

Administrative Provisions of the Michigan Business Tax Act (MBTA)

The Michigan Business Tax (MBT) will be administered by the Michigan Department of Treasury under the provisions of the Michigan Revenue Act.⁽¹⁾ This means the Revenue Act penalty and interest provisions will apply to the MBT as it applied to the Single Business Tax (SBT). Also, the Revenue Act audit, record keeping and appeal provisions will also apply as provisions relating to the issuance of Rules and Bulletins. There are specific administrative provisions in the Michigan Business Tax Act (MBTA) which differ from the SBT. This whitepaper discusses the administrative provisions of the MBT as contained in Chapter V of the MBTA.

Estimated Returns and Payments

A taxpayer who reasonably expects liability for the tax year to exceed \$800.00 must file an estimated return and pay an estimated tax for each quarter of the tax year.⁽²⁾ For taxpayers on a calendar year basis, the quarterly returns and estimated payments must be made on or before April 15, July 15, October 15, and January 15. Taxpayers not on a calendar year basis must file quarterly returns and make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year.⁽³⁾ The estimated payment made with each quarterly return of each tax year shall be for the estimated business income tax base and modified gross receipts tax base for the quarter or 25% of the estimated annual liability. The second, third, and fourth estimated payments in each tax year must include adjustments, if necessary, to correct underpayments or overpayments from previous quarterly payments in the tax year to a revised estimate of the annual tax liability.⁽⁴⁾

The MBTA provides limited safe-harbor provisions whereby certain taxpayers in specified situations can avoid the assessment of interest for underpayment of estimated.

The interest due on underpayments of estimated tax will not be assessed:

(a) If the sum of the estimated payments equals at least 85% of the liability and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made.⁽⁵⁾

1 MCL 208.1513)

2 2007 P.A. 36 §501(1) MCL 208.1501(1)

3 2007 P.A. 36 §501(2) MCL 208.1501(2)

4 2007 P.A. 36 §501(3) MCL 208.1501(3)

5 2007 P.A. 36 §501(4)(a) MCL 208.1501(4)(a)

(b) For the 2009 tax year and each subsequent tax year, if the preceding year's tax liability was \$20,000.00 or less and if the taxpayer submitted four equal installments the sum of which equals the immediately preceding tax year's tax liability.(6)

Each estimated return must be filed on a form prescribed by the Department of Treasury and must include an estimate of the annual tax liability and other information required by the state treasurer.(7) For a taxpayer filing an estimated tax return for the first tax year of less than 12 months, the amounts paid with each return must be proportional to the number of payments made in the first tax year.(8) Estimated payments made will be a credit against the annual tax return. The Department of Treasury has the authority to require filing of the returns and payment of the tax for other than quarterly or annual periods. Such authority is invoked if the Department of Treasury considers it necessary to insure payment of the tax or to provide a more efficient administration of the tax.(9)

Annual Return and Payments

An annual or final return must be filed with the Department of Treasury in the form and content prescribed by the Department of Treasury by the last day of the fourth month after the end of the taxpayer's tax year. Any unpaid tax or final liability must be remitted and paid with the annual return.(10)

Extensions

The Department of Treasury, upon application of the taxpayer and for good cause shown, may extend the date for filing the annual return. However, extending of the date to file the annual return does not extend the due date for payment of the tax otherwise due. Interest at the rate of 1% over Michigan prime rate of interest(11) will be added to the amount of the tax unpaid for the period of the extension. The state treasurer will require with the application for extension, payment of the estimated tax liability unpaid for the tax period covered by the extension.(12)

If a taxpayer is granted an extension of time to file the federal income tax return for any tax year, the filing of a copy of the federal request for extension together with a tentative return and payment of an estimated tax with the Department of Treasury by the due date of the annual return will automatically extend the due date for the filing of an annual or final MBT return until the last day of the eighth month following the original due date of the return. Interest will be added to the amount of the tax unpaid for the period of the extension.(13)

6 2007 P.A. 36 §501(4)(b) MCL 208.1501(4)(b)

7 2007 P.A. 36 §501(5) MCL 208.1501(5)

8 2007 P.A. 36 §501(6) MCL 208.1501(6)

9 2007 P.A. 36 §501(8) MCL 208.1501(8)

10 2007 P.A. 36 §515(1) MCL 208.1515(1)

11 1941 P.A. 122, MCL 205.23

12 2007 P.A. 36 §505(3) MCL 208.1505(3)

13 2007 P.A. 36 §505(4) MCL 208.1505(4)

Short Period Returns

If a taxpayer's tax year ends before December 31, 2008 or if a taxpayer's first tax year is less than 12 months, the taxpayer may elect to compute the tax for the portion of that tax year to which the MBT applies or that first tax year of the MBT in accordance with one of two acceptable methods:

- a) Apportionment: The tax may be computed as if the MBT were effective on the first day of the taxpayer's annual accounting period and the amount computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first tax year and the denominator of which is 12. (14)
- b) Separate Accounting: The tax may be computed by determining the business income tax base and modified gross receipts tax base in the first tax year in accordance with an accounting method satisfactory to the Department of Treasury that reflects the actual business income tax base and modified gross receipts tax base attributable to the period.(15)

