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Important Note:

The following summaries of recent statutory amendments to the Michigan Business Tax Act, 2007 PA 36, are for informational purposes only and are not to be interpreted as official statements of the Michigan Department of Treasury. These summaries are not to be construed as promulgated rules, bulletins or rulings of the Department and are subject to revision.

Summary of Amendments to the Michigan Business Tax at the End of 2008

Public Act 335 of 2008

New Credit for Service Station Owners for Conversion of Existing or Creation of New Delivery Systems to Provide E85 Fuel or Qualified Biodiesel Blends

2008 PA 335 amends the MBT by adding Section 460 to create a new, nonrefundable credit for owners of service stations. The credit is equal to 30% of the costs incurred during the tax year to convert existing or create new delivery systems designed to provide E85 fuel or qualified biodiesel blends. "Qualified biodiesel blends" means any biodiesel blend that is blended *on site* utilizing on-demand bio-blending equipment that is installed after December 23, 2008. The credit cannot exceed \$20,000 per tax year per taxpayer, and the total amount of all such credits is capped at \$1.0 million per calendar year.

A taxpayer cannot include any conversion or creation costs for which the taxpayer received a grant under the Service Station Matching Grant Program.

To claim the credit, the taxpayer must attach to its annual MBT return the certificate issued to the taxpayer by the Michigan Strategic Fund Energy Office. A taxpayer that stops using the new or converted fuel system within three years of receiving the MBT credit can have the credit reduced or terminated, or have a percentage of a previously-claimed credit added back to its MBT tax liability in the year that the taxpayer stops using the fuel delivery system.

2008 PA 335 is effective for tax years beginning after December 31, 2008 and ending before January 1, 2012.

Public Act 433 of 2008

Amends the Definitions of "Gross Receipts" and "Inventory"

2008 PA 433 amends Section 111 of the MBT by amending the definitions of "gross receipts" and "inventory," and adding several categories of receipts that are excluded from "gross receipts."

Definitional changes. The act amends the definition of “gross receipts” to (i) provide that gross receipts is determined using the taxpayer’s method of accounting used for federal income tax purposes, and (ii) exclude amounts deducted as “bad debt” for federal income tax purposes that correspond to items of gross receipts that are in the modified gross receipts tax base for the current tax year or a prior tax year. The exclusion is phased in over a five year period.

Exclusions. The act adds the following items as exclusions from “gross receipts”:

1. Ad space. Amounts received by a newspaper taxpayer to acquire advertising space (not owned by that taxpayer) in another newspaper on behalf of another person.
2. Regulated Investment Companies. Amounts received by a “regulated investment company” (e.g., mutual fund) for equity issued and from investment activity by the company.
3. Hedging transactions. For amounts received from property used in a “hedging transaction,” only the “overall net gain” from such transactions, to the extent included in federal taxable income, is included in gross receipts. Gains and losses from hedging transactions during the tax year are offset to determine overall net gain. “Hedging transactions” are those as defined under IRC § 1221, except that a transaction need not have been identified by the taxpayer as a hedge for federal income tax purposes as long as the transaction is identifiable as a hedge on the taxpayer’s books and records.
4. Treasury functions. For amounts received from investment and trading assets managed as part of a treasury function, only the “overall net gain” from such functions, to the extent included in federal taxable income, is included in gross receipts. Gains and losses from treasury functions during the tax year are offset to determine overall net gain. “Treasury function” means the pooling and management of investment and trading assets for the purpose of satisfying the cash flow and liquidity needs of the taxpayer’s trade or business.
5. Government obligations. Amounts received from interest income and dividends from an obligation or security of the U.S., the state of Michigan, or any “governmental unit” of the state of Michigan.
6. Foreign dividends. Amounts received or deemed received from a foreign operating entity or other non-U.S. person. This exclusion is phased in over a five year period.
7. Taxes and fees. To the extent not deducted from the taxpayer’s gross receipts as “purchases from other firms”:
 - Sales and use taxes. Sales, use and other taxes collected from or reimbursed by a purchaser and remitted to a local, state or federal authority. This exclusion is phased in over a five year period.

