

DEPARTMENT OF TREASURY

STATE TREASURER

TAXPAYER BILL OF RIGHTS

(By authority conferred on the Department of Treasury by sections 3, 4, 23, and 24 of 1941 PA 122, MCL 205.3, MCL 205.4, MCL 205.23, and MCL 205.24 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 205.1001 Definitions.

Rule 1. As used in these rules:

(a) "Act" means 1941 PA 122, MCL 205.1 to 205.31.

(b) "Confidential information" means information and facts that are treated in a confidential manner under section 28 of the act.

(c) "Department" means the department of treasury and includes those employees and officers of this state, or their agents, who implement or carry out the functions described in the act.

(d) "Department representative" means a contractor, consultant, agent, or other person acting in a representative capacity for or on behalf of the department.

(e) "Informal conference" means a meeting involving a taxpayer and a department representative before a referee to review and, where appropriate, to resolve a tax dispute pursuant to section 21 of the act.

(f) "Notice of audit refund" means the notice the department must provide pursuant to section 21(3) of the act.

(g) "Notice of denial of refund" means the notice of adjustment or other written communication from the department indicating that a request for refund is rejected in whole or in part, or that a credit forward sought by a taxpayer will not be allowed in whole or in part.

(h) "Notice of final assessment" means the notice that advises the taxpayer that an assessment issued under section 21 of the act is final and subject to appeal.

(i) "Notice of intent to assess" means the notice that advises the taxpayer of the department's intent to assess the tax and provides the amount of the tax the department believes the taxpayer owes, the reason for the deficiency, and a statement that advises the taxpayer of all of the following:

(i) The right to an informal conference.

(ii) The requirement of a written request by the taxpayer for the informal conference, including the taxpayer's statement of the contested amounts and an explanation of the dispute.

(iii) The 60-day time limit for the request.

(j) "Person" means any of the following:

(i) An individual.

- (ii) A firm.
- (iii) A bank.
- (iv) A financial institution.
- (v) A limited partnership.
- (vi) A copartnership.
- (vii) A partnership.
- (viii) A limited liability company.
- (ix) A joint venture.
- (x) An association.
- (xi) A corporation.
- (xii) A receiver.
- (xiii) An estate.
- (xiv) A trust.
- (xv) Any other group or combination acting as a unit.

(k) "Referee" means an individual who is authorized by the treasurer to conduct an informal conference pursuant to section 21 of the act.

(l) "Tax" means any tax that is administered and collected under the act. Tax includes any tax, penalty, and interest.

(m) "Taxpayer representative" means a person who is authorized by the taxpayer to represent the taxpayer before the department.

(n) "Third party" means any of the following:

(i) A relative, except for a husband or wife when a joint return is filed. However, if a joint return has not been filed and a spouse has been claimed as an exemption on a return, that spouse may not receive information without written permission from the taxpayer. If a joint return has been filed and the parties are separated or divorced, current information, such as the current address, employment information, or collection information, about 1 party shall not be disclosed to the other party.

(ii) A friend of the taxpayer.

(iii) Any elected official acting in his or her official capacity, including a member of the United States Congress or the state legislature.

(iv) Any professional, such as an accountant or attorney, who is not authorized as the taxpayer's representative. For example, a return preparer who has prepared and signed a

return is not entitled to receive the return upon request without express written authorization from the taxpayer.

(v) Any person, other than the taxpayer, who is not authorized by the act or these rules to obtain confidential information.

(o) "Treasurer" means the treasurer of this state or his or her designee.

History: 1996 AACS; 2018 AACS.

PART 2. DEPARTMENT EMPLOYEE, DEPARTMENT REPRESENTATIVE CONDUCT

R 205.1002 Standards for treatment of public by department employees and representatives.

Rule 2. (1) The department, department employees, and department representatives shall treat the public in a fair and courteous manner. A department employee, or department representative, that has direct contact with the public in the course of his or her duties shall perform his or her duties in a businesslike manner.

(2) A department employee, or department representative, shall not engage in improper conduct in interactions with the public and shall strive to avoid the appearance of impropriety. The following are examples of improper conduct:

(a) The use, or appearance of use, of one's position or knowledge of department procedures or access to confidential information to intentionally harass or personally benefit from another person or grant privileges to another person.

(b) Conduct, the natural consequence of which is to oppress or abuse another person.

(c) The use, or threat of use, of violence or other criminal means to harm a person's physical integrity, reputation, or property.

(d) The use of profane or offensive language.

(e) Name-calling of a derogatory nature.

(f) Soliciting raffle tickets during work hours for a charity.

(g) The acceptance of, or an agreement to accept, a gift or anything of value from a person that could reasonably be expected to influence the manner in which an employee or department representative performs work or makes decisions.

(h) The making of false statements or statements with false implications in the course of collecting debts, such as falsely implying that the employee or department representative is an attorney, using a false name, or falsely implying that the taxpayer has committed a crime.

(i) An employee's, or department representative's, participation in any business transaction or private arrangement for direct or indirect financial gain or deferment or discount of payment that accrues from or is based upon the employee's, or department representative's, official position or on confidential information gained by reason of the employee's, or department representative's, position.

(j) An employee's, or department representative's, failure to report to the employee's, or department representative's, supervisor or the supervisor's supervisor appearances of a possible conflict of interest in relation to taxpayers with whom the employee or department representative may have direct or indirect involvement.

(k) The employee's, or department representative's, failure to report to the employee's, or department representative's, supervisor or the supervisor's supervisor a taxpayer's complaint about the employee, another employee, or department representative, or the employee's, or department representative's, failure to report to the employee's or department representative's, supervisor or the supervisor's supervisor a possible interference in a taxpayer's attempts to discuss matters with a management person.

(l) The falsification of reports or other records of contacts or attempts to contact or personally serve taxpayers with any notice or the falsification of other work activities.

(m) Other conduct that may be subject to disciplinary action.

