

STATE OF MICHIGAN
IN THE SUPREME COURT

VECTREN INFRASTRUCTURE SERVICES
CORP., SUCCESSOR-IN-INTEREST TO
MINNESOTA LIMITED, INC.,

Plaintiff-Appellee,

Supreme Court Docket No. 161422
Court of Appeals Docket No. 345462
Court of Claims Docket No. 17-000107-MT

vs.

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

LYNN A. GANDHI (P60466)
REGINA M. GILMOUR (P83117)
Foley & Lardner LLP
Attorneys for Plaintiff-Appellee
500 Woodward Avenue, Suite 2700
Detroit, Michigan 48226
(313) 234-2715
lgandhi@foley.com
rgilmour@foley.com

DAVID W. THOMPSON (P75356)
JUSTIN R. CALL (P80892)
Assistant Attorneys General
Michigan Department of Attorney General
Attorneys for Defendant-Appellant
Revenue and Tax Division
P.O. Box 30754
Lansing, Michigan 48909
(517) 335-7584
thompsonD18@michigan.gov
CallJ1@michigan.gov

PLAINTIFF-APPELLEE'S APPENDIX

VOLUME II

TABLE OF CONTENTS**Volume I**

<u>Description</u>	<u>Volume</u>	<u>Page No.</u>
Relevant Portions of Transcript of Deposition of Christopher Leines taken March 22, 2018	I	1 - 14
First Amended Complaint	I	15 - 51
Letter to Mr. Greg Gursky, Deputy Treasurer, Michigan Department of Treasury, dated December 14, 2016	I	52 - 224
Relevant Portions of Transcript of Deposition of Lance Wilkinson taken March 8, 2017	I	225 - 229
MLI State Tax Returns, including Michigan (VEC000389-VEC000865)	I	230 - 706

Volume II

<u>Description</u>	<u>Volume</u>	<u>Page No.</u>
Enbridge Contract Documents (VEC000212-VEC000378)	II	707 - 873
MLI Financial Statements (VEC000925-VEC000950)	II	874 - 899
MLI Depreciation Schedules and Fixed Assets Expense Reports (VEC000408-VEC000438)	II	900 - 930
MLI Disposal Reports 2007-2010; Equipment Sales-Exchange Receipts VEC000719-VEC000744)	II	931 - 956
Personal Property Tax Reports (Michigan) (VEC000895-VEC000924)	II	957 - 986
Customer Contract List and Valuations (VEC000951-VEC000953)	II	987 - 989
Audited Financial Records (VEC000927-VEC000950)	II	990 - 1013

<u>Description</u>	<u>Volume</u>	<u>Page No.</u>
MLI Alternative Minimum Tax Reports (VEC000009-VEC000028)	II	1014 - 1033
Relevant Portions of Transcript of Deposition of Douglas Banning taken March 16, 2018	II	1034 - 1040
Kelli Murphy, Michigan Business Tax Apportionment and Sales Sourcing Provisions	II	1041 - 1077
RAB 2018-28	II	1078 - 1087
Donald E. Erikson, Judicial Administrative Review	II	1088 - 1093
Relevant Portions of Transcript of Deposition of Brad Hirsch taken February 14, 2018	II	1094 - 1105
Transcript of Deposition of Jeffrey Starbird taken March 22, 2018	II	1106 - 1124
Michigan Business Tax Frequently Asked Questions	II	1125 - 1301

Enbridge Energy, Limited Partnership
1601 Pratt Avenue
Marshall MI 49068

EMAILED

January 11, 2011

Minnesota Limited INC
Attn: Ted Crowe

Re: Work Order # **WML-20964-11**

Attached please find a copy of the above Work Order. Please arrange to have this work order signed by a duly authorized agent on behalf of your company. Once signed, please email a copy of the signed work order to me and send the work order with the signature by mail to:

Enbridge Energy, Limited Partnership
ATTN: Stacey Dew
Operations Command Post
1601 Pratt Avenue
Marshall, MI 49068

****Please note Enbridge will not be paying any invoices until we have received the signed copy back from your company.**

Please keep a copy for your files. The Work Order document, including the RFP with included Schedule A's (General Conditions), should not be amended in any way without receiving the prior written consent of Enbridge.

All invoices should be submitted to the following address:

Enbridge Energy Company Inc.
Attention: ACCOUNTS PAYABLE
1100 Louisiana Street
Suite 3300
Houston, TX 77002

All invoices for work should reference the following:

- The name of your Enbridge contact person: **Bev McKone**
- The name of the specific Enbridge Company to which you are providing materials or services, as provided by your Enbridge contact
- If applicable, specific information such as Contractors Holdbacks, Non-Resident Withholding Tax and Deposits received
- Any Contract, PO or WO number provided to you by your Enbridge contact: **WML-20964-11**
- For Enbridge US Companies only, the specific Enbridge Line-of -Business (LOB) number, as provided by your Enbridge contact: **91002**

If you have any questions or concern regarding the Work Order or general matters relating to the Work Order, please contact **Bev McKone at 269-781-9055 or Stacey.dew@enbridge.com**

VEC000212

Work Order Contract
Enbridge Energy, Limited Partnership (The "Company")

Order Number WML-20964-11	Rev 0	Page 1 of 2
-------------------------------------	-----------------	-----------------------

Bill To: 1100 LOUISIANA ST. SUITE 3300 HOUSTON, TX 77002 UNITED STATES Mail Invoice to this location.	Location 455 LEGGITT ROAD /Ship To: MARSHALL, MI 49068 UNITED STATES
Vendor# 24257 Vendor: MINNESOTA LIMITED INC 18640 200 ST PO BOX 410 BIG LAKE, MN 55309-0410 UNITED STATES (The "Contractor")	Creation Date 06-JAN-2011 Commencement Date 03-JAN-2011 Completion Date 15-JUN-2011

Brief Description: PROVIDE REMEDIATION SERVICE

Line	Detailed Description	Value
------	----------------------	-------

1	PROJ #91153SC10125:PROVIDE REMEDIATION SERVICE	
Project #	91153SC10125 1.3.61999-12.91160	Charge Code

AS DIRECTED BY THE COMPANY, AND AS DETAILED IN THE REQUEST FOR PROPOSAL ("RFP") PROVIDED VIA EMAIL FROM DAVE WOLDEN DATED DECEMBER 17, 2010 AT 4:36 PM INCLUDING ALL ATTACHMENTS THERETO, MINNESOTA LIMITED INC SHALL PERFORM, ON A TIME AND MATERIAL BASIS, REMEDIATION SERVICES AT MP 8.5 L1 TO L2 AND MP 12.01R WITH THE POTENTIAL OF ADDITIONAL MP SITES IN THE FUTURE. MINNESOTA LIMITED SHALL PERFORM THIS WORK AND ANY ADDITIONAL MP SITE WORK PER THEIR BID PROPOSAL DATED DECEMBER 29, 2010 INCLUDING THE RATES ATTACHED THERETO.

THE FOLLOWING ARE SPECIFICALLY MADE A PART OF THIS WORK ORDER:


1. COMPANY RFP DATED DECEMBER 17, 2010 INCLUDING ALL ATTACHMENTS THERETO.
2. COMPANY LOCATION MAP AND SCOPE OF WORK DETAILS FOR MP 12.0R1
3. COMPANY'S CURRENT CONTRACTOR SAFETY PROGRAM.
4. COMPANY'S DRUG & ALCOHOL TESTING REQUIREMENTS.
5. COMPANY'S OPERATOR QUALIFICATION REQUIREMENTS AS APPLICABLE.
6. MINNESOTA LIMITED INC'S BID PROPOSAL DATED DECEMBER 29, 2010 INCLUDING ALL RATE SHEETS ATTACHED THERETO.
7. COMPANY MEMO ADDENDUM 1 DATED DECEMBER 20, 2010
8. COMPANY MEMO ADDENDUM 2 DATED DECEMBER 27, 2010 INCLUDING ALL ATTACHMENTS THERETO.

VEC000213

Work Order Contract
ENBRIDGE ENERGY, LIMITED PARTNERSHIP (The "Company")

Order Number	Rev	Page
WML-20864-11		2 of 2

Line	Detailed Description	Value US Dollar
------	----------------------	--------------------

Material or work accepted by:		
	1/1/10	259319
Name	Date	Employee Number

Total

THIS WORK ORDER CONTRACT IS SUBJECT TO THE CONDITIONS ON THE SCHEDULE "A", WHICH THE CONTRACTOR HEREBY ACKNOWLEDGES THE RECEIPT OF. NO WORK SHALL COMMENCE ON COMPANY PROPERTY UNTIL THE CONTRACTOR HAS SIGNED THIS WORK ORDER CONTRACT AND HAS PROVIDED TO THE COMPANY A CERTIFICATE OF INSURANCE WHERE REQUESTED.

NAME OF CONTRACTOR: MINNESOTA LIMITED INC

PER CHRISTOPHER HAN

PER  DATE: 7/11/10

APPROVED BY:

EMPLOYEE NUMBER: 259319

ENBRIDGE ENERGY, LIMITED PARTNERSHIP
BY ENBRIDGE PIPELINES (LAKEHEAD) LLC AS GENERAL PARTNER

NOTE

- (1) CONTRACTORS MUST SIGNIFY ACCEPTANCE BY SIGNING AND RETURNING COPY A TO THE COMPANY
- (2) CONTRACTORS MUST QUOTE ORDER NUMBER ON INVOICE.
- (3) MAIL INVOICE DIRECTLY TO THE COMPANY. (See Bill To.)

