

# Tax Newsletter

October - November 1975



TAXATION SECTION

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EDITOR'S NOTE:

Excerpts from the Court of Appeals Digest, on pages 7-9, are being reprinted here with the permission of Chief Judge Lesinski who, as a courtesy and on an experimental basis, has allowed editors of State Bar newsletters access to the digest because of the backlog between the time of decision and the date on which the advance sheets are published.

Also in this issue of the Tax Newsletter is Volume II of the Michigan Single Business Tax question and answer series, released by the Department of Treasury on October 20, 1975. Volume III is in the process of being prepared and will be published in the Tax Newsletter as soon as it is released.

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Taxation Section  
State Bar of Michigan, 306 Townsend Street, Lansing, Mich. 48906

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CORPORATION INCOME TAX - FINAL ESTIMATE

The Michigan Corporation Income Tax has been repealed effective as of December 31, 1975, to be replaced by the new Michigan Single Business Tax.

The last installment payment of corporation estimated income tax will be due January 31, 1976. This means that corporations which report their income tax for a calendar year period, and those fiscal year corporations with any quarter ending on December 31, 1975, will make their last estimated income tax payment on or before January 31, 1976. All others, that is those corporations with fiscal quarters ending during January or February 1976, will not make an estimated tax payment for that quarter but, rather, will pay their entire remaining income tax liability on or before April 15, 1976.

The MICHIGAN DEPARTMENT OF TREASURY has issued the following guidelines:

"Fiscal Year Corporations

November year end	- one month -	no estimate
October	" - two months -	no estimate
September	" - three months -	MI-1120-ES
August	" - four months -	MI-1120-ES
July	" - five months -	MI-1120-ES & 2nd Q
June	" - six months -	MI-1120-ES & 2nd Q
May	" - seven months -	MI-1120-ES & 2nd Q
April	" - eight months -	MI-1120-ES & 2nd Q
March	" - nine months -	MI-1120-ES & 2nd and 3rd Q
February	" - ten months -	MI-1120-ES & 2nd and 3rd Q
January	" - eleven months -	MI-1120-ES & 2nd and 3rd Q

All corporations will receive their final 1975 MI-1120 in January 1976. The final MI-1120-Q mailing will be made in January 1976. EDP will make no further mailings for corporation income tax and code & registration will be closed at the end of December 1975. New accounts will be handled manually after that date.

All returns are due April 15, 1976. Extensions will be granted but extension interest will run from April 15, 1976. A "safe" estimate is one based on a proportionate share of the prior year's tax or one based on actual accounting with the balance of the estimate for one or two month quarters not paid with forms MI-1120-ES and MI-1120-Q being paid by April 15, 1976 either with the annual return or with a request for extension."

SINGLE BUSINESS TAX QUESTIONS AND ANSWERS  
VOLUME II

10/20/75

1. Does business income in Act 233, Section 269 for credit for SBT paid refer to business income of the business activity or the individual's, partner's or shareholder's proportionate share of the business income?
  - A. Proportionate share.
2. Section 4(3) defines compensation and excludes from compensation payments to independent contractors. In some instances workmen's compensation must be paid by the general contractor for his subcontractors. Is this payment considered for and on the behalf of an employee or is it exempt from compensation as a payment to an independent contractor?
  - A. Exempt, as payment is for or on the behalf of a subcontractor.
3. How is insurance handled from the compensation standpoint?
  - A. If the insurance is for the benefit of the company, the insurance payment would not constitute compensation; however, if the benefit is to the employee or the employee's beneficiary, the insurance must be included in compensation.
4. When a business activity of a sole proprietor is allowed a credit under Act 233 for the SBT, is the income from the business activity from a spouse required to be included in business income, which would in effect reduce the percentage of credit? Example: Rental housing reported on a joint return with the business income for a separate business.
  - A. Yes, if filing a joint return for income tax purposes.
5. Will payments to Individual Retirement Accounts (IRA) be considered compensation as defined under the SBT Act?
  - A. No, as the payment is not made for or on the behalf of an employee.
6. Will a contractor be allowed to report on a completed contract basis even though the contract may run two or three years or must he report on a percentage of completion method?
  - A. Must remain consistent with method used to report Federal income tax.

7. Under Section 23 may the taxpayer defer the capital acquisition deduction to the end of the completed contract or payment thereof or must he deduct the cost paid or accrued in a taxable year?

A. The taxpayer must deduct the cost paid or accrued in a taxable year.

8. Do all individuals, partners and subchapter S shareholders qualify for the credit in Act 233 for SBT paid?

A. Yes, on a percentage basis as follows:

<u>If net business income is</u>	<u>The credit is</u>
\$20,000 or less	20% of the single business tax
More than \$20,00 but less than \$40,000	15% of the single business tax
More than \$40,000	10% of the single business tax

Except: 1) The credit cannot exceed the personal income tax liability.

