

**COUNCIL OF TAXATION SECTION
MINUTES OF REGULAR MEETING**

February 18, 2016

A regular meeting of the Council of the State Bar of Michigan Taxation Section was held on February 18, 2016, at 9 a.m. at Bodman, Ford Field, 1901 St. Antoine Street, 6th Floor, Detroit, Michigan. Michael Antovski, Chairperson of the Taxation Section, presided.

COUNCIL MEMBERS PRESENT

Michael Antovski	Alex Domenicucci	Carolee Kvoriak Smith
Jackie Cook	Marjorie Gell	James Combs
Joshua Wease	Tammie Tischler	William Lentine
Sean Cook		

COUNCIL MEMBERS ABSENT

Andrew MacLeod	Katie Wilbur	Joe Pia
Paul McCord		

COMMITTEE CHAIRPERSONS PRESENT

Michael Monaghan	Brian Gallagher	Thomas E.F. Fabbri
Andrea Crumback	Ryan Peruski	

COMMITTEE CHAIRPERSONS ABSENT

Jack Panitch		
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OTHERS PRESENT

Stephanie Stenberg	Eric Skinner	Brian Figot
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The Chair called the meeting to order at 9:06 a.m.

MINUTES OF PRIOR COUNCIL MEETING

Jackie Cook presented the Council Meeting Minutes of December 3, 2015. Upon motion by Marjorie Gell, seconded by Alex Domenicucci, the aforementioned Minutes were unanimously approved and adopted.

TREASURER'S REPORT

Carolee Smith presented the final budget for the twelve months ending September 30, 2015. [Attachment A] She noted that the actual amounts reflected as spent by the State and Local Tax Committee and Practice and Procedure Committee were adjusted to take out the amounts spent on the Meet the Players Mixer as it was moved to October 2015. Those expenditures were moved to the budget for year ending September 2016. Carolee noted that the Section was under budget at year end.

Carolee presented the proposed budget for four months ending January 31, 2016, reflecting that the Section is approximately \$1,110 under budget. [Attachment A] There is cash on hand, but there are still expenses being submitted. Marjorie Gell suggested that Council explore the opportunity of making the Michigan Tax Lawyer available through Westlaw/RIA Checkpoint and Bloomberg to increase royalty revenue and indicated she would review the Lexis Nexis contract to determine whether it contains exclusivity language. The budget does not reflect yet the \$1,000 increase in ICLE's program fee from \$11,000 to \$12,000. As previously discussed, the L. Wright Hart Fund is a separate item under "General Revenue."

Carolee indicated that the State Bar requires that checks be submitted within three days of the date on the check. Carolee pointed out that this is difficult in some situations, such as when committee chairs are collecting checks for events for weeks prior to an event. Alex Domenucci suggested that the committee chairs be informed of this requirement during the committee chair orientation in the fall. Brian Figot indicated that the State Bar does offer program registration online through michbar.org. Brian will gather information about how online registration works and about any fees required and will report back to Council.

Upon motion by Sean Cook, seconded by William Lentine, the budget for the twelve months ending September 30, 2015, and the budget for the four months ending January 31, 2016, were approved and adopted.

CHAIR'S REPORT

Michael Antovski reported that as committee activities are being planned, they are getting populated in the Section's online calendar and otherwise promoted through social media. He encouraged everyone to continue forwarding dates to Brian and Katie for online promotion. Michael distributed a Membership Report from the State Bar and noted that the number of active attorneys increased but that the number of law school

student members decreased. [Attachment A] There was discussion about why the number of law school students is decreasing, and Marjorie Gell noted that there are less law school students in Michigan overall. Michael indicated that efforts are being made to reach out to students and encouraged the committee chairs to host events that will draw students. Carolee noted that annual events hosted the same time every year, like the SALT Mixer in Lansing, tend to have good attendance. Michael encouraged committee chairs to continue looking for ways to work together and cross promote their committees. Joshua Wease indicated that MSU has a large section of students devoted to tax law and indicated that he can assist with posting Section events on MSU tax law's calendar in order to promote the Tax Section and its events among students. Marjorie offered to do that as well on Western Michigan/Cooley's calendar. Michael indicated that a law school "road show" was in the works that would involve panel presentations and mixer events at each of the law schools in order to educate students about the benefits of getting involved in the Tax Section. Joshua Wease suggested planning the MSU program for when the tax law society meets. He indicated that some students are not planning on practicing law in Michigan and would benefit from information about how the Tax Section would benefit them. Ryan Peruski indicated that MSU career services reached out to him to speak to students on March 16 about his experience in the tax clinic at MSU, and he indicated he would reach out to Joshua to coordinate efforts. Michael indicated that for the other "road shows," it would be a good idea to consult with each school's career service offices. Marjorie indicated she would assist with the panel presentation at Western. Sean Cook indicated he would contact University of Michigan, and it was suggested he contact a former committee chair, Nicole Appleberry. William Lentine indicated he was already speaking with University of Michigan professors about the transactional team negotiation competition and would help coordinate efforts. Michael indicated that Andrew MacCloud had been working on law school outreach efforts and that anyone who can assist should contact Andrew to coordinate efforts.

Michael announced that the next Council meeting will be held on March 22, 2016.

COUNCIL ACTIVITIES

1. Strategic Planning – James Combs

James Combs reported that he is reaching out to tax attorneys who work for accounting firms to encourage their involvement in the Section. He indicated he is working on two other strategic initiatives: (1) continuing Jackie Cook's work on a written strategic plan with the expectation of having a draft to present to Michael Antovski by March; and (2) drafting a tentative curriculum for tax bootcamp for entry-level attorneys by the end of February.

2. Social Media / Communications – Katie Wilbur

Katie Wilbur was absent and did not submit a report.

3. Michigan Tax Lawyer – Katie Wilbur

Katie Wilbur was absent and did not submit a report.

4. Michigan Bar Journal Liaison / Tax Court Lunch – Joe Pia

Joe Pia was absent and did not submit a report.

5. Annual Tax Conference

2016 – Tammie Tischler:

Tammie Tishler reported that an email promoting the Tax Conference was recently sent out and that hard-copy brochures are being printed and will be mailed on February 22, 2016, and again in March and April.

Tammie is working on securing sponsorships from accounting firms and form sponsors of prior Tax Conferences. The Michigan Women's Tax Association made the offer to provide the Tax Section with a vendor table at the MWTA's annual meeting in October in exchange for the Section providing a table to the MWTA at the Tax Conference this year. The general consensus was in support of the idea. Carolee Smith asked whether Citizens Research Council could also have a vendor table as their director is speaking again this year at the Conference to promote its 100th year anniversary. Michael Antovski and others indicated support of the idea as both MWTA and CRC are nonprofit organizations.

There was discussion about the timing of the luncheon at the Conference this year, given Senator Levin's commitment to speak during lunch. Michael Antovski indicated that the law school student award presentation should be streamlined by acknowledging each awardee by name without having them come up to accept their award and instead giving them an opportunity during the reception to take photos.

Tammie reported that all speakers are now confirmed and requested that the committee chairs reach out to their members to encourage their attendance at the Conference. There was discussion about encouraging law school students to attend, and it was noted that they are charged a reduced fee of \$30. There was discussion about how to encourage law school students to attend, and Tammie made the suggestion that registrations to the Conference be raffled off at the law school mixers being planned.

James Combs suggested the Section consider hiring a photographer again to take pictures during the Conference.

2017 – William Lentine:

Bill Lentine reported that at the next Tax Conference, scheduled for May 25, 2017, the Tax Section's 60th anniversary will be celebrated. Bill indicated he has lined up a few tentative speakers for the 2017 Conference regarding Section 355 and partnership regulations.

6. Federal & State Legislative Update and Public Policy Liaison – James Combs

James Combs reported on the key features of the extender bill signed into law in December 2015. He reported that although tax inversions have received attention lately from the press and from Congress, there is no legislative solution proposed yet. James reported on other potential federal bills involving tax issues that may be introduced. He indicated that Michigan issued a new internal policy directive regarding over-the-counter medicine and that Michigan recently passed an increase to the gas tax impacting taxpayers with stored gas, effective in 2017.

7. Annual Meeting – Sean Cook

Sean Cook reported that he is looking into holding the Annual Meeting this year at Tre Monti in Troy. The Annual Meeting is set for September 29, 2016. Sean is looking into having musical entertainment, such as the high school trio that played last year. Michael Antovski indicated that any contracts would need to be submitted to the State Bar of Michigan for review.

8. ICLE – Stephanie Stenberg

Stephanie Stenberg reported that ICLE is recording the fourth seminar in the Tax Law Series next week. She indicated earlier seminars have been very successful and the format, including a "Johnny Carson" moderator, seems popular. The Tax Law Series seminars are on demand and available online. Stephanie also provided the following written report:

Tax Law Series (www.icle.org/tls):

1. Stephanie updated on this year's series (see seminar topics below; each title is hyperlinked to the store page where you can see a clip).
2. Requested ideas and speakers for next year's Tax Law Series.
3. Will return next month to get more ideas and report on TLS view counts and ratings.

State Tax Controversies in Michigan

Presented 11/12/15 |

Get the latest on state tax developments. Our experts show you how to adapt your practice to the most recent Michigan tax legislation and cases.

Tax Aspects of Divorce

Presented 12/14/15 |

Divorce settlements can have hidden negative tax consequences for your client. Avoid unexpected asset allocation tax consequences, ensure proper tax planning for property and alimony payments, and understand how taxes impact a business valuation.

An Inside Look into the IRS Appeals Process

Presented 02/15/16 |

Contesting a case through IRS Appeals is one of the most efficient, cost-effective, and practical ways to resolve a controversy with the IRS. Get an insider's perspective on the appeals process so you can resolve ongoing tax controversies favorably.

Estate Planning Tax Considerations for 2016

On-Demand Webcast 03/15/16 |

Our experts show you how to handle the latest estate planning tax issues in the coming year.

Tax Conference (www.icle.org/tax):

1. The first email was sent on Monday. Please ask the group if they received it. We highlighted Carl Levin.
2. The brochure is at the printer and will be mailing soon (Feb. 22).
3. Timing-wise, we're matching last year's marketing. Last year the first email was sent on 2-16-15.
4. We have 4 registrations. Last year we had 3 regs with 92 days to go.
5. We're setting up conference calls right now for all of the panel presentations to coordinate the materials and talks.
6. No news on sponsors. We still just have Plante Moran confirmed.
UPDATE: on 02/17, Valerie Clay from Rehmann contacted Jeff about sponsorship opportunities; he is following up with them.
7. At some point soon we should talk through the logistics of the lunch. We'll probably need to speed up the pace for the student and grant awards in order for Levin to have enough time.
8. Registration is at www.icle.org/tax

9. Grant Program – Paul McCord

Paul McCord was absent and did not submit a report.

