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REVENUE ADMINISTRATIVE BULLETIN 2001-4
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Single Business Tax Foreign Trucking

RAB 2001-4. This Revenue Administrative Bulletin (RAB) describes how the Single Business Tax (SBT) applies to foreign persons in the business of trucking and certain other transportation services within Michigan for tax years starting on or after January 1, 2000. As used in this RAB, “trucking” and “transportation services” mean the transportation of persons or property upon highways or roads within Michigan for hire using any type of motor vehicle. See Section II of this RAB. This RAB generally applies to rail transport and to shipping on the navigable waters of Michigan. This RAB does not apply to foreign persons engaged in the international operation of aircraft. Foreign trucking companies that were not subject to United States (U.S.) federal income taxes due to a provision in the U.S. Internal Revenue Code (“IRC”) or an income tax treaty before January 1, 2000, are not subject to the SBT for tax years beginning before January 1, 2000. See RAB 1999-10. For tax years beginning on or after January 1, 2000, a foreign person is not required to pay SBT or file an SBT return if its adjusted, apportioned gross receipts are less than \$250,000. See Section VI (1) of this RAB for details. This RAB supplements RAB 2001-2 (Single Business Tax of a Foreign Person) which applies to all foreign persons, including foreign trucking companies to the extent consistent with this RAB.

ISSUES

- I. Who is a “foreign person” engaged in transportation services for SBT purposes?
- II. Under what circumstances is a foreign person who performs transportation services subject to SBT?
- III. How does a foreign transportation business calculate business income and the additions and subtractions to business income that are included in the U.S. tax base for SBT purposes?
- IV. How does a foreign transportation business calculate compensation?
- V. How does a foreign transportation business apportion its U.S. tax base to Michigan?
- VI. How does a foreign transportation business calculate gross receipts?
- VII. What nation’s currency is used for SBT purposes?

CONCLUSIONS

- I. **Foreign Person Defined.** A “foreign person” is a business organization formed or organized under the laws of a country other than the U.S. or a political subdivision of a country other than the U.S. For an individual such as a sole proprietor, a “foreign person” means an individual who is not a U.S. citizen or U.S. resident. A person who is required to file for U.S. federal income tax purposes as a U.S. person is not a foreign person under the Single Business Tax Act (SBTA) [MCL 208.19(6)].

NOTE: A foreign person engaged in transportation services must indicate the “principal business activity” on the SBT return as “Foreign Transportation Services.”

- II. **Nexus and Business Activity.** A foreign person that performs any “business activity” and that has “nexus” in Michigan is subject to the SBT.

Business Activity. A person that transports property or persons by motor vehicle for others within Michigan performs “transportation services” which constitute “business activity” [MCL 208.3(1)]. “Transportation services” as used in MCL 208.56 and 208.57 means the public conveyance of passengers, goods, or materials for others as a commercial enterprise. The determination of whether a business performs “transportation services” is based on all the relevant facts and circumstances.

Nexus. Revenue Administrative Bulletin 1998-1 “SBT Nexus Standards” contains examples of business activities that create nexus. The nexus standards apply equally to foreign persons and U.S. persons.

Example 1: JBFE, Inc., a foreign trucking corporation, delivers goods to Michigan for various foreign manufacturers. JBFE makes the deliveries in a truck that it owns, which is driven by an employee of JBFE. JBFE also contracts with an independent owner operator. JBFE is subject to the SBT based on the business activity it performs within Michigan both by its employee and by its representative, the independent owner operator. Each contact alone creates nexus. Furthermore, the miles driven by both the employee and the independent owner operator are included in JBFE’s apportionment formula.

“Drive-Through” Transportation Activity. Merely driving through Michigan with no other business activity is a *de minimis* presence that does not create nexus with Michigan for a transportation business. “Driving through” Michigan, means traveling within Michigan on a trip that originates and terminates outside Michigan and the vehicle makes no pick ups or deliveries and conducts no other business activity in Michigan. Once nexus exists, all revenue miles driven within Michigan are included in the apportionment fraction (including revenue miles traveled while merely driving through Michigan). Revenue miles traveled in Michigan while carrying no cargo or passengers for hire (“deadhead miles”) are not included in the apportionment formula.

