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Michigan Supreme Court Denies Taxpayer Challenge of Illegal Property Tax

On March 30, 2010, the Michigan Supreme Court decided *Briggs Tax Service, LLC v Detroit Public Schools*. An unauthorized 18 mill property tax was levied by the Detroit Public Schools (the "DPS") for tax years 2002, 2003 and 2004. In 2005, the DPS published a notice which, for the first time, acknowledged that these levies were unauthorized. Within 30 days thereafter a number of taxpayers, including Briggs, filed actions seeking refunds of the unlawfully collected tax under a three year statute of limitations requiring proof of a "mutual mistake of fact." The Michigan Court of Appeals agreed with Briggs that a "mutual mistake of fact" had occurred and, therefore, the action was timely.

The Michigan Supreme Court reversed the Court of Appeals and dismissed Briggs' claims as untimely. In so holding, the Court acknowledged that the tax was illegal and should not have been levied. However, the Court also held that there had been no "mutual mistake of fact." Thus, to be timely, Briggs' refund claim had to be brought within 30 days of the issuance of the illegal 2002, 2003 and 2004 tax bills, even though the illegality of the tax was not disclosed by the DPS until August 2005.

Kmart Decision Legislative Fix for Certain LLCs

On March 31, 2010, Governor Granholm signed into law Public Act 38 of 2010 (House Bill 5937). Public Act 38 was enacted in response to a Michigan Department of Treasury Notice to Taxpayers. That Notice, in turn, was in response to the Michigan Court of Appeals decision in *Kmart Michigan Property Services LLC v Michigan Department of Treasury*, where the Court found that limited liability companies (LLCs) previously disregarded for federal income tax purposes, would be treated as separate taxpayers under the Michigan Single Business Tax (SBT). The Treasury Notice indicated that such entities would no longer be disregarded, would be required to file SBT returns for all open tax years, and that amended returns would be required from the LLC owners that had included the disregarded entities in their returns. The estimated administrative burden associated with these filings was staggering. The legislative fix to return to the pre-Kmart status quo faced little opposition and was supported by both Treasury and the business community. Public Act 38 eliminates the need for any new or amended SBT returns while preserving refunds for a taxpayer in litigation if all rights of appeal have been exhausted prior to February 12, 2010.

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