VEC000214

Contract Change Order



Date		Change Order Number	Contract Number
17-Nov-11			WML-20864-11
Contractor		Contract Title	
Minnesota Limited			
<p>Except as otherwise expressly provided herein, Contractor hereby agrees to perform the below described Work in accordance with all the terms and conditions of the Contract referenced above. Contractor Invoices must show charges for this work separately, identified by both the Change Directive number and Contract number.</p>			
Description of Change (Attach extra pages or backup as required)			
<p>As directed by the Company on a time and material basis, Minnesota Limited shall perform on a time and material basis overbank excavation at the following sites: Bridge & Access Sites, 4.25E, 4.50 IF, 4.5L1, 9.50 I, 11.25 R1 & R2, 21.50 Oxbow and composite. Work is to be completed by December 31, 2011.</p>			
Financial		Enbridge Approvals	
Original Contract Price	_____	Project Manager	
Approved Changes to Date	_____	Christopher Haux	
Value this Change	_____	Print Name	Signature
Total	_____	Director	
		John Sobolneki	
		Print Name	Signature
Enbridge Authorization			
<p>The project position with the Authority, or the delegated authority, to authorize the value of the contract change as per the General Authority Guidelines for non-standard contracts changes.</p>			
Authorized by:			
Leon Zupan	_____	Signature	
Print Name			
Sr. VP, Operations	_____	Date	
Title		Nov 18, 2011	
<p>Pursuant to Schedule A - General Conditions of the Construction Contract this Change Order shall constitute agreement for the Change in Work as described above.</p>			
Contractor Acceptance			
Accepted by:			
Ted Crowe	_____	Signature	
Print Name			
Director of operations	_____	Date	
Title		11/18/2011	

Change order Template.xls

VEC000215

Work Order Contract
Enbridge Energy, Limited Partnership (The "Company")

Order Number WML-20885-10	Rev 0	Page 1 of 5
-------------------------------------	-----------------	-----------------------

<p>Bill To: 1100 LOUISIANA ST. SUITE 3300 HOUSTON, TX 77002 UNITED STATES</p> <p>Mail Invoice to this location.</p>	<p>Location 455 LEGGITT ROAD /Ship To: MARSHALL, MI 49068 UNITED STATES</p>
<p>Vendor# 24257 Vendor: MINNESOTA LIMITED INC 18640 200 ST PO BOX 410 BIG LAKE, MN 55309-0410 UNITED STATES</p> <p>(The "Contractor")</p>	<p>Creation Date 08-AUG-2010 Commencement Date 26-JUL-2010 Completion Date</p>

Brief Description: PROVIDE CONSTRUCTION SERVICES

As directed by Company, Minnesota Limited, Inc. to provide labor, materials and equipment to support the Marshall Station leak site. Work is based on time and material. All invoices shall contain the following information: AFE and Location of work. On a daily basis, Contractor shall accumulate a summary report of man-hours, equipment and material used on this project. If a summary report of man-hours is not submitted, the applicable invoice(s) will not be processed and paid.

The following are specifically made part of this Work Order:

1. Companys Schedule A General Conditions (attached).
2. Companys Construction Safety Program 2010.
3. Companys Drug & Alcohol Testing Requirements.
4. Companys Operator Qualification Requirements as applicable.
5. Contractors 2009-2010 Hourly Labor Rates Michigan effective January 1, 2009 through December 31, 2010.
6. Contractors 2009-2010 Standard Equipment Rates Rolling Stock.
7. Email from Michael Hyke dated August 5, 2010.
8. Contractors Certificate of Liability Insurance.

Line	Detailed Description	Value
1	PROJ. #91153SC10125: PROVIDE CONSTRUCTION SERVICES	
Project #	91153SC10125 1.3.61601-12.91153 Charge Code	

VEC000216

Work Order Contract
Enbridge Energy, Limited Partnership (The "Company")

Order Number WML-20885-10	Rev 0	Page 2 of 5
------------------------------	----------	----------------

Line	Detailed Description	Value
------	----------------------	-------

Material or work accepted by:

Name _____ Date _____ Employee Number _____

Total US Dollar

THIS WORK ORDER CONTRACT IS SUBJECT TO THE CONDITIONS ON THE ATTACHED SCHEDULE "A", WHICH THE CONTRACTOR HEREBY ACKNOWLEDGES THE RECEIPT OF. NO WORK SHALL COMMENCE ON COMPANY PROPERTY UNTIL THE CONTRACTOR HAS SIGNED THIS WORK ORDER CONTRACT AND HAS PROVIDED TO THE COMPANY A CERTIFICATE OF INSURANCE WHERE REQUESTED.

NAME OF CONTRACTOR MINNESOTA LIMITED INC PER: _____

PER: MICHAEL HYKE *[Signature]* DATE 8/8/2010 APPROVAL BY: *[Signature]*

SIGNATURE _____ EMPLOYEE NUMBER 258296

NOTE

(1) CONTRACTORS MUST SIGNIFY ACCEPTANCE BY SIGNING AND RETURNING COPY A TO THE COMPANY.
(2) CONTRACTORS MUST QUOTE ORDER NUMBER ON INVOICE.
(3) MAIL INVOICE DIRECTLY TO THE COMPANY. (See Bill To:)

VEC000217

Enbridge Energy, Limited Partnership Schedule "A" to Work Order # WML-20885-10

WORK ORDER & PURCHASE CONTRACT- GENERAL CONDITIONS

1. SCOPE: The Contractor agrees to furnish all labor, tools, equipment and material and to secure all permits necessary for the complete performance of the work contracted for, except as provided herein.
2. COMPLIANCE WITH LAWS: The Contractor agrees, while on the Company's premises, to comply with all applicable state and federal laws and regulations, including applicable provisions of United States CFR 192 and/or 195 (specifically including Operator Qualification Requirements as provided in 192 Subpart N and 195 Subpart G), and to observe such rules as the Company shall prescribe for the protection of the Company's personnel and property, including, but not limited to, such safety and operator qualification rules as the Company shall establish, and to limit smoking and the use of fire and ignition sources to such locations and occasions as are designated by the Company's representative. The Contractor's equipment is to be in safe operating condition and subject at all times to the Company's inspection and approval.
3. PERSONNEL: The Company reserves the right to refuse entry to the premises to any or all of the Contractor's personnel at any time.
4. LIABILITY OF CONTRACTOR: The Contractor agrees to indemnify and save the Company harmless from and against any and all loss, damage, injury, liability and claims of any nature whatsoever resulting from the Contractor's negligence or the negligence of his subcontractors, servants, agents, or employees arising out of or connected in any manner with his performance or purported performance of the work covered by this Work Order and Purchase Contract.
5. PATENTS: The Contractor warrants that all materials and work covered by this Work Order and Purchase Contract, and the sale or use of any of them will not infringe on any rights of invention, patent, trademark, copyright, industrial design or process of manufacture, and the Contractor agrees that it will indemnify and save the Company harmless against all costs, royalties, damages and expenses arising out of any infringement or alleged infringement. In case the work or materials covered by this Work Order and Purchase Contract or their use are held to constitute an infringement and their use is enjoined, the Contractor shall promptly secure for the Company the right to continue using the work or materials, replace the work or materials with non-infringing work or materials, or if unable to do any of the foregoing, the Contractor shall remove the infringing work or materials and refund all monies paid therefore.
6. ACCEPTANCE OF WORK AND EXPRESS AND IMPLIED CONDITIONS: By accepting this Work Order and Purchase Contract, the Contractor warrants that the material and the work to be supplied hereunder will conform with the specifications, drawings and descriptions herein contained and that such material and work shall be free from all defects in design, workmanship, and material. All work and material supplied hereunder is subject to final inspection and acceptance by the Company. In the event that any work or material does not conform to the requirements stated above, the Contractor agrees to properly repair and/or replace, at its expense, any defective work or materials. Furthermore, the Company reserves the right to reject the defective work or material. In the event that the rejected work or materials have been paid for, it may be returned and charged back to the Contractor, including all inspection, handling and transportation expenses. The Contractor agrees that no payment made by the Company shall be evidence of acceptance of work and inspection of materials performed under this Work Order and Purchase Contract either wholly or in part and that no such payment shall be construed to be an acceptance of unsatisfactory or defective work or improper materials. Except as otherwise noted on the front page of this Work Order and Purchase Contract, these conditions shall survive the Work Order and Purchase Contract for one (1) year following final acceptance of the work or materials, it being the express intention that these conditions are in addition to and not in substitution for any statutory condition or any other right or remedy which the Company may have.
7. INSURANCE REQUIREMENTS: The Contractor shall carry at its own expense the following insurance: (i) if applicable, Workers Compensation coverage providing statutory benefits; (ii) if applicable, Employer's Liability coverage with a single limit of at least \$2,000,000 for each accident and in the aggregate for each employee; (iii) Comprehensive General Liability covering damages resulting from bodily injury (including death) or property damage (including loss of use or occupancy) arising out of or related to the work in a sum not less than \$2,000,000.00. The deductible for this policy shall not be more than \$25,000.00; (iv) Automobile Liability Insurance covering all motor vehicles owned or leased and licensed in the name of the Contractor or any of its affiliates. Limits of liability shall not be less than \$2,000,000.00 (inclusive limit) for the accidental injury to or death of one or more persons or damage to or destruction of property as a result of one accident; (v) Contractor's Equipment Insurance for all Contractor's equipment owned or leased. The Contractor shall waive its rights of any recovery or subrogation against the Company and will have its insurers waive their rights of subrogation against the Company in the event of loss or damage to the equipment owned by, leased by or rented to such Contractor; (vi) Other additional insurance which is required by law or which it may consider necessary. Upon request, the Contractor shall provide to the Company a Certificate of Insurance certifying that all insurance policies required have been issued by the Contractor's insurer and are in effect until completion of the work. If the Contractor fails to provide the Company with the above mentioned Certificate of Insurance, the Company may obtain and maintain the required insurance in the name of the Contractor and the cost thereof shall be payable by the Contractor to the Company on demand and the Company may elect to deduct the cost from any monies which are or may become payable to the Contractor.
8. ASSIGNMENT: The Contractor agrees not to subcontract, assign or transfer this Work Order & Purchase Contract, in whole or in part, without obtaining the previous written consent of the Company. Contractor shall not be relieved of any liability or responsibility for completion of any and all work required hereunder by virtue of subcontracting the work or any portion thereof to any third party.
9. BONDS: Upon request, the Contractor agrees to furnish, from a surety satisfactory to, and at the cost of the Company, a Performance Bond in the full amount of the contract price and any other types of surety bonds required by the Company.
10. EXTRA WORK: The Contractor shall not be entitled to any money for extra work performed unless such work shall have been previously authorized in writing by the Company.
11. LIENS: The Contractor agrees to take all necessary steps to ensure that no claims for liens hereunder will be filed against the work or property of the Company or against the property where the work is to be performed. Notwithstanding the foregoing undertaking, if any claim for a lien shall be filed, and so often as the same shall happen, the Contractor agrees that it shall at its own expense, within ten (10) days after the filing thereof, cause the lien to be cancelled and removed. The Contractor further agrees to indemnify the Company against all loss, costs, charges and expenses occasioned by, resulting from, or in any way arising out of such claims.
12. TIME OF ESSENCE: All time limits stated in this Work Order and Purchase Contract are of the essence of the contract. Contractor shall commence work immediately upon the execution of the Work Order and Purchase Contract and shall make every reasonable effort to complete its performance within the time or schedule provided for in the scope or as may be approved by Company.
13. DELAYS AND EXTENSION OF TIME: If Contractor is delayed at any time in the progress of the work by an act or omission of Company or of any third party employed by Company or by strikes, lockouts, fire, unusual delay in transportation, acts of God, or other causes over which Contractor has no control, then the time of completion shall be extended for such reasonable time as the parties shall decide, and no adjustment shall be made in Contractor's compensation.
14. PRICE, PAYMENT AND DELIVERY: Prices shall not be raised, except upon notification of and acceptance by Company. Further, Company shall be protected against declining prices on the undelivered portion of this order. Contractor may elect to meet price reduction of other vendors or its own lower prices to other purchasers, but if Contractor should refuse to do so, Company shall have the right to cancel any or all of this order without cost to Company. The price shall be deemed to include any and all taxes, assessments,