Example 2: SLH International Corp., a foreign trucking company, owns and operates one truck that travels from Canada through Michigan to a destination in Indiana. The truck does not stop in Michigan and SLH has no other business activity in Michigan during 2000. SLH is not subject to the SBT for the 2000 tax year. In 2001, the same SLH truck takes the same route, but stops in Michigan to refuel. This refueling stop alone does

not create nexus in 2001. In 2002, the SLH truck makes a single stop in Michigan to deliver cargo. SLH has nexus in 2002 and must file an SBT return. All the revenue miles driven in Michigan in 2002, including revenue miles where no deliveries were made in Michigan, are included in the apportionment formula numerator.

Manufacturer or Seller of Goods. A manufacturer or seller who delivers goods that it manufactures or sells in trucks that it leases or owns is not engaged in “transportation services.” However, the manufacturer or seller performs business activity in Michigan and has nexus with Michigan by virtue of the delivery activities, and is subject to the SBT. See RAB 1998-1. A manufacturer or seller that ships its goods to Michigan by an unrelated contract carrier or unrelated common carrier generally does not have nexus with Michigan. However, if the carrier performs other business activity on behalf of the foreign person, nexus may exist based on all relevant facts and circumstances.

- III. **Business Income, Additions, and Subtractions.** Foreign persons engaged in transportation services apportion worldwide net income (business income), additions, and subtractions to the U.S. by formula based on revenue miles traveled in the U.S. and revenue miles traveled everywhere.

Business Income. The business income calculation for a foreign person starts with the worldwide gross income minus related deductions allowed under the U.S. IRC. A foreign person that is not subject to U.S. federal income taxes (such as most foreign trucking companies) shall calculate business income using a *pro forma* U.S. federal income tax return, such as the U.S. Federal Form 1120 for corporations. The *pro forma* U.S. income tax return must include the gross income and deductions allowed under the IRC, calculated in U.S. dollars as if the foreign person is a U.S. person. A foreign person may obtain information needed to complete the *pro forma* U.S. federal income tax form using the accounting information maintained by that taxpayer. The law requires the taxpayer to follow the IRC provisions on gross income and deductions when completing the *pro forma* U.S. income tax form [MCL 208.19(5)(a)]. The worldwide business income is apportioned to the U.S. using the “revenue miles” formula (described below) to arrive at “U.S. business income.” This amount (U.S. business income) is entered on the “business income” line on the SBT Annual Return, Form C-8000.

Additions. The tax base of a foreign person includes the adjustments under section MCL 208.9 that are related to U.S. business activity [MCL 208.19(1)]. Amounts such as depreciation, interest expenses, dividends paid, taxes, and certain royalty expenses, are included in the tax base to the extent deducted in calculating net income on the *pro forma* U.S. income tax return. Each worldwide addition amount from the *pro forma* U.S. return is apportioned to the U.S. using the revenue miles formula (described below) and entered on the individual line for that item on the C-8000. The total apportioned additions are entered on the line for “total additions” on the SBT Annual Return (Form C-8000).

Subtractions. Certain amounts that were included in gross income for income tax purposes are deducted when calculating the tax base for SBT purposes. These items include dividend income, interest income, some royalties, a capital loss not deducted in arriving at *pro forma* federal taxable income, and gains and losses from partnerships. Each worldwide subtraction amount from the *pro forma* U.S. return is apportioned to the U.S. using the revenue mile formula and entered on the individual line for that item on

the C-8000. The total apportioned subtractions are entered on the line for “total subtractions” on the C-8000.

Apportionment Formula for Determining U.S. Business Income, Additions and Subtractions. The formula used to apportion worldwide net income, additions and subtractions to the U.S. is a fraction, the numerator of which is the revenue miles of transportation services performed in the U.S., and the denominator of which is the revenue miles of the transportation services performed everywhere.

Revenue Miles. A “revenue mile” means the transportation for a consideration of one (1) net ton in weight or one (1) passenger the distance of one (1) mile [MCL 208.57(1)]. If the taxpayer shows to the satisfaction of the commissioner that information on revenue miles is not available or cannot be obtained without unreasonable expense to the taxpayer, the commissioner may use such other data which may be available and which in the opinion of the commissioner is equitable [MCL 208.57(2)]. A taxpayer that calculates "revenue miles" for some other purpose must use "revenue miles" in the apportionment formula. However, pursuant to authority granted the revenue commissioner under MCL 208.57(2), and in recognition that the special daily recording of "revenue miles" exclusively for the purpose of apportionment of the SBT would be a substantial burden and unreasonable expense to the taxpayer, a taxpayer may use actual “miles driven” to apportion when "revenue miles" are not calculated for another purpose. The remaining examples use actual miles driven.

