



State and Local Tax

Newsletter

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- Tax Minimization Studies
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- Allocation and Apportionment Planning
- Combined, Consolidated, & Unitary Planning
- Nexus Studies
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- Grants, Financing, & Infrastructure Assistance

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Michigan Business Tax Unknowns

How Much Revenue Will it Raise and the Constitutionality Issues

GRAND RAPIDS, MI - Thursday, September 20, 2007 - The Michigan Business Tax (MBT) is a very large and complicated tax law. It is unlike the Single Business Tax (SBT) or its predecessors and unlike any other tax in the United States. Because of the uncertainty of the amount of revenue that the tax will raise, the legislature has placed revenue limits on how much the state can collect. It was the intent of the Legislature that the MBT be revenue neutral, that is, it raise the same amount of revenue as the SBT would have raised.

The MBT is creative in that several new and untested provisions were enacted to let the tax serve as an economic development tool. Such provisions may boarder on the edge of Constitutionality. The legislature fully recognizing that some or all of these provisions will or may be litigated by the courts, has inserted in the Michigan Business Tax Act (MBTA) a severability clause which would preserve the MBT in the event any one or more of its provisions were declared by the court to be unconstitutional.

Revenue Limits

The (MBTA) will limit revenue from the Michigan Business Tax (MBT) 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. [MCL 208.1601]

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 (SBT) and the Michigan Business Tax (MBT), but excluding revenue from the tax on insurance companies. [MCL 208.1601(1)]

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) [MCL 208.1601(2)]

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) [MCL 208.1601(3)]

If the revenue limit is exceeded by less than \$5 million, all of the excess will be credited to the Budget Stabilization Fund. [MCL 208.1601(4)]

Edward S. Kisscorni is the Director of State and Local Taxation with EHTC in Grand Rapids. Ed has over 35 years of experience in Michigan state and local taxation as an auditor with the Michigan Department of Treasury, in the tax department of a large international CPA firm, as a sole practitioner, and in the state and local tax group of a national CPA firm.

He currently serves on the Treasury Business Advisory Group and other organizations.

Ed's practice areas include Consultation and Planning and Litigation Support in the areas of State and Local Taxation and Accountant's Legal Liability.

STATE AND LOCAL TAX WHITEPAPERS

MICHIGAN SINGLE BUSINESS TAX

- History
- Compensation
- Capital Acquisition Deduction
- Agricultural Exemption
- Entities Under Common Control
- Combined or Consolidated Returns
- Jurisdictional Standards
- Apportionment & Allocation
- Foreign Taxpayers
- Small Business Credit
- Investment Tax Credit
- Michigan Economic Growth Authority Credit (MEGA)
- Brownfield Zone Credit
- Renaissance Zone Credit
- Historic Resource Credit

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About EHTC

Echelbarger, Himebaugh, Tamm & Co., P.C. (EHTC), a professional corporation was established in 1977 by Dennis M. Echelbarger. Since that time, our Firm has grown to become one of the largest, most successful, local accounting firms in the Greater Grand Rapids, Michigan area, and we are a recognized leader in the business community. Our success is based on building partnering relationships with our customers. We are large enough to serve a wide diversity of customers but small enough to maintain personalized attention.

EHTC's professional team is highly trained to provide technical and consulting services in the areas of accounting, taxes, and strategic planning to nonprofit, profit and service organizations and related entities.

Minimizing your tax liability requires careful, advance planning rather than preparing tax returns as deadlines near. Our tax professionals provide complete tax services and are assisted by our extensive tax library and the latest technology.

We pay careful attention to your unique circumstances such as your current requirements and your plans for the future. We then recommend a plan that best suits your needs while minimizing financial risk.

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. [MCL 208.1601(5)]

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, 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. [MCL 208.1519]

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- Records & Record Keeping Requirements
- Direct Pay Authorization
- Compliance Agreements
- Michigan Use Tax
- Exemption Documentation Requirements
- Construction Contractors
- Contractor vs. Retailer
- Service vs. Tangible Personal Property
- Industrial Processing
- Extractive Operations
- Containers, Cartons & Wrapping Materials
- Health Care
- Computer Software
- Rentals
- Taxability of Interstate Motor Carrier Property
- Discounts, Rebates, & Coupons
- Drop Shipments
- Delivery Services
- Food for Human Consumption
- Interstate Commerce
- Isolated Sales



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