

Right to Compute Tax Pursuant to Multistate Tax Compact Under Review in Michigan

July 10, 2013

Can a multistate corporation elect to use the Multistate Tax Compact's apportionment reporting method in place of the Michigan Business Tax Act's mandated formula without the Department of Treasury's permission? The Michigan Supreme Court will decide in its next term.

The Court granted leave to hear the issue in *IBM v. Dept. of Treasury*. The state high court will review the Court of Appeals' November 2012 decision that denied IBM's claim that the Compact, which has been on Michigan's books since 1969, applies to the MBT, which was in effect from 2008 to 2011 before being replaced by a simplified corporate income tax. That decision was unpublished.

The Supreme Court has asked the parties to brief whether the MBT is an income tax to which the election applies, whether the Michigan Legislature effectively repealed the MTC election when it passed the MBT, and whether the Compact is a contract that cannot be unilaterally altered.

This case will determine whether taxpayers are entitled to refund of MBT paid in prior years. It may also impact similar cases pending in other states, including California and Texas. A decision is expected in mid-2014.

Meanwhile, some refund claims must be filed by December 31, 2013. For more information on filing, contact a member of Miller Canfield's State + Local Tax Group.

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