(3) An employee, or department representative, shall perform his or her duties at the following times and places:

(a) For collection purposes, the department, and its representatives, shall observe the following rules with respect to taxpayers, but not third parties:

(i) Taxpayers may be contacted only during the day after 8 a.m. and before 9 p.m., local time, except with prior supervisory approvals based upon the following:

(A) The taxpayer has noncustomary working hours and has expressed to the department, or its representative, that he or she wishes to be contacted at a different time of the day.

(B) On a case-by-case basis for activities authorized under the act, such as those related to jeopardy assessment accounts, seizures that require earlier contact to make personal service, **or** similar activities.

(ii) Except as provided by the following and unless otherwise agreed to by the department, or its representative, and the taxpayer, in the absence of knowledge of circumstances to the contrary, the department, or its representative, shall presume that a convenient place for communicating with the taxpayer is the location of the taxpayer or, if the taxpayer is represented and the department, or its representative, has been properly notified of the representation, the location of the taxpayer representative, for example, the address of record:

(A) The department, or its representative, shall not communicate with the taxpayer regarding the collection of a debt at any time or place known, or which should be known, to be inconvenient to the taxpayer.

(B) A department employee, or department representative, shall not contact a taxpayer at his or her place of employment if the employee, or department representative, knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving the communication.

(C) If a taxpayer representative does not respond to a communication from the department, or its representative, then a department employee, or department representative, shall refer the matter to his or her immediate supervisor and shall refrain from contacting the taxpayer representative until further instructions are provided.

(b) For audit purposes, the department, and its representatives, shall observe the following rules with respect to taxpayers:

(i) Auditors shall keep the work hours as established by the taxpayer, shall limit lunchtime to not more than an hour, and shall leave the taxpayer at the established time.

(ii) Auditors shall respect the taxpayer's property, rules, business practices, and hours and shall obtain permission to use the taxpayer's equipment, such as the telephone or copying machine.

(c) For all other purposes, the department, and its representative, shall contact taxpayers during regular working hours unless otherwise agreed to by the taxpayer.

(4) The department, and its representatives, shall have a system for monitoring compliance with the standards of fair and courteous treatment of the public. The system shall provide for aggrieved persons to complain to the immediate supervisor of the employee, or department representative, who acts improperly, or to the supervisor's supervisor; for the department, or its representative, to discipline the employee, or department representative, who acts improperly; and for a taxpayer advocate to respond to complaints from the public. The system for monitoring compliance shall include, but not be limited to, all of the following:

(a) Each supervisor shall monitor the behavior of employees and department representatives on the telephone and review outgoing correspondence for compliance.

(b) The audit confirmation letter that the department, or its representative, sends to the taxpayer to confirm the scheduled audit shall identify by name and telephone number the auditor, the audit supervisor, and the audit manager.

(c) The department, or its representative, shall enclose with the audit confirmation letter information about the audit process, which shall also instruct the taxpayer how to contact the department's taxpayer advocate office.

(5) The department, and its representatives, shall not use collection goals or quotas during the conduct of an audit for a tax administered under the act.

(6) The department, and its representatives, in carrying out the department's responsibilities under the act, shall fairly and consistently apply all applicable statutes and rules to all taxpayers.

(7) Department employees, and department representatives, shall satisfactorily complete relevant departmental training before performing collection or auditing procedures.

History: 1996 AACCS; 2018 AACCS.

PART 3. DISCLOSURE OF CONFIDENTIAL INFORMATION

R 205.1003 Confidentiality of information.

Rule 3. (1) Except as otherwise provided by law, the treasurer, any employee or authorized representative or former employee or former authorized representative, or anyone connected with the department shall not disclose to any person, except the taxpayer or his or her or its authorized representative, any facts or information obtained in connection with the administration of a tax or information or parameters that would enable a person to ascertain the audit selection or processing criteria for a tax administered by the department or collection or assessment parameters or collection information.

(2) Access to confidential information shall be restricted to department employees who have a need to access the information to perform their duties. A department employee shall not disclose confidential information to another department employee, except as needed to perform duties. For example, if an employee reviews a taxpayer's individual return and discovers a letter

concerning the taxpayer's business tax liability, the employee shall refer the correspondence to the business tax division for further action and shall identify the source of the correspondence.

(3) A department employee shall not disclose confidential information to confirm information made public by another party or source or which is part of any public record. For example, if an unauthorized third party wants to know if a tax lien has been filed against a certain business, a department employee shall not release that information. A tax lien becomes part of the public record upon filing, but still retains its identity as tax return information and may not be released to unauthorized parties.

(4) An employee or authorized representative of another agency of the federal, state, or local government who handles confidential information pursuant to an agreement or

subpoena is subject to the same restrictions as department employees or authorized representatives and shall not disclose the confidential information.

(5) A department employee shall not disclose confidential information obtained about a taxpayer without proper authorization.

(6) The department shall keep records of persons who are not department employees or authorized representatives of the department and are granted access to, or given copies of, returns or return information. The records must contain all of the following information:

(a) The name and address of the person who has been granted access to, or given copies of, returns.

(b) The representative capacity of the person specified in subdivision (a) of this subrule if not the taxpayer.

(c) The date of disclosure.

(d) The name of the taxpayer or taxpayers.

(e) The type of returns.

(f) The taxable periods involved.

History: 1996 AACCS; 2018 AACCS.

R 205.1004 Confidentiality of information; exceptions to disclosure prohibition.

Rule 4. (1) Subject to the same restrictions as department employees on the treatment of confidential information, a private contractor or its employees shall not disclose taxpayer information to a third party. The prohibition against disclosure does not bar an employee of a private contractor that processes tax returns or payments pursuant to the act

from having access to confidential information that is reasonably required for the processing or collection of amounts due this state.

(2) The department may use a taxpayer's name, address, and social security number or employer identification number to the extent necessary in connection with the processing and mailing of forms for any report or return required in the administration of any tax administered under the act.

(3) The department may disclose confidential information in any of the following circumstances:

(a) If the disclosure is required for the proper administration of a tax law administered under the act.