10. Pro Bono Project/Community Service Initiative Coordinator – Paul McCord

Paul McCord was absent and did not submit a report.

11. IRS Area Counsel Liaison Report – Eric Skinner / Rob Heitmeyer

Eric Skinner reported that the U.S. Tax Court will be in session in Detroit on June 6, 2016, with Judge David Gustafson presiding. Joshua Wease noted that Michigan State University's tax clinic has cases on the docket. Eric reported that the IRS is reengineering the audit approach for large corporations and partnerships by moving toward more issue-focused audits. Eric indicated that the IRS is working on doing more with less staff by focusing on data mining and data analytics to identify compliance risks among particular business segments and to identify particular issues for auditing. He reported on new proposed regulations impacting partnership audits, currently open to public comment, and that the IRS would like to raise \$10,000,000 by implementing these adjustments. It was noted that the FIT Committee is currently planning a seminar on the topic.

Probate and Estate Planning Section Liaison Report – George Gregory

George Gregory was absent but submitted a written report. [\[Attachment B\]](#)

12. State Bar of Michigan Liaison Report – Richard Siriani

Richard Siriani was absent and did not submit a report.

13. YLS Liaison Report – Ryan Peruski

Ryan Peruski reported that he is reaching out to law school students and accounting firm attorneys to encourage their participation in the Tax Section. He reported that there are eight new members and that he personally reached out to welcome them. Ryan is refining the Young Tax Lawyers Committee email list, and will be sending out an email to the group today to promote the "Building Success as a Tax Practitioner" event at the Detroit Beer Company on March 22, 2016, discussed in more detail below under the report of the Young Tax Lawyers Committee.

14. Program Facilitator Report – Brian Figot

Brian Figot indicated that there have been some problems with SBM Connect, resulting in Tax Section dates not getting calendared in a timely fashion, and that he anticipates the problems getting taken care of in the next month or so. He noted that the Membership Update distributed reflects that total membership, at 1,315, is up from 1,275 at the same time last year. He suggested looking for potential strategic planning initiatives with the Real Property and Master Lawyers Sections. Brian reported he will work on updating contact lists.

COMMITTEE ACTIVITIES

1. Federal Income Tax – Michael P. Monaghan

Michael Monaghan reported that fifteen attendees participated in a seminar regarding s-corporation transactions. He indicated that no attendees participated via video conferencing from Grand Rapids. He reported that an MTL article on a FIT topic was received from Plante Moran. Michael is planning a seminar on April 12, 2016, regarding streamlined partnership audits at Dickinson Wright's Detroit office at 4 p.m.

2. Employee Benefits – Brian Gallagher

Brian Gallagher reported that the Employee Benefits Committee hosted a seminar in December in East Lansing on wellness programs that had seven attendees. He is planning a joint event with the ASPPA in Troy that is expected to have 60-70 attendees. Brian is discussing the possibility of hosting a joint event with the Michigan Women's Tax Association in June in Grand Rapids with Mindy Johnson of Foster Swift. Brian also submitted a written committee report. [\[Attachment C\]](#)

3. Estates and Trusts – Thomas Fabbri

Thomas Fabbri reported that the Estates and Trusts Committee hosted an event with Dan Cornwell presenting on income tax planning for estate planners at Clark Hill that drew fifteen attendees, including some newer attorneys who expressed an interest in the Estates and Trusts Committee. Thomas indicated he has been actively reaching out to attorneys to encourage their involvement in his Committee, including two estate planners hired by his firm.

4. Practice and Procedure – Jack Panitch

Jack Panitch was absent. The report of the Practice and Procedure Committee is included in Andrea Crumback's State and Local Taxation Report below.

5. State and Local Taxation – Andrea Crumback

Andrea Crumback reported that the State and Local Taxation Committee and the Practice and Procedures Committee jointly hosted an event in January at Fraser Trebilcock's offices in Lansing at which Greg Nowak and Jason Puskas presented on Senate Bill 537 which would reform the Michigan Tax Tribunal. Andrea reported that she received the most recent draft of SB 537 and would appreciate Council members' thoughts on it. Carolee Smith suggested that Andrea and Jack Panitch coordinate efforts to prepare a brief summary about the most recent version of SB 537 for Council members' consideration as Council considers the possibility of formalizing a position on SB 537. Andrea reported that she secured a commitment for a Michigan Tax Lawyer article on a SALT topic from Jackie Cook.

6. Young Tax Lawyers – Ryan Peruski

Ryan Peruski reported that the Young Tax Lawyers Committee would be hosting its first event on March 22, 2016, from 5:30 p.m. to 7 p.m., at the Detroit Beer Company (second floor), and that he was currently in the process of assembling a panel of attorneys to speak on "Building Success as a Tax Practitioner." He indicated that his goal is to have 50 participants and encouraged everyone to come and to invite others to attend. Ryan reported that he is also working on planning an event in Lansing in April for MSU students after finals.

OLD BUSINESS

1. Member Database – Andrew MacLeod. Andrew is working on a membership database and has been in contact with the State Bar to discuss it. Information is being gathered about tools available through the State Bar's website that would allow each committee within a section to have its own webpage. Andrew will be providing more information to Council on the topic in the future.

NEW BUSINESS

1. Approval of ICLE Contract. Michael Antovski indicated the ICLE contract related to hosting the Tax Conference was approved for three years with the annual fee increasing to \$11,000 in 2015 and to \$12,000 in 2016.
2. University of Detroit Mercy Law School Bar Association Fair. Michael Antovski indicated that U of D is hosting a Bar Association Fair on February 23 from 12-3 to encourage law students to get involved in bar associations.
3. BTAG – See Attachments. Lynn Gandhi provided handouts from the most recent meeting of the Business Tax Advisory Group to the Michigan Department of Treasury. She encouraged the submission of comments to proposed Revenue Administrative Bulletins to Julie Thelan. [Attachment D]

There being no additional business, a motion to adjourn was made by Alex Domenicucci, seconded by Carolee Smith. The meeting was adjourned at approximately 11:25 a.m.

Respectfully submitted,



Jackie J. Cook

Secretary

Attachment A

**TAXATION SECTION BUDGET
FOR THE TWELVE MONTHS ENDED SEPTEMBER 30, 2015
STATE BAR OF MICHIGAN, TAXATION SECTION**

	Actual as of 9/30/15	Annual Budget 2014-2015	Difference Budget/Actual
REVENUE:			
DUES	37,418.00	\$ 37,914.00	\$ (496.00)
LEXIS NEXIS	1,564.35	1,200.00	\$ 364.35
SUBSCRIPTION TO MICHIGAN TAX LAWYER	60.00	-	\$ 60.00
MISCELLANEOUS AND JOINT COMMITTEE MEETINGS	245.00	300.00	\$ (55.00)
TOTAL REVENUE	\$ 39,287.35	\$ 39,414.00	\$ (126.65)
EXPENSES			
COMMITTEE MEETINGS			
Federal Income Tax	\$ 447.01	\$ 1,500.00	\$ (1,052.99)
Employee Benefits	\$ 1,513.16	2,000.00	\$ (486.84)
Estates and Trusts	\$ 800.93	3,000.00	\$ (2,199.07)
Practice and Procedure	\$ 92.54	2,500.00	\$ (2,407.46)
Young Tax Lawyers	\$ 461.71	3,000.00	\$ (2,538.29)
State and Local	\$ 92.54	2,000.00	\$ (1,907.46)
International			
MICHIGAN TAX LAWYER	\$ 5,834.82	9,000.00	\$ (3,165.18)
NAT'L ASSOCIATION OF TAX SECTIONS	\$ 2,608.62	2,500.00	\$ 108.62
SBM MACKINAC LEADERSHIP CONFERENCE	\$ 2,449.49	1,500.00	\$ 949.49
PROFESSIONAL COORDINATOR			
Compensation	\$ 6,010.06	5,000.00	\$ 1,010.06
Telephone	\$ -		\$ -
Postage and Copying	\$ -		\$ -
Mileage and Other Expense Reimbursements	\$ 84.30	120.00	\$ (35.70)
Total professional coordinator expense	\$ 6,094.36	5,120.00	974.36
TAX LAW SERIES MARKETING EXPENSE	\$ -		\$ -
ANNUAL TAX CONFERENCE			
Registrant revenue	\$ (14,275.00)	(16,500.00)	\$ 2,225.00
Sponsorship revenue	\$ (11,300.00)	(10,000.00)	\$ (1,300.00)
Conference expenses	\$ 33,285.72	33,000.00	\$ 285.72
Net conference expense	7,710.72	6,500.00	1,210.72
TAX COUNCIL MEETINGS (Including Annual Past Presidents' Dinner)	\$ 5,680.40	6,000.00	\$ (319.60)
TAX COURT LUNCHEONS			
Expenses	\$ 773.08	2,000.00	\$ (1,226.92)
Sponsorships	\$ -	(500.00)	\$ 500.00
Net expense	\$ 773.08	1,500.00	(726.92)
TAX SECTION DIRECTORY		-	-
PRO BONO AND OUTREACH (including grant program)	\$ 5,000.00	5,000.00	\$ -
STRATEGIC PLANNING / MEMBERSHIP OUTREACH ACTIVITIES	\$ -	3,000.00	\$ (3,000.00)
COUNCIL ACTIVITIES (including amicus expenses)		1,000.00	\$ (1,000.00)
SEMINARS -- JOINT REVENUE SHARING		-	-
LISTSERV & E-NEWSLETTER	\$ 630.00	600.00	\$ 30.00
RESERVE/CONTINGENCY	\$ 2,153.15	500.00	\$ 1,653.15
TOTAL EXPENSES:	\$ 42,342.63	\$ 56,220.00	\$ (13,877.47)
NET:	\$ (3,055.18)	\$ (16,806.00)	\$ 13,750.82

