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REVENUE ADMINISTRATIVE BULLETIN 2007-5

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SINGLE BUSINESS TAX - FINAL RETURN OF FISCAL YEAR TAXPAYER

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 07-5. This Revenue Administrative Bulletin provides guidance on how the final Single Business Tax (SBT) return is calculated for a fiscal year taxpayer. A short year return shall be used by fiscal year taxpayers for their final SBT return. Initiated Law 2006 Act 325 (Act 325) repeals the SBT after December 31, 2007. Under section 2 of Act 325, (MCL 208.152), the Department of Treasury (Department) must prorate SBT liability, “to impose the equivalent of a tax at the rate of zero on business activity after December 31, 2007.”

Additionally, the Department will grant an extension to a taxpayer whose fiscal year extends beyond April 30, 2008, the deadline for filing and payment of final SBT liability for all taxpayers. The extension will be granted, upon request of the taxpayer, provided that substantially all of the tax estimated to be due is paid with the request for extension, in compliance with section 73 of the Single Business Tax Act (SBTA).

For a fiscal year filer with a late in the year year end, e.g., September 30, if the standard SBT extension period is not sufficient to allow a fiscal year taxpayer to gather necessary information for its final SBT return, the Department will, upon request, grant a special extension appropriate to the circumstances.

ISSUES

- I. How does a fiscal year taxpayer calculate its final SBT return?
- II. How should SBT credits be reported for the final SBT return for a fiscal year taxpayer?

CONCLUSIONS

I. A fiscal year taxpayer shall file a final return and pay the tax imposed by the SBTA for a partial year from the end of its fiscal year ending in 2007, to December 31, 2007. The fiscal year taxpayer may elect to compute the tax for the final taxable year of less than 12 months in accordance with 1 of the following methods, provided the method does not result in imposition of SBT for periods subsequent to December 31, 2007:

(i) The tax may be computed as if the SBTA were effective on the final day of the taxpayer's annual accounting period and the amount so computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's final taxable year, and the denominator of which is 12. [Annual Method]

(ii) The tax may be computed by determining the tax base in the final taxable year/short period in accordance with the method of accounting the taxpayer used in prior fiscal years, which reflects the actual tax base attributable to the period. [Actual Method]

Examples: A taxpayer with a fiscal year end of August 31 would compute the tax on whatever the base would be for the September 1, 2007 through August 31, 2008 annual accounting period, and then multiply that sum by 4/12 or 1/3 for the short year of September 1, 2007 through December 31, 2007.

Alternatively, the same taxpayer could choose to compute the actual tax base for the short year of September 1, 2007 through December 31, 2007 using the same method of accounting employed in prior years.

The Department, upon request of the taxpayer, will grant an extension to a taxpayer whose fiscal year extends beyond the deadline for the filing and payment of the final SBT liability for all taxpayers, which is April 30, 2008. The extension request must comply with section 73 of the SBTA, including the requirement that substantially all of the estimated tax due is paid with the request.

For a fiscal year filer with a late in the year year end, e.g., September 30, if the standard SBT extension period is not sufficient to allow a fiscal year taxpayer to gather necessary information for its final SBT return, the Department will, upon request, grant a special extension appropriate to the circumstances.

The replacement for the SBTA, which is the Michigan Business Tax Act (MBTA), becomes effective on January 1, 2008. A fiscal year taxpayer will file a return and pay the tax imposed by the MBTA for a partial year from January 1, 2008 to the end of its fiscal year in 2008. Section 503 of the MBTA, (MCL 208.1503), contains the election to calculate the MBT liability on the initial short period return by the annual or actual method. While a fiscal year taxpayer may choose the method for filing its initial MBT return, the fiscal year taxpayer must use that same method to calculate tax liability on its final SBT return.

