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**REVENUE ADMINISTRATIVE BULLETIN 2018-28**

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**ALTERNATIVE APPORTIONMENT FOR THE  
MICHIGAN BUSINESS AND INCOME TAXES**

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

**RAB 2018-28.** This Revenue Administrative Bulletin (RAB) describes the procedures and standards governing the alternative apportionment relief provisions in parts 1 and 2 of Michigan's Income Tax Act and in the Michigan Business Tax Act.

**ISSUES**

- I. What is alternative apportionment?
- II. When must a taxpayer submit a request to use an alternative apportionment formula?
- III. What must a taxpayer submit to request alternative apportionment?
- IV. Who has the burden of proving that the statutory apportionment formula does not fairly represent the taxpayer's business activity in Michigan?
- V. What standard of proof must be met before an alternative apportionment method will be applied?
- VI. Is the Department required to respond to a request for alternative apportionment within a certain timeframe?
- VII. If approved, to what tax periods may the alternative apportionment method be applied?
- VIII. Are there any special filing instructions for filing a return for a tax period in which an approved alternative apportionment method is used?

- IX. Under what circumstances may the Department impose an alternative apportionment method?

## CONCLUSIONS

- I. Alternative apportionment is a remedy available to both the Department and taxpayers, including individuals and trusts as well as business taxpayers, that allows deviation from Michigan's statutorily-mandated apportionment formula when the statutory formula fails to fairly represent a taxpayer's business activity in this state.
- II. A taxpayer must submit a request for alternative apportionment at least 90 days prior to the due date of the return (including extensions) for which permission to use the alternative method is sought or, in the case of an amended return, at least 90 days prior to filing the amended return. Requests for alternative apportionment will not be approved if made after a return is filed taking an apportionment position contrary to that in statute.
- III. A taxpayer's request for alternative apportionment must be in writing and clearly labeled "Request for Alternative Apportionment." The request must identify the tax type and period for which alternative apportionment is requested and must clearly demonstrate why the statutory formula does not fairly represent the taxpayer's business activity in Michigan. It must also include a reasonable alternative and disclosure of certain information about the taxpayer's apportionment method in other states.
- IV. The burden of proof rests on the party advancing an alternative apportionment method.
- V. The party seeking to apply an alternative apportionment method must prove by clear and convincing evidence that the statutory method grossly distorts the taxpayer's business activity in Michigan or operates to unconstitutionally tax extraterritorial activity and that the proposed alternative is a reasonable method of apportioning the taxpayer's income.
- VI. The Department is not required to respond to a request for alternative apportionment within a certain timeframe; however, the request will be deemed denied if the Department does not respond within 60 days.
- VII. Once approved, an alternative apportionment method may only be applied to the tax period(s) for which the request was approved.
- VIII. When filing a return using an approved alternative apportionment method, a taxpayer must attach the Department's approval letter and a schedule supporting how the apportionment percentage was derived and applied.
- IX. The Department may impose an alternative apportionment method whenever the statutory formula does not fairly reflect the taxpayer's business activity in Michigan, resulting in either gross distortion or unconstitutional extraterritorial taxation.

## INTRODUCTION

The Due Process and Commerce Clauses of the U.S. Constitution require a state's income tax on interstate commerce to be apportioned in a manner that reasonably approximates the relationship between a taxpayer's income attributed to that state and the taxpayer's business activities in that state. The U.S. Supreme Court has determined that a state's standard apportionment formula adequately reflects this relationship if the apportionment formula is internally and externally consistent both facially and when applied to a particular taxpayer. Where the standard apportionment formula fails to fairly reflect the relationship between the taxpayer's business activities in this state and the taxpayer's income attributable to this state, Michigan law provides relief in the form of an alternative apportionment provision. Michigan law permits deviation from the standard apportionment formula for businesses and individuals, estates and trusts.<sup>1</sup> This RAB addresses the procedures and standards applicable to the use of the alternative apportionment provision for business taxpayers under the Michigan Business Tax (MBT) for both the business income and the modified gross receipts tax bases, for business taxpayers under the Corporate Income Tax (CIT), and for those taxpayers covered by Part 1 of the Michigan Income Tax Act (MITA).