(b) If the disclosure is required by judicial order sought by an agency charged with the duty of enforcing or investigating support obligations pursuant to an order of a court in a domestic relations matter as that term is defined in section 31 of 1982 PA 294, MCL 552.531.

(c) If the disclosure is required pursuant to a judicial order, including a subpoena, search warrant, or other court order, sought by an agency of the federal, state, or local government charged with the responsibility for the administration or enforcement of criminal law for purposes of investigating or prosecuting criminal matters or for federal or state grand jury proceedings.

(d) If the disclosure is required by judicial order where the taxpayer's liability for a tax administered under the act is to be adjudicated by the court that issued the judicial order.

(e) If the disclosure is required by a reciprocal agreement between the department and other departments of state government, the United States Department of Treasury, local governmental units within this state, or taxing officials of other states.

(f) If the disclosure is upon the written request of a head of an institution, agency, or department of state government when it is required for the effective administration or enforcement of the laws of this state, is upon the written request of a proper officer of the United States Department of Treasury, or is upon the written request of a proper officer of another state reciprocating in this privilege.

(g) For all of the types of disclosure specified in this subrule, the request for information, subpoena, or other judicial order shall be directed to the disclosure officer Michigan department of treasury, Austin building, Lansing, Michigan 48922.

(4) The department may disclose records and information that are not confidential, for example, that the department is not barred from disclosing under the act, pursuant to a request filed under 1976 PA 442, MCL 15.231 to 15.246. Requests shall be addressed to the FOIA coordinator, Michigan department of treasury, Austin Building, Lansing, Michigan 48922.

History: 1996 AACCS; 2018 AACCS.

R 205.1005 Representation before department.

Rule 5. (1) Any person may represent a taxpayer before the department as a taxpayer representative. A taxpayer may appear for himself, herself, or itself or may be represented by an accountant, attorney, bookkeeper, tax preparer, or any other third party that the taxpayer may choose.

(2) The person shall file, with the department, either an appearance in the dispute or written authorization as described in R 205.1006. The person's name, address, and telephone number shall be included in the appearance or the written authorization. The person's appearance applies only to the extent authorized by the taxpayer.

(3) A person who has entered an appearance in a dispute may withdraw from the representation after giving the department notice of the withdrawal.

(4) The appearance of a business firm or an organization shall include the name of an individual who serves as a contact person and the address and phone number of the individual if different from the business firm or the organization.

History: 1996 AACCS.

R 205.1006 Rescinded.

History: 1996 AACCS; 1998 AACCS; 1998 - 2000 AACCS; 2018 AACCS.

R 205.1006a Implied authorization for disclosure of confidential information to third parties.

Rule 6a. (1) Before a department officer or employee may disclose confidential information to a third party, the department shall confirm that the third party is authorized by the taxpayer to receive the confidential information.

(2) Before giving out confidential information, whether the request is by telephone or in person, the department shall obtain information about the taxpayer and the subject matter as it determines to be necessary to identify the requesting party.

(3) For a refund inquiry, the department shall obtain the approximate amount of the expected refund, unless that amount is computed by the department, and the manner in which the return was filed; for example, an individual, separate, or a joint return.

(4) A telephone conference call that is initiated by the taxpayer and includes the taxpayer, a third party, and the department may be used to discuss confidential information concerning the taxpayer without written authorization. However, the department, if it is unable to verify the identity of the caller to its satisfaction, may mail, or otherwise transmit electronically, requested confidential information to the taxpayer at the taxpayer's address of record rather than discussing it in a telephone conference call.

(5) A taxpayer's conduct may constitute either express or implied authorization to the department to disclose confidential information to a third party. For example, if a taxpayer brings a friend to an informal conference or other face-to-face meeting with department personnel and invites the friend to sit in, the taxpayer, by that conduct, has given implied consent to the department to disclose the taxpayer's confidential tax information to the friend. If the taxpayer does not authorize the department to disclose confidential tax information to the friend, then the friend must leave the informal conference or other face-to-face meeting. As an additional example, the conduct of a deaf individual seeking translation services from the department constitutes implied consent to the translator to relay or receive confidential information on the individual's behalf if the deaf individual is a party to the conversation with the department.

(6) The department may accept tax information that is voluntarily offered by a third party, but, in the absence of express or implied authorization from the taxpayer consistent with these rules, shall not disclose information to the third party. For example, a third party may provide canceled check information to initiate a payment tracer on a bill, but the department shall not disclose the balance due or the nature of the assessment to the third party in the absence of express or implied authorization from the taxpayer consistent with these rules. Absent express or implied authorization from the taxpayer consistent with these rules, the department may discuss with a third party only general information concerning the meaning of a bill or a notice or information provided by the third party.

History: 2018 AACCS.

R 205.1006b Written authorization by taxpayer for representative to represent taxpayer in communications with department.

Rule 6b. (1) Michigan Department of Treasury Form 151, entitled "Authorized Representative Declaration (Power of Attorney)," shall incorporate separate parts or sections in order to accommodate both of the following:

(a) A taxpayer's designation of an authorized representative to act on its behalf and represent the taxpayer in communications with the department.

(b) A taxpayer's written request to the department that copies of future letters and notices regarding a single, specified tax type and tax period or periods for that tax type be sent to the taxpayer's official representative, as provided in MCL 205.8. Michigan Department of Treasury Form 151 shall be used by a taxpayer for either purpose, or for both purposes.

(2) A taxpayer may provide written authorization for a representative to act on its behalf and represent the taxpayer in communications with the department. The written authorization shall be provided by the taxpayer on 1 of the following:

(a) Michigan Department of Treasury Form 151.

(b) Another written document that meets all the requirements set forth in subrule (3) of this rule.

(c) Another document that provides clear legal authority for a representative to act on the taxpayer's behalf and to represent the taxpayer in communications with the department, such as a court approved guardianship or conservatorship or other court order.

(3) In order to be valid, the written authorization must include, at a minimum, all of the following information:

(a) The taxpayer's name, address, telephone number, and account or identification number.