II. A fiscal year taxpayer may claim on the final SBT return only the SBT credits earned and calculated based on actual payments made or accrued and actions performed from the end of its fiscal year in 2007 to December 31, 2007. This is correct even if the taxpayer chooses to calculate the SBT tax base on the annual/pro rata method. All standard practices pertaining to annualization and proration will apply for the qualification and calculation of credits and adjustments on the final SBT filing for a period less than 12 months.

Example: the investment tax credit (ITC) in the SBTA, (MCL 208.35a), is allowed for a portion of the cost, including fabrication and installation, **paid or accrued in the taxable year** of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. A taxpayer with a fiscal year end of August 31 would claim on the final SBT return, subject to the applicable limitations provided, the payments made or accrued to acquire these qualifying assets from September 1, 2007 thru December 31, 2007.

The standard practice of annualizing adjusted gross receipts to determine the ITC when a short year return is involved will be followed.

LAW AND ANALYSIS

Act 325 repeals the SBTA as of January 1, 2008 by mandating in section 1, (MCL 208.151) that, “The purpose of this initiated law is to (a) Repeal the [SBT] on business activity in this state after December 31, 2007.” The question is how fiscal year taxpayers should calculate their final SBT returns.

Section 2 of Act 325, (MCL 208.152), specifies that: “The department of treasury shall prorate the liability for the tax imposed under the [SBTA] as necessary to impose the equivalent of a tax at the rate of zero on business activity after December 31, 2007.” To implement this directive, the fiscal year taxpayer must use a short year return for the period from the end of the taxpayer’s 2007 fiscal year end through December 31, 2007.

For ease of administration, the Department will allow fiscal year taxpayers to calculate the short period SBT final return based either on the actual adjusted tax base in the short period or on a prorated adjusted tax base for the entire fiscal year to the number of months in the short year.

The Department will grant an extension to a taxpayer whose fiscal year extends beyond the deadline for the filing and payment of the final SBT liability for all taxpayers, which is April 30, 2008. The extension request must comply with section 73 of the SBTA in that substantially all of the tax estimated to be due must be paid with the request. Section 73 and other provisions of the SBTA continue for any period for which the SBTA was in effect prior to its repeal on December 31, 2007. Section 3 of Act 325, (MCL 208.153), provides that, “Except as specifically provided, this initiated law shall not affect the administration, allocation, or apportionment of the tax; payments to counties; nor any appropriation. The obligation of taxpayers and the state for taxes levied or collected on business activity on or before December 31, 2007 is affirmed.”

The method, annual or actual, that a fiscal year taxpayer uses to calculate tax liability on its final SBT return must be the same method the fiscal year taxpayer chooses to calculate tax liability on its initial MBT return. The election to calculate the final SBT return using the annual method is being authorized by the Department in response to MCL 208.152, and for the administrative convenience of taxpayers. However, the annual method may not be used if the tax will be imposed at an effective rate of greater than zero for periods subsequent to December 31, 2007.

The annual method may not be used for the final SBT return by taxpayers unless the annual method is used for the initial MBT return. For example, a taxpayer with seasonal business activity predominantly in the fall holiday season, and a fiscal year ending September 30, 2008

cannot use the annual method for the final SBT return and the actual method for the initial MBT return because the result would be business activity that is subject to neither the SBT nor the MBT. As the MBT is the replacement for the SBT, and effective immediately following the SBT, all business activity should be subject to one tax or the other.

A fiscal year taxpayer must file a final return and pay the tax imposed by the SBTA for a partial year from the end of its fiscal year ending in 2007, to December 31, 2007. Although the fiscal year taxpayer can elect to compute the tax for the final taxable year of less than 12 months under either the annual or actual method, the tax year reported ends December 31, 2007 with the repeal of the SBT. Therefore, a taxpayer is not entitled to claim a credit for actions taken or payments made or accrued after 2007. This treatment corresponds with the fact that a credit is a benefit that is conditioned by statute with a qualifying period beyond which a taxpayer is not entitled to claim the credit.