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S CORPORATIONS, PARTNERSHIPS AND LLCS

Michigan Taxation of Pass-Through Entities and Their Owners

Taxpayers and their advisors must be careful in structuring entities doing business in Michigan to avoid adverse consequences and to maximize planning opportunities.

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In recent years, there has been a proliferation of businesses that are deemed "pass-through" entities for federal income tax purposes. Michigan imposes a variety of taxes that apply to pass-through entities and their owners, but the state does not treat these entities consistently. Thus, it is useful to examine the different treatments, which, as discussed below, often are presented as Michigan Department of Treasury positions that are expressed in various "revenue administrative bulletins" (RABs, which are cited in the notes accompanying this article).

In some instances, the federal income tax treatment is followed, while in others the entity is deemed a separate taxpayer or given other special treatment. In addition, Michigan court cases have concluded that in certain situations pass-through entities and their owners may choose optional tax apportionment methods.

Types of Federal Pass-Through Entities

For federal income tax purposes, the more common types of pass-through entities are:

- limited liability companies (LLCs), including multiple-member LLCs (MMLLCs) and single-member LLCs (SMLLCs)

- Qualified Subchapter S subsidiaries (QSUBs)
- general partnerships (GPs)
- limited partnerships (LPs)
- limited liability partnerships (LLPs)

Two of these types of entities, the SMLLC and the QSUB, technically are not considered pass-through entities. Instead, they generally are "disregarded entities" ("DREs"), i.e., treated as if their assets were owned directly by the entity's single member or single shareholder.

The Various Michigan Taxes

Among the more common Michigan taxes (some of which are comparable to taxes imposed in other states) are:

- corporate income tax
- Michigan business tax (generally repealed, but applicable to certain electing entities)
- special tax on a financial institution
- special tax on an insurance company
- individual income tax
- sales and use taxes
- withholding taxes, income and employment
- real estate transfer tax
- real estate ad valorem tax

The analysis in this article is structured by type of Michigan tax. The various types of pass-through entities will be examined within the discussion of each tax. Corporate income tax nexus implications to corporate owners of a pass-through entity will also be addressed. Note that Michigan statutes typically use the term "flow-through entity" instead of "pass-through entity." These terms are used interchangeably throughout the article.

Corporate Income Tax ("CIT")

The CIT is, generally speaking, a traditional type of net income tax. Pass-through entities are not subject to the CIT. However, as discussed below, a corporation that owns an interest in a pass-through entity may have its tax determined in combination with the pass-through entity.

The income of a DRE owned by a corporation will be included in the taxable income of the corporation that is subject to the CIT. If a federal check-the-box election is made to be taxed as a corporation, an SMLLC will be taxed as a separate entity in Michigan, subject to the CIT and, unless the SMLLC and its owner constitute a unitary business group, its out-of-state owner (if a corporation) generally will not be subject to Michigan tax jurisdiction.[1]

Under federal Treas. Reg. § 301.7701-3, any unincorporated entity (such as a partnership or LLC) with at least two members may elect to be taxed as a corporation or by default it will be taxed as a partnership. For purposes of the CIT, a member of an MMLLC is treated as a partner only if the MMLLC is taxed as a partnership.

When a corporation is unitary with a flow-through entity

When a corporation owns an interest in a flow-through entity with which it is unitary, the corporation must compute its CIT sales factor on a combined basis with the flow-through entity.[2] The numerator of its sales factor fraction must include its proportionate share of the Michigan sales of the flow-through entity, and the denominator of the fraction must include its proportionate share of the flow-through entity's sales everywhere.

A flow-through entity is unitary with a taxpayer when (i) the taxpayer owns or controls, directly or indirectly, more than 50% of the ownership interests with voting rights or ownership interests that confer comparable rights to voting rights of the flow-through entity, and (ii) either (a) the business activities or operations result in a flow of value between the taxpayer and the flow-through entity, or between the flow-through entity and another flow-through entity unitary with the taxpayer, or (b) the business activities or operations are integrated with, are dependent upon, or contribute to each other.

