

Recent Legislation

Several bills have been enacted recently that are of interest to business lawyers. The full texts of bills, public acts, and bill analyses are available online at www.michigan-legislature.org/law/.

Fee Increases Effective October 1, 2003

As part of the efforts to balance the State of Michigan's budget for the 2004 fiscal year, several bills increasing fees were recently enacted. Generally, the legislation provides that the increase in fees is effective for the period from October 1, 2003, through September 30, 2007. To avoid delays, check with the appropriate agency to determine current fees before submitting applications or other documents.

Section 915 of both the Business Corporation Act and the Nonprofit Corporation Act was repealed, and fees for annual reports were moved to section 1060. The fees increased to \$25 and \$20, respectively, if paid after September 3, 2003.¹ Section 1101(g) of the Michigan Limited Liability Company Act was amended to increase the fee for the annual statement of the resident agent and registered office from \$15 (if paid through September 30, 2003, and after September 30, 2007) to \$25 beginning October 1, 2003, through September 30, 2007.² Professional limited liability companies must file both an annual statement and an annual report.³ As a result of the fee increase for an annual statement, the annual fee for a professional limited liability company for its annual statement and report for October 1, 2003, through September 30, 2007, increased from \$65 to \$75.

A domestic corporation dissolved by operation of law or a foreign corporation whose certificate of authority has been revoked for failure to file an annual report that renews its existence between October 1, 2003, and

September 30, 2007, will pay \$10 more per report.⁴ A profit corporation, for example, dissolved on July 15, 2002, for failure to file its 2000 annual report will pay \$25, plus a \$50 late penalty, for each year for which reports were not filed. Nonprofit corporations will pay \$20, plus a \$5 late penalty, for each year for which reports were not filed.

A limited liability company that is not in good standing can be restored to good standing by the filing of a certificate of restoration accompanied by the annual statements for all of the years for which they were not filed. Between October 1, 2003, and September 30, 2007, a \$25 fee is required for each annual statement plus the \$50 filing fee for the certificate of restoration.⁵

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Professional limited liability companies must file both an annual statement and an annual report. A certificate of restoration for a professional limited liability company must be accompanied by annual statements and reports for all of the years for which they were not filed, a \$50 filing fee for the certificate, \$75 for each annual statement and report, plus a \$50 late penalty for each annual report after February 15 of the year in which it was due.

In addition to the changes in fees for annual filings for corporations and limited liability companies, fees have been increased for licenses issued under the Occupational Code,

1979 PA 152, and for securities broker-dealer, agent, and investment adviser registrations under the Michigan Uniform Securities Act, 1964 PA 265.⁶ The occupational licensing fee increases for October 1, 2003, though September 30, 2007, vary depending on the license with the increases averaging \$10. The filing fee for broker-dealer, agent, and investment adviser registrations will be \$300, \$65, and \$200, respectively, from October 1, 2003, through September 30, 2007.

Other fees for licenses and permits have also increased. Some additional examples of increases are for pesticide applicators, animal shelters, livestock yards, and nursery stocks.⁷ Contact the appropriate agency or review the applicable statute to determine if a fee has changed.

Changes in Tax Provisions

House Bills 4557-4565 amend various provisions of the Income Tax Act to define or redefine terms and to apply income tax deduction and withholding requirements to a flow-through entity, casino licensee, race meeting licensee, or track licensee. A brief summary is provided below.

HB 4557, Public Act 52 of 2003, effective July 14, 2003, amends the Income Tax Act to redefine "business income" as "all income arising from transactions, activities, and sources in the regular course of the taxpayer's trade or business . . ."⁸

HB 4558 and HB 4559, Public Acts 51 and 50 of 2003, effective October 1, 2003, respectively, redefine the terms "tax" and "taxpayers" to include the tax required to be withheld by a flow-through entity, and any flow-through entity required to withhold taxes, on nonresident members' share of income available for distribution.⁹

HB 4560, Public Act 49 of 2003, effective October 1, 2003, allows a nonresident member who had income in the state from one or more flow-through entities to elect to be

included in the composite income tax return of a flow-through entity. A flow-through entity is permitted to file a composite income tax return on behalf of electing nonresident members and report and pay the tax due based on the electing members' share of income available for distribution from the flow-through entity for doing business in, or deriving income from, sources within the state.¹⁰

