



CFO/Controller Roundtable Michigan Business Tax

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Agenda

- ▶ General overview of MBT
- ▶ Details of income tax and modified gross receipts tax
- ▶ Planning risks & opportunities
- ▶ How far have we come in a year?
- ▶ Informational resources
- ▶ Q & A

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MBT

Four Primary Components

- **Standard Taxpayers:**
 - Business Income Tax (“BIT”)
 - Modified Gross Receipts Tax (“GRT”)
- **Financial Institutions**
- **Insurance Companies**

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MBT – cont’d

- ▶ BIT – Rate of 4.95% on defined income tax base
- ▶ GRT – Rate of 0.8% on defined modified gross receipts tax base
- ▶ Surcharge – 21.99%

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MBT – cont'd

- ▶ Effective January 1, 2008
- ▶ Nexus broadens reach of the tax
- ▶ Unitary filing requirement
- ▶ Sales single-factor apportionment
- ▶ New and continuing credits
- ▶ Carryover provisions
- ▶ Small Business Alternative Credit

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Nexus

- ▶ Nexus is the legal term used to describe a “casual link.” In our context it defines the link that subjects a taxpayer to MBT
- ▶ Synopsis of what causes a company to be [subject to the MBT](#)
- ▶ Nexus is different for:
 - Gross receipts tax
 - Business income tax

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Apportionment

- ▶ Single Factor apportionment for both the BIT and GRT – Sales
- ▶ Apportionment Formula
 - Must establish ability to apportion sales
 - Michigan Sales/Total Sales Everywhere
- ▶ Michigan sourced sales
 - Tangible personal property – final destination
 - Intangibles – where the market or benefit for the intangible is used
 - Services – where the customer receives benefit
- ▶ Unitary Group Apportionment
 - For groups with out of state members, Michigan sales also includes those from members who may not have Nexus but are included in the Unitary group

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Unitary Business Groups Defined

- ▶ Required to file as a Unitary business group
- ▶ Unitary group is defined as a group of U.S. persons, other than a foreign operating entity, which have:
 - Ownership/Control – directly or indirectly greater than 50% interest with voting rights
 - Operations/Activities – that give value among or between businesses in the group
 - Operations/Activities – that are integrated or dependent upon each other

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Unitary Business Groups - Issues

- ▶ Group files combined return. Intercompany transactions eliminated
- ▶ Apply combined apportionment percentage
- ▶ Foreign Entities – not included in Unitary Business Group, but required disclosure if affiliated based on control test
- ▶ Choice of Designated Member

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Business Income Tax

- ▶ Applies to all entity types
- ▶ No casual transaction exception
 - Business Income
 - + Additions
 - - Subtractions
 - Times sales apportionment factor
 - Less MBT loss carryforward
 - Times 4.95% tax rate
 - Less qualifying credits limits apply
 - Plus Surcharge [21.99% of tax before credits]

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Business Income Tax

Additions to Business Income:

- Interest/Dividends from non-Michigan obligations
- Taxes on or measured by net income including MBT
- Federal net operating losses
- Dividends/Royalties received from persons other than US persons or foreign operating entities
- Pass-through entity losses (if not in Unitary group)
- Dividends, royalties, or other expenses paid to a person related by ownership or control for use of intangible assets if person is not included in unitary group (unless it can be demonstrated that the transaction has a non-tax business purpose other than tax avoidance)

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Business Income Tax

Deductions from Business Income:

- Interest income from U.S. obligations
- Self-employment earnings (excludes return of capital)
- Business losses incurred after 12/31/07
 - 10 year carryforward of loss after apportionment
- Pass-through entity income (if not in Unitary group)
- Dividends or royalties received from non-U.S. persons or foreign operating entities

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Business Income Tax – Issues

- ▶ The effect of an LLC and an S Corporation – Self employment income deduction
- ▶ PL 86-272 Protection – Non-resident companies
- ▶ Foreign Parent companies – starting point of computation

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Modified Gross Receipts Tax

Modified Gross Receipts Tax

- Gross Receipts
- Less "purchases from other firms"
- Times sales apportionment factor
- Times 0.80% tax rate
- Less qualifying credits [certain limits apply]
- Plus Surcharge [21.99% of tax before credits]

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Modified Gross Receipts Tax

Gross Receipts

- Any amount received by the taxpayer from any activity carried on for direct or indirect gain except those specifically excluded, such as:
 - Amounts received in an agency capacity
 - Certain amounts received by advertising agencies
 - Refunds received on returned merchandise
 - Proceed in excess of gain on sale of capital assets and land
 - Cash and in-kind discounts
 - Tax refunds
 - Security deposits
 - Property received in like-kind exchange
 - Payments received on the principal portion of loans
 - Proceeds from original issuance of stock, equity, or debt
 - Certain proceeds from sale of accounts receivable
 - Amounts received by auto dealers subsidizing interest
 - Receipts of PEO for actual wages of leased employees