Sales between the taxpayer and a flow-through entity unitary with the taxpayer will, to the extent of the taxpayer's interest in the flow-through entity, be eliminated in computing the taxpayer's sales factor. Sales between a flow-through entity unitary with the taxpayer and another flow-through entity unitary with the taxpayer will, to the extent of the taxpayer's interest in the selling flow-through entity, be eliminated in computing the sales factor. The corporation's CIT tax base includes both its income and its share of income from the flow-through entity.

When a corporation is not unitary with a flow-through entity

When a corporation is not unitary with a flow-through entity in which it owns an interest, the corporation includes in its CIT tax base its share of the flow-through entity's income determined by the product of (i) its ownership percentage multiplied by (ii) the flow-through entity's income multiplied by (iii) the flow-through entity's separately computed sales factor.[3]

On March 31, 2016, the Michigan Court of Appeals in *Labelle Mgmt., Inc. v. Mich. Dep't of Treasury*, 315 Mich. App. 23 (2016) found that, for Michigan Business Tax (MBT) purposes, a taxpayer was not part of the same unitary business group with related entities because the greater than 50% control test had not been met. The *Labelle* decision involved three entities: Labelle Management, Inc. (Management), The Pixie, Inc. (Pixie), and Labelle Limited Partnership (LP). Management was a Michigan corporation that was owned primarily by the Labelle brothers. Management was a subsidiary of Pixie until 2008 when Pixie sold all of its interest in Management to the brothers. Neither brother ever owned more than 50% of the common stock of Pixie. Finally, each brother held an approximate 45% interest in LP. Management filed separate company MBT returns and was audited by the Department of Treasury (Department).

The Department's audit concluded that Management indirectly owned 100% of Pixie and LP and that Pixie owned 100% of Management and 90% of LP. In determining this ownership structure, the Department relied on certain Internal Revenue Code constructive ownership provisions[4] to conclude that indirect ownership constituted constructive ownership and thus the entities were a unitary business group and should have filed a combined return.

However, the Court of Appeals found that indirect ownership and constructive ownership are distinct concepts and that under Michigan law indirect ownership "means ownership through an intermediary, not ownership by operation of legal fiction." Accordingly, the court ruled that the related entities did not constitute a unitary business group. While the case focused on the MBT, the court's examination is also applicable to the CIT since the "unitary business group" definition is the same under both taxes.

Nexus for partners

An entity taxed as a partnership with Michigan business activity can create CIT nexus with Michigan for its corporate partners, regardless of their ownership percentages. One of the alternative nexus standards under the CIT is an ownership interest or a beneficial interest in a "flow-through entity," directly or indirectly

through one or more flow-through entities, that has nexus in Michigan.[5] A partnership is considered a flow-through entity under the CIT.[6] Therefore, if the partnership has nexus with Michigan, an ownership interest in the partnership by a corporation will create Michigan nexus for the corporation. The partnership will have nexus in Michigan if it either (1) has a physical presence in Michigan for more than one day during the tax year, or (2) actively solicits sales in Michigan and has Michigan sourced gross receipts of $350,000 or more for the tax year.[7]

Consolidated returns

Under current law and administrative interpretations, only corporations that meet the requirements of a unitary group are required to file consolidated income tax returns. Nevertheless, de facto consolidated returns can be achieved using an SMLLC because such entities generally are disregarded and their assets treated as owned by their single member.

Michigan Business Tax ("MBT")

Taxpayers with certificated tax credits under the generally repealed MBT had the opportunity to elect to continue to be taxed under the MBT (instead of the CIT, if applicable) while they are utilizing their credits.[8] This includes, for example, a partnership or LLC taxed as a partnership. Under the MBT, there were two separate taxes, a net income tax and a modified gross receipts tax.[9] A complete discussion of the MBT and this alternative method of filing is beyond the scope of this article.

