

DEPARTMENT OF TREASURY

BUREAU OF REVENUE

TAXPAYER BILL OF RIGHTS

(By authority conferred on the state commissioner of revenue by sections 4, 23 and 24 of Act No. 122 of the Public Acts of 1941, as amended, being §§205.4, 205.23, and 205.24 of the Michigan Compiled Laws).

R 205.1001 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 122 of the Public Acts of 1941, as amended, being §205.1 et seq. of the Michigan Compiled Laws.

(b) "Commissioner" means the state commissioner of revenue as appointed by the state treasurer and described in the act.

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

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

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

(g) "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 30-day time limit for the request.

(h) "Person" means any of the following entities:

(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.

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

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

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

(l) "Third party" means any of the following entities:

(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 one 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 does not act as the taxpayer 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.

History: 1996 AACCS.

R 205.1002 Standards for treatment of public by department employees.

Rule 2. (1) The department shall treat the public in a fair and courteous manner. A department employee 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 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 privilege 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 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 is an attorney, using a false name, or falsely implying that the taxpayer has committed a crime.

(i) An employee'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 official position or on confidential information gained by reason of the employee's position.

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

(k) The employee's failure to report to the employee's supervisor or the supervisor's supervisor a taxpayer's complaint about the employee or another employee or the employee's failure to report to the employee'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 shall perform his or her duties at the following times and places:

(a) For collection purposes, the department 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 follows:

(A) The taxpayer has noncustomary working hours and has expressed to the department 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, similar activities.

(ii) Except as provided in subparagraphs (A) to (C) of this paragraph and unless otherwise agreed to by the department and the taxpayer, in the absence of knowledge of circumstances to the contrary, the department 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 has been properly notified of the representation, the location of the taxpayer representative, for example, the address of record:

(A) The department 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 shall not contact a taxpayer at his or her place of employment if the employee 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, then a department employee 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 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 shall contact taxpayers during regular working hours unless otherwise agreed to by the taxpayer.

(4) The department 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 who acts improperly, for the department to discipline the employee who acts improperly, and for a taxpayer advocate to respond to complaints from the public.

History: 1996 AACCS.

R 205.1003 Confidentiality of information.

Rule 3. (1) Except as otherwise provided by law, the commissioner of revenue, 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) Confidential information shall not be disclosed by a department employee 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 shall be subject to the same restrictions as department employees or authorized representatives and shall not disclose the confidential information.

(5) Confidential information obtained about a taxpayer shall not be disclosed without proper authorization.

(6) The commissioner of revenue or a designated representative shall keep records of persons who are not department employees or authorized representatives of the commissioner and are granted access to, or given copies of, returns or return information. The records shall 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.

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 are strictly prohibited from disclosing 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 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 Act No. 294 of the Public Acts of 1982, as amended, being §552.531 of the Michigan Compiled Laws.

(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. 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, Treasury 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 Act No. 442 of the Public Acts of 1976, as amended, being §15.231 et seq. of the Michigan Compiled Laws. Requests shall be addressed to the Director of the Bureau of Management Services, Michigan Department of Treasury, Treasury Building, Lansing, Michigan 48922.

History: 1996 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 Written authorization for disclosure of confidential information to third parties or taxpayer representatives; use of facsimile equipment.

Rule 6. (1) Before a department officer or employee may disclose confidential information to a third party, the third party shall furnish the appropriate authorization from the taxpayer.

(2) For telephone or in-person requests, the department shall determine the identity of the requesting party before giving out confidential information.

(3) When determining the identity of the third party, whether the request is by telephone or in person, the department shall obtain the following information about the taxpayer and the subject matter from the requesting party:

(a) The taxpayer's name, address of record, taxpayer's identification number, and any other information necessary to identify the requesting party.

(b) For a refund inquiry, the approximate amount of 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 which is initiated by the taxpayer and which includes the taxpayer, the taxpayer representative, and the department may be utilized to discuss confidential information concerning the taxpayer without written authorization, unless it is preferable to mail the requested return information to the taxpayer's address of record.

(5) The written authorization of the taxpayer shall include the following information:

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

(b) The time period for which the authorization is effective.

(c) The name, address, and telephone number of the taxpayer representative.

(d) The type of return, tax type, and period to be disclosed.

(e) The taxpayer's signature and the date of signature.

(f) A designation as to whether the taxpayer representative is given general authorization or limited authorization to act on the taxpayer's behalf. General authorization to act on the taxpayer's behalf includes authorization to do any of the following:

(i) Inspect or receive confidential tax information for all tax years and all tax matters.

(ii) Represent the taxpayer and make oral or written presentations of fact and argument for all tax matters and years.

(iii) Sign returns and enter into agreements for all tax matters and years. Limited authorization for specific tax matters includes authorization as to a specific type of tax, return, or year or period.

(6) A taxpayer's written authorization may be provided by filing any of the following completed documents:

(a) The original Michigan form C-1029 entitled "Power of Attorney/ Authorization." The form may be obtained without cost from the Michigan Department of Treasury, Treasury Building, Lansing, Michigan 48922, or by calling 1-800-FORM-2-ME (1-800-367-6263).

(b) A copy of federal form 2848 entitled "Power of Attorney and Declaration of Representative." The form may be obtained at the nearest internal revenue service office.

(c) An original or a copy of any other appropriate power of attorney or other taxpayer authorization.