(b) The name, address, and telephone number of the taxpayer's representative and, if the representative is an entity, such as a law firm rather than an individual, the name of a contact person. If the taxpayer's representative is an entity, the written authorization permits the department to disclose confidential information to any member of the named entity. The specification of a contact person is only to ensure that information sent to the entity is directed to the individual overseeing the representation.

(c) The time period for which the authorization is effective. If no start date is specified, the authorization is effective as of the date that it is signed by the taxpayer. If no expiration date is indicated, the authorization is effective until revoked.

(d) The type of authority granted to the representative, and any restrictions on that authority, such as tax type and/or tax period.

(e) The signature of the taxpayer or, if the taxpayer is not an individual, for example, a corporation, the signature of a person authorized to sign on behalf of the taxpayer; the printed name of the person signing; the title of the person signing if the taxpayer is not an individual; and the date of signing.

(4) A taxpayer's written authorization should be provided by filing a properly completed Michigan Department of Treasury Form 151, except as provided in subrules (2)(b) or (c) or (8) of this rule. Form 151 is available on the department's website or may be requested by contacting the department. Directions for returning the completed form shall be included in the instruction page, and the taxpayer shall return the completed form in accordance with the instructions.

(5) Except as provided under subrule (2)(c) of this rule, a written authorization is properly completed only if the requirements of subrule (3) of this rule are met, and as to Michigan Department of Treasury Form 151, in addition to any requirements specified by the department on Form 151 and instructions to this form.

(6) If a written authorization submitted by a taxpayer is incomplete, has been filled out incorrectly, or fails to meet all the requirements under subrule (3) of this rule, the authorization is not effective, and the department shall notify the taxpayer, identify the information needed, and request that the taxpayer submit to the department a new, properly completed Michigan Department of Treasury Form 151.

(7) Only 1 taxpayer representative, either an individual or an entity, may be named on a single written authorization. A written authorization filed with the department is presumed to be valid until it expires according to its terms, or until the taxpayer specifically revokes the representative's authority. A taxpayer may revoke a representative's authority in whole or in part by completing the indicated portions of Michigan Department of Treasury Form 151 or by providing another written document that clearly revokes that prior representative's authority. Directions for revoking a representative's authority by Michigan Department of Treasury Form 151 must be included in the form's instructions page. Filing a new written authorization through a Michigan Department of Treasury Form 151, without completing the revocation section of the form, does not automatically revoke a previously filed written authorization.

(8) If circumstances exist that make it impossible for the taxpayer to provide a written authorization as specified in subrule (2) of this rule, for example, the taxpayer is incapacitated, the party purporting to represent the taxpayer shall contact the department so that special arrangements can be made.

(9) A written authorization granting authority to a representative to act on the taxpayer's behalf and represent the taxpayer in communications with the department does not constitute a written request to the department that copies of future letters and notices regarding a single, specified tax type and tax period or periods for that tax type be sent to the taxpayer's official representative, as provided in MCL 205.8, unless that authorization is provided in accordance with R 205.1006c.

History: 2018 AACCS.

Editor's Note: An obvious error in R 205.1006b was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in Michigan Register, 2018 MR 9. The memorandum requesting the correction was published in Michigan Register, 2019 MR 1.

R 205.1006c Requesting copies of letters and notices with respect to tax dispute.

Rule 6c. (1) Michigan Department of Treasury Form 151, entitled "Authorized Representative Declaration (Power of Attorney)," shall incorporate separate parts or sections in order to accommodate both of the following:

(a) A taxpayer's designation of an authorized representative to act on its behalf and represent the taxpayer in communications with the department.

(b) A taxpayer's written request to the department that copies of future letters and notices regarding a single, specified tax type and tax period or periods for that tax type be sent to the taxpayer's official representative, as provided in MCL 205.8. Except as provided under Rule 6b(2), Michigan Department of Treasury Form 151 shall be used by a taxpayer for purposes of subdivision (a) of this subrule, or for purposes of subdivision (a) of this subrule and this subdivision.

(2) A taxpayer may file a written request with the department that copies of future letters and notices regarding a dispute be sent to the taxpayer's official representative, as provided in MCL 205.8.

(3) For purposes of this rule and MCL 205.8, the taxpayer's identification of a single, specified tax type and tax period or periods for which the taxpayer is requesting copies of future letters and notices is considered a dispute.

(4) Letters and notices that are subject to the authorization under this rule and MCL 205.8 shall be any written correspondence from the department with content that relates to the audit, assessment, and/or collection of the respective tax type or that involves the appeal rights of the taxpayer under MCL 205.22, and may include additional written correspondence as systems capabilities of the department can accommodate. Letters and notices regarding a dispute under this subrule may be sent by the department by mail or, if systems capabilities of the department can accommodate, to a secure, encrypted electronic mailbox designated by the department that was authorized by the taxpayer.

(5) A taxpayer shall make a written request under subrule (2) of this rule only by filing a properly completed Michigan Department of Treasury Form 151. This form is available on the department's website, or may be requested by contacting the department. The taxpayer shall return the completed form as provided for in the form and its instructions.

(6) The taxpayer shall identify on the appropriate line or lines of Michigan Department of Treasury Form 151 the specific tax type or types and the tax period or periods for each respective tax type.

(7) If a taxpayer has more than 1 dispute with the department and wants its named official representative to also receive copies of future letters and notices with respect to those additional disputes, the taxpayer shall complete and submit 1 or more Michigan Department of Treasury Form 151, as prescribed by the department in the form and instructions, for the respective tax type and tax period desired by taxpayer.

(8) Only 1 official representative authorized under this rule and MCL 205.8 may receive copies of future letters and notices regarding a single, specified tax type and tax period or periods for that tax type. If the named official representative is an entity, the department shall send copies of future letters and notices regarding the single, specified tax type and tax period or periods for that tax type to the individual named as the contact person.

(9) If a taxpayer's written request for copies of letters and notices as submitted to the department is incomplete or the relevant portions of Michigan Department of Treasury Form 151 have been filled out incorrectly, the written request for copies of letters and notices will not be effective, and the department shall notify the taxpayer, identify the information needed, and request that the taxpayer submit to the department a new, properly completed Michigan Department of Treasury Form 151.

