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Michigan Again Revises Its Primary Business Tax, Along With Personal Income Tax Changes and Technical Corrections

While, for most Michigan taxpayers, the new tax structure will be less complicated, they, along with their advisors, will nevertheless again be scrambling to understand and plan for a brand new tax system.

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For the second time in approximately four years, Michigan has nearly completely revised its primary business tax and also made substantial individual tax changes. In addition, certain technical corrections were adopted. The following discussion summarizes significant aspects of the new legislation, which generally takes effect 1/1/12, although some provisions are effective before or after that date.

On 5/25/11, Michigan Governor Rick Snyder signed into law several bills that extensively revise both the Michigan business tax and the state's individual tax scheme.[1] Governor Snyder was elected in November 2010 on a platform that included a repeal of the Michigan Business Tax (MBT) and he now has followed through on that promise, along with substantially amending the state's Income Tax Act of 1967 (Chapter 206, codified at Mich. Comp. Laws Ann. §206.1 *et seq.*).

Business Tax Changes

In addition to, as noted above, generally repealing the MBT, the legislation creating a new "corporate income tax" also will, among other things, eliminate various tax credits and impose a new withholding tax on certain pass-through entities. The legislation also can have an effect on financial accounting matters and choice of business entity.

Repeal of the MBT and introduction of a CIT.

The most significant change is the repeal of the current MBT[2] for most (but, as explained below, not all) taxpayers. The MBT became effective 1/1/08. The two separate taxes imposed on most taxpayers under the MBT, the "business income tax" and the "modified gross receipts tax," will be replaced effective 1/1/12 with a single "corporate income tax" (CIT) imposed at the rate of 6%. Most important, the new CIT will apply only to regular (i.e., "C") corporations. Pass-through entities such as Subchapter S corporations, limited liability companies (LLCs), and partnerships will not be subject to the CIT, whereas they were subject to the MBT. The pass-through income from these types of entities will be taxed to their owners at the owner's income tax rate: 6% in the case of a C corporation owner and 4.35% in the case of an individual owner. The MBT's special tax treatment of financial organizations and insurance companies will continue essentially unchanged under the CIT (as discussed further below).

The transition from the MBT to the CIT will be a bit awkward for fiscal year taxpayers. The statute refers to business activity conducted before 2012 or after 2011. A fiscal year taxpayer will be required to file two short-period returns for its fiscal year that includes 12/31/11.

Computation of the CIT.

In general, the CIT base[3] is computed in manner similar to the tax base under the business income tax element of the MBT. The CIT base starts with the taxpayer's federal taxable income and is adjusted by the following additions and subtractions:

Add:

(1) State, local, and other net income taxes, to the extent deducted in arriving at federal taxable income.

(2) Net operating losses, both carrybacks and carryforwards, to the extent deducted in arriving at federal taxable income.

(3) Interest and dividend income from obligations or securities of states other than Michigan, to the extent excluded from federal taxable income, less any related expenses not deducted in computing federal taxable income.

(4) Royalties, interest, or other expenses paid to a related person for the use of an intangible asset, if the person is not included in the taxpayer's unitary business group. This addition is not required if the taxpayer can demonstrate that the transaction had a nontax business purpose,

was conducted with arm's-length pricing and terms, and met at least one of several other conditions (e.g., the transaction is taxable in another jurisdiction, the Michigan Department of Treasury determines that the addition would be unreasonable, etc.).

Subtract:

(1) Dividends and royalties received from foreign persons and foreign operating entities, to the extent included in federal taxable income.

(2) Interest income from U.S. obligations, to the extent included in federal taxable income.

The CIT, like the MBT, requires decoupling from IRC Sections 168(k) and 199 , meaning that bonus depreciation and the federal "domestic production activities deduction" [4] are added back to arrive at the state tax base. In contrast to the MBT, however, the CIT does not include an adjustment to the tax base for income or loss attributable to ownership in a pass-through entity. Also, for tax years beginning after 2011, income and expenses from producing oil and gas subject to the severance tax (Mich. Comp. Laws Ann. §§205.301 to 205.317) are eliminated from the CIT base.

