


Michigan's Elimination of Predeprivation Rights Through Premature Offsets

by Lynn A. Gandhi

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In this installment of *Smitten With the Mitten*, Gandhi examines Michigan's offsetting of alleged tax debts — potentially using credit carryforwards — before taxpayers' appeal rights expire, effectively denying them the chance to contest the debt before it's collected.

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A strange thing is happening in Michigan: the unilateral use by its Department of Treasury of its offset powers before the expiration of a taxpayer's appeal rights. This offset of alleged additional tax due could be achieved using credit carryforwards — real and imagined — as well as “created” tax refunds. The offsets are occurring before a taxpayer's appeal rights to contest an alleged amount due have expired, acting as a de facto elimination of the taxpayer's predeprivation rights and forcing satisfaction of an alleged tax debt before the ability to be heard. Something is very upside-down in Michigan,¹ and bad things are happening.²

¹For those unfamiliar with the Netflix flagship series *Stranger Things*, the Upside Down is the alternative dimension accessible by a portal developed by the U.S. Department of Energy in the fictional rural town of Hawkins, Indiana — likely just over the Michigan border.

²Not to be confused with Netflix's new horror series, *Something Very Bad Is Going to Happen*, by the creators of *Stranger Things*. The upcoming Netflix series is an atmospheric horror series set at a wedding, following the bride and groom in the week leading up to their ill-fated nuptials. TVLine Casting News (Dec. 17, 2024).

Background

Overview of the Federal Tax Offset Program

The U.S. Department of the Treasury's Bureau of the Fiscal Service³ administers the Treasury Offset Program (TOP) to collect past-due debts owed to the federal government. Some payments are exempt from offset based upon the payer and the type of payment.⁴ None of the exemptions applies to past-due tax debt.

Federal agencies are required to notify a debtor via mail at least 60 days in advance of sending the debt to TOP for collection. The letter must indicate the type of debt and amount, the name of the referring agency, and the rights that the debtor has to resolve the debt. Generally, these rights permit the debtor to pay the debt, enter a payment plan, or dispute that the debt is owed (if an opportunity to appeal is still available).⁵

Federal agencies are required to send debts to TOP once they are 120 days past due. The referring agency is responsible for verifying that the debt is valid and legally enforceable. Once in the system, a notice is sent to the debtor regarding the pending offset, and funds will be delivered to the creditor agency as they are intercepted. A debtor will stay in the TOP database until the debt is paid in full, or if other reasons justify pausing or stopping collection, such as a bankruptcy stay.⁶

³Authorization is provided by 26 U.S.C. section 6402 and 31 U.S.C. section 3702A. In 2024 the TOP recovered more than \$3.8 billion for the federal government.

⁴A full list can be found at Bureau of the Fiscal Service, “Treasury Offset Program: Payments Exempt From Offset by Disbursing Officials” (last updated Jan. 21, 2025).

⁵You can learn about the TOP at Bureau of the Fiscal Service, “Treasury Offset Program.”

⁶*Id.*

States' Participation in the Federal TOP

States are permitted to enter into agreements with the Bureau of the Fiscal Service to intercept federal tax refunds and other federal payments for past-due state debts.⁷ States may also agree to offset state payments for delinquent debt owed to federal agencies.⁸

Offsetting for state participation is permitted only against residents of the state, which is presumptively determined by using a state address on a taxpayer's federal income tax return.⁹ If debts are owed to both a federal agency and a state agency, the priority for offsetting is:

- liability for internal revenue tax;
- liability for past-due child support; and
- past-due and legally enforceable debt owed to a federal agency, before amounts will be delivered to a state agency.¹⁰

The IRC defines a "past-due, legally enforceable state income tax obligation"¹¹ as a debt that resulted from:

1. a judgment from a court of competent jurisdiction that has determined an amount of state income tax to be due;
2. an administrative hearing that has determined the tax to be due and no longer subject to judicial review; or
3. a state income tax that has been assessed and the period for redetermination has expired and the tax has not been delinquent for more than 10 years.¹²

The priorities for offsetting are the same as those for federal debts.

⁷ Authorization for the Bureau of the Fiscal Service to collect state income tax debt is under section 6402(e). The most common state debts are for income taxes, unemployment insurance, and child support payments. However, any debt owed to the state — such as vendor payments — can be subject to offset. Notably, the TOP does not extend to state sales and use taxes. It does permit offsetting for local income taxes if the state acts as the administrator of the tax. Section 6402(e)(5).