(10) Once filed with the department, a taxpayer's written request authorizing its official representative to receive copies of future letters and notices regarding a dispute shall be presumed to be valid until the matter in dispute is concluded, or until the taxpayer specifically revokes the official representative's authority. A taxpayer may revoke an official representative's authority to receive copies of letters and notices regarding a dispute by completing the indicated portions of Michigan Department of Treasury Form 151, directions for which are included on the form and instructions.

(11) A taxpayer's written request that copies of future letters and notices regarding a dispute with that taxpayer be sent to the taxpayer's official representative does not give the official representative authority to act on the taxpayer's behalf or to represent the taxpayer in communications with the department.

(12) If a taxpayer files a written request with the department that copies of future letters and notices regarding a dispute with that taxpayer be sent to the taxpayer's official representative in accordance with the requirements under this rule, but the department fails to provide the taxpayer's representative with a copy of a letter or notice regarding the respective tax type and tax period or periods that gives rise to appeal rights to the taxpayer, the department shall do the following, as applicable:

(a) If the department sent subsequent letters or notices regarding the dispute only to the taxpayer and not also to the taxpayer's official representative, the department shall deem the time period in which to request an informal conference under MCL 205.21(2), or to otherwise appeal to the Michigan Court of Claims or the Tax Tribunal under MCL 205.22(1), to commence when a copy of the pertinent letter or notice is subsequently furnished to the taxpayer's official representative. The copy of the pertinent letter or notice sent to the taxpayer's official representative must be accompanied by a letter from the department stating the appeal period.

(b) If the taxpayer has been denied appeal rights by the department, the Court of Claims or the Tax Tribunal because of an untimely appeal arising from the department's failure to provide the taxpayer's official representative with a required copy of a pertinent letter or notice, the department shall reinstate the taxpayer's applicable appeal rights upon the taxpayer's written request to the department for an informal conference. The taxpayer's written request must include the taxpayer's name, federal employer identification number or other identification number, the tax type and tax period or periods, and any relevant assessment number. In the case of a denied or reduced refund, the taxpayer shall provide the tax type and tax period or periods, or other identifying information. All of the following apply:

(i) The taxpayer's written request must include a copy of the taxpayer's original letter or other document that had requested copies of future letters and notices be sent to the taxpayer's official representative.

(ii) If decided adversely to the taxpayer, the informal conference must result in a decision, order, or assessment by the department that may be appealed to the Court of Claims or the Tax Tribunal under MCL 205.22(1).

(iii) If the matter had been to informal conference, and the denial of appeal rights is based upon a Final Bill for Taxes Due (Final Assessment), the taxpayer shall contact the department's office of the taxpayer advocate, which shall issue the taxpayer's official representative a copy of the pertinent letter or notice and which must be accompanied by a letter stating the new appeal period.

(c) If the taxpayer has been denied appeal rights by the department, the Court of Claims, or the Tax Tribunal because of an untimely appeal arising from the department's receipt of a written request not in accordance with this rule and the department failed under subrule (7) of this rule to advise the taxpayer that the written request was not in accordance with this rule, the department shall reinstate the taxpayer's applicable appeal rights that were denied because of the department's failure to advise the taxpayer. The taxpayer's written request must include the taxpayer's name, federal employer

identification number or other identification number, the tax type and tax period(s), and any relevant assessment number. In the case of a denied or reduced refund, the taxpayer shall provide the tax type and tax period or periods, or other identifying information. All of the following apply:

(i) The taxpayer's written request must include a copy of the taxpayer's original letter or other document that had requested copies of future letters and notices be sent to the taxpayer's official representative.

(ii) If decided adversely to the taxpayer, the informal conference must result in a decision, order, or assessment by the department that may be appealed to the Court of Claims or the Tax Tribunal under MCL 205.22(1).

(iii) If the matter had been to informal conference, and the denial of appeal rights is based upon a Final Bill for Taxes Due (Final Assessment), the taxpayer shall contact the department's office of the taxpayer advocate, which shall issue the taxpayer's official representative a copy of the pertinent letter or notice and which must be accompanied by a letter stating the new appeal period.

(13) If a taxpayer's appeal rights were denied by the Court of Claims or the Tax Tribunal and the related opinion or order denying relief to the taxpayer addresses the merits of any notice issues arising under MCL 205.8, then the relief provided under subrule (12) of this rule shall not be provided.

History: 2018 AACCS.

R 205.1006d Discussing return information with preparer of return.

Rule 6d. (1) A taxpayer may authorize the department to discuss the taxpayer's return with the preparer of the return by checking the designated box on the return and providing information regarding the authorized preparer as specified on the return or instructions.

(2) The checked box on the return authorizes the department to contact the preparer of the return concerning the contents of the return. In addition, it authorizes the preparer of the return to do all of the following:

(a) Provide the department with information missing from the return.

(b) Contact the department to obtain information about processing or the status of refunds and payments related to the return.

(c) Request copies of any correspondence related to matters concerning the return, such as math errors, return preparation, and any adjustments to the return.

(d) Respond to any such correspondence related to matters concerning the return.

(3) The checked box on the return does not authorize the department to discuss with the preparer any other tax return or to provide the preparer any information regarding audit, assessment, or collection activities on the taxpayer's account. In addition, the checked box on the return does not authorize the preparer to take any action on behalf of the taxpayer, such as requesting an informal conference or undertaking an appeal of any assessment, decision, or order of the department, receive a refund check, or otherwise represent the taxpayer before the department. The taxpayer shall execute a Michigan Department of Treasury Form 151 under Rule 6b, or other written authorization as permitted under R 205.1006b(2), designating the preparer as its representative in order

for the preparer to discuss with the department any matters outside the scope of those referenced in subrules (1) and (2) of this rule, or to take action on behalf of the taxpayer.

History: 2018 AACCS.

R 205.1007 Disclosure officer; delegation of authority.

