

Resources

Deadline to Make Constitutional Challenges to Michigan Business Tax for 2008 Tax Year Is Fast Approaching

February 23, 2010

Overview

Some taxpayers believe the Michigan Business Tax ("MBT") contains provisions that violate the U.S. Constitution. For example, potential taxpayer challenges under the U.S. Constitution include Commerce Clause challenges related to site-based investment tax credits,¹ R&D tax credits,² compensation tax credits,³ the economic nexus standard, and the apportionment of the tax base. Taxpayers preparing to challenge any MBT provision on any constitutional grounds must be aware of a fast approaching deadline for refund claims for the 2008 tax year. Once this deadline passes, a taxpayer is barred from claiming a refund for the 2008 tax year based on a violation of federal law or the U.S. or Michigan constitutions.

Claim for Refund—General Rule

Generally, the statute of limitations for claiming a refund of any taxes paid is the later of (i) 4 years after the filing date of the original return, or (ii) the date the return was actually filed. The statute of limitations for a refund claim based on a constitutional challenge, however, is much shorter.

Claim for Refund Based on Federal or State Constitutional Issue

If a taxpayer claims that a law under the MBT violates the laws or Constitution of the United States or the Michigan Constitution, the claim for refund must be filed within 90 days after the date set for filing a return.

Deadline to File a Constitutional Challenge

If a taxpayer does not timely file a claim for refund based on a constitutional challenge to a provision of the MBT, a claim for such refund will be permanently barred and no refund will be paid. The deadline depends on the fiscal year end of the taxpayer and whether the Michigan Department of Treasury (the "Department") granted the taxpayer a filing extension.

If a calendar year taxpayer did not file for an extension, the deadline to file a claim for refund is within 90 days of April 30th the following tax year.

If the Department granted the taxpayer an extension until December 31, 2009, a refund claim for the 2008 tax year must be filed by March 31, 2010.

Filing a Claim for Refund

To file a claim for refund, a taxpayer generally must either (1) file a refund claim by reporting an overpayment of tax and providing adequate notice to the Department of the taxpayer's view that a law is unconstitutional, or (2) file an amended return with the Department showing an overpayment of tax and requesting a refund based on the constitutional claim.

Taxpayers with questions about these or other Michigan tax matters may contact **Steven E. Grob** at 313-568-6582.

¹MCL 208.1403(3)

²MCL 208.1405

³MCL 208.1403(2)

Deadline to Make Constitutional Challenges to Michigan Business Tax for 2008 Tax Year Is Fast Approaching (Cont.)

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Practice Areas

Taxation

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