Cash on Hand 9/30/2014
Cash on Hand 9/30/2015

\$ 86,095.52
\$ 83,040.34

TAXATION SECTION BUDGET
PROPOSED FOR THE FOUR MONTHS ENDING JANUARY 31, 2016
STATE BAR OF MICHIGAN, TAXATION SECTION

	Actual as of 1/31/2016	Annual Budget 2015-2016	Difference Budget/Actual
REVENUE:			
DUES	\$ 35,874.00	\$37,000.00	\$ (1,126.00)
LEXIS NEXIS	358.06	1,500.00	\$ (1,141.94)
SUBSCRIPTION TO MICHIGAN TAX LAWYER	30.00	-	\$ 30.00
MISCELLANEOUS AND JOINT COMMITTEE MEETINGS	-	300.00	\$ (300.00)
TOTAL REVENUE	\$ 36,262.06	\$ 38,800.00	\$ (2,537.94)
EXPENSES			
COMMITTEE MEETINGS			
Federal Income Tax	\$ 136.55	\$ 2,000.00	\$ (1,863.45)
Employee Benefits	\$ 679.42	2,000.00	\$ (1,320.58)
Estates and Trusts	\$ -	\$ 2,000.00	\$ (2,000.00)
Practice and Procedure	\$ 750.00	\$ 2,000.00	\$ (1,250.00)
Young Tax Lawyers	\$ -	\$ 2,000.00	\$ (2,000.00)
State and Local	\$ 750.00	2,000.00	\$ (1,250.00)
International			
MICHIGAN TAX LAWYER	\$ 2,478.27	12,000.00	\$ (9,521.73)
	\$ -		\$ -
SBM MACKINAC LEADERSHIP CONFERENCE	\$ -	2,500.00	\$ (2,500.00)
PROFESSIONAL COORDINATOR			
Compensation	\$ 1,553.58	5,000.00	\$ (3,446.42)
Telephone			\$ -
Postage and Copying	\$ -		\$ -
Mileage and Other Expense Reimbursements	\$ 112.13	120.00	\$ (7.87)
Total professional coordinator expense	\$ 1,665.71	5,120.00	(3,454.29)
TAX LAW SERIES MARKETING EXPENSE	\$ -		\$ -
ANNUAL TAX CONFERENCE			
Registrant revenue	\$ -	(14,500.00)	\$ 14,500.00
Sponsorship revenue	\$ -	(7,500.00)	\$ 7,500.00
Conference expenses	\$ -	33,000.00	\$ (33,000.00)
Net conference expense	-	11,000.00	(11,000.00)
TAX COUNCIL MEETINGS (including Annual Past Presidents' Dinner)	\$ 1,197.39	6,000.00	\$ (4,802.61)
TAX COURT LUNCHEONS			
Expenses	\$ -	2,000.00	\$ (2,000.00)
Sponsorships	\$ -	(500.00)	\$ 500.00
Net expense	\$ -	1,500.00	(1,500.00)
TAX SECTION DIRECTORY		-	-
PRO BONO AND OUTREACH (including grant program)	\$ -	5,000.00	\$ (5,000.00)
STRATEGIC PLANNING / MEMBERSHIP OUTREACH ACTIVITIES	\$ -	3,000.00	\$ (3,000.00)
COUNCIL ACTIVITIES (including amicus expenses)		1,000.00	\$ (1,000.00)
SEMINARS -- JOINT REVENUE SHARING		-	-
LISTSERV & E-NEWSLETTER	\$ 120.00	600.00	\$ (480.00)
RESERVE/CONTINGENCY	\$ 264.97	500.00	\$ (235.03)
TOTAL EXPENSES:	\$ 8,042.31	\$ 60,220.00	\$ (52,177.69)
NET:	\$ 28,219.75	\$ (21,420.00)	\$ 49,639.75

Cash on Hand 9/30/2015

\$ 83,040.34

General Revenue

\$ 111,260.09

L. Wright Hart Fund

\$ 2,562.04

Cash on Hand 1/31/2016

\$ 111,822.13



Taxation Section

Membership Update

As of January 31, 2016

*Total Current Section Membership: 1315

Membership by Member Type:	Current	End of Last FY	Annual Increase (Decrease)
Attorney, Active (ATA Only)	1,291	1,287	4
Attorney (All others)	7	9	(2)
Affiliate (LASST and LADM)	2	4	(2)
Law Student (LS)	12	33	(21)
Non Members (NON)	3	1	2
Total	1,315	1,334	(19)

**Membership by Dues Type:

Paid	1,197	1,243	(46)
Discount	12	34	(22)
Free	33	55	(22)
Unpaid	73	0	73

* Membership numbers fluctuate during certain months due to the following reasons:

Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.
New dues pmts.	New admits & dues pmts.	New admits		Non-pmt. Suspension	Non-renewal removal		New admits	New admits			Free m'ships expire

** Add paid plus discounted dues type to equal revenue from Section Dues (-1050) and Law Student/Affil Dues (-1055).

Attachment B

REPORT TO THE TAXATION SECTION OF THE STATE BAR OF MICHIGAN

FROM: George W. Gregory, Probate & Estate Planning Section Liaison

DATE: February 15, 2016

The Biennial Plan of Work is attached.

The EPIC Update – Topics List is attached

There are a number of pending legislative changes the Probate and Estate Planning Section are involved in that might interest the Taxation Section. Those include:

1. Property Taxes
 - a. Transfer of ownership, HB 4645, HB 5140, HB 5141, SB 648, SB 650
 - b. Other HB 4930
2. Dower, SB 558
3. Community Property Trusts (to achieve double step up in basis)

Changes to the Artificial Reproductive Technology and Probate are still under discussion.

230 people have signed up for the Annual Probate and Estate Planning Institute.

An Amicus Curie brief was rejected due to the fact intensity of the matter. One of the statements made by the proponent of the section's intervention is the implication that a fiduciary that enters into an agreement which gives discounts for lack of marketability and lack of control is violating his fiduciary duty as a matter of law (no hearing was held on value).

The Citizens Outreach Committee has drafted online brochures for Durable Powers of Attorney, Designations of Patient Advocates, Guardianships and Probate (with more user friendly names).

The Tax Nugget dealt with confusion and delayed reporting dates for providing value as used for Federal Estate Tax purposes to the person receiving the property.

Probate & Estate Planning Section
Biennial Plan of Work
10/1/2014 - 9/30/2016

	Statutory/Legislative	Court Rules, Procedures and Forms	Council Organization & Internal Procedures	Professional Responsibility	Education & Service to the Public & Members
Action Pending	<ul style="list-style-type: none"> -Prop tax uncapping exempt. (HB5552) -Fiduciary Access to Digital Assets (HB5366-5370) -PR access to online accts (SB 293) -Hearings minors < 18 (SB 144 & 177) -Funeral Representative (HB 5162/SB 731) 		<ul style="list-style-type: none"> -Supreme Court Task Force Report -Bylaw Update 		<ul style="list-style-type: none"> -"Who Should I Trust?" Program -55th Annual P&EP Institute
Priority Items	<ul style="list-style-type: none"> -Domestic Asset Protection Trusts -ILIT Trustee Liability Protection -Artificial Reproductive Technology -Charitable Trust -Probate Appeals 	<ul style="list-style-type: none"> -SCAO Meetings* 			<ul style="list-style-type: none"> -Communications with members* -Social media & website* -Brochures* -Annual Institute/ICLE seminars* -Section Journal*
Secondary Priority	<ul style="list-style-type: none"> -EPIC/MTC Updates -Directed Investment Trusts -TBE Trusts -ADR Revision -Property tax on trust property -Uniform Real Property TOD Act 			<ul style="list-style-type: none"> -Inventory Lawyer 	<ul style="list-style-type: none"> -Opportunities with ICLE -Digital Journal
Priority To Be Determined	<ul style="list-style-type: none"> -Dignified Death (Family Consent) Act -Pooled income trust exclusion -Neglect Legislation -Foreign Guardians -Inheritance Tax -Estate Recovery -PRE after death & nursing home 		<ul style="list-style-type: none"> -Budget Reporting -Action on SC recommendations 		<ul style="list-style-type: none"> -Probate Court Opinion Bank -Mentor program

*Ongoing

Legislation Development and Drafting Committee
EPIC Update – Topics List

- **FADA fix (Meg)** – FADA currently allows the custodian to require a court order before giving access. Instead, give probate register the ability to add digital access powers in the Register's Statement following an Application for Informal Probate
- **Satisfaction of claims using nonprobate assets (Josh Ard).** MCL 700.3805.
 - Clarify duties of fiduciaries regarding
 - Priority for use of assets to pay claims
- **Apostille fix (Howard)**
 - Possibly an amendment to the Great Seal Act, MCL 2.41 et seq
 - Court form for certification (MC 202), references 28 USC 1738:
 - The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
 - The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
 - Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.
- **Expanded petition and order of assignment for “trust funding cleanup” (Nathan)**
 - MCL 700.3982 (Allow assignment to devisees with appropriate waiver from surviving spouse)
 - Possibly add new section instead
- **Gender/same-sex marriage-related changes (Meg)** (substitute gender-neutral language)
 - 700.2114 Parent and child relationship.
 - 700.2519 Statutory will.
 - 700.2801 Effect of divorce, annulment, decree of separation, bigamy, and absence.
 - 700.2806 Definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances.
- **Exempt property allowance (Nathan)**
 - 700.2404 (consider allowing testator to override allowance for adult children)
- **COLA (Howard).** The following EPIC thresholds are not subject to COLA. Consider incorporating into MCL 700.1210.
 - 700.2519 Statutory will., Additional clauses (\$5,000 gift to minors provision)
 - 700.3605 Demand for bond by interested person (\$2,500 threshold for interest in estate for demanding a bond)
 - 700.3916 Disposition of unclaimed assets. (\$250 threshold for certain distributions)

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- 700.3917 Duties of county treasurer. (\$1,000 threshold for county treasurer imposing certain fees on unclaimed funds)
- 700.3918 Distribution to person under disability. (\$5,000 threshold for distributions to spouse, parent, or other close relative in lieu of a conservator)
- 700.3981 Delivery of cash not exceeding \$500 and decedent's wearing apparel.
- 700.5102 Payment or delivery (\$5,000 threshold for payments f/b/o minors without the appointment of a conservator)
- **COLA beyond EPIC**
 - MCL 257.236 (\$60,000 threshold for the transfer of motor vehicles through the SOS)
 - MCL 324.80312(3) (\$100,000 threshold for transfer of watercraft through the SOS.)
- **Allow for appointment of standby guardians (Nathan).**
 - Minors: Add new section to Article V, Part 2, MCL 700.5201, et seq.
 - Legally Incapacitated Individuals: Add new section to Article V, Part 3, MCL 700.5301, et seq.
- **MTC fixes (Jim Spica)**
 - The prepositional phrase with which section 7815(2) (MCL § 700.7815(2)) begins (viz., "Unless the trust instrument expressly provides otherwise") should be deleted. The phrase is superfluous (and, therefore, potentially confusing) in light of section 7105(2). (The phrase's inclusion in the statute is my fault: I drafted 7815(2) as part of the 2012 decanting amendments to the MTC, and there was evidently a moment in which I forgot that I was writing statutory language rather than commentary.)
 - Section 7105(2)(a) should refer to section 7402 (MCL § 700.7501(2)(a)). The committee will have to decide whether the wanted reference to section 7402 should supplant the (existing) reference to section 7401, whether the amended provision should refer to both sections 7401 and 7402, or whether we should follow the UTC in referring simply to "the requirements for creating a trust." See Unif. Trust Code § 105(b)(1) (amended 2006). (I suspect that the existing reference in MTC section 7105(1)(a) to section 7401 was actually meant just to be a reference to section 7402, but I don't know that.) In any case, it is in section 7402 that the MTC addresses the requirements for creating a trust most directly.
- **MTC Notice Fix (Geoff Vernon)**
 - 700.7103(g) "Qualified trust beneficiary" means a trust beneficiary to whom 1 or more of the following apply on the date the trust beneficiary's qualification is determined:
 - (i) The trust beneficiary is a distributee or permissible distributee of trust income or principal.
 - (ii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees under the trust described in subparagraph (i) terminated on that date without causing the trust to terminate.
 - (iii) The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.
 - Related fixes in 700.7814