duties and other charges eligible with respect to the materials and work covered by this Work Order and Purchase Contract. Payment to the Contractor shall be subject to all lien rights and expiration of the holdback period as required by law. Delivery shall be F.O.B. Company's premises.

15. **TAXES:** Unless otherwise stated in the Work Order and Purchase Contract, the Contractor shall pay all taxes, including federal and state sales taxes, customs duties and excise taxes, payable by it in connection with the performance of the Work Order and Purchase Contract (the "Taxes"). In the event that the Company is assessed for any Taxes payable by the Contractor, the Company may recover from the Contractor as liquidated damages, a sum equivalent to the amount of Taxes, penalty and interest paid by the Company. Any increase in costs due to increases in non-creditable Taxes over and above that identified in the Work Order and Purchase Contract shall be the sole responsibility of the Contractor and shall not be deemed to be sufficient cause to increase the Work Order and Purchase Contract price.
16. **WORKERS' COMPENSATION REQUIREMENTS:** If the Work Order & Purchase Contract comes within the jurisdiction of any applicable Workers' Compensation legislation, the Contractor agrees to furnish the Company with a certificate of good standing. The Company, in its discretion, may withhold payment until it has received the certificate.
17. **RIGHT TO AUDIT:** The Company shall have the right to audit all costs and records of the Contractor and subcontractors for work performed pursuant to cost-plus contracts or cost-plus Work Order and Purchase Contract revisions. The Company's internal audit staff or authorized representatives, upon fifteen (15) days written notice to the Contractor, shall have access to the Contractor's and subcontractor's books, records and documentation supporting billed amounts for cost-plus agreements.
18. **TERMINATION:** If the Contractor fails to make deliveries or to complete the work within the times specified or otherwise fails at any time to fully comply with the Contractor's obligations hereunder, the Company may, at its option, terminate this Work Order and Purchase Contract without incurring any cancellation or other charges. This Work Order and Purchase Contract may be terminated by the Company, at any time, in its sole discretion, upon giving the Contractor fourteen (14) days prior written notice.
19. **CONFIDENTIAL & PROPRIETARY INFORMATION AND PROPERTY:** The Contractor hereby covenants and agrees with the Company that the Contractor will not, either during or after the term of this Work Order & Purchase Contract, reveal to any third party or use for the Contractor's own purposes or for any purposes other than those of the Company, any confidential information originated by or acquired by the Contractor or any confidential information of the Company, its subsidiaries and affiliates, which may be furnished to the Contractor or to which the Contractor may become privy or which the Contractor may produce or prepare in the course of work or services performed for the Company. "Confidential information" shall include any technical, economic, financial, marketing or other information which is not common knowledge among competitors of the Company or others who might wish to possess such information or might find it useful, or any information which at any time may be communicated to the Contractor (whether verbally or in writing) by the Company or by any representative of the Company which is communicated as being confidential information. All drawings, blue-prints, specifications, dies, patterns, tools, etc., whether supplied by the Company or prepared or constructed by the Contractor as a requirement for completion of this Work Order and Purchase Contract and paid for by the Company, shall be the property of the Company and information therefrom shall be considered confidential and will not be disclosed to a third party without written consent of the Company, and upon completion of deliveries or work hereunder, or upon termination of this Work Order and Purchase Contract shall be delivered to the Company unless otherwise agreed to in writing.
20. **INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor and nothing contained in this Work Order and Purchase Contract or otherwise, nor any past relationships or course of dealings between the parties, shall be construed as establishing a relationship of principal and agent, master and servant or employer and employee. Should the Contractor or any employee or agent of the Contractor be determined by the Internal Revenue Service or any other governmental agency to be an employee of the Company for any purpose, the Contractor agrees to defend, indemnify and hold harmless the Company from and against any and all costs, liability, penalties or taxes incurred as a result of such determination. The Contractor shall be solely responsible for the payment wherever payable of any withholding taxes, income taxes or other taxes or contributions based on the compensation paid to the Contractor hereunder or paid by the Contractor to any of its employees on account of services performed for the Company.
21. **APPLICABLE LAWS:** The contract constituted hereunder shall be governed by and construed according to the laws of the State of Wisconsin.
22. **THIRD PARTY CLAIMS:** If there is reasonable evidence indicating the filing or probable filing of any claim of any kind for which, if established, the Company might become liable and which is attributable to the Contractor under any Workers' Compensation legislation or other similar legislation, the Contractor shall not be entitled to further payment at any time until all such claims have been satisfied, withdrawn or discharged. All expenses the Company incurs as a result, including all legal fees, shall also be paid to the Company by the Contractor before further payment is required.
23. **INTELLECTUAL PROPERTY:** The Contractor shall promptly and fully reduce to writing and deliver to the Company all ideas, conceptions, methods, techniques, systems, improvements, discoveries, inventions or other information, as well as any applications thereof (the "Work Product"), which the Contractor may make, discover, conceive or otherwise become aware of during the term of this Work Order & Purchase Contract and for two years thereafter, which result from or are suggested by any work which the Contractor does or did for or on behalf of the Company pursuant to this Work Order & Purchase Contract and the same shall be the sole and exclusive confidential or intellectual property, as the case may be, of the Company, to the exclusion of the Contractor. The Contractor hereby waives any moral rights that it may have respecting copyright in the Work Product.
24. **SURETY DEPOSIT:** Minnesota law requires that Minnesota companies withhold eight percent (8%) of all payments to out-of-state contractors as a surety deposit on contracts exceeding One Hundred Thousand Dollars (\$100,000) unless the contractor provides written documentation of its exemption from such withholding. If applicable to the contract, the Company will withhold such amounts in compliance with Minnesota law unless the Contractor provides such written documentation.
25. **ENTIRE AGREEMENT:** This Work Order and Purchase Contract constitutes the whole of the contract between the parties hereto and neither has been induced to make or enter into this Work Order and Purchase Contract by reason of any promise, agreement, representation, statement, or warranty other than as contained in this Work Order and Purchase Contract.

