



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

ROBERT J. KLEINE
STATE TREASURER

Letter of Inquiry Concerning Michigan Taxes

March 6, 2009

COMPANY AND ADDRESS HERE

Dear Controller, Tax Manager or Tax Director:

The Michigan Department of Treasury, Discovery and Tax Enforcement Division, is notifying out-of-state companies concerning nexus standards for Michigan Single Business Tax (SBT) and Sellers Use Tax. This initiative is intended to educate companies that may unknowingly be conducting activities in the state that exposes them to either tax.

Your company has been identified as making sales or providing services to customers located in Michigan. These activities may make your company liable for payment of Michigan taxes.

Single Business Tax

The Michigan Court of Appeals determined that Public Law (PL) 86-272, 15 USC 318(a), did not apply to SBT since it is a value-added tax and not an income tax. Any activity that would otherwise be considered protected under PL 86-272 will not be protected for the purpose of determining nexus for SBT.

Any business soliciting sales or performing services in Michigan with a resident or nonresident employee, agent, representative, independent contractor, broker, or others acting on the company's behalf, has nexus with Michigan and may be liable for SBT. Revenue Administrative Bulletin 1998-1, *Single Business Tax Nexus Standards* applies to all open years from 1989 through 2007. Form 4503, *Summary of Revenue Administrative Bulletins (RABs) 1998-1 & 1999-1* is enclosed to assist you in determining if your company has nexus with Michigan. For a complete listing of Revenue Administrative Bulletins in their entirety, please visit our website at www.michigan.gov/taxes and click on Reference Library. SBT returns must be filed if a company has nexus with Michigan, and annual apportioned gross receipts equal or exceed the filing threshold.

For tax years 2004 through 2007, the filing threshold is \$350,000. If the taxpayer is a member of an affiliated group, a controlled group of corporations or an entity under common control, the filing threshold is different. For each year, the group must sum the apportioned gross receipts of its members. Do not include members without nexus or having less than \$100,000 in apportioned gross receipts. Each member having nexus with Michigan and at least \$100,000 in apportioned gross receipts has an SBT filing requirement, provided the group's total apportioned gross receipts is at least \$350,000. A *Voluntary Disclosure - Multi-Year Apportionment Schedule for Single Business Tax*, Form 4132, is enclosed to assist you in determining if the company is liable for SBT.

The Michigan Business Tax (MBT) replaced the Single Business Tax (SBT) effective January 1, 2008.

For taxpayers with apportioned or allocated gross receipts of \$350,000 or more, the MBT is comprised of a 4.95% tax on business income and a 0.8% tax on modified gross receipts (except for insurance companies and financial institutions). Insurance companies are taxed on gross direct premiums written on property or risk located in Michigan. Financial Institutions, including their subsidiaries, are subject to a franchise tax on their net capital.

Please note MBT's nexus standards are more inclusive than SBT's nexus standards. There are two nexus standards under the MBT. First, a person may have nexus with Michigan if that person has physical presence in Michigan for more than one day during the tax year. Alternatively, a person may have nexus with Michigan if the person actively solicits sales in Michigan and has Michigan gross receipts of \$350,000 or more. See MCL 208.1200(1).

(See reverse for further information)

"Actively Solicits" is defined in RAB 2007-6. Active solicitation includes, but is not limited to, solicitation through (1) the use of mail, telephone, and e-mail; (2) advertising, including print, radio, internet, television, and other media; and (3) maintenance of an internet site over or through which sales transactions occur with persons within Michigan.

Public Law 86-272 applies to the business income portion of the MBT tax. Therefore, any activity that would be protected under PL86-272 will be protected for the purpose of determining nexus for the business income portion of the MBT.

Taxpayers include a single person or entity or a unitary business group. A unitary business group means a group of United States persons, other than a foreign operating entity, one of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of the other United States persons and that (a) has business activity resulting in a flow of value between or among persons in the group, or (b) has business activities that are integrated with, are dependent upon or contribute to each other.

Our website www.Michigan.gov/taxes contains additional information regarding MBT details, MBT credits, MBT Frequently Asked Questions (FAQ's), how to submit questions, forms for filing estimated MBT payments, and a "Michigan Business Tax Estimator".

Use Tax

A seller is subject to use tax collection responsibility under the Use Tax Act if it has nexus with Michigan. Revenue Administrative Bulletin 1999-1, *Use Tax Nexus Standards*, applies to all open years.

Voluntary Disclosure

In response to the changes in SBT nexus standards, Michigan enacted legislation to create a voluntary disclosure program, which allows a qualifying company to limit its prior year tax liabilities in exchange for future tax compliance. Under voluntary disclosure, a qualifying company can limit the number of prior year taxes (the lookback period), to no more than four years and pay only the tax and interest amounts. The failure to file penalty is waived. In addition, voluntary disclosure provides the assurance that the department will not pursue taxes or bring any criminal action against the company for failure to report or remit a required tax for years prior to the lookback period. Voluntary disclosure applies to all taxes administered by the department. A copy of the voluntary disclosure legislation, Michigan Compiled Law (MCL) Section 205.30c can be found at www.legislature.mi.gov.

If you believe the company qualifies for voluntary disclosure and wish to take advantage of this program, complete and submit the enclosed *Nexus Questionnaire*, Form 1353, and *Voluntary Disclosure Request*, Form 4133, for tax years 2004 through 2007. Filing returns or paying tax prior to requesting voluntary disclosure will eliminate a company from participation in the program. ***Do not submit annual returns, worksheets, estimated payments or extension payments for the tax(es) disclosed at this time.*** If the company qualifies, we will contact the representative identified on the voluntary disclosure request form.

The company must meet the eligibility requirements outlined in the voluntary disclosure legislation at the time a formal request for voluntary disclosure is submitted. This letter does not guarantee or provide immunity from actions resulting in the company's inability to qualify for voluntary disclosure. The opportunity to apply for voluntary disclosure is limited to 45 days. After 45 days, a "final letter of inquiry" will be issued; and the company will be disqualified from this program and the associated benefits of a limited lookback period and penalty waiver. Please refer to Section 30c(15)(d) of the voluntary disclosure legislation.

If you determine your company does not have nexus with Michigan and is not liable for Michigan taxes, complete and submit the enclosed *Nexus Questionnaire*, Form 1353, for tax years 2004 through 2007, and submit with an explanation of your Michigan activities.

Please forward your response no later than April 21, 2009. A return envelope is enclosed for your use.

This letter of inquiry is sent in accordance with Section 21(2)(a) of the Revenue Act, Public Act 122 of 1941, as amended. If you have any questions, please contact **Scott Nearpass** at **517-636-4266**, Discovery and Tax Enforcement Division.

Enclosures

Form 4133, Voluntary Disclosure Request Form

Form 1353, Michigan Department of Treasury Nexus Questionnaire

Form 4503, Summary of Revenue Administrative Bulletins (RABs) 1998-1 & 1999-1

Return Envelope