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- Related fix to “nonwaivable duties” provision, 700.7105(2)(i): address the reference to 7814(2)(a) to (c) and fact that 7105(2)(i) does not list all the duties in 7814(2)(a) to (c).
- Problem scenarios and questions –
 - Assume there exists a dynasty trust with all generations of the family (e.g., child, grandchild, and great grandchild) being permissible distributees (assuming “permissible distributees” are included in the term “distributees”) of trust income and principal. Pursuant to (g)(ii), the clean-up clause beneficiaries (commonly charities), who are almost certainly never going to receive trust distributions (because every family member of the several generations would have to die prior to trust termination), are “qualified trust beneficiaries”. Inasmuch, these clean-up beneficiaries are required to receive notice under section 7814(2) (a) – (c) and such notice provisions cannot be modified by the trust instrument. This cannot be the intent of the section.
 - With respect to (g)(iii), it matters how the trust terminates. Do we assume the trust terminates per the terms of the governing instrument (meaning, in most cases, that everybody in the family is dead)? Or do we assume that the trust was terminated by court order or as if the RAP period ended and everybody is still living?
 - Also with respect to (g)(iii), if the trust terminates due to deaths and the new permissible distributee is another trust that hasn’t been funded and has no trustee, who gets the section 7814 notices?
 - Is it intentional that (g)(ii) omits “permissible distributees” in the phrase “if the interests of the distributees under the trust...terminated”. Is it acceptable to read that to only consider those that have actually received distributions?
- **Statutory forfeiture for benefiting drafter** (Legislative Development and Drafting Committee)
- **UPC-Related updates** (Prof. Waggoner and ART committee)
 - MCL 700.1201, General Definitions.
 - MCL 700.2103, Share of Heirs Other than Surviving Spouse
 - MCL 700.2104., Requirement of Survival by 120 Hours; Individual in Gestation.
 - MCL 700.2108. [Reserved.]
 - MCL 700.2114, Parent Barred from Inheriting in Certain Circumstances.
 - MCL 700.2115, Definitions.
 - MCL 700.2116, Effect of Parent-Child Relationship.
 - MCL 700.2117, No Distinction Based on Marital Status; Child Born or Conceived During Marriage.
 - MCL 700.2118, Adoptee and Adoptee’s Adoptive Parent or Parents.
 - MCL 700.2119, Adoptee and Adoptee’s Genetic Parents.
 - MCL 700.2120, Child Conceived by Assisted Reproduction Other Than Child Born to Gestational Carrier.
 - MCL 700.2121, Child Born to Gestational Carrier.
 - MCL 700.2122, Equitable Adoption.
 - MCL 700.2502, Execution; Witnessed or Notarized Wills; Holographic Wills.

Legislation Development and Drafting Committee
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- MCL 700.2504, Self-proved Will.
- MCL 700.2705, Class Gifts Construed to Accord with Intestate Succession; Exceptions.
- MCL 700.2805, Reformation to Correct Mistakes.
- MCL 700.2806, Modification to Achieve Transferor's Tax Objectives.
- MCL 700.3406, Formal Testacy Proceedings; Contested Cases.
- New MCL 700.3715 regarding posthumous conception.
- New 700.7821 regarding posthumous conception.
- MCL 700.8101, Time of Taking Effect; Provisions for Transition.

Attachment C

Report of the Employee Benefits Committee

February 18, 2016

The Employee Benefits Committee met on December 16, 2015 at the Henry Center for Executive Development at Michigan State in East Lansing. Samantha Kopacz (Fraser Trebilcock) presented an update on wellness program guidance, outlining the three separate (and often conflicting) sets of regulations governing wellness programs and the challenges facing practitioners and employers given these discrepancies. Although attendance was minimal, the smaller group allowed for a great discussion and more in-depth networking.

In addition, we held a joint event with the ASPPA Benefits Council ("ABC") of Detroit on January 21, 2016 at the Management Education Center in Troy. Sherry Brackney (DOL-EBSA) discussed various issues relating to EBSA investigations of employee benefit plans. The event was very well-attended.

We have begun discussions with the Michigan Women's Tax Association about the possibility of a joint event in Grand Rapids in June.

Finally, Bob Miller (Calfee Halter & Griswold) has agreed to serve as a panelist with me at the 2016 Tax Conference, presenting on Announcement 2015-19 regarding modifications to the determination letter program. Bob is leading the ABA taskforce on this issue. Jeff Kirkey is still trying to secure a third panelist from the IRS. If he is unsuccessful, we will either try to find another local speaker to round out the panel, or Bob and I will serve on a panel of two.

Attachment D



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January 2016 – December 2017**

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TAX POLICY GUIDANCE
as of February 1, 2016

Guidance Type	Process Start Date	Issue	Stage - PUBLISHED	Published #
IPD	*N/A	<i>Use Tax Exemption for Transfers of Certain Property to an "In-Law"</i>	Published 5/28/15	IPD 2015-1
LR	*N/A	<i>Administration of 2013 PA 160 and 2013 PA 234 (sales tax on the difference) (rescinded LR 2014-2)</i>	Published 4/20/15	LR 2015-1
LR	*N/A	<i>The Effect on Audits of Changes Made to Statute of Limitations Extensions by Public Act 3 of 2014</i>	Published 6/10/15	LR 2015-2
LR	*N/A	<i>Non-Tobacco Products with Nicotine and the Tobacco Products Tax Act</i>	Published 7/22/15	LR 2015-3
LR	*N/A	<i>Tobacco Tax Payment Requirements for Unclassified Acquirers</i>	Published 8/6/15	LR 2015-4
RAB	*N/A	<i>Environmental Protection Regulatory Fee (replaced RAB 2014-12)</i>	Published 7/13/15	RAB 2015-11
RAB	*N/A	<i>Exemption for Foreign Diplomatic Personnel (update of RAB 2013-4)</i>	Published 8/6/15	RAB 2015-13
RAB	*N/A	<i>Filing and Remitting "Same Day" Sales and Use Tax Returns and Payments When There is an Electronic Funds Transfer for Michigan Treasury Online System Failure</i>	Published 8/10/15	RAB 2015-14
RAB	*N/A	<i>Taxability of Income to Estates, Trusts, or Beneficiaries (update of RAB 1988-19)</i>	Published 8/20/15	RAB 2015-15
RAB	*N/A	<i>Sales Tax Treatment of Delivery Services Provided by Retailers</i>	Published 9/23/15	RAB 2015-17
RAB	*N/A	<i>Household Resources</i>	Published 10/5/15	RAB 2015-18
RAB	*N/A	<i>Where Benefit of Services is Received (update of RAB 2010-5)</i>	Published 10/16/15	RAB 2015-20
RAB	*N/A	<i>Sales and Use Tax Nexus Standards for Out-of State Sellers</i>	Published 11/3/15	RAB 2015-22
RAB	*N/A	<i>Officer Liability</i>	Published 11/3/15	RAB 2015-23
RAB	*N/A	<i>Sales and Use Taxes - Lessors (update of RAB 1988-39)</i>	Published 12/2/15	RAB 2015-25
RAB	*N/A	<i>Revenue Act -Audits and the Statute of Limitations (update of RAB 2008-8)</i>	Published 12/2/15	RAB 2015-26
RAB	*N/A	<i>Sales and Use Tax Bad Debt Deduction (update of RAB 1989-61)</i>	Published 12/2/15	RAB 2015-27
RAB	*N/A	<i>Sales and Use Tax Treatment of Interstate Motor Carriers (update of RAB 1993-8)</i>	Published 1/8/16	RAB 2016-2
RAB	*N/A	<i>Income Tax - Treatment of Gambling Gains, Losses, and Expenses</i>	Published 1/21/16	RAB 2016-3
RAB	*N/A	<i>Determination of Tangible Personal Property or Real Property</i>	Published 2/1/16	RAB 2016-4
Rules	*N/A	<i>R 205.2001 – 205.2011, Audit Standards for Field Audits</i>	Published 5/13/15	R 205.2001-205.2011
Guidance Type	Process Start Date	Issue	Stage - IN FINAL REVIEW/APPROVAL	
RAB	*N/A	<i>Use Tax Base of Tangible Personal Property Affixed to Real Estate by a Manufacturer/Contractor or Other Contractor</i>	Final review/approval	
LR	*N/A	<i>State Real Estate Transfer Tax Refund Procedure</i>	Final review/approval	
LR	*N/A	<i>IP Exemption and Automobile Dealers</i>	Final review/approval	
IPD	N/A	<i>Homestead Property Tax Credit Calculation for Claimants Living in Special Housing</i>	Final review/approval	

TAX POLICY GUIDANCE
as of February 1, 2016

IPD	9/29/2015	<i>Appeal Extension When Taxpayer's Representative Was or Is Not Provided the Required Copy of a Letter or Notice Pursuant to MCL 205.8</i>	Final review/approval	
IPD	11/6/2015	<i>Taxability of Over-the-Counter Medications Dispensed by Prescription and Paid for by Medicaid Arrangements</i>	Final review/approval	
Guidance Type	Process Start Date	Issue	Stage - EXTERNAL COMMENT PERIOD	
Guidance Type	Process Start Date	Issue	Stage - INTERNAL COMMENT PERIOD	
Guidance Type	Process Start Date	Issue	Stage- INTERNAL DRAFTING - (OUTLINE COMMENTS RECEIVED if applicable)	
RAB	8/19/2015	<i>Sales and Use Taxation in the Construction Industry (update of RAB 1999-2)</i>	Outline comments received/Internal drafting	
RAB	9/3/2015	<i>Income Tax Apportionment</i>	Outline comments received/Internal drafting	
RAB	10/23/2015	<i>Sales and Use Tax - Nonprofit Entities (update of RAB 1991-19 and RAB 1995-3)</i>	Outline comments received/Internal drafting	
RAB	11/2/2015	<i>Railroad Employee Benefits</i>	Outline comments received/internal drafting	
RAB	10/23/2015	<i>Issuance of Bulletins, Letter Rulings, and Other Guidance</i>	Outline comments received/Internal drafting	
Guidance Type	Process Start Date	Issue	Stage - OUTLINE - EXTERNAL COMMENT PERIOD	
RAB	1/11/2016	<i>Sales and Use Tax Exemptions and Requirements</i>	Comments due 2/10/16	
Guidance Type	Process Start Date	Issue	Stage - IN QUEUE	
RAB		<i>Sale of Ownership Interest in a Pass-Through Entity</i>		
Rules		<i>Proposed Rules, Authorized Representatives</i>		
*N/A - Drafting commenced prior to new process.				



