

Consider Action Before Year End on Michigan Corporate Income Tax Refund Opportunity

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A potential refund opportunity under the Michigan corporate income tax may justify taking action before year end. The issue concerns the Michigan Department of Treasury's position that the Internal Revenue Code ("IRC") 163(j) interest expense limitation ("the 163(j) limitation") must be calculated on a separate entity basis rather than a unitary group basis, a position which Miller Canfield is challenging on behalf of several clients. The limitation period for refunds for tax year 2019 for most companies will expire on December 31, 2024, and therefore time is of the essence to protect the right to recover overpaid taxes for that year.

On June 8, 2020, Treasury released Notice: Corporate Income Tax Treatment of the 163(j) Business Interest Limitation ("Notice"). In the Notice, Treasury took the position that the members of a Michigan combined group must compute the 163(j) limitation on an entity by entity basis despite the fact that Michigan's unitary filing method otherwise treats the combined group as if it were a single entity. Treasury's position is based on language in the Act which states that each member of the unitary group is to be "treated" as a separate person, but the position contradicts other provisions of the statute which support computing the limitation on a combined basis, as is done at the federal level and all but one other state. Most companies adhered to Michigan's position for tax year 2019, but we believe their position is wrong and those companies may be entitled to a refund.

The impact of Treasury's position depends on the corporate structure and where any debt within the consolidated group resides, but we have encountered some clients with up to \$1M per year at issue. Companies with a holding company structure or that otherwise have been unable to push debt down to their operating companies tend to have the largest detrimental impact from the separate company limitation.

We would be happy to discuss the issue to explore whether a claim for refund at least for tax year 2019 could be merited, and how we could assist in the filing. There is still time to claim a refund for 2019, and we can also file for years after 2019.

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