Rule 7. (1) The authority to disclose state tax information is delegated to the disclosure officer and to certain other positions within the department. The disclosure officer serves as a contact person for all governmental and nongovernmental agencies that seek confidential information. The disclosure officer shall determine that a request for confidential information meets the

requirements of the act and these rules.

(2) The following positions within the department shall ensure the confidentiality of tax information and coordinate requests for authorized disclosure of tax information within the department:

(a) The disclosure officer shall develop security directives and the periodic review of security procedures within the department. For those agencies that the department discloses information to, a report of all findings is furnished to the treasurer for action as deemed appropriate. The disclosure officer shall develop information sharing agreements with appropriate federal and state agencies. The disclosure officer serves as the liaison with federal and state agencies and their appropriate administrators concerning the exchange of information. The disclosure officer reviews all requests from local jurisdictions seeking confidential information.

(b) Division administrators who have primary custody or control of returns or tax return information shall determine that the necessary safeguards are in place to prevent the unauthorized use or disclosure of state or federal tax information. The department shall issue appropriate written instructions to employees and shall adopt measures to ensure that employees remain thoroughly familiar with, and strictly adhere to, the rules and procedures governing confidentiality and the disclosure of tax information.

(3) All new department employees shall review the policies, procedures, and bulletins governing confidentiality and the authorized disclosure of confidential information and certify that they are familiar with the documents as the documents relate to the employee's specific duties. Periodically, department employees shall review the policies,

procedures, and bulletins associated with confidential information in the performance of their duties. The disclosure officer shall annually remind department employees of the confidentiality requirements.

History: 1996 AACCS; 2018 AACCS.

PART 4. INFORMAL CONFERENCE

R 205.1008 Right to informal conference; request requirements for informal conference; acknowledgment.

Rule 8. (1) If a notice of intent to assess, a notice of denial of refund, or a notice of audit refund is sent to a taxpayer, the notice shall include all of the following:

(a) A statement of the taxpayer's right to an informal conference, provided the taxpayer sends a written request to the address specified in the notice requesting an informal conference within 60 days after the taxpayer receives a notice of intent to assess or within 60 days of the date of issuance of a notice of denial of refund or a notice of audit refund.

(b) A statement that the written request seeking an informal conference must include the taxpayer's statement of the contested amounts and an explanation of the dispute.

(2) The taxpayer shall be entitled to an informal conference with respect to a notice of intent to assess, a notice of denial of refund, or a notice of audit refund if a taxpayer or taxpayer representative does all of the following:

(a) Serves written notice upon the department, to the address specified in the notice, within 60 days after the taxpayer receives the notice of intent to assess or within 60 days of the date of issuance of the notice of denial of refund, or notice of audit refund. The department will accept a United States postmarked certified or registered mail receipt as proof of service if the certified mail receipt number is listed on the written notice of appeal.

(b) Remits the uncontested portion of the liability, if any, indicated in the notice in cash, by check payable to the "State of Michigan," or other means of payment.

(c) Provides a statement of the contested amounts and an explanation of the dispute.

(3) At such time that a taxpayer requests an informal conference or at any time thereafter before the issuance of a decision and order by the department, a taxpayer who is contesting an intent to assess may by written notice sent to the hearings division, Austin Building, 430 West Allegan, Lansing, MI 48922, accompanied by payment of the contested amount, convert his or her contest to a claim for refund. The taxpayer preserves the right to address the issues raised in the intent to assess as if it remained unpaid and to have the matter resolved as a contested denial of refund.

(4) A taxpayer who has made a timely request for an informal conference by complying with subrule (2) of this rule may, at any time before the issuance of a decision and order in the matter, withdraw the request by filing written notice to the hearings division, Austin Building, 430 West Allegan, Lansing, MI 48922. Upon receipt of the request for withdrawal, the department shall issue a decision and order and, where appropriate, a final assessment from which the taxpayer may seek appeal.

(5) If the taxpayer complies with the provisions of subrule (2) of this rule, the department shall respond, in writing, by acknowledging the request. If a taxpayer does not satisfy all of the conditions specified in subrule (2) of this rule, the department shall inform the taxpayer, in writing, of that fact and shall advise the taxpayer that the taxpayer is not entitled to an informal conference.

History: 1996 AACS; 2018 AACS.

R 205.1009 Time and place of informal conference; requests to change time.

Rule 9. (1) The department shall set the informal conference at a convenient or reasonable time and place. This rule establishes general principles for the department to apply in determining whether a particular time and place for an informal conference are

convenient or reasonable. The department shall exercise sound judgment in applying the principles.

(2) It is reasonable for the time of an informal conference to be set during the regular business hours of the department and during regular working days of the department. The regular business hours of the department are 8 a.m. to 5 p.m., Monday through Friday, except legal holidays or other days that the department is closed.

(3) It is reasonable for the department to schedule informal conferences throughout the year without regard to seasonal fluctuations in the businesses of particular taxpayers or taxpayer representatives. However, the department shall work with taxpayers or taxpayer representatives to try to minimize any adverse effects that may arise in scheduling an informal conference.

(4) The department shall schedule the place of an informal conference at a location that is available to the department and that has adequate resources for the safe, proper, and efficient handling of an informal conference. The department's determination of the place for an informal conference is based upon the requirements of fair and efficient tax administration and the availability of conducting the informal conference by telecommunications.

(5) The department shall resolve a request by a taxpayer or taxpayer representative to change the date of an informal conference on a case-by-case basis taking into consideration all of the following factors:

(a) The availability of conducting the informal conference by telecommunications.

(b) Whether this is the first request to change the time of an informal conference.

(c) The reasonableness of the reasons offered.

(d) Factors that indicate that holding the informal conference could pose an undue inconvenience to the taxpayer.

(e) Factors that indicate that holding the informal conference would fulfill the requirements of fair and efficient tax administration.

(6) Nothing in this rule shall be interpreted as precluding the department from rescheduling an informal conference if it would promote the effective and efficient conduct of the informal conference. If a taxpayer requests that the informal conference not be rescheduled, then the department shall consider the request according to the provisions of subrule (5) of this rule.

