## FILING REQUIREMENTS

**Filing Requirements 1.** When does the CIT take effect?

**ANSWER:**
The Corporate Income Tax is effective as of January 1, 2012. The CIT replaces the Michigan Business Tax; however, MBT taxpayers who have received or been assigned certain certificated credits may elect to continue to file under the MBT rather than the new CIT in order to claim such credits.

**Filing Requirements 2.** Who must file CIT quarterly estimates?

**ANSWER:**
Taxpayers reasonably expecting an annual tax liability exceeding $800 must file quarterly estimates.

**Filing Requirements 3.** When are CIT quarterly estimates due?

**ANSWER:**
Quarterly returns and payments for calendar year filers are due April 15, July 15, October 15, and January 15. Taxpayers not on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year; that is, quarterly returns and estimates for fiscal year filings are due the 15th day of the first month after each quarter.

If filing monthly using Form 160, *Combined Return for Michigan Taxes*, and not making remittances by electronic funds transfer, monthly payments may be filed on the 20th day of the month. For example, a calendar year taxpayer may file monthly CIT estimates using Form 160 on February 20th, March 20th, and April 20th rather than April 15 for the quarter. However, for taxpayers required to make remittances by electronic funds transfer or otherwise not using Form 160, CIT estimates remain due on the 15th day of the month following the final month of the quarter. Regardless of the method chosen, the estimated CIT for the quarter must also reasonably approximate the liability for the quarter.

**Filing Requirements 4.** When are CIT Annual Returns due?

**ANSWER:**
CIT Annual Returns must be filed—and final liability remitted—by the last day of the 4th month after the end of the taxpayer's tax year. Taxpayers (other than Insurance Companies or Financial Organizations) are not required to file a return or pay the tax if their apportioned gross receipts are less than $350,000. The filing threshold is annualized for tax years of less than 12 months. In addition, any taxpayer whose tax liability is $100 or less does not need to file a return or pay the tax.

**Filing Requirements 5.** How can I get an extension of time to file a CIT Annual Return?

**ANSWER:**
Taxpayers seeking an extension must file a Michigan Application for Extension of Time to File Michigan Tax Returns by the due date of the CIT annual return, together with payment of estimated tax.

**Filing Requirements 6.** If I'm registered for the MBT what do I need to do to register for the CIT?

**ANSWER:**
You are automatically registered for the CIT if you are currently registered for the MBT and meet the definition of "taxpayer" found in the CIT at MCL 206.611(5).

**Filing Requirements 7.** When will forms be available for the Corporate Income Tax?

**ANSWER:**
We are on schedule to have the 2012 Corporate Income Tax (CIT) forms and instructions available on the same schedule as the quarterly and annual returns for the other Michigan taxes.

Quarterly estimated CIT forms will be mailed to taxpayers starting in early January 2012 for payment of their CIT estimates.

When the legislature adjourns for the year in December 2012, annual returns will be finalized, posted on our web site, and sent to the printers. We anticipate that paper forms and instructions will be available for distribution to the public in January 2013.

Fiscal year taxpayers will be granted an automatic extension for their 2012 fiscal year annual CIT return or 2012 fiscal year annual MBT election return. Returns for fiscal years ending in 2012 will be due the same date as 2012 calendar year returns, which is April 30, 2013. An extension request form need not be filed unless required to transmit payment of any tax due with the annual return. The annual return tax due must be paid by the original due date, which is the last day of the fourth month after the end of the fiscal year.

In addition, beginning in February 2012, taxpayers will be able to pay their CIT estimate on their Combined Return for Michigan Taxes (Form 160).

**Filing Requirements 8.** Does the CIT follow the federal check-the-box regulations?

**ANSWER:**
Yes. A person that is required or has elected to file as a C corporation as defined under sections 1361(a)(2) and 7701(a)(3) of the IRC is by definition a corporation under the CIT. This statutory definition effectively adopts the federal "check-the-box" regulations for CIT purposes.

C corporations, insurance companies, financial institutions, and unitary business groups are subject to tax under the CIT.

**Filing Requirements 9.** (Answer rescinded as of 12/31/14) May a taxpayer make estimated CIT payments on Form 160, the Combined Return for Michigan Taxes, and if so, how will the different due dates be reconciled?

**ANSWER:**
For a calendar year taxpayer, CIT quarterly returns are due the 15th day of April, July, October and January. For fiscal year filers, quarterly returns are due the 15th day of the first month after each quarter. CIT payments may be made with either of the following returns:

- Form 4913, *Corporate Income Tax Quarterly Return*, or

- Form 160, *Combined Return for Michigan Taxes*.

If filing monthly using Form 160, *Combined Return for Michigan Taxes*, and not making remittances by electronic funds transfer, monthly payments may be filed on the 20th day of the month. For example, a calendar year taxpayer may file monthly CIT estimates using Form 160 on February 20th, March 20th, and on April 20th rather than April 15 for the quarter. However, for taxpayers required to make remittances by electronic funds transfer or otherwise not using Form 160, CIT estimates remain due on the 15th day of the month following the final month of the quarter. Regardless of the method chosen, the estimated CIT for the quarter must also reasonably approximate the liability for the quarter.

**Filing Requirements 10.** Will MBT overpayments be applied to CIT?

**ANSWER:**
Yes. At the option of the taxpayer, any MBT overpayments from the final return may be either refunded or carried forward and applied to the initial CIT return. For fiscal year filers, the final MBT return must be made on a short year return filed for the period ending on December 31, 2011. The due date of the final MBT short year return will be April 30, 2012. If payment of the estimated tax due is made on or before this due date with an extension request, an extension of time to file the short year return will automatically be granted until the standard fiscal year due date.

The Department will handle the situation of a taxpayer with an MBT overpayment that will no longer be a taxpayer after December 31, 2011, by applying section 30 of the "Revenue Act" (MCL 205.30). Section 30 governs overpayments and directs that the overpayment shall be first applied to any known liability as provided in section 30a (MCL 205.30a), and the excess, if any, at the taxpayer's request, shall be refunded or credited against any current or subsequent tax liability.

**Filing Requirements 11.** What is the filing threshold under Part 2 of the Income Tax Act of 1967 (ITA) that imposes the CIT?

**ANSWER:**
Section 685(1) (MCL 206.685(1)) of the ITA directs that a taxpayer, *other than* an insurance company or financial institution, whose apportioned or allocated gross receipts are less than $350,000.00, does not need to file a return or pay the tax imposed under Part 2 of the ITA. Section 685(1) also directs that a taxpayer whose CIT tax liability is less than or equal to $100.00 does not need to file a return or pay the tax imposed under Part 2.

This section clearly excludes insurance companies and financial institutions from the $350,000.00 filing threshold. An insurance company or financial institution with an annual liability of $100.00 or less is not required to file a CIT annual return or pay the tax.

**Filing Requirements 12.** Can a fiscal year filer request an extension for the first CIT return?

**ANSWER:**
Fiscal year taxpayers will be granted an automatic extension for their 2012 fiscal year annual CIT return or 2012 fiscal year annual MBT election return. Returns for fiscal years ending in 2012 will be due the same date as 2012 calendar year returns, which is April 30, 2013. However, an extension of time to file is not an extension of time to pay. An extension request form need not be filed unless required to transmit payment of any tax that would be due with the

annual return. The annual return tax due must be paid by the original due date, which is the last day of the fourth month after the end of the fiscal year.

A fiscal year taxpayer may request an additional extension on Form 4, *Application for Extension of Time to File Michigan Tax Returns*, if the extension to April 30, 2013, is not sufficient, e.g., a taxpayer with a fiscal year ending November 2012, with a federal extension granted through September 2013.

**Filing Requirements 13.** How are quarterly estimates calculated?

**ANSWER:**
The sum of estimated payments must equal at least 85% of estimated tax liability for the year, and the amount of each estimated payment must reasonably approximate the tax liability for that quarter. For tax year 2013 and after, if prior year's tax under the CIT or MBT election is $20,000 or less, estimated tax may be based on the prior year's amount in four equal payments, the sum of which equals the previous year's tax liability. If the year's tax liability is expected to be $800 or less, quarterly returns are not required.

**Filing Requirements 14.** Will a safe harbor be allowed for 2012 estimates based on the 2011 MBT return?

**ANSWER:**
No. For the 2012 tax year, estimated CIT payments must be computed on the actual Corporate Income Tax base of the period. No interest will be charged if payments are made on time, the sum of the estimated payments equals at least 85% of annual liability, and the amount of each payment reasonably approximates the tax liability incurred during the period. Estimates cannot be based on the prior year's MBT liability.

For the 2013 and subsequent tax years, if prior year's tax is $20,000 or less, estimated tax may be based on the prior year's amount in four equal payments, the sum of which equals the previous year's tax liability.

However, a taxpayer with a certificated credit who elects to continue to be taxed under the Michigan Business Tax Act (MBTA) can base its estimates on its 2011 MBT tax liability to determine if it falls under the safe harbor of four equal estimated payments that total the prior year's liability of $20,000 or less. See MCL 208.1501(4)(b) of the MBTA.

**Filing Requirements 15.** How must a fiscal year taxpayer calculate quarterly estimated payments if one quarter straddles the period in which the MBT ends and the CIT begins? Must a fiscal year taxpayer pay its final MBT quarterly estimated payment or can the taxpayer pay all remaining liability on its final MBT return?

**ANSWER:**
The first CIT estimate is based on the number of months in the fiscal year quarter that fall within 2012. The quarterly estimate should be based on the actual Corporate Income Tax base of the single month and should not be computed using any period from the last MBT tax year. Estimates cannot be based on the prior year's MBT tax liability.

A taxpayer must file its estimated MBT quarterly returns by the due date. If the taxpayer fails to make the estimated payment to cover the estimated MBT tax liability, the taxpayer is subject to penalty. The fact that the taxpayer's payment on the final return covers the taxpayer's liability

does not negate a penalty liability for failure to make the estimated MBT quarterly payment required. The existing requirements governing payment of MBT liability continue to apply and will be enforced.

**Filing Requirements 16.** Will a taxpayer be required to make a payment with an extension request or is the listing of estimated payments made going to be accepted as it is in the Michigan Business Tax?

**ANSWER:**
If the extension request shows that estimated payments have been made that result in no unpaid estimated tax liability for the tax period covered by the extension, then no payment must accompany the extension request.

**Filing Requirements 17.** Will Voluntary Disclosure continue with the Corporate Income Tax?

**ANSWER:**
Yes, the Department is required to administer the CIT under the Revenue Act, 1941 PA 122. See MCL 206.693(1). Voluntary Disclosure agreements are provided for under the Revenue Act at MCL 205.30c. The State Treasurer, or a representative, is authorized to enter into a voluntary disclosure agreement with non-filers that have a nexus filing responsibility and who meet certain other statutory criteria. Under a voluntary disclosure agreement, eligible persons may file returns and pay taxes and interest for a limited lookback period of four years without imposition of penalties, in exchange for future tax compliance.

While Voluntary Disclosure will continue with the CIT, a taxpayer must still meet the statutory qualifications to enter into an agreement.

**Filing Requirements 18.** Can a taxpayer who claims an error was made in the calculation of a CIT quarterly estimated payment request a refund of that payment without filing an annual CIT return?

**ANSWER:**
Generally, no. Estimated payments are required for taxpayers who expect to owe an annual liability in excess of $800.00. MCL 206.681(1). The amount, manner of payment, and due dates of the quarterly estimated payments are all established in MCL 206.681. Payments made under MCL 206.681 are a credit against the payment required with the annual return required under MCL 206.685. MCL 206.685 requires all taxpayers with a filing obligation to file an annual or final return in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year.

A refund claim of overpaid CIT estimates may be made pursuant to MCL 205.30(2) of the Revenue Act, which states:

> (2) A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a [of the Revenue Act]. If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund. If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be

refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability.

**Filing Requirements 19.** The first CIT annual returns could be due before CIT forms are released to the taxpayer public. Will penalties be waived for these first CIT returns if taxpayers make a good-faith guess as to liability?

**ANSWER:**
Because fiscal year taxpayers will be granted an automatic extension for their 2012 fiscal year annual return with an extended due date of April 30, 2013, CIT annual returns will not be due before forms are released in January 2013.

In accordance with the CIT, "interest and penalty provided by this part shall not be assessed … (a) If the sum of the estimated payments equals at least 85% of the liability and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made." MCL 206.681(3)(a). While the Revenue Act also provides for imposition of penalties "if a taxpayer fails or refuses to file a return or pay a tax within the time specified" [MCL 205.24(2)], penalties would not be imposed if the criteria of MCL 206.681 are timely met.

**Filing Requirements 20.** Are federally disregarded entities required to withhold under the CIT?

**ANSWER:**
No. Part 3 of the Income Tax Act requires a "flow-through entity" with business activity in Michigan that has more than $200,000 of business income in the tax year after allocation or apportionment to withhold a tax on the distributive share of business income of each corporation or flow-through member of the flow-through entity in an amount computed pursuant to MCL 200.623. MCL 206.703(4).

