

Honigman is the Michigan member of the American Property Tax Counsel (APTC), the National Affiliation of Property Tax Attorneys, and serves as national property tax counsel for a number of taxpayers.

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### **Importance of Paying Industrial Personal Property Taxes in December**

Taxpayers who plan to claim a Michigan Business Tax (MBT) credit for personal property taxes paid this year should carefully consider the timing of their property tax payments. Calendar year MBT taxpayers should make 2011 winter property tax payments before the end of the year to ensure eligibility for the credit. The MBT credit only applies to taxes paid during the tax year. The new Corporate Income Tax (CIT), starting in 2012, does not include a credit for property taxes paid on industrial personal property. Fiscal year filers may also benefit from paying before the end of the year because they will be assured of the credit regardless of whether they calculate the last MBT year based on a proration of the full fiscal year or use the "hard cut-off" of December 31, 2011.

### **Taxable Value Increase for 2012 Will Be Capped at 2.7%**

For 2012, the Proposal A property tax inflation cap will be set at 2.7%. The taxable value for each parcel of property, excluding "additions," may not increase greater than 2.7% for the 2012 tax year.

### **Legislature Changes Apportionment for Flow-Through Entities**

Under the newly enacted CIT, effective January 1, 2012, flow-through entities (Partnerships, LLCs and S-Corporations) are not subject to tax but must withhold CIT on behalf of any corporate owner. Under the new law, a taxpayer with a direct or indirect ownership or beneficial interest in a flow-through entity apportions the business income that is directly attributable to the business activity of the flow-through entity by using an apportionment formula based on the business activity of the flow-through entity. Thus, the flow-through entity's income is sourced to Michigan based upon its sales factor.

However, proposed legislation, if enacted, will alter the apportionment formula for flow-throughs that are unitary with its corporate owner, based upon a more than 50% ownership threshold. Under the pending legislation, the income and apportionment factors of a unitary flow-through entity will be combined into the tax calculation for the unitary business group. Thus, the flow-through entity and its corporate owner will be treated as one taxpayer. Business income from a nonunitary flow-through entity will be allocated based solely upon the sales factor of the flow-through entity. SB 673 and 807 have passed the Senate, are pending in the House and are expected to be enacted before the end of the year.

Both unitary and nonunitary flow-through entities are required to withhold CIT for their corporate owners. This has raised some concern about double remittances on behalf of corporate owners of unitary flow-through entities that the Administration has yet to address.

### **All Federal Disregarded Entities to be Disregarded Under the New CIT**

SB 678 proposes that all disregarded entities for federal tax purposes will be disregarded under the new CIT. This bill will clarify that foreign disregarded entities would not be treated as a separate entity required to file under the CIT. SB 678 is likely to be enacted before the year ends.