⁸ General information is found at Bureau of the Fiscal Service, "How the Treasury Offset Program (TOP) Collects Money for State Agencies."

⁹ IRC section 6402(e)(2).

¹⁰ IRC section 6402(e)(3).

¹¹ As noted *infra*, state income tax debt includes any local income tax administered by the state's chief tax administration agency. Section 6402(e)(5).

¹² *Id.*

State-Specific Offset Programs

In addition to participation in the federal TOP to collect debts arising from state income taxes, state unemployment compensation, and child support, many states have enacted similar offset or setoff authority to permit revenue agencies to offset state tax debt. A sampling of states with specific offset authority beyond the federal TOP are listed below. Some states allow offsetting if the same tax is the basis for both the debt and the credit, while others have broader authority and allow offsetting of credits and refunds for all state tax levies.

Alabama

Alabama permits its Department of Revenue to offset any tax refund for debts for a claimant agency if the debt is more than \$25. Offsetting is not allowed if:

- the validity of the debt is legitimately in dispute;
- an alternative means of collection is pending and believed adequate; or
- that collection would result in a loss of federal funds or assistance.

The taxpayer may appeal the setoff.¹³ Thus, in Alabama, an initial assessment for additional tax due would not be valid for offset until the expiration of the protest or appeal period.

Connecticut

Connecticut permits the commissioner of the Department of Revenue Services — when making an assessment or allowing a claim for refund — to offset overpayments of tax for a tax period or periods against underpayments of the same tax for another period.¹⁴ The state comptroller is also permitted to offset any refund due to a taxpayer in the ordinary course by the amount of any other delinquent taxes, including penalties and interest, that the taxpayer owes to the state.¹⁵ To qualify as delinquent taxes, the taxes owed must be past due and legally enforceable obligations to the state. Connecticut allows a taxpayer to send evidence to support that the debt is not due within 60 days of

¹³ Ala. Code section 40-18-100 through -102.

¹⁴ Conn. Gen. Stat. section 12-39u.

¹⁵ Conn. Gen. Stat. section 12-39g.

the date of the Notice of Intent to Offset.¹⁶ Also, any state that extends comity for the collection of taxes owed to Connecticut may request that the commissioner withhold all or part of any tax refund owed to a taxpayer and pay the withheld amount to the other state to offset delinquent taxes that the taxpayer owes.¹⁷

Illinois

For overpayment of any tax liability arising from an act administered by the DOR, the department may credit the amount of the overpayment and interest thereon against any final tax liability arising under that or any other act administered by the DOR.¹⁸ Illinois's offset authority also extends to certified delinquent court fees.¹⁹

Illinois also extends comity to other states and permits offsetting for tax claims of other states for refunds claimed by a taxpayer under the Illinois Income Tax Act.²⁰

Massachusetts

The Massachusetts DOR is authorized to offset any tax refunds otherwise payable to a taxpayer by the amount of any outstanding tax liabilities of the taxpayer.²¹

Massachusetts defines refund to mean an overpayment of a tax — including interest and penalties — that is statutorily permitted to be returned or credited to the taxpayer.²² However, the revenue commissioner cannot offset any refunds payable to a lodging operator, a vendor under the sales and use tax law, or a direct broadcast satellite service provider to the extent

that the person is obligated to repay the purchaser the amount for which the application for refund is made.

The DOR provides comity to other states that participate in a reciprocal offset program for the collection of state tax liabilities owed to Massachusetts. Requests for the collection of taxes through offsetting must be at least \$50.²³

New Jersey

The New Jersey Division of Taxation may credit an erroneous state tax overpayment to a taxpayer's account to offset a deficiency assessment made against the taxpayer for the same type of tax during the assessment period.²⁴ If a taxpayer properly protests the assessment and establishes that it made an erroneous overpayment during the same assessment period — but based on a different issue — and that claim is verified by the director, the erroneous tax overpayment will be credited to the taxpayer's account to offset the amount of the deficiency assessment against it. Offsets are not considered refund actions.²⁵

For refund claims made by the taxpayer, if the director concurs that there has been an overpayment of state tax, or if a taxpayer is entitled to payment under a contract with the state, the refund or payment due to the taxpayer (with the interest on the overpaid amount) can be offset by the director against the taxpayer's liability for any other New Jersey state tax.²⁶ The director may also offset the refund to any indebtedness owed by the taxpayer under the provisions of the Tax Uniform Procedure Law.²⁷

Like TOP procedures, the division may initiate procedures for a setoff 90 days after either the issuance by the division of a notice and demand for payment of any state tax owed by the taxpayer, or the division's issuance of a final determination on any protest filed by the taxpayer

¹⁶ See Connecticut State Department of Revenue Services, "Treasury Refund Offset and Treasury Offset Program."