- Tobacco taxes. For receipts from the sale of cigarettes or tobacco products by a wholesaler, retailer, distributor, manufacturer or seller, federal and state excise taxes paid on such products under subtitle E of the IRC or applicable state law. This exclusion is phased in over a three year period.
 - Motor fuel taxes. For receipts from the sale of motor fuel by motor fuel tax licensees or retail dealers, federal and state excise taxes paid on such fuel under IRC § 4081 or applicable state law. This exclusion is phased in over a five year period.
 - Alcohol taxes. For receipts from the sale of beer, wine or liquor by a licensed seller, distributor or producer of such products, federal and state excise taxes paid on such products under subtitle E of the IRC or applicable state law. This exclusion is phased in over a five year period.
 - Telecommunications, energy and utility taxes. For receipts from the sale of communication, video, or internet access and related services and equipment, or from the sale of electricity, natural gas, or other energy sources, any government imposed tax or fee required by applicable law and authorized to be charged on a customer's invoice. This exclusion is phased in over a five year period.
 - Bottle deposits. Amounts received for barrel and bottle deposits required under the Michigan bottle deposit law and similar deposit laws in other states. This exclusion is phased in over a five year period.
 - Airport parking taxes. Amounts received for airport parking excise taxes collected from or reimbursed by a consumer and remitted under the Airport Parking Tax Act. This exclusion is phased in over a five year period.
8. Pass-through entities. Amounts received attributable to an ownership interest in a pass-through entity, regulated investment company, real estate investment trust, or cooperative corporation whose business activities are taxable or would be taxable under Section 203 of the MBT if the business activities were in Michigan.
9. Medicaid premiums and reimbursements. For fiscal years beginning after September 30, 2009, amounts received for Medicaid premiums or reimbursements for services provided to a Medicaid recipient, unless a certification is made by the state budget director that the federal rates required for Michigan Medicaid managed care contracts provide for an explicit adjustment for the MBT gross receipts tax.

Personal investments. The act also amends the gross receipts personal investment provision by expanding the list of entities that can claim the exception. The provision now applies to any person – not just a partnership or estate – that is organized for estate or gift planning purposes. Moreover, such a person need not be organized exclusively for estate or gift planning purposes in order to claim the exception. The act also includes royalties as a type of receipts that may be excepted from gross receipts. Finally, the act excepts receipts derived from

investment activity by a person organized exclusively to conduct investment activity solely for an individual or persons related to that individual, or by a common trust fund.

Inventory. The act amends the term “inventory” to include for a securities trader or a member of that securities trader’s unitary business group, the cost of securities and the cost of commodities. The amendment accords to securities traders the same treatment provided to securities brokers and dealers.

2008 PA 433 is retroactive and effective for taxes levied on and after January 1, 2008.

Public Act 434 of 2008

Decouples the MBT from Federal Bonus Depreciation; Effectively Defines Puerto Rico as a Foreign Country for Certain Purposes; Increases the Limit on Combined Credits for Certain Utilities; and Creates a New Credit Related to Federal Bonus Depreciation

2008 PA 434 amends Sections 109 and 403 of the MBT and adds Section 461.

Decoupling. The act amends Section 109(3) to provide a new definition of "federal taxable income" such that all calculations based on federal taxable income must be made without regard to any bonus depreciation (IRC § 168(k)) or the domestic production activities deduction (IRC § 199). That is, for depreciable property purchased or put into service on or after January 1, 2008, for purposes of calculating federal taxable income and gains or losses reflected or included in federal taxable income, depreciation and basis must be determined under IRC §§ 167-168, but without IRC § 168(k). As a result, depreciation deductions and the basis of assets may differ for federal and MBT purposes. Decoupling from IRC § 168(k) generally produces only a timing difference. Absent the federal bonus depreciation, the MBT calculation of federal taxable income may require a series of additions and subtractions until such time that a particular asset is fully depreciated. Decoupling from IRC § 199 primarily affects corporations.

Puerto Rico. The act removes Puerto Rico as a territory or possession of the U.S. for the purpose of defining a foreign operating entity, effectively making Puerto Rico a foreign country for this purpose. A foreign operating entity is excluded from any unitary business group.

Utility Company Credit Limitation. For the 2008 tax year only, a utility company that makes capital investments in utility assets, and that has a portion of its ITC denied due to the combined credits limitation in MCL 208.1403(1), will have that limitation increased by the lesser of (1) the amount of the denied ITC or (2) 50% of the difference between the tax liability calculated under the MBT as written and the MBT as if IRC § 168(k) was in effect. The total combined credit for the 2008 tax year may not exceed 80% of the company’s MBT liability.