MINNESOTA LIMITED, LLC
 PROJECT HISTORY - STATE OF MICHIGAN
 ENBRIDGE PROJECTS

Job	For the Year Ending December 31, 2010			For the Three Months Ending March 31, 2011			For the Nine Months Ending December 31, 2011		
	Revenue	Job Costs	Profit (Loss)	Revenue	Job Costs	Profit (Loss)	Revenue	Job Costs	Profit (Loss)
EB1016123 - MI - Rapid River Station Re-Piping 2010	1,028,426	918,171	110,255	-	14,040	(14,040)	124,023	126,067	(2,064)
EB1016574 - Marshall, MI - Clean Up	14,615,984	9,797,623	4,818,362	32,639	16,530	16,109	0	-	0
	15,644,411	10,715,793	4,928,617	2,884,977	2,400,288	484,689	16,480,889	14,516,663	1,964,326
EB1016500 - Marshall, MI - Released Oil Recovery Clean Up	-	-	-	10,416,034	8,751,563	1,664,471	22,683,300	18,399,337	3,784,363
EB1116505 - MI - 2011 Integrity Work	-	-	-	-	-	-	36,285	39,620	(3,335)
EB1116571 - MI - PLM Tie-In Assistance	-	-	-	-	-	-	369,247	189,534	179,713
EB1116583 - Rapid River Discharge Piping Modifications	-	-	-	-	-	-	131,979	101,183	30,795
EB1116588 - Superior DRA Relocation	-	-	-	-	-	-	441,312	516,527	(75,215)
EB1116596 - Rapid River Station - PLM Assistance	-	-	-	-	-	-	659,945	925,594	(274,050)
EB1116631 - MI - US Integrity Work	-	-	-	-	-	-	-	-	-
				13,333,650	11,182,420	2,151,230	40,918,100	35,313,545	5,604,555

VEC000220

PURCHASE AGREEMENT

by and among

Vectren Infrastructure Services Corporation

(“Buyer”)

and

Christopher T. Leines

and

Paulette A. Britzius

(“Sellers”)

and

Nordic Land Company, LLC

(“Nordic Land”)

Dated effective as of March 31, 2011

Table of Contents

	<u>Page</u>
1. PURCHASE TRANSACTION	1
1.1 Equity Interests.....	2
1.2 Purchase Price; Payment.....	2
1.3 Escrow.....	2
1.4 Working Capital Adjustment.....	2
2. CLOSING.....	4
2.1 Closing Date.....	4
2.2 Deliveries by Sellers.....	4
2.3 Deliveries by Buyer.....	6
3. INTENTIONALLY BLANK.....	7
4. REPRESENTATIONS AND WARRANTIES OF SELLERS	7
4.1 Organization and Good Standing.....	7
4.2 Authority; No Conflict; Consents.....	7
4.3 Capitalization; Ownership.....	8
4.4 Financial Statements.....	8
4.5 Real Property.....	9
4.6 Condition and Sufficiency of Assets; Ownership; Encumbrances	10
4.7 Accounts Receivable.....	10
4.8 Inventory.....	10
4.9 No Undisclosed Liabilities.....	10
4.10 Taxes.....	10
4.11 No Material Adverse Change.....	12
4.12 Employee Benefits.....	12
4.13 Compliance with Legal Requirements.....	14
4.14 Governmental Authorizations.....	14
4.15 Legal Proceedings; Orders.....	14
4.16 Absence of Certain Changes and Events.....	15
4.17 Contracts; No Defaults.....	16
4.18 Insurance.....	18
4.19 Environmental Matters.....	18
4.20 Employees.....	19
4.21 Labor Relations; Compliance.....	19
4.22 Intellectual Property.....	19
4.23 Customers.....	20
4.24 Warranty.....	20
4.25 Books and Records; Bank Accounts.....	20
4.26 Relationship with Related Persons.....	21
4.27 Disclosure.....	21
4.28 Brokers or Finders.....	21
5. REPRESENTATIONS AND WARRANTIES OF BUYER.....	21
5.1 Organization and Good Standing.....	21
5.2 Authority; No Conflict; Consents.....	21
5.3 Certain Proceedings.....	22
5.4 Investment Intent.....	22
5.5 Brokers or Finders.....	22
6. INTENTIONALLY BLANK.....	22
7. POST-CLOSING COVENANTS	22
7.1 Tax Matters.....	22
7.2 Covenants regarding Buyer's Parents and Affiliates.....	25
7.3 Confidential Information.....	25

7.4	Seller Release.....	25
7.5	WARN Act.....	25
7.6	Insurance.....	25
7.7	Workers Compensation Insurance.....	26
7.8	Labor Matters.....	26
7.9	Nordic Land Superior, LLC.....	26
7.10	Greater Minnesota Transmission LLC Settlement Stipulation and Order.....	27
7.11	LLC Agreements and Shareholder Agreement.....	27
7.12	Intentionally blank.....	27
7.13	Post Closing True-Ups.....	27
7.14	Accrued Bonuses.....	28
7.15	Audited Financial Statements.....	28
8.	INTENTIONALLY BLANK.....	28
9.	INDEMNIFICATION; REMEDIES.....	28
9.1	Survival.....	28
9.2	Indemnification by Sellers.....	29
9.3	Indemnification by Buyer.....	29
9.4	Limitations - Sellers.....	30
9.5	Limitations - Buyer.....	31
9.6	Procedure for Indemnification -- Third Party Claims.....	31
9.7	Procedure for Indemnification -- Other Claims.....	32
9.8	Exclusive Remedy.....	32
10.	GENERAL PROVISIONS.....	32
10.1	Sellers' Representative.....	32
10.2	Expenses.....	33
10.3	Public Announcements.....	33
10.4	Notices.....	33
10.5	Jurisdiction; Service of Process.....	34
10.6	Further Assurances.....	34
10.7	Waiver.....	34
10.8	Entire Agreement and Modification.....	34
10.9	Disclosure Letter.....	34
10.10	Assignments, Successors, and No Third-Party Rights.....	34
10.11	Severability.....	35
10.12	Section Headings.....	35
10.13	Governing Law.....	35
10.14	Execution of Agreement.....	35
10.15	Interpretation.....	35
10.16	Legal Representation of the Parties.....	35
10.17	Post Closing Obligations.....	36

Schedules and Exhibits

- Schedule 1.2(c) – Closing Indebtedness
- Schedule 1.4 – Preliminary Net Working Capital Schedule
- Schedule of Other Excluded Liabilities
- Exhibit A – Definitions
- Exhibit B – Disclosure Letter
- Exhibit C – Escrow Agreement
- Exhibit D – Non-Competition Agreement
- Exhibit E – Lease Agreement

Disclosure Letter

Part 4.1	Jurisdictions
Part 4.2(b)	No Conflict
Part 4.2(c)	Consents
Part 4.3(a)	Investments
Part 4.3(b)	Ownership Proportion
Part 4.3(c)	Conduct of Business
Part 4.4	Financial Statements
Part 4.5(a)	Owned Real Property
Part 4.5(b)	Leased Real Property
Part 4.6(a)	Condition of Assets
Part 4.6(b)	Permitted Encumbrances
Part 4.7	Accounts Receivable
Part 4.9	No Undisclosed Liabilities
Part 4.10	Tax
Part 4.10(a)(i)	Tax Returns
Part 4.10(a)(ii)	Unpaid Taxes
Part 4.10(b)(i)	Audits
Part 4.10(b)(ii)	Audit Deficiencies
Part 4.10(b)(iii)	Adjustments
Part 4.10(b)(iv)	Adjustment Deficiencies
Part 4.10(c)	Proposed Tax Assessment
Part 4.11	No Material Adverse Change
Part 4.12(a)	Employee Plans
Part 4.12(b)	Qualified Plan Compliance
Part 4.12(c)	Multiemployer Plans
Part 4.12(d)	Post-Retirement Health Benefits
Part 4.12(g)	Employees
Part 4.12(h)	Prohibited Transactions and Fiduciary Breaches
Part 4.12(i)	Separately Funded Employee Benefit Plans
Part 4.12(l)	Right to Terminate Employee Plans
Part 4.13	Compliance with Legal Requirements
Part 4.14(a)	Governmental Authorizations
Part 4.14(b)	Governmental Authorizations - Compliance
Part 4.15(a)	Proceedings
Part 4.15(b)	Orders
Part 4.16	Absence of Certain Changes and Events
Part 4.17(a)	Contracts
Part 4.17(b)	Contracts
Part 4.17(c)	Contracts
Part 4.17(d)	Contracts
Part 4.18	Insurance
Part 4.19	Environmental Matters
Part 4.19(a)	Environmental Matters - Permits
Part 4.20	Employees
Part 4.21	Labor Relations; Compliance
Part 4.22	Intellectual Property
Part 4.22(a)	Intellectual Property - Title
Part 4.22(c)	Intellectual Property - Licensing Arrangements
Part 4.23	Customers
Part 4.24	Product Warranty
Part 4.25(b)	Bank Accounts

763862
 KD3319265

Part 4.26

Affiliated Party Transactions

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is made effective as of March 31, 2011, by and among Vectren Infrastructure Services Corporation, an Indiana corporation ("Buyer"), Christopher T. Leines and Paulette A. Britzius, individually (each a "Seller" and collectively "Sellers"), and Nordic Land Company, LLC ("Nordic Land").

