

***Michigan Association of Certified Public Accountants  
Position Statement – MBT Penalty Relief  
March, 2009***

The Michigan Association of Certified Public Accountants (MACPA) is comprised of more than 17,000 members – representing every corner of Michigan’s economic marketplace. MACPA members serve all types of Michigan business entities, individuals, school districts, municipalities and other governmental agencies – providing a one-of-a-kind hand on the pulse of the state’s financial climate. Likely the most diverse professional association in Michigan, the MACPA takes an official position on only a limited array of non-occupational issues of importance to the accounting profession and the public. Most tax policy proposals do not qualify. Because of the significant ambiguity surrounding many portions of the Michigan Business Tax (MBT) and the numerous amendments made late in 2008 (and early in 2009), the MACPA is seeking statutory penalty relief for MBT returns.

The MACPA’s position reflects statutory needs in three areas, as well as additional administrative clarity:

75% of MBT Liability

The vast majority of taxpayers and tax preparers in Michigan have described the MBT as one of, if not the most complex tax structures with which they have worked. The Department of Treasury and the MACPA have, to date, answered a combined 452 separate questions through online FAQ systems. Additionally, the Michigan Legislature made numerous changes to the MBT as late as January 9, 2009 – affecting the 2008 tax year. Many of the remaining areas of ambiguity (e.g. some aspects of the unitary principle) have a significant impact on final tax liability. Given the historic 85% penalty safe harbor that has been allowed under the much better understood SBT, it is very reasonable that a taxpayer that achieved a 75% or greater level of accuracy in payment should not be penalized in the first year of MBT implementation.

100% of Prior Year SBT Liability

Many companies do not have the resources to engage consultants and experts to estimate tax liability – and certainly not to the extent necessary to have achieved a fully accurate estimate of new liability under the unfamiliar aspects of the MBT. Substantial changes in the nature of the tax base, unitary group filing requirements, expanded nexus standards, and modified apportionment rules have made it very challenging for companies to accurately estimate their MBT liability. As a result many businesses have based their 2008 estimates on prior year SBT liability as a good faith estimate. An entity that paid MBT estimates based on 100% of prior year SBT liability should not be penalized in the first year of MBT implementation.

Application to Tax Years Ending Prior to 12/31/09

Many Michigan companies do not have a 12/31 year-end and operate on a fiscal-year basis. For example, a taxpayer with a March 31<sup>st</sup> year-end has already remitted three of its quarterly estimates for its year April 2008 to March 2009 tax year. By extending penalty relief through tax years ending prior to 12/31/09 you ensure the same level of relief is provided to all taxpayers regardless of year-end.

Administrative Clarity

Existing statute [MCL 204.24(4)], administrative rule as promulgated by the Department (R 205 1013) and Revenue Administrative Bulletins (RAB) 2005-3 provide for the waiver of penalty due to reasonable cause. In addition to the specific statutory relief as described above, the MACPA is seeking further clarity regarding the Department’s intention of reasonable cause application to MBT filings.