Special Tax on a Financial Institution

An entity meeting the definition of a "financial institution" that has substantial nexus in Michigan is subject to a franchise tax at the rate of 0.29% of its allocated or apportioned tax base. The definition of a "financial institution" could include a pass-through entity.[10] The tax base of a financial institution is its "net capital" as defined in Mich. Comp. Laws Ann. § 206.655.[11]

Special Tax on an Insurance Company

An insurance company (as defined in Mich. Comp. Laws Ann. § 206.607(5)) is subject to a tax equal to 1.25% of gross direct premiums written on property or risk located or resident in Michigan.[12] The definition

of "insurance company" means an authorized insurer (as defined in Mich. Comp. Laws Ann. § 500.108). An "authorized insurer" means an insurer duly authorized to transact insurance in Michigan.[13] The definition of "insurer" includes a partnership or other type of legal entity.[14] Accordingly, a pass-through entity can operate as an "insurance company" in Michigan.

Income Tax

Michigan's CIT applies to any type of entity taxed as a corporation for federal income tax purposes (except a financial institution or insurance company) and not to a flow-through partnership or LLC. A separate income tax applies to individuals, trusts, and estates, and takes into consideration the taxpayer's ownership of all types of pass-through entities.

An entity's classification for federal income tax purposes determines the Michigan income tax treatment of its owner, shareholder, partner, or member (regardless of the taxpayer's residency status in Michigan).[15] Michigan does not provide for a separate entity classification election for state income tax purposes.

An individual resident in Michigan is taxed on 100% of any dividends received from an entity taxed as a corporation, whether the corporation's business is conducted in Michigan or in other states. If an individual Michigan resident owns an interest in a pass-through entity that conducts at least part of its business outside Michigan, the resident's distributive share of the entity's income is subject to apportionment. Michigan case law has held that income from a partnership or an S corporation that is actively engaged in business is subject to apportionment (as opposed to nonbusiness income, which is taxable in the state where the owner is domiciled).[16] If a pass-through entity is owned by Michigan nonresidents and conducts business in Michigan, the owners will be subject to Michigan income tax on their share of the income apportioned to Michigan, even if they have no other connection with the state.

Taxation of Michigan resident owners on non-Michigan business activity

A Michigan individual resident owner of an entity taxed as either a partnership or an S corporation that conducts business activity inside and outside of Michigan will be subject to Michigan income tax on his ownership share of the entity's business income that is apportioned to Michigan. The entity's income will be apportioned using a single factor apportionment formula based on the ratio of the entity's sales in Michigan to its sales everywhere.[17] This may be advantageous if the entity generates taxable income such that the Michigan resident can exclude part of his pass-through income from Michigan taxation. However, if the

entity incurs a taxable loss, there may be a detriment to the owner in that he cannot deduct on his Michigan return pass-through losses that are apportioned to states other than Michigan.

Income from the sale of an interest in a pass-through entity operating a business outside of Michigan can be considered business income and excludable from a resident owner's income tax base. In *Aikens v Dep't of Treasury*, Michigan Court of Appeals, No. 310528, January 28, 2014, the taxpayer owned an interest in a partnership that owned an interest in a limited partnership that operated a business in many states other than Michigan. The limited partnership interest was liquidated and a federal tax gain was recognized.

The Department of Treasury, on audit, asserted that the gain on the sale of the limited partnership interest was from the sale of an investment and not business income. However, the court applied Mich. Comp. Laws Ann. § 206.4(4) which provides that business income includes income from the sale of a business or business property, and concluded that the gain at issue was business income and not attributable to Michigan.

Taxation of non-Michigan resident owners on Michigan business activity

A non-Michigan individual resident owner of an entity taxed as either a partnership or an S corporation that conducts business activity inside and outside of Michigan will be subject to Michigan income tax on her ownership share of the entity's business income that is apportioned to Michigan. The entity's income will be apportioned using a single factor apportionment formula based on the ratio of the entity's sales in Michigan to its sales everywhere.[18] This is sometimes surprising to residents of states that have no individual income tax, such as Florida, Nevada and Texas.

If a nonresident owner of a pass-through entity is also employed by the entity, all or a portion of any compensation earned for services rendered by the owner may be subject to Michigan income tax. The compensation is allocable to Michigan based on the ratio of the number of days worked in Michigan compared with the total number of days worked everywhere (taking into consideration only days worked for the entity).[19] This may be contrasted with income received as an owner of an S corporation, LLC, or partnership, which, as noted above, is apportioned to Michigan using a sales factor formula.