Example 3 U.S. Business Income, Additions, Subtractions, Apportionment: FTC, Inc., a foreign trucking company, ships goods within Canada and the U.S. FTC receives \$100 million as gross consideration for all of its trucking services (gross sales reported on the *pro forma* U.S. 1120 equal \$100,000,000.) FTC also receives \$10,000 in interest income. The expenses and deductions allowed under the U.S. IRC equal \$90 million. The net income calculated on the *pro forma* U.S. 1120 is \$10,010,000. The worldwide net income (\$10,010,000) is apportioned using U.S. miles / worldwide miles. The apportionment fraction is .25 (see calculation below). The apportioned amount (\$2,502,500) is entered on the business income line of the form C-8000. The individual, worldwide additions and subtractions are apportioned and entered on the respective lines for additions and subtractions. The worldwide additions are \$4,000,000 depreciation, \$3,000,000 royalties, and \$2,000,000 interest expense. These amounts are apportioned and entered on the lines for additions (depreciation = \$1,000,000; royalties = \$750,000; interest expense = \$500,000). The apportioned additions are totaled and entered on the line for “total additions” (\$2,250,000). The apportioned subtractions are entered on the C-8000 lines for subtractions. The only “subtraction” in this example, interest income of \$10,000, is apportioned and entered on the C-8000 “total subtractions” line (\$2,500).

The “U.S.” apportionment fraction is calculated as follows: FTC’s trucks traveled 36 million miles in Canada and 12 million miles in the U.S., for a total of 48 million miles worldwide. The apportionment fraction used to determine the U.S. business income, additions and subtractions is .25 [12 million U.S. miles ÷ 48 million Worldwide miles = .25].

Illustration of calculations described in Example 3:

\$10,010,000 (worldwide net income) X .25 = \$2,502,500 (U.S. business income)

\$4,000,000 (worldwide depreciation) X .25 = \$1,000,000 (U.S. depreciation)

\$3,000,000 (worldwide royalty expense) X .25 = \$750,000 (U.S. royalty expense)

\$2,000,000 (worldwide interest expense) X .25 = \$500,000 (U.S. interest expense)

\$10,000 (subtractions – interest expense) X .25 = \$2,500 (U.S. subtractions)

- IV. **Compensation.** The compensation included in a foreign person’s “U.S.” tax base is the daily compensation paid to employees, officers or directors who perform services within the U.S. [MCL 208.19(3)]. “Compensation” is remuneration of any kind, including benefits that an employer pays for services [MCL 208.4(3)]. A foreign person’s tax base includes the daily compensation paid to each employee, officer, and director, multiplied by the number of days that the employee, officer, or director performs services within the U.S. in the tax year. An employee, officer, or director of a foreign person who performs services within the U.S. for part of a day is considered to perform services within the U.S. for one whole day [MCL 208.19(3)]. A day during which the person performs no services in the U.S. is not counted. A driver who merely drives through Michigan or the U.S. performs services in the U.S., and an employer that has nexus must include that daily compensation in the taxpayer’s U.S. compensation. The apportionment formula is not used to determine “U.S.” compensation.

Compensation Provisions for Foreign Trucking (2000 PA 373, Imd. Eff. Jan. 2, 2001; MCL 208.35b). Qualifying foreign transportation companies may elect to calculate or reduce compensation under this section. To qualify, the foreign person’s tax base must be derived from transportation services by motor vehicle and the foreign person cannot maintain a permanent establishment in the U.S. regardless of any exemption from federal income taxes under a treaty or the IRC. The alternatives provided by 2000 PA 373 are not available to persons that perform rail transportation, shipping transportation, or aircraft transportation.