## BACKGROUND

A state's power to tax is an inherent feature of its sovereignty, and a state has wide latitude to establish a taxation scheme.<sup>2</sup> Its powers, if exercised for public purposes, are generally unlimited, extending to all persons, property, and business within its jurisdiction. Where a taxpayer earns income from a multistate business and more than one state has jurisdiction to impose income tax, the states' power to tax is limited by two federal constitutional provisions: the Commerce Clause and the Due Process Clause. The Commerce Clause restrains states from burdening the free flow of commerce among the states.<sup>3</sup> Specifically, it prevents states from subjecting taxpayers to multiple tax burdens simply because they do business across state lines. It is satisfied when a state's formula, if applied by every jurisdiction, would result in no more than all of the taxpayer's income being taxed.<sup>4</sup> The Due Process Clause precludes a state from taxing value earned outside its borders, sometimes referred to as extraterritorial taxation.<sup>5</sup>

These limitations shape the statutory framework governing division of business income among the states, requiring a state's taxation scheme to be both internally and externally consistent. The internal consistency test looks at the structure of the tax and measures whether the apportionment formula if adopted by all states would disadvantage interstate commerce as compared to intrastate commerce—a test designed to identify and prevent multiple taxation. The external consistency test focuses on whether a state's tax reaches beyond that portion of value that is fairly attributable to

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<sup>1</sup> See MCL 206.195 for individuals, estates and trusts, MCL 206.667 for corporations under the Corporate Income Tax, and MCL 208.1309 for Michigan Business Tax taxpayers. This RAB's references to individual income taxpayers are intended to include estates and trusts under part 1 of the Michigan Income Tax Act (MITA).

<sup>2</sup> *C F Smith Co v Fitzgerald*, 270 Mich 659, 668-669 (1935).

<sup>3</sup> *Massachusetts v US*, 435 US 444 (1978).

<sup>4</sup> *Container Corp of America v Franchise Tax Bd*, 463 US 159, 169 (1983).

<sup>5</sup> *ASARCO, Inc v Idaho State Tax Comm'n*, 458 US 307, 315 (1982).

economic activity within the taxing state—a test designed to identify and prevent extraterritorial taxation.<sup>6</sup>

Most states, including Michigan, divide or “apportion” income among states using a formula based upon one or more factors representative of the taxpayer’s activities in the taxing state.<sup>7</sup> This method of attributing income earned by a taxpayer in the operation of a unitary business is referred to as formula apportionment. Formula apportionment<sup>8</sup> does not purport to identify the precise geographical source of a taxpayer’s income, but is instead intended to be only a rough approximation of a taxpayer’s income that is related to the activities conducted within the taxing state.<sup>9</sup>

Michigan apportions business income using single sales factor apportionment for both business and individual income taxes.<sup>10</sup> The U.S. Supreme Court has determined the sales factor apportionment method to be presumptively valid.<sup>11</sup> Most states, including Michigan, permit a taxpayer to deviate from the statutorily-mandated apportionment method under certain circumstances. This statutorily-authorized relief is commonly referred to as the alterative apportionment provision. The presumptive validity of the single sales factor apportionment method is expressly stated in the alternative apportionment provisions of Michigan’s business tax statutes.<sup>12</sup> The CIT alternative apportionment provision, which is identical in all pertinent respects to the MBT provision, is as follows:

(1) If the apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:

(a) Separate accounting.

(b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.

(c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.

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<sup>6</sup> *Container Corp of America v Franchise Tax Bd*, 463 US 159, 169–170 (1983); *Oklahoma Tax Comm'n v Jefferson Lines, Inc*, 514 US 175 (1995).

<sup>7</sup> The underlying rationale for formula apportionment grew out of the difficulty of identifying the geographic source of income earned by a multistate enterprise. See *Trinova Corp v Michigan Dep't of Treasury*, 498 US 358, 373 (1991).

<sup>8</sup> Formula apportionment is more commonly known simply as apportionment; further references in this RAB will refer to the more commonly used “apportionment.”