(7) If a request to change the time of a scheduled informal conference is denied, then the informal conference shall be at the time as established by the department.

History: 1996 AACCS; 2018 AACCS.

R 205.1010 Informal conference generally.

Rule 10. (1) The purpose of the informal conference is to informally discuss the positions of the parties, more thoroughly narrow the issues that may not be capable of resolution at this level, and present arguments to the referee in support of the parties' positions, to permit the referee to make a recommendation to the treasurer.

(2) The informal conference is not a contested case proceeding and is not subject to the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The provisions of the open meetings act, 1976 PA 267, MCL 15.261 to 15.275 do not apply.

(3) The department shall provide the taxpayer or taxpayer representative a written notice of the assignment of the informal conference to a referee.

(4) The department shall provide written notice of the time and place of the informal conference by certified mail. The department shall provide the notice not less than 20 days before the informal conference. The notice shall specify whether the conference will address a notice of intent to assess, a notice of denial of refund, or a notice of audit refund, the type of tax, and the tax period that is the subject of the informal conference. The department shall explain the nature of the informal conference and advise that the final determination will be made by the treasurer.

(5) At the beginning of the informal conference, the referee shall ascertain whether any portion of the tax dispute has been resolved. If the parties resolve any portion of the tax dispute at any time after the tax dispute has been assigned to a referee, but before the treasurer has issued a decision and order, the parties shall notify the referee assigned to conduct the informal conference.

(6) The referee shall conduct the informal conference in an informal manner that facilitates the exchange of information needed to review and, where applicable, to resolve the tax dispute. The referee shall hear and receive testimony. Generally, testimony is not taken under oath, although matters alleged as fact may be submitted in the form of affidavits or may be declared to be true under penalties of perjury. The department shall provide the reasons and authority for the proposed assessment. The parties shall discuss their respective positions with a view to narrowing the issues and shall present arguments based upon the law in support of their respective positions.

(7) Instead of attending the informal conference, the parties may have the dispute reviewed and resolved based upon a written statement that contains the facts, a discussion of the law, and the legal arguments that the parties would have presented had they attended the informal conference. A party that chooses to have a dispute reviewed in this manner shall so advise the referee as early as possible in advance of the scheduled informal conference.

(8) A taxpayer may request that an informal conference be conducted by telecommunications. The department may require an informal conference by telecommunication, if required for fair and efficient tax administration.

(9) If an informal conference is conducted by telecommunications, the referee shall identify all persons, by name and title, and shall ask whether any participant is recording the informal conference and whether any participant objects to the recording of the informal conference.

(10) If a taxpayer or taxpayer representative fails to appear at a scheduled informal conference without permission to change the time, then the referee shall proceed in the absence of that party and the referee shall prepare a recommendation based upon the information available.

(11) A formal record of the informal conference is not made. A taxpayer at whose request the informal conference is being held or the department may make a sound recording of the informal conference at the recording party's expense. The taxpayer or department employee who makes the sound recording shall give advance written notice of not less than 7 days to the opposing party and to the referee. The authorization to make a sound recording of the informal conference does not include authorization to make a video recording.

History: 1996 AACCS; 2018 AACCS.

R 205.1011 Informal conference; referee recommendation; decision and order of treasurer following informal conference.

Rule 11. (1) After reviewing the testimony, evidence, comments, and, if applicable, written submissions at an informal conference, the referee shall prepare a written recommendation to the treasurer.

(2) The treasurer or an authorized representative of the treasurer shall review the recommendation and shall issue a written decision and order of determination. In the written decision and order of determination, the treasurer, or an authorized representative of the treasurer, shall do either of the following:

(a) Accept the recommendation of the referee.

(b) Reject the recommendation of the referee, in whole or part, with a written rebuttal explanation of the reasons for rejecting the recommendation of the referee.

(3) The decision and order of determination shall contain a statement of the reasons and authority for the decision and shall assess the tax, interest, and penalty found to be due and payable. The decision and order of determination shall be limited to the subject of the informal conference. Neither the taxpayer nor the department representative shall be provided an opportunity to review the recommendation of the referee and to file objections to the recommendation in advance of the issuance of the decision and order of determination by the treasurer or an authorized representative of the treasurer. There shall not be a rehearing of a decision and order of determination.

(4) The department shall send, to the taxpayer, by certified mail if the taxpayer is not represented, or by first-class mail if the taxpayer is represented in the dispute, a copy of the recommendation, the decision and order of determination, and, if applicable, the rebuttal explanation. If a taxpayer is represented in the informal conference, the department shall send, by certified mail, to the taxpayer representative, a copy of the recommendation, the decision and order of determination, and, if applicable, the rebuttal explanation.

(5) If the decision and order of determination affirms an intent to assess in whole or in part, the decision and order of determination must state that a notice of final assessment will be issued. The notice of final assessment must include a statement advising the taxpayer of the right to appeal. If the decision and order of determination confirms the denial of a refund, in whole or in part, the decision and order of determination must include a statement advising the taxpayer of the right to appeal. A decision and order of determination addressing audit refunds must include a statement advising the taxpayer of the right to appeal.

History: 1996 AACCS; 2018 AACCS.

R 205.1012 Taxpayer negligence determination; burden of proof; examples of negligence; examples of reasonable cause for waiving negligence penalty.

Rule 12. (1) Negligence is the lack of due care in failing to do what a reasonable and ordinarily prudent person would have done under the particular circumstances. The

standard for determining negligence is whether the taxpayer exercised ordinary care and prudence in preparing and filing a return and paying the applicable tax in accordance with the statute. The facts and circumstances of each case will be considered.

(2) When the department imposes a negligence penalty, the department bears the burden of establishing facts to support a finding of negligence and the taxpayer bears the burden of establishing facts that will negate a finding of negligence. The taxpayer shall file a written statement that explains, in detail, the facts which are relied upon to defeat the penalty and which constitute reasonable cause.