A qualifying foreign transportation company may elect any of the following:

- ☒ Calculate compensation under section 19 [MCL 208.19] as described in Section IV above. In which case, the person may qualify for the “excess compensation reduction” under MCL 208.31(4).
- ☒ Calculate U.S. compensation under section 19, and reduce that amount by 50% [MCL 208.35b(1)(a)]. A person that calculates compensation under MCL 208.35b(1)(a) [50% reduction] shall not claim an “excess compensation reduction” under MCL 208.31(4).
- ☒ Calculate worldwide compensation for all employees, officers, and directors, without regard to where the services are performed, and apportion that amount to the U.S. using the “revenue miles” formula [U.S. revenue miles ÷ worldwide revenue miles] [MCL

208.35b(1)(b)]. In which case, the person may qualify for the “excess compensation reduction” under MCL 208.31(4).

Example 4: Compensation of truck drivers. FTC, Inc., a foreign trucking company, ships goods from Canada to the U.S. FTC employs 600 drivers, each of whom drive 100 miles per day in the U.S. for 200 days during the tax year making shipments to Michigan and other states. FTC’s daily compensation paid to its drivers equals \$150,000 (\$250 for each driver X 600 drivers). The total daily compensation is multiplied by the number of U.S. contact days to determine U.S. compensation (\$150,000 daily compensation X 200 days = \$30,000,000). The compensation equals \$250 per driver per day, regardless of the miles driven or time spent each day in the U.S.

FTC elects to reduce compensation under MCL 208.35b(1)(a); therefore it reduces its U.S. compensation (\$30,000,000) by 50%, which equals \$15,000,000.

Example 5: XYZ Trucking Corp, a foreign corporation, has one salaried employee who drives a truck in the U.S. for 20 days during the tax year. XYZ has a terminal in the U.S. that is a permanent establishment under the U.S. Canada Income Tax Treaty. The driver’s annual compensation (wages and benefits) is \$50,000, and she worked 250 days during the year. The daily compensation is the total compensation paid to the driver during the tax year, divided by the number of days worked ($\$50,000 \div 250 = \200). U.S. Compensation for SBT purposes equals the average daily compensation multiplied by the number of U.S. contact days ($\$200 \times 20 = \$4,000$). XYZ does not qualify for the alternative compensation methods under MCL 208.35b(1)(b).

Example 6: The U.S. Tax Base (continuing from Examples 3 and 4). FTC’s tax base attributable to U.S. business activity is calculated as follows: \$2,502,500 (U.S. business income) + \$2,250,000 (U.S. additions) - \$2,500 (U.S. subtractions) + \$15,000,000 (U.S. compensation from Example 4) = \$19,750,000 (U.S. tax base). This U.S. tax base is apportioned to Michigan using the formula described in Section V of this RAB.

- V. **Apportioning the “U.S.” Tax Base to Michigan.** The tax base attributable to U.S. business activity under MCL 208.9 and MCL 208.19 consists of business income, compensation, and additions, minus subtractions, determined under Sections III and IV of this RAB. The U.S. tax base is apportioned to Michigan using the formula for transportation services [MCL 208.57]. The formula is a fraction, the numerator of which is revenue miles traveled in Michigan and the denominator of which is revenue miles traveled everywhere. Qualifying taxpayers may use “actual miles driven” rather than revenue miles. See Section III. “Revenue Miles.”

Example 7: The Michigan Tax Base (continuing from Examples 3, 4, and 6). FTC’s trucks traveled 36 million miles in Canada and 12 million miles in the U.S. for total worldwide miles of 48 million. The trucks traveled 6 million miles in Michigan. The apportionment fraction is .125 [Michigan miles (6 million) \div worldwide miles (48 million)]. The U.S. tax base is apportioned to Michigan as follows:

The tax base attributable to U.S. business activity, per Example 6 above is \$19,750,000. This U.S. tax base is apportioned to Michigan as follows:

$$\text{U.S. tax base} \times \text{Michigan Miles} \div \text{Worldwide Miles} = \text{Michigan Tax Base}$$
$$\$19,750,000 \times .125 = \$2,468,750 \text{ (Michigan tax base)}$$

The taxpayer enters this amount (\$2,468,750) on the “apportioned tax base” line of the Form C-8000.