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Modified Gross Receipts Tax

► Purchases from other firms includes:

- Inventory, including freight, shipping, delivery, and engineering charges acquired during the year
- Depreciable assets acquired during the year including costs of fabrication and installation
- Materials and supplies, including repair parts and fuel
- For staffing companies the compensation of personnel supplied to customers
- For real property contractors amounts paid to subcontractors

► Unitary Groups

- Gross receipts exclude amounts received from members in the unitary group, due to elimination

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Modified Gross Receipts Tax – Issues

- ▶ Gross Receipts – inclusion of flow-thru income on tiered entity structures that are not unitary groups
- ▶ Materials and supplies – what does it mean?
- ▶ Subcontractor deduction
- ▶ Professional Employer Organizations vs. Staffing companies
- ▶ Factoring/Financing companies

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Small Business Tax Benefits

- ▶ Taxpayers with gross receipts less than \$350,000 have no filing requirement
- ▶ Phase-in-Credit from \$350,000 to \$700,000 in gross receipts
- ▶ Small Business Credit
 - Gross receipts less than \$20 million
 - Adjusted business income limit \$1.3 million (indexed to inflation)
 - Allocated income limit \$180,000
 - Adjusted business income is taxed at 1.8%

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New Credits

- ▶ 35% Industrial personal property tax credit
- ▶ 23% State utility personal property taxes
- ▶ 10% natural gas pipeline utility personal property tax
- ▶ 0.296% Michigan compensation credit
 - Wages and Benefits
 - Payroll taxes and workers compensation insurance excluded
 - Partner and proprietor self-employment income qualify
 - PEO exception
- ▶ 2.32% Michigan Investment credit
 - Cost paid or accrued for MI tangible assets eligible for depreciation. Mobile assets do not qualify
 - Recapture provisions apply similar to SBT
- ▶ 1.52% Michigan R & D credit

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New Credits & Limitations

- ▶ Sum of compensation and Investment credit cannot exceed 65% of MBT Liability before credits
- ▶ Sum of compensation, Investment and R&D credits cannot exceed 75% of MBT liability before credits
- ▶ Other new credits
 - Entrepreneurial credit
 - Culture Credit
 - Special interest credits

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Credits Retained

- ▶ Start Up Business
- ▶ Michigan early stage venture capital
- ▶ Workers disability compensation
- ▶ Food bank and homeless shelter contribution
- ▶ Next Energy
- ▶ Renaissance Zone
- ▶ Historic Preservation
- ▶ Brownfield
- ▶ Hematite ore
- ▶ Public Contribution Credit
 - Expanded to include MI housing and community development
- ▶ Community Foundation Credit
 - Expanded to include Education Foundations

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Credits Not Retained & Carryforwards

- ▶ Credits Not Retained
 - Public Utility Property Tax
 - Hybrid Technology R & D
 - Pharmaceuticals
 - Unincorporated businesses
 - MEGA business activity
 - Enterprise zone
 - Apprenticeship
 - Donated Auto
 - Minority Venture Capital
 - Transfer Jobs
 - Created jobs
- ▶ Carryforwards
 - Unused SBT Credit carryforwards may be applied against MBT for years 2008 and 2009

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Filing Instructions and Dates

- ▶ Quarterly estimates
 - \$800 or less not required to file
 - April 15, July 15, October 15, and January 15
 - Fiscal year filers 15 days after quarter end
 - Safe Harbor: 85% of current year tax liability. For 2009 and after if prior year tax is \$20,000 or less safe harbor is 100% of prior year tax
- ▶ Due Date
 - Last day of 4th month after tax year end
- ▶ Extensions
 - Granted for cause or automatic extension to last day of 8th month after year end with copy of federal extension

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Fiscal Year Taxpayers

- ▶ File short-period SBT return for the period ending on 12/31/07 and short-period MBT return for the period beginning on 01/01/08
- ▶ Unitary Groups with multiple year ends
- ▶ Choices on how income is allocated between SBT/MBT short-period returns

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Planning Risks & Opportunities

- ▶ Business Sales – create an opportunity to apportion
- ▶ Capital gains (Investment clubs, family partnerships, trusts, individuals)
- ▶ Personal Property Classifications for industrial credit
- ▶ R&D Analysis
- ▶ Affiliates that visit Michigan
- ▶ GAAP – FAS 109
- ▶ Record Keeping

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How far have we come in a year?

- ▶ Frequently Asked Questions [FAQ's]
 - Not force and effect of law.
 - Can be rescinded at any time
 - Approx 325 (129 pgs) issued as of 12/2/08
- ▶ Treasury Rules – RAB's
 - Active Solicitation
 - Nexus
- ▶ Technical corrections – still needed
- ▶ Constitutional challenges – still expected



Reference Links

www.michigan.gov/treasury

www.michigan.gov/mbt

www.claytonmckervey.com



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