(3) The following illustrative examples, when clearly established, are generally considered to constitute negligence:

Example no. 1: The income tax and single business tax instructions clearly require the prepayment of the annual tax, but the taxpayer remits estimated tax payments of less than the required amount.

Example no. 2: A taxpayer fails to file an income tax or single business tax amended return within 120 days, as required by law, after a final alteration, modification, recomputation, or determination of a deficiency under the provisions of the internal revenue code.

Example no. 3: The taxpayer has been assessed a tax deficiency. There is a subsequent audit of the taxpayer that results in a similar deficiency for a subsequent tax period resulting from the taxpayer's failure to correct internal controls and reporting procedures that contributed to the original assessment.

Example no. 4: The income tax and single business tax instructions clearly require payment of the estimated annual tax at the time of filing an extension request. The taxpayer understates and underpays the annual liability with the extension request.

Example no. 5: The estate tax act requires an amended return to be filed within 60 days of the date of the federal determination. The personal representative fails to file the amended return within the 60 days allowed.

(4) The following illustrative examples, when clearly established, are generally considered to constitute reasonable cause for purposes of waiving the negligence penalty:

Example no. 1: The taxpayer was assessed a deficiency of sales and use taxes and negligence penalty on the taxpayer's first audit. Reporting procedures were not adequate during the audit period. The taxpayer overstated and understated food deductions in each year. The taxpayer claimed a resale exemption on fixed asset purchases, expense items, and out-of-state purchases. The taxpayer hired an accountant after the deficiency was issued. The taxpayer has subsequently invested in a new system for record keeping purposes. Reasonable cause has been established because corrective steps were taken to prevent the recurrence of this situation.

Example no. 2: The taxpayer was assessed an income tax deficiency and negligence penalty. The taxpayer is a Michigan resident who is employed in a neighboring state. The taxpayer's employer withheld income tax for the wrong state. The taxpayer's employer provided the taxpayer and the department with a letter acknowledging the error as an error of the employer. The taxpayer requests a waiver of the negligence penalty. Reasonable cause has been established because the taxpayer's

employer created the error and acknowledged the error. The taxpayer exercised ordinary care and prudence.

History: 1996 AACRS.

R 205.1013 Failure to file or pay penalty; waiver of penalty; reasonable cause for failure to file or pay.

Rule 13. (1) Except as otherwise provided in the act, if a taxpayer fails or refuses to file a return, or fails or refuses to pay a tax administered under the act within the time specified by law, a penalty of \$10.00 or 5% of the tax, whichever is greater, shall be added to the tax owed if the failure is for a period of not more than 1 calendar month. An additional penalty shall be added to the tax owed at the rate of 5% for each additional month or fraction of a month during which the failure continues or the tax is not paid. The maximum penalty shall be 50% of the tax owed.

(2) If a return is filed or a remittance is paid after the time specified, the taxpayer may request that the commissioner of revenue waive and the commissioner shall waive the penalty authorized by section 24(4) of the act if the taxpayer establishes that the failure to file the return or to pay the tax was due to reasonable cause and not to willful neglect.

(3) A waiver of penalty request shall be in writing and shall state the reasons alleged to constitute reasonable cause and the absence of willful neglect.

(4) The taxpayer bears the burden of affirmatively establishing, by clear and convincing evidence, that the failure to file or failure to pay was due to reasonable cause.

(5) A taxpayer is required to exercise ordinary business care and prudence in complying with filing and payment requirements.

(6) When determining whether a taxpayer was unable to file a return or pay a tax in spite of the exercise of ordinary business care and prudence, the timeliness, facts and circumstances of each case will be considered.

(7) The examples set forth in this subrule, if clearly established and if other contributing circumstances do not exist, generally constitute reasonable cause for failure to file or pay. The following examples are not intended to be the only instances in which reasonable cause may be established and each case shall be judged individually upon its own facts and circumstances:

(a) The delay in filing or payment is caused by the prolonged unavoidable absence of the taxpayer responsible for filing and the taxpayer who is precluded, due to circumstances beyond the taxpayer's control, from making alternate arrangements for filing and paying.

(b) The delay in filing or payment is caused by the destruction, by fire or other casualty, of the taxpayer's records or the taxpayer's business if the destroyed records directly related to and prevented timely compliance.

(c) The delay arose from the taxpayer's inability to obtain the necessary records or information due to reasons beyond the taxpayer's control. The taxpayer shall explain why the records are needed to comply, why the records are unavailable, other avenues explored to secure the information, and why the information is not estimated.

(d) The taxpayer receives erroneous written information from a department employee who responds to the taxpayer's request and the taxpayer provided all complete and relevant information. The erroneous written information directly relates to and prevents the taxpayer from complying with state tax obligations.

(e) The filing of a return or payment of tax is delayed in delivery by the United States post office or is filed or paid in the wrong office of the department.

(f) A bank error that is the sole cause of the failure to pay.

(8) The following factors alone do not constitute reasonable cause for failure to file or pay. However, these factors may be considered with other facts and circumstances and may constitute reasonable cause. The following factors are for illustration only and are not an exclusive listing of factors:

(a) The compliance history of the taxpayer.

(b) The nature of the tax.

(c) The taxpayer's financial circumstances, including the amount and nature of the taxpayer's expenditures in light of the income the taxpayer, at the time of the expenditures, could reasonably expect to receive before the due date prescribed for paying the tax.

(d) The taxpayer was incorrectly advised by a tax advisor who is competent in Michigan state tax matters after furnishing the advisor with all necessary and relevant information and the taxpayer acted reasonably in not securing further advice.

(e) The taxpayer's accounting and financial system that is designed to ensure timely filing breaks down due to unavoidable circumstances and, upon discovery, the taxpayer promptly complies.

(f) The death or serious incapacitating illness of the taxpayer or the person responsible for filing the return or making the payment or a member of his or her immediate family.

(g) Lack of funds to make timely payment.

(h) A taxpayer's reliance on an employee or agent to file the return or make the payment.

History: 1996 AACCS.