VI. **Gross Receipts for Foreign Transportation Businesses.** “Gross receipts” means the sum of sales and rental or lease receipts from all sources worldwide. The taxpayer enters worldwide (unapportioned) gross receipts on the C-8000 (line 10 on the 2000 form). The gross receipts calculation under the SBTA is relevant for various purposes, including the following:

1) Filing Threshold [MCL 208.73(1)]. A foreign person whose adjusted, apportioned gross receipts are less than \$250,000 is not required to file an SBT return. Gross receipts includes, but is not limited to, gross income derived from transportation services performed worldwide [MCL 208.7(3)]. A foreign person’s gross receipts, for purposes of the filing threshold, are the apportioned, adjusted gross receipts. The worldwide gross receipts are apportioned to Michigan by a formula. The apportionment formula is the standard formula for transportation businesses, which is a fraction, the numerator of which is revenue miles traveled in Michigan and the denominator of which is revenue miles traveled everywhere. Qualifying taxpayers may use “actual miles driven” rather than revenue miles. See Section III “Revenue Miles” [MCL 208.57].

Example 8: ABC, Inc., a foreign corporation, delivers packages by truck between Ontario Canada, and Detroit, Michigan USA. Its worldwide gross receipts for the tax year are \$1 million (U.S. dollars). ABC traveled 500,000 miles worldwide, of which 100,000 miles were traveled in Michigan. ABC’s Michigan miles are 20% of its total miles. [100,000 miles ÷ 500,000 miles = .2]. ABC’s apportioned gross receipts are \$200,000 [\$1,000,000 X .2 = \$200,000]. ABC, Inc. is not required to file an SBT return for that tax year because its apportioned, adjusted gross receipts are less than \$250,000.

2) Gross Receipts Reduction [MCL 208.31(2)]. For purposes of the gross receipts reduction, gross receipts includes the adjusted worldwide receipts apportioned to Michigan using the standard formula for transportation businesses, in the same manner as described above for “filing threshold purposes.”

For more details on gross receipts of a foreign person, see RAB 2001 – 2.

VIII. **Converting Foreign Currency to U.S. Dollars.** A foreign person must convert foreign currency to U.S. currency for SBT purposes. The exchange rate is the average rate for the taxpayer’s tax year. The taxpayer shall prepare the SBT return and any *pro forma* U.S. return in U.S. dollars.

LAW AND ANALYSIS

Transportation of Property or Persons by Motor Vehicles. This RAB applies to “foreign persons” in the business of transporting persons or property by motor vehicle for others within Michigan. A person who files for U.S. federal income tax purposes on U.S. Form 1120 or 1040 is not a foreign person. A foreign person that performs transportation services determines the portion of the tax base attributable to Michigan under both MCL 208.19 and MCL 208.57. “Transportation services” as used in MCL 208.56 and 208.57 means the public conveyance of passengers, goods, or materials for others as a commercial enterprise. *City-Car Terminal, Inc v Department of Treasury*, 128 Mich App 387; 340 NW2d 98 (1983).

Business Activity and Nexus. The general nexus standards for the SBT are found in RAB 1998-1. The *de minimus* exception to nexus for drive-through activity explained in Section II of this RAB applies to motor vehicle transportation only, including both foreign and U.S. trucking businesses. If there is no pick up or delivery of cargo or passengers within Michigan, and no other business activity, but Michigan is merely a point of entry to or departure from the U.S. or between states, the physical presence within Michigan is insufficient to create nexus for SBT purposes. This determination is based on the quality, rather than the quantity of the presence, and upon the facts and circumstances unique to the trucking industry.

Compensation. Section 19, MCL 208.19, defines “compensation” for purposes of calculating the tax base of a foreign person. The general definition of “compensation” found in MCL 208.4(3) determines the types of payments and benefits that are included in compensation for a foreign person. The compensation component of U.S. value added is determined by considering compensation paid to employees (including officers and directors of a corporation) who conduct business activity in the U.S. This completely excludes from the tax base the compensation paid to employees that perform no services in the U.S. The daily U.S. compensation is included in the tax base, which is then apportioned to Michigan by a formula. The formula ensures that only the appropriate portion of U.S. compensation is included in the apportioned tax base. Assume that a truck driver travels 1000 miles on a trip from Canada to Michigan, Ohio and Indiana. The driver travels 500 miles in Canada, 200 miles in Michigan, and 300 miles in Indiana and Ohio. The driver had contact with the U.S. on each day of the trip, and the total compensation for the trip is \$300. The U.S. portion of the compensation is \$300 because the driver had contact with the U.S. for part of each day that the services were performed. However, the entire \$300 is not taxed. This amount is apportioned to Michigan (along with the rest of the tax base) by a formula that includes the miles driven *in Canada* and other U.S. states in the denominator. Therefore, the compensation associated with the miles driven in other states and Canada is effectively excluded from the tax base by operation of the formula. The compensation apportioned to Michigan is \$60. (If the driver had spent one day driving completely within Canada on this same trip, the compensation for that day would not be in the pre-apportioned tax base. Nevertheless, the miles driven on that day would be included in the denominator of the apportionment formula.)