However, the definition of "flow-through entity" under Part 3 of the ITA expressly excludes entities that are classified as disregarded entities pursuant to MCL 206.699. MCL 206.701(d). MCL 206.699 states that, "[n]otwithstanding any other provision of this act, a person that is a disregarded entity for federal income tax purposes under the internal revenue code shall be classified as a disregarded entity for purposes of parts 2 and 3 of this act." Consequently, an entity classified as a disregarded entity under the CIT is not required to withhold on the distributive share of business income of its owners under MCL 206.703(4).

**Filing Requirements 21.** Who is a taxpayer under the CIT?

**ANSWER:**
Under the CIT, a taxpayer is defined as a corporation, insurance company, financial institution, or unitary business group. MCL 206.611(5). "Corporation" means a person that is required or has elected to file as a C corporation under the internal revenue code. A financial institution also includes any entity, other than an insurance company, that is directly or indirectly owned by a bank holding company, a national bank, a state chartered bank, a state chartered savings bank, a federally chartered savings association, or a federally chartered farm credit system institution and is a member of the unitary business group. MCL 206.651.

Flow-through entities, including S Corporations, partnerships, and trusts, generally are not taxpayers under the CIT, unless the flow-through entity elects or is required to file as a C

corporation for federal tax purposes or otherwise constitutes an insurance company or financial institution.

Financial institutions and insurance companies are not generally subject to the CIT, but are subject to alternative taxes under Part II of the Income Tax Act.

**Filing Requirements 22.** What method must a fiscal year taxpayer subject to the MBT that will be subject to the CIT use to file returns for its tax year ending in 2012?

**ANSWER:**
All MBT taxpayers must file a final MBT return for the tax year ending on December 31, 2011, including a fiscal year taxpayer that will be subject to the CIT.

A taxpayer that is subject to the MBT and the CIT for fractional parts of the same fiscal tax year must use the same method to compute the MBT as used to compute the CIT for the other portion of the tax year. MCL 208.1503(2) and MCL 206.683. More specifically, MCL 206.683(1) directs that a taxpayer subject to the CIT may elect to compute the tax for the portion of the tax year to which the CIT applies by 1 of the following methods:

1. Annual - The tax may be computed as if the CIT was effective on the first day of the taxpayer's annual accounting period and the amount computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first tax year and the denominator of which is the number of months in the taxpayer's annual accounting period.

2. Actual - The tax may be computed by determining the corporate income tax base in the first tax year in accordance with an accounting method satisfactory to the department that reflects the actual corporate income tax base attributable to the period. The method of accounting used in prior fiscal years will be assumed to reflect the actual tax base attributable to the period.

MCL 206.683(2) further states that the method chosen by the taxpayer to compute the CIT shall be the same method used by that same taxpayer when computing the MBT for the other portion of that same tax year.

**Filing Requirements 23.** Is an S corporation subject to the CIT?

**ANSWER:**
Generally, no. The corporate income tax is levied and imposed only on a person that is required or has elected to file as a C corporation, or is an insurance company, a financial institution, or a unitary business group. However, an S corporation will be subject to the CIT to the extent that it is a financial institution or insurance company.

An S corporation may be required to withhold on its shareholders.

**Filing Requirements 24.** Will I be able to e-file my Corporate Income Tax Return?

**ANSWER:**
Yes. All eligible CIT returns prepared using tax preparation software or computer-generated forms must be e-filed. Treasury will not process computer-generated paper returns that are eligible to be e-filed. A notice will be mailed to the taxpayer indicating that their return was not

filed in the proper form and content and must be e-filed. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed.

Additional information will be published on Treasury's Web site as it becomes available. E-file information is available at www.MIfastfile.org.

**Filing Requirements 25.** Will I be able to send attachments with the CIT e-file return?

**ANSWER:**
Yes. Treasury will accept certain Portable Document Format (pdf) attachments with e-filed CIT returns. You will need to follow your software instructions for submitting attachments with an e-filed return.

**Filing Requirements 26.** If I e-file, do I have to mail anything to Treasury?

**ANSWER:**
If you are expecting a refund or have no tax due, there are no paper forms to mail to Treasury. If your return requires payment, you may choose to make your payment using the Electronic Funds Transfer (EFT) online payments process for ACH Debit filers. The existing touch tone telephone payment process will continue to be available. For more information about the online payments process, visit our Web site at www.michigan.gov/biztaxpayments.

If you choose to mail your payment, you must include form CIT-V, CIT E-file Annual Return Payment Voucher (Form 4901), with the payment. Copies of federal and Michigan returns or schedules should not be mailed with form CIT-V.

**Filing Requirements 27.** How do I know if my Michigan e-filed return was accepted or rejected?

**ANSWER:**
Treasury will generate an acknowledgement for all returns received. The acknowledgement for the Michigan return will be made available to the transmitter within three business days after successful transmission. Transmitters who transmit for Electronic Return Originators and preparers must notify taxpayers of the Michigan acknowledgment at the time of receipt.

**Filing Requirements 28.** What should I do when I owe tax and want to e-file my Corporate Income Tax return?

**ANSWER:**
The payment options available for CIT e-file returns are:

**Electronic Funds Transfer (EFT**). Online payments are now available for ACH Debit and ACH Credit filers. Information on the EFT process as well as the EFT Debit Application (Form 2248) and EFT Credit Application (Form 2328) are available on Treasury's Web site at www.michigan.gov/biztaxpayments. Fax your completed application to (517) 636-4520. Please allow four weeks for processing.

**Paper Payment Voucher**. Taxpayers who e-file their CIT return and choose to mail their payment must include form CIT-V, CIT E-file Annual Return Payment Voucher (Form 4901), with the payment. **Copies of federal and Michigan returns or schedules should not be mailed with form CIT-V.**

## NEXUS & APPORTIONMENT

**Nexus & Apportionment 1.** Is the occasional sale of assets by a taxpayer a "sale" for apportionment purposes?

**ANSWER:**
No, so long as the assets sold are neither stock in trade nor inventory and are not held by the taxpayer for sale to customers in the ordinary course of the taxpayer's business. This determination is made on a facts and circumstances basis. For example, the occasional and isolated sale of a desk by a law firm is not a "sale" under MCL 206.609(4)(a); the desk does not constitute stock in trade or inventory to the law firm and is not held by the taxpayer primarily for sale to customers in the ordinary course of the law firm's business. In contrast, if the law firm operates a program under which office furniture is routinely and systematically sold at auction, then such sales would be "sales" under MCL 206.609(4)(a).

If a transaction is not a "sale" under MCL 206.609(4), it will be excluded from both the numerator and denominator of the sales factor, although it may still be included in the corporate income tax base.

**Nexus & Apportionment 2.** How are gross receipts, rents etc. received from real property apportioned?

**ANSWER:**
Receipts from the sale, lease, rental or licensing of real property are Michigan sales if the property is located in Michigan. MCL 206.665(1)(b).

**Nexus & Apportionment 3.** Does the CIT provide for "throw back sales"?

**ANSWER:**
No, the CIT does not provide for "throw back sales." A "throw back sale" describes a situation in which the income or activity from a Michigan taxpayer's sale of tangible personal property to an out-of-state purchaser is not taxable in the state of the purchaser. The sale would then be "thrown back" to Michigan for inclusion in the sales apportionment factor's numerator, thereby increasing the sales apportionment factor.

Sales to destinations outside Michigan need not be included in the CIT sales factor numerator regardless of whether nexus exists or tax is paid in the destination jurisdiction. MCL 206.665(1)(a). However, if the taxpayer does not have nexus in at least one other state, it cannot apportion its tax base, and any corporate income or net capital tax base must be allocated to Michigan. MCL 206.661(3). The direct premiums tax base for insurance companies is not subject to apportionment.

**Nexus & Apportionment 4.** How does a unitary business group apportion its tax base when some members of the group do not have nexus with Michigan?

**ANSWER:**
For a unitary business group with business activities within and without Michigan, as defined in MCL 206.661(2), the unitary business group's corporate income tax base is apportioned to Michigan by multiplying it by the combined sales factor of the members of the unitary business group. The tax base of a unitary business group is calculated according to MCL 206.623, combining all the unitary business group members' business income. The sales factor is

Michigan sales divided by everywhere sales. The sales of all members of the unitary group are included in both the numerator and the denominator. Transactions between unitary business group members are eliminated when determining the group's combined tax base and apportionment. A unitary business group member's business income and sales are included in the calculation of the tax base and apportionment whether or not the member has nexus with Michigan.

**Nexus & Apportionment 5.** What are the nexus standards under the CIT?

**ANSWER:**
A taxpayer, other than an insurance company, has nexus with Michigan and is subject to the tax imposed under the CIT if (a) the taxpayer has a physical presence in this state for more than one day in a tax year, (b) the taxpayer actively solicits sales in this state and has gross receipts of $350,000 or more sourced to Michigan, or (c) the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through one or more other flow-through entities, that has nexus in Michigan. MCL 206.621(1). The same nexus standard applies to a financial institution with regard to the imposition of the franchise tax. MCL 206.653.

However, the corporate income tax is limited by federal statutory provisions commonly referred to as PL 86-272, which prohibits Michigan from imposing an income tax if the only in-state business activity of the out-of-state person 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. 15 USC 381 et seq. Once a taxpayer exceeds the safe harbor of PL 86-272, the taxpayer is then subject to the corporate income tax on its entire tax base, including that portion of income otherwise protected by PL 86-272. Protection under PL 86-272 does not apply to financial institutions, as they are subject to a franchise tax on net capital, which is not an income tax.

Physical presence means "any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity." MCL 206.621(2)(b). 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 market in this state." MCL 206.621(2)(b).

"Actively solicits" under the nexus standard referenced in item (b) above means either of the following:

> (*i*) Speech, conduct, or activity that is purposefully directed at or intended to reach persons within [Michigan] and that explicitly or implicitly invites an order for a purchase or sale[, or]
> (*ii*) Speech, conduct, or activity that is purposefully direct at or intended to reach persons within [Michigan] 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.

MCL 206.621(2)(a).

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.

Examples of active solicitation include: sending mail order catalogs; sending credit applications; maintaining an internet site offering online shopping, services, or subscriptions, and; soliciting through media advertising, including internet advertisements.

**Nexus & Apportionment 6.** For purposes of apportionment under the CIT, what jurisdictional standard will be applied to determine whether a taxpayer is subject to tax in another state?

**ANSWER:**
MCL 206.661(3) provides as follows:

> (3) A taxpayer is subject to tax in another state in either of the following circumstances:
> (a) The taxpayer is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.
> (b) That state has jurisdiction to subject the taxpayer to 1 or more of the taxes listed in subdivision (a) regardless of whether that state does or does not subject the taxpayer to that tax.

Under the CIT, a taxpayer

> "has substantial nexus in this state and is subject to the tax imposed under [the CIT] if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year, if the taxpayer actively solicits sales in this state and has gross receipts of $350,000 or more sourced to this state, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly or indirectly through 1 or more flow through entities, that has substantial nexus in this state." MCL 206.621(1).

The same standard used to determine nexus for out-of-state taxpayers, as described in MCL 206.621(1) above, will be applied to determine whether a taxpayer is subject to tax in another state for purposes of apportionment under the CIT.

**Nexus & Apportionment 7.** For purposes of apportionment, in determining whether a Michigan-based taxpayer has nexus with a state other than Michigan pursuant to MCL 206.661(3), must gross receipts in any "one" state or in all states equal or exceed $350,000 in order to satisfy the "actively solicits sales" nexus standard?

**ANSWER:**
Because the nexus standard at MCL 206.621(1) references $350,000 in gross receipts sourced to a single state (Michigan), in applying that standard to determine whether a taxpayer is subject to tax in another state for purposes of apportionment, a taxpayer must meet the $350,000 gross receipts threshold in a single non-Michigan state. Also, MCL 206.661(3) by its terms refers to "another state" (singular) having jurisdiction to subject the taxpayer to tax. Accordingly, a Michigan-based taxpayer having gross receipts of $150,000 in one non-Michigan state and gross receipts of $200,000 in another non-Michigan state would not meet the standard under MCL 206.661(3) and would not be able to apportion its tax base.

**Nexus & Apportionment 8.** An out-of-state company has an employee located in Michigan. The out-of-state company has no sales or business activities in Michigan. Does the out-of-state company have nexus with Michigan under the CIT?

**ANSWER:**
Yes. Under the CIT, a taxpayer, other than an insurance company, has nexus with Michigan if (a) the taxpayer has a physical presence in Michigan for more than one day in a tax year, (b) the taxpayer actively solicits sales in Michigan and has unapportioned gross receipts of $350,000 or more sourced to Michigan, or (c) the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in Michigan. MCL 206.621(1). The presence of a permanent employee in Michigan constitutes physical presence in this state and creates nexus under the CIT.

However, absent Michigan sales and business activities, that company is unlikely to meet or exceed the filing threshold of $350,000 in allocated or apportioned gross receipts. MCL 206.685(1). In that case, the out-of-state company need not pay the CIT or file a return, even though it would have nexus with Michigan.

