



This Week in State Tax (TWIST)

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Michigan: Memo Did Not Constitute a Request for Refund

The Michigan Court of Appeals recently addressed when interest started to accrue on a tax refund. All parties agreed the taxpayer was entitled to a corporate income tax refund; the issue before the court was when the taxpayer filed its refund claim. This was important because under Michigan law, interest on refunds “shall be added to the refund commencing 45 days after the claim is filed...” In this case, the taxpayer argued that interest started to accrue after it emailed a memo to a Department of Treasury auditor asserting that a particular subsidiary should have been included in its unitary business group. While the inclusion of the subsidiary’s losses would have reduced the group’s liability for the tax years at issue, the memo did not explicitly demand a tax refund. It was the taxpayer’s position that the emailed memo constituted a refund request. The Department of Treasury, on the other hand, asserted that the first time the taxpayer made a clear, express claim for refund was when it requested an informal conference to discuss the audit almost two years later. The matter eventually came before the appeals court.

In an earlier case, *Ford Motor Co v Dep’t of Treasury*, the Michigan Supreme Court held that although a “claim” or “petition” for refund need not take any specific form, it must clearly demand, request, or assert a right to a refund of tax payments made to the Department of Treasury. Additionally, to “file” the claim or petition, a taxpayer must submit the claim to Treasury in a manner sufficient to provide Treasury with adequate notice of the taxpayer’s claim. In the instant case, the court noted that the emailed memo did not contain any request or demand for tax money to be refunded. Rather, the memo was focused solely on arguing that the subsidiary should have been included in the unitary group. The taxpayer also asserted that its representative orally requested a refund in her discussion with the auditor. However, the under Michigan law, a claim or petition for a tax refund must be made in writing. The appeals court concluded that the email memo was insufficiently definite and specific to constitute an explicit demand or request for a tax refund. Please contact [Dan De Jong](#) with questions on *United States Steel Corp. v. Dep’t of Treasury*.



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