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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.

Treasury Issues Guidance Regarding Adult-Use (Recreational) Marihuana

Recreational or adult-use marihuana was legalized in Michigan by the voter-initiated Michigan Regulation and Taxation of Marihuana Act (“MRTMA”) (MCL 333.27951 et seq.). The MRTMA became effective on December 6, 2018; however, the statute requires the Department of Licensing and Regulatory Affairs (“LARA”) to take many diverse actions, including the promulgation of multiple administrative rules, prior to issuing operating licenses to marihuana retailers and marihuana microbusinesses. The MRTMA imposes an excise tax on licensed marihuana retailers and marihuana microbusinesses at the rate of 10 percent of the “sales price” of adult-use marihuana sold or otherwise transferred to anyone other than a “marihuana establishment.” LARA has issued the first licenses in November and is expected to issue several more over the next few weeks. Accordingly, the imposition of the excise tax has commenced. Treasury is issuing guidance to taxpayers, including a Revenue Administrative Bulletin (“RAB”) and several new administrative rules, to coincide with the commencement of retail sales of adult-use marihuana.

RAB 2019-17 was recently published and it (i) explains the excise tax imposed on sales of marihuana under the MRTMA, (ii) discusses the sales and use tax treatment of such marihuana sales, (iii) addresses certain other issues arising under the MRTMA, and (iv) sets forth the tax return and remittance requirements and procedures that taxpayers subject to the MRTMA must follow.

With respect to the new excise tax, the RAB defines the term “sales price” (the measure upon which the excise tax is imposed) as the total amount of consideration, including cash, credit, property, services, or any other valuable consideration given in exchange for marihuana. This definition is consistent with the definition of “sales price” in the General Sales Tax Act. The RAB also addresses the sale of marihuana to customers for a set price that includes the excise tax, as well as the treatment of non-sale business uses of small amounts of marihuana inventory. The MRTMA prohibits marihuana from being sold in a single-mixed or “bundled” transaction together with property or services other than marihuana. The RAB clarifies the meaning of a “bundled transaction” in this context, and explains that, if property or services other than marihuana are bundled and sold in a single transaction

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Recently Issued Guidance from Treasury

RAB 2019-15

Sales and Use Taxation of the Construction Industry (Excluding Manufacturer/Contractors) (Replaces Revenue Administrative Bulletin 2016-18)

RAB 2019-17

Taxation of Adult-Use (Recreational) Marihuana Under the Michigan Regulation and Taxation of Marihuana Act

Technical Advice Letter

Sales and Use Tax Treatment of Software Products

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

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despite the statute's prohibition against such transactions, the excise tax must be imposed on the entire sales price of the transaction, including the non-marihuana property or services. The RAB provides examples to further clarify what does and does not constitute a prohibited "bundled transaction."

Regarding the sales and use tax treatment of marihuana sales, the RAB clarifies that, in addition to the 10 percent excise tax and absent a valid claim of exemption, retail sales of adult-use marihuana under the MRTMA are also subject to Michigan's 6 percent sales tax, while the use, storage, and consumption of adult-use marihuana in Michigan are similarly subject to Michigan's 6 percent use tax. The RAB also addresses whether sales of adult-use marihuana are potentially eligible for certain sales and use tax exemptions.

Further, the RAB provides guidance to taxpayers regarding the scope of the deduction from Michigan income tax for the "ordinary and necessary expenses" of marihuana establishments that are provided under the MRTMA. The RAB also clarifies that the MRTMA does not repeal or replace either the Marihuana Facilities Act or the Medical Marihuana Act, except that the 3 percent excise tax on medical marihuana provisioning centers imposed by the Marihuana Facilities Act was repealed as of March 6, 2019. The RAB also addresses issues with respect to dual licensing as both a "provisioning center" under the Marihuana Facilities Act and a marihuana retailer or microbusiness under the MRTMA.

Finally, the RAB discusses requirements and procedures that taxpayers must follow regarding the filing of returns and the remittance to Treasury of both the 10 percent excise tax and the 6 percent sales or use tax.

In addition to the RAB, Treasury is completing the promulgation of three new administrative rules regarding sales of adult-use or recreational marihuana. One of the new Taxation of Adult-Use (Recreational) Marihuana Rules defines the term "sales price" while the other defines a "bundled transaction" and clarifies the tax result of engaging in a prohibited bundled transaction. The single new Sales and Use Tax Rule clarifies that the sales tax is levied in addition to the excise tax, that the taxable "sales price" for purposes of the sales tax includes the 10 percent excise tax, and that retail sales of marihuana in any form are not exempt from taxation as food or prescription drugs. The pending rules are published on the Michigan government website at <http://www.michigan.gov/moahr> and were also published in the September 15, 2019 issue of the Michigan Register. Treasury anticipates final promulgation of these rules by the end of the year.