WITNESSETH:

WHEREAS, Sellers own 100% of the outstanding capital stock of Minnesota Limited, Inc., a Minnesota corporation ("Minnesota Limited");

WHEREAS, Sellers also own 100% of the state law membership interests of Nordic Land;

WHEREAS, Nordic Land owns 100% of the Membership Interests of each of the following Minnesota limited liability companies: Nordic Equipment, LLC ("Nordic Equipment"), Nordic Pipeline Services LLC ("Nordic Pipeline"), Nordic Land Bemidji, LLC ("Nordic Bemidji"), and Nordic Land Altamont, LLC ("Nordic Altamont," and, together with Nordic Equipment, Nordic Pipeline, and Nordic Bemidji, the "LLC Group");

WHEREAS, Nordic Land also owns 100% of the state law membership interests of Nordic Land Superior, LLC ("Nordic Superior"), but it is the express intent of the parties to exclude Nordic Superior and its assets and liabilities from the transactions contemplated hereby;

WHEREAS, Minnesota Limited and the LLC Group are also sometimes collectively referred to herein as the "Seller Group";

WHEREAS, Buyer is an affiliate of Miller Pipeline, LLC, an Indiana limited liability company ("Miller Pipeline");

WHEREAS, the Seller Group is engaged in the business of providing the following services for the natural gas and petroleum industries: (i) high-pressure, welded steel pipeline installation and construction services; (ii) pump station, compressor station, terminal, and refinery construction services related to such pipelines; (iii) gas distribution pipeline construction services; (iv) pipeline maintenance; and (v) hydrostatic testing (the "Business");

WHEREAS, Sellers and Nordic Land desire to sell and transfer their respective interests in, and Buyer desires to purchase and acquire, (i) all of the outstanding capital stock of Minnesota Limited (the "Shares") and (ii) all of the state law membership interests of each member of the LLC Group (the "Membership Interests," and together with the Shares, the "Equity Interests"), all on the terms and conditions set forth in this Agreement; and

WHEREAS, for purposes of this Agreement, capitalized terms used herein but not otherwise defined herein shall have the meanings specified or referred to in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the respective premises, mutual covenants and agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. PURCHASE TRANSACTION

763862
KD3319265

VEC000226

1.1 Equity Interests. Upon the terms and subject to the conditions set forth in this Agreement and on the basis of the representations, warranties, covenants and agreements herein contained, at the Closing, Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, (i) all of Sellers' right, title and interest in and to the Shares and (ii) all of Nordic Land's right, title and interest in and to the Membership Interests.

1.2 Purchase Price; Payment.

(a) The aggregate consideration for the Equity Interests to be paid by Buyer to Sellers and Nordic Land will be Eighty Million Dollars (\$80,000,000), subject to the following adjustments:

(i) plus or minus, as the case may be, the amount by which the Preliminary Net Working Capital is greater than or less than the Target Working Capital;

(ii) minus, the aggregate amount of funded debt and related items of the Seller Group set forth on Schedule 1.2(a)(ii), if any (the "Closing Indebtedness");

(iii) minus, the amount of the U.S. Bancorp Loans debt on the Closing Date, which loans will be retained by Minnesota Limited in connection with the Transaction, plus a credit one-half of the prepayment penalty associated therewith;

The foregoing calculations, shall be the "Estimated Purchase Price."

(b) On the Closing Date, the Estimated Purchase Price shall be paid by Buyer in the following manner:

(i) the Escrow Amount shall be paid pursuant to Section 1.3;

(ii) any amounts directed in writing by Sellers to be paid by Buyer on Sellers' behalf (excluding any payments of Closing Indebtedness which shall be paid by Buyer as set forth in the last paragraph of this subsection (b)), including without limitation payment of any brokerage or other fees payable to Greene Holcomb & Fisher LLC, shall be paid by wire transfer of immediately available funds to one or more accounts designated in writing by Sellers; and

(iii) the balance shall be paid to Sellers by wire transfer of immediately available funds to an account designated in writing by such Sellers at least one (1) business day prior to the Closing.

On the Closing Date, the Buyer shall pay an amount equal to the Closing Indebtedness by wire transfer of immediately available funds to one or more accounts designated in the Payoff Letters, in the amounts set forth therein.

(c) After the Closing Date, the Estimated Purchase Price may be adjusted in accordance with Section 1.4 (as adjusted, the "Purchase Price"), and such adjustment, if any, shall be paid pursuant to Section 1.4(b).

1.3 Escrow. At the Closing, Buyer shall deposit an amount equal to Four Million Dollars (\$4,000,000) (the "Escrow Amount") with U.S. Bank, N.A., as escrow agent (the "Escrow Agent") by wire transfer of immediately available funds (the Escrow Amount together with all earnings thereon, the "Escrow Deposit"). The Escrow Deposit shall be held, invested and disbursed as specified in and pursuant to the terms and conditions of an Escrow Agreement, substantially in the form attached hereto and incorporated herein as Exhibit C (the "Escrow Agreement"), and in accordance with the terms and

conditions of Section 9 hereof. All interest and other income earned on the Escrow Deposit shall be paid to Sellers in accordance with their respective Percentage Interest at the end of the Escrow Period.

1.4 Working Capital Adjustment. Following the Closing, the Estimated Purchase Price may be adjusted as follows:

(a) Net Working Capital Computation. (i) Not later than the sixtieth (60th) day following the Closing Date, (A) Buyer shall prepare and deliver to the Sellers' Representative a balance sheet of the Seller Group prepared in accordance with GAAP (any requirement by GAAP to have reserves or allowances for any of the receivables or workers compensation shall be ignored) and in a manner consistent with the preparation of the Interim Balance Sheet (as defined in Section 4.4) (the "Closing Date Balance Sheet") as of 11:59 p.m., central standard time, on the Closing Date and (B) based on the Closing Date Balance Sheet, Buyer shall prepare and deliver to the Sellers' Representative a statement (the "Net Working Capital Schedule") of the Net Working Capital as of the Closing Date (the "Closing Net Working Capital"). The Closing Net Working Capital shall use the same methodology in computing current assets, current liabilities and working capital as was used in the determination of the Preliminary Net Working Capital.

(ii) If the Sellers' Representative disagrees with the Closing Net Working Capital as reflected on the Net Working Capital Schedule, the Sellers' Representative shall notify Buyer on or before the date thirty (30) days after the date on which Buyer delivered to the Sellers' Representative such Net Working Capital Schedule. Unless the Sellers' Representative delivers such a notice disagreeing with the accuracy of the Closing Net Working Capital within such thirty (30) day period, the Net Working Capital Schedule shall be deemed final and binding on the Sellers and Buyer. The Sellers' Representative and Buyer shall attempt to resolve any such disagreements. If the Sellers' Representative and Buyer are unable to resolve all such disagreements on or before the date fifteen (15) days following notification by the Sellers' Representative of any such disagreements (which period may be extended by agreement of Buyer and the Sellers' Representative), Buyer and the Sellers' Representative shall retain Grant Thornton LLP (the "Final Accounting Firm"), to resolve all such disagreements, who shall adjudicate only those items still in dispute with respect to the Net Working Capital Schedule and the calculation of the Closing Net Working Capital.

(iii) The Final Accounting Firm shall offer Buyer and the Sellers' Representative the opportunity to provide written submissions regarding their positions on the disputed matters, which written submissions shall be provided to the Final Accounting Firm, if at all, no later than twenty (20) days after the date of referral of the disputed matters to the Final Accounting Firm (the "Submission Period"). The Final Accounting Firm shall deliver a written report resolving only the disputed matters and setting forth the basis for such resolution within twenty (20) days after the Submission Period. Absent arithmetic error, the determination of the Final Accounting Firm with respect to the Closing Net Working Capital shall be final and binding on the Parties. Buyer and Sellers shall bear the fees and expenses of the Final Accounting Firm in the same proportion (on an inverse basis) as each Party's determination of Closing Net Working Capital (as submitted to the Final Accounting Firm) compares to the final Closing Net Working Capital determined by the Final Accounting Firm, all as determined by the Final Accounting Firm, which shall be final and binding on the Parties. The Final Accounting Firm shall conduct its determination activities in a manner wherein all materials submitted to it are held in confidence and shall not be disclosed to third parties. The Parties hereto agree that judgment may be entered upon the determination of the Final Accounting Firm in any court having jurisdiction over the Party against which such determination is to be enforced.

(iv) Buyer shall provide the Sellers' Representative and its agents and advisors with access to the relevant books and records of the Seller Group and Buyer's financial

advisors and accountants in order to confirm the Net Working Capital Schedule and determine the Closing Net Working Capital. Upon reasonable prior notice, the Sellers' Representative and its agents and advisors shall be entitled to discuss such books and records with Buyer and those persons whom the Sellers' Representative reasonably deems necessary for confirmation of the Net Working Capital Schedule.

(b) Payments. (i) If the Closing Net Working Capital as determined pursuant to this Section 1.4 is greater than the Target Working Capital, then Buyer shall pay to the Sellers (or their designee(s) as set forth in a written notice to Buyer) an amount equal to the sum of (A) the difference between the Closing Net Working Capital and the Target Working Capital (less any increase, if any, that has previously been paid based on the Preliminary Net Working Capital being greater than the Target Working Capital) and (B) the amount, if any, by which the Preliminary Net Working Capital was less than the Target Working Capital, in cash by wire transfer of immediately available funds on or before the date three (3) days after the date of such determination. Any payment which is not made by such third day shall accrue interest from and after such third day at the Prime Rate.

(ii) If the Closing Net Working Capital as determined pursuant to this Section 1.4 is less than the Target Working Capital, then the Sellers shall pay to Buyer (or its designee as set forth in a written notice to the Sellers' Representative) an amount equal to the sum of (a) the difference between the Target Working Capital and the Closing Net Working Capital (less any decrease, if any, that has previously been made based on the Preliminary Working Capital being less than the Target Working Capital) and (B) the amount, if any, by which the Preliminary Net Working Capital was greater than the Target Working Capital, which amount shall be paid in cash by wire transfer of immediately available funds on or before the date three (3) days after the date of such determination. Any payment which is not made by such third day shall accrue interest from and after such third day at the Prime Rate. Any payment owed by Sellers pursuant to this Section 1.4(b)(ii) may, in Buyer's sole discretion, be paid in whole or in part out of such account established pursuant to the Escrow Agreement in the event Sellers do not make such payment within three (3) days after the date of determination.

