

Michigan Enacts Changes to Statute of Limitations and Other Procedural Tax Provisions

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Overview

The State of Michigan has recently adopted into law Senate Bill (“SB”) 337, amending Michigan law with respect to various procedural tax provisions of the Michigan Revenue Act.¹ These amendments include: the addition of deadlines by which certain events must occur within an audit, changes regarding how an audit or other events affect the statute of limitations, the addition of a deemed-denied appeal option for certain refund claims, and changes to various responsible person and successor liability provisions.

This External Alert summarizes these law changes and also highlights relevant taxpayer considerations. Unless specified otherwise in the discussion that follows, all changes became effective on February 6, 2014.

Addition of Audit Timing Provisions

Prior to the enactment of SB 337, no statutory deadlines existed with respect to the time period in which the Michigan Department of Treasury (“Department”) was required to conduct or complete an audit. For audits that commence after September 30, 2014, SB 337 amends Mich. Comp. Laws § 205.21 to require the following:

- The Department must complete fieldwork and provide a written preliminary audit determination no later than one year after the normal four-year statute of limitations period. This one-year deadline does not apply if the taxpayer and the Department agree in writing to extend the statute of limitations.²
- The Department is also required to issue a final assessment within nine months of the date that the Department provided a written preliminary audit determination unless the taxpayer requests reconsideration of the determination or requests an informal conference.³

Changes to Statute of Limitations

Pursuant to Mich. Comp. Laws § 205.27a(2), the Department may assess a deficiency, interest, or penalties within four years of the date set for filing the required return or four years after the date the return was filed, whichever is later.⁴ Prior to the enactment of SB 337, Mich. Comp. Laws § 205.27a(3)(a) provided that the four-year statute of limitations was “*suspended*” for the time period pending a final determination of tax through an audit, hearing, or litigation for either a Michigan tax or a federal income tax, and for one year after that period. SB 337 amends this provision such that the statute of limitations is “*extended*” for the following periods ***if the periods exceed the normal four-year statute of limitations***:

- The period pending a final determination of tax through audit, conference, hearing, and litigation of liability for federal income tax and for one year after that period.⁵

¹ Public Act No. 3 of 2014 (filed with Secretary of State Feb. 6, 2014), accessible at: <http://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2014-PA-0003.pdf>.

² SB 337, adding subsection (6) to Mich. Comp. Laws § 205.21.

³ SB 337, adding subsection (7) to Mich. Comp. Laws § 205.21.

⁴ If the taxpayer has sought a valid extension of time to file the required return (typically 6 or 8 months), the four-year statute of limitations runs from the extended due date. See, Revenue Administrative Bulletin 2008-8.

⁵ SB 337, amending Mich. Comp. Laws § 205.27a(3)(a).

- The duration of an audit that commences after September 30, 2014, or pending the completion of an appeal of a final assessment.⁶
- A period of 90 days after a decision and order from an informal conference or a court order that finally resolves an appeal of a decision of the Department in a case in which a final assessment was not issued prior to appeal.⁷

The statute of limitations continues to be extended (previously suspended) for the period that the taxpayer and the Department have consented in writing.⁸

The statute of limitations is only extended for items that were the “subject of the audit, conference, hearing, or litigation,” a term that was previously undefined. SB 337 adds the following definition:

Items that share a common characteristic that were examined by an auditor even if there was no adjustment to the tax as a result of the examination. Items that share a common characteristic include items that are reported on the same line on a tax return or items that are grouped by ledger, account, or record or by class or type of asset, liability, income, or expense.⁹

Refund Deemed-denied Appeal Election

PA 337 also amends the Revenue Act to provide that a refund claim that has not been approved, denied or adjusted by the Department within one year of the date received “may be treated as denied.” In this instance, a taxpayer may then elect to seek an appeal, pursuant to Mich. Comp. Laws § 205.22, to either the Michigan Tax Tribunal or the Michigan Court of Claims.¹⁰

Regarding this law change, taxpayers may wish to consider the following: (1) a taxpayer that makes a deemed-denied election may not seek an informal conference pursuant to Mich. Comp. Laws § 205.21a; and (2) a taxpayer that does **not** make this election retains all appeal rights (including the right to request an informal conference) upon subsequent unfavorable Treasury action relative to the taxpayer’s refund claim.

Changes to Successor Liability and Responsible Person Provisions

SB 337 also enacts numerous (and generally taxpayer-favorable) changes to the scope and manner in which the Department may seek to enforce successor liability upon acquirers of a business and responsible persons in instances when a business fails to pay a tax due. While a detailed review of these changes is beyond the scope of this Alert, two of the more significant changes include the following:

- Within 60 days of its receipt of a proper request, the Department is *required* to release to the purchaser of a business the amount of the known or estimated tax liability of the business.¹¹
- The *scope of potential responsible person liability is limited to trust fund type taxes* (e.g., sales and use taxes, withholding of individual income tax, etc.) for assessments issued to responsible persons after December 31, 2013.¹²

Taxpayer Considerations

While the enactment of SB 337 is generally good news for taxpayers, a number of questions and issues remain. Whether the addition of the timing parameters within the audit will have any practical effect is unclear, particularly when the deadlines can be waived upon agreement between the taxpayer and the Department. Another uncertainty is the manner in which audits that are *currently*

⁶ SB 337, adding Mich. Comp. Laws § 205.27a(3)(c).

⁷ SB 337, adding Mich. Comp. Laws § 205.27a(3)(d).

⁸ SB 337, amending Mich. Comp. Laws § 205.27a(3)(b).

⁹ SB 337, amending Mich. Comp. Laws § 205.27a(4).

¹⁰ SB 337, amending Mich. Comp. Laws § 205.30(2). Note – this new provision does not apply to individual income tax refund claims.

¹¹ SB 337, amending Mich. Comp. Laws § 205.27a(2).

¹² SB 337, adding Mich. Comp. Laws § 205.27a(14).

ongoing will be affected by the changes to the statute of limitations. Only audits that commence after September 30, 2014, appear to be within the scope of those periods for which the statute of limitations would be extended. Finally, the fact that the new refund deemed-denied provision does not provide affected taxpayers with the right to initiate their appeal through an informal conference may limit the overall effectiveness of this option.

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