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Michigan enacts series of corporate income tax amendments

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Michigan Governor Snyder signed a series of bills that amend provisions of the [newly-enacted corporate income tax](#). The new tax, along with these amendments, takes effect on January 1, 2012. The enacted measures address a variety of subjects, including unitary groups, financial institutions, apportionment, nexus standards, foreign persons, credits, and receipts from flow-through entities. In addition, a bill amending Michigan Business Tax provisions relating to short-year returns and credits was signed by the Governor on October 26, 2011

- **Tax Year of Unitary Group Members.** [House Bill 4946](#) (enacted 10/14) provides that a person included in a unitary business group that joins or departs a unitary group other than the end of that person's federal tax year must have a tax year that begins with its federal income tax period and ends on the date of joining or departing the group. Another tax year begins on the date immediately after joining or departing the group and ending with its federal income tax period.
- **Financial Institutions.** [House Bill 4951](#) redefines a financial institution to exclude an office of thrift supervision chartered bank or thrift institution, and a savings and loan holding company other than a diversified savings and loan holding company.
- **Foreign Persons Income and Apportionment.** [House Bill 4955](#) (enacted 10/14) provides that the income of a foreign person does not include net income from sales of tangible personal property where title passes outside the United States. Previously, the exclusion was for proceeds from sales where



title passes outside the U.S. In addition, for purposes of sales of tangible personal property, the sales factor of a foreign person will include only sales where title passes inside the U.S., and other sales will be apportioned based on the formula for other taxpayers.

- **Credits.** [House Bill 4967](#) (enacted 10/14) provides that any taxpayer that claimed, and failed to comply with the terms of, a credit under the single business tax or Michigan business tax, and that credit included a "clawback provision," the taxpayer must add back all or part of the credit to its corporate income tax liability in the year that the taxpayer failed to satisfy or breached the conditions of the credit. In addition, a taxpayer that claimed a credit under the SBT, Sec. 35A, or the MBT, Sec. 403, for a tangible asset that the taxpayer has sold, transferred out of Michigan, or otherwise disposed of during the current tax year must, to the extent the credit was used, and at the rate at which the credit was used, add back an amount (determined under a statutory formula) to the taxpayer's corporate income tax liability.
- **Financial Institution and Nexus.** The tax regime currently in existence under the MBT for financial institutions will be retained. Financial institutions will be subject to tax based on net capital at a rate of 0.29 percent. Under [S.B. 650](#) (enacted 10/17), a financial institution has substantial nexus if it satisfies any of the following: (1) has a physical presence in the state for a period of more than one day during the tax year; (2) actively solicits sales (as defined for other taxpayers) in the state and has gross receipts of \$350,000 or more sourced to the state; or (3) has an ownership interest or beneficial interest in a flow-through entity, directly or indirectly, through one or more other flow-through entities that have substantial nexus (as defined below under S.B. 669) with the state.
- **Actively Solicit Proposal.** Under [S.B. 669](#) (enacted 10/17), language directing the Department to define "actively solicits" is repealed. Under the bill, "actively solicits" means either: (i) speech, conduct, or activity that is purposefully directed at or intended to reach persons within the state and that explicitly or implicitly invites an order for purchase or sale; or (ii) speech, conduct, or activity that is purposefully directed at or intended to reach persons within the state that neither explicitly nor implicitly invites an order for a purchase or sale, but is entirely ancillary to requests for an order for a purchase or sale.
- **Receipts of a Flow-Through Entity and Nexus Threshold.** Under [S.B. 654](#) (enacted 10/17), the apportioned or allocated gross receipts of a flow-through entity must be imputed to each of its members based on the same percentage that each member's proportionate share of distributive income is to the total distributive income of the flow-through entity. In addition, if a taxpayer has apportioned or allocated gross receipts for less than a 12 month tax year, the \$350,000 receipts/nexus threshold must be multiplied by a fraction, the numerator of which is the number of months on the tax year, and the denominator of which is 12.
- **Apportionment of Flow-Through Entity Income.** [S.B. 674](#) (enacted 10/17) provides apportionment rules for a taxpayer that has an ownership or beneficial interest in a flow-through entity. Under the language of the bill, a taxpayer's business income directly attributable to the business activity of the

flow-through entity is apportioned to the state using a single-sales factor based on the activity of the flow-through entity. Previously, the language limited this provision to the ownership or beneficial interest in flow-through entity that has business activity in the state.

- **MBT Amendments/Credits/Part Year Returns.** Under [House Bill 4947](#), (enacted, 10/26/11) for MBT purposes, a taxpayer that has a fiscal tax year ending after December 31, 2011 is deemed to have two separate tax years: the first is for the fractional part of the fiscal year ending before January 1, 2012, and the second is for the fractional part of the fiscal year after December 31, 2011. Returns filed for these short years will both be deemed to be annual returns. The legislation requires these taxpayers to compute their MBT liability under the same method for both fractional periods. In addition, these taxpayers must calculate and claim credits based on actions taken or payments made during the fractional period represented on the return. The legislation also provides that, if a unitary business group elects to keep paying the MBT in order to claim certificated credit or any unused carryforward of that credit, the group return must include all persons in the group regardless of whether that person is incorporated. In addition, the legislation amends provisions for taxpayers claiming a certificated brownfield development credit for multiphase projects. The legislation revises the formula under which the MBT liability is determined for taxpayers that elect to remain subject to the MBT. Specifically, the legislation provides that in making the "greater of" calculation, for a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the members.
- **Other.** In addition, [House Bill 4968](#) (enacted 10/14) redefines "gross receipts" and [House Bill 4953](#) (enacted 10/14) eliminates the separate definition of business income for a tax-exempt mutual or cooperative electric company.

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