**Nexus & Apportionment 9.** Non-U.S. corporations qualify as taxpayers under the CIT. For purposes of the corporate income tax, will the Department recognize the protection of PL 86-272 for non-U.S. corporations?

**ANSWER:**
Yes, the Department will recognize the protection of PL 86-272 for non-U.S. corporations.

Although PL 86-272, by its plain terms, applies only to interstate commerce and makes no mention of foreign commerce, the Department has determined that the protections afforded by this federal statute should also be extended to non-U.S. corporations.

**Nexus & Apportionment 10.** Does the protection of Public Law 86-272 apply to financial institutions?

**ANSWER:**
No. Public Law 86-272 is a federal law that prohibits a state from imposing a net income tax on an out-of state taxpayer whose only business activity in Michigan 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. 15 USC 381 et seq. Financial institutions are subject to a franchise tax under Chapter 13 of the Income Tax Act. MCL 206.653. The franchise tax is levied at a rate of 0.29% on a financial institution's net capital. MCL 206.653; MCL 206.655. This tax on net capital is not a net income tax. Thus, the protection of PL 86-272 does not apply to financial institutions taxed under Chapter 13.

**Nexus & Apportionment 11.** If an out-of-state corporation owns a partnership interest in a partnership in Michigan, does that create nexus for the corporation?

**ANSWER:**
Yes. There are three separate, alternative nexus standards under the CIT. A taxpayer has nexus with Michigan under the CIT if any of the following exists: (1) the taxpayer has a physical presence in Michigan for a period of more than 1 day during the tax year, (2) the taxpayer actively solicits sales in Michigan and has Michigan sourced gross receipts of $350,000 or

more, or (3) if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has nexus in Michigan. MCL 206.621(1). A partnership is considered a flow-through entity under the CIT. MCL 206.607(2). Thus, if the partnership has nexus with Michigan, the ownership interest in that partnership will create nexus in Michigan for the corporation.

**Nexus & Apportionment 12.** Does an out-of-state trucking corporation that drives into Michigan for pick up or delivery of product, but has no other physical presence (e.g. employees or real or personal property) in Michigan, create nexus with Michigan subjecting the company to the CIT? If nexus is created, how is apportionment calculated?

**ANSWER:**
Yes, the out-of-state trucking corporation would have nexus with Michigan for purposes of the CIT if the corporation either picked up or delivered product in Michigan during 2 or more days within the tax year. Furthermore, the corporation would have nexus with Michigan if it merely drives through Michigan, i.e., travels through Michigan on a trip that originates and terminates outside of Michigan, with no pick up or delivery in Michigan and with no other business activity in Michigan, during 2 or more days within the tax year.

If nexus with Michigan is established, and if the corporation's tax liability exceeds $100 and its apportioned or allocated gross receipts exceed the $350,000 filing threshold under MCL 206.685(1), then the taxpayer's corporate income tax base is apportioned by multiplying the tax base by the sales factor. MCL 206.661(1). Generally, for an out-of-state transportation corporation, receipts from transportation services provided by the transportation corporation are sourced according to MCL 206.665(11), (12) based on the ratio of revenue miles in Michigan (numerator) to revenue miles everywhere (denominator). Revenue mile means the transportation for consideration of one net ton in weight or one passenger the distance of one mile. MCL 206.609(3). Receipts from transportation services are combined with other receipts or sales of the taxpayer to compute the sales factor. Note that once nexus exists in a tax year, then all revenue miles driven in Michigan, including revenue miles associated with "drive through" trips made in Michigan, are included in the apportionment formula numerator.

For an out-of-state transportation corporation that is a "foreign person" as defined in MCL 206.625(5)(c) and is subject to CIT taxes, the sales factor is a fraction, the numerator of which is the taxpayer's total sales in Michigan during the tax year and the denominator of which is the taxpayer's total sales in the United States during the tax year. MCL 206.625(4). For purposes of apportionment for a "foreign person" subject to CIT taxes, for sales of tangible personal property, only those sales where title passes inside the United States shall be used in the sales factor. For sales of property other than tangible personal property, those sales are apportioned in accordance with the apportionment methods set forth in Chapter 14 of the Income Tax Act.

Under MCL 206.625(1)(c), however, a foreign corporation domiciled in a member country of NAFTA is not subject to CIT if the foreign corporation is domiciled in a subnational jurisdiction of that member country that does not impose an income tax on a similarly situated person domiciled in Michigan whose presence in that foreign member country is the same as the foreign corporation's presence in the United States. This exemption from the CIT exists notwithstanding the fact that the foreign corporation has nexus with Michigan for CIT. Furthermore, if a subnational jurisdiction of the NAFTA member country does not impose an income tax on businesses, but instead imposes some other type of subnational business tax, then the foreign corporation domiciled in that subnational jurisdiction is not subject to CIT taxes if that subnational jurisdiction's business tax is not imposed on a similarly situated person

domiciled in Michigan whose presence in the foreign country is the same as the foreign person's presence in the United States. MCL 206.625(1)(c).

**Nexus & Apportionment 13.** If a CIT taxpayer owns an interest in a flow-through entity how does that taxpayer calculate its apportionment factor?

**ANSWER:**
If a taxpayer has a direct (or indirect through 1 or more other flow-through entities) ownership or beneficial interest in a flow-through entity and the taxpayer is not unitary with that flow-through entity, the taxpayer's business income that is directly attributable to the business activity of the flow-through entity is apportioned to Michigan using the flow-through entity's sales factor. MCL 206.661(2).

However, if a taxpayer is unitary with a flow-through entity, the taxpayer must include in its sales factor used for apportionment the taxpayer's proportionate share of the flow-through entity's Michigan and total sales. MCL 206.661(2), 206.663(1).

A taxpayer is unitary with a flow-through entity if that taxpayer:

- Owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the flow-through entity, and
- The taxpayer has business activities or operations with the flow-through entity that (1) result in a flow of value between or among persons in the group, or (2) are integrated with, are dependent upon, or contribute to each other. [MCL 206.663(1).]

If a taxpayer is unitary with a flow-through entity, the taxpayer must include in the numerator of its sales factor an amount equal to the flow-through entity's total sales in Michigan multiplied by the taxpayer's percentage of ownership of that flow-through entity. In the denominator of its sales factor, the taxpayer would include an amount equal to the flow-through entity's total sales everywhere multiplied by the taxpayer's percentage of ownership of that flow-through entity. Sales between a taxpayer and a flow-through entity unitary with that taxpayer must be eliminated when calculating the apportionment sales factor. MCL 206.663(3).

**Nexus & Apportionment 14.** If a taxpayer is unitary with a flow-through entity, are intercompany sales eliminated when calculating the taxpayer's apportionment factor?

**ANSWER:**
Yes. If a taxpayer is unitary with a flow-through entity, sales between the taxpayer and the flow-through entity must be eliminated when calculating the taxpayer's apportionment factor. MCL 206.663(2).

**Nexus & Apportionment 15.** If a taxpayer is unitary with a flow-through entity, how do I calculate the amount of sales to be included in that taxpayer's apportionment factor?

**ANSWER:**
To determine the amount of the flow-through entity's Michigan sales that will be added to the numerator of the taxpayer's apportionment factor, start with the entire amount of the flow-through entity's Michigan sales and then subtract from that amount any Michigan sales eliminations – Michigan sales that the flow-through entity made to the taxpayer. Multiply the

amount of sales by the taxpayer's percentage of ownership of that flow-through entity. Include this amount in the numerator of the taxpayer's apportionment factor. This is shown in the equation below:

Michigan sales to be included = (FTE's MI sales – eliminations) x ownership percentage

To determine the amount of the flow-through entity's total sales to be added to the denominator of the taxpayer's apportionment factor, start with the entire amount of the flow-through entity's total sales and then subtract from that amount sales eliminations – sales that the flow-through entity made to the taxpayer. Multiply the amount of sales by the taxpayer's percentage of ownership of that flow-through entity. Include this amount in the denominator of the taxpayer's apportionment factor. This is shown in the equation below:

Total sales to be added = (FTE's total sales – eliminations) x ownership percentage

## CORPORATE TAX BASE

**Corporate Tax Base 1.** May taxpayers take the IRC 199 deduction for CIT purposes?

**ANSWER:**
No. For federal tax purposes, the deduction under IRC 199 provides a tax benefit for certain domestic production activities. In particular, IRC 199 allows a deduction equal to a specified percentage of the taxpayer's qualified production activities income for the tax year.

This federal deduction, however, does not flow through to the CIT. The CIT defines "federal taxable income" to mean "taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if . . . section 199 of the [IRC was] not in effect." MCL 206.607(1). Thus, to the extent that the IRC 199 deduction is included in the calculation of federal taxable income for federal tax purposes, the amount of that deduction must be added back in calculating federal taxable income for CIT purposes.

**Corporate Tax Base 2.** The CIT is decoupled from federal bonus depreciation. Consequently, taxpayers must add back to business income bonus depreciation that was taken on the federal return.

Since bonus depreciation is not allowed for CIT returns, when increasing the business income for the amount of bonus depreciation taken, is it allowable to compute and subtract from business income regular MACRS depreciation or section 179 expense on those assets for which bonus depreciation was claimed for federal purposes?

**ANSWER:**
The amount of IRC §179 expense deduction taken on a taxpayer's federal tax return will be allowed in computing CIT business income. This amount will not vary in computing business income for federal and Michigan tax purposes. A taxpayer that did not elect and take a federal §179 expense deduction on its federal tax return may not claim the federal deduction in its computation of business income under the CIT.

Any IRC §168(k) bonus depreciation claimed on a taxpayer's federal return will not be allowed for CIT purposes. MCL 206.603(2); 206.607(1). Taxpayers should re-compute CIT depreciation using a federally accepted depreciation method that computes a depreciation amount as if IRC §168(k) was not in effect. This depreciation method must be used consistently over the life of the asset until retired or disposed of when computing CIT business income. The federal depreciation expense that is calculated as if §168(k) was not in effect is the deduction used in calculating CIT business income. A taxpayer must keep sufficient records to track the basis of the asset and depreciation deduction claimed for purposes of the CIT.

**Corporate Tax Base 3.** If an entity is subject to the Corporate Income Tax (CIT), will the entity's shareholders be subject to Michigan personal income tax?

**ANSWER:**
Yes. An individual shareholder of an entity subject to CIT will also be subject to Michigan income tax on any dividend income paid by the corporation that is included in the shareholder's taxable income. Dividend income is allocated to the shareholder's state of residence for individual Income Tax purposes. MCL 206.113.

**Corporate Tax Base 4.** Are farms exempt under the CIT? Are agricultural activities taxed under the CIT? What about a taxpayer that has both retail and farm activities?

**ANSWER:**
No, farms are not exempt under the CIT. Furthermore, the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods is similarly not exempt. However, taxpayers under the CIT are limited to C corporations, insurance companies, financial institutions, and unitary business groups.

**Corporate Tax Base 5.** Are system software royalties excluded from the determination of corporate income tax liability like they were under the Single Business Tax Act ("SBTA")(see MCL 208.9(4)(g)(viii) and (7)(c)(vii))?

**ANSWER:**
Unlike the SBTA, but similar to the MBT, there is no specific language in the CIT which excludes such system software royalties from the calculation of the corporate income tax base. However, there are certain royalty adjustments to the corporate income tax base under the CIT that may apply in limited circumstances, generally those involving foreign entities. See MCL 206.623.

**Corporate Tax Base 6.** Under the CIT, will there be a depreciation deduction? Will Michigan conform to federal depreciation rules?

**ANSWER:**
To the extent applicable, federal depreciation rules are utilized for the purpose of calculating CIT liability. Although there is no specific deduction or credit for depreciation expenses under the CIT, a taxpayer receives the benefit of any depreciation deduction taken on its federal income tax return due to the inherent structure of the corporate income tax base. A CIT taxpayer's corporate income tax base is composed of the taxpayer's "business income," with certain adjustments. MCL 206.623(2). "Business income" is defined as "federal taxable income" MCL 206.603(2). "Federal taxable income" means taxable income as defined in IRC 63, except that federal taxable income shall be calculated as if IRC 168(k) and 199 were not in effect. Thus, any IRC 168(k) bonus depreciation claimed on a taxpayer's federal return will not be allowed for CIT purposes. Taxpayers should re-compute CIT depreciation using a federally accepted depreciation method that computes a depreciation amount as if IRC 168(k) was not in effect. This depreciation method must be used consistently over the life of the asset until retired or disposed of when computing CIT business income. The federal depreciation expense that is calculated as if 168(k) was not in effect is the deduction used in calculating CIT business income. A taxpayer must keep sufficient records to track the basis of the asset and depreciation deduction claimed for purposes of the CIT.

**Corporate Tax Base 7.** For purposes of applying section 623(2)(e) of the CIT, does the phrase "subject to tax in another jurisdiction" refer only to taxation by another state, or does it also include taxation by a foreign country?

