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**STATE AND LOCAL TAX NEWSLETTER**

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5136 Cascade Rd. SE #2A • Grand Rapids, MI 49546 • Phone: 616-575-3482 • Fax: 616-575-3481



[Ed Kisscorni,](#)  
[CPA/MBA](#)

[edk@ehtc.com](mailto:edk@ehtc.com)

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## Administrative Provisions in the MBT Law Answers Questions

**GRAND RAPIDS, MI – Monday, October 22, 2007 – Chapter V of the Michigan Business Tax Act contains the administrative provisions relating to the imposition of the Michigan Business Tax. It provides information on penalty, interest, the requirement to file informational returns and the Department of Treasury's mandate to promulgate administrative rules. It also answers the questions on what happens if the tax raises more revenue than expected or if a court determines one or more of the provisions of the Michigan Business Tax Act are unconstitutional.**

### MBT: Penalty, Interest, Information Returns and Administrative Rules

The Michigan Business Tax (MBT) will be administered by the Department of Treasury (Department) under the provisions of the Revenue Act. [MCL 208.1513] 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.

However, the MBT also includes administrative provisions which may require a taxpayer to file informational returns and it also mandates the Department to promulgate rules. The following is a summary of the relevant provisions in the MBT requiring informational returns and promulgating administrative rules.

#### Informational Returns

At the request of the Department, a taxpayer required by the internal revenue code to file or submit an information return of income paid to others must, 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. [MCL 208.1509(1)]

At the request of the Department, 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 may prescribe alternate forms of the returns. [MCL 208.1509(2)]

#### Administrative Rules

The Michigan Business Tax Act (MBTA) mandates that the Department must promulgate rules to implement the MBT. The rules must be promulgated pursuant to the administrative procedures act. [MCL 208.1513(2)]

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. [MCL 208.1513(3)]

### MBT: Revenue Limit

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The Michigan Business Tax Act (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)]

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)]

### **MBT: 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, a 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]

If you have questions regarding these recent updates, or if I may be of service please don't hesitate to call.

Sincerely,

Ed Kisscorni, CPA/MBA



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5136 Cascade Rd. SE #2A  
Grand Rapids, MI 49546

(616)575-3482 / [ehtc@ehtc.com](mailto:ehtc@ehtc.com) / [www.ehtc.com/](http://www.ehtc.com/)

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