

Income/Franchise:

Michigan Department of Treasury Comments on Case Involving Statute of Limitations on Late Unitary Filing

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (5/24). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury (Department) comments on the Michigan Court of Appeals (Court) 2023 decision affirming that a Michigan Business Tax (MBT) audit of tax returns of single entity taxpayers that were later included in an untimely unitary business group (UBG) return filing did not extend the statute of limitations for the UBG to request a refund [see *State Tax Matters*, Issue 2023-48, for more details on the 2023 decision]. According to the Department, the Court concluded that under the MBT, a UBG is a separate taxpayer from its constituent members and that a UBG return filing is mandatory rather than elective. As such, because a UBG return should have been filed in this case, the Department noted that the Court rejected the “paradoxical argument that the audit of the single entity returns which should never have been filed should toll the statute of limitations for the filing of UBG returns that should have been filed but were not.” The Department also noted that the Court similarly concluded there was no legal basis for the claim that a pending audit for a single member of a UBG extends the statute of limitations for the entire UBG. Moreover, “even if the filing of both the individual and UBG returns were proper, tolling of one set of returns could not support a basis to extend or toll the statute for the other taxpayer’s returns.” The Department also explained that, according to the Court, it was the taxpayer’s obligation to determine whether a UBG return should have been filed and to timely file it, and “any refund lost was not the result of the Department’s actions, but of the UBG’s failure to recognize its obligation to file a UBG return and to do so in a timely manner.” Please contact us with any questions.

URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_May2024Final.pdf

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