¹⁷ Conn. Gen. Stat. section 12-35f.

¹⁸ 20 Ill. Comp. Stat. 2505/2505-275; Ill. Admin. Code tit. 86, section 700.500(d)(1)(A).

¹⁹ 20 Ill. Comp. Stat. 2505/2505-655; Ill. Admin. Code tit. 86, section 700.500(d)(3).

²⁰ 35 Ill. Comp. Stat. 5/911.2; Ill. Admin. Code tit. 86, section 700.500(d)(5).

²¹ Mass. Gen. Laws ch. 62C, section 36; Mass. Gen. Laws ch. 62D, section 1. Before 2013 offsetting was permitted only for income tax refunds. Massachusetts Technical Information Release No. 13-15 (Oct. 18, 2013).

²² Thus, a refund does not include amounts that the taxpayer would be required to repay to the purchaser, such as sales and use taxes, lodging taxes, and broadcast taxes. See Mass. Gen. Laws ch. 62C, sections 30, 31A, 36, 36A, 37, or 39; ch. 65, section 27 or 27A; ch. 65A, section 6; or any other general or special law that authorizes such a return or credit.

²³ Mass. Gen. Laws ch. 62D, section 16(b) and (c).

²⁴ N.J. Rev. Stat. section 54:49-16(b); N.J. Admin. Code section 18:2-2.10(a).

²⁵ N.J. Admin. Code section 18:7-13.8(f).

²⁶ N.J. Rev. Stat. section 54:49-15; N.J. Admin. Code section 18:2-5.4(a); N.J. Admin. Code section 18:2-8.1.

²⁷ N.J. Rev. Stat. section 54:49-17; N.J. Rev. Stat. section 54:49-19(a); N.J. Admin. Code section 18:2-8.2(a).

against an assessment or final audit determination.²⁸

The director must provide the taxpayer with an opportunity for a hearing to protest the setoff action by filing a written protest within 30 days of the notice. A request for conference, protest, or subsequent appeal to the tax court regarding a setoff does not stay the collection of the indebtedness, and no payment will be made to the debtor taxpayer or agency pending resolution of the indebtedness. Also, interest payable by the state to the debtor taxpayer will be stayed.²⁹

New Jersey extends its setoff authority to the tax obligations of a partner or shareholder against sums owed by the state to a partnership or S corporation. If a partnership or S corporation is entitled to payment under a contract with the state, its agencies, or instrumentalities, including the state's legislative and judicial branches, either for providing goods or services or for construction projects, and if a partner or shareholder of the entity is indebted for any New Jersey state tax, the director is permitted to seek a setoff of that partner's or shareholder's share of the payment due to the partnership or S corporation by deducting any expenses or other deductions that might be attributable to that partner or shareholder.³⁰

South Carolina

In South Carolina, if a taxpayer is found to be due a refund, the refund must first be applied against any amount of the same type of tax due, then against the outstanding amount of any other state taxes or offsets due. Any remaining balance would then be refunded to the taxpayer with applicable interest. Note that a taxpayer may request to have any remaining balance credited against future tax liabilities.³¹

Wisconsin

The DOR can set off any debt or other amount it is owed, regardless of the debt's origin, amount, nature, or date. This extends to unclaimed property owed to the debtor.³²

The term "debt" is defined as an amount owed to a state agency, if the amount has been reduced to a judgment or if the agency has provided the debtor reasonable notice and an opportunity to be heard regarding the amount owed, and other specified obligations or amounts owed.³³ All refunds, overpayments, or refundable credits are subject to offset.³⁴

The Situation in Michigan

In a matter being adjudicated, the Michigan Department of Treasury has asserted that its offset authority includes the ability to offset credits against alleged audit findings before the expiration of the taxpayer's appeal rights. How can this be?³⁵

Michigan's Offset Authority

Under Mich. Comp. Laws section 205.30, a refund or a credit balance shown on a return constitutes a claim for refund.³⁶ Before a refund or credit, the statute permits the department to offset:

If the department agrees the claim is valid, the amount of overpayment, penalties, and interest *shall be first applied to any known liability as provided in section 30a*, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability. [Emphasis added.]

²⁸ N.J. Admin. Code section 18:2-8.3(a); N.J. Admin. Code section 18:2-8.1.

