

Miller Canfield Drives Kmart Bill Through Michigan Legislature

March 26, 2010

The Michigan Senate unanimously approved House Bill 5937, the "Kmart Fix" legislation on March 25, 2010.

The bill eliminates the requirement of amended returns and bars the assessment of tax, interest, or penalty as well as refunds in connection with the decision of the Michigan Court of Appeals in Kmart Michigan Property Services. That decision had rejected conformity with the federal check-the-box regulations under Michigan's former SBT, which was repealed at the end of 2007.

The Michigan Department of Treasury in February of 2010 announced its intention to give full retroactive effect to the Kmart decision, which caused an uproar in the taxpayer community. It was determined that legislation would be necessary to override the Department's action.

Greg Nowak of Miller Canfield was enlisted by taxpayer organizations and the Michigan Association of Certified Public Accountants, for whom he serves as Vice-Chairman, to spearhead the legislative effort. He engaged in negotiations with the Department of Treasury and provided testimony in the Michigan House and Michigan Senate in support of the bill. "My mandate was clear, get Treasury on board, get the House and Senate on board, and get it done quickly. There were an enormous number of companies adversely affected by the decision."

This bill has achieved passage in unprecedented time, having only been introduced on March 9th. "Time was of the essence," said Nowak, "to fix this for first quarter financial reporting purposes. The analysis burdens alone would have been massive, not to mention the potential exposures." The bill will now move to the Governor's desk. We understand she intends to sign it prior to March 31, 2010.