

USE AND SALES TAX ISSUES AND MICHIGAN OFFER-IN-COMPROMISE PROGRAM

Richard F. Roth, Esq.

The Michigan Use Tax Act

6% tax on use,
storage and
consumption of
“tangible
personal
property”

Michigan Use Tax Act

Also taxed under the Act are:

- intrastate telecommunication services
- rooms or lodging at hotels and motels
- certain laundering services

Michigan Use Tax Act

Exemptions:

- Property purchased for resale
- Property sold in Michigan if sales tax was collected
- Transaction between related parties
- Gift to beneficiary of an estate

The Michigan General Sales Tax Act

- creates an annual 6% tax
- from persons engaged in the business of making sales at retail
- requires retailers to obtain a sales tax license

The Michigan General Sales Tax Act

- Sales taxes also apply to the following:
- (a) the transmission and distribution of electricity, if the sale is made to the consumer or user of the electricity for consumption or use rather than for resale.

The Michigan General Sales Tax Act

(b) the sale of a prepaid
telephone calling card or a
prepaid authorization number
for telephone use



The Michigan General Sales Tax Act



(c) A conditional sale, installment lease sale, or other transfer of personal property, if title is retained as security for the purchase but is intended to be transferred later.

The Michigan General Sales Tax Act

Exemptions from sales tax:

- ✓ Prescription and over-the-counter drugs
- ✓ Food or food ingredients, except prepared foods for immediate consumption
- ✓ Foods or other tangibles purchased with food stamps
- ✓ Deposits on returnables

The Michigan General Sales Tax Act

Get ready for the Pass!

Retailers are allowed to reimburse themselves for sales tax by passing the tax onto the consumer and adding the tax amount to the sale price.

The Michigan General Sales Tax Act

Andrie Inc. v Dep't of Treasury

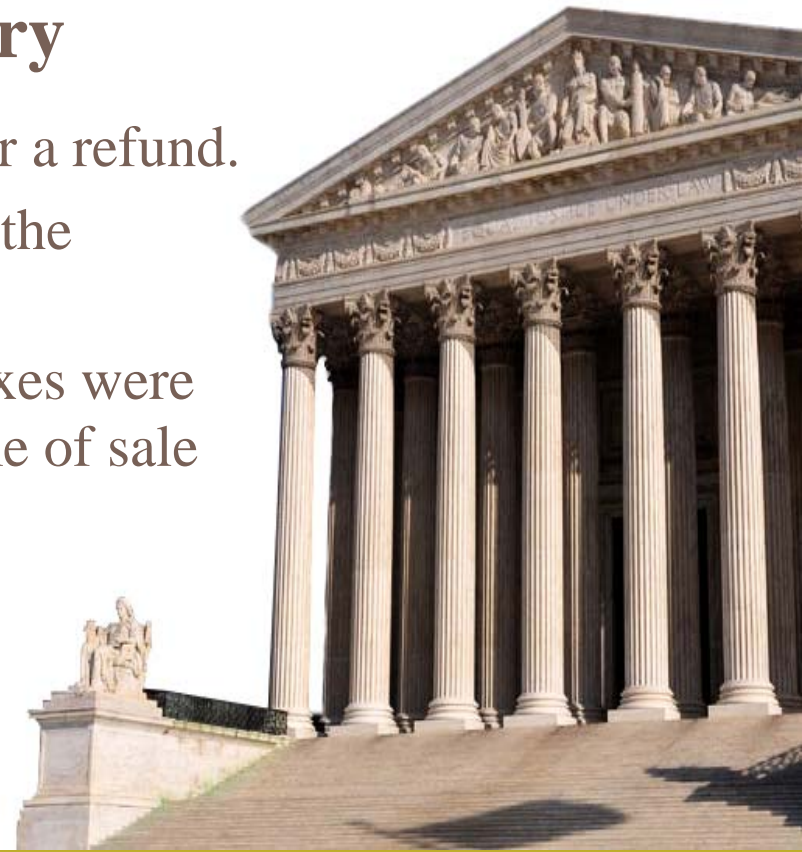
- Andrie, Inc., a Michigan corporation, purchases fuel and other supplies for its business
- Dep't of Treasury conducted a use tax audit
- Sales tax was not itemized separately on receipts for the purchase of goods
- Treasury concluded that Andrie had understated its use tax obligations by nearly \$400,000



The Michigan General Sales Tax Act

Andrie Inc. v Dep't of Treasury

- Andrie, Inc. paid but brought a suit for a refund.
- The Michigan Supreme Court upheld the use tax obligation.
- Andrie failed to establish that sales taxes were paid on transactions at issue at the time of sale (or thereafter).
- The Court ruled that “absent an exception, tangible personal property sold and used in Michigan is subject to both use and sales tax.”



The Michigan General Sales Tax Act

- Under MCL 205.94(1)(a), property sold in Michigan on which transaction a tax is paid under the general sales tax act . . . is exempt from use tax, *if the tax was due and paid on the retail sale to a consumer.*
- Taxpayers have the burden of proving entitlement to a use tax exemption, as there is no presumption that a taxpayer has paid sales tax at the point of sale.

Michigan Offer-in-Compromise Program

Public Act 240, which created an Offer-In-Compromise Program, was enacted on June 21, 2014 upon approval by Governor Snyder

- Effective 1/1/2015
- To compromise all or a portion of a tax liability, including related interest and penalties
- Grounds which the State Treasurer may compromise a tax liability are:
 - (1) if doubt exists as to liability
 - (2) if doubt exists as to collectability
 - (3) If a federal tax compromise was granted for the same tax years

Michigan Offer-in-Compromise Program

- Taxpayer must submit the greater of \$100.00 or 20% of the offer
 - which is applied to the outstanding balance of the taxpayer's liability
 - not refunded if the offer of compromise is reduced or rejected

Michigan Offer-in-Compromise Program

- Treasury may revoke any compromise and may re-establish all compromised liabilities
 - Since a compromise is subject to continued review; and
 - Is not subject to any statute of limitations
 - If the Treasury reasonably determines the person receiving the compromise concealed property, or if the taxpayer fails to comply with any term or condition

Michigan Offer-in-Compromise Program

Administrative Requirements of the Program

- Records and Reports
 - The Treasury must keep written reports of all compromises

Michigan Offer-in-Compromise Program

Administrative Requirements of the Program

- Records and Reports
 - Treasury must publish the written reports on their website with:
 - The amount of tax assessed
 - The amount of interest or assessable penalty
 - The terms of the compromise and the amount actually paid
 - The grounds for the compromise
- Disclosure to the general public

Use and Sales Tax Issues and Michigan Offer-in-Compromise Program

**THANK YOU
FOR YOUR
PARTICIPATION**

Richard F. Roth, Esq.