²⁹ N.J. Rev. Stat. section 54:49-19(a); N.J. Admin. Code section 18:2-8.5.

³⁰ N.J. Rev. Stat. section 54:49-20(a); N.J. Admin. Code section 18:2-8.4.

³¹ S.C. Code Ann. section 12-60-490; S.C. Code Ann. section 12-60-500.

³² Wis. Stat. section 177.24.

³³ Wis. Stat. section 71.93(1)(a)(1) and (8).

³⁴ Wis. Stat. section 71.93; Wis. Stat. section 71.935; Wis. Stat. section 49.855.

³⁵ For fans of the show, Lansing, Michigan, does have Lansing Mall, with 57 stores and a food court. Could there be a gateway nearby? The Gwinnett Place Mall in Georgia was the location of Starcourt Mall in the series. It has since been dismantled.

³⁶ Mich. Comp. Laws section 205.30(2).

The process for offsetting, and the list of priorities, is in Mich. Comp. Laws section 205.30a³⁷:

1. other known tax liabilities to the state;
2. any known liability of the taxpayer to the state, including liability to pay support if that has been assigned to the state and is the basis of a tax refund offset request from the Office of Child Support;
3. other support liabilities that are the basis of a tax refund offset request from the Office of Child Support;
4. a writ of garnishment or other valid court order;
5. an IRS levy; and
6. a liability to repay benefits obtained under the Michigan Employment Security Act to which the taxpayer was not entitled, on a request for tax refund offset from the Michigan Employment Security Commission. The law sets out procedures for implementing offset, including provisions for joint taxpayers, notice, false statements, failures to file forms, rules, and definitions.

Thus, Michigan's offset authority is in addition to the federal TOP and is considered an administrative remedy to collect delinquent assessments.³⁸ For a federal offset, the department's Collection Services Bureau will send a "Notice of Intent to Offset" by certified mail to the last known address, explaining that the debt will be forwarded to TOP if not paid in full within 60 days. Once TOP receives certification from the state of the past-due tax debt, the federal income tax refund may be taken to pay down the state debt, and any remaining federal refund amount will be sent to the taxpayer. The Bureau of the Fiscal Service will also mail a notification explaining why the federal

refund was reduced. It may take several weeks before the federal refund is applied to outstanding debts with the Michigan Department of Treasury.³⁹

To avoid a federal offset, a taxpayer must either pay the balance in full or provide documentation proving that all or part of the debt owed to the department is not past due or legally enforceable.⁴⁰

What Is a Known Liability?

What does "known liability," the term used in Mich. Comp. Laws section 205.30a, mean? According to the department, the plain meaning of the term "known" is merely if there is an awareness of the liability and not a past-due liability. That meaning flies in the face of federal terminology, as well as that of all other states that exercise offset authority, as shown in the state examples earlier. It is also contrary to the language on the department's website, which states that offsetting is solely for delinquent taxes. In all these instances, known liability requires a past-due liability, for which the appeal period has expired and the amount of debt is fixed. An audit determination, an intent to assess, and even a final assessment do not constitute past-due amounts until the protest or appeal period has expired. Until the expiration of the appeal period, any alleged amounts are not yet fixed or subject to collection.

As the term is not statutorily defined, the courts generally turn to the plain meaning — that is, look to common usage via dictionary definitions. The term "known" is not merely "an awareness"; rather, it means "generally recognized."⁴¹ Thus, known tax liabilities are "financial or pecuniary obligations in a specified amount that are generally recognized."⁴²

Neither preliminary audit determinations nor intents to assess are known tax liabilities. Intents to assess are merely alleged liabilities that are not yet final and conclusive. Following an audit's

³⁷ Note that in Michigan, it is not necessary for the department to obtain a court judgment for a past-due liability. Under Mich. Comp. Laws section 205.22(4), once the appeal period has run without contest by a taxpayer, an assessment is final, conclusive, and not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

³⁸ *Cf. Whispering Pines AFC, Home Inc. v. Department of Treasury*, 538 N.W.2d 452, 456 (1995); Michigan Department of the Attorney General, 1 OAG, 1980, No. 5794 (Oct. 7, 1980).

³⁹ See generally Revenue Administrative Bulletin 2019-21, "Overview of the Revenue Act Provisions Governing the Collection of Assessments" (Dec. 11, 2019).

⁴⁰ Guidance on Michigan's TOP can be found at Michigan Department of Treasury, "Treasury Offset Program."