**ANSWER:**
The phrase includes taxation by a foreign country. Pursuant to section 623(2)(e) of the CIT, a taxpayer must add back to its corporate income tax base "any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group." MCL 206.623(2)(e). Such amounts need not be added back, however, if certain conditions are met:

> The addition of any royalty, interest or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business purpose other than avoidance of this tax, is conducted with arm's-length pricing and rates and terms as applied in accordance with section 482 and 1274(d) of the internal revenue code, and
>
> ***
>
> (ii) Results in double taxation. For purposes of this paragraph, double taxation exists if the transaction is subject to tax in another jurisdiction. MCL 206.623(2)(e)(ii).

The meaning of the phrase "subject to tax in another jurisdiction" is not specifically set forth in the statute. For purposes of applying this subsection, as with the MBT, the Department will interpret "another jurisdiction" to mean states other than Michigan and foreign taxing jurisdictions.

**Corporate Tax Base 8.** How is a like-kind exchange treated under the CIT?

**ANSWER:**
Generally, for business or investment property exchanged solely for business or investment property of a like-kind, no gain or loss is recognized for federal income tax purposes under IRC 1031. If, as part of the exchange other (not like-kind) property or money is received, gain is recognized to the extent of the other property and money received, but a loss is not recognized. Properties are of like-kind if they are of the same nature or character, even if they differ in grade or quality. IRC 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, or certain other assets.

The corporate income tax base is the taxpayer's business income, before allocation or apportionment, with prescribed adjustments after allocation or apportionment. MCL 206.623(2). The taxpayer's business income is federal taxable income. MCL 206.603(2). Therefore, to the extent the like-kind exchange is or is not recognized in federal taxable income, it will be similarly recognized in the corporate income tax base.

Like the SBT and MBT, the value of property received in a like-kind exchange will be excluded from gross receipts, which is determined for purposes of determining nexus under MCL 206.621, the filing threshold under MCL 206.685, and eligibility for the small business credit under MCL 206.671. If, as part of the exchange, other (not like-kind) property or money is received and gain is recognized for federal income tax purposes, the gain will be included in gross receipts. Losses that are not recognized for federal income tax purposes similarly are not recognized for purposes of determining gross receipts under the CIT.

**Corporate Tax Base 9.** Is an individual person who earns more than $350,000 in interest and dividends for the tax year subject to the CIT? Are the person's capital gains from sales of stock subject to the CIT?

**ANSWER:**
No, the corporate income tax is levied and imposed only on a person that is required or elected to file as a C corporation, insurance companies, financial institutions, or a unitary business group as defined under MCL 206.611(6).

However, dividends, interest, and capital gains of an individual are subject to the individual income tax of 4.35% to the extent that they are included in the individual's federal adjusted gross income for the tax year.

**Corporate Tax Base 10.** Is the gain recognized on the one time sale of business assets and goodwill by an entity to another entity taxed under the CIT?

**ANSWER:**
Yes, the gain is taxed under the CIT. A taxpayer's corporate income tax base is the taxpayer's business income, which is federal taxable income, before allocation or apportionment, subject to specific statutory adjustments after allocation or apportionment. MCL 206.623(2). To the extent the capital gain is included in the taxpayer's federal taxable income it must also be included in the corporate income tax base. There are no statutory exceptions, exclusions, or deductions under the CIT that are applicable to capital gains recognized by a corporation from the sale of capital assets.

**Corporate Tax Base 11.** Does business income include casual transactions or isolated sales?

**ANSWER:**
Yes. Business income means federal taxable income. MCL 206.623(2). To the extent that the income attributable to a casual transaction or isolated sale is included in a taxpayer's federal taxable income, it is included in its corporate income tax base under the CIT. In other words, unless expressly excluded, business income will include income derived from any transaction included in the taxpayer's federal taxable income, including "casual transactions" or "isolated sales."

**Corporate Tax Base 12.** How should inter-company transactions between members of a unitary business group be eliminated when the members have different year ends?

**ANSWER:**

**The underlined dates were corrected on May 15, 2013. Previously, the dates read "April 1, 2011, through March 31, 2012" which are incorrect.**

MCL 206.691 requires the elimination of all transactions between members of the unitary business group that affect the corporate income tax base and the apportionment formula. When members of a unitary business group have different year ends, the combined return of the unitary business group must include each tax year of each member whose tax year ends with or within the tax year of the designated member of the unitary business group. "Designated member" means a member of a unitary business group that has nexus with Michigan under MCL 206.621 and that will file the combined return required under MCL 206.691. If the member that owns or controls the other members of the unitary business group has substantial nexus with Michigan, then that controlling member must be the designated member. Each member should eliminate the inter-company items of income and expense recorded on its books for the tax period of the member that is included in the combined return of the unitary business group. In other words, inter-company eliminations are made on an entity basis in computing the members' tax bases that are summed together for the combined return.

For example, a unitary business group consists of Corporation A, the designated member that reports on a calendar year, Corporation B that reports on a calendar year, and Corporation C that has a fiscal year ending March 31. In 2012, Corporations A and B will eliminate all inter-

company transactions between each other since they both report on a calendar year end. In computing their 2012 tax bases, Corporations A and B will also eliminate all inter-company transactions they had recorded on their books during the calendar year with Corporation C.

Corporation C will report the months April 1, 2011, through December 31, 2011, on a final MBT return. Only January 1, 2012, through March 31, 2012, will be reported on the unitary business group's 2012 CIT return. When computing its 2012 corporate income tax base, Corporation C will eliminate all inter-company transactions it has recorded on its books for the period January 1, 2012, through March 31, 2012. On the unitary business group's 2013 CIT return, Corporation C will eliminate all inter-company transactions it has recorded on its books for the periods April 1, 2012, through March 31, 2013. Corporations A and B will eliminate all inter-company transactions recorded in 2013 between each other and with Corporation C since both Corporations A and B report on a calendar year end. While timing differences will occur due to differences in each member's year end, eliminating each member's inter-company transactions that were recorded on that member's books during the periods included in the combined return will eliminate inter-company transactions from the unitary business group's tax base.

**Corporate Tax Base 13.** How are gross receipts used under the CIT?

**ANSWER:**
Unlike under the MBT, gross receipts are not used directly to determine a taxpayer's liability. In other words, unlike under the MBT, there is no modified gross receipts tax and gross receipts are not subject to tax. Gross receipts are, however, used in other contexts under the CIT.

First, gross receipts are used to determine whether a taxpayer has nexus in Michigan. There are three separate alternative nexus standards under the CIT. One of these is that a taxpayer has nexus with Michigan if the taxpayer actively solicits sales in Michigan and has gross receipts of $350,000 or more sourced to Michigan. Therefore, the amount of a taxpayer's gross receipts, in conjunction with active solicitation of sales, is determinative of whether a taxpayer has nexus in Michigan.

Second, gross receipts are used as a threshold to determine whether a taxpayer is required to file an annual CIT return and pay the tax. A taxpayer, other than an insurance company or a financial institution, whose apportioned or allocated gross receipts are less than $350,000 is not required to file a return or pay the tax imposed under the CIT. MCL 206.685(1). A taxpayer whose gross receipts exceed this amount must file a return and pay the tax.

Finally, gross receipts are used to determine whether a taxpayer qualifies for a small business alternative credit under MCL 206.671. Subject to other disqualifying conditions set forth at MCL 206.671, the credit is available to a taxpayer with gross receipts that do not exceed $20,000,000 for the tax year, adjusted annually for inflation. In addition, the credit is reduced by a fraction where the taxpayer's gross receipts exceed $19,000,000 up to the $20,000,000 disqualifying threshold.

**Corporate Tax Base 14.** Is an entity that is treated as disregarded under the Internal Revenue Code for federal income tax purposes treated as disregarded for purposes of Michigan's Corporate Income Tax?

**ANSWER:**

Yes, a person that is a disregarded entity for federal income tax purposes under the IRC is classified as a disregarded entity for purposes of the CIT. MCL 206.699. This applies to both domestic and foreign disregarded entities.

**Corporate Tax Base 15.** Will negative business income – or business losses – from 2011 be allowed as a deduction on the CIT return for 2012?

**ANSWER:**
No. The CIT is imposed on the corporate income tax base, after allocation or apportionment at the rate of 6.0%. The corporate income tax base means a taxpayer's business income subject certain statutory adjustments, before allocation or apportionment. One such adjustment is for any available business loss incurred *after* December 31, 2011. "Business loss" means a negative business income taxable amount after allocation or apportionment. The CIT does not permit a carryforward of a business loss incurred prior to January 1, 2012. In other words, MBT business losses may not be used under the CIT.

**Corporate Tax Base 16.** The tax base under the CIT is computed as though section 168(k) bonus depreciation is not in effect. When computing depreciation under the CIT for assets that were purchased in years prior to January 1, 2012, should taxpayers use the remaining basis that carries forward from the MBT?

**ANSWER:**
Yes. As with the MBT, for the CIT "federal taxable income" means "taxable income as defined in section 63 of the internal revenue code, except that federal taxable income shall be calculated as if section 168(k) . . . of the [IRC is] not in effect." MCL 206.607(1). In other words, both the MBT and CIT decouple from federal bonus depreciation.

To the extent applicable, federal depreciation rules are utilized for the purpose of calculating the CIT base. Although there is no specific deduction or credit for depreciation expenses under the CIT, a taxpayer receives the benefit of any depreciation deduction taken on its federal income tax return due to the structure of the income tax base that is based on federal taxable income as a starting point. Thus, the calculation of the income tax base begins with the taxpayer's federal taxable income, a figure that already includes any deductions taken by the taxpayer on account of depreciation expenses. Since the MBT also decoupled from federal bonus depreciation, the asset's basis used for MBT purposes and the depreciation methods used on those assets will similarly be used under the CIT without further adjustment.

Any IRC 168(k) bonus depreciation claimed on a taxpayer's federal return will not be allowed for CIT purposes. Taxpayers should re-compute CIT depreciation using the federally accepted depreciation method that computes a depreciation amount as if IRC 168(k) was not in effect. This depreciation method must be used consistently over the life of the asset until retired or disposed of when computing CIT income. While bonus depreciation is not allowed in the year of acquisition, this is merely a timing difference and the taxpayer will recover the basis of the asset through depreciation over the life of the asset. The federal depreciation expense that is calculated as if IRC 168(k) was not in effect is the deduction used in calculating CIT income. A taxpayer must keep sufficient records to track the basis of the asset and depreciation deduction claimed for purposes of the CIT.

Note, however, that the amount of IRC 179 expense deductions taken on a taxpayer's federal tax return in any year will be allowed in computing the CIT base for that year. The amount of IRC 179 expense will not vary in computing income for federal and Michigan tax purposes. The

federal IRC 179 deduction that is taken will reduce the basis of the asset that is subject to depreciation. A taxpayer that did not elect and take a federal IRC 179 expense deduction on its federal tax return may not claim the federal deduction in its computation of income under the CIT.

**Corporate Tax Base 17.** The CIT tax base requires an addition for taxes measured on net income, to the extent deducted federally. MCL 206.623(1)(b). What portion of the Michigan Business Tax must be included in this add back?

**ANSWER:**
A taxpayer must add back, to the extent deducted federally, only that portion of MBT liability corresponding to the business income tax base. Taxpayers can find this number on Form 4567, MBT Annual Return.

The portion of the MBT based on gross receipts is privilege tax and not a tax on income. MCL 208.1203(2). The MBT surcharge is calculated as a "percentage of the taxpayer's tax liability" and, by its plain terms, is not calculated on a taxpayer's income. MCL 208.1281(1). Accordingly, the portion of MBT liability attributable to either the gross receipts tax base or the surcharge is not a required addition to the CIT tax base.

**Corporate Tax Base 18.** The CIT tax base requires an addition for taxes measured on net income, to the extent deducted federally. Does this add back include the Texas Gross Margins Tax?

**ANSWER:**
The Texas Gross Margins Tax is not a required addition to the CIT tax base.

## CREDITS

**Credits 1.** How should a taxpayer calculate the renaissance zone credit for purposes of the MBT and CIT comparative liability calculation of the MBT election?

**ANSWER:**
A taxpayer under the MBT election will calculate all certificated credits, including the renaissance zone credit, in accordance with the provisions of the MBT. The renaissance zone credit is calculated under MCL 208.1433. The renaissance zone credit continues under the MBT election as a certificated credit only for taxpayers with a development agreement or a qualified collaborative agreement executed or entered into before January 1, 2012. MCL 208.1107(1)(f). A taxpayer with one of these qualifying renaissance zone credits may make the election for its first tax year ending after December 31, 2011, to file and pay under the MBT. MCL 208.1500.

A taxpayer making the MBT election calculates liability as:

> (1) the taxpayer's MBT liability after application of all credits, deductions, and exemptions and any carryforward of any unused credit as prescribed in the MBT, or;
> (2) the taxpayer's liability computed under the CIT, after application of all credits, deductions, and exemptions under the CIT, less the amount of the taxpayer's certificated credits, including any unused carryforward of a certificated credit, that the taxpayer was allowed to claim for the tax year under the MBT. MCL 208.1500(4).