HB 4561, Public Act 22 of 2003, effective October 1, 2003, extends withholding requirements to flow-through entities, casino licensees, race meeting licensees, and track licensees. Every flow-through entity in Michigan must withhold tax on income available for distribution to each nonresident member. Every casino licensee must withhold tax on a nonresident's winnings that are reportable under the Internal Revenue Code. Every race meeting licensee or track licensee must withhold tax on a nonresident's winning ticket that is reportable under the Internal Revenue Code.¹¹

HB 4562, Public Act 48 of 2003, effective October 1, 2003, extends the requirements applicable to employers that are required to withhold taxes on a flow-through entity, casino licensee, race meeting licensee, or tract licensee. In addition, PA 48 requires every publicly traded partnership that had equity securities registered with the Securities and Exchange Commission to file on or before each August 30 all unitholder information from the publicly traded partnership's schedule K-1 for the immediately preceding calendar year.¹²

HB 4563, Public Act 47 of 2003, effective October 1, 2003, extends to a flow-through entity, casino licensee, race meeting licensee, or track licensee the requirements applicable to employers to provide a statement of the total compensation and amount withheld to each employee, nonresident member, or person with winnings or a payoff on a winning ticket; to file the statements with Department of Treasury; and to make certain returns and reports.¹³

HB 4564, Public Act 46 of 2003, effective October 1, 2003, extends to other business entities the same requirement that applies to corporations to request a tax clearance within 60 days after submitting a certificate of dissolution or application for certificate of withdrawal.¹⁴

HB 4565, Public Act 45 of 2003, effective October 1, 2003, defines "flow-through entity" as an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. A flow-through entity does not include a publicly traded partnership (as that term is defined in the Internal Revenue Code) that has equity securities registered with the Securities and Exchange Commission. "Member of a flow-through entity" means a shareholder of an S corporation, a partner in a partnership or limited partnership, or a member of a limited liability company. "Non-resident member" means any of the following who was a member of a flow-through entity: an individual who was not domiciled in the state, a nonresident estate or trust, or a flow-through entity with a nonresident member.¹⁵

Security Interest in Mobile Home Affixed to Real Estate

Senate Bill 425 was introduced in response to the January 14, 2003, decision of the U.S. Court of Appeals for the Sixth Circuit in *Boyd v Chase Manhattan Mortgage Corp (In Re Kroskie)*, 315 F3d 644 (6th Cir 2003), which held that the lien must be included on the certificate of title to perfect a security interest in a mobile home.

The amendments to the Mobile Home Commission Act changing the manner of perfecting a security interest in mobile homes affixed to real property passed in July. Public Act 44 of 2003, effective July 14, 2003, provides that the owner must submit the certificate of title to the Department of Consumer and Industry Services for cancellation if the mobile home is affixed to real estate. The amendment is intended to permit perfecting a lien

or security interest in a mobile home in the same manner as an interest in real estate.

An affidavit is recorded with the register of deeds for the county in which the real property is located. Section 30i(5) provides that a mobile home is considered to be part of the real estate and may only be conveyed as part of the real property.¹⁶ Section 30i(6) addressed the impact of the legislation on existing security interests.

(6) If a mobile home is affixed to real property before the effective date of the amendatory act that added this section, a person who is the holder of a lien or security interest in both the mobile home and the real property to which it is affixed on the effective date of the amendatory act that added this section may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real property.¹⁷

In addition, the amendments provide a process for obtaining a certificate of title for a mobile home that is being detached from real property. Lawyers with clients that sell, purchase, or finance mobile homes should become familiar with the changes in procedures for perfecting a security interest in a mobile home affixed to real estate.

NOTES

1. MCL 450.1915, *repealed by* 2003 PA 106 (effective July 24, 2003); MCL 450.2060, *amended by* 2003 PA 106 (effective July 24, 2003); MCL 450.2915, *repealed by* 2003 PA 107 (effective July 24, 2003); MCL 450.3060, *amended by* 2003 PA 107 (effective July 24, 2003).

2. MCL 450.5101, *amended by* 2003 PA 81 (effective July 23, 2003).

3. MCL 450.4909(1).

4. MCL 450.2060(1)(u).

5. MCL 450.5101.
6. 2003 PA 87 (effective July 23, 2003),
and 150 (effective August 8, 2003).
7. 2003 PA 82, 83, 85, 104.
8. MCL 206.4(2).
9. MCL 206.22, .26.
10. MCL 206.315.
11. MCL 206.351.
12. MCL 206.355.
13. MCL 206.365.
14. MCL 206.451.
15. MCL 206.12.
16. MCL 125.2330i(5).
17. MCL 125.2330i(6).

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