Bonus Depreciation Credit. For tax years beginning after December 31, 2008 and ending before January 1, 2011, the act creates a new, nonrefundable credit equal to 0.42% of the amount of the IRC § 168(k) deduction claimed on the taxpayer's federal return for the 2008 tax apportioned to Michigan. If the credit exceeds the taxpayer’s MBT liability, the excess may be carried forward for 10 years or until used up. This new credit applies to all taxpayers other than regulated utilities.

Public Act 435 of 2008

Exempts Certain Foreign Persons from Taxation; Defines Business Income, Gross Receipts and the Sales Factor for Foreign Persons

2008 PA 435 amends Section 207 of the MBT. The act exempts foreign persons from taxation under the MBT so long as the foreign person is domiciled in a subnational jurisdiction (e.g., a Canadian province) that does not impose an income or other business tax on a similarly situated person domiciled in Michigan. For example, an Ontario company doing business in Michigan will be exempt from the MBT so long as a similarly situated Michigan company doing business in Ontario is exempt from Ontario business taxation. The exemption also applies to insurance companies and financial institutions so long as the reciprocity requirements are satisfied. The act also defines business income, gross receipts, business income tax base, modified gross receipts tax base, and sales factor for foreign persons that are not exempt under the reciprocity provision. In general, for non-exempt foreign persons, the tax bases and sales factor are limited to U.S. sales and receipts from U.S. sources.

2008 PA 435 is retroactive and effective January 1, 2008 and applies to all business activity occurring after December 31, 2007.

Public Act 448 of 2008

Revisions to Historic Preservation Credit

2008 PA 448 amends Section 435 of the MBT, the Historic Preservation Credit, by adding two additional “tiers” of credits and making certain changes to the existing credit. The additional “tiers” of credits effectively allow taxpayers to “stack” state and federal historic preservation credits, thus negating the effect of the provision in Section 435 requiring taxpayers to subtract their federal credit from the available state credit amount.

The second tier provides for credits of between 10% and 15% of qualified expenditures, depending upon the total of the rehabilitation plan’s anticipated expenditures. Plans must be approved by the director of History, Arts, and Libraries (HAL) and, for plans with more than \$1.0 million in qualified expenditures, by the president of the Michigan Strategic Fund (MSF). The total of all second tier credits cannot exceed a cap ranging from \$8.0 million in 2009 to \$12.0 million in 2013, and at least 25% of the amount must be allocated to rehabilitation plans having \$1.0 million or less in qualified expenditures.

The third tier provides for three additional credits in 2009, and two in each of 2010 through 2013, each for up to 15% of qualified expenditures, for “high community impact” rehabilitation plans. Two of the 2009 credits are available only to projects meeting certain, specified criteria. Third tier credits must be approved by the director of HAL, the president of MSF and the State Treasurer. The maximum third tier credit that a taxpayer can claim in any tax year is \$3.0 million, and the excess may be carried forward until used up.

For the existing credit, the requirement that a completion certificate be issued within five years after plan certification is deleted, and a provision is added that only expenditures paid or incurred during the time periods prescribed for the federal historic preservation credit may be considered

qualified expenditures (essentially, a 24-month or, for multi-phase plans, a 60-month window of time that is selected by the taxpayer).

For completed projects certified in tax years beginning after December 31, 2008: (i) the credit may be partially or wholly assigned, and may be reassigned; (ii) if the credit is less than \$250,000, the taxpayer may elect to receive a refund of 90% of the amount of the credit that exceeds the taxpayer's MBT liability; (iii) if the project's certificate is revoked or the historic resource is sold less than five years after certification, from 20% to 100% of the credit claimed will be recaptured, unless the taxpayer has a written agreement with the Historic Preservation Office allowing for the sale; and (iv) any credit recapture is the responsibility of the taxpayer receiving the credit, rather than an assignee.

2008 PA 448 is effective for tax years beginning on and after January 1, 2009.

Public Act 451 of 2008

New Credit for Charitable Contributions Made Through the Individual or Family Development Account Program Act

2008 PA 451 amends the MBT by adding Section 426 to create a new, nonrefundable credit available to standard taxpayers and "qualified financial institutions" for 75% of contributions made to a reserve fund of a fiduciary organization in accordance with the Individual or Family Development Account Program Act, 2006 PA 513 (IFDAPA). A "fiduciary organization" is an exempt, charitable organization approved by the state housing development authority to manage a reserve fund. A "reserve fund" is a fund established and managed by a fiduciary organization housed at a financial institution. The fund holds monies used to match contributions.