2) The credit cannot be used by a taxpayer who elects the 50% gross limitations for computing the SBT.

9. How is the gain or loss treated for property transferred between members of an affiliated group who qualify to file combined or consolidated returns?

A. The gain or loss will be treated the same as the Federal income tax treatment except the specific statutory provision under Section 23(b) & (d) for property acquired after January 1, 1976.

10. Is the increased exemption under Section 35(a) subject to the "two for one" reduction or is the "two for one" reduction only applicable to the first \$34,000 of tax base for 1976?

A. The increased exemption is also subject to the "two for one" reduction.

11. In applying the business loss and net operating loss, which comes first?

A. Business loss.

12. Does the language in Section 23(f) open up an additional five years of carryforward for net operating losses?

A. Any unused Michigan Corporation Income Tax net operating loss as of December 31, 1975 can be carried forward through December 31, 1980.

13. If a taxpayer sold property prior to 1-7-76 and is reporting the gain on an installment basis over the life of the contract, is the gain subject to SBT?
- A. Yes, to the extent it is included as a part of Federal income tax and any excluded capital gain.
14. Is interest income included in gross receipts for the 50% of gross receipts limitation?
- A. Yes, if derived from a business activity.
15. Can the 75% or more of gross receipts from qualified food be prorated so as to prorate the percentage of compensation?
- A. No.
16. Can a taxpayer filing a combined return adjust the combined return by using the various exemption alternatives for various members?
- A. No. The determination for the various exemption alternatives must be made on the total activity of the group.
17. Is an individual who is subject to the SBT who also has a sizable investment portfolio subject to SBT on the income derived from investment?
- A. We will follow the Internal Revenue Service guidelines with regard to investors and traders. If an individual is deemed to be a trader under the Internal Revenue Code, receipts from investments and intangibles will be considered business income subject to SBT. If a taxpayer is considered an investor (passive investor) under the Internal Revenue Code, the income from intangible investments would not be subject to SBT but, of course, would be subject to the Michigan Intangibles Tax and would also be reported on the MI-1040.
18. If an individual subject to SBT has rental income from real property, is the income from rental property taxable under the SBT?
- A. The income from rental property is considered a business activity and, therefore, is subject to the SBT which, of course, would be subject to the \$34,000 gross receipts limitation for filing a SBT return.
19. Is a fiscal year taxpayer entitled to the capital acquisition deduction for property acquired within the first taxable year less than 12 months? Example: Property acquired in March, 1976 - would the taxpayer prorate or use the actual method of arriving at the deduction?
- A. The taxpayer would use the actual amount paid or accrued in the taxable year.

20. At what point does property become eligible for the capital acquisition deduction?
- A. Section 23 refers to the costs paid or accrued in the taxable year for assets which will become eligible for depreciation. Therefore, cost paid or accrued for property would be eligible for the capital acquisition deduction even though not yet taken as a depreciable item on the Federal income tax return.
21. Does the language in Section 23(b) & (d) referring to the gross proceeds from the sale of tangible assets refer only to those assets on which a capital acquisition has been taken (acquired after 1-7-76) or is the requirement to add back the gross proceeds for all assets without regard to the date acquired?
- A. Section 23(b) & (d) apply only to those assets acquired after January 1, 1976.
22. What will be the treatment of tips and gratuities both for compensation purposes and gross receipts purposes for SBT?
- A. Tips collected by the employer will be considered gross receipts of the employer and compensation.
23. Will a fiscal year taxpayer using the actual method receive the full statutory exemption for the first taxable year?
- A. No, the statutory exemption must be prorated in accordance with Section 72(b).
24. If the gross proceeds from sales of capital assets requiring addback in Section 23(b) and 23(d) are on an installment basis for Federal income tax reporting purposes, is the same treatment granted for SBT purposes?
- A. Yes, the taxpayer must be consistent with the Federal income tax treatment.
25. If the adjusted tax base is a negative amount, what effect does the excess compensation deduction have?
- A. The excess compensation deduction cannot be used to increase a loss carryover in accordance with Section 23(e).
26. Can an affiliated group file a consolidated or combined return if members are subject to different tax base computations including Sections 9, 20, 21 or 22?
- A. No. All members of an affiliated group filing consolidated or combined returns must have like tax base computations in addition to the requirements provided in Section 77. Although separate filing of returns is required, the affiliated group is entitled to only one exemption allowed by Section 35(a).

