



Echelbarger, Himebaugh, Tamm & Co., P.C.

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Business Strategists & Certified Public Accountants

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The Michigan Business Tax Unitary Business Group Provisions

GRAND RAPIDS, MI – Monday, November 26, 2007 – In my tour with Steve Dilley of six Michigan cities to present the Michigan Business Tax (MBT), there was no other issue that created more questions than the "unitary business group". It has been 32 years since Michigan imposed the old Michigan Corporate Income Tax on the "unitary" basis. The MBT version has a few different wrinkles. Complications arise when the "unitary business group" concept is combined with the broad definition of "business activity" and the definition of "person".

A "unitary business group" can include an individual, estate, trust, receiver, family partnership as well as the other more common types of entities. The definition of "person" includes all of the above and others acting as a unit.

A "business activity" subject to the MBT can include casual sales, isolated transactions, investment activities and non business income because none of the above is excluded from the definition of "business activity". The Michigan Business Tax Act (MBTA) defines "business activity" as follows:

A transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act. [MCL 208.1105(1)]

The definition of "unitary business group" includes two test, both of which must exist, and several subtests within the two main tests. [MCL 208.1117(6)]

A "Unitary Business Group" means a group of United States persons, other than a foreign operating entity, one of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights,

And

Has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other.

A Michigan based taxpayer that does not apportion tax base normally would benefit from being included in a "unitary business group". Business income tax losses of an entity can be used against another entity "business income tax base". Also, intercompany sales can be eliminated. However, inclusion in a "unitary business group" can cause an entity, or group, disqualification from the alternative tax or small business credit.

For multistate groups of entities, inclusion in a "unitary business group" would normally help a Michigan based group to the disadvantage of non Michigan based groups. However, you must crunch the numbers because of the interplay of the two tax base components and apportionment.

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Single Combined Return Requirement

A Unitary Business Group shall file a combined return that includes each United States person, other than a foreign operating entity, that is included in the Unitary Business Group. Each United States person included in the Unitary Business Group shall be treated as a single person and all transactions between person in the group shall be eliminated for purposes of the: [MCL 208.1511]

Business Income Tax
Modified Gross Receipts Tax , and
Apportionment Formula

Business Income of a Unitary Business Group

The business income of a unitary business group is the sum of the business income of each person, other than a foreign operating entity or a person subject to the insurance tax or tax on financial institutions, included in the unitary business group less any items of income and related deductions arising from transactions including dividends between persons included in the unitary business group. [MCL 208.1201(3)]

Modified Gross Receipts of a Unitary Business Group

The modified gross receipts of a unitary business group is the sum of modified gross receipts of each person, other than a foreign operating entity or a person subject to the insurance tax or tax on financial institutions, included in the unitary business group less any modified gross receipts arising from transactions between persons included in the unitary business group. [MCL 208.1203(3)]
The Department of Treasury has stated that they will rely on the guidance provided by the United States Supreme Court in *Container Corporation v Franchise Tax Board (1983) 463 U.S. 159, affg 117 Cal. App. 3d 988.*

The prerequisite to a constitutionally acceptable finding of unitary business is a flow of value, not a flow of goods.

A relevant question in the unitary business inquiry is whether contributions to income resulted from functional integration, centralization of management, and economies of scale.

Substantial mutual interdependence can arise in any number of ways; a substantial flow of goods is clearly one but just as clearly not the only one. (Edited from opinion)

Please stay tuned for more news and follow the [MichiganStateAndLocalTax Blog](#) for information as it becomes available.

If you have questions please feel free to contact me. I would be happy to be of assistance.

Sincerely,

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