Under the CIT, a reference to the "Internal Revenue Code" means the Internal Revenue Code of 1986 as in effect on 1/1/12 or, at the taxpayer's option, the version in effect for the tax year. Also, references to the IRC include other provisions of U.S. laws relating to federal income taxes. [5]

Elimination of most tax credits. The MBT Act contains a myriad of tax credit provisions; in fact, the credit provisions comprise over half the text of that Act. Those provisions included broad-based credits for investments in assets, research and development, and certain compensation payments. Now, nearly all of the MBT credits will be repealed under the CIT.

Under the CIT, the primary remaining credit applies basically to a qualifying small business, i.e., a business having gross receipts of not more than $20 million and business income of not more than $1.3 million (with those limits to be adjusted annually for inflation). Additional limitations apply to compensation and director's fees paid to shareholders and officers. Such compensation and fees in excess of specified amounts can also serve to reduce the credit. The basic small business credit is the amount by which the CIT exceeds 1.8% of adjusted business income. [6]

MBT credits for the film industry and for certain racetracks also were modified by the new legislation.[7]

File under the MBT and credits can continue. In fairness to taxpayers who committed to multi-year projects under the MBT's extensive tax credit programs, the new law creates an exception to the elimination of credits. A taxpayer with "certificated credits" under the MBT can elect to continue to pay tax under the MBT, and use available MBT credits, until the credits have been fully used up.[8] Certificated credits included Brownfield credits, "Michigan Economic Growth Authority" (MEGA) credits,[9] media production and infrastructure credits, and renaissance zone[10] credits. Taxpayers claiming certificated credits will pay a tax based on the greater of their MBT liability or a modified version of their liability under the CIT.[11]

This is a rather strange circumstance because some certificated credit projects may take another 10 to 20 years to complete. This means that, at least for some taxpayers, the MBT will not be fully repealed for many years.[12]

Choice of entity. The new CIT will be a material factor in deciding on a taxpayer's choice of business entity. Because the CIT applies only to C corporations, businesses may have an incentive to operate in Michigan in the form of a pass-through entity such as a single- or multi-member LLC or a Subchapter S corporation.

For an existing C corporation, this situation is an added bonus to making an S election, which can generally be done with no adverse federal income tax consequences. In contrast, while conversion from a C corporation to an LLC may reduce Michigan tax liability, the conversion may result in significant federal taxable gain.[13]

Unitary filing. The CIT continues the mandatory unitary filing that applies under the MBT. A group of U.S. C corporations, one of which owns or controls, directly or indirectly, more than 50% of the ownership interests of the other members of the group, and that has business activities or operations that (1) result in a flow of value between or among group members, or (2) are integrated with, are dependent upon, or contribute to each other, must file a unitary return.[14]

Nexus considerations. The CIT nexus standard is similar to the standard under the MBT. A taxpayer has Michigan CIT nexus for a tax year if (1) it has a physical presence in Michigan for more

than one day during the year, (2) it actively solicits sales in Michigan and has at least $350,000 in Michigan-sourced gross receipts, or (3) it has an ownership interest or a beneficial interest in a pass-through entity (directly, or indirectly through one or more other pass-through entities) that has nexus in Michigan.[15]

Under the federal "Interstate Commerce Tax Act" (P.L. 86-272), a taxpayer is protected from being subjected to an income tax in a state if the taxpayer's only business activity in that state is the solicitation of sales of tangible personal property.[16] Non-Michigan businesses clearly may qualify for P.L. 86-272 protection from the imposition of the CIT. This is a significant contrast from the current MBT that for most taxpayers applies two different taxes, a "business income tax" that is subject to P.L. 86-272 and a "modified gross receipts tax" (MGRT) that is not. One of the motivations behind the enactment of the MGRT portion of the MBT was to subject to tax businesses that are based outside the state but that sell into the Michigan market. The switch to a pure income tax under the CIT provides a significant windfall to those businesses based outside of Michigan.

Apportionment: single sales factor. The MBT Act adopted a single factor apportionment formula based on the ratio of sales in Michigan to sales everywhere. The new CIT continues that single, sales-only factor apportionment method.[17] A point that was overlooked in drafting the MBT, however, was the fact that Michigan had previously enacted a version of the Multistate Tax Compact (MTC), that allowed a multistate taxpayer to elect to apportion its tax base using an equally weighted three-factor formula consisting of property, payroll, and sales in Michigan compared with, respectively, property, payroll, and sales everywhere.[18]

To correct this apparent oversight, one of the bills signed into law on 5/25/11 repeals the use of the optional three-factor MTC apportionment formula, effective 1/1/11.[19] Thus, three-factor apportionment will not be available for MBT returns covering tax periods beginning after 2010 or for any CIT returns, which will cover tax periods beginning after 2011.

