

Notice: Penalty and Interest Waived for 33 Days for Certain Sales, Use, and Withholding Taxpayers with Returns Due January 20, 2021

Issued: January 14, 2021

Through a series of emergency orders, the Michigan Department of Health and Human Services (MDHHS) has implemented certain capacity and facemask restrictions on gatherings to mitigate the continued spread of COVID-19 in Michigan. [1] Section 3 of the December 7, 2020 order included a prohibition on gatherings at certain types of facilities, including most entertainment, recreational, and indoor food service venues, resulting in the temporarily closure of those facilities. Those businesses previously received an automatic 31-day waiver of penalty and interest for sales, use, and withholding returns or payments due on December 20, 2020.[2]

To alleviate some of the continued challenges faced by those businesses, the Department of Treasury is automatically waiving penalty and interest for the late reporting or late payment of sales, use, and withholding tax for any non-accelerated return or payment due on January 20, 2021. The waiver will be effective for a period of 33 days; therefore, any non-accelerated sales, use, and withholding tax returns or payments currently due on January 20, 2021 may be reported and submitted to the Department without penalty or interest through February 22, 2021.[3]

The waiver of penalty and interest applies only to non-accelerated sales, use, and withholding[4] filers whose business was subject to the prohibition on gatherings under Section 3 of the MDHHS order dated December 7, 2020.[5] This includes, for example, businesses that are entertainment venues,[6] recreational facilities and places of public amusement,[7] and food service establishments with indoor dining.[8] Businesses that were not subject to a capacity prohibition, such as a business operating under the emergency rules issued by Michigan Occupational Safety and Health Administration (MIOSHA) on October 14, 2020, or businesses that were operating under general occupancy limitations, such as a retail store, are not eligible for the waiver of penalty and interest within this Notice. Taxpayers should consult with the MDHHS order to determine if the relief under this Notice is applicable.

The automatic waiver of penalty and interest applies only to a non-accelerated return or payment of sales, use, and withholding tax due on January 20, 2021.[9] This includes the 2020 fourth quarter return required to be filed on that date. Any other return or payment due after January 20, 2020 will not be eligible for the relief provided within this Notice.

This waiver also applies to returns or payments due on January 20, 2021 as a result of the previous 31-day waiver of penalty and interest for returns and payments due on December 20, 2020. Taxpayers originally required to file returns and remit tax on December 20, 2020 therefore have until February 22, 2021 to file returns and remit tax without penalty and interest.

The waiver does not apply to any accelerated return or payment of sales and use tax[10] that may be due on January 20, 2021 and similarly does not apply to any withholding required to be paid on an accelerated schedule.[11] Any taxpayer that currently pays sales, use, or withholding taxes on an accelerated basis must therefore continue to remit tax according to that accelerated schedule.

The 2020 Sales, Use, and Withholding Tax Annual Return (Form 5081) remains due on February 28, 2021. All tax periods from 2020, including any periods for which relief has been granted under this Notice, must be included on an *original* annual return. The filing of an original annual return does not relieve any taxpayer from the requirement to file — by February 22, 2021 — any monthly or quarterly return eligible for the relief provided within this Notice.

The waiver of penalty and interest provided within this Notice is automatic. Taxpayers do not need to contact or otherwise submit any documentation to the Department to receive this relief.

Questions regarding this Notice may be directed to the Department at (517) 636–6925.

[1] The January 13, 2021 order can be found at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-549437-,00.html.

[2] The prior waiver notice is available online at <https://www.michigan.gov/taxes/0,4676,7-238--547373--,00.html>.

[3] Returns and payments are generally due on the twentieth of each month, except that if such date falls on either a Saturday, Sunday, state holiday, or legal banking holiday, then the due date is the next succeeding business day. MCL 205.56(6).

Because February 20, 2020 falls on a Saturday, any return or payment otherwise due on that date may be filed on the next succeeding business day (i.e., February 22).

[4] The relief provided under this Notice only applies to sales and use taxes and state tax withholding due under the Michigan Income Tax Act, MCL 206.1 *et seq.*, and does not cover any city tax withholding due under the City Income Tax Act, MCL 141.501 *et seq.*

[5] The December 7, 2020 order can be located at https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-546790-,00.html,

[6] Examples of entertainment venues include auditoriums, arenas, banquet halls, cinemas, conference centers, concert halls, performance venues, sporting venues, stadiums, and theaters.

[7] Examples include amusement parks, arcades, bingo halls, bowling alleys, casinos, night clubs, skating rinks, strip clubs, water parks, and trampoline parks.

[8] See MCL 289.1107(t) (defining "food service establishment").

[9] MCL 205.56(2); MCL 205.96(2).

[10] MCL 205.56(2); MCL 205.96(2)

[11] MCL 205.19(2).