Entities such as SMLLCs and QSUBs, which are disregarded for federal tax purposes, are also disregarded for Michigan income tax purposes. The income of the disregarded entity is reported directly by its member or shareholder.

Options for apportionment of business income from pass-through entities

Michigan income tax treatment of the combination and apportionment of income from pass-through entities is a bit complicated. As applicable to individual owners of pass-through entities, these issues have been addressed by the Michigan Supreme Court in the consolidated cases of *Malpass v. Dep't of Treasury*, 295 Mich. App. 263 (2011) and *Wheeler Estate v. Dep't of Treasury*, 297 Mich. App. 411 (2012).[20] The outcome turns upon whether the activities in question are multi-state business activities and whether the parties involved are unitary.

In both *Malpass* and *Wheeler*, the individual taxpayers received income or losses from pass-through business entities operating both in Michigan and other states. In both cases, the Michigan Department of Treasury denied the taxpayers' attempts to combine the pass-through income and losses of their respective businesses and then apportion the income using the businesses' combined apportionment factors, and instead required the income of each entity to be apportioned separately.

The Michigan Supreme Court stated that Michigan has adopted formulary apportionment for individual taxpayers in the Income Tax Act. However, it noted that there are at least two different methods of applying the apportionment formula. First, a state may use separate-entity reporting, which requires each entity having nexus with the state to be considered as a separate entity, regardless of whether it is unitary with other entities. Alternatively, a state may use combined reporting, which requires each member of a group carrying on a unitary business to compute its individual taxable income attributable to activities in the state by taking a portion of the combined net income of the group through the utilization of combined apportionment factors.

The Court noted that an individual taxpayer with business income stemming from business activity both within and outside of Michigan must allocate and apportion all business income using the formula contained in Mich. Comp. Laws Ann. § 206.115. However, the Court reasoned that the Michigan statute does not require that either separate or combined reporting must be used. The Court concluded that in the absence of a policy choice by the Legislature, the Income Tax Act permits either reporting method. Therefore, individuals with interests in unitary pass-through entities have the option of reporting on either a separate or combined basis. The Court further concluded that an individual taxpayer eligible to use combined reporting for unitary pass-through entities can include a foreign entity in the combined reporting.

In contrast, in *Winget v. Dep't of Treasury,* 304 Mich. App. 542 (2014) the Michigan Court of Appeals held that the individual taxpayers were not permitted to combine business income from separate pass-through

entities for individual income tax purposes because the entities were not unitary. The husband-taxpayer was the sole shareholder of several Subchapter S corporations, some of which had multi-state business activities. Because the businesses were not unitary, the taxpayers were required to compute and apply separate apportionment percentages to each S corporation.

Composite income tax returns

RAB 2004-1 describes the procedures in Michigan for filing composite income tax returns by flow-through entities. In Michigan, a flow-through entity can file a composite individual income tax return on behalf of its owners. Form 807 is used for this purpose. It is, in effect, a collective individual income tax filing of the participating owners that is filed on their behalf by the flow-through entity (that can be an S corporation, general partnership, limited partnership, limited liability partnership or a limited liability company not taxed as a C corporation for federal income tax purposes). The owners of the entity may elect to have it file a composite return in place of the owners filing separate individual income tax returns.

An entity that does business in Michigan may file a composite return if it is filing on behalf of two or more nonresident individuals or trust partners, shareholders or members. If the entity is part of a tiered structure of pass-through entities, it may also be eligible to file a composite return. The entity may not file on behalf of an owner that is a C corporation or an owner that files federally as a C corporation. An owner who is a Michigan resident (full-year or part-year) or who wishes to claim more than one Michigan exemption may not participate in a composite return.

Information reporting to owners

A flow-through entity must report certain information to its owners, because both individuals and CIT taxpayers require this information to complete their income tax returns.[21] A flow-through entity may use any method to report the information to its owners, but the Department of Treasury recommends that the information be provided as a supplemental attachment to the owner's federal Schedule K-1. The following information must be conveyed:

- The FEIN of the flow-through entity.
- The tax year of the flow-through entity.
- The amount of flow-through withholding paid on behalf of that owner. For nonresident individual owners that will participate in a Composite Individual Income Tax Return (Form 807), report instead the owner's share of the tax paid by the flow-through entity on the composite return.