The new legislation did not, however, address MBT returns filed for earlier periods (i.e., beginning after 2007 and ending before 2011). Therefore, many businesses based outside of Michigan may still benefit from the use of their out-of-state property and payroll in apportioning income for their MBT tax years 2008 through 2010.

"Sales" for apportionment purposes are defined under the CIT similar to the definition under the MBT.[20] The rules for sourcing sales under the CIT are similar to the sourcing rules under the MBT.[21] For example, receipts from services will continue to be sourced based upon the location where the customer received the benefit of the services, and receipts from the use of intangible assets will continue to be sourced to the location where the customer used the intangibles.

Again similar to the MBT, the CIT uses a "Finnigan rule" for sourcing a unitary group's sales receipts. That is, if any member of a unitary group has nexus in a taxing state (e.g., Michigan), a sale into that state by any other member of the group is included in that state's sales factor numerator, even if the selling entity does not have nexus in the taxing state.[22]

Under the CIT, a C corporation that owns an interest in a pass-through entity will apportion its business income attributable to the business activity of the pass-through entity using the sales factor of that entity.[23]

Business income of individuals. As discussed further, below, the apportionment method for business income that is included in individual income tax returns was also revised to a single, sales-only factor effective for tax years beginning after 2010. Previously, such business income was apportioned using an equally weighted three-factor (property, payroll, and sales) apportionment formula.

Loss carryovers. In computing the tax base, the CIT permits a carryforward of up to ten years for a "business loss" generated under the CIT. A "business loss" means a negative business income taxable amount after allocation or apportionment.[24] A business loss generated under the business income tax element of the MBT is not allowed as a deduction for CIT purposes. Also, the MBT's business income tax book-to-tax difference deductions that would have been available for years 2015 through 2029 are not permitted deductions under the CIT.

Withholding tax. New withholding tax rules apply under the CIT. A pass-through entity that has more than $200,000 of business income (after allocation and apportionment) in a tax year must withhold tax (at the 6% corporate tax rate) on the distributive share of business income of each member or partner that is a corporation or pass-through entity. Tax withheld by a pass-through entity on the distributive share of business income of a member pass-through entity will be applied to the withholding required of that member pass-through entity. The income tax rules requiring withholding by a pass-through entity with nonresident individual owners or members remain unchanged.[25]

Financial accounting implications. Accounting Standard Codification (ASC) Topic 740, "Income Taxes" (formerly the Financial Accounting Standards Board's Statement No. 109, "Accounting for Income Taxes") requires a business to account for the effect of a change in income tax law or rate as a deferred tax asset or deferred tax liability in the period that includes the enactment date of the change. The effect of a change in tax law or rate on taxes currently payable or refundable must be accounted for beginning in the period that the new law or rate is both enacted and effective. The MBT Act contained a "fix" that allowed a special deduction to offset a taxpayer's net deferred tax liability from the imposition of the MBT. Currently, there is no such deduction allowed under the CIT. The enactment of the CIT may have material negative consequences to a company's financial statement accounting.

Financial institutions and insurance companies. As referred to briefly above, under the MBT, financial institutions and insurance companies are each subject to special tax treatment. The CIT generally continues that treatment.[26]

Each of these types of taxpayers may be included in a unitary group of C corporations but only if the group consists of, respectively, all financial institutions or all insurance companies. Financial institutions are subject to a tax of 0.29% (instead of 0.235% under the MBT) on their apportioned net capital.[27] In contrast to the MBT, a financial institution will no longer be permitted a deduction for goodwill in computing its net capital base. Insurance companies will pay a tax imposed at the same rate as under the MBT, 1.25% of gross direct premiums written on property or risk located or residing in Michigan.[28]

Individual Income Tax Changes

Michigan has had an individual income tax since 1967, but the recent legislation makes significant modifications via several amendments, generally effective 1/1/12.

