

Income/Franchise:

Michigan: Taxpayer Electing to File Under MBT Base Can't Claim MBT Loss Carryforwards on CIT Return

Case No. 360602, Mich. Ct. App. (1/19/23). The Michigan Court of Appeals (Court) affirmed summary judgment for the Michigan Department of Treasury, agreeing that a corporate taxpayer cannot deduct business losses on its 2019 Michigan corporate income tax (CIT) return that were first generated when it elected to file under the Michigan Business Tax Act (MBTA) pursuant to Michigan's transitional provisions in moving from the MBTA to the CIT Act. In doing so, the Court concluded that a taxpayer transitioning from the MBTA to the CIT Act in Michigan cannot claim prior losses calculated and submitted under the MBT as business losses on the first tax return it files under the CIT. The Court explained that the Michigan Legislature employed language in the CIT Act that supports a finding that a business loss calculated on an MBT tax base and used on MBT tax returns cannot carryforward on a CIT tax return in which a CIT tax base is used. Had the Michigan Legislature intended to permit the taxpayer to do so, "it could have easily specified so in either the MBT or CIT." Under the facts, the taxpayer was awarded Michigan Economic Growth Authority (MEGA) credits under the MBTA beginning in the 2008 tax year. After Michigan enacted the CIT in 2011, for tax years beginning after December 31, 2011 and until its 2018 tax year, the taxpayer elected to continue to file under the MBTA to claim its MEGA credits. The taxpayer filed its first CIT return for the 2019 tax year at issue and unsuccessfully attempted to claim a CIT business loss carryforward on its 2019 return. Please contact us with any questions.

URL: https://www.courts.michigan.gov/48f0bf/siteassets/case-documents/uploads/opinions/final/coa/20230119_c360602_22_360602.opn.pdf

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