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## *Michigan addresses unitary flow-through entities under the income tax, and disregarded entities under the MBT*

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*Authored by: Adam Weinreb*

Enacted Michigan legislation amends provisions relating to the sales factor of the apportionment formula for a taxpayer that is unitary with a flow-through entity for purposes of the corporate income tax. Other enacted measures address the treatment of disregarded entities under the Corporate Income Tax and the Michigan Business Tax. [[S.B. 807](#), [S.B. 673](#), [S.B. 369](#), [S.B. 653](#), [S.B. 678](#), enacted 12/27/11]

### **Corporate income tax - treatment of flow-through entities and disregarded entities**

As originally enacted, for a taxpayer that has an ownership or beneficial interest in a flow-through entity, business income that is directly attributable to the business activity of the flow-through entity is apportioned to the state under the single-sales factor based on the business activity of the flow-through entity. Under [S.B. 807](#), if the taxpayer is unitary with the flow-through entity, this provision does not apply.

Under [S.B. 673](#), the sales factor numerator must include a taxpayer's proportionate share of the total sales in the state of a flow-through entity that is unitary with the taxpayer, and the denominator must include the taxpayer's proportionate share of the total sales everywhere of the unitary flow-



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through entity. In determining whether a flow-through entity is deemed unitary with a taxpayer, the legislation establishes a 50 percent ownership or control threshold by the taxpayer, and requires that the business activities or operations result in a flow of value between the taxpayer and the flow-through entity (or between the flow-through entity and another flow-through entity unitary with the taxpayer), or the business activities or operations of the taxpayer and entity are integrated with, are dependent upon, or contribute to each other. In addition, the legislation requires the elimination from the sales factor of sales between a taxpayer and a unitary flow-through entity, and of sales between flow-through entities unitary with the taxpayer.

Under [S.B. 678](#), a disregarded entity for federal income tax purposes is treated as a disregarded entity for corporate income tax and for withholding tax regimes. [Senate Bill 653](#) provides that a flow-through entity does not include a disregarded entity under S.B. 678.

These bills took immediate effect upon the signature of the Governor.

## Michigan business tax - treatment of disregarded entities

Under [S.B. 369](#), a person that is a disregarded entity under the I.R.C. for federal income tax purposes must be classified as a disregarded entity under the Michigan Business Tax. However, a disregarded entity under the I.R.C. that was treated for MBT purposes as a person separate from its owner on an originally filed return prior to January 1, 2012 or on an amended return prior to December 1, 2011 is not required to file an amended return with its owner as a disregarded entity. In addition, if such a disregarded entity was treated as a person separate from its owner for MBT purposes for its first tax year that begins after December 31, 2009, the entity may be treated as a person separate from its owner for its tax year that begins after December 31, 2010 and ends before January 1, 2012

This legislation is retroactive to taxes levied after January 1, 2008.

### *PwC Observes*

"Despite the language of Senate Bill 678, under which a federally disregarded entity must be treated as a disregarded entity for corporate income tax purposes, uncertainty remains regarding the treatment of foreign disregarded entities," explains Eric Burkheiser, PwC SALT partner in Detroit. "As enacted, the corporate income tax is imposed on a 'foreign person,' meaning a person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the I.R.C. Thus, it's not clear if a foreign disregarded entity is disregarded for corporate income tax purposes."

"Senate Bill 369 provides the Department with the confirmation that disregarded entities must be treated the same as they are federally for MBT purposes, as well as providing filing relief for such entities and their owners," says Jim Manley, PwC Managing Director in Detroit.

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*For more information, please do not hesitate to contact:*

*Eric Burkheiser      (313) 394-6407      [eric.v.burkheiser@us.pwc.com](mailto:eric.v.burkheiser@us.pwc.com)*

*James Manley      (313) 394-6518      [james.r.manley@us.pwc.com](mailto:james.r.manley@us.pwc.com)*

*Adam Weinreb      (646) 471-4409      [adam.weinreb@us.pwc.com](mailto:adam.weinreb@us.pwc.com)*

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