<sup>9</sup> *Moorman Mfg Co v Bair*, 437 US 267, 273 (1978).

<sup>10</sup> See MCL 206.115(2) in Part 1 of the MITA pertaining to individual income taxpayers for years beginning in 2012 and after. See MCL 208.1301(2) for taxpayers under the Michigan Business Tax and MCL 206.661(2) for taxpayers under part 2 of the MITA known as the Corporate Income Tax. Michigan’s business tax acts do not distinguish between business and non-business income as does Part 1 of the MITA with respect to individual income taxation.

<sup>11</sup> *Moorman Mfg Co*, at 273.

<sup>12</sup> See MCL 206.667 for the CIT and MCL 208.1309 for the MBT.

- (2) An alternate method may be used only if it is approved by the department.
- (3) The apportionment provisions of this part shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of the tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.
- (4) The filing of a return or an amended return is not considered a petition for the purposes of subsection (1).<sup>13</sup>

The alternative apportionment provision under part 1 of the MITA, pertaining to individual income taxpayers, is nearly equivalent to the MBT and CIT provisions but does not contain subsection (3) or (4). The Department considers the single sales factor prescribed in part 1 of the MITA to have the same rebuttable presumption as expressly stated in section 667(3) of part 2 of the MITA based upon the U.S. Supreme Court's determination of this formula's presumptive validity. As a matter of uniformity, the Department considers subsection (4) of part 2 of the MITA to be equally applicable to individual income taxpayers under part 1 of the MITA, as will be discussed below.

## **PROCEDURES AND STANDARDS**

Michigan law permits either the taxpayer to petition for, or the Department to require, the use of an alternative apportionment method, if reasonable, when the statutory apportionment method does not fairly represent the extent of the taxpayer's business activity in this state. This RAB addresses the procedures applicable to each.

### **Taxpayer Request for Alternative Apportionment Relief**

**Time for Filing.** A request for alternative apportionment will not be considered unless it has been timely filed. A taxpayer seeking to apply an alternative apportionment method must seek the Department's approval at least 90 days prior to the due date of the return (including extensions) for which permission to use the alternative method is sought or, in the case of an amended return, at least 90 days prior to filing the amended return.

**Where to File.** A taxpayer's request for alternative apportionment must be sent to the Bureau of Tax Policy at 430 West Allegan Street, Lansing, MI 48922.

**Required Components.** A taxpayer's request for alternative apportionment must be a written request clearly labeled "Request for Alternative Apportionment" and must include:

1. Tax Type and Period. A request must identify the tax type and period covered by the taxpayer's request.

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<sup>13</sup> MCL 206.667.

2. **Statement of Reasons.** A request must contain a statement of the reasons, supported by detailed facts and data, explaining why the taxpayer believes the statutory method does not fairly represent the activities of the taxpayer in Michigan.
3. **Proposed Alternative Method.** A request must detail the proposed alternative apportionment method(s) and explain how it reflects the taxpayer's income attributable to Michigan and why it is a reasonable alternative.
4. **Data and Analysis.** The proposal must attach documentation identifying and describing the nature of the taxpayer's business activity and justifying the figures presented in the proposal for alternative apportionment, as well as their origin, nature and relation to the overall result proposed.
5. **Disclosure.** The request must disclose whether the proposed method is being used or requested in other states and whether the alternative method has been approved or rejected in those other states. The request must also identify those other states.

### **Criteria for Evaluating Requests for Alternative Apportionment.**

**Presumptions.** The statutory method of apportionment is presumed to fairly represent the business activity attributable to the taxpayer in this state for all tax types covered by this RAB.<sup>14</sup> Therefore, a taxpayer requesting alternative apportionment must rebut the presumption.

