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STATE AND LOCAL TAX NEWSLETTER

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2007-13

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Fiscal Year Taxpayers Have Challenges and Opportunities

GRAND RAPIDS, MI – Monday, October 29, 2007 – A fiscal year business will have some very interesting challenges and opportunities because their final Single Business Tax (SBT) return and their first Michigan Business Tax (MBT) return will be short period returns. Both the Single Business Tax Act (SBTA) and the Michigan Business Tax Act (MBTA) offer interesting filing alternatives.

Single Business Tax

The final SBT return for a fiscal year taxpayer starting in 2007 and ending in 2008 will be a short period return for the period starting in 2007 and ending December 31, 2007. The SBTA does not provide specific guidance on how the final SBT return of a fiscal year filer will be computed. However, in the Business Tax Repeal legislation, Public Act 325 of 2006, the legislature repealed "the single business tax on business activity in this state after December 31, 2007." [MCL 208.151] The legislation specified "The department of treasury shall prorate the liability for the tax imposed under the single business tax act as necessary to impose the equivalent of a tax at the rate of zero on business activity after December 31, 2007." [MCL 208.152]

The Michigan Department of Treasury (Treasury) has provided guidance in their [MBT FAQ A-11](#) on the methodology for filing the short period return:

"Consequently, a fiscal year taxpayer may elect to compute the tax for the final short period SBT year and the initial short period MBT year in accordance with 1 of the following methods:

1.) Annual - The tax may be computed as if the Act(s) were effective throughout the taxpayer's 2007-08 federal tax period and the amount computed multiplied by a fraction, the numerator of which is the number of months of the federal period that fall in 2007 or 2008, and the denominator of which is the number of months in the full federal period (typically 12).

2.) Actual - The tax may be computed based on actual business activity occurring in the final/initial short period in accordance with an accounting method satisfactory to the department that reflects the actual business activity attributable to the period. The method of accounting used in prior fiscal years will be assumed to reflect the actual tax base attributable to the period. "

When is the final SBT return due for a fiscal year short period return?

The SBTA [MCL 208.73(1)] requires the taxpayer to file the annual return on "the last day of the fourth month after the end of the taxpayer's tax year."

The SBTA [MCL 208.10(1)] defines "tax year" to be "the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base is computed under this act..."

Based on the two short year filing methods contained in the Treasury's FAQ cited above, there can be some confusion as to whether the definition of "tax year" applies to the entire fiscal year for accounting purposes necessary to facilitate a prorated return or a "short period" necessary to facilitate the actual filing method. Further complicating the issue is the fact that the taxpayer would presumably file based on the method that resulted in the lowest tax. That decision could not be made until after the end of the fiscal year and the taxpayer had an opportunity to compute the tax

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using both methods.

Treasury has not published specific direction, but is aware of timing problems that may occur if a return is required to be filed four months after the end of a short tax year. They are looking at using the Federal definition of "tax year" for the last SBT return of a fiscal year filer. However, if the final return is due on April 30, 2008; the taxpayer has the option to apply for an extension and pay the tax based on a tentative return calculation.

Michigan Business Tax

The effective date of the MBT is January 1, 2008. Therefore all taxpayers with a tax year other than a calendar year ending on December 31 will have to file a short period MBT return covering the period January 1, 2008 to the end of their fiscal year. The MBTA provides the taxpayer options on calculating the MBT for the short period.

If a taxpayer's tax year ends before December 31, 2008 or if a taxpayer's first tax year is less than 12 months, then the taxpayer may elect to compute the tax for the portion of that tax year to which the MBT applies or that first tax year of the MBT in accordance with 1 of two acceptable methods:

Apportionment: The tax may be computed as if the MBT were effective on the first day of the taxpayer's annual accounting period and the amount computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first tax year and the denominator of which is 12. [MCL 208.1503(a)]

Separate Accounting: The tax may be computed by determining the business income tax base and modified gross receipts tax base in the first tax year in accordance with an accounting method satisfactory to the Department of Treasury that reflects the actual business income tax base and modified gross receipts tax base attributable to the period. [MCL 208.1(503)(b)]

Planning Opportunity or Not

The availability of two different methods of computing the tax for both the SBT and the MBT would appear to create a very unique planning opportunity. The taxpayer could use the lowest tax method for both the final SBT return and the first MBT return. However, Treasury does not agree. In the last paragraph of MBT FAQ A-11 cited above they state: "The method the taxpayer employs for its final SBT return must also be used for the initial MBT return." We disagree; neither the SBTA nor the MBTA specify or require that the method used must be consistent. The two acts are separate pieces of legislation that impose two radically different taxes. The two different statutes stand on their own. They are not tie barred and there is no transitional legislation that requires a consistent method of filing the short period returns. Therefore, we believe, the filing option provided in MCL 208.1503 does not have to be consistent with the filing method used on the final SBT return. In Treasury's defense, the MBTA does provide them authority to "promulgate rules in conformity with this act for ... the manner and time of changing or electing accounting methods ..." [MCL 208.1513(3)]

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

For regular updates please visit my blog at www.MichiganStateandLocalTax.com

Sincerely,

Ed Kisscorni, CPA/MBA



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