⁴¹ "Known," *Merriam-Webster Dictionary*.

⁴² Mich. Comp. Laws section 205.30a(2)(a); Mich. Comp. Laws section 8.3a; Mich. Comp. Laws section 205.21(g); "Liability," *Black's Law Dictionary* (2024).

conclusion, the department is required to notify the taxpayer of its intent to assess the tax.⁴³ Mich. Comp. Laws section 205.21(2)(b) provides that the department must include:

the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, and a statement advising the taxpayer of a right to an informal conference, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 60-day time limit for that request. [Emphasis added.]

As an intent is merely the amount believed, it lacks finality and is not a known tax liability because it simply provides notice of the department's intent to assess tax.⁴⁴ Further, even a final assessment issued after the period to request an informal conference triggered by the issuance of an intent to assess does not become final until the appeal period has expired.⁴⁵

The department's reluctance to acknowledge that a liability is not fixed and determinative until after the taxpayer's appeal period has expired is ungrounded. In issued guidance, the department states that Michigan's offset authority extends only to past-due taxes or a state agency debt.⁴⁶ Thus, a final assessment cannot rise to a known liability for which collection actions may begin until the appeal period has expired. Collection actions may then begin.⁴⁷ The department's

position that Mich. Comp. Laws section 205.30a(2) authorizes it to apply tax payments for other tax periods to a merely alleged tax liability is baffling and inapposite to its public guidance.⁴⁸

To repeat, the scope of the department's offset authority applies only when there is a valid refund and when there is a known tax liability.⁴⁹ An intent to assess is not a known liability because it is merely a notice of the department's intent to assess tax.⁵⁰ The agency's powers are limited to those conferred expressly or those that — by necessary or fair implication — effectuate the authority expressly granted.⁵¹ There is no authority supporting the department's premature taking, nor its deprivation of taxpayers' rights under the Revenue Act, let alone the inherent due process rights under both the U.S. and Michigan constitutions. If the department had this purported authority, taxpayers would forever be deprived of their due process rights, as the agency could act as judge and jury, issue an assessment, seize payments, and claim the assessment was now moot, as any alleged amounts due would have been satisfied, leaving an assessment of \$0. The Revenue Act's predeprivation rights and due process protections would be nullified.

Further adding to this situation is the lack of a definition for the term "deficiency" within the Revenue Act. The IRC defines deficiency as the amount by which an income, estate, gift, or certain excise tax exceeds: (i) the amount shown as tax by the taxpayer on the return, (ii) plus the amounts previously assessed (or collected without assessment) as a deficiency, (iii) minus the amount of rebates, as defined in section 6211(b)(2). The deficiency is determined without regard to credits for estimated tax payments, taxes withheld from wages, taxes withheld at the source on nonresident aliens and foreign corporations, or collections for termination assessments.⁵²

A deficiency thus is determined based not on what payments have been applied to a taxpayer's

⁴³ Mich. Comp. Laws section 205.21(2)(b).

⁴⁴ This conclusion is further substantiated by comparison of Mich. Comp. Laws section 205.21(2)(b) (cited above) with Mich. Comp. Laws (g), which provides:

Except for those issues that were settled pursuant to subdivision (e), after the informal conference, the department shall render a decision and order in writing, setting forth the reasons and authority, and shall assess the tax, interest, and penalty found to be due and payable.

Thus, there is no tax payable until after the informal conference, or until the appeal period for an action has run if the taxpayer does not contest.

⁴⁵ Mich. Comp. Laws section 205.22(5); *PIC Maintenance Inc. v. Michigan Department of Treasury*, 809 N.W.2d 669 (2011).

⁴⁶ Department of Treasury, "Guidance Regarding Withholding of Refunds." See also Treasury FAQ, "If Your Refund Is Held/Offset to Pay a Debt." This FAQ acknowledges that offsetting is permitted only for unpaid past-due taxes.

⁴⁷ Mich. Comp. Laws section 205.13(1)(e) provides that "the Department is responsible for the 'collection of all past due money and accounts that are owing to the state of Michigan.'"

⁴⁸ Perhaps Vecna has taken control of the dimension.

⁴⁹ Mich. Comp. Laws section 205.30a(2).

⁵⁰ Mich. Comp. Laws section 205.21(b).

⁵¹ *In re Quality of Service Standards for Regulated Telecommunication Services*, 516 N.W.2d 142 (Mich. 1994); see also *Roberts Tobacco Co. v. Department of Revenue*, 34 N.W.2d 54 (Mich. 1948).

