JONES DAY | STATE TAX RETURN NEWSLETTER

Volume 18 Number 2 June 2011

Midwest Legislative Update: Indiana, Michigan, and Missouri

Allison E. Haedt
Columbus
1.614.281.3972
aehaedt@jonesday.com

Rachel A. Wilson
Dallas
1.214.969.5050
rawilson@jonesday.com

Midwestern states passed some important tax legislation in 2011. For example, Indiana passed a budget bill that lowers the corporate income tax rate and eliminates the carryback of state net operating losses, Michigan abandoned the Michigan Business Tax in favor of a new corporate income tax, and Missouri passed a phase-out of its franchise tax.

Indiana – Corporate Tax Rate Reduction

On May 10, 2011, Governor Mitch Daniels signed into law Indiana House Bill 1004. The new law contains several important tax changes. First, it lowers the rate of the Indiana corporate Adjusted Gross Income Tax ("AGIT") from 8.5 percent to 6.5 percent over the course of four years. The rate will be lowered by one-half percent each year, beginning July 1, 2012, until it reaches 6.5 percent, effective July 1, 2015. Second, the new law eliminates all carryback deductions for state net operating losses ("NOLs"). A carryforward deduction remains available, however, for the number of years allowed for carryforward of federal NOLs under Internal Revenue Code § 172(b). And finally, the new law revises the corporate AGIT apportionment rules applicable to attribution of business income and sales receipts from certain intangibles. Under the revised rules, certain intangible property is sourced on the basis of rules found in Indiana Code § 6-3-2-2 (Adjusted Gross Income as Applied to Corporations and Nonresidents) rather than Indiana Code § 6-3-2-2.2 (Income Attributable to Indiana for Tax Purposes).

Michigan – MBT, R.I.P.

On May 25, 2011, Governor Rick Snyder signed into law House Bill 4361. The new law creates a new corporate income tax ("CIT") at a rate of 6 percent. The new CIT provisions largely mirror the provisions of the income tax portion of the current Michigan Business Tax ("MBT") and will be effective beginning January 1, 2012. However, unlike the MBT, which is levied on all businesses, the CIT will be levied only on businesses organized as traditional C corporations. Sole proprietorships, partnerships, S corporations, and limited liability companies will not be required to pay taxes or file returns under the CIT. Moreover, the CIT does not retain any of the tax credits offered under the MBT, with the exception of the alternate tax credit, which applies only to businesses with gross receipts of $20.0 million or less and adjusted business income of $1.3 million or less.

That same day, Governor Snyder also signed House Bill 4362, which allows a taxpayer that has been awarded MBT credits through 2011 to file returns under the MBT rather than the new CIT until the taxpayer's MBT credit or any carryforward of such credit has been used. Specifically, the new law amends the MBT Act to provide that beginning January 1, 2012, "taxpayer" will include only a person or unitary business group with a "certificated credit" that wishes to claim the credit and either is not subject to the new CIT or elects to file under the MBT rather than the new CIT. "Certificated credits" are defined as credits obtained as a result of a taxpayer's entering into an agreement with the state under the MBT before January 1, 2012. The new law also provides that the MBT Act will be fully repealed once Michigan's secretary of state receives written notice from the Department of Treasury that all "certificated credits" have been exhausted.

Also on May 25, 2011, Governor Snyder signed House Bill 4479, which clarifies that beginning January 1, 2011, multistate companies are not permitted to elect three-factor apportionment under the state's Multistate Tax Compact provisions. Businesses operating in other states that are subject to the Michigan Business Tax (or the newly created CIT) are now required to allocate and apportion their receipts using single-sales-factor apportionment.

For a more detailed discussion of the new Michigan CIT, please see the article entitled "The Death of the MBT: Michigan Enacts a New Corporate Income Tax" in this edition of the *Jones Day State Tax Return*.

Missouri – Franchise Tax Phase-Out

On April 26, 2011, Governor Jay Nixon signed into law Missouri Senate Bill 19, phasing out the Missouri Franchise Tax. Under the new law, the Missouri Franchise Tax liability for companies is capped at the level they paid in tax year 2010, and the franchise tax rate is gradually reduced over a five-year period until the tax is phased out on July 1, 2016. The Missouri Franchise Tax, which is based on the amount of assets a business has located in Missouri, has long been unpopular with Missouri businesses. In signing the legislation, Governor Nixon stated that "[p]hasing out this burdensome tax will encourage businesses to expand their operations and create jobs in Missouri, boosting our economy and making our state more competitive for years to come." According to a press release issued by the Missouri governor's office on April 26, 2011, Missouri collected approximately $87.5 million in corporate franchise taxes during fiscal year 2010. The estimated impact to state revenues in fiscal year 2012 is expected to be approximately $24.0 million.

This article is reprinted from the *State Tax Return,* a Jones Day monthly newsletter reporting on recent developments in state and local tax. Requests for a subscription to the *State Tax Return* or permission to reproduce this publication, in whole or in part, or comments and suggestions should be sent to Christa Smith (214.969.5165) in Jones Day's Dallas Office, 2727 N. Harwood, Dallas, Texas 75201 or StateTaxReturn@jonesday.com.