Medicaid Waiver for Home Care Providers

Many Michiganders provide services to individuals that are homebound. There are many State and federal programs that provide funding for care providers. Some payments to care providers are tax-exempt while others are taxable. The care providers and their tax preparers are not always sure of the program that funds the service. To add to the confusion, employers of the care provider may issue a W-2 that includes exempt income.

Some care providers are unsure if their payments were received for services under the Medicaid Home and Community Based Services waiver authorized under section 1915(c) of the Social Security Act. Under the waiver, a provider lives with and cares for a recipient who otherwise would require care in a hospital, nursing facility, or intermediate care facility. The payments are for “difficulty of care” services and are exempt from federal tax under section 131 of the Internal Revenue Code. See IRS Notice 2014-7. The payments are exempt from Michigan tax but are included in the total household income of the provider.

Although the payments are exempt from federal and Michigan tax, a provider may receive a W-2 that includes the income. If a W-2 is received, the income should be claimed as wages on the federal return and the exempt portion should be subtracted as “Other income.” There is no information on the face of a W-2 that identifies the source as a Medicaid waiver. If the taxpayer is unsure of the waiver status, a tax preparer may assume that W-2s issued to home care providers by the following Michigan employers are Medicaid waiver payments and are not taxable.

Medicaid Waiver Section 1915(c)	Agency	Home Based Services for:
Mi Choice	Area Agency on Aging	Elderly & Disabled
Mi Choice-MC (managed care)	Area Agency on Aging	Elderly & Disabled
MI HealthLink	Aetna Better Health of Michigan, Inc.	Elderly & Disabled
	AmeriHealth Caritas VIP Care Plus	Elderly & Disabled
	Michigan Complete Health	Elderly & Disabled
	HAP Midwest Health Link	Elderly & Disabled
	Meridian Complete	Elderly & Disabled
	Molina Healthcare, Inc.	Elderly & Disabled
	UP Health Plan MI HealthLink	Elderly & Disabled
Children's Waiver Program	Community Mental Health	Children under age 21
Children with Serious Emotional Disturbances	Community Mental Health	Children under age 21
Children's Home & Community Based Services	Community Mental Health	Children under age 18
Habilitation Supports Waiver	Community Mental Health	Beneficiaries with Dev. Disabilities

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. "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

Are You Required to Collect and Remit Sales Tax in Other States? Help is Available!

Did you know that although your business may only be physically located in Michigan, if you ship your products to customers in other states, you may also be required to collect and/or remit sales or use taxes to those other states?

For decades, U.S. Supreme Court precedent required an out-of-state (or remote) seller to have physical presence in a state before that state could require the seller to collect, pay, or remit sales tax on sales into that state. However, on June 21, 2018, the U.S. Supreme Court overturned those precedents in *South Dakota v Wayfair*, holding that physical presence is no longer required. Specifically, the Court concluded that South Dakota's law, which mandates the collection and remittance of sales tax if the seller had sales exceeding \$100,000 or 200 or more transactions with South Dakota purchasers in the prior calendar year, is constitutional. In other words, the Court upheld "economic presence" nexus for sales tax.

Michigan and many other states enacted legislation similar to South Dakota's shortly after the *Wayfair* decision was issued. State laws vary widely regarding the amount of the thresholds and how to calculate them. Therefore, it is critical that Michigan-based sellers review state law for all states into which they are making sales to determine if they are required to collect and/or remit those states' sales tax. Failure to register and remit tax in other states may result in tax assessments, including penalties and interest.

Michigan, along with 23 other states, is a member of the Streamlined Sales and Use Tax Agreement (SSUTA). The other SSUTA states are Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Tennessee is an associate member of SSUTA. Under the SSUTA these states have:

- Developed a central registration system that allows businesses to register with any or all of the 24 streamlined states by completing one simple online application. There is no cost to complete and submit this registration for any of the streamlined states. Once you are registered in a state, you are expected to collect and remit the appropriate sales or use taxes for that state and file the required returns.

