

A LOOK AT THREE PROPOSALS TO REPLACE THE MICHIGAN SINGLE BUSINESS TAX

BY EDWARD J. CASTELLANI J.D., C.P.A.

*M*ichigan's Single Business Tax (SBT) was repealed by a ballot proposal effective December 31, 2007. The debate has now begun over what tax will replace the SBT and the \$1.9 billion dollars it raised annually. While a number of replacement plans have been proposed, three plans stand out as the proposals that have the most support and the greatest likelihood of being enacted. The three proposals are referred to as the Michigan Business Tax (which is Governor Granholm's proposal), the Business License Fee and the Business Income Tax. A summary of the three proposals follows.

1. Michigan Business Tax

The Governor released details of her SBT replacement tax known as the Michigan Business Tax (MBT). The MBT consists of an income tax, an asset-based tax and a gross receipts tax. The MBT provides for a 1.875% tax on net profits. There is no compensation or health care expense addback as was the case with the SBT. A business with less than \$350,000 of gross receipts is exempt from the tax. There is also a .125% tax on assets. Assets include cash, accounts receivable, equipment, real estate, intangible assets and other assets. There is also a .125% tax on gross sales, and this portion of the tax is based 100% on sales without regard to whether the taxpayer has payroll or property located in Michigan. The tax rate on insurance companies would increase from 1% to 1.25%. Commercial and industrial personal property would be exempt from the personal property tax.

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2. Business License Fee

The Detroit Regional Chamber of Commerce has promoted the Business License Fee. This tax would tax a business on its gross sales in Michigan. The tax is based on a graduated rate starting at \$1,000 for sales between \$350,000 and \$500,000 and ending at \$1,000,000 for sales above \$100,000,000. The attraction of the Business License Fee is its simplicity. The tax is based on the gross receipts of a business, without deductions and without regard to profit.

3. Business Income Tax

The third SBT replacement proposal is known as the Business Income Tax and is promoted by the Michigan Chamber of Commerce. This tax consists of a business income tax, a business license tax and a wholesale retail tax, and includes an option without personal property tax relief and an option with personal property tax relief. The Business Income Tax proposal would include a business income tax rate of 1.85% without personal property tax relief or a tax rate of 3.05% with personal property tax relief. It would also include a business license tax rate of .18% without personal property tax relief or a rate of .48% with personal property tax relief. The business license tax is paid on receipts in excess of \$350,000, with a minimum of \$150 and a maximum of \$2,000,000 per business and includes an overall \$500 million net tax reduction. The Business Income Tax proposal would also include a wholesale rate tax, which would be .24%

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A LOOK AT THREE PROPOSALS TO REPLACE

THE SBT *CONTINUED...*

without personal property tax relief or .18% with personal property tax relief.

The Governor pushed to have the SBT replacement approved in 2006. However, the legislation was not enacted in the 2006 lame duck session and is postponed until next year. It is difficult to predict with

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any accuracy which replacement tax will ultimately be adopted, but it will most likely be a blend and a compromise of the three proposals summarized above.

Fraser Consulting, LLC lobbyists are actively involved in the SBT replacement process. If you are interested in having input or participating in the process, you may contact our office for information about how your voice may be represented in the legislative process.



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NEW EMPLOYER-OWNED LIFE INSURANCE RULES

BY: RYAN M. WILSON

*L*ife insurance proceeds payable by reason of the death of the insured are generally excluded from gross income of the beneficiary. Prior to the Pension Protection Act of 2006, there were no separate rules for the exclusion of life insurance proceeds from an employer-owned life insurance (EOLI) contract. Unfortunately, Section 101(j) of the Internal Revenue Code, added by the Pension Protection Act of 2006, imposes potentially

devastating new tax treatment that can transform income tax-free life insurance proceeds into ordinary income.

The new rule affects every business (C or S Corporation, LLC, Partnership, and even Sole Proprietorship) of any size that, regardless of the reason, purchases insurance on the life of any employee payable to the employer. EOLI has been an important tool for businesses. It is used as an economic shock absorber to cushion the death of a key employee, fund a stock redemption buy-sell agreement and as a means of financing post-retirement employee benefits.

Code Section 101(j) provides that, for an EOLI contract, the amount excluded from the applicable policyholder's gross income cannot exceed an amount equal to the sum of the premiums and other amounts paid by the employer. Any proceeds received in excess of those two amounts are now taxable to the recipient employer at ordinary income rates. The new rules are already effective! They apply to EOLI contracts issued after August 17, 2006.

Fortunately, the Pension Protection Act of 2006 provided exceptions to this harsh rule of income inclusion. These safe harbor exceptions (which restore the income tax-free character of life insurance proceeds) apply in the case of an EOLI contract if the “notice and consent” requirements of the new statutory provisions are met and the insured falls within a safe harbor class. In order to satisfy the “notice and consent” requirements, before the policy is issued, the employee must be notified in writing including certain information, the employee must provide written consent to being insured, and the employee must be informed in writing that the employer will be a beneficiary of the life insurance contract. Employers owing EOLI contracts subject to the new rules must also maintain records necessary to determine whether the requirements of new Code Section 101(j) are met.

In addition to “notice and consent” requirements, employers who own one or more EOLI contracts issued after August 17, 2006 must file an annual IRS return showing the contracts owned and various information regarding the contracts.

Every business that purchases any size or type of policy on the life of any employee where the proceeds

are payable directly or indirectly to the employer must now comply with annual reporting and strict new initial notice and consent rules, and the party insured must fall within the specified excepted class in order to retain the tax-free nature of the life insurance proceeds.



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ATTORNEY ACTIVITIES OF NOTE

- Robert Nelson spoke at the New Jersey Telecommunications Summit on December 5, 2006 in Princeton, NJ on the subject of Local Telephone Issues.
- Ed Castellani was a speaker at a Michigan Association of Certified Public Accountants seminar. His presentation was called “2006 Update on Sales, Use and Single Business Tax Issues for Auto Dealers.”
- Gary Rogers, with assistance from Ryan Kauffman, recently won a major victory when they convinced Judge Osterhaven of the Eaton County Circuit Court to dismiss a wrongful death lawsuit brought against a Fraser Trebilcock Davis & Dunlap, P.C. client. The lawsuit involved a 2003 highly-publicized pedestrian/automobile accident in which a 13 year-old Waverly Middle School student was killed while crossing St. Joseph Highway. After numerous depositions were taken, Mr. Rogers filed a motion to dismiss, claiming there was insufficient evidence of negligence on the part of his client to allow the case to continue to trial. The Court agreed.

GOLDEN NUGGET

Myth: A Durable Power of Attorney for Health Care (also called a Patient Advocate Designation) is just for “old” people.

Fact: Under Michigan law, an individual 18 years of age or older can execute a Durable Power of Attorney

and name an agent to make medical treatment decisions. It is also common to add a person’s wishes and desires regarding life-sustaining treatment in such a document. It is just as important for a “young” person to have a Durable Power of Attorney for Health Care. Some of the most controversial medical situations have involved young adults who were unexpectedly incapacitated, e.g., Terri Schiavo, Nancy Cruzan and Karen Ann Quinlan.

Interested in more information about Estate Planning and Probate issues? Sign up for Ryan Wilson’s free monthly *Golden Bullets*. It is available in print and email format. For a subscription call Mr. Wilson at 517/377-0897 or email him at rwilson@fraserlawfirm.com.

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The attorneys, consultants, and staff at Fraser Trebilcock Davis & Dunlap, P.C. wish you and your family a happy Holiday Season and a prosperous New Year.

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