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*Michigan business tax notice requires
filing by federally disregarded entities;
deadline extended to October 31, 2011*

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The Michigan Department of Treasury on April 30 released a revised "Notice to Taxpayers" asserting that disregarded entities for federal tax purposes, including single member limited liability companies or QSubs, must file a separate return (or file as a member of a unitary business group, if applicable) for Michigan Business Tax (MBT) purposes. The revised Notice extends the previously announced June 30, 2011 deadline for compliance (which itself was an extension from the original January 31, 2011 deadline) to **October 31, 2011**. [[Revised Notice to Taxpayers Regarding Federally Disregarded Entities and the Michigan Business Tax](#), Mich. Dept. of Treas., revised 4/30/2011]

According to the Notice, a person or unitary business group that previously filed an MBT return that included one or more "previously disregarded entities" is required to amend its returns and treat them as separate entities for all open periods, even if the amended returns do not change the tax liability. Further, a previously disregarded entity that exceeds the \$350,000 filing threshold (which takes into account the apportioned gross receipts of the entire unitary business group) or is otherwise required to file must file all required forms and supporting schedules, including combined filing schedules if applicable. Both previously disregarded entities and persons amending returns to remove previously disregarded entities must prepare a corresponding *pro forma* federal return.

The revised Notice now allows taxpayers until October 31, 2011 to file returns or amended returns for prior periods to avoid the imposition of failure to file penalties,



although interest will accrue on any resulting deficiencies from the time the tax was originally due. The Notice provides that previously disregarded entities that do not have a Federal Employer Identification Number or Michigan Treasury Assignment Number must register with the Department before filing an MBT return.

PwC Observes

"Taxpayers should consider that a 'Notice' is an informal statement of the Department's position on how they will administer the tax and does not have the force of law," observes Eric Burkheiser, State and Local Tax Partner with PwC in Detroit. "The fact that this Notice completely reverses previous Department guidance on this high-profile issue should alert taxpayers to the fact that the law is not clear, and the Notice does not resolve that uncertainty. Taxpayers may feel a sense of déjà vu, as the Department issued a similar Notice related to the Single Business Tax (SBT) in response to *Kmart Michigan Property Services, LLC v. Michigan Department of Treasury*, 283 Mich. App. 647 (2009). As a result of that Notice, the Michigan legislature quickly enacted a statute that applied retroactively to 'correct any misinterpretation concerning the treatment of an entity disregarded for federal income tax purposes' under the SBT. It's not surprising that there has yet to be a change to the MBT law to address this issue, as the newly-elected legislature has been occupied with the budget and proposed MBT repeal. However, it may be just a matter of time before this issue is taken up by the legislature."

Jim Manley, State and Local Tax Managing Director with PwC in Detroit, cautions: "It is important for taxpayers to consider that the law in this area has not yet changed. Some in fact may view this Notice as inconsistent with the current law. It is therefore important that taxpayers carefully consider this issue, the law, and the alternatives available to them prior to acting in accordance with this most recent release from the Department."

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