⁵² IRC section 6211.

account, but rather on what assessments have been made with respect to that account. And a deficiency must exist before payments and other remittances for taxes owed can be applied to reduce that deficiency.

For example, a criminal restitution assessment pursuant to 18 U.S.C. section 3664 that has been paid before a tax deficiency has been assessed does not reduce or discharge a tax deficiency determination until it has been assessed.

Thus, under federal tax law, a deficiency exists when the tax due exceeds the amount shown on the return; the payments on account of estimated income tax, like other payments of tax by the taxpayer, are disregarded in the determination of a deficiency.⁵³ Michigan tax law conforms to federal income tax law.⁵⁴ Following this conformity, a deficiency exists before payments and other remittances for taxes (such as a credit carryforward) can be applied to reduce that deficiency.⁵⁵ Prematurely offsetting an alleged amount due with an established credit would nullify, in most instances, the existence of a deficiency. Without a deficiency amount due, an intent to assess would not be issued, depriving a taxpayer of its statutory appeal rights.

Lastly, Mich. Comp. Laws section 205.30a only authorizes the department's offset actions as it relates to outstanding refunds or an amount shown as a credit on a return; it does not support the department's actions in applying payments for other periods to the alleged liabilities of an audit determination or an intent to assess. Subsequent payments are not credits shown on a return; they constitute payments for later periods.

There is scant case law on point. In the matter of *Chrysler*,⁵⁶ the Michigan Court of Appeals affirmed the court of claims' order granting summary disposition to the department on the basis that it lacked subject matter jurisdiction, as

the taxpayer had failed to appeal notices of tax offsets issued by the department within 90 days as required in the Revenue Act.⁵⁷ The department had sent notices informing the taxpayer that it had intercepted tax refunds and applied those funds to other taxes owed by the taxpayer. The taxpayer filed a complaint beyond the 90-day period and both parties moved for summary disposition. The taxpayer claimed that the notices sent by the department regarding the offsets did not constitute assessments, decisions, or orders within the meaning of the Revenue Act, hence the 90-day period of limitations was inapplicable.⁵⁸

In determining whether the offset notices constituted an assessment, the Court of Appeals noted that "the definitions of the term 'assess' include 'to impose a tax or other charge on.'"⁵⁹ The court found that "the offset notices informed plaintiff's predecessor of the amounts imposed, or assessed, against it and payable to defendant. Thus, the notices may properly be characterized as 'assessments' under MCL 205.22(1)."⁶⁰ Further, the court stated that "the definitions of the term 'assessment' in *Black's Law Dictionary* (9th ed) include, 'imposition of something, such as a tax or fine, according to an established rate; the tax or fine so imposed' and, accordingly, the notices constitute 'assessments' under the legal dictionary definition of that term."⁶¹ The court noted that "although the notices were titled 'State of Michigan Remittance Advice,' it was not necessary for the title to include the word 'decision' or 'assessment' in order for the notices to fall within the dictionary definitions of those terms."⁶²

Conclusion

One can never predict the outcome of litigation, yet there is little support — including the department's guidance — for its actions. Taxpayers must remain diligent in reviewing notices and correspondence from state agencies,

⁵³ Treas. reg. section 301.6211-1(b).

⁵⁴ Mich. Comp. Laws section 206.2(2) provides that "any term used in this part shall have the same meaning as when used in comparable context in the law of the United States relating to federal income taxes unless a different meaning is clearly required."

⁵⁵ See *Rozin v. Commissioner*, T.C. Memo. 2017-52, attached as Exhibit M ("A deficiency must first exist before restitution remittances for taxes owed can be applied to reduce that deficiency.").

⁵⁶ *Chrysler Financial Services Americas LLC v. Michigan Department of Treasury*, Dkt. No. 302299 (Mich. Ct. App. Mar. 20, 2012) (unpublished).

⁵⁷ Mich. Comp. Laws section 205.22.

⁵⁸ *Chrysler*, No. 302299, at 2.

⁵⁹ *Id.* at 4, citing *Webster's College Dictionary* (1997).

⁶⁰ *Chrysler*, No. 302299, at 4.

⁶¹ *Id.*

⁶² *Id.*

particularly if no tax is shown to be due. With more reliance on heavily automated systems, as well as the increasing use of artificial intelligence, it is impossible to determine what may go wrong until it does. And then, litigation is often needed to preserve appeal rights. Just when you think you have seen it all, there are stranger things.⁶³ ■

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⁶³ Stay tuned for season five later this year.