



December 29, 2017

Mr. Nick Khouri
Treasurer, State of Michigan
Executive Office, Treasury Building
Lansing Michigan 48922

RE: Tax Cut and Jobs Act; Implication for Michigan Income Taxes; Suggested Clarification

Dear Treasurer Khouri:

As you are undoubtedly aware, the federal Tax Cut and Jobs Act adopted into the law several days ago has enormous implications for federal taxation, and many implications for state taxation as well. The conference committee report adopted on December 22 is long and confusing, even by the standards of tax law. I am writing to suggest that the Treasury provide clarification on one issue that has generated significant confusion in the few days since the President signed the Act into law, and which affects Michigan income tax payers starting January 1, 2018.

One Interpretation: Large Hidden Michigan Income Tax Increase

One interpretation, based on a December 22 statement by the governor and the common description of the federal law, is the following:

1. The new federal law eliminates the federal exemption for individual filers;
2. Michigan's income tax act, in section 30, grants exemptions only to the extent that they are granted under federal law; therefore
3. All of Michigan's income tax payers lose their exemptions January 1, 2018; and
4. Without taking any state legislative or administrative action, Michigan's state income taxes will increase by over a hundred million dollars in the year 2018 alone, estimated by taking all exemption amounts and multiplying the aggregate by the Michigan income tax rate.

Recommended Interpretation

My interpretation is different:

1. The new federal law, in section 11041, does not eliminate the federal exemption for individual filers. It sets the "exemption amount" to zero for years 2018 through 2025, for the purposes of federal individual income taxes.
2. The new federal law is explicit that, for other purposes, "the reduction of the exemption amount to zero under subparagraph (A) shall not be taken into account..."

3. As further evidence of that, the same federal law provides for the exemption amount to not only remain in place, but continue to be indexed for inflation, for the purposes of the estate tax.
4. Michigan's income tax act, in Section 30, allows exemptions. These exemptions remain in place because no change in state law has taken place, and because federal law continues to recognize and establish exemptions.
5. Without any legislative or administrative action, Michigan's income tax payers will not lose their state income tax exemptions January 1, 2018, and will not be subjected to a large income tax hike due to a loss of their exemptions under state tax law.

Suggested Administrative Statement

While I believe the interpretation listed above is correct, it is based on my first review of only part of the (very long and confusing) recently adopted federal law, as well as section 30 of Michigan's Income Tax Act. I acknowledge that there remains ambiguity in the state and federal laws, and there are undoubtedly other considerations that you will take into account in applying Michigan's income tax given the new federal law, and after further study.

Given the public's interest and concern about this issue, I believe it would be worthwhile for the Treasury department to state its interpretation of the law in the absence of any change in the state law. Unless there is a clear reason otherwise, I recommend to you the interpretation listed above, which I think is consistent with the spirit of the federal law, the principles of federalism, and the most reasonable way to read a very long and confusing federal tax law. Furthermore, the Governor has stated his intention, which I believe is shared by the majority of the legislature, that changes in federal law not cause state taxes to increase.

You may later determine, after further study, that a clarifying amendment to the Michigan income tax act would be welcome to address this and other issues. There may also be conflicts or ambiguities that require other state actions or interpretations of law. However, given the importance of addressing this issue immediately, I recommend that you make an administrative statement on this matter as soon as possible.

Sincerely,



Patrick L. Anderson
Principal & CEO

CC: Governor Rick Snyder
Attorney General Bill Schuette

Attachments: Excerpt, Michigan Income Tax Act, section 30
Excerpt, Tax Cut and Jobs Act, section 11041

Michigan Law

Michigan Income Tax Act

Sec. 30.

(1) "Taxable income" means, for a person other than a corporation, estate, or trust, adjusted gross income as defined in the internal revenue code subject to the following adjustments under this section:

...

...

...

(2) Except as otherwise provided in subsection (7), a personal exemption of \$3,700.00 multiplied by the number of personal or dependency exemptions allowable on the taxpayer's federal income tax return pursuant to the internal revenue code shall be subtracted in the calculation that determines taxable income.

...

...

(7) For each tax year beginning on and after January 1, 2013, the personal exemption allowed under subsection (2) shall be adjusted by multiplying the exemption for the tax year beginning in 2012 by a fraction, the numerator of which is the United States consumer price index for the state fiscal year ending...

Tax Cuts and Jobs Act

Enrolled Bill HR 1

ART V—Deductions and exclusions

SEC. 11041. Suspension of deduction for personal exemptions.

(a) In general.—Subsection (d) of section 151 is amended—

(1) by striking "In the case of" in paragraph (4) and inserting "Except as provided in paragraph (5), in the case of", and

(2) by adding at the end the following new paragraph:

"(5) SPECIAL RULES FOR TAXABLE YEARS 2018 THROUGH 2025.—In the case of a taxable year beginning after December 31, 2017, and before January 1, 2026—

"(A) EXEMPTION AMOUNT.—The term 'exemption amount' means zero.

"(B) REFERENCES.—For purposes of any other provision of this title, the reduction of the exemption amount to zero under subparagraph (A) shall not be taken into account in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction, under this section."

Reference link:

<https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.xml>