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Tax Policy Division: RAB/IPD Candidates (2016)

- Successor Liability
- Income Tax; Business/Nonbusiness Income; Rental Income
- Sales and Use Taxes; Exemption Certificates
- Income Tax; Pensions and Retirement Plans
- Income Tax; Net Operating Losses
- Sales and Use Taxes; Veterinarians
- Income Tax; Oil and Gas
- Sales and Use Taxes; Agricultural Exemption
- Corporate Income Tax; Unitary Business Groups
- Sales and Use Taxes; Data Centers
- Income Tax; Sale of Partnership Interests

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TREASURY'S RESPONSE TO EXTERNAL COMMENTS REGARDING DRAFT RAB

(Determination of Property as TPP or Real Property)

- I. **Background of RAB.** A comment recommended that the RAB include certain factors relating to the tax base of the tangible personal property that is affixed to real estate. The Department did not revise the RAB to specifically address those factors because of the limited purpose and scope of this RAB. However, in light of this comment, a footnote was added to the RAB to illustrate different consequences that spring from the determination (e.g., sales tax for retail sale vs. use tax for consumption of the property as a contractor).
- II. **RAB References to *Sequist v Fabiano*.** A comment stressed that the Michigan Supreme Court decision in *Sequist v Fabiano*, 274 Mich 643 (1936), was not a tax case and suggested that the Department use an alternative 3-prong test for determining when tangible personal property becomes affixed to real estate. The Department declined to adopt an alternative test because: (i) the Department has consistently relied on the test discussed in *Sequist* for the limited purpose for which this RAB is being issued (particularly in the context of sales and use taxes), and; (ii) it deviates from the test which the Department and courts have continuously relied on, including in the context of sales and use taxes. See, e.g., *Granger Land Development Co v Dep't of Treasury* (COA 2009); *West Shore Services, Inc v Dep't of Treasury* (COA, unpublished 2015); *Dallman Industrial Corp v Dep't of Treasury*, (MTT 2011); and *S.L.C. Meter Service, Inc v Dep't of Treasury* (MTT 1999). However, the Department did accept another comment that the RAB should clearly articulate that all of the prongs of the test must be satisfied for tangible personal property to be considered affixed to real estate, and revised the RAB accordingly.
- III. **Annexation of Property to Real Estate (substantial vs incidental affixation).** A comment recommended that "there should be a clear statement that the affixation *must be substantial and not incidental*." The Department declined to adopt this comment because to add this qualification would lend itself to more questions than it would answer (e.g., what constitutes a "substantial" vs. "incidental" affixation?) and because it appears to be more limited than what the case law provides. See, e.g., *Brunt Assoc, Inc v Dep't of Treasury*, MTT Docket No. 461270 (May 16, 2015) finding that the taxpayer was a manufacturer/contractor (rather than a retailer as the taxpayer argued). In that case, the MTT rejected the taxpayer's position that the subject furniture, fixtures, cabinets, shelves and decorative panels were attached "in an incidental manner" with clips, screws, nuts and bolts so they were not "affixed" to realty. The MTT determined that these items were "attached to realty by screws, clips, fasteners, or bolts" such that they were "affixed." Accordingly, the RAB was not revised to adopt this comment.
- IV. **Annexation of Property to Real Estate (annexation in some manner or means, albeit slight).** A comment recommended that the RAB not include the phrase "in some manner or means, albeit slight," in the discussion of annexation. This comment was not adopted because the phrase "in some manner or means, albeit slight" is a direct quote from the case law (e.g., *Wayne Co v Britton Trust*, 454 Mich 608, 615 (1997) citing *Morris v Alexander*, 208 Mich 387, 391 (1919)). Furthermore, annexation is only one factor (out of three) and so there is no need to limit it as such. The commenter also notes, "the affixation must be constructive and consistent with the intent to make it permanent." The Department points out that intent is the third factor and would be part of the calculus for making any determination. Therefore, no change to the RAB was made based on this comment.
- V. **Annexation of Property to Real Estate (Discussion of *Granger Land Development Co v Dep't of Treasury*).** One comment recommended that the RAB delete the reference that Michigan courts have recognized that there are "innumerable ways that a person can affix personal property to real estate ..." because the commenter argued it creates confusion. Another comment requested additional examples and suggested that the RAB explain that the *Granger* court noted that the mere size and weight of the property should not lead to the assumption that the property is affixed to the realty and proposed that the RAB state that "the property must be affixed to the reality in a constructive manner." The Department notes that the quote

from *Granger* with which the comment is concerned is important because, in this context, there is not merely a check-the-box solution to making determinations as the RAB disclaims. Taxpayers should be aware that although the 3-factor test will be used, the fact that Michigan courts recognize there are “innumerable ways” that a person can affix TPP to realty illustrates the point that specific examples are not warranted. Instead, the Department has provided summaries of cases it intends to follow and a general guideline (including a snapshot of the chart that is included in the Contractor Manual issued by the Department). As to the issue of “size and character,” that is what the *Granger* court noted and is consistent with other decisions cited in the RAB such as the *Baraga Area Schools* decision (which the *Granger* court cited for that point). Accordingly, no changes were made to the RAB concerning these comments.

- VI. RAB Incorporation of Principle (for Annexation prong) from *Kent Storage Co v Grand Rapids Lumber Co.*** A comment criticizes the RAB’s use of a quote from *Kent Storage* (e.g., “whatever is affixed to a building by an owner to complement, to facilitate its use and occupation in general, becomes a part of the realty, though capable of removal without injury to the building” – 239 Mich 161, 164-165 (1927)) because it alleges that it reflects the decision of only one court and then recommends that the RAB follow a decision from New Jersey. The Department notes that the *Sequist* court cited *Kent Storage* for that proposition and there are other cases that have done so as well. See, e.g., *Wood Hydraulic Hoist & Body Co v Norton*, 269 Mich 341, 346 (1934); *In re James Todd Wierenga*, 431 B.R. 180, 184, Bkrtcy.W.D.Mich (2010). Concerning the New Jersey decision, it is non-binding and has not been cited or followed by any Michigan appellate court or federal court in Michigan applying Michigan law. Moreover, the statement that property that can be removed without loss of value or damage to the realty remains tangible personal property appears to be too absolute. While it is a relevant fact to be considered, the proposal appears to make such facts conclusive. See for example, *Velmer v Baraga Area Schools*, 430 Mich 385 (1988) (opining that a milling machine not bolted to the floor in a high school shop classroom could be constructively affixed to the real property because of its size and weight) cited by *Granger* and *West Shore Services, Inc v Dep’t of Treasury* (COA, unpublished 2015). Accordingly, no changes were made to the RAB based on these comments.
- VII. RAB’s Discussion of the Adaptation Prong of the 3-Part Test.** A comment suggested that “this is the most important factor” and requires greater explanation and use of examples. A significant limitation on providing guidance concerning this factor is the lack of case law setting forth a comprehensive discussion of this factor as to the law. For example, as of 1997, the Michigan Supreme Court declared that “[n]o Michigan case has addressed the adaptation prong of the fixture test” and so it provided sparse guidance. See *Wayne Co v Britton Trust*, 454 Mich 608, 619 (1997). The Department also notes that case law does not appear to support the contention that this is “the most important factor.” To the contrary, if any factor has been described as being more important, it is the third factor concerning intent. See e.g., *Morris v Alexander*, 208 Mich 387, 390 (1919) quoting *Aldine Mfg Co v Barnard*, 84 Mich 632 (1891) (“... neither the mode of annexation nor the manner of use is in all cases conclusive; yet these considerations are frequently of much importance in arriving at the intention of the parties, which is the real test. It is now well settled in this state that whether an article attached to the freehold becomes a fixture depends largely upon the intention of the parties.”) For the reasons explained in Item V above, the RAB does not follow the New Jersey court decision cited by the comment. Because determinations are highly fact-specific and must be made on a case-by-case basis, the RAB is not intended to provide extensive examples of how the Department will treat certain property except where noted in the case examples. In light of this comment, however, certain examples were added to the RAB in the context of this factor.
- VIII. Application of Tests from Property Tax Cases.** One comment concerned the RAB’s use of tests applied in property tax cases and recommended that the RAB point out that it is not intended to provide guidance concerning general *ad valorem* property taxes. The Department made changes to the RAB to adopt this comment. Specifically, the RAB was revised to explain that the Department is following the 3-factor test (notwithstanding that it generally derives from property tax cases) and explicitly disclaims that it should not be relied upon for making determinations concerning general *ad valorem* property taxes.