A taxpayer calculates all credits available to it, including the renaissance zone credit, in accordance with the provisions of the MBT, for step one of the calculation. In step two of the calculation, the taxpayer calculates its CIT liability, as though it were subject to that tax, and then reduces that liability by the amount of certificated credits that the taxpayer was allowed to use in step one. Both steps of the calculation utilize the certificated credit amount available to the taxpayer as calculated in accordance with the MBT.

Example: Consider a taxpayer with MBT liability before credits of $500 and CIT liability before credits of $750. The taxpayer entered into a qualified collaborative agreement for a renaissance zone credit before January 1, 2012. Using MCL 208.1433, the taxpayer calculates available renaissance zone credit of $1,000. For part (1) of the calculation, the taxpayer will apply $500 of the certificated credit amount to the $500 liability, resulting in an MBT liability of zero. For part (2) of the calculation, the taxpayer will apply $500 of credit (the amount the taxpayer was allowed to claim when calculating its MBT liability in step one) to the CIT liability of $750, resulting in a CIT liability after credit of $250. Because the taxpayer must pay the higher of calculations (1) and (2), the taxpayer's tax liability for the tax year is $250. The taxpayer then carries forward $500 in credit (the remaining amount of the certificated credit after determining liability).

**Credits 2.** How are existing MBT credits, or those awarded but not yet certified, handled under the CIT?

**ANSWER:**
All MBT credits, except those certificated credits defined at MCL 208.1107(1), are extinguished as of January 1, 2012, for CIT purposes. However, businesses that have been approved to

receive, have received, or have been assigned certain certificated credits may elect to file a return and pay the tax imposed by the MBT in lieu of the CIT until the certificated credits are exhausted or extinguished. Certificated credits that may permit a business this MBT election include the following:

- Brownfield Rehabilitation Credit under MCL 208.1437;
- Historic Preservation Credit under MCL 208.1435;
- MEGA Photovoltaic Technology Credit under MCL 208.1430;
- MEGA Employment Credit under MCL 208.1431;
- Anchor Company Payroll Credit under MCL 208.1431a;
- MEGA Federal Contract Credit under MCL 208.1431b;
- Anchor Company Taxable Value Credit under MCL 208.1431c;
- MEGA Poly-Silicon Energy Cost Credit under MCL 208.1432;
- Battery Credits under MCL 208.1434;
- Hybrid Technology Research and Development Credit under MCL 208.1450;
- Certain Renaissance Zone Credits under MCL 208.1433;
- Film Production Credit under MCL 208.1455;
- Film Infrastructure Credit under MCL 208.1457;
- Farmland Preservation Credit under MCL 324.36109;
- Tax Voucher Certificates under MCL 208.1419 or the Michigan Early Stage Venture Investment Act of 2003; and
- NASCAR Credits under MCL 208.1409.

Except for taxpayers holding qualifying historic preservation or brownfield certificated credits, a taxpayer is required to make the election to continue under the MBT "for the taxpayer's first tax year ending after December 31, 2011." MCL 208.1500(1). A taxpayer holding a pre-approval letter for a brownfield credit or a pre-approval letter, approved rehabilitation plan, or approved enhanced or special high community impact plan for a historic preservation credit may elect to pay under the MBT in "the tax year in which that certificated credit may be claimed." MCL 208.1500(2)-(3). Or, in the case of a multi-phase project for either of these credits, a taxpayer may elect to pay under the MBT in each tax year the credit is payable; except that a taxpayer with a multi-phase brownfield credit under MCL 208.1437(10) must continue to file and pay under the MBT until the certificated credit, and any carryforward of the credit, are used up, once the election is made. MCL 208.1510(2), (3).

**Credits 3.** How does a taxpayer with a qualifying certificated credit under MCL 208.1107(1) make the election to remain under the MBT? When must the election be made?

**ANSWER:**
A taxpayer with a qualifying certificated credit, as defined at MCL 208.1107(1), will make the election to continue filing under the MBT by filing an MBT return.

Except for taxpayers holding either historic preservation or brownfield certificated credits, section MCL 208.1500 requires a taxpayer to make the election "for the taxpayer's first tax year ending after December 31, 2011." That section further provides that, once the election is made, the taxpayer is required to continue to file and pay tax under the MBT until the certificated credit and carryforward of that credit are used up. MCL 208.1500(1). Therefore, most taxpayers making the election will have to make the election for the first tax year of the CIT and will not be permitted to change the election.

Taxpayers with a pre-approval letter for a brownfield credit or a pre-approval letter, approved rehabilitation plan, or approved enhanced or special high community impact plan for a historic preservation credit have greater flexibility. A taxpayer with one of these certificated credits may elect to pay under the MBT in "the tax year in which that certificated credit may be claimed." MCL 208.1500(2)-(3). Or, in the case of a multi-phase project for either of these credits, a taxpayer may elect to claim the amount payable in the tax year; except that a taxpayer with a multi-phase brownfield credit under MCL 208.1437(10) must continue to file and pay under the MBT until the certificated credit, and any carryforward of the credit, are used up, once the election is made. MCL 208.1510(2), (3). These taxpayers may be CIT taxpayers for tax years in which a credit is not available.

**Credits 4.** If a taxpayer has a brownfield or qualifying historic preservation credit before December 31, 2011, and elects to claim the credit as refundable for 90% of the amount on the certificate on January 31, 2012, has the taxpayer made the election to continue filing under the MBT? Is the taxpayer still required to file an annual return at the end of its 2012 tax year?

**ANSWER:**
**This FAQ currently does not reflect changes in the law. It is being reviewed and is expected to be revised in the coming months.**

Yes, the taxpayer has made the MBT election by claiming the refund and must file an annual MBT return at the end of its tax year. Section 510(1) states that a taxpayer with

> a certificate of completion, assignment certificate, or component completion certificate [for a brownfield credit] or a certificate of completed rehabilitation, assignment certificate, or reassignment certificate [for an historic preservation credit] … may elect to claim a refundable credit for 90% of the amount of that certificate or any carryforward remaining from that certificate, whichever is less.

The taxpayer is permitted to file the claim for refund as early as January 1, 2012, and is not required to wait until the end of its tax year. MCL 208.1510(1). The Department must pay the refund within 60 days of receiving the taxpayer's claim. Id. The act of requesting the refund makes the election for the taxpayer to continue under the MBT. Therefore, the taxpayer remains subject to all provisions of the MBT and nothing in the statute excuses the taxpayer from the general requirement to file an annual return (provided that the taxpayer's gross receipts exceed the filing threshold). MCL 208.1505(1).

This answer also applies to a taxpayer that elects to claim the balance of a special high community impact historic preservation credit at 86%. MCL 208.1510(2).

**Credits 5.** If a member of a UBG has a qualifying certificated credit and elects to continue filing under the MBT in order to use the credit, does that election require any flow-through entities that would be included in the UBG to file a combined return with that member?

**ANSWER:**
Yes. Under section MCL 208.1117(5)(b), beginning January 1, 2012, taxpayer means:

> A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under [the MBT], if any.

This same section further provides:

> If a person or unitary business group that elects under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act is part of a unitary business group as defined under [the MBT], the unitary business group as defined under [the MBT] shall file the return and pay the tax, if any, under [the MBT].

Additionally, MCL 208.1500(1) and (2) state that if a person awarded a certificated credit "is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under [the MBT] and claim the certificated credit." Finally, the statute explicitly provides that all members of a unitary business group making the election must be included on the combined return. MCL 208.1500(1). These sections make clear that if any member of the group has a certificated credit it wishes to use then the group must make the election as a whole to continue to be subject to the MBT. The election will be made by the designated member on behalf of the group.

In short, the group is not electing only to participate in the credit portion of the MBT, but is electing to be an MBT taxpayer with all that entails.

Example: For the 2011 tax year UBG A has three members; member one is a corporation and is the designated member, member two is an S-Corporation and member three is an LLC taxed as a partnership. On December 1, 2011, member one is awarded a qualifying renaissance zone credit. In order to use that credit, member one must file an MBT return for the group's first tax year ending after December 31, 2011. Assuming no change in ownership or control for this example, members one, two and three must be included on that MBT return.

**Credits 6.** The calculation of liability under the MBT requires a taxpayer to compare its MBT liability to a liability based on its CIT. How does a UBG perform this calculation? Must the comparison calculation include all members of the group, including the flow-through entities that are otherwise not taxable under the CIT?

**ANSWER:**

**The text that has been stricken was deleted on August 20, 2015.**

Yes. MCL 208.1500(4) states that "a taxpayer's tax liability under this act" shall be the greater of

> (1) the taxpayer's MBT liability "after application of all credits, deductions, and exemptions and any carryforward of any unused credit as prescribed in this act", or;
> (2) the taxpayer's liability computed under the CIT, after application of all credits, deductions, and exemptions under the CIT, *as if the taxpayer were subject to the CIT*, less the amount of the taxpayer's certificated credits, including any unused carryforward of a certificated credit that the taxpayer was allowed to claim for the tax year under the MBT.

MCL 208.1117(5) defines "taxpayer" to include a UBG. The definition of unitary business group in the MBT is unchanged. Further, the statute explicitly provides that all members of a unitary

business group making the election must be included on the combined return. MCL 208.1500(1). Thus, all members of the UBG must be included in the calculation of liability under MCL 208.1500.

Example: Assume a UBG with three members, one of which is a partnership and has a renaissance zone credit of $1,000. The group, meaning all three members, calculates its MBT liability under method (1) above to be $500 before application of the renaissance zone credit. This means the group may use $500 of credit for an MBT liability of zero. Then, the group performs the CIT calculation under method (2) and reaches a CIT liability of $750 before credit. From calculation (1) we know that the group may use $500 of credit. Therefore, the hypothetical CIT liability of the group is reduced to $250. Calculation (2) produces the higher liability. The group will pay this amount ~~and carry forward $500 in renaissance zone credit to the next tax year~~.

**Credits 7.** How does a taxpayer with a certificated film production or film infrastructure credit issued before December 31, 2011, claim the credit for tax years beginning after January 1, 2012?

**ANSWER:**
In order to claim a certificated film production or film infrastructure credit issued before December 31, 2011, a taxpayer must make an election to continue filing under the MBT "for the taxpayer's first tax year ending after December 31, 2011." MCL 208.1500. The taxpayer makes the election by filing an MBT return. Once the election is made, the taxpayer is required to continue to file and pay tax under the MBT until the certificated credit and carryforward of that credit are used up. MCL 208.1500(1).

**Credits 8.** How does a Professional Employer Organization, as defined by MCL 206.609(2), determine compensation for the small business alternative credit disqualifier in accordance with MCL 206.671?

**ANSWER:**
A PEO is disqualified based on amounts paid to its own officers and employees. MCL 206.671(8). Individuals leased to a PEO's client are not considered for calculating the PEO's disqualifiers. Under MCL 206.671, an entity is disqualified from taking the small business alternative credit if more than $180,000 is paid to a shareholder or officer. The term "shareholder" is defined as a person who owns outstanding stock in a corporation or a person that is a member of a business entity which files as a corporation at the federal level. MCL 206.609(5). Similarly, the term "officer" is defined to mean an officer of a corporation, including a person performing duties similar to an officer. MCL 206.617(10)(g).

**Credits 9.** Who is considered an officer for purposes of the Small Business Alternative Credit under MCL 206.671?

**ANSWER:**
Under MCL 206.671, an entity is disqualified from taking the small business alternative credit if more than $180,000 is paid to a shareholder or officer. "Officer" means an officer of a corporation, including a chairperson of the board; the president, vice president, treasurer, or secretary of the corporation or board; or any person performing similar duties. MCL 206.617(10)(g).

"Corporation" means a person "that is required or has elected to file as a C corporation as defined under section 1361(a)(2) and section 7701(a)(3) of the [IRC]." MCL 206.605(1).

**Credits 10.** How is stock ownership determined with respect to Small Business Alternative Credit disqualifiers? Will the attribution rules used for the MBT and found in IRC section 318 apply when computing the active shareholder rules under the CIT?

**ANSWER:**
Under MCL 206.671, an entity is disqualified from taking the small business alternative credit if shareholder compensation and share of adjusted business income (minus the loss adjustment) exceed $180,000. The term "shareholder" is defined as a person who owns outstanding stock in a corporation or a person that is a member of a business entity which files as a corporation at the federal level. The credit provides that an active shareholder's share of business income shall not be attributed to another active shareholder. MCL 206.671(2).

An "active shareholder" is a shareholder who receives, in any combination, at least $10,000 in compensation, directors' fees, or dividends from the business, and who owns at least 5% of the outstanding stock or other ownership interest. MCL 206.671(10)(a). An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the Internal Revenue Code. MCL 206.609(5).

The CIT definitions of "shareholder" and "active shareholder" are identical to the definitions under the MBT. Therefore, the attribution rules for stock ownership and for determining "active shareholders" will be applied to the Small Business Alternative Credit in a similar manner as they were under the MBT.

**Credits 11.** Can a taxpayer use data from its MBT tax periods in calculating the loss adjustment for purposes of determining eligibility for the small business alternative credit under MCL 206.671?

