

MICHIGAN CORPORATE INCOME TAX

OVERVIEW

A 6% Michigan Corporate Income Tax (CIT) will be levied beginning January 1, 2012. The tax will apply to C Corporations and any entity that elects to be taxed as a C corporation. Income will be apportioned based 100% on the sales factor. Corporations with less than \$350,000 of apportioned gross receipts or less than \$100 in liability will not be required to file or pay the CIT.

Flow-through entities will pay no CIT and will have income pass through to the owners' CIT or personal income tax (PIT) return. Michigan's current personal income tax rate is 4.35%. The PIT rate drops to 4.25% in 2013.

Flow-through entities are required to withhold at the applicable rates.

APPORTIONMENT

The CIT's apportionment formula is based on the following: a company's sales in Michigan divided by total sales everywhere. Thus, a firm's investment or job creation in Michigan will not directly affect the apportioned tax base.

SMALL BUSINESS ALTERNATIVE TAX CREDIT

The CIT includes a Small Business Alternative Tax Credit. Qualified small businesses may pay an alternate tax equal to 1.8% of adjusted business income. The small business must meet the following criteria:

- Adjusted business income does not exceed \$1.3 million (indexed to inflation).
- Gross receipts do not exceed \$20 million. (The credit phase-out range for gross receipts is \$19 million–\$20 million.)
- Officer/shareholder's compensation cannot exceed \$180,000. (The credit phase-out range for officer compensation is \$160,000–\$180,000.)

EXISTING NEGOTIATED CREDITS

The new tax system will allow taxpayers to receive the benefits of existing certificated credits (executed prior to January 1, 2012) by allowing the taxpayer to continue to file under the current Michigan Business Tax (MBT) structure. Companies will calculate and apply the value

MICHIGAN CORPORATE INCOME TAX HIGHLIGHTS	
Effective	January 1, 2012
Corporate income tax rate	6%
Tax filers	C Corporations Entities taxed as corporations
Unitary filing	Required
Filing threshold	\$350,000 apportioned gross receipts or \$100 MCIT liability
Apportionment factor	100% sales
Personal income tax rate	4.35% (4.25% in 2013)

of their certificated credits to the higher of either the MBT liability, including non-certificated credits, or the calculated CIT liability as if they were subject to the CIT. Companies may also simply file under the CIT, but they would forgo their remaining credits. A list of qualified certificated credits is provided below. For more information, business clients should contact their MEDC project or business development manager.

INSURANCE COMPANIES AND FINANCIAL INSTITUTIONS

Insurance companies and financial institutions are taxed differently from other businesses under the CIT. Insurance companies are liable for 1.25% of gross direct premiums written on property or risk residing in Michigan (with adjustments). Financial institutions are taxed at a 0.29% rate on the value of net capital averaged over five years.

KEY DEFINITIONS

Nexus

Nexus is the term that identifies the minimum level of activity that causes a business entity to be responsible for filing and paying a tax in a specified jurisdiction. A taxpayer has nexus and is subject to the CIT if it has a physical presence in the state for more than one day per tax year or if the entity "actively solicits" sales and has gross receipts of \$350,000 or more in Michigan—or if the taxpayer has an ownership interest or a beneficial

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interest in a flow-through entity, directly, or indirectly through one or more other flow-through entities, that has substantial nexus in Michigan.

PL 86-272, 15 USC 381-384, prohibits Michigan from imposing the CIT on an out-of-state corporation if the only in-state business activity of the out-of-state corporation is the solicitation of orders for sales of tangible personal property where the orders are sent outside the state for approval or rejection and are filled by shipment or delivery from a point outside the state.

Unitary Business Groups

The CIT requires unitary business groups to file a combined return that includes each U.S. person in the group. Neither the tax base nor apportionment formula include transactions between group members. A unitary business group is a group of U.S. persons other than a foreign operating entity, one of which:

- Owns/controls, directly or indirectly, more than 50% of the ownership interest of the other U.S. persons (“Control Test”);
and
- Has business activities or operations that result in a flow of value between or that are integrated with, dependent upon, or contribute to other members of the group (“Relationship Test”).

Physical Presence

Any activity conducted by the taxpayer or on behalf of the taxpayer by its employee, agent, or an independent contractor acting in a representative capacity. Physical presence does not include the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer’s ability to establish and maintain a Michigan market.

Actively Solicits

“Actively solicits,” for the purposes of determining nexus as defined by the Treasury Department’s Revenue Administrative Bulletin 2007-6 (RAB 2007-6), means “purposeful” solicitation of persons within this state. Specifically, RAB 2007-6 says, “Solicitation means (1) speech or conduct that explicitly or implicitly invites

an order; and (2) activities that neither explicitly or implicitly invite an order, but are entirely ancillary to requests for an order. Solicitation is purposeful when it is directed at or intended to reach persons within Michigan or the Michigan market. Active solicitation includes, but is not limited to, solicitation through (1) the use of mail, telephone, and e-mail; (2) advertising, including print, radio, internet, television, and other media; and (3) maintenance of an internet site over or through which sales transactions occur with persons within Michigan.”

Certificated Credits

Credit agreements executed before January 1, 2012, will be honored by allowing a taxpayer to continue to file under the MBT for the remaining duration of their credit. These credits, called “Certificated Credits,” include the following:

- MEGA (including standard, high-tech, rural and retention)
- Brownfield Tax Credit
- Renaissance Zones Credits which have a development agreement executed between the taxpayer and Michigan Strategic Fund or which are part of a qualified collaborative agreement.
- Historic Preservation Credit
- Michigan Film Infrastructure and Michigan Film Production Credits.
- Michigan Early Stage Venture Investment Credit
- Photovoltaic MBT Credit
- Anchor Jobs Credit
- Defense Contracting MBT Credit
- Anchor District Credit
- Polycrystalline Energy Credit
- Battery Production Credit
- Hybrid R&D Technology Credit
- NASCAR Investment Credit

For more information, contact the Michigan Economic Development Corporation customer assistance center at 517.373.9808.