(7) If the written authorization does not identify the effective date and expiration date, the department shall presume that the effective date is the same date as the date of the written authorization. If the written authorization is not dated, the department shall presume that the effective date is the date the department receives the written authorization. The department shall presume that there is no expiration date for the matters specified. If a written authorization is otherwise incomplete, the department may request the taxpayer to supply missing or clarifying information.

(8) The taxpayer may name only 1 taxpayer representative for a single tax dispute or matter. The department will contact the taxpayer representative when a valid authorization or power of attorney has been properly filed with the department and the taxpayer makes a written request that copies of letters and notices be sent to the taxpayer representative. If a taxpayer representative is an organization and not an individual, the taxpayer shall designate a contact person within the organization.

(9) A taxpayer shall have only 1 authorization or power of attorney for each taxpayer representative on file with the department for a particular matter. An authorization, once filed with the department and associated with a return or tax matter, shall be presumed to be valid unless the department receives notice that the authorization is no longer valid. By executing and filing a new written authorization, a taxpayer shall revoke a previously filed authorization that relates to the same tax dispute that is covered by the newly filed authorization. An authorization ordinarily will be requested regarding a specific matter only upon the first appearance of the representative before the department.

(10) The department may accept tax information that is voluntarily offered by third parties, but, in the absence of appropriate authorization, may 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 may not disclose the balance due or the nature of the assessment to the third party in the absence of appropriate authorization from the taxpayer. The department may discuss only general information relative to the meaning of a bill or a notice or information that is provided by the third party.

(11) A taxpayer's conduct may constitute either express or implied authorization to the department to disclose confidential information. 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's conduct will be considered to have given implied consent to the disclosure of confidential tax information about the taxpayer. If a taxpayer does not authorize the department to disclose confidential tax

information to the friend, then the friend shall leave the informal conference. For example, the conduct of a deaf individual who seeks translation from the department may constitute 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.

(12) The department will accept either the original written authorization or, with indicia of reliability and trustworthiness, a copy of a power of attorney received by facsimile transmission (FAX).

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) Specific responsibilities are delegated to the following positions within the department to ensure the confidentiality of tax information and to coordinate requests for authorized disclosure of tax information within the department:

(a) The disclosure officer is responsible for the development of 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 commissioner of revenue for action as deemed appropriate. The disclosure officer is responsible for the development of information sharing agreements with appropriate federal and state agencies. The disclosure officer 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 will 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 be required to review the policies, procedures, and bulletins governing confidentiality and the authorized disclosure of confidential information and to certify that they are familiar with the documents as they documents relate to the employees specific duties. Periodically, department employees shall be required to 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.

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

Rule 8. (1) If a notice of intent to assess is sent to a taxpayer, the notice shall include a statement of the taxpayer's right to an informal conference, the need for a written request by a taxpayer for the informal conference, which includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 30-day time limit for the request.

(2) The taxpayer shall be entitled to an informal conference 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 of intent to assess, within 30 days after the taxpayer receives a notice of intent to assess. 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 in cash, by check payable to the "State of Michigan," or as otherwise indicated in the notice of intent to assess.

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

(3) If a taxpayer pays on the intent to assess in full before the scheduled informal conference is held in order to stop the accrual of interest, the taxpayer may preserve the right to dispute the assessment and raise whatever issues would have been raised had the assessment remained unpaid.

(4) 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 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 AACCS.

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

Rule 9. (1) The department shall set the informal conference at a mutually 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 mutually 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 will work with taxpayers or taxpayer representatives to try to minimize any adverse effects that may arise in scheduling an informal conference.

(4) It is reasonable for the department to 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 shall make an initial determination of the place for an informal conference based upon all of the following considerations:

(a) The location of the taxpayer or taxpayer representative.

(b) The location of department employees.

(c) The distance that either a taxpayer or department employee would have to travel to attend.

(d) The requirements of fair and efficient tax administration.

(5) A request by a taxpayer or taxpayer representative to change the place or date of an informal conference will be resolved on a case-by-case basis taking into consideration all of the following factors:

(a) The location of the taxpayer.

(b) The location of the taxpayer representative, if applicable.

(c) The location at which the department can conduct the informal conference most efficiently.

(d) The department's resources available at the location to which the taxpayer has requested a transfer.

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

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

(g) The reasonableness of the reasons offered.

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

(i) 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 initiating the transfer of an informal conference if the transfer would promote the effective and efficient conduct of the informal conference. If a taxpayer requests that a transfer not be made, then the department will consider the request according to the provisions of subrule (5) of this rule.

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

History: 1996 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 commissioner.

(2) The informal conference is not a contested case proceeding and is not subject to the provisions of Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws. The provisions of Act No. 267 of the Public Acts of 1976, being §15.261 et seq. of the Michigan Compiled Laws do not apply.

(3) The department will 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 notice shall be provided not less than 20 days before the informal conference. The notice shall specify the intent to assess, the type of tax, and the tax year 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 commissioner.

(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 commissioner has issued a decision and order, the parties shall notify the commissioner or an authorized representative of the commissioner.

(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 have the option to 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 commissioner 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 and place, 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 AACS.

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

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

(2) The commissioner or an authorized representative of the commissioner shall review the recommendation and shall issue a written decision and order. In the written decision and order, the commissioner 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 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 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 by the commissioner. There shall not be a rehearing of a decision and order.

(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, 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, and, if applicable, the rebuttal explanation.

(5) After the decision and order have been issued, a notice of final assessment shall be sent to the taxpayer. The notice of final assessment shall include a statement advising the taxpayer of the right to appeal.

History: 1996 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 AACCS.

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.