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The Modified Gross Receipts Tax Part of the Michigan Business Tax Act (MBTA)

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.

MODIFIED GROSS RECEIPTS TAX

The MBTA also imposes a modified gross receipts tax on every taxpayer with nexus in Michigan. The modified gross receipts tax is imposed on the modified gross receipts tax base, after allocation and apportionment, at the rate of 0.8%.[6] The modified gross receipts tax is levied and imposed on the privilege of doing business and not upon income or property.[7] The modified gross receipts tax base is the taxpayer's gross receipts less purchases from other firms before apportionment.[8]

Gross receipts is broadly defined to mean the entire amount received by the taxpayer from any activity whether in intrastate, interstate or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others.[9]

Gross receipts are further defined to exclude by statute the following items:[10]

- Proceeds from sales collected in an agency capacity
- Amounts received as an agent
- Excluded gross income of a foreign air carrier
- Amounts received by an advertising agency to acquire advertising
- Amounts collected by a real estate management company
- Proceeds from the transfer of an accounts receivable
- The original issue of stock or equity instruments.
- The original issue of debt instruments.
- Refunds from returned merchandise
- Cash and in-kind discounts.
- Trade discounts.
- Federal, state, or local tax refunds.
- Security deposits.
- Payment of the principal portion of loans.
- Value of property received in a like-kind exchange.
- Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income.
- The proceeds from a policy of insurance, a settlement of a claim, or a judgment in a civil action less any proceeds under this subdivision that are included in federal taxable income.
- For a sales finance company as defined in the motor vehicles sales finance act owned in whole or part by a motor vehicle manufacturer:
  - Amounts realized from the repayment, maturity, sale or redemption of the principal of a loan, bond or mutual fund, certificate of deposit, or similar marketable instrument.
  - The principal amounts received under a repurchase agreement or other transaction properly characterized as a loan.
- For a mortgage company, proceeds representing the principal balance of loans transferred or sold in a taxable year.
- For a professional employer organization, any amount received that represents the actual cost of wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee.
- Any invoiced items used to provide more favorable floor plan assistance to a person subject to the MBT than to a person not subject to the MBT and paid by a manufacturer, distributor, or supplier.

The MBTA allows a deduction from modified gross receipts for "purchases from other firms" defined to include:[11]

a) inventory, including delivery charges;
b) depreciable assets, including installation costs;
c) other materials and supplies, including repair parts and fuel;
d) for staffing companies, compensation of personnel supplied to their customers;[12] and
e) for a construction contractor, payments to a subcontractor for a construction project under a contract specific to that project.

The subtraction for inventory includes:[13]

a) stock of goods held for resale;
b) finished goods, goods in process and raw materials; and
c) floor plan interest of a new motor vehicle dealer.

Inventory does not include personal property under lease and depreciable property.[14]

For the 2008 tax year, taxpayers may deduct 65% of any remaining SBT[15] business loss carry forward incurred in 2006 or 2007. [16]

The MBTA provides that a new motor vehicle dealer or a dealer of new and used personal watercraft may add the modified gross receipts tax to the sales price.[17]

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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 §203(1) MCL 208.1203(1)
[7] 2007 P.A. 36 §203(2) MCL 208.1203(2)
[8] 2007 P.A. 36 §203(3) MCL 208.1203(3)
[9] 2007 P.A. 36 §111(1) MCL 208.1111(1)
[10] 2007 P.A. 36 §111(1)(a-u) MCL 208.1111(1)(a-u)
[11] 2007 P.A. 36 §113(6) MCL 208.1113(6)
[12] 2007 P.A. 36 §113(6)(d) MCL 208.1113(6)(d)
[13] 2007 P.A. 36 §111(4) MCL 208.1111(4)
[14] 2007 P.A. 36 §111(4)(d) MCL 208.1111(4)(d)
[15] 1975 P.A. 228
[16] 2007 P.A. 36 §203(4) MCL 208.1203(4)
[17] 2007 P.A. 36 §203(5) MCL 208.1203(5)