

Timely Payment Required for SBT Credit

2007 is the last year for the Single Business Tax (SBT). The new Michigan Business Tax (MBT) becomes effective January 1, 2008. However, a refundable credit against the 2007 SBT equal to 15% of Michigan industrial personal property taxes paid in calendar year 2007 remains available. Companies that are exempt from filing an SBT return may elect to file a return in order to claim the credit and receive a cash payment.

For property classified as industrial personal property, the 2007 winter tax (levied on or about December 1, 2007) must be paid on or prior to December 31, 2007 for the payment to be eligible for the SBT credit. If the 2007 winter tax levy is paid in 2008, payment of the tax will not be eligible for the SBT credit. Also, the 2007 winter tax levy, if paid in 2008, will not be eligible for the 2008 MBT tax credit. **Therefore, it is imperative that the winter 2007 tax bills for industrial personal property be paid on or prior to December 31, 2007.**

Please contact us if you believe that you have industrial personal property but that property does not appear to be classified as such or if you need assistance in determining and filing for this credit.

Personal Property Tax Refunds Based on Incorrect Reporting

Our firm has recently retained additional staff with over 20 years of combined experience in identifying and securing property tax refunds related to incorrectly reported personal property. If you have significant personal property assessments for tax years 2005, 2006 or 2007, you may want us to review these assessments to determine whether a property tax refund opportunity exists. The ability to correct incorrectly reported property for tax year 2005 expires on December 31, 2007. **Therefore, any review of tax year 2005 filings must be completed by the end of this month.**

Interest Rate on Tribunal Judgments Increases

For 2007, the interest rate on Tax Tribunal-ordered tax refunds increased to 5.42% from only 3.66% for 2006. **For 2008, that interest rate will increase to 5.81%.** These higher interest rates make delay in obtaining tax refunds less painful to taxpayers and also eliminate the taxing jurisdictions' ability to borrow, by postponing the resolution of Tax Tribunal cases, at what they perceive to be favorable interest rates.

Another Unfavorable Uncapping Decision

The subject property in *C&J Investments of Grayling, LLC v City of Grayling* was owned by a trust. The trust transferred property to a limited liability company (LLC). The ownership interests in the LLC were held 50% by the trust and 50% by an unrelated individual. The Court of Appeals recently held that the transaction was a transfer and uncapped the property's taxable value.

The LLC argued the transfer of the property to it by the trust was a transfer among "commonly controlled" legal entities exempt from uncapping. The statute does not define the term "commonly controlled," but a State Tax Commission (STC) Bulletin adopts for this purpose the definition of the term used by the Department of Treasury for single business tax purposes. For two legal entities to be commonly controlled under that definition, two requirements must be met: (1) one entity must own at least 80% of the other entity or the same five or fewer persons must own at least 80% of both entities, and (2) both entities must be engaged in a trade or business.

The Court upheld the STC's two-pronged definition of "commonly controlled." The Court held that the first prong of the definition was not satisfied because the trust owned only 50% of the LLC and neither the LLC nor the unrelated individual owned any interest in the trust. The Court also found that the second prong of the definition was not met because a trust is not the type of entity that engages in a trade or business.

The Court's holding that a trust is not a trade or business entity is questionable because many trusts actively engage in investment and business activities. Even more troubling is the fact that the same economic result apparently could have been achieved with no or only partial uncapping.

The Court's holding of form over substance in *C&J Investments* appears to be contrary to the recent uncapping decision in *Signature Villas, LLC v City of Ann Arbor*. In *Signature Villas*, instead of transferring 100% of the property or of the ownership interests in an LLC that owned the property (which would have triggered uncapping), there was a transfer of 100% of the ownership interests in a parent LLC that owned 100% of the ownership interests in a subsidiary LLC that owned the property (a transaction arguably not resulting in uncapping under the literal statutory language). The transaction in *Signature Villas* was nevertheless found to result in uncapping, with the Tribunal applying substance over form principles to prevent the parties from achieving a result by indirect means that they could not achieve by direct means. In short, the two cases are consistent only in their determinations that the taxpayer loses and holdings that taxable value was uncapped.

These decisions make clear that careful planning is required to avoid an unexpected uncapping of taxable value.

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