Federal Income Tax Returns

A taxpayer required to file a MBT return may be required to furnish a true and correct copy of any return or portion of any return filed under the provisions of the internal revenue code.(16) A taxpayer shall file an amended return with the department showing any alteration in or modification of a federal income tax return that affects its business income tax base or modified gross receipts tax base under the MBT. The amended return must be filed within 120 days after the final determination by the internal revenue service.(17)

Informational Returns

At the request of the Department of Treasury, a taxpayer required by the internal revenue code to file or submit an information return of income paid to others shall, to the extent the information is applicable to residents of Michigan, at the same time file or submit the information in the form and content prescribed to the Department of Treasury.(18) At the request of the Department of Treasury, a voluntary association, joint venture, partnership, estate, or trust must file a copy of any tax return or portion of any tax return that was filed under the provisions of the internal revenue code. The Department of Treasury may prescribe alternate forms of returns.(19)

14 2007 P.A. 36 §503(a) MCL 208.1503(a)
15 2007 P.A. 36 §503(b) MCL 208.1(503(b)
16 2007 P.A. 36 §507(1) MCL 208.1507(1)
17 2007 P.A. 36 §507(2) MCL 208.1507(2)
18 2007 P.A. 36 §509(1) MCL 208.1509(1)
19 2007 P.A. 36 §509(2) MCL 208.1509(2)

Administrative Rules

The MBTA mandates that the Department of Treasury shall promulgate rules to implement the MBT. The rules must be promulgated pursuant to the administrative procedures act.(20)

The MBTA gives the Department of Treasury authority to prescribe forms for use by taxpayers and may promulgate rules in conformity with the MBTA for the maintenance by taxpayers of records, books, and accounts, and for the computation of the tax, the manner and time of changing or electing accounting methods and of exercising the various options contained in this act, the making of returns, and the ascertainment, assessment, and collection of the tax imposed by the MBTA.(21)

Severability Provision

There are several provisions in the MBT that persons believe may be unconstitutional. Specifically, the nexus standard, the unitary and apportionment provisions and the Michigan only credits have drawn attention and may result in litigation. To protect the MBT in the event of an unfavorable ruling that may have the effect of voiding the MBT, the severability section was put into the act. The severability section provides that if any provision of the MBT is determined to be unconstitutional, it shall be severed and shall not be in effect for any other tax year for which the final order shall apply, and the remaining provisions of this MBT shall remain in effect.

If a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired determines that any provision of the MBTA that provides a deduction, credit, or exemption with respect to employment, persons, services, investment, or any other activity that is limited only to Michigan is unconstitutional or applies to employment, persons, services, investment, or any other activity outside of Michigan, that credit, deduction, or exemption shall be severed and shall not be in effect for any other tax year for which the final order shall apply, and the remaining provisions of this act shall remain in effect.(22) (Section 519).

The MBT will be administered by the Department of Treasury under the provisions of the Revenue Act.(23) The Revenue Act penalty and interest provision will apply. Specifically these penalty provisions apply for failure to file, filing late and failure to pay. The penalty is equal to 5% per month up to a 25% maximum. Interest is applied at the rate of 1% over Michigan prime for non payment, insufficient payment or late payment of tax due on an estimated return or an annual return.

20 2007 P.A. 36 §513(2) MCL 208.1513(2)

21 2007 P.A. 36 §513(3) MCL 208.1513(3)

22 2007 P.A. 36 §519 MCL 208.1519

23 2007 P.A. 36 §513 MCL 208.1513

Revenue Limit

The MBTA will limit revenue from the Michigan Business Tax starting in the 2008 state fiscal year through the 2010 state fiscal year. The MBTA specifies that half of the excess revenue above the revenue limit will be deposited in the Budget Stabilization Fund and the other half be returned to taxpayers.(24)

For the 2008 fiscal year, the revenue limit is \$2,398,000,000. Revenue includes the total net cash payment from both the Single Business Tax and the Michigan Business Tax, but excluding revenue from the tax on insurance companies.(25)

For the 2009 fiscal year, the revenue limit is \$2,398,000,000 increased by 1% and the percentage change in personal income from fiscal year 2008 to fiscal year 2009. (Excluding revenue from the tax on insurance companies).(26)

For the 2010 fiscal year, the revenue limit is \$2,398,000,000 increased by 2.01% and the percentage change in personal income from fiscal year 2009 to fiscal year 2010 (excluding revenue from the tax on insurance companies). (27)

If the revenue limit is exceeded by less than \$5 million, all of the excess will be credited to the Budget Stabilization Fund.(28)

The refund available if the MBT exceeds the revenue limits shall be applied pro rata to the taxpayers that made positive net cash payments during the fiscal year. The taxpayer's pro rata share shall be the total amount to be refunded multiplied by a fraction the numerator of which is the positive net payments made by the taxpayer during the fiscal year and the denominator of which is the sum of the positive net cash payments made by all taxpayers during the fiscal year.(29)

Enactment

This Michigan Business Tax Act takes effect January 1, 2008 and applies to all business activity occurring after December 31, 2007.

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- 24 2007 P.A. 36 §601 MCL 208.1601
 - 25 2007 P.A. 36 §601(1) MCL 208.1601(1)
 - 26 2007 P.A. 36 §601(2) MCL 208.1601(2)
 - 27 2007 P.A. 36 §601(3) MCL 208.1601(3)
 - 28 2007 P.A. 36 §601(4) MCL 208.1601(4)
 - 29 2007 P.A. 36 §601(5) MCL 208.1601(5)