

IN MICHIGAN, IT IS NOW SELLER BEWARE

Buyers of Michigan real property are generally aware of the potential adverse tax consequences on the purchase of real property due to real property transfer taxes and the "pop up" property tax (uncapping of taxable value) which is triggered when property is purchased. However, sellers may now also be subject to significantly adverse tax consequences on the sale of their real property.

Under the recently enacted Michigan Business Tax ("MBT"), taxpayers pay both a business income tax ("BIT") and a gross receipts tax ("GRT"). The base on which the MBT is levied starts with federal taxable income and therefore captures any gain reported for federal income tax purposes. The GRT base is defined as all gross receipts from the taxpayer's business.

The MBT, unlike the Internal Revenue Code, makes no distinction between capital gain and ordinary income. Therefore, sellers of Michigan real property will find themselves subject to the MBT on **both** the gain on the sale (BIT) and the gross receipts of the sale (GRT). A limited GRT exclusion is provided for property used in a trade or business.

Example: Assume Seller sells property for \$6 million with a basis of \$3 million. For federal income tax purposes, Seller will receive capital gain treatment. The MBT liability would be \$239,710, calculated as follows:

Sale Price	\$6,000,000
Basis	<u>\$3,000,000</u>
Gain	\$3,000,000
MBT Liability	
Business Income Tax (BIT)	\$ 148,500 (4.95% of \$3M)
Gross Receipt Tax (GRT)	<u>\$ 48,000 (0.8% of \$6M)</u>
Subtotal	\$ 196,500
MBT Surcharge (21.99%)	<u>\$ 43,210</u>
Total MBT Due Based on Sale	\$239,710

Recapture of investment tax credit taken for Single Business Tax purposes may also increase Seller's MBT liability. Many sellers of Michigan real property have already been surprised by this tax bite. However, **with**

careful planning, sellers of real property may be able to lessen the impact of the MBT.

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