Instructions for Form 4579
Michigan Business Tax (MBT) Qualified Affordable Housing Seller's Deduction

Purpose

Public Act (PA) 168 of 2008 provides for deductions from the Business Income Tax base and Modified Gross Receipts Tax base for certain amounts associated with the sale of residential rental units to — and operation of those units by — a qualified affordable housing project.

This form is used to calculate the seller's deduction and establish the maximum recapture that the buyer may be liable for if it fails to qualify as a qualified affordable housing project or fails to operate in accordance with the operation agreement.

NOTE: Beginning January 1, 2012, only those taxpayers with a certificated credit, which is awarded but not yet fully claimed or utilized, may elect to be MBT taxpayers. If a taxpayer files an MBT return and claims a certificated credit, the taxpayer makes the election to file and pay under the MBT until the certificated credit and any carryforward of that credit are exhausted. A taxpayer making a valid certificated credit election may also claim the credits on this form.

Eligibility

Qualified affordable housing project means a person that is organized, qualified, and operated as a Limited Dividend Housing Association that has a limitation on the amount of dividends or other distributions that may be distributed to its owners in any given year and has received funding, subsidies, grants, operating support, or construction or permanent funding through one or more sources, including those listed below:

- Mortgage or other financing provided by the Michigan State Housing Development Authority, the Federal Department of Housing and Urban Development (HUD), the Federal Department of Agriculture for Rural Housing Service, the Michigan Interfaith Housing Trust Fund, Michigan Housing and Community Development Fund, Federal Home Loan Bank, Housing Commission Loan, Community Development Financial Institution, or mortgage or other funding or guaranteed by Fannie, Ginnie, Federal Housing Association, United States Department of Agriculture, or Federal Home Loan Mortgage Corporation.
- A tax exempt bond issued by a nonprofit organization, local government, or other authority.
- A payment in lieu of tax agreement or other tax abatement.
- Funding from the state or local government unit through a HOME investments partnership program.
- A grant or other funding from a federal home loan bank's affordable housing program.
- Financing or funding under the Federal New Markets Tax Credit Program.
- Financing under HUD's Hope VI Program as authorized by Section 803 of the National Affordable Housing Act, HUD's Section 202 program authorized by Section 202 of the National Housing Act, and under the Low-Income Housing Tax Credit program under Internal Revenue Code § 42.
- Financing or other subsidies from any new programs similar to any of the above.

A *limited dividend housing association* is organized and qualified pursuant to Chapter 7 of the State Housing Development Authority Act (Michigan Compiled Law 125.1491 et seq).

The seller and buyer of affordable rental units must enter into an "operation agreement" in which the buyer agrees to operate a specific number of the residential rental units sold as rent restricted units for a minimum of 15 years.

If these requirements are satisfied, the seller may take a deduction from its Business Income Tax base – after apportionment – of the gain from the sale of the residential rental units to the qualified affordable housing project. If, under the agreement, the buyer agrees to operate something less than the full amount of the rental units as rent restricted units, then the deduction is limited to the gain on the sale of the rental units multiplied by a fraction, which is the number of rental units sold to be operated as rent restricted units over the total number of residential rental units sold.

If a sale of qualifying property is reported on the installment method for Federal Income Tax purposes, the gain — or a proportional amount of the gain — may be deducted over time under the installment method so long as this treatment is consistent with the seller's treatment of the transaction for Federal Income Tax purposes.

Liens and Recapture

The Michigan Department of Treasury must record a statutory lien against the property subject to the operation agreement for the full (maximum) amount of the deduction from the Business Income Tax base of the seller. If a sale of qualifying property is reported on the installment method for Federal Income Tax purposes, the lien will be filed in the initial year of the sale for the full amount of the cumulative deductions.

If the buyer fails to qualify as a qualified affordable housing project or fails to operate any of the residential rental units as rent restricted units in accordance with the operation agreement within 15 years after the date of purchase, a proportionate amount of the lien becomes payable to the State. A qualified affordable housing project that converts some but not all of its rent restricted units to free market units in violation of the operation agreement would experience recapture. Failure to operate just one residential rental unit in accordance with an operation agreement constitutes failure to operate "all or some" of the residential rental units as rent restricted units in accordance with the operation agreement. The lien is payable through a "recapture" to be added to the tax liability of the buyer in the year the recapture event occurs, the amount of which is equal to the full amount of the deduction allowed the seller multiplied by a fraction, which is the difference between 15 and the years the affordable housing project qualified and complied with the terms of the agreement over 15. This recapture is reported on the *MBT Schedule of Recapture of Certain Business Tax Credits and Deductions* (Form 4587) and is mandatory even if a taxpayer does not meet the MBT gross receipts filing threshold.

Line-by-Line Instructions

Lines not listed are explained on the form.

Name and Account Number: Enter name and account number as reported on page 1 of Form 4567.

Unitary Business Groups (UBGs): Complete one form for each member for whom this schedule applies. Enter the Designated Member (DM) name in the Taxpayer Name field and the specific member of the UBG for which this form is filed on the line below.

Line 5: Multiply line 1 by the percentage on line 4. Carry this amount to the seller's Form 4567, line 48i.

UBGs: Carry amount on line 5 to the *MBT Unitary Business Group Combined Filing Schedule for Standard Members* (Form 4580), Part 2A, line 45i.