**Burden and Standard of Proof.** The burden of proof rests on the party seeking to apply an alternative apportionment formula.<sup>15</sup> That party must prove by clear and convincing evidence that the presumptively fair statutory formula is unfair under the particular circumstances and that the proposed alternative is reasonable.<sup>16</sup> This standard of proof imposes two burdens on the requesting party, one relative to the statutory formula and one relative to the proposed alternative.<sup>17</sup>

**Burden of Proving that the Statutory Method does not Fairly Represent Business Activity.** As to the first burden, the business tax statutes adopt what is known as the constitutional gross distortion standard, which requires a party attempting to overcome the presumption that the statutory formula is fair to demonstrate:

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<sup>14</sup> See MCL 206.667(3) for CIT, MCL 208.1309(3) for the MBT, and *Moorman Mfg Co v Bair*, 437 US 267, 273 (1978).

<sup>15</sup> Carolyn Joy Lee, Charolette Noel, *PER SE versus "AS APPLIED" CHALLENGES AND THE USE OF ALTERNATIVE APPORTIONMENT PROVISIONS*, 2010 St & Loc Tax Law 241, 261-262 (2010).

<sup>16</sup> *Donovan Const Co v MI Dep't of Treasury*, 126 Mich App 11, 21 (1983). Note that the "clear and cogent" standard of proof referenced in *Moorman Mfg Co*, at 274, is equivalent to the "clear and convincing" standard of proof. See <https://en.oxforddictionaries.com/definition/cogent>, defining cogent as clear, logical, and convincing. Evidence is clear and convincing when it "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227 (1995).

<sup>17</sup> ¶ 9.20 *EQUITABLE APPORTIONMENT PROVISIONS*, Hellerstein and Swain, 1999 WL 1398944, 16. See also BNA's Tax Management Weekly State Tax Report, Vol 17, No 49, p 5, December 10, 2010.

That the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state<sup>18</sup> AND leads to a grossly distorted result,<sup>19</sup> OR

That the statutory formula would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.<sup>20</sup>

The U.S. Supreme Court treats a showing of gross distortion as evidence of a state's taxation of extraterritorial activity, thus equating the two proofs.<sup>21</sup> The Department follows this treatment. Additionally, the Department treats the alternative apportionment relief provision under section 195 of Part 1 of the MITA, pertaining to individuals, as requiring the same gross distortion level of proof as that required under the business tax statutes based upon the Michigan Supreme Court's determination in *Trinova Corp v Dep't of Treasury*.<sup>22</sup> There, the Michigan Supreme Court considered section 69 of the Single Business Tax Act, which is nearly identical to section 195 of the MITA,<sup>23</sup> and determined that it served as a constitutional circuit breaker, requiring the gross distortion standard of proof.

For all taxes covered by this RAB, a determination as to whether the standard apportionment formula attributes income to this state out of all appropriate proportion to the taxpayer's business activities within this state and produces a grossly distorted result or whether it operates to unconstitutionally tax extraterritorial activity will depend on the facts and circumstances. A taxpayer may not rely solely on a large difference between the statutory and alternative methods as to either the income attributed to this state or the resulting tax liabilities as proof of distortion. Rather, additional analysis establishing why the statutory method attributes income to Michigan out of all appropriate proportion to the taxpayer's business activities within this state is necessary to sustain any distortion claim.<sup>24</sup>

Embodied in this burden are two evidentiary hurdles, one quantitative and one qualitative.<sup>25</sup> The quantitative hurdle requires a party to employ the metric that most appropriately quantifies the level of distortion between the taxpayer's business activities conducted in this state and the income attributed to this state using the statutory formula. The level of distortion required is one of

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<sup>18</sup> The "out of all appropriate proportion" language derives originally from the U.S. Supreme Court's opinion in *Hans Rees' Sons, Inc v N Carolina ex rel Maxwell*, 283 US 123, 135 (1931).

<sup>19</sup> The "gross distortion" language derives originally from the U.S. Supreme Court's opinion in *Norfolk & W Ry Co v Missouri State Tax Comm*, 390 US 317, 326 (1968).

<sup>20</sup> MCL 206.667(3) and 208.1309(3).

<sup>21</sup> *Norfolk & W Ry Co*, *supra* at 327.

<sup>22</sup> 433 Mich 141 (1989).

<sup>23</sup> Section 69 lists four alternatives to the statutory apportionment formula instead of the three listed by § 195. They are otherwise identical.