- For owners subject to the Individual Income Tax, the owner's distributive share of taxable income attributable to the flow-through entity. For owners subject to the CIT, the owner's distributive share of business income and the owner's share of statutory additions and subtractions before apportionment, attributable to the flow-through entity.
- The amount of the flow-through entity's sales that are sourced to Michigan.
- The flow-through entity's total sales.
- For owners that are corporations or other flow-through entities, the amount of the flow-through entity's gross receipts. Owners will report their proportionate share of allocated or apportioned gross receipts from flow-through entities on their CIT returns.

Income tax audit procedures

At the federal level, partnership returns filed for tax years beginning after 2017 will be subject to a dramatically different income tax audit procedure that in many situations will result in imposition of liability for the taxes, penalties and interest from an assessment at the partnership level.[22] To date, Michigan has not yet implemented a similar partnership audit regime.[23]

Sales and Use Taxes

In general, Michigan imposes a sales tax[24] on retail sellers of tangible personal property, and a use tax[25] on purchasers of such property that is used, consumed, or stored in Michigan without having been subject to sales tax. Michigan treats all federal pass-through entities as separate taxpayers for sales and use tax purposes. An entity classification election for federal income tax purposes has no bearing on sales and use taxation. An entity that is not required to have a separate federal employer identification number (EIN) will be assigned a Michigan ID number by the Department of Treasury.[26] An S corporation and its QSUB, however, may request permission to file a combined sales and use tax return.[27]

Withholding Taxes and Payroll Taxes

Michigan imposes an income tax withholding obligation and employer payroll taxes on all types of entities having employees in Michigan, regardless of their federal pass-through or disregarded entity status. An entity that meets the definition of "employer" under IRC Section 3401(d) is also an employer for Michigan income tax withholding purposes.

As with the sales tax procedures, if an entity is not required to obtain a federal EIN, the Department will assign an ID number for Michigan withholding tax purposes. Also similar to the sales tax scheme, the Department may, on request, allow (i) a QSUB to file a combined withholding tax return with its shareholder, and (ii) an SMLLC to file a combined return with its member.[28]

Michigan income tax withholding

For tax years beginning before July 1, 2016, flow-through entities were required to withhold Michigan income tax when their owners were nonresident individuals, C corporations or other flow-through entities.[29] However, under Public Act 158 of 2016, such flow-through withholding is not required for tax years beginning after June 30, 2016. A disregarded entity never had an obligation to withhold Michigan income tax on its owner.[30]

Real Property Taxes

Michigan imposes a real property transfer tax, and most local taxing jurisdictions in the state impose ad valorem real property taxes. These taxes can apply to pass-through entities owning real property.

Real estate transfer tax ("SRETT")

In general, Michigan imposes a tax on the transfer of title to real property located in Michigan.[31] The amount of the tax is equal to the tax rate ($3.75 for each $500 or fraction thereof of the total value of the property transferred) multiplied by the value of the property transferred.[32] Persons subject to the tax include individuals and any legal entity, including corporations, partnerships, and LLCs.[33]

For purposes of the real property transfer tax, Michigan's administrative policy is to generally respect the legal form of ownership, irrespective of the entity's classification for federal tax purposes. Therefore, the transfer of ownership of *the entity,* including a pass-through entity (even one that is disregarded for federal income tax purposes, such as an SMLLC or a QSUB) will not be treated as a transfer of any real property owned by the entity and, accordingly, the transfer tax will not apply. However, if an entity owns real property that constitutes 90% or more of the fair market value of the entity, then the transfer of a controlling interest (generally speaking, an interest of more than 80%) in the entity will be considered a transfer of the real property it owns.[34]

Certain property transfers are exempt from the SRETT. For example, an exemption applies if property is transferred from a partnership to a limited liability company where the existing partners in the partnership are also members of the limited liability company.[35]

