

## Resources

### Michigan Department of Treasury Notice Regarding Retroactive Application of the Decision in *Kmart Michigan Real Property Services LLC v. Dep't of Treasury* ("Kmart")

February 11, 2011

#### The *Kmart* Decision

The Michigan Court of Appeals held that a disregarded, single member LLC is a separate taxpayer for purposes of the Michigan Single Business Tax.

#### The Department's Response to *Kmart*

In its Notice issued February 5, 2010, the Department concluded that *Kmart* applies retroactively to all open tax years such that SBT returns are required from all LLC's that previously filed as a part of their single member's SBT return. The single member's SBT return will need to be amended for all open years also. The Department's position is that its administrative bulletins RAB 1999-9 and RAB 2000-5 dealing with the requirement that an entity disregarded for federal tax purposes must also file as a disregarded entity for state tax purposes are invalid to the extent inconsistent with *Kmart*.

#### Open Tax Years for Single Member and LLC May Differ

The single member (Parent) in most cases will have filed SBT returns and will typically have at least four open tax years under Michigan's four year statute of limitations. However, the Department's position is that the disregarded LLC did not file a "return" by being included in a single member's tax return as a division, so no statute of limitations began running for the LLC.

#### Penalty Deadline

All persons required to file original or amended SBT returns must file all such returns by **September 30, 2010** to avoid penalties.

#### Interest

Interest is due on any underpayment from the time the tax was originally due. Interest due on refunds will be calculated beginning 45 days after the refund claim is filed.

#### Registration

All previously disregarded LLCs must register if they do not have a Federal Employer Identification Number ("FEIN") or a Michigan Treasury Assigned Number.

#### Pro Forma Federal Return

Previously disregarded LLCs must attach a pro forma federal tax return and a statement identifying the single member parent entity in whose SBT return the LLC was previously included.

The entities that amend SBT returns to remove an LLC must also include a pro forma federal tax return and a statement identifying each previously disregarded entity that was included in the original SBT return.

Michigan Department of Treasury Notice Regarding Retroactive Application of the Decision in Kmart Michigan Real Property Services LLC v. Dep't of Treasury ("Kmart") (Cont.)

## Filing

All original and amended SBT returns filed pursuant to Kmart must be filed, with or without payment, at:

Michigan Department of Treasury  
P.O. Box 30059  
Lansing, MI 48909

Taxpayers with questions about these or other Michigan tax matters may contact Wayne D. Roberts at 616-776-7514, **Steven E. Grob** at 313-568-6582, or Sherrill D. Wolford at 313-568-6849.

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## Practice Areas

### Taxation

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