<sup>24</sup> See *Citizens Utilities Co of Illinois v Dept of Revenue*, 488 NE2d 984, 993 (1986), noting that the 15,000% increase in tax liability between the statutory formula and the separate accounting method in *Butler Bros v McColgan*, 315 US 501 (1942) was upheld because bare percentages without explanation were insufficient.

<sup>25</sup> The quantitative and qualitative analysis originated in the California Supreme Court case *Microsoft Corp v Franchise Tax Bd*, 39 Cal 4th 750, 766 (2006). Even though California does not require a taxpayer to carry the heavier constitutional burden of establishing gross distortion, the analysis still serves as a useful starting point.

constitutional magnitude. “Gross” distortion is flagrant distortion, distortion beyond all reasonable measure.<sup>26</sup>

A showing of quantitative distortion of constitutional magnitude is insufficient by itself. A taxpayer must also show qualitative distortion. The qualitative prong of the metric focuses not on the magnitude of the distortion but on the nature of the distortion and requires a taxpayer to show that its sales into Michigan do not fairly represent the nature of the taxpayer’s business activity in Michigan.<sup>27</sup> U.S. Supreme Court precedents have held separate accounting to be of little value in accurately depicting the business activity of a unitary business in a particular jurisdiction.<sup>28</sup> Therefore, if the taxpayer’s business is unitary, the Department will rarely consider separate accounting to be an appropriate method for establishing gross distortion. By the same principle, attempts by a unitary taxpayer to establish gross distortion or extraterritorial taxation with evidence that the taxpayer is more profitable in one jurisdiction than another will rarely be pertinent.<sup>29</sup>

Likewise, attempts to carve out certain receipts from the tax base will be unsuccessful without a showing that the income is somehow unrelated to the taxpayer’s unitary business activity. The form of a business’ investments or its organization will not control. For example, dividends received from subsidiaries and affiliates that reflect profits derived from a functionally integrated enterprise are income to the parent earned in a unitary business and their inclusion in the tax base does not result in gross distortion of the taxpayer’s business activity in this state. Additionally, unusually large receipts from an extraordinary event or an isolated transaction are not grossly distortive per se.<sup>30</sup> Distortion is not proved solely by comparing results. To determine whether there is gross distortion, the Department will look at the relationship between the apportionment factor and the taxpayer’s business activity producing the taxable income.

Single sales factor apportionment is intended to attribute sales to the consumer state and in so doing gives recognition to the consumer state’s contribution in the taxpayer’s production of the income.<sup>31</sup> The metric used should therefore demonstrate how it reflects Michigan’s contribution in the production of the taxpayer’s income.

**Burden of Proving that the Proposed Alternative is Reasonable.** Once the burden of establishing gross distortion is met, the second burden is to show that the proposed alternative is a reasonable method of apportioning the taxpayer’s income. To be reasonable, the party asserting it must establish a close connection between the proposed alternative apportionment method and the basis for deviating from the statutory formula.<sup>32</sup> The Department considers the following factors to be

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<sup>26</sup> Black’s Law Dictionary, (10<sup>th</sup> ed 2014) by Bryan A. Garner, editor in chief.

<sup>27</sup> *Microsoft Corp*, *supra* at 769. In *Microsoft*, the Court noted that the taxpayer’s treasury functions were qualitatively different from its principal business in contrast to the facts of another case involving Merrill Lynch, where the taxpayer’s treasury functions were not qualitatively different from its principal business of buying and selling securities. *Id.* at 766.

<sup>28</sup> See *Mobil Oil Corp v Comm’r of Taxes of Vermont*, 445 US 425, 438 (1980), citing *Butler Bros v McColgan*, 315 US 331, 336 (1939).

<sup>29</sup> ¶ 8.16 DISTORTION OR MISATTRIBUTION OF INCOME, Hellerstein and Swain, 1999 WL 1398922, 10.

<sup>30</sup> State Taxation § 8.16 *Distortion or Misattribution of Income*, 1999 WL 1398922, 16.

<sup>31</sup> See Pierce, *The Uniform Division of Income Tax for State Tax Purposes*, 35 Tax 747 (October 1957).