Tax rate. The current individual income tax rate of 4.35% was scheduled to be reduced by 0.1 percentage point annually beginning 10/1/11 until the rate reached 3.95% (on 10/1/14), and then reduced to 3.9% on and after 10/1/15.[29] As amended, the rate will be held at 4.35% through 12/31/12, and then drop to 4.25% on and after 1/1/13.[30]

Increased taxation of retirement income. Current Michigan tax law permits an individual to exclude from the income tax base public pensions as well as Social Security

benefits, and a portion of pension and retirement income from private plans (in tax year 2010, $45,120 for single filers and $90,240 for joint filers, as adjusted for inflation). The private pension exemption is reduced by any compensation and retirement benefits received for services in the armed forces, as well as by any public pension.[31]

Under the amendments effective 1/1/12, taxpayers born before 1946 will generally see no change in the treatment of retirement or pension income, except that the private pension exemption will be reduced also by any retirement or pension benefits received under the Federal Railroad Retirement Act of 1974.[32] For younger taxpayers, however, significant new limitations and restrictions will apply, as discussed below. For joint filers, these new rules will apply based on the age of the older spouse.[33]

For taxpayers born in 1946 through 1952, the new law eliminates the current exemptions for retirement and pension income, although the exemptions for Social Security benefits and several other types of income exempt under current law will be retained for taxpayers younger than 67. Until a taxpayer reaches that age, the law also provides a new exemption for a portion of pension and retirement income ($20,000 for single filers and $40,000 for a joint return), regardless of whether the income is from a public or private pension. After the taxpayer reaches age 67, the exemption amount remains the same but the exemption applies to all income, from both retirement and nonretirement sources. Also, the law retains the full exemption for Social Security income and select other types of income excluded under current law. Regardless of age, if "total household resources" exceed $75,000 for a single filer, or $150,000 for a joint return, the bill eliminates the $20,000/$40,000 exemption.[34]

For taxpayers born after 1952, the new law eliminates any exemption for public or private pension or retirement income other than Social Security benefits and certain other types of income, until the taxpayer reaches 67 years of age. At that point, the bill allows an exemption ($20,000 for single filers and $40,000 for a joint return) against all types of income, including Social Security benefits and other types of income (including both retirement and nonretirement income). The law allows a taxpayer to forgo the $20,000/$40,000 exemption, and instead deduct 100% of Social Security income. A taxpayer who elects to claim the $20,000/$40,000 exemption will not be allowed to claim either the deduction for Social Security income or the standard personal exemption. Regardless of age, if total household resources exceeds $75,000 for a single return, or $150,000 for a joint return, the $20,000/$40,000 exemption is eliminated.[35]

A question of constitutionality. With regard to the new retirement income provisions, more changes may be forthcoming. On 6/15/11, the Michigan Supreme Court granted the governor's request for an advisory opinion on the constitutionality of the reduction or elimination of tax exemptions for pension income contained in the new law. [36] Oral argument is scheduled for 9/7/11 on the following questions:

> (1) Does reducing or eliminating the statutory exemption for public pension incomes as described in Mich. Comp. Laws Ann. §206.30, as amended, impair accrued financial benefits of a pension plan or retirement system of the state or its political subdivisions under Art. 9, §24 of the Michigan Constitution?
>
> (2) Does reducing or eliminating the statutory tax exemption for pension incomes, as described in Mich. Comp. Laws Ann. §206.30, as amended, impair a contract obligation in violation of Art. 1, §10 of the Michigan Constitution or Art. I, §10(1) of the U.S. Constitution?
>
> (3) Does determining eligibility for income tax exemptions on the basis of total household resources, or age and total household resources, as described in Mich. Comp. Laws Ann. §§206.30(7) and (9), as amended, create a graduated income tax in violation of Art. 9, §7 of the Michigan Constitution?
>
> (4) Does determining eligibility for income tax exemptions on the basis of date of birth, as described in Mich. Comp. Laws Ann. §206.30(9), as amended, violate equal protection of the law under Art. 1, §2 of the Michigan Constitution or the Fourteenth Amendment of the U.S. Constitution?

The court requested the Michigan Attorney General to submit "separate briefs arguing that the reduction or elimination of tax exemption for pension incomes contained in [the new law] and the determination of eligibility of income tax exemptions for pensions on the basis of age *are and are not constitutional* under the Michigan and United States Constitutions." (Emphasis added.) The court also invited any person or group interested in this matter to seek the court's permission to file amicus briefs on either or both sides of the submitted questions.

