



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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GOVERNOR

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STATE TREASURER

**NOTICE TO TAXPAYERS REGARDING
FEDERALLY DISREGARDED ENTITIES
AND THE MICHIGAN BUSINESS TAX**

This Notice replaces the original Notice published on November 29, 2010, and revised on April 30, 2011, October 3, 2011, and November 15, 2011. The prior Notices required affected persons to file amended returns to comply with *Kmart Michigan Property Services LLC v Dep't of Treasury*, 283 Mich App 647 (2009), *lv den* 772 NW2d 421 (2009). This Notice explains 2011 PA 305 enacted on December 27, 2011.

2011 PA 305 added MCL 208.1512 to the Michigan Business Tax Act retroactive to January 1, 2008. MCL 208.1512 governs the tax treatment and filing requirements of entities that are disregarded for federal income tax purposes. Specifically, MCL 208.1512 requires:

- An entity that is disregarded for federal income tax purposes to be classified as a disregarded entity for MBT filing purposes. There are two exceptions to this default rule:
 - 1) An entity that is disregarded for federal income tax purposes that filed separate from its owner for its 2008, 2009, or 2010 MBT tax year in original returns filed prior to January 1, 2012, or in amended returns filed prior to December 1, 2011, is not required to amend those returns.
 - 2) An entity that is disregarded for federal income tax purposes that filed separate from its owner for its 2010 MBT tax year in an original return filed prior to January 1, 2012, or in an amended return filed prior to December 1, 2011, may also file separate from its owner for its 2011 tax year.

In other words, an entity that is disregarded for federal income tax purposes that *did not file* as a separate entity for the 2008, 2009, or 2010 MBT tax year in either an original return filed before January 1, 2012, or an amended return prior to December 1, 2011, may *not* file as a separate entity for its 2008, 2009, 2010, or 2011 MBT tax year.

However, an entity that is disregarded for federal income tax purposes that *did file* as a separate entity for the 2008, 2009, or 2010 MBT tax year in either an original return filed before January 1, 2012, or in an amended return filed prior to December 1, 2011, *may* file an amended MBT return as a disregarded entity if the MBT return at issue is within the statute of limitations provided in MCL 205.27a.

2011 MBT Returns for Disregarded Entities Filing Separately. An entity disregarded for federal income tax purposes that is eligible to file as a separate entity for its 2011 MBT tax year and does file as a separate entity in that year must file all required forms and supporting schedules, including combined filing schedules if the entity is part of a unitary business group.

The disregarded entity must identify its Organization Type before its MBT return will be processed. It must select the Organization Type under which its parent filed its return. For example, if the entity is a limited liability company (LLC) whose single member (parent) is a C corporation, it must select the Organization Type: *C Corporation/LLC C Corporation*. If the entity is a qualified subchapter S subsidiary (QSub), it must select the Organization Type: *S Corporation/LLC S Corporation*.

The disregarded entity that is filing separately must prepare a corresponding *pro forma* federal return and attach that *pro forma* federal return to its 2011 MBT return.

The parent entity must also prepare a corresponding *pro forma* federal return and attach that *pro forma* federal return to its 2011 MBT return.

This Notice was issued on January 26, 2012.