



## Tax Alert: Agricultural Producers and the New Michigan Business Tax ("MBT")

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Under the MBT, agricultural producers may find that they have more complicated tax issues than they have had in the past. The potential problems with the new tax arise from the facts that (1) the MBT does not make an agricultural production entity exempt from the tax; the MBT merely allows such entities to exclude agricultural production revenue and income from the MBT tax base, and (2) the MBT may apply to unitary business groups that include both agricultural producers and non-agricultural businesses.

### **MBT Exemption for "Tax Base Attributable to Agricultural Production"**

Under the MBT an agricultural producer is not an exempt entity. Instead, the agricultural producer is a taxpayer that must first calculate its MBT tax base, and then MAY BE allowed an exemption for the portion of the tax base that is attributable to agricultural production. The applicable MBT statute specifically provides that an agricultural producer (whose primary activity is the production of agricultural goods) may exclude from its MBT tax base only:

- that portion of the tax base attributable to the production of agricultural goods

Therefore, the agricultural producer is an MBT taxpayer and must calculate its total MBT tax base and then may subtract allowable amounts that are attributable to the production of agricultural goods.

### **MBT Unitary Business Groups**

Under the MBT, groups of separate entities may be combined and required to file a single tax return as if they were a single taxpayer. Generally, the MBT applies to any group of corporations or other separate legal entities that are under common control (more than 50% common ownership) if there is a "flow of value" or interdependence between or among the separate entities. For example, if a family were to own a corn farming corporation and that farming corporation leased farm land from a related LLC, and shipped goods using a related trucking company, all of the business activities might be forced to combine for purposes of calculating the group's MBT liability. Under Michigan's prior tax, the Single Business Tax, combined filings were not generally an issue because the SBT was a separate entity tax.

### **New Analysis for Agricultural Producers**

The Michigan Department of Treasury has provided recent guidance<sup>1</sup> indicating that an agricultural producer with multiple business holdings must perform the following steps to calculate its MBT liability:

1. First, each member of the group (both farming and non-farming businesses) would first calculate its individual business income and modified gross receipts tax bases.
2. Second, the farm entity member would subtract from its tax bases the portion of each base that is related to its production of agricultural goods. MCL 208.1207(d).
3. Third, each group member must then eliminate from its tax bases all intercompany transactions. MCL 208.1511.
4. Fourth, the unitary business group (the taxpayer) would then calculate its business income and modified gross receipts tax bases by combining the tax bases of the group's individual members.
5. Fifth, the group's tax bases would then be allocated or apportioned, and the amount allocated or apportioned to Michigan would be subject to the MBT.

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Many agricultural producers are involved in complex, multi-faceted business operations. The MBT is an extremely complicated tax that may present new challenges to agriculture-related businesses. For many agricultural producers, there are both compliance and planning considerations that should be addressed with the assistance of experienced tax counsel.

Should you have any questions about these issues and their impact on your business, please contact these tax professionals:

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<sup>1</sup> Department of Treasury Frequently Asked Questions ("FAQ") U49.