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## **NOTICE TO TAXPAYERS**

### **REGARDING ALTERNATIVE DISPUTE RESOLUTION**

Issued: December 27, 2017

On December 20, 2017, [2017 PA 215](#) (“PA 215”) was signed into law by Governor Snyder. PA 215 amends Sections 21 and 28 of the Revenue Act (MCL 205.21 and 205.28) to provide for a new, non-judicial dispute resolution process. Prior to the passage of PA 215, the Department of Treasury (the “Department”) was able to resolve disputes with taxpayers through negotiated settlement only within the confines of the judicial process – that is, after a contested matter had been timely appealed to the Michigan Tax Tribunal or to the Michigan Court of Claims. Under the provisions of PA 215, the Department has the authority to settle tax disputes with taxpayers by accepting less than the full amount of tax in dispute, or increasing the amount of a taxpayer’s refund, prior to the commencement of litigation. The new process is available to all taxpayers who have made a timely request for informal conference pursuant to MCL 205.21(2)(c), except that a taxpayer may not request settlement consideration of its dispute more than 21 days after the date that the informal conference was held. After that point, a taxpayer may not request settlement as part of the informal conference process, and may only pursue settlement through litigation.

The Department may consider settling a tax dispute with a taxpayer if, after taking into consideration the factual and legal issues involved and the risks of litigating the dispute, it is in the State’s best interests to accept a lesser amount of tax than the Department previously determined was owed by the taxpayer. Doubt as to the taxpayer’s ability to pay or the Department’s ability to collect the determined tax does not constitute a basis for settlement.

Shortly, the Department will publish on its website a required settlement application form and written guidelines explaining the process that taxpayers will be required to follow in order to submit a valid settlement proposal in accordance with PA 215. In general, the process outlined in PA 215 mandates that any settlement offer submitted by a taxpayer be in writing, signed by the taxpayer, and identify (i) the issues in dispute to be settled, (ii) the amount of the settlement offer, and (iii) the factual and legal bases supporting the taxpayer’s settlement offer. The taxpayer must also include any supporting documentation. The State Treasurer’s designee will determine whether to accept, reject, or counter the settlement offer, and the taxpayer will be notified of the Department’s decision in writing. If the settlement offer is not accepted, the Department will include in the written notification the factual and legal bases for the Department’s rejection or counter-offer. A counter-offer made by the Department may be accepted, rejected, or further countered by the taxpayer.

A settlement proposal may also be initiated by the Department. If the State Treasurer's designee determines to pursue settlement, the Department will notify the taxpayer in writing of the Department's settlement offer.

If a settlement offer does not ultimately result in a settlement, or if only some of the pending issues are settled, the informal conference process will proceed as provided in MCL 205.21(2), unless the taxpayer files a written notice of withdrawal. If the Department accepts the taxpayer's settlement offer or counter-offer, or the taxpayer accepts the Department's settlement offer or counter-offer, the Department and the taxpayer will execute a written agreement outlining the terms of the settlement. Where appropriate, the Department will then issue a final assessment to the taxpayer that reflects the agreement and the agreed-upon amount of liability as to the settled issues. A final assessment issued pursuant to a settlement agreement under PA 215 is not subject to challenge or appeal under the Revenue Act, nor is it reviewable in any court by mandamus, appeal, or other method of direct or collateral attack. The informal conference process will proceed as provided in MCL 205.21(2) with respect to any disputed issues that are not included in the settlement agreement, unless the taxpayer files a written notice of withdrawal.

Settlement offers, counter-offers, responses, settlement agreements, and the disposition of any settlement offer or counter-offer may not be offered by any party in litigation as proof of the validity of the Department's position or of the proper amount of the taxpayer's tax liability. All such documents are also exempt from disclosure under the Freedom of Information Act and may not be obtained through discovery in any proceeding.

Questions about the new alternative dispute resolution process may be directed to the Department's Alternative Dispute Resolution Office at (517) 373-3223.