**ANSWER:**
Yes, the Department will allow the use of a "loss adjustment" from a period prior to the start of the CIT for purposes of determining qualification for the small business alternative credit under MCL 206.671. In computing eligibility for the credit, the CIT defines "loss adjustment" to mean, in relevant part, "the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit under this section is being determined." MCL 206.671(10)(f). Therefore, a taxpayer may utilize data for the respective tax years under the MBT to calculate eligibility for the credit for CIT tax years. A taxpayer may only use a loss adjustment amount from a year in which it qualified for the credit.

In the case of a unitary business group, members of the group may contribute separate year loss adjustment history which may be applied against the credit disqualifiers on a "first-in- first-out" basis. However, the UBG is prohibited from using a loss adjustment from a year in which the members and/or group did not qualify for the credit.

**Credits 12.** How are the small business alternative credit disqualifiers under the CIT calculated for a part-year shareholder?

**ANSWER:**
A taxpayer will be disqualified from taking the small business alternative credit if a shareholder receives more than $180,000 in compensation or if the sum of the shareholder's share of

business income and compensation exceed this amount. MCL 206.671(1). The term "shareholder" is defined as a person who owns outstanding stock in a corporation or a person that is a member of a business entity which files as a corporation at the federal level. MCL 206.609(5). These disqualifiers are computed for the tax year. Id. Thus, a part-year shareholder will need to prorate its stock ownership to calculate the disqualifiers when reporting for a full tax year.

For the compensation disqualifier, the part-year shareholder must annualize compensation for the length of time spent as a shareholder to reach what compensation would have been for the entire year. The annualized amount is then measured against the compensation disqualifier. To annualize, the part-year shareholder will take compensation for the period that it was a shareholder, multiply by 12, and then divide that result by the number of months as a shareholder.

The business income disqualifier is calculated by multiplying the percentage of ownership by the business income (including carryback or carryover of a net operating loss or capital loss to the extent deducted in arriving at federal taxable income and net of the loss adjustment.) For a part-year shareholder this means that the shareholder must prorate its percentage of ownership for the year in order to determine its proper annual percentage of ownership and share of business income for the tax year. To prorate, the part-year shareholder will divide the number of shares it held for the year by the total shares, then multiply the result by a fraction, the numerator of which is the number of months that the part-year shareholder was a shareholder and the denominator of which is 12. The result will be the part-year shareholder's percentage of ownership for the tax year. This percentage of ownership is then applied to the adjusted business income of the taxpayer to determine the part-year shareholder's share of business income. Finally, the resulting share of business income is added to the part-year shareholder's annualized compensation.

The following examples illustrate the calculations:

1) Corporation A has 50,000 shares of outstanding stock for the 2013 calendar year and business income of $100,000 for the year. Individual C obtains 15,000 shares on July 1, 2013. C also received $45,000 in compensation for July through December. Corporation A must compute the disqualifiers for the 2013 tax year.

Compensation: ($45,000 x 12) /6 = $90,000
Percentage of Ownership: 15,000/50,000 = 30%; 30% x 6/12 = 15%
Share of Business Income: 15% x $100,000 = $15,000
Compensation combined with share of business income: $90,000 + $15,000 = $105,000
Corporation A is not disqualified on C's compensation alone, which is $90,000 for the tax year. Nor is it disqualified by compensation plus C's share of business income which equals $105,000 for the tax year. This part-year shareholder does not cause the taxpayer to be disqualified from the small business alternative credit.

2) Next, consider a taxpayer with 100,000 shares of outstanding stock and $300,000 in business income for the 2013 calendar year. Its employee, X, becomes a shareholder on November 1, 2013, obtaining 20,000 shares. X is paid $25,000 in compensation for November through December and is considered an active shareholder.

Compensation: ($25,000 x 12) /2 = $150,000
Percentage of Ownership: 20,000/100,000 = 20%; 20% x 2/12 = 3.3%

Share of Business Income: 3.3% x $300,000 = $9,900
Compensation combined with share of business income: $150,000 + $9,900 = $159,900.
This part-year shareholder's combined compensation and share of business income do not cause the taxpayer to be disqualified.

**Credits 13.** Will MBT credit carryforwards carry over to the Corporate Income Tax?

**ANSWER:**
No. MBT credit carryforwards will not be useable under the CIT. The only taxpayers that will be able to use any type of MBT credit carryforward are those taxpayers with the right to elect to remain taxable under the MBT. Beginning January 1, 2012, those taxpayers will be:

> a) a person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, and that elects under section 500 to file a return and pay the tax imposed under this act, if any.
>
> b) a person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act, if any. MLC 208.1117(5), as amended by 2011 PA 39.

In other words, only those persons or unitary business groups that have a certificated credit as defined in MCL 208.1107(1) may elect to be subject to the MBT and continue to use MBT credit carryforwards.

**Credits 14.** Do I need to have a certificated credit in order to continue filing MBT or do I have an option of filing MBT if it will result in a lower tax liability for me than what CIT will compute?

**ANSWER:**
A person must have a certificated credit in order to continue filing under the MBT. In other words, only those persons or unitary business groups that have a certificated credit as defined at MCL 208.1107(1) may elect to be subject to the MBT in lieu of no liability (for the reason that the person is not subject to the CIT) or the CIT.

**Credits 15.** If a taxpayer elects to file under the MBT because it holds a qualifying certificated credit but a later audit determines that the taxpayer was not entitled to a credit, is the taxpayer required to amend to file under the CIT for those years?

**ANSWER:**
Yes. If a taxpayer elected to file under the MBT and an IRS or Michigan audit determines that the taxpayer was not in fact entitled to the certificated credit or the credit was exhausted, the election to file under the MBT terminates because the taxpayer had no right to make the election. The taxpayer will then file under the CIT if required to do so. In such cases, a taxpayer may have to file CIT returns for any previous MBT returns filed after the tax year adjusted by the audit.

**Credits 16.** How is liability calculated for a taxpayer with a qualifying certificated credit that elects to remain taxed under the MBT?

**ANSWER:**
Section 500 of the MBT provides that a taxpayer with a certificated credit may elect to file and pay under the MBT in order to claim the certificated credit or any unused carryforward. The electing taxpayer must continue to file and pay the tax under the MBT until the credit and any carryforward from the credit are used up. MCL 208.1500(1). Subsection 500(4) of the MBT describes that the electing taxpayer's liability under the MBT act is the greater of:

> (1) the taxpayer's MBT liability "after application of all credits, deductions, and exemptions and any carryforward of any unused credit as prescribed in this act," or;
> (2) the taxpayer's liability computed under the CIT, after application of all credits, deductions, and exemptions under the CIT, "less the amount of the taxpayer's certificated credits, including any unused carryforward of a certificated credit, that the taxpayer was allowed to claim for the tax year" under the MBT.

Subsection 500(4)(b)(ii) makes clear that the taxpayer, in calculating its alternative CIT liability amount, shall not include any nonrefundable credit to the extent that credit exceeds the taxpayer's liability, and any nonrefundable credit remaining after liability is determined may be carried forward to the following tax years.

Example: Consider a taxpayer with MBT liability (before credit) of $500 and available nonrefundable credit of $1,000. For part (1) of the calculation the taxpayer will apply $500 of the certificated credit amount to the $500 liability, resulting in an MBT liability of zero. For part (2) of the calculation, assume that the taxpayer has CIT liability of $750 before credit. The taxpayer will apply $500 of credit (the amount the taxpayer was allowed to claim when calculating its MBT liability under subsection 500(4)(a)) to the *pro forma* CIT liability of $750, resulting in a *pro forma* CIT liability after credit of $250. Because the taxpayer must pay the higher of calculations (1) and (2), the taxpayer's tax liability for the tax year is $250. The taxpayer then carries forward $500 in credit (the remaining amount of the certificated credit after determining liability).

**Credits 17.** If a taxpayer calculates a negative tax due after credit (in other words, a refund) does the taxpayer file using the lesser refund?

**ANSWER:**
Yes. MCL 208.1500(4) states that a taxpayer's tax liability under [the MBT] shall be "the greater of" (1) the determined MBT liability after application of all credits, deductions, and exemptions and any unused credit carryforwards, or (2) the determined CIT liability after all credits, deductions, and exemptions under the CIT, less the amount of the certificated credits, including unused certificated credit carryforwards, the taxpayer was allowed to claim under the MBT.

For example: Consider a taxpayer with a refundable credit of $1000 and tax liability before credits in MBT of $300; this would result in a $700 refund. Part (2) of the calculation, the hypothetical CIT liability, computes to $100; resulting in a $900 potential refund. Because, negative $700 is a greater tax liability than negative $900, the taxpayer will be entitled to a $700 refund.

**Credits 18.** If a taxpayer electing to file under the MBT calculates a negative MBT liability and a CIT of zero under MCL 208.1500(4), is the taxpayer required to file MBT even when CIT is mathematically a higher amount?

**ANSWER:**
Yes. MCL 208.1500(4) states that "a taxpayer's tax liability under [the MBT] shall be the greater of (1) the determined MBT liability after application of all credits, deductions, and exemptions and any unused credit carryforwards, or (2) the determined CIT liability after all credits, deductions, and exemptions under the CIT, less the amount of the certificated credits, including unused certificated credit carryforwards, the taxpayer was allowed to claim under the MBT."

The taxpayer would still file under the MBT, but the taxpayer's determined MBT tax liability for the tax year would be that calculated as the CIT tax liability of zero, since the CIT liability of zero is greater than the MBT determined amount. The taxpayer is still filing under the MBT Act with an MBT return and its MBT liability would be zero.

**Credits 19.** If a taxpayer holds a certificated credit that will not be immediately available (for example, a battery credit in 2015) must the taxpayer file under the MBT for 2012-2014 in order to use the credit?

**ANSWER:**
Yes. MCL 206.680 and 208.1500 provide that, for certificated credits other than the historic preservation credit and the brownfield rehabilitation credit, a taxpayer that has been approved to receive, has received, or has been assigned a certificated credit must elect to file a return and pay the tax imposed by the MBT for the taxpayer's first tax year ending after December 31, 2011. MCL 208.1500 requires a taxpayer electing to file an MBT return to file an MBT return for each tax year thereafter until the certificated credit and any carryforward from that credit are used up.

Therefore, the taxpayer awarded the battery credit must make an irrevocable election in the first tax year ending after December 31, 2011, and file and pay under the MBT if it wants to claim the certificated credit, even if the taxpayer may not be able claim the credit until years after the election year. Once the taxpayer elects to file under the MBT, it must calculate both its MBT liability and its *pro forma* CIT tax liability each year it is required to file under the MBT, until the certificated credit and any carryforward are used up. MCL 208.1500(4).

**Credits 20.** How is the Small Business Alternative Credit under MCL 206.671 calculated by a taxpayer that is a unitary business group? How do the disqualifiers and percentage reducers work?

**ANSWER:**
The Small Business Alternative Credit is available to any taxpayer (other than insurance companies under Chapter 12 and financial institutions under Chapter 13) with gross receipts that do not exceed $20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed $1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index and subject to certain additional disqualifiers. MCL 206.671(1). The taxpayer will also be disqualified if an officer or shareholder receives more than $180,000.00 in compensation or compensation plus share of business income exceeds that amount (allocated income disqualifier). MCL 206.671(1)(a).

"Taxpayer" is defined to include a unitary business group. MCL 206.611(5). The gross receipts and adjusted business income thresholds are those of the unitary business group (UBG) and are calculated at the group level. The allocated income disqualifier is calculated for an officer or shareholder using all amounts paid or allocable to the officer or shareholder by all entity

members of the unitary business group. MCL 206.671(2)(B). The reduction percentages of the credit, which may reduce but not completely disqualify a taxpayer from the credit, are calculated in the same manner.

A disqualifier or reduction percentage applies to the entire UBG if such applies to any one member of the group. MCL 206.671(9). This credit is calculated without regard to intercompany eliminations.

Example X, a taxpayer that is a unitary business group is disqualified from taking the credit if that unitary business group includes a member that is an LLC taxed as a corporation and any one shareholder or any one member of the LLC receives more than $180,000.00 in shareholder compensation. The shareholder's compensation is calculated by combining all compensation paid to the shareholder by all members of the UBG.

Example Y, the credit is reduced by 20% if the taxpayer is a unitary business group that includes a member that is a corporation and the compensation and director's fees of an officer of that member corporation exceed $160,000.00 but are less than $165,000.00, calculated with compensation and director's fees paid by all members of the group.

**Credits 21.** When must a brownfield or historic preservation credit assignment be in place in order for the assignee to make the election to remain under the MBT?

**ANSWER:**
Beginning January 1, 2012, an MBT taxpayer is either of the following:

> (a) A person or [UBG] that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under part 2 of the income tax act … and that elects under section 500 to file a return and pay the tax imposed under this act, if any.
>
> (b) A person or [UBG] that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, … to file a return and pay the tax imposed under this act, if any. [MCL 208.1117(5)]

Thus, an assignee may be a taxpayer under the MBT so long as assignment is completed in accordance with the appropriate credit section of the MBT for the brownfield (section 437) or historic preservation (section 435) credits, and the taxpayer elects to file and pay the MBT.