Other deductions, exemptions, and credits modified or denied.

Effective starting in 2012:

- The deduction claimed by senior citizens for a portion of their interest, dividends, and capital gains received during the tax year will no longer be available for individuals born after 1945.[37]
- The additional exemptions of (1) $600 for each dependent child under age 19, and (2) $1,800 for each taxpayer over age 64, are eliminated.[38]
- The personal exemption is fixed at $3,700 through 2012, to be adjusted for inflation each year thereafter. The exemption phases out for single filers with total household resources of $75,000 up to $100,000 and for married persons filing joint returns with total household resources of $150,000 up to $200,000.[39]
- All nonrefundable state tax credits are eliminated, including the city income tax credit, the college tuition credit, and credits for donations to public institutions, community foundations, homeless shelters, food banks, and vehicle programs.[40]
- Political contributions will no longer be deductible.[41]
- The "homestead property tax credit" calculation phases out for "total household resources" between $41,000 and $50,000 (formerly a higher "household income"). Also, eligibility for the credit is precluded if the value of the taxpayer's homestead exceeds $135,000.[42]

Apportionment. As noted briefly above, the new law adopts a single, sales-only factor apportionment methodology for sourcing business income for individual income tax purposes. Significant differences exist, however, between the sales factor computations under the CIT (discussed above) and under the individual income tax.

The individual income tax apportionment method retains a "throw-back" provision. In addition, the individual income tax sourcing provisions retain the cost-of-performance approach to sourcing receipts other than from sales of tangible personal property (i.e., sales of services and/or intangibles).[43] The CIT apportionment rules generally follow the MBT rules, which do not include a throw-back rule and, for receipts other than from sales of tangible personal property, source the sale to (1) in the case of services, where the customer derived the benefit of the services and (2) in the case of intangible property, where the customer used the property.

The revisions to the individual income tax apportionment rules are to be applied after 12/31/10.[44] Therefore, the 2011 tax liability of individual owners of pass-through entities may be dramatically impacted.

Conclusion

Governor Snyder's expressed intent in backing the CIT was to stimulate job creation in Michigan by making it a more desirable state in which to conduct business. With the adoption of the CIT, Michigan will have the lowest corporate income tax rate in the Midwest and, for most taxpayers, the tax structure will be much less complicated than the MBT. Nevertheless, local as well as out-of-state Michigan taxpayers and their advisors will once again be scrambling to understand and plan for a brand new tax system. **[]**

ENDNOTES

1

H.B. 4361, 5/25/11; Laws 2011, P.A. No. 38 (creates a corporate income tax, effective 1/1/12, levied on businesses organized as traditional C corporations, and also eliminates various individual income tax credits, deductions, and exemptions and changes future income tax rates); H.B. 4362, 5/25/11; Laws 2011, P.A. No. 39 (allows taxpayers to continue to claim select MBT credits allowed under current law if they continue to file returns under the MBT); H.B. 4479, 5/25/11; Laws 2011, P.A. No. 40 (amends the Multistate Tax Compact to eliminate a loophole regarding apportionment). Although not specifically discussed in this article, the governor also signed the following bills: H.B. 4480, 4481, 4482, 4483, and 4484, 5/25/11; Laws 2011, P.A. Nos. 41, 42, 43, 44, and 45 (subjecting public pensions to state taxes, effective 1/1/12).

2

Mich. Comp. Laws Ann. §208.1101 *et seq.* (S.B. 94, 7/12/07). For more on the MBT, see Grob and Roberts, "The Michigan Business Tax Replaces the State's Much-Vilified SBT," 17 J. Multistate Tax’n 8 (October 2007) , and "Michigan Business Tax Update: Significant Amendments Enacted as the New MBT Goes Into Effect," 18 J. Multistate Tax’n 14 (Mar/Apr 2008) . The MBT replaced Michigan's Single Business Tax (SBT); for more background, see, e.g., Grob, "The Michigan SBT Is History...Almost, but First Some Significant Changes," 9 J. Multistate Tax’n 6 (September 1999) .

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[3] Mich. Comp. Laws Ann. §206.623 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[4] For more on this federal deduction, see, e.g., Sutton, "State Tax Planning and the Federal Domestic Production Activities Deduction," 15 J. Multistate Tax'n 30 (September 2005) .

