

House Passes Democrats' Michigan Business Tax

House Democrats created a new replacement tax called the Michigan Business Tax ("MBT") that is a combination of business income tax and a net worth tax. The Michigan Business Tax was substituted into HB 4367 on Thursday, April 26th. The Bill was approved by the House Tax Policy Committee on May 1st and approved by the House on May 2nd. The plan is the first to be approved by a chamber of the Michigan Legislature. The plan will now proceed to the Senate where it will likely be assigned to the Senate Finance Committee. Below is a general description of key elements of the Bill.

Tax Base & Apportionment

The MBT tax would be imposed on two separate tax bases. A business income tax would be imposed on federal taxable income. The business income tax would be limited by PL 96-272 to those companies that do more than solicit sales in the state. For companies that sell other than tangible personal property in the state, it is unclear what the nexus standard would be. A net worth tax would be imposed on a tax base of total assets less total liabilities computed in accordance with Generally Accepted Accounting Procedures (GAAP). The net worth tax will be imposed to the fullest extent allowed by the US Constitution. The tax base will be apportioned based on sales in Michigan. Sales of tangible personal property are sourced to Michigan if the property is received in Michigan. Sales of services and intangible property is sourced to Michigan if the customer receives the benefit of the services or intangibles in the state.

Tax Rate

The business income tax will be imposed at a rate of 6.95% and the net worth tax will be imposed at the rate of .488%. Certain regulated industries receive a reduction in the net worth tax rate.

Insurance Companies

Insurance companies would pay tax on gross premiums at a rate of 1.25%. Credits allowed under the SBT are retained.

Minimum Tax – Small Business Exception

Taxpayers with apportioned gross receipts under \$350,000 will not be subject to tax. The tax is phased in from \$350,000 to \$700,000 in receipts to eliminate any cliff effect.

Filing Method

A unitary business will be required to file a combined return. A unitary business is a group of corporate and non-corporate businesses with 50% common ownership and a flow of value between the entities. Entities with different apportionment formulas would be combined into one group. The bill adopts a Finnegan standard so that the sales factor for the unitary group is calculated as all Michigan sales of all members of the unitary group, irrespective of nexus over all sales of the unitary group everywhere. No elective consolidation is allowed.

Credits and Incentives

The statutory credits allowed on the SBT return will be provided in the MBT, including Michigan Economic Growth Authority (MEGA), renaissance zone activity, historic preservation, and brownfield redevelopment. Any single business tax loss carryforward may be used against the business income tax.

New credits are provided for all compensation paid in Michigan at a rate of .8% and 3.3% of depreciable assets used in Michigan at a rate of 3.3%. Insurance companies are not eligible for these credits. The total of all combined credits that may be claimed is limited to 75% of the tax liability for any year. Compensation is defined the same as under the former SBT to include all payments subject to or excepted from withholding under IRC sections 3401 to 3406. Accordingly, compensation includes health care benefits and pensions costs. Compensation was specifically amended to include payments to independent contractors but does not include any amounts paid as earnings from a partnership, limited liability company taxed as a partnership or S corporation.

Personal Property Tax Relief

The proposal would eliminate from the personal property tax the 24 mills for school operating and state education. In addition, taxpayers would receive a 50% credit for industrial and commercial personal property tax paid to local governments.

Potential Rebate Trigger

If revenues collected under this tax exceed the projected revenues for revenue neutrality by 10% or more for 2008 and 2009, the excess revenues will be rebated pro rata through a credit against the subsequent year's tax liability. Only taxpayers who claimed a credit for compensation, capital investment, or research and development under sections 41 or 42 of the bill are eligible for the rebate.

To view this Bill, go to: www.honigmansbtinfo.com

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