For a brownfield credit, other than a multi-phase credit, assignment must be made in the same tax year in which a certificate of completion is issued. For a multiphase credit, the credit may be assigned by component, once a component completion certificate is issued. For the historic preservation credit, assignment is made in the year in which the certificate of completed rehabilitation is issued. If a proper assignment is in place, the assignee may elect to remain under the MBT in accordance with the requirements of the certificated credit assigned, and the process of doing so varies by credit.

The statute provides for both non-accelerated (traditional) and accelerated brownfield and historic preservation certificated credits. An assignee with a non-accelerated brownfield or historic preservation certificated credit may make the election in the year in which a credit is available and is permitted to remain taxable under the MBT until the qualifying credit and any

carryforward of that credit are extinguished. An assignee with a multiphase brownfield credit under MCL 208.1437(10) that makes the election is required to continue to file and pay the MBT until the certificated credit is complete and the credit is used up.

For an accelerated brownfield or historic preservation certificated credit, the certificate of completion, assignment certificate, or component completion certificate (for a brownfield credit), or the certificate of completed rehabilitation, assignment certificate, or reassignment certificate (for an historic preservation credit) must be issued for a tax year beginning after December 31, 2011. An accelerated credit may be claimed at any point in the tax year, or with the assignee's annual return.

## INSURANCE COMPANIES/FINANCIAL INSTITUTIONS

**Insurance Companies/Financial Institutions 1.** Are mortgage companies financial institutions under the Corporate Income Tax?

**ANSWER:**
Possibly. MCL 206.651(f) defines a financial institution as:

> (i) A bank holding company, a national bank, a state chartered bank, a state chartered savings bank, a federally chartered savings association, or a federally chartered farm credit system institution.
>
> (ii) Any entity, other than an entity subject to the tax imposed under chapter 12, who is directly or indirectly owned by an entity described in subparagraph (*i*) and is a member of the unitary business group.
>
> (iii) A unitary business group of entities described in subparagraph (*i*) or (*ii*), or both.

Thus, even though a mortgage company is not expressly defined as a financial institution, it will be considered a financial institution if it is owned directly or indirectly by a financial institution and is a member of the unitary business group of which the parent financial institution is also a member.

**Insurance Companies/Financial Institutions 2.** Does the $100 liability threshold apply to insurance companies and financial institutions?

**ANSWER:**
Yes. Section 685 of 2011 PA 38 provides for a filing threshold and a liability threshold, stating:

> a taxpayer, other than a taxpayer subject to the tax imposed under chapter 12 or 13, whose apportioned or allocated gross receipts are less than $350,000.00 does not need to file a return or pay the tax imposed under this part**…** A taxpayer whose tax liability under this part is less than or equal to $100.00 does not need to file a return or pay the tax imposed under this part.

This section clearly excludes insurance companies and financial institutions from the $350,000 filing threshold but does not similarly limit the liability threshold. Therefore, an insurance company or financial institution with an annual liability of $100 or less is not required to file a CIT annual return or pay the tax.

**Insurance Companies/Financial Institutions 3.** Do nonresident financial institutions located outside Michigan whose only activity in Michigan consists of an ownership interest in loans secured in whole or in part by real property located in Michigan have nexus under the CIT?

**ANSWER:**
A nonresident financial institution located outside Michigan whose only activity in Michigan consists of an ownership interest in loans secured in whole or in part by mortgages on real property located in Michigan will not have physical presence nexus under the CIT. However, nexus is determined by evaluating all facts and circumstances. To the extent that the nonresident financial institution, or its employee, agent, or independent contractor acting in a representative capacity, has physical presence in Michigan for more than one day, nexus is

established. Additionally, nexus exists if the nonresident financial institution actively solicits sales in Michigan and has Michigan gross receipts of $350,000 or more, or if the taxpayer has an ownership interest or a beneficial interest in a flow-through entity, directly, or indirectly through 1 or more other flow-through entities, that has substantial nexus in this state. MCL 206.621.

**Insurance Companies/Financial Institutions 4.** The CIT franchise tax provides financial institutions with a tax base deduction for "the average daily book value of United States obligations and Michigan obligations." MCL 206.655(1). Does "average daily book value" include the premiums and discounts for U.S. obligations?

**ANSWER:**
Yes, where the premiums and discounts are reflected in the book value of the U.S. obligations.

The CIT defines United States obligations as:

> all obligations of the United States exempt from taxation under 31 USC 3124(a) or exempt under the United States constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from state or local taxation under the United States constitution or any statute of the United States. MCL 206.651(s).

Michigan obligation is defined as:

> a bond, note, or other obligation issued by a governmental unit described in section 3 of the shared credit rating act, 1985 PA 227, MCL 141.1053. MCL 206.651(k).

"Average daily book value" is not a defined term in the CIT or the Federal IRC. "Book value" is commonly understood to be the value at which an asset is carried on the taxpayer's balance sheet. Black's Law Dictionary, 8th ed. Thus, in order to reach the average daily book value of U.S. obligations a financial institution will calculate the daily value of the obligation as it appears on the institution's balance sheet and average this value over the days in the financial institution's tax year. If the book value of the U.S. obligation is affected by premiums and discounts on the institution's balance sheet then these amounts will also be included in the computation of average daily book value for purpose of the tax base calculation.

**Insurance Companies/Financial Institutions 5.** Financial Institutions are required to calculate the net capital tax base using a five year look-back period to find the average of net equity and certain deductions. Should a CIT taxpayer look to years under the MBT in order to calculate the 5 year period?

**ANSWER:**
Yes. MCL 206.655 requires a financial institution to compute its net capital tax base "by adding the financial institution's net capital as of the close of the current tax year and preceding 4 tax years and dividing the resulting sum by 5." This look-back period will require taxpayers to use data from MBT years for the first 4 tax years under the CIT.

**Insurance Companies/Financial Institutions 6.** **(Rescinded beginning with tax year 2017)**
Financial Institutions must calculate the net capital tax base five year look-back period to find the average of net equity and certain deductions. The CIT provides guidance in the case of a

merger or acquisition of a financial institution for future tax years only. How does a financial institution that has combined with another financial institution by acquisition calculate the five year averaging period for the year prior to an acquisition?

**ANSWER:**
The net capital of each of the combined entities should be included separately in the tax base look back period for years prior to the acquisition. The sum of these separate calculations should then be combined to reach net capital of the surviving financial institution entity. Net capital from the look back period for both the surviving and acquired entities should be included in the calculation of the tax base.

**Insurance Companies/Financial Institutions 7.** Financial Institutions pay tax under the CIT on net capital. Computation of this tax base requires a financial institution to average the past five years of net equity with certain deductions. How does a unitary business group of financial institutions perform this calculation for entity members that have not been a part of the UBG for five years but became members of the group sometime within the five year look-back period?

**ANSWER:**
The term "financial institution" includes a unitary business group of financial institutions. MCL 206.651(f). A financial institution must compute the current tax year tax base by taking a five year average of net capital. MCL 206.655(2). For a UBG of financial institutions each member entity of the group must compute net capital, using the five year average, individually. The group then sums the results of the entities' calculations to reach net capital for the group. Once a member entity is considered a part of a UBG of financial institutions, it must compute its individual net equity in accordance with this requirement. This means that an entity that was newly added to the UBG will compute its net capital by using the average of five years of net capital and then adding this result to the results of the other member entities of the group. A shorter look-back period may apply if the new UBG member has not itself been in existence for five years. MCL 206.655(2).

**Insurance Companies/Financial Institutions 8.** How must a foreign insurer file for purposes of the retaliatory tax when the insurer's state of incorporation requires unitary filing?

**ANSWER:**
A foreign insurer must calculate its burden for purposes of the Michigan retaliatory tax according to the laws of its state of incorporation. If the insurer's state of incorporation requires filing on a unitary basis, the insurer should compute its retaliatory tax burden using this method.

The retaliatory tax is calculated by first computing the burden to the foreign insurer doing business in Michigan and then computing the burden that would be imposed upon a hypothetical Michigan insurer as if it was performing the identical business activity in the foreign state. When making this calculation it should be assumed that the hypothetical Michigan insurer would calculate its liability in the same manner required of the foreign insurer.

**Insurance Companies/Financial Institutions 9.** Does a unitary group of insurance companies have to file a combined CIT return?

**ANSWER:**
No. Insurance companies are not specifically excluded from the definition of a unitary business group, found at MCL 206.611(6), and thus may constitute a unitary business group. In practice, however, there is no practical effect of this possibility. The tax on authorized insurance

companies is equal to 1.25% of gross direct premiums written on property or risk located or residing in Michigan. MCL 206.635(2). Because the tax is only on property or risk located in Michigan there will be no traditional apportionment for insurance companies. Thus, even if an authorized insurance company is unitary with another authorized insurance company under MCL 206.611(6), this will have no effect in calculating the tax. A combined return will not be necessary.

**Insurance Companies/Financial Institutions 10.** Under the CIT "insurance company" is defined as an "authorized insurer" at MCL 206.605(5). What is the meaning of "authorized insurer"? If an insurance company is not an "authorized insurer" how is it taxed under the CIT? If a non-nexus insurance member of a unitary business group is not an "authorized insurer" how is this member treated?

**ANSWER:**
An authorized insurer is an insurer as defined by the insurance code of 1956, 1956 PA 218, MCL 500.106, as "any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds organization, fraternal benefit society, and any other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts," which is authorized according to the insurance code at section 108. "Authorized" means "an insurer duly authorized, by a subsisting certificate of authority issued by the [insurance] commissioner, to transact insurance in this state." Thus, an insurance company under the CIT is an insurer as defined and authorized by the insurance code.

If an insurance entity does not meet these requirements, that entity is taxed as a standard taxpayer under the CIT. Likewise, a non-nexus insurance member of a unitary business group which is not an "authorized insurer" will be treated as a standard taxpayer and its corporate income and sales will determine the liability of the group.

The direction of MCL 206.691, that any corporate income and sales attributable to the insurance company be eliminated from the UBG return, is not applicable because the unauthorized insurance company is not "subject to the tax under chapter 12."

# UNITARY BUSINESS GROUP

**Unitary Business Group 1.** Is a foreign entity disregarded for federal income tax purposes includable in a unitary business group?

**ANSWER:**
Yes. A person that is a disregarded entity for federal income tax purposes under the IRC is classified as a disregarded entity for purposes of the CIT. In other words, it is treated as a branch or division of its owner and will be included in a UBG as part of its owner if the owner is a member of a UBG.

**Unitary Business Group 2.** How does a unitary business group register under the CIT?

**ANSWER:**
The designated member (DM) of a unitary business group must register with the Department for the CIT. "Designated member" means a member of a unitary business group that has nexus with Michigan under MCL 206.621 and that will file the combined return required under MCL 206.691 for the unitary business group. If the member that owns or controls the other members of the unitary business group has nexus with Michigan, then that controlling member must be the designated member. Otherwise, the designated member can be any member of the unitary business group with nexus. The designated member must remain the same every year unless the designated member ceases to be a member of the unitary business group or the controlling member engages in activity in Michigan that subjects that member to nexus.

If the designated member was registered under the MBT and is a C corporation, then it will automatically be registered under the CIT. If the designated member was not registered under the MBT, the designated member must register with the Department using Form 518, Complete Registration Booklet, or online at www.michigan.gov/businesstaxes.

CIT returns must be filed under the designated member's FEIN. All members of the unitary group must be listed on the group's annual return.

Estimated payments for a unitary business group under the CIT must be made by the designated member on behalf of the unitary business group. Estimates filed and paid separately by members other than the designated member will be consolidated and applied to the unitary business group by the Department, so long as the combined annual return filed by the designated member includes a complete and accurate schedule of the unitary business group members. Carryforwards generated on separately filed MBT returns will also be consolidated and applied to the CIT unitary business group based on the schedule supplied with the CIT return.

**Unitary Business Group 3.** How does a unitary business group apportion its tax base when some members of the group do not have nexus with Michigan?

**ANSWER:**
For a unitary group with business activities within and without Michigan, the tax base is apportioned to this state by multiplying it by the sales factor. MCL 206.661. The sales factor is Michigan sales divided by everywhere sales. MCL 206.663(1). Sales includes sales in this state of every person included in the unitary business group without regard to whether the person has nexus in this state. Sales between persons included in a unitary business group must be eliminated in calculating the sales factor. MCL 206.663(2).

The tax base of a unitary business group comprised of financial institutions whose business activities are subject to tax within and without Michigan are apportioned by multiplying the tax base by the gross business factor.