The credit defines "qualified financial institutions" by reference to the definition in IFDAPA, which does not parallel the MBT definition of financial institution. Because the definition of financial institution used by the new credit does not match the MBT definition, the credit effectively excludes entities defined as financial institutions under the MBT. Certain financial institutions will, however, qualify if they fall within the IFDAPA definition (MCL 206.702(i)). Standard taxpayers also qualify for the credit.

The credit is non-refundable but may be carried forward up to ten years. The credit, combined with the equivalent credit found in the individual income tax act, may not exceed \$1.0 million annually. The annual limit is monitored through certification of contributions conducted pursuant to IFDAPA.

2008 PA 441 is effective for the 2009 tax year and tax years thereafter.

Public Act 470 of 2008

Financial Institutions Unitary Business Groups Net Equity

2008 PA 470 amends Chapter 2B of the MBT to modify the tax base for unitary business groups of financial institutions. Under the act, any investment made by one member of a unitary business group of financial institutions in another group member will be excluded from the unitary business group's net capital tax base. The act essentially creates for unitary groups of

financial institutions the equivalent of the intercompany eliminations that are permitted for unitary business groups consisting of standard taxpayers. The eliminations permitted under the act will typically be utilized by parent financial institutions excluding investments made in those subsidiaries that are in the same unitary business group from the group's net equity computation.

2008 PA 470 is effective for tax years beginning on and after January 1, 2008.

Public Act 472 of 2008

Inclusion of Realtor Payments to Independent Contractors in Purchases from Other Firms

2008 PA 472 amends the definition of "purchases from other firms" found in Section 113 of the MBT to include payments by a taxpayer licensed under Article 25 (real estate brokers, associate brokers, or sales persons) or Article 26 (appraisers) to an independent contractor licensed under Article 25 or 26.

Under the MBT, modified gross receipts are defined as a taxpayer's gross receipts less its "purchases from other firms." The inclusion of payments to certain independent contractors in the definition of "purchases from other firms" will reduce the modified gross receipts tax base of those taxpayers to whom the change is applicable.

2008 PA 472 is effective for tax years beginning on and after January 1, 2008.

Public Act 507 of 2008

New Credit for Certain Public Exhibitions in Michigan

2008 PA 507 amends the MBT by adding Section 446 to create a new credit for certain public exhibitions in Michigan. For 2009, a taxpayer who owns, operates, or controls an exhibition in Michigan that meets certain criteria may claim a credit equal to its entire MBT liability or \$500,000, whichever is less. For 2010 and each year thereafter, the credit is equal to the taxpayer's entire MBT liability or \$250,000, whichever is less.

To qualify for the credit, the public exhibition must promote, advertise, or display the design or concept of products that are designed, manufactured, or produced, in whole or in part, in Michigan and are available for sale to the general public. In addition, the exhibition must use more than 100,000 square feet of floor space; be open to the general public for at least seven consecutive days in a calendar year; have attendance exceeding 500,000; and be attended by more than 3,000 credentialed journalists, including international journalists.

Public Act 572 of 2008

Increased Credit for Upgrades to Motorsports Entertainment Complexes and Related Safety Expenditures

2008 PA 572 amends Section 409(1) of the MBT to increase the maximum credit that can be claimed by the owner or operator of a qualifying motorsports entertainment complex against its tax liability for certain capital improvements. For tax years beginning on or after January 1,

2008, and ending before January 1, 2013, an eligible taxpayer may claim a credit equal to the amount expended on capital improvements in Michigan for infield renovations, grandstand and infrastructure upgrades and other construction and upgrades, up to a maximum available credit amount each year. The maximum available credit ranges from \$2.1 million to \$1,050,000. To qualify for the credit, an eligible taxpayer must expend \$30 million on capital expenditures before January 1, 2011.

2008 PA 572 also increases the additional credit in Section 409(2) for the eligible taxpayer's necessary expenditures for police officers, traffic management and professional fees to ensure traffic and pedestrian safety during motorsports events. For the 2009 tax year, the credit is equal to 50% of qualifying expenditures incurred in this state, and for 2010 and following years, the credit is equal to 100% of such expenditures. If the credit exceeds the taxpayer's tax liability for the tax year, the excess is refunded.

2008 PA 572 is effective for tax years beginning on and after January 1, 2008.

Public Act 578 of 2008

Revisions to Brownfield Redevelopment Credit

2008 PA 578 amends Section 437 of the MBT, the Brownfield Redevelopment Credit. Previously, this credit was amended to permit a taxpayer whose redevelopment project had been approved, but who had not yet made an eligible investment at the property, to petition the Michigan Economic Growth Authority (MEGA) to amend the project to increase the maximum total eligible investment for the project on which credits could be claimed, as well as the maximum total of all credits for the project. Such a taxpayer could also petition MEGA to make other amendments to the project at any time before certification, including extending the duration of time provided to complete the project.