- IX. **Non-precedential Nature of Unpublished Michigan Court of Appeals decisions.** A comment recommended that the RAB point out that these decisions cannot be relied upon as precedent. The Department revised the RAB in response to this comment by adding the following disclaimer where unpublished decisions are cited: "Please note that unpublished decisions do not constitute binding precedent."
- X. **Portable Grain Storage Bins and the *Miedema Metal Building Systems* decision.** A comment questioned the value of including the Court of Appeals decision in *Miedema Metal Building Systems* in the case examples given the subsequent enactment of legislation exempting portable grain bins. The RAB notes that following the *Miedema Metal Building Systems* decision, the Legislature expanded the agricultural production exemptions in the General Sales Tax Act (e.g., MCL 205.54a(1)(e)) and the Use Tax Act (e.g., MCL 205.94(1)(f)) to include portable grain bins. Under these statutes, a portable grain bin is "a structure that is used or is to be used to shelter grain and that is designed to be disassembled without significant damage to its component parts." However, the RAB points out that *to the extent grain storage bins constitute portable grain bins as defined in these statutes*, they would be exempt from sales and/or use tax notwithstanding the *Miedema Metal Building Systems* decision. Notably, and in response to the comment, the Department added to the relevant footnote that the Department would characterize the grain storage bins at issue in *Miedema Metal Building Systems* as portable grain bins which are exempt from sales and use tax. The footnote further explains that if a grain storage bin is permanently attached to the real property (e.g., has a concrete foundation with poured concrete walls cemented into the foundation), then the bins would not likely qualify as portable grain bins under these statutes. The Department also left the discussion of *Miedema Metal Building Systems* in the RAB because the Department has successfully argued that the decision is instructive as to whether a taxpayer is a retailer or a contractor and the MTT continues to rely on that case for that purpose. See MTT decisions in *Greystone Int'l, Inc v Dep't of Treasury*, MTT Docket No. 429973 (May 10, 2013) and *Brunt Assoc, Inc., supra*.
- XI. **Other Michigan Tax Tribunal and Michigan Bd of Tax Appeals decisions.** The Department reviewed and considered the additional MTT and court decision offered in the comment, but did not include them in the RAB because they were non-binding, did not apply the 3-factor test, and/or are not being followed by the Department.
- XII. **General Criticism of RAB Format and Use of Property Tax Cases.** One comment recommended a "rewrite" of the RAB (alleging the RAB lacked clear direction) and also suggested that the references to property tax cases were not useful even for illustrative purposes. Based on the first comment, the RAB was revised to clarify the purpose of the RAB, which is: (i) to explain the test that the Department will apply to make determinations as to when property remains TPP or should be considered real property; (ii) to explain what the elements of that test are, and; (iii) to provide examples of cases that have either applied the test, are binding precedent, or are cases the Department has agreed to follow although non-binding. Because determinations are highly fact-specific and must be made on a case-by-case basis, the RAB is not intended to provide specific examples of how the Department will treat certain property except where noted in the case examples elsewhere in the RAB. Concerning the second part of the comment, the Department disagrees with the commenter as to the usefulness of the case references. In fact, even though there are non-tax (or property tax) cases cited, the same tests discussed/applied in those cases have been applied in sales and use tax cases for determining the very issue at the heart of this RAB. See, e.g., *Granger* at 611; *West Shore Services* (COA, unpublished 2015). Accordingly, no other changes were made to the RAB.
- XIII. **RAB Definition of "Fixture" and Application of this Term throughout the RAB.** A comment recommended that the term "fixture" be applied consistently. Another comment alleged that the examples were either too narrow or too vague to provide meaningful guidance. As to the first comment, the RAB was revised to address the issue with the "fixture" references. As to the second comment, the examples are a result of the subject matter under which determinations are made under the unique facts of each case and so are evaluated on a case-by-case basis. For this reason the RAB is focused more on general concepts than on specific examples. No change was made to the RAB to relative to this comment.

- XIV. RAB Citation to *Morris v Alexander*.** A comment asserts that “[t]here must be more relevant case law than the 1919 case of *Morris v Alexander*. Especially as the industrial processing exemption was greatly expanded in 1999.” It was not clear to the Department what this comment is addressing, as the RAB cites, quotes, and/or summarizes many more cases than the *Morris v Alexander* decision, including cases that have applied the 3-part test in the sales or use tax context. Moreover, the specifics of industrial processing, including the issue of affixation to real estate, is currently addressed in RAB 2000-4. To the extent any updates are necessary, they should be addressed in that RAB. Furthermore, while the industrial processing exemption was expanded in 1999, it generally maintained the exclusion for property affixed and becoming a structural part of real estate. Accordingly, no change was made to the RAB relative to this comment.
- XV. RAB Discussion of *Granger Land Development Co v Dep’t of Treasury*.** One comment objected to the content of the RAB’s discussion of the *Granger* case. The Department believes that the RAB presents a fair summary of the *Granger* decision. The summary provides a snapshot of the facts relied on by the *Granger* court as to each of the prongs of the 3-part test. The Department also notes that *Granger* and subsequent decisions have noted that “unique facts” were are play in *Granger*, so its application beyond those facts is limited. Therefore, no changes were made to the RAB for this comment.
- XVI. Cases Relied on in the RAB.** A comment suggested that the RAB announces an intention to follow the three-factor test in *Sequist*, but then relies on many cases that did not follow or apply the three-factor test and recommends that the guidance be clear as to whether the three-factor test is being adopted by the Department. The RAB was revised to address this comment. Specifically, the RAB makes it clear that the Department will make determinations as to whether personal property should be considered a fixture to real estate by applying the three-factor test. The RAB was revised to make it clear that the case examples provided are for illustrative purposes (i.e., examples of how courts have ruled – and in some cases done so without applying the three factor test) and to summarize cases that the Department is bound to follow (or in the case of non-binding precedent, has chosen to follow).
- XVII. General Characterization Chart.** One comment was critical of the usefulness of the chart and recommended explanations be added to the chart. The chart provides excerpts from the larger chart that is contained in the Contractor Manual (June 2015) issued by the Department. It was not intended to be all-encompassing. Moreover, whether property remains personal property or becomes part of the real property is to be determined “on a case-by-case basis” (*Granger* at 611) because the “question whether an object is a fixture depends on the particular facts of each case.” (*Velmer* at 394). Because determinations are highly fact-specific and must be made on a case-by-case basis, the RAB is not intended to provide specific examples of how the Department will treat certain property except where noted in the case examples or otherwise in the RAB. Accordingly, no changes were made to the RAB relative to this comment except to note that a more comprehensive chart is included in the Contractor Manual issued by the Department and published on the Department’s website.

Treasury Update

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Taxability of "Cloud Computing" Clarified by Appellate Court

As noted in the November issue of Treasury Update, the Department of Treasury had been litigating the taxability of certain forms of "cloud computing." On October 27, 2015, the Michigan Court of Appeals issued a published decision in *Auto-Owners Insurance Co v Dep't of Treasury*, ___ Mich App ___ (2015), 2015 WL 6473592. At issue in *Auto-Owners* was whether certain products were subject to the imposition of use tax on prewritten computer software delivered in any manner under MCL 205.92b(o). Treasury had determined during audit that the taxpayer's purchase of remote access to third party vendors' computer networks, servers, data storage, and software applications amounted to the taxpayer's "use" of tangible personal property—specifically prewritten computer software—in Michigan. The taxpayer objected, and filed a claim in court. On appeal, the Court of Appeals found that the taxpayer's transactions amounted to the purchase of nontaxable services, not the purchase of prewritten computer software.

The decision by the Court of Appeals in *Auto-Owners* provides guidance to Treasury on the parameters involved in taxing certain "cloud computing" products. Essentially, the court separated the products into two different categories.

The first category consisted of products that did not include the delivery of "code that enabled" the vendor's system to operate. That is, the software was entirely accessed remotely. The court found these products did not satisfy the requirement that prewritten computer software was delivered, in any manner, because there was no proof that code was electronically delivered to Auto-Owners, or that Auto-Owners exercised any incidence of ownership over the vendor's code. The second category consisted of products where the court found that some prewritten computer software was electronically delivered to Auto-Owners. The court found that the electronic delivery of a "local client" or "desktop agent" was sufficient to constitute an "ownership-type right" over the product.

However, even though the court found that some prewritten software had been delivered, the court determined that – under the "incidental to service" test developed in *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13 (2004) – the software was merely incidental to the vendor's "rendering of professional services." Consequently, if a software program is electronically downloaded in its entirety, it will be taxable. If only a portion of a software program is electronically delivered to a customer, the "incidental to service" test under *Catalina* will be applied to determine whether the transaction constitutes the rendition of a nontaxable service rather than the sale of tangible personal property.

Treasury will apply the holding in *Auto-Owners* to all open tax years. Treasury has issued a Notice providing further guidance for taxpayers seeking a refund of taxes paid on products falling within the *Auto-Owners* opinion. The Notice regarding *Auto-Owners* is available on Treasury's website.

Under Auto-Owners, the taxability of "cloud computing" products depends upon whether the software at issue is downloaded in its entirety; if the software is downloaded only in part, the "incidental to service" test must be applied. If merely accessed remotely, the software is exempt.



Motor Fuel Inventory “Floor Stock” Tax

Set to Spring into Effect in 2017

With the enactment of 2015 PA 176, the tax rates imposed under the Motor Fuel Tax Act (MFTA) on gasoline and diesel fuel will increase to 26.3 cents/gallon beginning on January 1, 2017. This increase in the tax rates will cause a dormant provision in the MFTA to spring to life. That provision is the inventory (floor stock) tax found in section 10 of the MFTA, MCL 207.1010. Under that provision, whenever the tax imposed on gasoline or diesel fuel is increased, a specific amount of previously taxed fuel held in storage is subject to the tax increase, and tax must be reported and paid to the Department of Treasury based on the increase. This inventory tax applies as follows:

- For end users, the tax applies to motor fuel held in storage in excess of 3,000 gallons.
- For those holding fuel for sale (e.g., retail stations), the tax applies to motor fuel in excess of “dead storage.” Dead storage equals either 200 gallons (for a tank with a capacity less than 10,000 gallons), or 400 gallons (for a tank with a capacity of 10,000 gallons or more).

A person in possession of motor fuel subject to this inventory tax must do all of the following:

- Take an inventory at the close of business on the last day before the effective date of the tax increase (i.e., December 31) to determine the gallons of motor fuel in storage.
- Complete a report to be filed with Treasury (on a form or in the format required by Treasury) for the following gallons held in storage: (i) total gallons of motor fuel; (ii) gallons in “dead storage,” and; (iii) gallons of dyed diesel fuel.
- File the report and pay the tax due within 20 days after the last day of the month that the increase in the tax rates took effect (i.e., February 20). Tax due is calculated by multiplying the increase in the tax rates by the taxable gallons held in storage.

The following chart summarizes the calculation of the tax due for rates effective January 1, 2017:

	END USER	RETAILER
	(a) Total Gallons of Motor Fuel*	(a) Total Gallons of Motor Fuel*
	(b) 3,000 gallons	(b) Dead Storage
	(c) Exempt Gallons (e.g., Dyed Diesel Fuel)	(c) Exempt Gallons (e.g., Dyed Diesel Fuel)
Taxable Gallons (TG)	(a)-(b)-(c) = TG	(a)-(b)-(c) = TG
Tax Due by Feb 20, 2017	TG x \$0.073	TG x \$0.073

* As of December 31, 2016

Treasury will publish more guidance regarding the inventory (floor stock) tax in the future.

