

MICHIGAN AMNESTY FOR SALES AND USE TAX OBLIGATIONS

BY ED CASTELLANI

Effective September 1, 2004, Michigan adopted changes to the Michigan sales and use tax laws to comply with the Streamline Sales Tax Project (SSTP). The SSTP is a voluntary effort by a number of states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of sales and use tax administration for all sellers in all types of commerce.

Michigan is a member of the SSTP, because it hopes that sales tax simplification among the states will ultimately allow the states to collect sales tax on sales by out of state sellers. Currently, states cannot require out of state sellers to collect sales and use tax unless they have a physical presence in Michigan (commonly known as nexus). The United States Supreme Court has ruled that requiring out of state sellers to collect sales and use tax in Michigan without some type of physical presence in Michigan is considered an undue burden on interstate commerce (see *Quill v North Dakota*).

States have tried to force remote sellers without a physical presence in the customer state to collect sales and use taxes from customers of catalog, telephone and internet sellers. The U.S. Supreme Court prevented the states from requiring collection in the landmark *Quill* case. In *Quill*, the Supreme Court held that because sales and use taxes are so complicated, requiring remote sellers to collect in the various states and local jurisdictions with sales and use taxes would create a burden on interstate commerce.

The long term goal of the SSTP is to simplify state sales tax systems enough so that either Congress will pass legislation to require out of state sellers to collect sales tax

for states that participate in the SSTP even though there may be no nexus with Michigan, or the United States Supreme Court will overturn the *Quill* decision and determine that the simplification is sufficient to remove the undue burden on interstate commerce.

The State of Michigan is very active in monitoring whether out of state sellers have nexus with Michigan and in collecting sales and use tax from those sellers with nexus to Michigan. Whether nexus exists is a question based on the facts of each case and a substantial amount of case law and Treasury Department policy has been developed to address this question. Out of state sellers who are contacted by the State of Michigan should review the rules and case law before they agree to be subject to Michigan sales and use tax.

Out of state sellers who may be subject to Michigan sales and use tax may voluntarily begin remitting the sales tax in return for a promise from the State of Michigan that they will not go back to collect the taxes plus tax interest and penalty for prior years.

One benefit of the SSTP for out of state retailers is that the SSTP provides tax amnesty for those that voluntarily participate. Out of state sellers who may be subject to Michigan sales and use tax may voluntarily begin remitting the sales tax in return for a promise from the State of Michigan that they will not go back to collect the taxes plus tax interest and penalty for prior years. Instead, by volunteering to collect under the SSTP Agreement, the out of state seller will not be liable for past tax, interest and penalty.

Michigan is currently offering amnesty through September 30, 2006, to all out of state sellers that are subject to Michigan sales and use tax. To take advantage of the amnesty program, the out of state seller must agree to collect and remit sales and use tax for all sales into Michigan and all other states which are participating in the SSTP. The amnesty program will prohibit assessment for uncollected or

Continued on Page 2

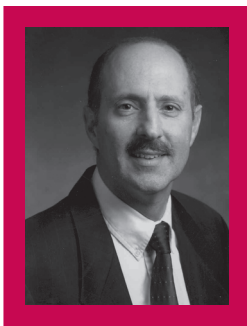
MICHIGAN AMNESTY FOR SALES AND USE TAX OBLIGATIONS continued

unpaid sales and use tax plus penalty and interest for sales made during the period the seller was not registered in the state, provided registration occurs prior to September 30, 2006. Amnesty is not available to a seller with respect to any matter for which the seller received notice of the commencement of an audit, if the audit is not

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yet finally resolved, nor is amnesty available for sales or use taxes already paid or remitted to the state.

Sellers who have sales and use tax liabilities to the State of Michigan may want to participate in the amnesty program to eliminate tax, interest and penalty for prior years in return for immediate and future collection of Michigan sales and use tax. If you need assistance with the registration process to take advantage of the amnesty, we would be happy to work with you.



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business must create a privacy policy that does at least all of the following:

1. Ensures the confidentiality of the Social Security Number;
2. Prohibits unlawful disclosure of the Social Security Number;
3. Limits who has access to information or documents that contain the Social Security Number;
4. Describes how to properly dispose of documents that contain the Social Security Number; and
5. Establishes penalties for violation of the privacy policy.

A person that creates a privacy policy must publish the privacy policy in an employee handbook, a procedures manual or one or more similar documents which may be available electronically.