Subsections (1)(a) and (1)(b) of Section 437 establish the amount of the credit, with the credit amounts expressed as percentages of the total of the taxpayer's eligible investment in the property. 2008 PA 578 amends subsections (1)(a) and (1)(b) to make eligible for the higher credit percentage amounts those redevelopment projects that were either approved, or amended (pursuant to the process described above), after April 8, 2008.

2008 PA 578 is effective for tax year 2008 and subsequent tax years.

Public Act 580 of 2008

New Credit for Activities Related to Alternative Energy Sources

2008 PA 580 amends the MBT by adding Section 434, which creates a series of credits for the manufacture of vehicle battery packs, certain expenses associated with battery-related vehicle engineering, and the construction of an integrative cell manufacturing facility. These credits are administered by MEGA.

Plug-In Traction Battery Pack Manufacturing Credit. For tax years beginning on or after January 1, 2010, and ending before January 1, 2015, a taxpayer may enter into an agreement with MEGA to manufacture plug-in traction battery packs in Michigan and receive a

credit for that activity. Credits will first be available for tax years beginning after December 31, 2010. At least one agreement entered into by MEGA must provide for a capital investment of at least \$200 million by December 31, 2012. Credits under this section may not be claimed for more than three years, and credit amounts are determined on the basis of battery capacity.

The act establishes the amount of the credit available per battery pack, the number of battery packs on which the credit may be claimed, and the limitation on total credits for each tax year for which the Plug-In Traction Battery Pack Manufacturing Credit is available. For example, for tax years beginning after December 31, 2010, and ending before January 1, 2012, the credit may not exceed \$2,000 per battery pack, up to 20,000 battery packs, with total credits limited to \$40 million.

Plug-In Traction Battery Pack Integration into Motor Vehicles Credit. This MEGA-certified credit is for authorized annual expenses incurred in Michigan to integrate the traction battery packs into motor vehicles. Although a taxpayer may begin to incur eligible expenses for tax years beginning on or after January 1, 2009, the credit may be claimed only for tax years beginning on or after January 1, 2012. In order to qualify for this credit, a taxpayer must manufacture at least 1,000 motor vehicles that qualify as plug-in electric drive motor vehicles under federal law. The amount of its authorized annual expenses which a taxpayer may use to calculate the up to 75% credit is based on the total number of qualifying motor vehicles manufactured by the taxpayer in a tax year. If the taxpayer manufactures between 1,000 and 2,000 motor vehicles, 20% of the expenses incurred to integrate the battery packs into the vehicles may be used to calculate the up to 75% credit; for 2,000 to 3,000 motor vehicles, 40% of expenses may be used; for 3,000 to 4,000 motor vehicles, 60% may be used; for 4,000 to 5,000 motor vehicles, 80% may be used; and for 5,000 or more, 100% of expenses may be used.

The credit may not exceed \$15 million per taxpayer per year and MEGA may not authorize more than \$70 million in total credits under this section.

Advanced Battery Engineering Credit. For tax years beginning on or after January 1, 2012, and ending before January 1, 2015, a taxpayer may enter into an agreement with MEGA to increase its advanced automotive battery engineering activities in Michigan and receive a credit for those activities. To qualify for the credit, the taxpayer's qualified expenses related to advanced automotive battery technologies must exceed its expenses for the 2008 fiscal year. This credit is capped at \$10 million for a single tax year, and is limited to \$30 million total. Only one agreement for this credit is permitted. The credit is for up to 75% of the qualified advanced battery engineering expenses incurred by the taxpayer during the 2009-2013 tax years.

Capital Investment Expenditures Credit. This MEGA-certified credit is for 50% of the capital investment expenses incurred for the construction of an integrative cell manufacturing facility. The taxpayer must create at least 300 jobs in Michigan to qualify for the credit. Capital investment expenses include expenditures for facilities, equipment, tooling and engineering, and manufacturing. Such expenses may also include salaries, contract services, taxes, utilities, raw materials, and supplies. Only one agreement for this credit is permitted, and the credit may not exceed \$25 million per year for four years. Although the taxpayer may begin incurring expenses prior to the 2012 tax year, the credit may not be claimed until the tax year beginning in 2012.