

>> SALT BRIEFS

MICHIGAN BUSINESS TAX UPDATES

Nexus Guidance

Guidance for the nexus standards under the Michigan Business Tax (“MBT”) has been issued by the Michigan Department of the Treasury. There are two alternative standards for determining if a taxpayer has nexus for the MBT. Both standards are effective retroactively to January 1, 2008.

Nexus exists if the taxpayer has a physical presence in Michigan for more than one day during the year. Physical presence occurs if the taxpayer conducts activities in Michigan or owns, rents or leases tangible or real property in the state. Other activities that may create nexus include, but are not limited to, attending trade shows or meetings; meeting with suppliers; or holding hiring events.

Alternatively, nexus is created if the taxpayer actively solicits sales in Michigan and has Michigan gross receipts equal to or exceeding \$350,000. P.L. 86-272 protects taxpayers who are only soliciting sales in Michigan from the income tax component of the MBT. Those same taxpayers are subject to the gross receipts portion of the MBT if they meet the gross receipts threshold.

If any member of a unitary business group establishes nexus with Michigan, all group members are considered to have nexus. All group members must be included in calculating apportionment formulas and tax bases for the MBT. Once nexus has been established, it lasts for the entire tax year.

Modified Definition of “Gross Receipts”

The definition of “gross receipts” under the MBT has been modified and is effective for taxes levied on or after January 1, 2008. The change in definition excludes additional items from “gross receipts” for MBT purposes. Among other things, the following may be excluded from gross receipts:

- Bad debt amounts deducted under federal income tax law that correspond to items in the tax base, based on phase-in percentages;
- Interest and dividends from federal or Michigan bonds;
- Royalties and dividends received from a foreign operating entity, according to phase-in percentages;
- Specific taxes and fees including: sales or use tax collected from consumers, excise taxes paid on tobacco, and motor fuel taxes (phase-in percentages apply);
- Amounts from an ownership interest in a pass-through entity, regulated investment company, or a real estate investment trust;
- Receipts from investment activity by a regulated investment company; and
- Proceeds from certain sales, less any gain, where the gain is included in federal taxable income and the property qualifies as: a capital asset; land used in trade or business; a hedging transaction; or an investment/trading asset managed as part of a treasury function.

Depreciation Changes and Other Credits

Michigan requires taxpayers to calculate federal taxable income without the deductions for bonus depreciation (IRC § 168(k)) and domestic production activities (IRC § 199). A new credit for the MBT has been established to offset the decoupling from bonus depreciation for tax years that begin after 2008 and end before 2011. Taxpayers can claim a credit against MBT in the amount of 0.42% of the bonus depreciation deduction for tax year 2008. The bonus depreciation deduction must be apportioned consistently with the tax base and can be carried forward for ten years.

Combined investment and compensation credits applied against the MBT remain capped at 50% of the taxpayer’s liability. Effective on and after January 1, 2008, the cap has been increased to 80% of the tax liability after the surcharge for taxpayers who invest in assets for electrical or gas distribution.

For additional details on the Michigan Business Tax, visit: www.michigan.gov/mbt. ■

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