This new law will apply to most businesses, but it does not apply to a business that possesses a Social Security Number in compliance with the Fair Credit Reporting Act or the Gramm Leech Bliley Act. Persons that are complying with the requirements of the Fair Credit Reporting Act or the Gramm Leech Bliley Act will not be required to comply with this new law since they should already have policies in place to safeguard confidential information.

If you have any questions on this new law you may contact Ed Castellani at 517-377-0845 or ecastellani@fraserlawfirm.com.

MICHIGAN ENACTS THE SOCIAL SECURITY NUMBER PRIVACY ACT

BY ED CASTELLANI

Effective January 1, 2006, Michigan's new Social Security Number Privacy Act requires that any person who obtains a Social Security Number in the ordinary course of

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DUNLAP AWARDED THE LEO A. FARHAT OUTSTANDING ATTORNEY AWARD

Peter Dunlap was awarded the Leo A. Farhat Outstanding Attorney Award by the Ingham County Bar Association on November 3rd at the Association's Annual Dinner.

The Leo A. Farhat Outstanding Attorney Award is presented to a member of the Ingham County Bar Association who has distinguished himself or herself by manifesting exemplary character, integrity, judgment and legal scholarship while adhering to and advancing the highest principles and traditions of the legal profession.



Mr. Dunlap joined the Fraser Law Firm in 1967. His areas of practice include Alternative Dispute Resolution, Legal Malpractice, Products Liability, Personal Injury Litigation and Professional Responsibility. Mr. Dunlap is listed in the *Best Lawyers in America* publication and has been a Guest Lecturer at the University of Michigan, Michigan State University and Thomas M. Cooley Law School. He serves as Secretary of the Michigan Defense Trial Counsel and as a member of their Board of Directors. Mr. Dunlap also serves as a member of the Mediation Advisory Board at the Institute of Continuing Legal Education.

WEED JOINS THE FRASER LAW FIRM

Katherine A. Weed has joined the Fraser Law Firm as an associate. She is practicing in the Litigation Department at the Detroit Office. Ms. Weed received her J.D. from the University of Michigan Law School and a B.S., *with honors*, from the University of Michigan. She is a member of American Bar Association, the State Bar of Michigan, the Detroit Metropolitan Bar Association and the Women Lawyers Association of Michigan.



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ATTORNEY ACTIVITIES OF NOTE

- Graham Crabtree spoke at the Michigan Defense Trial Counsel Winter Conference on December 2. Mr. Crabtree spoke on two topics, Effective Oral Argument and Preserving the Record.
- Pete Dunlap spoke to the Michigan State University School of Engineering Design Class on October 24th regarding Products Liability Law, "How to protect your employer."
- Gary Rogers and Josh Smith recently received a final order from the Michigan Court of Appeals upholding the trial court's grant of dismissal of a wrongful death action against the spouse of a man who murdered his neighbor after an ongoing dispute over barking dogs. The claim against the spouse was that she knew of her husband's dangerous propensities, and the fact that he kept weapons contrary to an order of the Court but did nothing to warn the neighbor. The Court of Appeals ruled that under the facts of the case the spouse owed no legal duty to the decedent as she did nothing to aid her husband in the murder.
- Gary Rogers and Ryan Kauffman recently obtained an Order from Ingham County Circuit Court Judge Nettles-Nickerson granting partial summary disposition on a negligence claim arising out of the Plaintiff suffering a serious leg injury after falling from the roof of a new house being built by the firm's client. The Court agreed with Mr. Rogers and Mr. Kauffman that discovery failed to establish that their client was negligent.
- Ryan Wilson was a commentator at an Institute for Continuing Legal Education seminar on December 6th. The topic was "Estate and Financial Planning for Elderly or Disabled Clients."
- Jonathan Raven and Mike Levine have been appointed by Lansing Mayor-elect Virg Bernero to serve on one of his Transition Team Task Forces. They are members of the Economic Growth and Job Creation Task Force.
- John Miller prevailed in a case involving a premature uncapping of the taxable value for 5 parcels upon the death of the settlor of a trust with a concurrent probate court matter pending. He argued that the township cannot uncapp the property until the beneficiaries are determined, which will be decided by the court. The Michigan Tax Tribunal agreed and ordered that the township must wait to uncapp the property until the probate court litigation is ultimately resolved. Mr. Miller's client should be entitled to a significant property tax refund for tax years 2004 and 2005.

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