(c) Exclusive Remedy for Working Capital Adjustment. Each of Buyer and the Sellers acknowledges and agrees that the adjustment provisions set forth in this Section 1.4 shall be the sole and exclusive remedy of Buyer and the Sellers with respect to (i) determining whether or not any adjustment would be made to the Estimated Purchase Price pursuant to this Section 1.4 (whether or not any such adjustment was, in fact, made), (ii) determining the amount of any such adjustment; (iii) any other claims relating to the determination of Closing Net Working Capital (in lieu of claims under Section 9 hereof, except any claims based on the failure of a Party to make any payments required by this Section 1.4 and claims relating to Section 7.13); and (iv) any other representation, warranty or covenant set forth in this Agreement related to any component of Net Working Capital, to the extent Damages arising out of a breach of such representation, warranty or covenant were resolved in connection with the Closing Net Working Capital; provided that, in the case of fraud, the foregoing adjustment provisions shall not be exclusive, but shall be in addition to any other rights or remedies to which Buyer and the Sellers or their respective assigns, as the case may be, may be entitled under Section 9.

2. CLOSING

2.1 Closing Date. The closing of the Contemplated Transactions (the "Closing") shall be deemed to take place at the offices of Maslon Edelman Borman & Brand, LLP at 10:00 a.m. central standard time on March 31, 2011 unless the parties agree otherwise (the "Closing Date"). The Parties hereto acknowledge and agree that all proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously,

and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

2.2 Deliveries by Sellers. At the Closing, Sellers shall deliver (or cause to be delivered) to Buyer originals or copies, if specified, of the following:

- (a) certificates representing the Shares accompanied by an appropriate stock power;
- (b) assignments of the Membership Interests;
- (c) the stock ledger, the membership interest ledgers, minute books and any other corporate records of each member of the Seller Group;
- (d) a counterpart of the Escrow Agreement, duly executed by the Sellers' Representative and the Escrow Agent;
- (e) a Non-Competition Agreement by and between Buyer or its designated Affiliate and the Sellers in the form as set forth in Exhibit D, attached hereto and made a part hereof (the "Non-Competition Agreement"), executed and delivered by Sellers;
- (f) an Employment Agreement by and between Buyer or its designated Affiliate and Christopher T. Leines (the "Employment Agreement"), executed and delivered by Christopher T. Leines;
- (g) a Lease Agreement for the Leased Real Property in the form of Exhibit E, attached hereto and made a part hereof (the "Lease Agreement"), executed and delivered by either MLBL, LLC, a wholly-owned subsidiary of Nordic Investments, LLLP, or Nordic Investments, LLLP, as lessor;
- (h) counterparts of all agreements, documents and instruments required to be delivered by the Seller Group, Nordic Land, or any of the Sellers pursuant to this Agreement or any of the agreements to be executed in connection with the Contemplated Transactions, duly executed by each member of the Seller Group, as applicable, Nordic Land, and such Sellers;
- (i) copies of each consent, waiver, authorization and approval required pursuant to Section 4.2(c) of this Agreement;
- (j) resignations of those officers and directors of the Seller Group identified in writing by Buyer at least five (5) business days prior to the Closing, effective as of the Closing Date;
- (k) a Certificate of Good Standing of Nordic Land and each member of the Seller Group issued by the Secretary of State of the State of Minnesota and appropriate Governmental Bodies of each state in which the nature of the Business or the ownership of assets in such state would require such member of the Seller Group to be qualified to do business in such state, each dated within sixty (60) days of the Closing Date;
- (l) a copy of the certified Articles of Incorporation of Minnesota Limited, including all amendments thereto, certified as true, complete and correct by the Secretary of State of the State of Minnesota;
- (m) a copy of the Articles of Organization of Nordic Land and each member of LLC Group, including all amendments thereto, certified as true, complete and correct by the Secretary of State of the State of Minnesota;

(n) a copy of the Bylaws and Shareholder Control and Buy and Sell Agreement of Minnesota Limited, including all amendments thereto, certified as true, complete and correct by the Secretary of Minnesota Limited;

(o) a copy of the Member Control Agreement and Operating Agreement for Nordic Land and each member of the LLC Group, if any, including all amendments thereto, certified as true, complete and correct by the Secretary of Nordic Land or such member of the LLC Group (the "LLC Agreements");

(p) a duly executed certificate of non-foreign status from each Seller (or its owner, in the case of a Seller that is a "disregarded entity" for United States federal income tax purposes) dated as of the Closing Date, certifying that such Person is not a "foreign person" as defined in Section 1445 of the Code;

(q) payoff letters for each instrument evidencing Closing Indebtedness from the obligees thereunder setting forth the amounts necessary to pay off all such Closing Indebtedness under such instrument as of the Closing Date along with the per diem interest amount with respect thereto and otherwise in form and substance reasonably satisfactory to Buyer, and evidence reasonably satisfactory to Buyer of the release of all encumbrances and UCC financing statements related thereto (each, a "Payoff Letter");

(r) a certificate, dated as of the Closing Date, duly executed by the Sellers' Representative acknowledging delivery by Buyer of the items set forth in Section 2.3 of this Agreement; and

(s) evidence of the termination of that certain lease by Minnesota Limited for real property owned by the Leines Family Partnership (the "Family Partnership Property"); and

(t) Such other documents as Buyer may reasonably request.

2.3 Deliveries by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to Sellers originals, or copies if specified, of the following agreements, documents and other items:

(a) the Estimated Purchase Price payments and other payments, all as provided in Section 1.2, which amount shall be divided between the Sellers and Nordic Land in such amounts as mutually agreed by the Sellers and Buyer (the amount allocated to the Sellers shall be split equally between the Sellers);

(b) a counterpart of the Escrow Agreement, duly executed by Buyer;

(c) counterparts of all agreements, documents and instruments required to be delivered by Buyer pursuant to this Agreement or any of the agreements to be executed in connection with the Contemplated Transactions, duly executed by Buyer;

(d) copies of all the resolutions adopted by the board of directors of Buyer and its Parent, and authorizing and approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions, certified to be true, complete, correct and in full force and effect by the Secretary of Buyer and Secretary of Parent, respectively;

(e) a Certificate of Existence of Buyer issued by the Secretary of State of the State of Indiana, dated within ten (10) business days of the Closing Date;

(f) a copy of the certified Articles of Incorporation of Buyer, including all amendments thereto, certified as true, complete and correct by the Secretary of State of the State of Indiana;

(g) the Lease Agreement and Employment Agreement executed and delivered by Buyer or designated Affiliate;

(h) a certificate executed by the Secretary of Buyer acknowledging delivery by Sellers of the items set forth in Section 2.2 of this Agreement; and

(i) evidence of Buyer's supplying of replacement collateral in connection with the Travelers Insurance paid loss program described in Section 7.7.

3. INTENTIONALLY BLANK

4. REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers, jointly and severally, hereby represent and warrant to Buyer on the date hereof and as of the Closing Date as follows:

4.1 Organization and Good Standing. Minnesota Limited is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under Seller Group Contracts. Nordic Land and each member of the LLC Group is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Minnesota, with full limited liability company power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under Seller Group Contracts. Nordic Land and each member of the Seller Group is qualified to conduct business and is in good standing in the jurisdictions set forth in Part 4.1 of the Disclosure Letter, which includes all jurisdictions, domestic or foreign, in which the nature of the business conducted or the character or location of property owned or leased by it requires such qualification, except to the extent that the failure to so qualify would not have a Material Adverse Effect on the Seller Group. Part 4.1 of the Disclosure Letter sets forth the name(s) used by each member of the Seller Group, other than its legal name, in the conduct of its business as well as the jurisdictions in which these names are used.

4.2 Authority; No Conflict; Consents.

(a) Sellers have full power and authority and legal capacity to execute and deliver this Agreement and each Related Agreement to which they are or will be a party and to perform the Contemplated Transactions. The parties acknowledge and agree that this Agreement, the Escrow Agreement, Employment Agreement and Non-Competition Agreements executed by the Seller Group will be at the discretion of and for the benefit of Buyer. The execution and delivery by Sellers of this Agreement and each of the Related Agreements to which any of them are or will be a party, and the consummation of the Contemplated Transactions, have been duly authorized on their part. This Agreement has been, and each of the Related Agreements to which any Seller is a party upon execution will be, duly executed and delivered by Sellers, as applicable, and this Agreement is, and each of the Related Agreements to which any Seller is a party upon execution will be, the legal, valid and binding obligation of them, enforceable against them in accordance with its terms.

(b) Except as set forth in Part 4.2(b) of the Disclosure Letter, neither the execution and delivery of this Agreement by Sellers nor the consummation or performance of any of the Contemplated Transactions by Sellers will (with or without notice or lapse of time): (i) contravene,

conflict with, or result in a violation of (A) any provision of the Organizational Documents of Nordic Land or the Seller Group, or (B) any resolution adopted by the board of directors, board of managers, members or the stockholders of Nordic Land or the Seller Group; (ii) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which the Seller Group, Nordic Land, or any Seller, or any of the assets owned or used by the Seller Group, may be subject; (iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by the Seller Group or that otherwise relates to the business of, or any of the assets owned or used by, the Seller Group; (iv) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Seller Group Contract; or (v) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by the Seller Group.

(c) Except as set forth in Part 4.2(c) of the Disclosure Letter, no Seller, Nordic Land, or any member of the Seller Group is or will be required to give any notice to or obtain any consent, approval or other authorization from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions, except for any filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”).