[5] Mich. Comp. Laws Ann. §§206.601 and 206.607(6) (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[6] Mich. Comp. Laws Ann. §206.671 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[7] H.B. 4362, 5/25/11, *supra* note 1, amending Mich. Comp. Laws Ann. §§208.1409 and 208.1455.

[8] H.B. 4361, 5/25/11, *supra* note 1, enacting Mich. Comp. Laws Ann. §206.680; H.B. 4362, 5/25/11, *supra* note 1, amending Mich. Comp. Laws Ann. §208.1107 to add new subsec. 1 (defining "certificated credit"), amending Mich. Comp. Laws Ann. §208.1117(5), and adding Mich. Comp. Laws Ann. §208.1500.

[9] For more on the MEGA initiative, see Labhart, "Michigan: Legislation Creates New Incentives—Some Narrow, Some More Broad," 14 J. Multistate Tax'n 39 (February 2005) . See also Weiss, "Michigan Business Tax Offers Many Tax Credit Opportunities," 19 J. Multistate Tax'n 8 (Nov/Dec 2009) .

[10] For more on one area's zones, see Schuring, "Detroit's Renaissance Zones: The Economics of Tax Incentives in Metropolitan Location Decisions, Results of the Zones to Date, and Thoughts on the Future," 17 J. Multistate Tax'n 8 (Nov/Dec 2007) . See also Weiss, *supra* note 9.

[11] Mich. Comp. Laws Ann. §208.1500(4), added by H.B. 4362, 5/25/11, *supra* note 1).

[12] Enacting §1 of H.B. 4362, *supra* note 1, provides: "The Michigan business tax act ... is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed."

[13] See, e.g., Everett, Hennig, and Raabe, "Converting a C Corporation Into an LLC: Quantifying the Tax Costs and Benefits," 113 J. Tax'n 94 (August 2010) ; and Nocjar, "Closely Held Companies: Now Might Be the Best Time to Convert to Tax Partnership Status," 111 J. Tax'n 220 (October 2009) .

[14] Mich. Comp. Laws Ann. §§206.611(6) and 206.691 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[15] Mich. Comp. Laws Ann. §206.621 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[16] P.L. 86-272 (codified at 15 USC §§381-384 15 USC §§381-384) limits a state's ability to assert income tax jurisdiction over a business whose only activity in the state is the solicitation of orders for sales of tangible personal property, provided the orders are sent out of the state for approval and are filled by shipment from outside the state. P.L. 86-272 does not protect other types of activities in a state and does not apply to non-income taxes (e.g., sales or use taxes) or to the sale of intangibles. See Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 505 US 214 , 120 L Ed 2d 174 (1992), which was analyzed in Marcus and Lieberman, "Does *Wrigley* Clarify 'Solicitation' for Purposes of Taxing Interstate Commerce?," 2 J. Multistate Tax'n 148 (Sep/Oct 1992) . See also Lieberman, "MTC Guidelines on P.L. 86-272 Implement the U.S. Supreme Court's Decision in *Wrigley,*" 5 J. Multistate Tax'n 52 (May/Jun 1995) .

17

Mich. Comp. Laws Ann. §206.661 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

18

Mich. Comp. Laws Ann. §205.581, Article III (referencing the three-factor formula set forth in Article IV, §9).

19

H.B. 4479, 5/25/11, *supra* note 1, amends Mich. Comp. Laws Ann. §205.581, Article III, to provide that, beginning 1/1/11, any taxpayer subject to the MBT or the Income Tax Act of 1967, must, for purposes of that Act, apportion and allocate in accordance with the provisions of that Act and may not apportion or allocate in accordance with §205.581, Article IV (which sets forth the equally weighted three-factor formula, and provides for the use of cost-of-performance to assign receipts from sales of other than tangible personal property).

20

Mich. Comp. Laws Ann. §206.609(4) (enacted by H.B. 4361, 5/25/11, *supra* note 1).

