

# 2023 MICHIGAN Schedule of Apportionment MI-1040H

Issued under authority of Public Act 281 of 1967, as amended.

Include with Form MI-1040, MI-1041, or Form 807. Type or print in blue or black ink.

**Attachment 09**

1. Owner's Name	2. Identifying Number
3. Name of Business Entity	4. Federal Employer Identification No. (FEIN)
5. Combined Unitary Apportionment <input type="checkbox"/> Check this box if you elect to combine the apportionment of business income (loss) from entities unitary with one another. If this box is checked, write the word "Unitary" in box 3 and leave box 4 blank.  <b>NOTE:</b> If you elect to use combined apportionment, you must use combined apportionment for every unitary group from which you receive income (loss).	

## PART 1: COMPUTATION OF SALES FACTOR FOR APPORTIONMENT PERCENTAGE

6. Michigan sales (see instructions regarding throwback sales) .....	6.	00	
7. Total sales.....	7.	00	
8. <b>Apportionment Percentage.</b> Divide line 6 by line 7. ....	8.		%
9. <input type="checkbox"/> Check this box if you filed a U.S. Form 461 with a current year federal limitation on business losses and complete Form MI-461. <b>Important:</b> See instructions before continuing to Part 2.			

## PART 2: COMPUTATION OF INCOME ATTRIBUTABLE TO ANOTHER STATE(S)

10. Business income included in adjusted gross income that is subject to apportionment (include ordinary, portfolio, and all other business income from this business activity).....	10.	00	
11. Multiply the amount on line 10 by the apportionment percentage on line 8. ....	11.	00	
12. Income or loss attributable to another state(s). Subtract amount on line 11 from line 10. Enter here and on Schedule 1, line 13 (income) or line 4 (loss). Nonresidents and part-year residents: Include this amount on the appropriate line in column C of Schedule NR.....	12.	00	

## PART 3: COMBINED APPORTIONMENT UNDER THE UNITARY BUSINESS PRINCIPLE

13. If you checked box 5 above, list below the entities that are unitary with one another for which you are combining apportionment. Include a separate schedule showing your computations. If more than eight entities will be listed, include additional Form(s) MI-1040H with "Unitary" on line 3 and lines 6 through 12 left blank.

Entity Name	Federal Employer Identification Number (FEIN)

## Instructions for Form MI-1040H, *Schedule of Apportionment*

### General Information

Michigan defines business income as all income (loss) arising from transactions, activities, and sources in the regular course of the taxpayer's trade or business. Michigan business income (loss) includes the distributive share of income (loss) from a flow-through entity, including portfolio income. Portfolio income includes interest income, dividend income, royalty income, and net short-term and long-term capital gain (loss) reported on the federal *Schedule D*. For more information see the MI-1040 booklet.

Business income from business activity that is taxable both within and outside Michigan is apportioned to Michigan for individual income tax (IIT) purposes using this form. This form is also used to apportion business income for fiduciary and composite filers.

In order to determine if apportionment is required rather than allocation, a taxpayer must determine if the business activity causes the taxpayer's income to be subject to tax in both Michigan and another state. The Michigan Income Tax Act definition of "state" includes a foreign country.

A taxpayer's business income is taxable in another state if:

1. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or
2. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether the state does or does not.

For IIT purposes, Michigan uses the standards prescribed by federal Public Law (P.L.) 86-272 to determine whether another state has jurisdiction to subject the taxpayer to a net income tax.

### Identification

For individual income tax filers, enter the owner's name and full nine-digit Social Security number on lines 1 and 2. For fiduciary and composite filers, enter the name of the estate or trust, or the name of the company and the full Federal Employer Identification Number (FEIN).

### Part 1: Computation of Sales Factor for Apportionment Percentage

Business income subject to apportionment is sourced to Michigan by applying a sales factor. To compute the sales factor, divide the total sales in Michigan during the tax year by the total sales everywhere during the tax year.

"Sales" includes gross receipts from sales of tangible property, rental of property, proceeds from the sale of property used in the business and providing of services that constitute business activity. Exclude all receipts of nonbusiness income.

Sales of tangible personal property are in Michigan if:

1. The property is shipped or delivered to a purchaser (other than the United States government) within Michigan regardless of the free on board (F.O.B.) point or other conditions of the sale, or
2. The property is shipped from an office, store, warehouse, factory or other place of storage in Michigan and the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

**NOTE:** The numerator of the sales factor for individual income tax may include "throwback sales." Throwback sales are sales

of tangible personal property that originate in Michigan made to a purchaser in another state or country, and are "thrown back" to the numerator as Michigan sales because they are not taxable by the other state. Throwback sales follow federal P.L. 86-272 standards; the business must have physical presence in the other state or activity beyond solicitation of sales in order to exclude sales into another state or country from the numerator. There is no "water's edge" for individual income tax purposes.

Sales of other than tangible personal property (e.g., services) are in Michigan if:

1. The business activity is performed in Michigan, or
2. The business activity is performed both in Michigan and in another state(s), but based on cost of performance, a greater proportion of the business activity is performed in Michigan.

There are special apportionment formulas for transportation companies and other authorized taxpayers. Those formulas are identified in Chapter 3 of the Michigan Income Tax Act.