The transfer tax must be considered when property is contributed to a pass-through entity or distributed by the entity to one or more of its owners. Even if such transfers are federally income tax free, they still may be subject to the SRETT. For example, real property transferred by its owner to a pass-through entity generally will be subject to the transfer tax unless the transfer meets one of several statutory exceptions (e.g., a transfer to an entity that is controlled at least 80% by the transferor).[36]

Real estate ad valorem taxes

Local jurisdictions in Michigan generally assess annual taxes on real property, based on value. The state, however, imposes a statutory limit or cap on the permissible annual increase in the taxable value of the realty. When property is sold or otherwise transferred, unless a specific exemption applies, the property is "uncapped" and revalued (generally at fair market value with no statutory limit) in the hands of the transferee for the following year, although subsequent additional increases in value are subject to the capped valuation formula.

A contribution of property to a pass-through entity or a distribution by the entity to one or more of its owners may trigger a reassessment in excess of the capped taxable value of the property. Moreover, transactions that are not considered transfers for purposes of the real estate transfer tax nevertheless may trigger an uncapped reassessment. For example, a more than 50% change in ownership of a corporation, partnership, LLC, or other legal entity will cause the uncapping of any real property owned by the entity.[37]

Conclusion

Under Michigan's various types of taxation, an entity that has pass-through treatment for federal income tax purposes is not always treated consistently by the state. In some instances, Michigan follows the federal approach and recognizes the pass-through nature of the entity or treats the taxpayer as a disregarded entity. In other situations, the entity is treated as a separate taxpayer or is given some special treatment. Therefore, taxpayers and their advisors must be careful in structuring entities doing business in Michigan to avoid adverse consequences and to maximize planning opportunities.

Practice Note: One Distinctive Approach

Michigan imposes a corporate income tax ("CIT") on entities taxed as corporations and an individual income tax on individuals, trusts, and estates. Pass-through entities are not subject to income tax, but may be subject to various other types of taxes. Taxpayers doing business in Michigan and in at least one other state can apportion their tax base using a sales factor formula.

One aspect of Michigan's treatment of individual taxpayers, however, seems unique. States that impose personal income taxes typically tax residents on all of their income, regardless of where the income is earned. If, however, a Michigan resident owns an interest in a pass-through entity that conducts at least part of its business outside Michigan, the resident's distributive share of the entity's income is subject to apportionment (using sales factor apportionment).

[1] Mich. Comp. Laws Ann. § 206.607(2) defines a "flow-through entity" as "an entity that for the applicable tax year is treated as a subchapter S corporation under section 1362(a) of the internal revenue code, a general partnership, a trust, a limited partnership, a limited liability partnership, or a limited liability company, that for the tax year is not taxed as a corporation for federal income tax purposes. Flow-through entity does not include any entity disregarded under section 699."

[2] Mich. Comp. Laws Ann. § 206.663.

[3] Mich. Comp. Laws Ann. § 206.661.

[4] IRC Section 318.

[5] Mich. Comp. Laws Ann. § 206.621(1).

[6] Mich. Comp. Laws Ann. § 206.607(2).

[7] Mich. Comp. Laws Ann. § 206.621(1); *see also* Mich. RAB 2014-5.

[8] Mich. Comp. Laws Ann. § 208.1500. For tax years beginning after December 31, 2011, each owner of a flow-through entity that made an election to continue to file MBT returns to receive certificated credits and that does not file as a member of a unitary business group must disregard all items attributable to that owner's interest in the flow-through entity for purposes of the CIT. Act 233 (H.B. 5041), Laws 2013.

[9] *See generally* Grob, *The Michigan Business Tax Replaces the State's Much-Vilified SBT,* 17 JMT 7 (October 2007).

[10] Mich. Comp. Laws Ann. § 206.651(f), and 68 C.F.R. § 7301 (providing that an entity formed as an LLC or an S corporation can be chartered as a state bank).

