

The Department of Treasury to Assess Michigan Single Business Taxes to Individuals and Family Limited Partnerships on Investment Income

May 4, 2010

An emerging issue under the former Single Business Tax (SBT) may affect individuals with an interest in flow through entities and banks and other entities that manage Family Limited Partnerships (FLPTs).

The Michigan Department of Treasury has begun sending "Letters of Inquiry" to individuals, fiduciaries, and banks and other entities that are partners in partnerships and that manage FLPTs and common trust funds asserting an SBT filing obligation for investment activity. These Notices are generated from the Department's Discovery Unit which indicates there is a specific audit project designed to discover individuals who hold an interest in flow through entities, FLPTs and trust funds and to collect tax, penalty and interest. Letters of Inquiry were sent to a large number of individuals, banks, partnerships, trusts and other family estate-planning entities earlier this year. The letters and follow-up correspondence are automated.

For 25 years, Michigan held to a definition of "gross receipts" which covered only receipts from a regular trade or business and the Department never subjected passive investment income of individuals or from family estate-planning entities to the SBT.

Due to a statutory change in 2000, the Department now believes that investment activity meets the definition of business activity. Though historically the Department assessed few, if any, taxpayers for their passive investment activity, the Discovery Unit is now asserting that the individuals and family estate-planning entities are non-filers; that they are taxable for all prior years; and it is signaling that it will issue assessments to those who fail to respond to the Notices.

Action Steps

Taxpayers should consider requesting an extension of time to respond if they receive a request to remit tax returns.

Taxpayers who have filed SBT returns in response to the inquiries from the Department should immediately take steps to ensure their rights for refunds are not lost.

If you have questions or concerns regarding the Department's discovery process, contact a Miller Canfield State and Local Tax attorney for assistance.