- Entered into contracts with certified service providers (CSPs) and agreed to compensate the CSPs for the streamlined states in which you are a “volunteer seller” to handle your sales and use tax collection, reporting and remittance requirements. Under these contracts, the CSPs will provide the software and services necessary to (i) set-up and integrate their tax calculation software with the businesses system, (ii) calculate the amount of tax due on a transaction at the time of the sale, (iii) generate and file the required sales and use tax returns for each of these states, (iv) make the required remittances to each of the states, (v) respond to notices and audits and (vi) protect the privacy of your information. CSPs will also provide these services for a fee to the business if the business is not a volunteer seller in a state.
- Completed a taxability matrix that helps determine the taxability of various categories of products in their state.
- Developed rate and jurisdiction databases that identify the state and local tax rates that apply to an address based on the street address, 9-digit zip code and 5-digit zip code.
- Adopted a uniform Sales and Use Tax Exemption Certificate that can be used to claim applicable exemptions from sales tax in the streamlined states.

If you have questions regarding the tools available through streamlined, please visit its website at <https://www.streamlinedsalestax.org/>, or contact the Streamlined Sales Tax Governing Board. The Governing Board also maintains a list of all states’ (SSUTA and non-SSUTA) economic nexus standards, available at <https://www.streamlinedsalestax.org/for-businesses/remote-seller-faqs/remote-seller-state-guidance>. If you have questions regarding a particular state’s requirements, please contact that state directly.

Non-SSUTA states have not undertaken these measures. Businesses making sales into non-SSUTA states should review those states’ laws and contact them directly if they have any questions regarding their laws.

Monitor Your Account to Ensure Tax Payments Were Properly Remitted

Over 4 million Michigan taxpayers choose to e-file an annual Michigan Individual Income Tax Return. E-filed returns are processed faster than paper returns, typically in about 14 days. Paper filed returns may take eight weeks or longer to process. E-filing eliminates many of the errors that lengthen processing times of returns.

A Michigan Individual Income Tax filer has the option of making electronic payments when their e-filed return resulted in a tax due. Paying electronically is easy, fast, and secure. A direct debit payment may be made at the same time that the tax return is e-filed. Payments from a checking or savings account can be accomplished using direct debit. There is no fee for direct debit payments. Check with your financial institution to obtain the correct Routing Transit Number (RTN) and account number for your account. If you have used the same preparation software in prior years and your information is automatically populated into the current year’s form, be sure that your direct debit information is correct.

Michigan income tax returns for the 2019 tax year must be filed and payments for tax due remitted by April 15, 2020. Taxpayers who use direct debit to pay tax due should monitor their account to ensure that the withdrawal was timely remitted. Treasury has noted that some taxpayers have failed to monitor their accounts to be certain that their tax payment was timely remitted to the State of Michigan, many of whom received assessments for taxes due. It is incumbent on the taxpayer to make the payment by the deadline. If your RTN or account number is incorrect, your payment may not be accepted, resulting in a tax deficiency. Penalty and interest will accrue on any tax due that has not been paid by the deadline.

MTO Frequently Asked Questions

Which taxes and tax years are available on MTO?

- SUW returns and payments are available on MTO for tax years 2015 and beyond.
- ESA statements and payments are available on MTO for tax years 2016 and beyond.
- SBT payments are available on MTO through 2011.
- MBT payments are available on MTO for tax years 2012 and beyond.
- Medical Marihuana Facilities tax returns and payments are available on MTO for tax years 2018 and beyond.

All Things Advocate - Benefits of Michigan Treasury Online (MTO) Round 2

In the November 2017 issue of Treasury Update, Treasury shared the benefits of using MTO. If you are still not using MTO or if your client(s) are reluctant to use MTO, we encourage you to reread the article on page 7 at the following link: https://www.michigan.gov/documents/treasury/Treasury_Update_November_2017_606900_7.pdf

In addition, check out the “Resources/Guides” tab on the MTO home page to view 10 NEW tutorial videos and 12 NEW guides to help even the most apprehensive taxpayers achieve MTO success.

Need more proof? Here are the top tax professional SUW question, error, and issue the Advocate office received in 2019.

Top Question: Why did my client receive this bill/assessment? Using MTO allows the client and tax professional to see the returns filed and not filed and the payments submitted and not submitted, which helps determine why an assessment was received.

Top Error: My client keeps receiving assessments for tax types they have never filed for in the past. MTO only allows taxpayers to file for the taxes for which they have registered. This eliminates the errors of filing of sales tax as use tax, or vice versa, and subtotalling on the incorrect line that can lead to assessments on tax for which the client never previously filed.

Top Issue: Not knowing when to file returns according to a client’s filing frequency. MTO clearly indicates a client’s filing frequency and due dates. Returns should be filed according to the filing frequency assigned by Treasury.

The biggest benefit of MTO is still the same – it provides real time access 24/7, 365 days a year – anytime, anywhere.