4.3 Capitalization; Ownership.

(a) The Seller Group does not, directly or indirectly, own, of record or beneficially, or have any Contract to acquire any securities or other equity or ownership interest in, or control, any Person. Except as set forth on Part 4.3(a) of the Disclosure Letter, no Seller or Nordic Land, directly or indirectly, owns, of record or beneficially, or has any Contract to acquire any securities or other equity or ownership interest in, or control, any Person (other than the Seller Group) that is directly or indirectly involved in or related to the Business, except for passive investments in publicly traded stock of companies who do not compete with the business, are not a Parent or Affiliate of Buyer, and which represent ownership of less than 1% of the issued and outstanding capital stock of each such company.

(b) The authorized securities of Minnesota Limited consist of 2,500 shares of common stock, \$10.00 par value, of which 2,055 shares are issued and outstanding, all of which are owned by Sellers in the proportions set forth on Part 4.3(b) of the Disclosure Letter. There are no other authorized securities of Minnesota Limited. Sellers each own 50% of the issued and outstanding state law membership interests of Nordic Land. There are no other authorized state law membership interests of Nordic Land. Nordic Land is the sole member of each member of the LLC Group. Sellers and Nordic Land are and will be on the Closing Date the only record and/or beneficial owners and holders of any of the securities of any member of the Seller Group. None of the Equity Interests or Membership Interests are held jointly with any other person. The Equity Interests and Membership Interests of any member of the Seller Group owned and/or held by Sellers or Nordic Land will be on the Closing Date duly authorized, validly issued, fully paid and non-assessable and transferred to Buyer free and clear of all Encumbrances. Except as set forth in Part 4.3(b) of the Disclosure Letter, there are no Contracts relating to the issuance, sale or transfer of any securities of any member of the Seller Group. None of the outstanding securities of any member of the Seller Group was issued in violation of preemptive or similar rights of any Person, the Securities Act or any other Legal Requirement.

(c) In the past ten years, except as set forth in Part 4.3(c) of the Disclosure Letter, the Seller Group, Nordic Land, and Sellers have conducted the Business only through the Seller Group.

4.4 Financial Statements. Sellers have delivered or made available to Buyer (a) audited balance sheets of Minnesota Limited and unaudited balance sheets of the other members of the Seller

Group as at December 31, 2007, December 31, 2008 and December 31, 2009 (including the notes thereto for the audited financial statements, the “Balance Sheet”), and the related combined statements of operations, retained earnings and cash flow for the fiscal years then ended (including the notes thereto for the audited financial statements, the “Income Statement” and, together with the Balance Sheet, the “Annual Financial Statements”), together with the report on the audited financial statements of Lurie Besikof Lapidus & Company, LLP, independent certified public accountants, and (b) an unaudited balance sheet of the Seller Group as at January 31, 2011 (the “Interim Balance Sheet”) and the related unaudited statements of operations, and retained earnings for the period then ended (the “Interim Income Statement” and together with the Interim Balance Sheet the “Interim Financial Statements”). Except as set forth in Part 4.4 of the Disclosure Letter, such financial statements fairly present in all material respects the financial condition and the results of operations, retained earnings and cash flow (only for the Annual Financial Statements) of each member of the Seller Group as at the respective dates of and for the periods referred to in such financial statements, are current and complete in all material respects, are in all material respects consistent with the books and records of each member of the Seller Group, in each case in accordance with and as required by GAAP, subject, in the case of the Interim Financial Statements and the other unaudited financial statements, to normal recurring year-end adjustments and the absence of notes. Except as set forth in Part 4.4 of the Disclosure Letter, the Interim Financial Statements reflect the consistent application of the accounting principles used in the preparation of the Annual Financial Statements. No financial statements of any other Person are required by GAAP to be included in the financial statements of the Seller Group.

4.5 Real Property.

(a) Part 4.5(a) of the Disclosure Letter sets forth the correct legal description, street address, and tax parcel identification number of each location of all properties owned by the Seller Group (the “Owned Real Property”). Except as described in Part 4.5(a) of the Disclosure Letter, the Seller Group does not lease the Owned Real Property or any interest therein to any Person. Except as described in Part 4.5(a) of the Disclosure Letter, neither Nordic Land nor the Seller Group is a party to any existing agreements, options, commitments, or rights which grant or provide to any person the right to use or acquire the Owned Real Property, any portion thereof, or any interest therein. The Seller Group has good and marketable fee simple title to the Owned Real Property, free and clear of all Encumbrances, except for and subject to the Permitted Encumbrances. The Seller Group will maintain possession of the Owned Real Property at Closing. The Seller Group has obtained all authorizations and rights-of-way which are necessary to ensure vehicular and pedestrian ingress and egress to and from the Owned Real Property. To the Knowledge of Sellers, (i) there are no legal restrictions of record or otherwise Known on entrance to or exit from the Owned Real Property to adjacent public streets and (ii) no conditions exist which will result in the termination of the present access from the Owned Real Property to existing highways and roads. The Sellers have no Knowledge of any proposed assessment on or against the Owned Real Property or Nordic Land or the Seller Group as the owners of the Owned Real Property. The Sellers have no Knowledge of any planned public improvements affecting the Owned Real Property that may result in material special assessments or other action involving eminent domain. Since December 31, 2009, no governmental agency has served any written notice upon Sellers requiring correction of any conditions existing on or within the Owned Real Property. Except as set forth in Part 4.5(a) of the Disclosure Letter, no written notice has been served upon Nordic Land or the Seller Group with respect to the Owned Real Property, from any entity, governmental body, or individual, claiming any violation of any law, regulation, ordinance, or code, or requiring compliance with any law, regulation, ordinance, or code, or demanding payment or contribution for environmental damage, injury to natural resources, or Environmental Laws or Occupational Health and Safety Laws which has not been corrected or remedied. To the Knowledge of Sellers, the Owned Real Property and the present uses thereof comply with all regulations and zoning requirements of all governmental authorities having jurisdiction over the Owned Real Property, the current zoning classification of the Owned Real Property is sufficient and appropriate for all present uses thereof, and the Sellers have not received written notices from any governmental authority, and have no Knowledge, that the Owned Real Property or any improvements erected or situated

thereon, or the uses conducted thereon or therein, presently violate any regulations or zoning requirements of any governmental authority having jurisdiction over the Owned Real Property. Except as described in Part 4.5(a) of the Disclosure Letter, the Owned Real Property is serviced by water, solid waste and sewage disposal, storm drainage, telephone, gas and electric facilities, each of which is in good operating condition and is adequate for the present use and operation of the Business located thereon. There is no Proceeding of any nature pending or, to the Knowledge of Sellers, threatened against or affecting the Owned Real Property, or any portion thereof, by any third-party, in any court or before or by any Governmental Body. No condemnation or other taking by eminent domain of the Owned Real Property or any portion thereof, including, to the Knowledge of Sellers, threat in lieu thereof, has been instituted, the Sellers have not received any notice of taking or condemnation or intent to take or condemn all or any portion of the Owned Real Property, and there are no pending or, to the Knowledge of Sellers, threatened condemnation or eminent domain proceedings in connection with the Owned Real Property or any portion thereof.

(b) Part 4.5(b) of the Disclosure Letter sets forth the street address of each location where each member of the Seller Group currently engages in Business upon properties leased by the Seller Group (the "Leased Real Property"), along with a description of the Contract pursuant to which such real property was leased (collectively, the "Leases"). Sellers have delivered or made available to Buyer correct and complete copies of the Leases. Each Lease is a legal, valid, and binding obligation of such member of the applicable Seller Group, enforceable against such member of the Seller Group in accordance with its terms. No member of the Seller Group, and to the Knowledge of Sellers, nor any other party thereto, is in material default, violation or breach in any respect under any Lease. Except as described in Part 4.5(b) of the Disclosure Letter, the transfer of the Equity Interests does not require the consent of, or notice to, any landlord of the Leased Real Property. The applicable member of the Seller Group has good and valid title to the leasehold estate under each Lease pursuant to the terms of each such Lease. The applicable member of the Seller Group enjoys peaceful and undisturbed possession under its respective Leases for the Leased Real Property. To the Knowledge of Sellers, except as set forth in Part 4.5(b) of the Disclosure Letter, there is no Order outstanding, nor any Proceeding (including, without limitation, eminent domain), pending or threatened, relating to the ownership, lease, use, occupancy or operation by any Person of the Leased Real Property that is likely to have a Material Adverse Effect on any member of the Seller Group. To the Knowledge of Sellers, the Leased Real Property (including, without limitation, any improvements thereon) is in material compliance with the Lease, and the Sellers have not received any written notice of violation or claimed violation of any Legal Requirement of such Leased Real Property which has not been corrected or remedied.

4.6 Condition of Assets; Ownership; Encumbrances. To the Knowledge of the Sellers, the material buildings, plants, structures and equipment owned by the Seller Group and reflected in the Interim Balance Sheet are structurally sound, are in reasonably good operating condition and repair, subject to normal wear and tear. The Seller Group owns good and marketable title to, or a valid leasehold interest in, all of the properties and assets reflected in the Interim Balance Sheet (except for assets sold since the date of the Interim Balance Sheet in the ordinary course of business and consistent with past practice). All the assets owned by the Seller Group are free and clear of all Encumbrances, except those listed on Part 4.6 of the Disclosure Letter (the "Permitted Encumbrances").

4.7 Accounts Receivable. All Accounts Receivable reflected on the Interim Balance Sheet represent valid obligations arising from bona fide sales actually made or services actually performed by the Seller Group. Except as set forth on Part 4.7 of the Disclosure Letter, to the Knowledge of Sellers, there is no contest, claim, or asserted right of set-off under any Contract with any obligor of an Account Receivable relating to the amount or validity of such Account Receivable.

4.8 Inventory. The Seller Group does not have any Inventory that is intended for retail sale that it capitalizes on its balance sheet.

