

For questions regarding MBT and other SALT issues, please contact:

Lynn A. Gandhi

313.465.7646 or
lgandhi@honigman.com

June Summers Haas

517.377.0734 or
jhaas@honigman.com

Patrick R. Van Tiflin

517.377.0702 or
pvantiflin@honigman.com

For questions regarding property tax issues, please contact:

Robert Arrigo

313.465.7220
rarrigo@honigman.com

Scott Aston

313.465.7206 or
saston@honigman.com

Mark A. Burstein

313.465.7322 or
mburstein@honigman.com

Jason S. Conti

313.465.7340 or
jconti@honigman.com

Aaron M. Fales

313.465.7210 or
afales@honigman.com

Timothy J. Gies

313.465.7200 or
tgies@honigman.com

Mark A. Hilpert

517.377.0727 or
mhilpert@honigman.com

Jeffrey A. Hyman

313.465.7422 or
jhyman@honigman.com

Leonard D. Kutschman

313.465.7202 or
lkutschman@honigman.com

Stewart L. Mandell

313.465.7420 or
smandell@honigman.com

Steven P. Schneider

313.465.7544 or
sschneider@honigman.com

Michael B. Shapiro

313.465.7622 or
mshapiro@honigman.com

Daniel L. Stanley

517.377.0714 or
dstanley@honigman.com

December 2009

Proposed Sales Tax on Services

The Legislature is again considering a sales tax on services notwithstanding the failed effort to do the same in 2007. House Bills 5527, 5528 and 5529 have been introduced and would impose sales tax on most service activities. However, these bills do contain a business-to-business exemption for the sale of services. In addition, a separate 2% excise tax has been proposed on entertainment services (HB 5604). The bills are considered to be placeholders for more specific legislation. The 2010 budget will require increased revenue, so we anticipate more activity in this area.

Reminder – 90 Day Filing Rule for Constitutional Based Claims

Michigan has a very short statute of limitations period for refunds of taxes governed by the Revenue Act, which includes the Michigan Business Tax. Under this requirement, a tax refund claim based on constitutional grounds must be filed within 90 days after the date set for filing a return. Please contact your Honigman SALT attorney for additional information.

Michigan Business Tax Draft Rules

The Department of Treasury has released in draft form four Rules applicable to the Michigan Business Tax. The Rules are on the following subjects: Definition of Actively Solicits, Industrial Personal Property Tax Credit, Materials and Supplies and Order of Credits. To commence the official rulemaking procedure administered by the State Office of Administrative Hearings and Rules, the Department will next initiate the processing of the Rules with a submission of language to the Legislative Service Bureau. There will be an opportunity to comment on the Rules as they proceed through the regulatory process. The current draft Rule defining materials and supplies has been criticized as limiting statutory benefits provided in a manner not supported by the current statutory language.

Proposed Revenue Administrative Bulletins (RABs)

In November, the Department issued a draft RAB on the Unitary Business Group Relationship Tests. This RAB, together with a draft RAB on the Unitary Business Group Control Test, are pending final review. Both the control test and one of the two relationship tests must be satisfied to establish a unitary business group. The RAB on the Unitary Business Group Relationship Tests provides the Department's interpretation on the two tests used to determine whether there is the required relationship among persons needed to establish a unitary business group. The tests are (1) a "flow of value" among persons in a unitary business group, or (2) that the group of persons are integrated with, dependent upon or contribute to each other. Concerns have been raised regarding the content of both RABs, including the Department's questionable interpretation of applicable case law. The final versions of the RABs are expected to be effective retroactively to January 1, 2008.