Tax Implications of the “Sharing Economy”

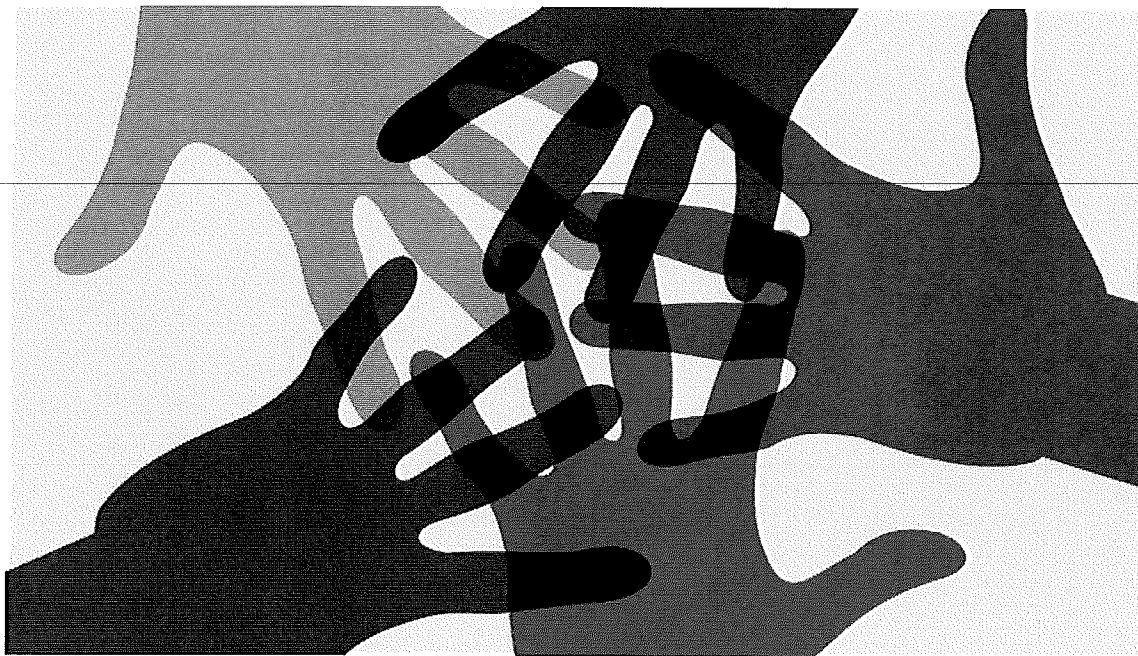
The “sharing economy” is a phrase given to a new and emerging sector of the business market that seeks to match demand with what many may think of as unconventional sources of supply. Examples of the “sharing economy” are cropping up in a variety of industries, including housing, transportation and leasing of tangible personal property. Have you booked housing accommodations through Airbnb or HomeAway, or caught a ride using Uber or Lyft’s platform? If so, you have participated in the “sharing economy.” In addition to various public safety and public policy issues, states have an interest in applying their tax laws consistently to these new business models. This article will focus on the use tax implications of the “sharing economy” in the housing sector.*

Homeowners who rent out their homes, or rooms in their homes, to the public for temporary lodging must remit use tax on those accommodations. Michigan’s 6% use tax applies to any stay of 30 days or less. This includes the rental of a vacation home, cabin, lodge, condominium, townhouse, room in a private residence, or any other structure. The tax applies whether the provider is a hotel chain, a bed and breakfast establishment, or a private homeowner.

Those providing goods or services in the “sharing economy” should keep proper records in order to substantiate whether, and in what amount, they may owe sales or use tax. If a person owes sales or use tax, he or she also needs to register with the Department of Treasury. Please follow the application process outlined on [Form 518, Michigan Business Taxes Registration Booklet](#), for further information.

If after reading this article you think you may be responsible for remitting sales or use tax, please consult a tax advisor knowledgeable in state tax laws.

* The leasing of tangible personal property, such as through SnapGoods, may create a tax liability in Michigan depending on the facts. The general rule is that lessors of tangible personal property can elect to either (1) pay sales or use tax on the full cost of the property at the time it is acquired, or (2) pay use tax on total rental receipts. MCL 205.95(4); Mich Admin Code, R 205.132(1). This means that if an individual pays sales tax when he purchases a lawnmower, he will not owe use tax if he later decides to lease the lawnmower.



Tax Exemption for Data Center Equipment

Effective January 1, 2016, 2015 PA 251 and 252 (the Acts), provide a new sales/use tax exemption for certain data center equipment sold to a qualified data center or colocated business for use in the operations of the qualified data center. The exemption also extends to data center equipment sold to a contractor if the equipment is affixed to or made a structural part of a qualified data center.

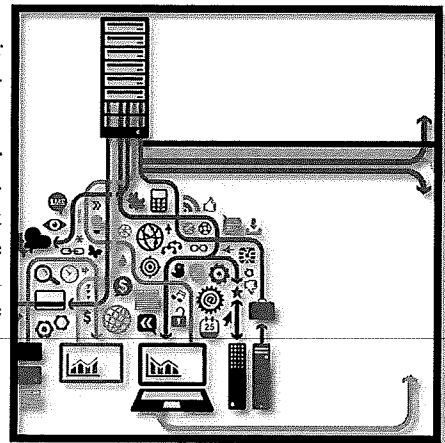
For example, an entity that sells or buys a server to be located in a qualified data center under a contract with the qualified data center will not be subject to sales or use tax on that server as long as the server is located in the data center. Similarly, a qualified data center is exempt from sales and use tax on servers it purchases for use in new data centers. The Acts are set to expire on December 31, 2035; however, they will expire sooner if certain job creation goals are not met by 2022 and 2026.

The Acts provide the following definitions of “data center equipment,” “qualified data center,” and “colocated business”:

- “Data center equipment” is limited to computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, prewritten computer software used in operating, managing, or maintaining the qualified data center or the business of the qualified data center or a colocated business, and construction materials used or assembled under the qualified data center’s proprietary method for the construction or modification of a qualified data center.
- “Qualified data center” means a Michigan facility (only) that is owned and operated by an entity engaged in operating, managing, or maintaining networked computers/facilities for the purpose of centralizing the storage, processing, management, or dissemination of data of at least one person that is not an affiliate of the owner or operator of the qualified data center. The qualified data center must receive 75% or more of its revenue from unaffiliated colocated businesses to qualify for the exemption. An “affiliate” is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person.
- A “colocated business” is a person that has entered into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the qualified data center for a period of 1 or more years.

Qualifying persons may claim the exemption when purchasing eligible data center equipment by providing a completed Michigan Sales and Use Tax Certificate of Exemption (Form 3372) to its seller. The purchaser, including contractors, must mark the box “Other” (Section 3, Line 11 of Form 3372) and fill in “Data Center” on the explanation line. Or, in lieu of an exemption certificate, the seller may obtain and retain other identifying information of the purchaser and the reason for claiming the exemption, in paper or electronic format.

To read the new laws, please refer to [2015 PA 251](#) and [2015 PA 252](#), which will be codified at MCL 205.54ee and MCL 205.95cc.



For questions, ideas for future newsletter or Revenue Administrative Bulletin topics, or suggestions for improving Treasury Update, please contact:

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The Chicken or the Egg: *Ashley Capital*

Determines Order of MBT Credits

The Michigan Court of Appeals recently addressed an issue that, while facially technical, may significantly impact a taxpayer's ultimate liability under the Michigan Business Tax (MBT). In its November 10, 2015 decision in *Ashley Capital v Dep't of Treasury*, ___ Mich App ___ (2015), 2015 WL 6955187, the Court of Appeals held that in calculating tax liability under the MBT, the Department of Treasury was required to first apply the compensation and investment tax credits to the taxpayer's liability before applying unused carryforward amounts from the former Single Business Tax (SBT). The ruling was contrary to Treasury's interpretation of the order in which these MBT credits and SBT carryforwards were to be taken and the manner in which those items were to be claimed on MBT returns developed by Treasury.

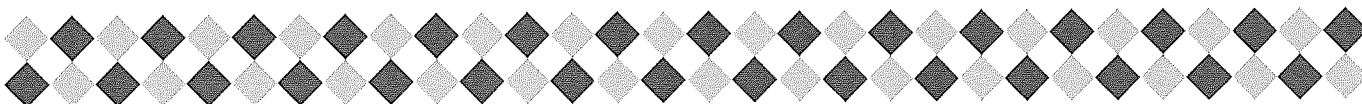
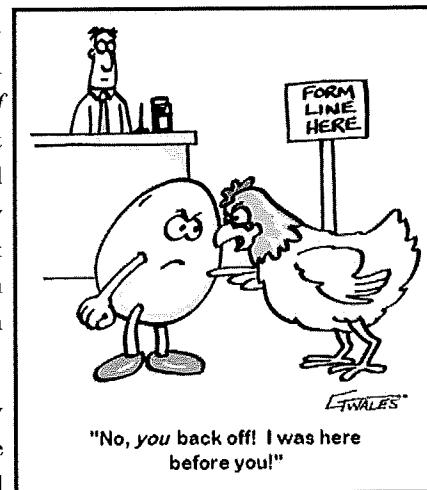
Section 401 of the MBT Act permitted a taxpayer to claim against its MBT liability unused amounts carried forward from certain credits provided under the SBT. The opportunity to claim these carryforward amounts was limited to a taxpayer's 2008 and 2009 tax years; unused carryforwards after 2009 were extinguished.

In addition, section 403 of the MBT Act provided for a credit against MBT liability equal to a percentage of a taxpayer's compensation in Michigan for the tax year 2008 and each year thereafter. Section 403 also provided that a taxpayer may claim an investment tax credit (ITC) against MBT liability equal to a percentage of the cost of depreciable assets paid for the tax year 2008, net of recapture, and each year thereafter. The total combined credit that could be claimed under section 403 was limited to 50% of the taxpayer's tax liability for 2008 and 52% for 2009 and each year thereafter. Section 403 required that the credits provided under that section (i.e. the compensation credit and the ITC) be taken "before any other credit under this act." This key phrase was the focus of the Court of Appeals' decision in *Ashley Capital*.

Treasury had determined that the SBT carryforward amounts that could be claimed under section 401 were not "credits under this act," since they were created and claimed under the SBT, a different act. Consequently, Treasury argued that an MBT taxpayer was required to apply the SBT carryforwards against tax liability before claiming the compensation credit and ITC provided under section 403.

The order in which these carryforwards and credits are taken affects the amount of compensation credit and ITC a taxpayer is able to claim, and typically impacts a taxpayer's resulting ultimate MBT tax liability. Because the combined section 403 credit is capped as a percentage of tax liability calculated at the time the credit is taken, application of the SBT carryforwards prior to the application of the combined credit could reduce the amount of the compensation credit and/or ITC that the taxpayer could claim and, thus, result in a higher tax MBT tax liability than would otherwise result when that order is switched.