**Unitary Business Group 4.** How do the CIT filing thresholds apply to a unitary business group?

**ANSWER:**
A taxpayer, other than a taxpayer subject to the tax imposed under chapter 12 (Insurance Company) or 13 (Financial Institution), whose apportioned or allocated gross receipts are less than $350,000.00 does not need to file a return or pay the tax imposed under the CIT. A taxpayer, including insurance companies and financial institutions, whose tax liability is less than or equal to $100 does not need to file a return or pay the tax imposed. MCL 206.685(1). "Taxpayer" means "a corporation, insurance company, financial institution, or unitary business group, whichever is applicable under each chapter that is liable for a tax, interest, or penalty under this part." MCL 206.611(5). Thus, for corporations, so long as the apportioned or allocated gross receipts of the unitary business group equal or exceed $350,000, the unitary business group must file a return and pay the tax imposed by the CIT regardless of the gross receipts of the members of the unitary business group. Taxpayers whose tax liability is less than or equal to $100.00 do not need to file a return or pay the tax imposed. MCL 206.685(1).

For example, a unitary business group is comprised of Corporations A, B, C, D, and E, each with $80,000 in gross receipts. Assuming allocation of the tax base and no intercompany transactions, the gross receipts of the unitary business group is $400,000. Since the group's gross receipts exceeds the $350,000 filing threshold, the taxpayer is required to file a return and pay the tax imposed by the CIT if the tax liability exceeds $100.00. The fact that no member of the unitary business group would meet the filing threshold if considered individually is immaterial.

**Unitary Business Group 5.** How does a unitary business group file under the CIT when one or more of the members of the unitary business group do not have nexus with Michigan?

**ANSWER:**
A taxpayer that is a unitary business group is required to file a return with Michigan so long as any one member of the unitary business group has nexus with Michigan.

Example: Corporations X, Y, and Z form a unitary business group. Corporation X has nexus with Michigan. Therefore, the unitary business group of Corporations X, Y, and Z must file a combined return as a single taxpayer.

**Unitary Business Group 6.** How is the CIT tax base calculated for a unitary business group?

**ANSWER:**
Under MCL 206.623(3), the tax base of a unitary business group is the sum of the business income of each group member minus any income and related deductions arising from inter-group transactions. Certain additions and subtractions to business income are outlined in MCL 206.623(2) and must be made before allocation or apportionment to arrive at the unitary group's income tax base. After the tax base is allocated or apportioned, the tax base is adjusted by available business loss as set forth in MCL 206.623(4). The tax base of a financial institution unitary business group is calculated under MCL 206.655 and 206.657.

**Unitary Business Group 7.** How must a unitary business group file its combined return when members of the group have different tax years?

**ANSWER:**
A taxpayer that is a unitary business group must file a combined return under MCL 206.691 using the tax year of the designated member. The combined return of the unitary business group must include each tax year of each member whose tax year ends with or within the tax year of the designated member. For example, Taxpayer ABC is a unitary business group comprised of three corporations: Corporation A, the designated member with a calendar tax year end, and Corporations B and C with fiscal years ending March 31, and September 30, respectively. Taxpayer ABC's tax year is that of its designated member. Thus, Taxpayer ABC's tax year ends December 31. That annual return must include the tax years of Corporations B and C ending March 31 and September 30.

A taxpayer that becomes a member of a unitary business group or ceases to be a member of a unitary business group during that member's tax year must file as part of the combined return for that portion of the member's tax year during which the member was part of the unitary business group. For example, if Corporation C from the above example ceased to be a member of Taxpayer ABC on July 31, Corporation C must include October 1- July 31 on Taxpayer ABC's annual return, but file as a separate taxpayer - or as part of a new unitary taxpayer - for the period August 1 - September 30.

**Unitary Business Group 8.** What is a unitary business group?

**ANSWER:**
Generally, a unitary business group is a group of related persons whose business activities or operations are interdependent. More specifically, a unitary business group is two or more persons that satisfy both a control test and one of two relationship tests. MCL 206.611(6). A unitary business group is a single taxpayer under the CIT and must file a combined return. MCL 206.611(5), 206.691. Foreign persons, other than certain disregarded entities, and foreign operating entities cannot be part of a unitary business group.

Control Test. The control test is satisfied when one person owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of the other person or persons.

Relationship Tests. In addition to satisfying the control test, the group of persons must have business activities or operations that (1) result in a flow of value between or among persons in the group, or (2) are integrated with, are dependent upon, or contribute to each other.

Flow of value is established when members of the group demonstrate one or more of functional integration, centralized management, and economies of scale. Examples of functional integration include common programs or systems and shared information or property. Examples of centralized management include common management or directors, shared staff functions, and business decisions made for the group rather than separately by each member. Examples of economies of scale include centralized business functions and pooled benefits or insurance. Groups that commonly exhibit a flow of value include vertically or horizontally integrated businesses, conglomerates, parent companies with their wholly owned subsidiaries, and entities in the same general line of business. Flow of value must be more than the mere flow of funds arising out of passive investment.

Businesses are integrated with, are dependent upon, or contribute to each other under many of the same circumstances that establish flow of value. However, this alternate relationship test is also commonly satisfied when one entity finances the operations of another or when there exist intercompany transactions, including financing.

**Unitary Business Group 9.** Is it possible to have a unitary group of financial institutions under the CIT? How will such groups file a combined return?

**ANSWER:**
Yes, under MCL 206.651(f)(i) a "financial institution" is defined as:

> A bank holding company, a national bank, a state chartered bank, an office of thrift supervision chartered bank or thrift institution, a savings and loan holding company other than a diversified savings and loan holding company as defined in 12 USC 1467a(a)(F), or a federally chartered farm credit system institution.

A "financial institution" includes any entity, other than an entity subject to the tax imposed under chapter 12 (insurance company), that is directly or indirectly owned by an entity described in subparagraph (i) and is a member of the unitary business group. MCL 206.651(f)(ii). This includes any disregarded entity owned by the financial institution. MCL 206.699. A unitary business group of financial institutions is permitted by definition. MCL 206.651(f)(iii).

Thus, if a financial institution or its subsidiary satisfies the control test and one of the two relationship tests outlined in MCL 206.611(6) with another financial institution and its subsidiaries, the unitary business group will file a combined return. MCL 206.691. A unitary business group of financial institutions will eliminate inter-group gross business when calculating the gross business factor. MCL 206.657(4).

**Unitary Business Group 10.** With respect to a unitary business group, what is the liability of the individual entities that make up the group for payment of the tax? If payment is not made, which member will be charged with penalties and interest?

**ANSWER:**
Although the designated member is responsible for filing the return and remitting payments, any CIT liability belongs to the "taxpayer," i.e., the unitary business group, and not merely to the designated member. Accordingly, if the group's CIT liability is not paid, the Department may look to each member of the unitary business group that has nexus with Michigan to collect the tax that is due, as well as any penalties and interest that may be assessed. In other words, each member of a unitary business group is jointly and severally liable for any CIT assessment, and the Department may pursue any or all such members to satisfy the entirety of the assessment. Joint and several liability means that all members of the unitary business group with nexus with Michigan are collectively and individually liable for the full amount of the group's tax liability.

**Unitary Business Group 11.** If a taxpayer that is a unitary business group has a business loss carry forward under MCL 206.623(4), what happens to the business loss carry forward if membership in the unitary business group changes?

**ANSWER:**
When the membership of a taxpayer that is a unitary business group changes, the business loss carryforward of the unitary business group is divided among the unitary business group and the

departing members in proportion to the losses the members would have generated had each member filed separately. Specifically, the portion of the business loss carryforward of a taxpayer that is a unitary business group attributable to a departing member is an amount equal to the business loss carryforward of the unitary business group multiplied by a fraction, the numerator of which is what would have been the business loss of that member had that member filed a separate return, and the denominator of which is the sum of what would have been the separate business losses of all members of the group in that year having business losses if those members filed separate returns.

Example. Taxpayer LMNOP is a unitary business group comprised of Corporations L, M, N, O, and P. The 2012 tax year generated an apportioned business loss of $100 to be carried forward to the 2013 tax year. However, due to a change in ownership, Corporation P is not part of the unitary business group for the 2013 tax year. If each member calculated their tax base on a separate basis for 2012, only Corporations N, O, and P showed losses of 50, 70, and 30 respectively. P gets a business loss carryforward of $20 [(30/(50+70+30))*100) for the 2013 tax year. Taxpayer LMNO retains a business loss carryforward of $80.

**Unitary Business Group 12.** At what point in time must two entities meet the test for being members of a unitary business group?

**ANSWER:**
A unitary business group is comprised of two or more U.S. persons that satisfy both a control test and one of two relationship tests. MCL 206.611(6).

There is no annual date on which members must meet the requirements of a unitary business group to be a unitary business group. Rather, a person becomes a member of a unitary business group whenever both the control test and one of the two relationship tests are met and it remains a member of that unitary business group so long as the control test and one of the two relationship tests continue to be met. Conversely, a member of a unitary business group that fails either the control test or the relationship tests may no longer be included in the unitary business group.

Any person that becomes a member of a unitary business group or ceases to be a member of a unitary business group during that member's tax year must file as part of the combined return for that portion of the member's tax year during which the member was part of the unitary business group. For example, Taxpayer ABC is a unitary business group comprised of three corporations: Corporation A, the designated member with a calendar tax year, and Corporations B and C with fiscal years ending March 31, and September 30, respectively. Taxpayer ABC's tax year is that of its designated member. Thus, Taxpayer ABC's tax year ends December 31, its annual return is due April 30, and that annual return must include the tax years of Corporations B and C ending March 31, and September 30, respectively. If Corporation C ceased to be a member of Taxpayer ABC on July 31, Corporation C must include October 1-July 31 on Taxpayer ABC's annual return, but file as a separate taxpayer - or as part of a new unitary taxpayer - for the period August 1 - September 30.

**Unitary Business Group 13.** Are foreign entities includable in a unitary business group?

**ANSWER:**
No. Unitary business groups are limited to U.S. persons other than foreign operating entities. However, a foreign disregarded subsidiary of a U.S. person may be included in a unitary business group as a branch or division of its owner.

**Unitary Business Group 14.** Can a UBG with one or more fiscal year members make the election between the actual and annual method for calculating its final MBT return?

**ANSWER:**
Yes, if the group's designated member (DM) is a fiscal year filer and the taxpayer continues under the CIT or the MBT after December 31, 2011.

All taxpayers must file an MBT return for the period ending December 31, 2011. MCL 208.1117(4). A fiscal year taxpayer with a tax year ending after that date is considered to have two separate tax years: the first short tax year is the part of the fiscal year ending December 31, 2011, and the second short tax year is for the part of the fiscal year beginning January 1, 2012. MCL 208.1117(4).

Fiscal year taxpayers continuing to the CIT or making the MBT election may choose between two methods of calculating the short period return ending December 31, 2011, and the return beginning January 1, 2012:

1. Annual - The tax is computed as if the relevant tax was effective on the first day of the taxpayer's annual accounting period and the amount computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's short period tax year and the denominator of which is the number of months in the taxpayer's annual accounting period (typically 12).
2. Actual - The tax is computed by determining the tax base in the short period tax year in accordance with an accounting method satisfactory to the department that reflects the actual tax base attributable to the period. The method of accounting used in prior fiscal years will be assumed to reflect the actual tax base attributable to the period. MCL 208.1503; MCL 206.683.

The taxpayer must use the same method for its short period return ending December 31, 2011, and for its first CIT or MBT election return. MCL 208.1503; MCL 206.683.

If the taxpayer will not continue under the CIT or the MBT after December 31, 2011, it may use only the actual method for its short period return ending December 31, 2011.

For a unitary business group, the tax year of the group is the tax year of the DM. If the DM is a fiscal year filer, it will choose between the annual and actual methods and this choice will apply to all group members. All members of the UBG that continue as a group into the CIT or that make the MBT election must file consistent with the method chosen for the short period return ending December 31, 2011. If the DM is a calendar year filer, or will not continue as a taxpayer, the group must file using the actual method. MCL 208.1503; MCL 206.683.

If a member of a UBG will be a separate filer beginning January 1, 2012, that member is statutorily permitted the choice between the annual and actual methods on its first CIT return; regardless of the choice made by the member's previous UBG. MCL 206.683.

If a member was a separate filer for the period ending December 31, 2011, and joins a UBG for the first CIT return, that member should amend its short period return ending December 31, 2011, to use the same method used by the group. If, however, the member is switching groups from the period ending December 31, 2011, to the first CIT return, the member should follow the

general rule and use the filing choice of the group, regardless of the method used by the member's previous group.

If a member of the MBT UBG holds a certificated credit and the group makes the MBT election, the membership of the group will not change unless there is a change to relationship or control. MCL 208.1500; MCL 208.1680. The UBG electing the MBT must file its short period return for the period beginning January 1, 2012, using the same method used on the group's short period return ending December 31, 2011. MCL 208.1503(3).

Example 1. UBG consists of three members, DM Corporation A, Member Corporation B, and Member Partnership C. DM A is a fiscal year filer. It elects the annual method for the group. The group will file its final MBT return using the annual method. DM A and Member B will file their first CIT return, as a UBG, using the annual method.

Example 2. UBG consists of three members, DM Corporation A, Member Corporation B, and Member Partnership C. DM A is a calendar year taxpayer. The DM does not have the statutory authority to choose between the annual and actual methods. The group will file its final MBT return using the actual method. DM A and Member B will file their first CIT return as a UBG, using the actual method.