

Michigan Nexus Standards for Business Taxes

Sales and Use Tax Presumption - Out of State Sellers (effective October 1, 2015)

A seller is subject to use tax collection responsibility under the Use Tax Act if it has physical presence in Michigan. An out-of-state seller will be presumed engaged in the business of making retail sales in Michigan which creates nexus under the **Michigan Compiled Law (MCL)**, if the seller, or another person, including an affiliated person, performs any of the following activities in Michigan (see MCL 205.52b in the General Sales Tax Act or MCL 205.95a in the Use Tax Act):

- Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller.
- Uses its employees, agents, representatives, or independent contractors in this state to promote or facilitate sales by the seller to purchasers in this state.
- Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in this state.
- Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller.
- Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state.
- Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in this state.
- Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in this state.
- The seller enters into an agreement, directly or indirectly, with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly, refers potential purchasers, whether by a link on an internet website, in-person oral presentation, or otherwise, to the seller, if all of the following conditions are satisfied:
 - The cumulative gross receipts from sales by the seller to purchasers in this state who are referred to the seller by all residents of this state with an agreement with the seller are greater than \$10,000.00 during the immediately preceding 12 months.
 - The seller's total cumulative gross receipts from sales to purchasers in this state exceed \$50,000.00 during the immediately preceding 12 months.
- Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state.

The presumption may be rebutted by showing that an activity is not significantly associated with the seller's ability to establish or maintain a market in Michigan.

An "affiliated person" includes: i) a person that is part of the seller's controlled group of corporations or ii) any other person that bears the same ownership relationship to the seller as a corporation that is a member of the seller's controlled group of corporations. "Controlled group of corporations" means that term as defined under internal revenue code (IRC) 1563(a).

Corporate Income Tax (effective January 1, 2012)

Taxpayers whose activities are limited to those protected by Public Law (PL) 86-272 are not subject to Corporate Income Tax (CIT).

There are three nexus standards under the CIT. A taxpayer has nexus with Michigan if it 1) has a "physical presence" in Michigan for more than one day, 2) "actively solicits" sales in Michigan and has gross receipts of \$350,000 or more sourced to Michigan, or 3) has an ownership or beneficial interest in a flow-through entity (directly or indirectly through one or more flow-through entities) which has substantial nexus in this state. Refer to Revenue Administrative Bulletin 2014-5 for the definition of "physical presence" and "actively solicit".

CIT is levied on all corporations with nexus in Michigan at a rate of 6% of the Corporate Income Tax Base, after allocation or apportionment. A corporation is an entity that is required or has elected to file as a C corporation under the Internal Revenue Code. Insurance companies are subject to a tax equal to 1.25% of gross direct premiums written on property or risk located or residing in Michigan. Financial institutions are subject to a tax equal to 0.29% of their apportioned net capital.

Taxpayers include a single corporation, insurance company, financial institution, or a unitary business group. A unitary business group means a group of United States persons, other than a foreign operating entity, one of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of the other United States persons and that (a) has business activity resulting in a flow of value between or among persons in the group, or (b) has business activities that are integrated with, are dependent upon, or contribute to each other.

Flow-Through Withholding (ending July 1, 2016)

Flow-Through entities with business activities beyond those protected by federal PL 86-272 are required to withhold Individual Income Tax on every member that is a nonresident. This withholding is done at the Individual Income Tax rate on the distributive share (after allocation or apportionment) that is reasonably expected to accrue to the nonresident individual. Also, effective January 1, 2012, a flow-through entity with business activities beyond those protected by federal PL 86-272 and that reasonably expects to accrue more than \$200,000 in apportioned or allocated business income for the tax year is required to withhold Corporate Income Tax on the distributive share of its members that are C-corporations or other flow-through entities in a tiered structure.