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The Court of Appeals concluded that the statutory language placed the combined compensation credit and ITC credit in a "super priority" position relative to all other credits that a taxpayer could take under the MBT. The Court ruled that the statute's requirement in section 403 that that credit be taken "before any other credit under this act" means that it must be taken before the SBT carryforwards as well as other MBT credits. The Court reasoned that while the carryforwards may have originated under the SBT, as of the effective date of the MBT, the SBT no longer existed and therefore, the carryforwards were governed by the MBT. The Court ruled that the carryforwards were credits "under" the MBT Act and, thus, would fall within that statutory prescription as to the ordering priority.

Although originally unpublished, the Court of Appeals approved the *Ashley Capital* decision for publication in January, rendering it precedential and binding on other matters. Accordingly, credits under section 403 are to be applied to MBT liability before the application of SBT carryforwards under section 401.

Treasury's New Acquiescence Policy

Not all court decisions have the effect of law. In particular, only published decisions of the Michigan Court of Appeals and all decisions of the Michigan Supreme Court become Michigan's "law of the land," and are therefore binding (have precedential effect) on both the Department of Treasury and taxpayers. Unpublished decisions of the Court of Appeals and decisions of the Court of Claims and the Michigan Tax Tribunal are binding only on the parties to the case and only with respect to the years and issues actually in litigation.

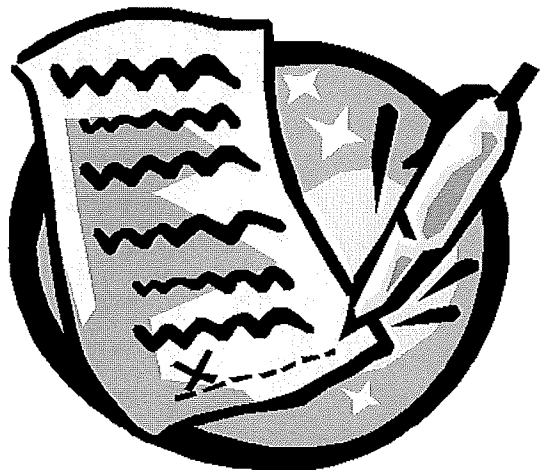
Even though a particular decision does not constitute precedent, it may nonetheless constitute persuasive authority in similar cases. Accordingly, when a court issues a decision that is adverse to Treasury, Treasury may determine to follow that decision even though it may not be required to do so. The policy of opting to follow a non-precedential court decision is generally known as "acquiescence." On the other hand, Treasury may also decline to follow an adverse, non-binding decision; this is known as "non-acquiescence."

At the federal level, the Internal Revenue Service (IRS) has a formal policy regarding acquiescence, pursuant to which it issues an "Action on Decision" announcing whether it will follow the holdings in certain non-binding, adverse cases. Treasury has determined to adopt a policy similar to that of the IRS with respect to such cases. Accordingly, beginning with the next quarterly newsletter (May 2016), Treasury will publish a list of final (unappealed), non-binding, adverse decisions, and announce its acquiescence or non-acquiescence with respect to each.

"Acquiescence" means that Treasury accepts the holding of the court in a case and will follow it in similar cases with the same controlling facts. "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.

Treasury Update is a periodic publication of the Tax Policy Division of the Michigan Department of Treasury. It is distributed for general informational 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.

New, Simplified Power of Attorney Form Now Available



In early November, the Department of Treasury unveiled a revised Authorized Representative Declaration (Power of Attorney) (ARD) form. The new ARD form incorporates a number of user-friendly changes and clarifications. Like older versions of the form, the new ARD form should be used by taxpayers to provide authorization to Treasury to communicate with a named individual or entity who has authority to act on the taxpayer's behalf. Unlike the previous form, however, the new ARD form can also be used by taxpayers to designate a representative to receive correspondence from Treasury regarding a particular, existing tax dispute. The form can also be used to revoke representative authority that was previously given.

The new, simplified ARD form is a single page. Taxpayers should take care to read the accompanying instructions, and to complete the new form properly. The form has a number of boxes labelled "required" – if these boxes are not completed with the required information, the form is considered invalid and will be rejected by Treasury; the taxpayer will then be notified of the rejection by letter.

A taxpayer may appoint either a specific individual or an entity (such as an accounting firm) as its representative. The differences between the two types of authority are explained in the instructions. If an entity is appointed, a "contact person" associated with that entity must also be named on the form. While the entity itself is the taxpayer's authorized representative, identifying a contact person ensures that information sent by Treasury to the entity is directed to the person overseeing the taxpayer's representation.

A taxpayer may grant its representative general or limited authority to act on its behalf. The specific actions that the representative may take on behalf of a taxpayer will depend on the boxes that are checked in Part 4 of the new ARD form. A taxpayer intending to grant its representative general authority to act on its behalf regarding any tax return and any debt should check box 5 in Part 4.

Part 5 of the form is completely new – this section permits a taxpayer to designate a representative to receive correspondence from Treasury regarding a particular existing tax dispute. Taxpayers should carefully read the instructions for completing Part 5. It is important to note that Part 5 cannot be used as a method of ensuring that a representative receives a "convenience copy" of every document or piece of correspondence that Treasury sends to the taxpayer. At this time, Treasury is not able to provide copies of all documents to a taxpayer's representative. A taxpayer completing Part 5 must therefore identify a single tax matter that is currently in dispute with Treasury. The dispute may cover more than one tax period or year (all of the years of a disputed audit, for example), but it must be a single dispute. If a taxpayer has several matters in dispute, and wants its representative to receive copies of future correspondence with respect to those additional disputes, a separate ARD form must be filled out for each dispute.

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Finally, filling out Part 5 alone does NOT give a representative authority to act on a taxpayer's behalf; one or more boxes in Part 4 must also be checked in order for that authority to be granted.

The new ARD form is available now on Treasury's website: [ARD Form](#). Although the form is fillable, at this time the form cannot be submitted electronically; it must be faxed or mailed to Treasury as provided in the instructions.

Changes to Corporate Officer Liability

When a business fails to fully pay certain tax liabilities, its officers may be held personally liable for the debt. This is known as derivative liability or more commonly as "officer liability." The Revenue Act, specifically MCL 205.27a, sets forth procedures the Department of Treasury must follow when issuing an assessment for officer liability. In 2014 the Legislature passed 2014 PA 3 (PA 3) which made substantial changes to officer liability in Michigan. Treasury has replaced its former officer liability Revenue Administrative Bulletin (RAB 1989-38) with RAB 2015-23 to address these changes. RAB 2015-23 outlines the major changes made to officer liability by PA 3. Notably, the RAB discusses, among other topics, the following:

- The requirement to assess successors prior to assessing officers in certain circumstances;
- The tax types to which officer liability applies (notably, the Single Business Tax, the Michigan Business Tax and the Corporate Income Tax are no longer subject to officer liability);
- When and how an officer becomes a "responsible person" (and therefore liable for the business's tax debt), including a discussion of the new time period of default and willfulness requirements;
- The evidence that must be presented by Treasury to establish a *prima facie* case or *prima facie* evidence;
- An officer's ability to challenge the underlying assessment that was issued against the business;
- New disclosure requirements; and,
- Bankruptcy proceedings and receiverships

RAB 2015-23 is available on Treasury's website: [RAB 2015-23 Officer Liability](#).

Greg Gursky Appointed New Deputy State Treasurer for Tax Policy

Nick Khouri, State Treasurer, recently announced the appointment of Gregory Gursky as Deputy State Treasurer for Tax Policy. Most recently, Greg was the director of PricewaterhouseCoopers' State and Local Tax Group, where he was responsible for the management and oversight of all Michigan, state, and local tax issues. Prior to joining PricewaterhouseCoopers, Greg spent more than 30 years with General Motors, concluding his tenure there as Director of Property and Non-Income Taxes.

Greg's extensive experience with, and unique understanding of, Michigan tax policy makes him an outstanding choice for this new Deputy Treasurer position. Reporting to Greg will be the Bureau of Tax Policy, Legislative Affairs, and the Taxpayer Advocate.

Update: Repeal of the Multistate Tax Compact

Public Act 282 of 2014 (PA 282), enacted on September 10, 2014, retroactively repealed the Multistate Tax Compact (Compact) effective January 1, 2008, and, in doing so, extinguished any election that taxpayers may have had to apportion their income tax bases using the Compact's three-factor apportionment method in lieu of the method provided by state law. PA 282 was enacted in response to the Michigan Supreme Court's decision in *IBM v Dep't of Treasury* (July 14, 2014) which held that the Michigan Business Tax Act (MBTA) did not impliedly repeal the Compact's election provision. PA 282 expressly provided that it was intended to cure and clarify the original intent of the MBTA to extinguish the availability of three-factor apportionment under the Compact. In a published decision issued September 29, 2015 in *Gillette Commercial Operations N.A. v Dep't of Treasury*, a consolidated docket consisting of 50 cases involving the same issue, the Court of Appeals upheld the constitutionality and legal effect of PA 282.

The taxpayers in the consolidated *Gillette* case have sought leave to appeal the Court of Appeals' decisions to the Michigan Supreme Court. The parties are currently awaiting the Michigan Supreme Court's decision whether it will grant leave to appeal and review.



RECENTLY ISSUED GUIDANCE FROM TREASURY

REVENUE ADMINISTRATIVE BULLETINS:

- [Revenue Administrative Bulletin 2015-20](#) Corporate Income Tax — Where Benefit of Services is Received
- [Revenue Administrative Bulletin 2015-22](#) Sales and Use Tax Nexus Standards for Out-of-State Sellers
- [Revenue Administrative Bulletin 2015-23](#) Officer Liability
- [Revenue Administrative Bulletin 2015-25](#) Sales and Use Taxes — Lessors
- [Revenue Administrative Bulletin 2015-26](#) Revenue Act — Audits and the Statute of Limitations
- [Revenue Administrative Bulletin 2015-27](#) Sales and Use Tax Bad Debt Deduction
- [Revenue Administrative Bulletin 2016-2](#) Sales and Use Tax Treatment of Interstate Motor Carriers
- [Revenue Administrative Bulletin 2016-3](#) Income Tax — Treatment of Gambling Gains, Losses, and Expenses

OTHER GUIDANCE:

- [Notice](#) to Taxpayers Regarding *Auto-Owners Insurance Company v Department of Treasury*
- [Notice](#): Appeal Extension When Taxpayer's Representative Was Not Provided Required Copy of Letter or Notice