**TAXATION - PROPERTY ASSESSMENT - CHALLENGE - SUIT - ADMINISTRATIVE REVIEW** Prior to the enactment of the Tax Tribunal Act, 1973 PA 186, the legislature provided a taxpayer two methods of challenging the assessment of a personal property tax: a suit in circuit court for the refund of an illegal tax under MCLA 211.53 and administrative review in the State Tax Commission under MCLA 209.101 et seq. Review of either a circuit court decision or State Tax Commission determination is only to be had in the Court of Appeals.  
STATUTE: MCLA 209.101 et seq; MCLA 211.53

**TAXATION - PROPERTY ASSESSMENT - SUIT - ADMINISTRATIVE REVIEW - CONCURRENTLY** Both a circuit court action and an appeal to the STC may be pursued simultaneously, and the statutory scheme does permit conflicting decisions.

**TAXATION - PROPERTY ASSESSMENT - SUIT - CIRCUIT COURT - STC - ERROR** Since review of an STC decision is not reviewable by the circuit court, a taxpayer in a section 53 suit need not prove error on the part of the STC.  
STATUTE: MCLA 209.101

**TRIAL COURT - BENCH TRIAL - TESTIMONY - WEIGHT - DISCRETIONARY** In a trial without a jury the trial judge is free to accord whatever weight he deems appropriate to the testimony of the various witnesses.

**TAXATION - PROPERTY ASSESSMENT - LIST PRICE ASSESSMENT - COMPUTER EQUIPMENT** Where the trial court heard testimony that there were virtually no sales of the taxpayer's computer equipment at the catalog list price and expert testimony describing the list price technique, there was sufficient testimony for the trial court's determination that the listed selling price method was at variance with financial realities and resulted in the imposition of an illegal tax.

**EVIDENCE - TAXATION - PROPERTY ASSESSMENT - METHODS - OTHER JURISDICTIONS** Where the issue in a personal property tax refund suit was whether the list price method of assessing certain data processing equipment fairly reflected the true cash value of the property, it was not error for the trial court to allow the plaintiff to introduce testimony relative to the methods used by taxing authorities outside the jurisdiction of the defendants.  
PANEL: Brennan, McGregor, WALSH

August 25, 1975

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APPEAL AND ERROR - STATUTES - INTERPRETATION - LEGISLATIVE INTENT In resolving cases involving disputed interpretations of statutory language it is the function of the reviewing court to seek to effectuate the legislative intent.

STATUTES - CONSTRUCTION - CLEAR - UNAMBIGUOUS If a statute is clear and unambiguous on its face there is no room for judicial construction and the statute must be enforced as written.

TAXATION - PROPERTY ASSESSMENT - INVENTORY - METHOD - CHOICE A taxpayer is permitted to elect to have its inventory in a particular assessing district assessed according to the average monthly inventory without regard to the method selected in another assessing district.

STATUTE: MCLA 211.13

TAXATION - PROPERTY ASSESSMENT - INVENTORY - ABUSE - CORRECTION If a taxpayer chooses to juggle his inventories as tax day approaches so as to decrease the overall amount of tax which must be paid, the solution lies in the proper enforcement of the law and not in the reviewing court's adopting of a strained construction of the statute which would deny a legislatively granted right to non-offending taxpayers.

TAXATION - PROPERTY ASSESSMENT - AVERAGE - DETERMINATION Where a taxpayer's property in the assessing district comprises approximately 23% of the value of all property located therein, this will constitute a significant factor in determining the average level of assessment, and the taxpayer's property should be excluded from the computations in arriving at the average level of assessment.

TAXATION - PROPERTY ASSESSMENT - AVERAGE - DETERMINATION - METHOD Where the value of one taxpayer's property is a significant factor in determining the average level of assessment, the proper method for determining the average level of assessment is to divide the assessed value of all taxable personal property in the assessing district, exclusive of the assessed valuation placed on taxpayer's taxable personal property by the Commission, by the true cash value of all taxable personal property in the assessing district, exclusive of the true cash value assigned to the taxpayer's taxable personal property by the Commission.

STATUTE: MCLA 211.13

PANEL: BRENNAN, Gillis, Walsh

XEROX CORPORATION v CITY OF DETROIT (Aff'd)  
September 10, 1975 20039;20056

TAXATION - PROPERTY ASSESSMENT - ADMINISTRATIVE REMEDIES - EXHAUSTED - COURT ACTION - NOT PRECLUDED In a suit to recover allegedly illegal taxes, paid under protest, the taxpayer's action is not foreclosed by virtue of having previously sought a review of said taxes from the State Tax Commission.

STATUTE: MCLA 211.53

TAXATION - PROPERTY ASSESSMENT - VALIDITY - STC DETERMINATION - NOT FINAL In a suit to recover allegedly illegal taxes paid under protest, a motion for summary judgment is properly denied where it is alleged that the method of assessment results in a valuation which bears no reasonable relationship to the true cash value of the property. The basic thrust of plaintiff's allegations are that defendant's methods of valuation were unconstitutional in that they constituted a fundamentally wrong principle of assessment. An STC determination is not final and binding where the validity of the tax or plaintiff's right to recover allegedly illegal taxes are involved.

PANEL: Brennan, MCGREGOR, Walsh