21

Mich. Comp. Laws Ann. §206.665 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

22

Mich. Comp. Laws Ann. §206.663(2) (enacted by H.B. 4361, 5/25/11, *supra* note 1). The "Finnigan" rule comes from the holding in a California case, Appeal of Finnigan Corp., Cal. SBE, No. 88-SBE-022-A, 1/24/90. In Finnigan, the State Board of Equalization had rejected its earlier holding in Appeal of Joyce, Inc., Cal. SBE, No. 66-SBE-070, 11/23/66 (the "Joyce" rule), which required the sourcing of a group member's sales to the destination state only if the selling member was taxable in that state, regardless of whether any other member had nexus there. For more on this subject generally, see Houghton, Dennen, and Borucki, "Apportionment Opportunities and Problems Involving the Sales Factor," 12 J. Multistate Tax’n 10 (May 2002) .

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[23] Mich. Comp. Laws Ann. §206.661(2) (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[24] Mich. Comp. Laws Ann. §206.623(4) (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[25] Mich. Comp. Laws Ann. §§206.703(3), (4), and (5) (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[26] Mich. Comp. Laws Ann. §206.635 *et seq.* (ch. 12, insurance companies) and §206.651 *et seq.* (ch. 13, financial institutions) (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[27] Mich. Comp. Laws Ann. §§206.653 and 206.655 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[28] Mich. Comp. Laws Ann. §206.635 (enacted by H.B. 4361, 5/25/11, *supra* note 1).

[29] Mich. Comp. Laws Ann. §206.51, effective until 1/1/12.

[30] Mich. Comp. Laws Ann. §206.51 (as amended by H.B. 4361, 5/25/11, *supra* note 1).

[31] Mich. Comp. Laws Ann. §§206.30(1)(e) and (f), effective until 1/1/12.

[32] Mich. Comp. Laws Ann. §206.30(9)(a) (as added by H.B. 4361, 5/25/11, *supra* note 1).

[33] Mich. Comp. Laws Ann. §206.30(9)(d) (as added by H.B. 4361, 5/25/11, *supra* note 1).

[34] Mich. Comp. Laws Ann. §§206.30(9)(b) and (10) (as added by H.B. 4361, 5/25/11, *supra* note 1). "Total household resources" means all income received by all persons of a household (i.e., the taxpayer and spouse) during a tax year, plus any net business loss after netting all business income and loss, plus any net rental or royalty loss, plus any deduction from federal adjusted gross income for a carryback or carryforward of a net operating loss as defined in IRC §172(b)(2) . Mich. Comp. Laws Ann. §§206.508(3) and (4) (as amended by H.B. 4361, 5/25/11, *supra* note 1).

[35] Mich. Comp. Laws Ann. §206.30(9)(c) (as added by H.B. 4361, 5/25/11, *supra* note 1).

[36] In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38, Mich. S.Ct., Docket No. 143157, 6/15/11, 489 Mich 954 , 2011 WL 2417010 .

[37] Mich. Comp. Laws Ann. §30(1)(p) (as enacted by H.B. 4361, 5/25/11, *supra* note 1). A "senior citizen" is "an individual, or either 1 of 2 persons filing a joint tax return ..., who is 65 years of age or older at the close of the tax year. The term also includes the unremarried surviving spouse of a person who was 65 years of age or older at the time of death." Mich. Comp. Laws Ann. §206.514(1).

[38] H.B. 4361 (5/25/11, *supra* note 1), Enacting §1, repealing Mich. Comp. Laws Ann. §206.30d, effective 1/1/12. The $1,800 exemption was in Mich. Comp. Laws Ann. §206.30(3)(a), effective until 1/1/12.

[39] Mich. Comp. Laws Ann. §§206.30(2) and (7) (as enacted by H.B. 4361, 5/25/11, *supra* note 1).

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[40]

See, e.g., former Mich. Comp. Laws Ann. §§206.257, 206.261, 206.269, 206.274 (repealed by H.B. 4361, 5/25/11, *supra* note 1, Enacting §1).

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[41]

This deduction was in Mich. Comp. Laws Ann. §206.30(1)(j), effective until 1/1/12.

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[42]

Mich. Comp. Laws Ann. §206.520 (as amended by H.B. 4361, 5/25/11, *supra* note 1), effective 1/1/12.

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[43]

Various sections under Mich. Comp. Laws Ann. §§206.102 to 206.195, as amended by H.B. 4361, 5/25/11, *supra* note 1.

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[44]

Mich. Comp. Laws Ann. §206.115, as amended by H.B. 4361, 5/25/11, *supra* note 1.

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