<sup>32</sup> See *A New Approach to Defining a “Reasonable” Alternative Apportionment Method*, State and Local Tax Advisory, September 10, 2013.



relevant to a determination of the reasonableness of the taxpayer's alternative apportionment method:

- what filing position the taxpayer has taken in other jurisdictions and/or what requests for alternative apportionment the taxpayer has made in other jurisdictions;
- whether the proposed method entirely removes the income from taxation by any jurisdiction; and,
- whether the proposed method reflects the economic reality of the taxpayer's business activity in Michigan.

A request for an assignment of income that results in all or a significant portion of a taxpayer's income escaping tax in all jurisdictions is unreasonable.

### **Invalid Requests for Alternative Apportionment**

A request for alternative apportionment must comply with the procedures set forth in this RAB. Because a valid request must be submitted in advance of a return, a return or amended return applying an alternative method of apportionment without prior approval does not constitute a valid request for alternative apportionment. This is true for taxpayers under part 1 of the MITA as well as taxpayers under part 2 of the MITA, the CIT, and for taxpayers under the MBT.<sup>33</sup> Nor may a request be attached to an original or amended return. Should the Department process an original or amended return which uses an unapproved alternative method, such action does not reflect the Department's acceptance or approval of the taxpayer's proposed alternative method.

A claim for refund which does not comply with the procedures set forth in this RAB does not constitute a valid request for alternative apportionment.

### **Department Response to Request for Alternative Apportionment**

As soon as practicable after receiving a proper and timely filed request for alternative apportionment, the Department will review and respond to the request, indicating whether it has been denied, approved, or approved in part and denied in part, and stating the reasons for the determination. This determination is appealable pursuant to the provisions of the Revenue Act

If the Department does not act upon a taxpayer's request before the expiration of 60 days from the date of the Department's receipt of the request, the request is deemed denied. The Department and the applicant may consent in writing to extend the time for a decision on the request.

### **Filing Instructions for Approved Requests**

Approval of an alternative apportionment method or partial approval is effective only for the tax period for which the approval was requested or another period designated by the Department. When filing a return or amended return using the alternative apportionment method, attach the

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<sup>33</sup> MCL 206.667(4) and MCL 208.1309(4).

Department's approval letter and a schedule indicating how the apportionment percentage was derived and applied.

In the event that approval is given for more than one tax period, the taxpayer must furnish information with the filing of its return in each subsequent tax period which establishes that the circumstances remain substantially unchanged. Approval for subsequent periods, if given, may be revoked if the circumstances justifying the variation in apportionment method have substantially changed.

### **Denied Requests**

If a taxpayer's request for alternative apportionment relief is denied, the taxpayer must report using the apportionment method mandated by the applicable statute. An aggrieved taxpayer may appeal the Department's decision pursuant to Section 22(1) of the Revenue Act.<sup>34</sup>

### **Department's Imposition of Alternative Apportionment Formula**

The Department will generally only impose an alternative apportionment method as the result of an audit or in conjunction with a partial rejection of a taxpayer's request for alternative apportionment. The Department is subject to the same presumptions and burdens of proof as those applicable to a taxpayer as outlined in this RAB. Specifically, the statutorily-mandated apportionment method is presumed to fairly represent the business activity attributed to the taxpayer in this state. The Department may impose an alternative apportionment method if it determines that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result and if the Department's proposed apportionment method is reasonable.

Because the Department must rely on taxpayers to self-report their income and tax liability, it is not bound to notify the taxpayer in advance of the due date of the return of its intent to apply an alternative apportionment method for that tax period. The Department may apply the alternative apportionment method for more than one tax period.

When the Department imposes an alternative apportionment method, it must advise the taxpayer in writing of 1) the reason the statutory formula does not fairly represent the taxpayer's business activity in this state, 2) an explanation of the alternative apportionment method being applied to determine the taxpayer's business activity in this state and why it is a reasonable alternative, and 3) the tax type and periods to which the alternative apportionment method applies.

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<sup>34</sup> MCL 205.22(1).