

Income/Franchise:

Michigan: Taxpayer Holding Investments in REMICs Cannot Claim Business Loss Carryforwards

Case No. 364746, Mich. Ct. App. (5/16/24). The Michigan Court of Appeals (Court) affirmed a 2022 Michigan Court of Claims ruling, which held that a taxpayer holding investments in real estate mortgage investment conduits (REMICs) could *not* exclude excess inclusion income (EII) from federal taxable income (FTI) that is the starting point for computing its tax base under Michigan’s corporate income tax (CIT), and thus the taxpayer could *not* carry forward over \$20 million in business losses from 2015 through 2017 on its 2018 Michigan CIT return. In doing so, the Court agreed with the Michigan Court of Claims’ reasoning that the Michigan CIT begins with FTI and employs its own business loss adjustment so that business losses under the Michigan CIT are different from federal net operating losses that are a required “add-back” under state law. Under the facts, the taxpayer had originally reported no business losses on its 2015 through 2017 Michigan CIT returns and then subsequently amended these Michigan CIT returns to try and claim substantial loss carryforwards on its 2018 Michigan CIT return. The Court concluded that the Michigan Court of Claims did not err by determining that the Michigan CIT amended returns in this case did not support the 2018 Michigan CIT return because the taxpayer used the incorrect starting point for its FTI – as it should have used FTI as listed on line 30 of its federal return. Please contact us with any questions.

URL: https://www.courts.michigan.gov/49a881/siteassets/case-documents/uploads/opinions/final/coa/20240516_c364746_34_364746.opn.pdf

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