

MICHIGAN ADOPTS THE MICHIGAN BUSINESS TAX

BY STATE AND LOCAL TAX GROUP

Effective January 1, 2008, the Michigan Business Tax (MBT) will replace the Michigan Single Business Tax (SBT). The revenue raised by the MBT is derived two-thirds from a modified gross receipts tax and one-third from a business income tax. The objective of the drafters of the MBT was to create a business tax with a broad base and a low tax rate, and to provide personal property tax relief and incentives to create an attractive tax environment for business to stay in or relocate to Michigan.

Some principal features of the modified gross receipts tax include:

- A tax base which includes the entire amount received by the taxpayer from any activity whether in intrastate or interstate commerce carried on for direct or indirect gain to the taxpayer, less inventory, assets, materials, supplies, repair parts and fuel purchased.
- New apportionment rule that apportions sales to Michigan based solely on the business's Michigan gross receipts.
- A tax rate of 0.8 percent.
- An exemption from the tax for taxpayers with gross receipts less than \$350,000 sourced to Michigan and a phase-in for modified gross receipts for taxpayers with gross receipts greater than \$350,000 but less than \$700,000.
- The new law defines nexus as a physical presence in Michigan for more than one day or solicitation of sales in Michigan with sales in excess of \$350,000.
- A 1.25% tax on gross direct premiums on insurance companies on property or risk located or residing in Michigan. The tax does not apply to the first \$190,000,000 of disability insurance premiums written in Michigan, except for credit insurance and disability income insurance.
- A .235% tax on a financial institution's net capital as defined in the new law.

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MICHIGAN ADOPTS THE MICHIGAN BUSINESS TAX *CONTINUED...*

Some principal features of the business income tax include:

- A broad tax base, which starts with federal taxable income, subject to several adjustments and exclusions. Compensation and health care are no longer part of the tax base.
- A tax rate of 4.95%.
- New apportionment rules that apportion sales to Michigan based solely on the business's Michigan gross receipts.
- An exemption from the tax for taxpayers with gross receipts less than \$350,000 sourced to Michigan and a phase-in for modified gross receipts for taxpayers with gross receipts greater than \$350,000 but less than \$700,000.

Some principal tax credits include:

- The small business credit is retained for businesses with less than \$20,000,000 in gross sales and adjusted business income less than \$1,350,000 adjusted for inflation and owner and officer compensation less than \$180,000.
- Personal property taxes are reduced by 12 mills for commercial property and 24 mills for industrial property, with a 35% refundable credit.
- A 0.37% credit for compensation paid in Michigan and an investment tax credit of 2.9% of the net cost of new capital assets located in Michigan limited to 65% of total tax liability.
- An initial 1.9% credit on the amount a business spends on research and development activity in Michigan. This credit, after adding the compensation and investment credit, is limited to 75% of total tax liability. A second credit, limited to \$300,000, equals 30% of the contributions a business makes to a small business to finance research and development that is of interest to the contributing business. The second credit is approved only for tax years 2008 through 2010.
- A credit equal to the increase in liability attributable to employment increases for tax years 2008 through 2010 for businesses that have gross receipts less than \$25 million adjusted for inflation. Retail establishments in general are not eligible for the credit.
- A taxpayer that is a qualified start-up business and has no income for two consecutive years may claim a credit for the second year and each consecutive year the taxpayer does not have business income equal to the taxpayer's liability. The credit may only be claimed for a total of five years.

“This article is a summary of a complex new law. Clients are advised to review the new law with their professional tax advisers.”

There are several other credits under the MBT including a motor sports entertainment complex credit, sports/entertainment facility credit, a motor vehicle dealer credit, and a special compensation credit. Several credits available under the SBT continue to be available under the MBT, including the Michigan Early State Venture Credit, Public Contribution Credit, Worker's Disability Credit, MEGA Credits, Renaissance Zone Credit and Brownfield Credits.

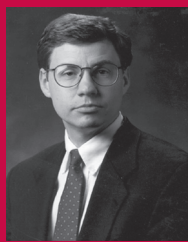
This article is a summary of a complex new law. Clients are advised to review the new law with their professional tax advisers. This article does not constitute legal or tax advice. Please contact any member of the Fraser State and Local Tax Group listed below with questions about the new law.



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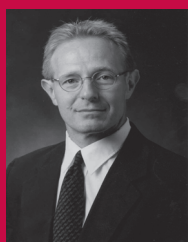
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ATTORNEY ACTIVITIES OF NOTE

- n The team of Michael Perry, Graham Crabtree and Edward Castellani won a major case on behalf of the auto dealership community when on May 25, 2007, the Michigan Supreme Court ruled in favor of one of our auto dealer clients, finding that the “purchase for resale” exemption from use taxes was an independent and enforceable exemption separate and apart from the “demonstrator” exemption. The “demonstrator” exemption is less attractive because it has a numerical cap per dealership based upon the number of sales in the prior year. No such cap applies to the “resale” exemption.
- n Jennifer Utter Heston was a speaker at the Michigan Energy Fair at the Manistee County Fairgrounds on June 23, 2007. The Michigan Energy Fair is sponsored by the Great Lakes Renewable Energy Association. The topic of Ms. Heston’s presentation was, “Alternative Energy Legislative Update from the 94th Legislative Session”. If you would like to receive a copy of Ms. Heston’s slide presentation, please e-mail her at jheston@fraserlawfirm.com

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