[11] Previously, under the now repealed Michigan Single Business Tax, in determining whether an entity should be taxed as a "financial organization" (similar to, but not the same as a "financial institution") the Department looked to whether the entity was treated as a corporation for federal tax purposes. *See* Mich. RAB 2002-16. Thus, for example, the 90/90 test applied to an LLC that elected to be taxed as a corporation for federal purposes. If an SMLLC is a disregarded entity, it has not elected to be taxed as a corporation and, thus, the 90/90 test did not apply (but presumably the test applied to the member if it was one of the specified forms of entity that can be a financial organization). An SMLLC or a QSUB that was one of the listed financial organizations (e.g., a bank or bank holding company) was per se a financial organization and, as with any per se financial organization, the 90/90 test did not apply. A QSUB is a corporation, however, and if it was not a per se financial organization, the 90/90 test was applied. (This was an apparent exception to the general Single Business Tax treatment of ignoring the existence of a QSUB).

[12] Mich. Comp. Laws Ann. § 206.635.

[13] Mich. Comp. Laws Ann. § 500.108.

[14] Mich. Comp. Laws Ann. § 500.106.

[15] *See* Mich. RAB 1999-9. Michigan's individual income tax is based on federal adjusted gross income, which reflects the entity classification of the individual's business activity. No specific Michigan income tax adjustments are allowed regarding entity classification. *See also* Mich. Comp. Laws Ann. § 206.701(j), which defines "Subchapter S corporation" as a corporation electing to be taxed under Subchapter S of the Internal Revenue Code (IRC Sections 1361 to 1379).

[16] *See Chocola v. Dept. of Treasury,* 422 Mich. 229, 369 N.W.2d 843 (1985). A Michigan resident's income from any source is allocated to Michigan unless statutorily attributable to another state. Business income that is also taxable in another state is apportioned to Michigan using a three-factor formula (subsequently replaced by sales factor only apportionment).

[17] Mich. Comp. Laws Ann. §§ 206.103, 115 and 121; also note that prior to January 1, 2012, apportionment was done using a three-factor formula based on the ratios of the entity's property, payroll and sales in Michigan to its everywhere property, payroll and sales.

[18] *Id.*

[19] Mich. Admin. Code r. 206.12 provides that salaries, wages, and other compensation received by a Michigan resident are allocated to Michigan, as are salaries and wages earned in Michigan by a

nonresident. The Michigan resident may be entitled to a credit if the compensation was earned in and taxed by another state. The income tax instructions state that the allocation for a nonresident is based on days worked in Michigan divided by days worked everywhere.

[20] *See Malpass v. Dep't of Treasury*, 494 Mich. 237 (2013).

[21] Treasury Update, vol. 1, issue 4 (August 2016).

[22] *See* Grob and Abbo, *Significant Changes to Partnership Audit Procedures Will Require Modifications to Partnership Agreements and Operating Agreements,* The Michigan Business Law Journal, vol. 36, issue 2 (summer 2016).

[23] Certain states, such as Arizona and Montana, have recently amended their statutes to correspond to the new federal partnership audit regime.

[24] Mich. Comp. Laws Ann. § 205.51 *et seq.*

[25] Mich. Comp. Laws Ann. § 205.91 *et seq.*

[26] Mich. RAB 1999-9.

[27] Mich. RAB 2000-5.

[28] Mich. RAB 2010-7 (replaces Mich. RAB 2003-4).

[29] Mich. Comp. Laws Ann. § 206.703.

[30] Mich. RAB 2010-7 (replaces Mich. RAB 2003-4).

[31] Michigan allows counties to impose county real estate transfer taxes. Non-exempted transfers are subject to tax at the rate of either $0.55/$1,000.00 or $0.75/$1,000.00, depending on the population of the county where each property is situated. *See* Mich. Comp. Laws Ann. § 207.504.

[32] Mich. Comp. Laws Ann. § 207.525.

[33] Mich. Comp. Laws Ann. § 207.521 *et seq.*

[34] Mich. Comp. Laws Ann. §§ 207.522 and 207.523.

[35] Mich. Comp. Laws Ann. § 207.526(p)(iii).

[36] Mich. Comp. Laws Ann. § 207.526.

[37] Mich. Comp. Laws Ann. § 211.27a(6)(h).