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The Business Income Tax Part of the Michigan Business Tax

The Michigan Business Tax (MBT) was created by enactment of the "Michigan Business Tax Act" (MBTA).[1] The date of enactment is January 1, 2008 and it applies to all business activity occurring after December 31, 2007.[2]

The MBT is a combination business income tax and modified gross receipts tax with a significant number of credits. The small business credit provisions[3] from the single business tax[4] have been retained in the MBT and greatly expanded. Several new credits reward Michigan employment and investments. The nexus, apportionment, and unitary filing provisions are designed to extend the reach of the tax beyond Michigan boarders.

The MBT is a unique form of taxation imposed on Michigan business activity unlike any other in this country or elsewhere. It combines a multilayered taxation system with a series of deductions and credits "to improve the economic condition of this state, foster continued and diverse economic growth in this state, and enable this state to compete fairly and effectively in the world marketplace for economic development opportunities that will provide for and protect the health, safety, and welfare of the citizens of this state, now and in the future." [5]

The MBT is a combination modified gross receipts tax and a tax on income with major credits allowed for compensation paid in Michigan, assets acquired for use in Michigan and research and development costs in Michigan. Generally, a commerce clause nexus standard is applied to multi-state businesses who apportion tax base with a single factor sales only apportionment formula. The tax is imposed on a unitary basis. Qualified small business organizations can pay an income tax only.

BUSINESS INCOME TAX

The MBTA imposes a business income tax on every taxpayer with "business activity"[6] in Michigan[7] unless prohibited by federal 15 USC 381 to 384.[8] The business income tax is imposed on the business income tax base, after allocation and apportionment, at the rate of 4.95%.[9] The business income tax base is business income subject to adjustments before allocation and apportionment and the adjustments for a business loss and unitary business group after allocation and apportionment.[10] Business income generally means that part of federal taxable income that is derived from business activity.[11]

Business income is subject to the following adjustments:[12]

a) Non Michigan municipal interest and dividend income net of expenses
b) Taxes measured on income and the Michigan Business Tax
c) Foreign dividend and royalty income
d) Income or loss from a flow through entity
e) Royalty, interest and other expenses of an intangible asset
f) Interest income of US obligations
g) Book-tax differences resulting in a deferred liability
h) Earnings from self-employment

A negative business income taxable amount after allocation and apportionment can be carried forward for ten years.[13]

The business income tax base of a unitary business group is the sum of the business income tax base of each person, other than a foreign entity, an insurance company or financial institution included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.[14]

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[1] Public Act 36 of 2007, signed into law on July 12, 2007.
[2] 2007 P.A. 36 Enacting section 1
[3] MCL 208.36
[4] 1975 P.A. 228
[5] 2007 P.A. 36, § 101(2) MCL 208.1101(2)

[6] 2007 P.A. 36 § 105(1) (MCL 208.1105(1)) defines "business activity" as a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act.

[7] 2007 P.A. 36, § 201(1) MCL 208.1201(1)
[8] 15 USC 381 to 384 (Public Law 86-272), enacted in 1959, generally prohibits states from imposing a tax on the income of a corporation derived from interstate commerce if the only business activities within the state by or on behalf of the corporation are the solicitation of orders of tangible personal property where orders are sent outside of the state for acceptance or rejection and, if accepted, are filled by shipment or delivery from a point outside of the state. Additionally, PL 86-272 provides that independent contractors may engage in soliciting sales, making sales, and maintaining a sales office within a state without subjecting the corporation to taxation.

[9] 2007 P.A. 36 §201(1) MCL 208.1201(1)
[10] 2007 P.A. 36 §201(2) MCL 208.1201(2)
[11] 2007 P.A. 36 §105(2) MCL 208.1105(2)
[12] 2007 P.A. 36 §201(2)(a-h) MCL 208.1201(2)(a-h)
[13] 2007 P.A. 36 §201(4) MCL 208.1201(4)
[14] 2007 P.A. 36 §201(3) MCL 208.1201(3)