

SUBJECT: DEDUCTIBILITY OF THE MICHIGAN SINGLE BUSINESS TAX

Based upon the State Board of Equalization's decision in the *Appeal of Dayton Hudson Corporation*, 94-SBE-003, February 3, 1994 (petition for rehearing denied September 1, 1994), the Franchise Tax Board will allow a tax deduction for the Michigan Single Business Tax (MSBT) where the taxpayer has incurred and deducted labor cost of goods sold in the year in which the MSBT is paid or accrued. The Board's decision was based on the fact that the MSBT paid by that taxpayer included a return of capital (in the form of labor cost of goods sold) in the tax base.

The Board acknowledged in its order denying the petition for rehearing that the decision addressed only the application of the MSBT to the specific facts of the appeal and that it did not overturn any prior decisions rendered by the Board. Prior Board decisions have consistently held that the determination of whether the tax base includes a return of capital element must be made on a case-by-case basis. (See *Appeal of Charles T and Mary R. Haubiel*, Cal. St. Bd. of Equal., January 16, 1973; *Appeal of Lloyd W. and Ruth Bochner*, Cal. St. Bd. of Equal., May 15, 1974; *Appeal of Philip and Aida Siff*, Cal. St. Bd. of Equal., August 19, 1975; and *MCA, Inc. v. FTB* (1981) 115 Cal.App.3d 185.). Accordingly, for cases in which there is no return of capital in the form of labor cost of goods sold in the MSBT base (businesses that exclusively provide services or that do not incur and deduct labor cost of goods sold), the FTB will not permit a deduction for the MSBT.

FTB Notice 90-2 (January 4, 1990) is hereby withdrawn.

DRAFTING INFORMATION

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