72 (Rev. 01-11)

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

REVISED NOTICE TO TAXPAYERS REGARDING FEDERALLY DISREGARDED ENTITIES AND THE MICHIGAN BUSINESS TAX

REVISED*:** This Notice was originally published on November 29, 2010. At that time, affected persons were required to file a return, or amend a return for prior period, by ***June 30, 2011. This due date, after which penalties will be assessed, is now revised to ***October 31, 2011***.

Requirement to File/Amend. A person that is a disregarded entity for federal tax purposes, including a single member limited liability company or QSub, must file a separate return under the MBT or file as a member of a unitary business group if the requirements of MCL 208.1117(6) are satisfied.[1] This requirement applies to all open tax periods under the MBT. A person disregarded for federal tax purposes that filed as a sole proprietor, branch, or division of its owner for MBT purposes (a "previously disregarded entity") is considered a non-filer for statute of limitations purposes under MCL 205.27a.

A person that previously filed an MBT return that included one or more previously disregarded entities, including a unitary business group, must amend its returns for all open periods, even if the amended returns do not result in a different tax liability.

A person required to file a return, or amend a return for a prior period, under this Notice must do so by October 31, 2011.

Any FAQ or other form of guidance that states that an entity disregarded for federal tax purposes for a given taxable period must also file as a disregarded entity for MBT purposes is invalid to the extent inconsistent with this Notice.

Penalties and Interest. Interest under MCL 205.23 and MCL 205.24 is due for any deficiencies in tax payments and shall be added to the tax from the time the tax was originally due. Interest

---

[1] This requirement is based on *Kmart Michigan Property Services LLC v Dep't of Treasury*, 283 Mich App 647 (2009), lv den 772 NW2d 421 (2009). At issue in that case was whether Kmart Michigan Property Services LLC ("KMPS"), a single member limited liability company disregarded for federal tax purposes, was permitted to file a return separate from its owner, Kmart Corporation, contrary to RAB 1999-9, which required KMPS to instead file as a division of its owner. The Court of Appeals found in favor of KMPS, holding:

> KMPS was required to file a SBT return, regardless of its classification as a disregarded entity for federal tax purposes, because KMPS fit within the statutory definition of a "person" conducting business activity and the SBTA required all persons conducting business activity in the state to file a SBT return. Therefore, the SBTA does not support the requirement of RAB 1999-9 that an organization that is a disregarded entity for federal tax purposes for a given taxable period must also file as a disregarded entity for state tax purposes.

on refunds due to amended returns or returns filed by previously disregarded entities shall be calculated and added to the refund commencing 45 days after the claim is filed.[2]

Failure to file penalties under MCL 205.24 will be waived for all returns filed and paid by October 31, 2011. Penalties will be assessed against any previously disregarded entity that fails to file a required return by October 31, 2011.

Registration. Previously disregarded entities that do not have a Federal Employer Identification Number ("FEIN") or Michigan Treasury Assigned Number ("TR") must register with the Department before filing an MBT return. Taxpayers are encouraged to register online at *www.michigan.gov/businesstaxes*. The web site provides information on obtaining an FEIN, which is required to submit taxes through e-file. Returns received without a registered account number will be subject to delayed processing.

Filing Threshold. In general, standard taxpayers[3] engaged in business activity in Michigan and whose apportioned or allocated gross receipts are $350,000 or more must file an annual return. The Department concludes that previously disregarded entities will generally constitute "United States persons" under MCL 208.1117. So long as the apportioned or allocated gross receipts of a unitary business group equal or exceed $350,000, the unitary business group must file a return and pay the tax imposed by the MBT regardless of the gross receipts of each member of the unitary business group. Thus, a previously disregarded entity with apportioned or allocated gross receipts under $350,000 may still be required to file as part of a unitary business group.

Previously Disregarded Entities of Insurance Companies. Previously disregarded entities owned by persons subject to the tax under MCL 208.1235 must file as a standard taxpayer – either separately or as a member of a unitary business group – unless the previously disregarded entity qualifies as an authorized insurance company or financial institution.

Completing and Filing the Required Returns. A previously disregarded entity that exceeds the filing threshold or is otherwise required to file must file all required forms and supporting schedules. A previously disregarded entity that is part of a unitary business group must file the appropriate return and any required combined filing schedules.

A previously disregarded entity must identify its Organization Type before its MBT return will be processed. A previously disregarded entity should select the Organization Type under which its parent filed its return. For example, a previously disregarded limited liability company whose single member (parent) is a C corporation should select the Organization Type: *C Corporation/LLC C Corporation*. A previously disregarded QSub should select the Organization Type: *S Corporation/LLC S Corporation*.

A previously disregarded entity must prepare a corresponding *pro forma* federal return.

A person amending a return to remove previously disregarded entities must also prepare a corresponding *pro forma* federal return.

[2] MCL 205.30.
[3] Taxpayers subject to the business income or modified gross receipts taxes.

All returns and amended returns filed pursuant to this Notice must be sent to the following addresses:

With Payment:
Michigan Department of Treasury
P.O. Box 30113
Lansing, MI 48909

Without Payment:
Michigan Department of Treasury
P.O. Box 30783
Lansing, MI 48909

This Notice was issued on April 30, 2011.