uniformity provisions governing state health care-related taxes, for a period of at least 5 years. The assessment imposed by the IPAA will begin to be levied on the first day of the calendar quarter in which DHHS notifies Treasury that the federal waiver permitting implementation of the IPAA has been approved.

DHHS timely submitted the waiver request, as required by the IPAA legislation. To date, however, the federal Medicaid authorities have not responded to the waiver request. Accordingly, the new tax has not yet been implemented, and HICAA remains in place until notice of the approval of the waiver request has been received by Treasury. HICAA payers should therefore continue to pay that assessment until further notice. Please note that, shortly after the notification of waiver approval has been received from DHHS, Treasury will publish on its website a taxpayer notice containing additional information about discontinuing HICAA payments as well as the overall transition to the IPAA. Taxpayer notices can be found on Treasury’s website under the “Reports & Legal” tab.

Drop Shipment Reporting Requirements

The sale of tangible personal property as part of a drop shipment are exempt from sales and use taxes if certain conditions are met. MCL 205.54k and MCL 205.94i. A “drop shipment” is a transaction where all of the following occur:

- A retail seller, that is not licensed for sales or use tax in Michigan, makes a retail sale to a Michigan purchaser;
- The retail seller purchases the property from a third-party and provides a resale exemption claim; and,
- The retail seller directs the third-party to ship the property directly to the Michigan purchaser.

Additionally, the sales and use tax acts require that, for each transaction, the third-party shipper must annually provide Treasury any information required by the Governing Board of the Streamlined Sales and Use Tax Agreement (SSUTA) in addition to the following information in a form prescribed by Treasury:

(a) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is sold for resale.

(b) The name, address, and, if readily available, the federal taxpayer identification number of the person to whom the property is shipped in Michigan.

The SSUTA Governing Board does not currently require any information in addition to what the sales and use tax acts require; therefore, Treasury does not require an annual form. Treasury only requires that the above information be maintained and provided upon request by Treasury.

All Things Advocate: What's with the ARD?

The *Authorized Representative Declaration (ARD)*, Form 151, referred to by some as the “power of attorney” form was last updated June 2017. While it has been over a year since the last update, there continue to be more submittals denied than we like to see. Completing the form is required if a taxpayer wants Treasury to disclose confidential tax information to anyone other than the taxpayer. To assist taxpayers in filing out the form correctly, the department published FAQs, as well as a “how to” video. Additionally, examples of correctly completed business and individual ARD forms were placed online. Unfortunately, Treasury continues to receive incomplete or incorrectly filed ARD forms.

If you find the ARD forms you submit are frequently denied, please note some of the common reasons for denial (see Example 1).

1. Not entering information for each box marked “required” will result in denial. If it indicates “required” it must be filled out. In the example below, this ARD would be denied because the taxpayer’s telephone number is missing.

PART 1: TAXPAYER OR DEBTOR INFORMATION		
Taxpayer's Name and Address (Required) If a business, include any DBA, trade or assumed name. If filing joint return, include spouse's name. Jane Smith 123 Street Drive City, MI 49010	FEIN, ME or TR Number (Required for business taxes) 12-3456789	
Taxpayer's Social Security Number (Required if no FEIN ME or TR Number listed)	Spouse's Social Security Number	
Taxpayer's E-mail Address janesmith@email.com	Daytime Telephone Number (Required)	Fax Number

2. Not selecting an authorization type and/or indicating conflicting information under Part 4 will result in the ARD being denied. Below are two examples of this type of error:

A. No authorization type selected.

PART 4: TYPE OF AUTHORITY					
If you check a box, you authorize your representative to act in that capacity.					
<input type="checkbox"/> 1. Receive and inspect confidential information (upon request only). (To have your representative receive copies of all future letters and notices involving a tax dispute [other than City Income Tax], you must complete Part 5.)					
<input type="checkbox"/> 2. Make oral or written presentation of fact or argument.					
<input type="checkbox"/> 3. Sign returns.	You may restrict authority in boxes 1-4 to a specific matter (Not required)				
<input type="checkbox"/> 4. Enter into agreements.	<table border="1"> <tr> <th>Tax Type, Debt or Fee</th> <th>Year(s) or period(s)</th> </tr> <tr> <td></td> <td></td> </tr> </table>	Tax Type, Debt or Fee	Year(s) or period(s)		
Tax Type, Debt or Fee	Year(s) or period(s)				
<input type="checkbox"/> 5. All of the above.					

B. Specifications given, but no authorization type:

PART 4: TYPE OF AUTHORITY					
If you check a box, you authorize your representative to act in that capacity.					
<input type="checkbox"/> 1. Receive and inspect confidential information (upon request only). (To have your representative receive copies of all future letters and notices involving a tax dispute [other than City Income Tax], you must complete Part 5.)					
<input type="checkbox"/> 2. Make oral or written presentation of fact or argument.	Specifications given - tax types & years				
<input type="checkbox"/> 3. Sign returns.	No specifications given on what they are authorized to do				
<input type="checkbox"/> 4. Enter into agreements.	You may restrict authority in boxes 1-4 to a specific matter (Not required)				
<input type="checkbox"/> 5. All of the above.	<table border="1"> <tr> <th>Tax Type, Debt or Fee</th> <th>Year(s) or period(s)</th> </tr> <tr> <td>SUW</td> <td>2015-2017</td> </tr> </table>	Tax Type, Debt or Fee	Year(s) or period(s)	SUW	2015-2017
Tax Type, Debt or Fee	Year(s) or period(s)				
SUW	2015-2017				

3. An authorized party not signing the form under Part 6 will result in denial. The definitions on the back of the ARD form provide that an authorized party is someone with authority to make decisions for the company. Examples of an authorized party are an owner, president, or officer. “Administrative support” would not be considered an authorized party.

PART 6: TAXPAYER OR DEBTOR AUTHORIZATION			
By signing this form, I authorize Treasury to communicate with my representative consistent with the authority granted.			
Signature (Required)	Print Name (Required) john smth	Title (Required if a business) Admin support	Date (Required)
Spouse's Signature	Print Name	Title	Date (Required if spouse signs)
TREASURY USE ONLY			
<input type="checkbox"/> Accepted	<input type="checkbox"/> Rejected	Division Name	Reviewer Initials

We hope you have found these examples helpful. Go to <https://www.michigan.gov/taxes/0,4676,7-238-43549-156184--,00.html> for additional information and resources on correctly completing the ARD form.