$$\$300 \text{ (U.S. compensation)} \times 200 \text{ Michigan Miles} \div 1000 \text{ worldwide miles} = \$60$$

Apportionment. The SBT has been described as a modified value added tax. *Trinova v Dep’t of Treasury*, 111 SCt 818, 498 US 358, 112 LEd 2d 884 (1989). The SBT is imposed upon the adjusted tax base of all persons with business activity within Michigan that is apportioned to Michigan [MCL 208.31(1)]. The SBT is imposed upon the privilege of doing business in Michigan, and is not an income tax [MCL 208.31(3)]. The total value added tax base is measured

by the sum of the taxpayer's net profit, labor costs, and capital costs, with certain exceptions, deductions, and credits. (See MCL 208.9 definition of "tax base"). Net profit is "business income" which is defined under MCL 208.3(3) generally, and specifically for purposes of calculating the tax base of foreign persons under MCL 208.19(5).

The SBT is imposed on the portion of the taxpayer's value added tax base that is apportioned to Michigan [MCL 208.31(1)]. Therefore, a foreign trucking company is only taxed on the portion of its value added that is directly proportionate to its business activity in Michigan, based on revenue miles traveled in Michigan. The U.S. Supreme Court has upheld a state's power to tax persons engaged in international commerce. *Container Corporation of America v Franchise Tax Board* 463 US 159; 103 SCt 2933; 77 LEd 2d 545 (1983); *Barclays Bank PLC v Franchise Tax Board*, 512 US 114; 114 SCt 2068; 129 LEd 2d 93 (1994); *Wardair v Florida Dep't of Revenue*, 477 US 1; 106 SCt 139; 91 LEd 2d 1 (1986).

Gross Receipts. 1999 PA 115 did not amend the gross receipts definition for foreign persons [MCL 208.7(3)]. The apportionment formula for transportation services was not changed for foreign persons [MCL 208.57]. Therefore, worldwide gross receipts from all transportation services performed everywhere are apportioned to Michigan using a fraction, the numerator of which is miles traveled in Michigan and the denominator of which is miles traveled everywhere.

Citations. A citation in this RAB to a statute, form, or another RAB refers to that statute, form, or RAB in effect at the time of the publication of this RAB. The taxpayer is responsible to check all such references for changes made after publication of this RAB.

Definitions

1. As used in this RAB, "business income" and "U.S. business income" for a foreign person mean the net profit component of the tax base that is calculated as described in this RAB and reported on line 11 of the SBT Annual Return, Form C 8000 (for tax year 2000). The terms "business income" and "U.S. business income" are synonymous and refer to the portion of "worldwide business income" that is attributable to United States business activity, determined by the apportionment method described in this RAB. U.S. business income, plus U.S. additions, minus U.S. subtractions, plus U.S. compensation, constitute the tax base for a foreign person that is apportioned to Michigan as described in this RAB.

"Business income" means, for a foreign person, gross income attributable to the taxpayer's United States business activity and gross income derived from sources within the United States minus the deductions allowed under the Internal Revenue Code that are related to that gross income [MCL 208.19(5)(a) relevant part].

2. "Gross income" means that term as defined in section 61 of the Internal Revenue Code.
3. As used in this RAB, "Worldwide business income" means gross income from whatever source derived everywhere minus the deductions allowed under the U.S. Internal Revenue Code calculated as if the foreign person were a U.S. person. Worldwide business income is apportioned to the United States using the formula described in this RAB to arrive at "U.S. business income."