### Part 2: Computation of Income Attributable to Another State(s)

**If you filed a U.S. Form 461 with a current year federal limitation on business losses, complete *Michigan Excess Business Loss (Form MI-461)* before completing Part 2.**

Michigan's definition of business income differs from the federal definition of business income. Due to the differences in the business income reported for federal purposes, the federal business income and loss reported on Form MI-461 may not include all business income or loss for Michigan purposes (e.g., interest and dividends). Therefore, line 10 of this form should exclude amounts reported and apportioned on Form MI-461. However, apportionable interest, dividends and other business income not reported on Form MI-461 must be reported on line 10.

If apportioned business capital gains (losses) are reported on line 3 and/or line 8 of Form MI-1040D or Form MI-461, do not include those amounts on line 10 of this form.

Guaranteed payments to partners are not considered business income for Michigan purposes and should not be included on line 10 of this form.

A separate Form MI-1040H should be used for each business activity that requires apportionment. If you have more than one MI-1040H and are a Michigan resident, do not net income and losses from multiple forms together. Instead, combine losses on line 12 with other losses on line 12 and enter the total losses from other states on Schedule 1, line 4; combine income on line 12 with other income on line 12 and enter total income from other states on Schedule 1, line 13. Nonresidents with more than one Form MI-1040H should net income and losses from line 12 of all MI-1040H forms before entering the total on Schedule NR, column C.

### Part 3: Combined Apportionment Under the Unitary Business Principle

Michigan Supreme Court held that combined apportionment under the unitary business principle may be used to calculate IIT taxable income at the election of the taxpayer, *Malpass v. Department of Treasury*, 494 Mich 237 (2013). A taxpayer has the option to apportion each discrete legal entity's income (loss) separately or to combine apportionment when entities are unitary with one another. When a taxpayer elects to combine apportionment factors of the

unitary business the taxpayer must control the entities included in the combined apportionment filing and those entities must have a flow of value between their various operations. A taxpayer with control may elect to combine apportionment when the business operations show:

- Economic realities
- Functional integration
- Centralized management
- Economies of scale
- Substantial mutual interdependence

These factors are not exhaustive or exclusive and the ability to elect combined apportionment will depend on the totality of the circumstances.

A unitary business may include non-Michigan entities. An individual taxpayer may only include entities that have business income or loss reported in the individual's adjusted gross income. The election to use combined apportionment is made on an annual basis. Generally, to compute combined apportionment, all the Michigan sales of every company in the group are combined to arrive at "Michigan sales" in Part 1 of the MI-1040H. Then the total sales of every company in the group are combined to arrive at "Total sales" in Part 1 of the MI-1040H. When calculating the Michigan sales and the total sales of each company, intercompany

sales may be eliminated. In addition, each company's Michigan sales and total sales are multiplied by the individual's ownership interest percentage in the corresponding company. The business income (or loss) from all the companies in the group, to the extent included in AGI, is combined to arrive at business income subject to apportionment in Part 2 of the MI-1040H.

Individual taxpayers who use the combined apportionment method must provide a statement identifying the members in the group. The statement must show the combining calculations and include a description detailing the unitary relationship between the entities included in the combined apportionment filing. The statement must be included with the MI-1040H filed with the MI-1040 return. An illustrative example of the statement that provides the required information is below.

## Combined Apportionment Example

Robert is a shareholder in two companies. He has a 75% ownership interest in Ajax Company and a 60% ownership interest in Acme Company. The companies operate as a unitary business. Robert's adjusted gross income includes distributive share income from both companies. Robert's distributive share income from the companies is subject to apportionment as one or more companies in the combined apportionment group has business activity within and outside of Michigan. Robert elects to combine apportionment factors of his unitary business and prepares the following worksheet to submit with his MI-1040H to be filed with his MI-1040 return.

To support the election to use combined apportionment on the MI-1040H, Robert includes with his worksheet a written statement that includes all of the relevant facts and information supporting the unitary relationship between Ajax and Acme. In this statement, Robert first demonstrates that he has control over each of the entities based upon his 75% controlling interest in Acme and his 60% controlling interest in Acme. Robert then provides a description of the business operations between Ajax and Acme sufficient to satisfy each of the factors generally used to determine the existence of a unitary relationship — economic realities, functional integration, centralization of management, economies of scale, and substantial mutual interdependence. As one example of the information included within this statement, Robert describes the centralization of management between the two companies by describing how overall and day-to-day management decisions of Ajax were centralized and directed by the managers of Acme. Robert provides in this statement a similar explanation for each of the other relevant factors considered in establishing a unitary relationship so that, based on the totality of the circumstances, Robert successfully demonstrates that a unitary relationship exists between Ajax and Acme.

**Taxpayer Name:** Robert  
**Social Security Number :** 123-45-6789  
**Tax Year:** 2023

Unitary Business Group - Everywhere Sales	Gross Michigan Sales	Intercompany Michigan Sales Elimination	Net Michigan Sales	Ownership Interest	Net Michigan Sales x Ownership Interest
Ajax Company	19,000	(3,000)	16,000	75%	12,000
Acme Company	26,225		26,225	60%	15,735
<b>Total Michigan Sales, enter on line 6 of MI-1040H</b>					<b>27,735</b>

Unitary Business Group - Everywhere Sales	Gross Everywhere Sales	Intercompany Everywhere Sales Elimination	Net Everywhere Sales	Ownership Interest	Net Everywhere Sales x Ownership Interest
Ajax Company	30,333	(10,000)	20,333	75%	15,250
Acme Company	34,500		34,500	60%	20,700
<b>Total Everywhere Sales, enter on line 7 of MI-1040H</b>					<b>35,950</b>

Robert describes the unitary relationship between Ajax Company and Acme Company.