4.9 No Undisclosed Liabilities. Except as set forth in Part 4.9 of the Disclosure Letter, to the Knowledge of Sellers, the Seller Group has no material liability of the type required to be reflected as liabilities on a balance sheet prepared in accordance with GAAP as of the Closing Date consistent with the past practices of such member of the Seller Group (whether absolute, accrued, or, contingent) which are not shown, or which are in excess of the amounts shown or reserved for, in the Interim Balance Sheet, except for accounts payable and other liabilities incurred in the ordinary course of business and consistent with past practice since the date of the Interim Balance Sheet.

4.10 Taxes. Except as set forth in Part 4.10 of the Disclosure Letter:

(a) Each member of the Seller Group has filed or caused to be filed on a timely basis all Tax Returns that are or were required to be filed by or with respect to it, pursuant to applicable Legal Requirements. Sellers have delivered or made available to Buyer copies of, and Part 4.10(a)(i) of the Disclosure Letter contains a complete and accurate list of, all such Tax Returns filed since January 1, 2007. The Seller Group has paid, or on the Interim Balance Sheet has accrued an amount at least equal to the amount required for the payment of, all Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received by Sellers, Nordic Land, or any member of the Seller Group, except such Taxes, if any, as are listed in Part 4.10(a)(ii) of the Disclosure Letter and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Interim Balance Sheet.

(b) Part 4.10(b)(i) of the Disclosure Letter contains a complete and accurate list of all audits of all such Tax Returns in the past ten years, including a reasonably detailed description of the nature and outcome of each audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled or, as described in Part 4.10(b)(ii) of the Disclosure Letter, are being contested in good faith by appropriate proceedings and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Interim Balance Sheet. Part 4.10(b)(iii) of the Disclosure Letter describes all adjustments to the United States federal income Tax Returns filed by any member of the Seller Group for all Taxable years since January 1, 2007, and the resulting deficiencies proposed by the IRS. Except as described in Part 4.10(b)(iv) of the Disclosure Letter, no Seller, Nordic Land, or member of the Seller Group has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of any member of the Seller Group or for which any member of the Seller Group may be liable.

(c) The charges and accruals with respect to Taxes on the Interim Balance Sheet are adequate (determined in accordance with GAAP) and are at least equal to the Seller Group's aggregate liability for Taxes. The Sellers have no notice or Knowledge of any proposed Tax assessment against any member of the Seller Group except as disclosed in the Interim Balance Sheet and in Part 4.10(c) of the Disclosure Letter. All Taxes that any member of the Seller Group is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Taxing Authority.

(d) All Tax Returns filed by (or that include on a consolidated basis) any member of the Seller Group are true, correct, and complete in all material respects. There is no Tax sharing agreement that will require any payment by any member of the Seller Group after the date of this Agreement.

(e) Minnesota Limited properly and timely filed a valid election under Code Section 1362 to be treated as an S corporation as defined under Code Section 1361 for federal income Tax purposes effective as of April 1, 1996; and such election became effective as of the same date under the income Tax laws of the State of Minnesota. Such election has remained in effect under all such Tax laws since such time. Except for the Contemplated Transactions, neither Sellers nor Minnesota Limited have

taken any action or failed to take any action, nor has any event occurred, that could reasonably be expected to result in the revocation or termination of such election at any time.

(f) None of the entities that comprise the LLC Group has ever been subject to an election under Treasury Regulations Section 301.7701-3(c) to be treated differently from their default status as defined in Treasury Regulations Section 301.7701-3(b). Thus, if an entity included in the LLC Group has or had two or more owners, it is or was considered a partnership for United States federal income Tax purposes for each period in which it has or had two or more owners. If an entity included in the LLC Group has or had a single owner, it is or was considered disregarded as an entity separate from its owner for United States federal income Tax purposes for each period in which it has or had a single owner.

4.11 No Material Adverse Change. Except as set forth in Part 4.11 of the Disclosure Letter, since December 31, 2009, to the Knowledge of Sellers there has not been any Material Adverse Change in the business, operations, properties or assets of the Seller Group.

4.12 Employee Benefits.

(a) Part 4.12(a) of the Disclosure Letter sets forth a list of all pension, retirement, supplemental retirement, stock option, stock purchase, stock ownership, savings, stock appreciation right, profit sharing, deferred compensation, consulting, bonus, medical, disability, workers' compensation, vacation, group insurance, severance, employee welfare benefit plans (as defined in ERISA), employee pension benefit plans (as defined in ERISA) and other employee benefit, incentive and welfare policies, contracts, plans and arrangements, and all trust agreements related thereto, maintained by or contributed to by any member of the Seller Group or any of their ERISA Affiliates in respect of any of the present or former directors, officers, other employees and/or consultants of or to any member of the Seller Group or any of their ERISA Affiliates, or in which any of such directors, officers, employees or consultants participates (each an "Employee Plan"). Except for each Employee Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA (a "Multiemployer Plan"), the Employee Plans have been maintained and operated substantially in accordance with both their terms and with all applicable Legal Requirements, including, without limitation, ERISA, the Code, HIPAA, USERRA and COBRA. For each Employee Plan that is not a Multiemployer Plan, Sellers have provided or made available to Buyer complete and correct copies of: (i) the plan document, if written, or a description of such plan if not written; and (ii) to the extent applicable to such plan, (A) the three (3) most recent Forms 5500 or other annual report (and all financial schedules thereto) required by applicable Legal Requirements to have been filed with the IRS or any other Governmental Body; (B) the most recent IRS determination letter or any pending request for a determination letter with respect to any Employee Plan that is not a Multiemployer Plan and is intended to be "qualified" under Code Section 401(a) (a "Qualified Plan"); (C) the three (3) most recent reports regarding the coverage and nondiscrimination testing of each Qualified Plan that is subject to Sections 410(b), 401(a)(4), 401(k) and 401(m) of the Code; (D) all correspondence from and to the IRS, PBGC, U.S. Department of Labor or other Governmental Body regarding any such Employee Plan within the last three (3) years; and (E) all current summary plan descriptions and summaries of material modifications with respect to such Employee Plans that are subject to ERISA.

(b) None of the Qualified Plans is subject to Title IV of ERISA (a "Title IV Employee Plan") as a single employer plan as defined in Section 4001(a)(15) of ERISA. None of the Qualified Plans is subject to liability under Sections 4063, 4069 or 4212 of ERISA. Each Qualified Plan, and the trust (if any) forming a part thereof, has received a favorable determination letter from the IRS as to its qualification under Section 401(a) of the Code and to the effect that each such trust is exempt from federal income Tax under Section 501(a) of the Code or, if the plan is documented in the form of a prototype, master or volume submitter plan and trust, such plan document has received an opinion or advisory letter from the IRS stating that the plan document meets the requirements of Section 401(a) of

the Code taking into consideration the provisions of EGTRRA and, except as described in Part 4.12(b) of the Disclosure Letter, nothing has occurred since the date of the most recent favorable determination, opinion or advisory letter which could reasonably be expected to adversely affect such qualification or Tax-exempt status. With respect to any Employee Plan that is not a Multiemployer Plan, there are no Proceedings being conducted or, to the Knowledge of the Sellers, threatened by any Governmental Body. Except as otherwise provided in subsection (c), none of the Qualified Plans or Multiemployer Plans is subject to the minimum funding standards of ERISA or the Code. There are no pending or, to the Knowledge of the Sellers, threatened claims by or on behalf of any of the Employee Plans other than Multiemployer Plans, by any participant or otherwise involving any such Employee Plan or the assets of any such Employee Plan (other than routine claims for benefits).

(c) With respect to each Multiemployer Plan in which any member of the Seller Group or any of their ERISA Affiliates participates or has participated, except as set forth on Part 4.12(c) of the Disclosure Letter, neither (i) any member of the Seller Group, nor any such ERISA Affiliate, has withdrawn, partially withdrawn, or received any notice of any claim or demand for withdrawal liability or partial withdrawal liability; (ii) any member of the Seller Group, nor any such ERISA Affiliate, has received any notice that any such plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise Tax, or that any such plan is or may become insolvent, or that such plan has or is in the process of developing a rehabilitation plan or a funding improvement plan as required under Section 305 of ERISA; (iii) any member of the Seller Group, nor any such ERISA Affiliate, has failed to make any required contributions; (iv) to the Knowledge of Sellers, no such plan is a party to any pending merger or asset or liability transfer; (v) to the Knowledge of Sellers, there are no PBGC proceedings against or affecting any such plan; and (vi) any member of the Seller Group, nor any such ERISA Affiliate, has (or may have as a result of the transactions contemplated hereby) any withdrawal liability by reason of a sale of assets pursuant to Section 4204 of ERISA.

(d) Except as set forth on Part 4.12(d) of the Disclosure Letter, neither any member of the Seller Group, nor any such ERISA Affiliate, has any liability for, and the consummation of the Contemplated Transactions will not result in any liability to Buyer or any the Seller Group or any of their ERISA Affiliates, nor any Encumbrance on any asset of any member of the Seller Group or any such ERISA Affiliate, with respect to any Employee Plan, including, without limitation, any post-retirement health, medical or similar benefit of any kind whatsoever (except as required by COBRA, any similar state Legal Requirement or USERRA).

(e) With respect to each Employee Plan, all contributions which are due (including all employer contributions and employee salary reduction contributions) from the Seller Group have been paid to such Employee Plan; and all unpaid contributions for prior plan years, and the portion of the current plan year ending on the Closing Date, which are owed by the Seller Group but not yet due have been accrued in full on the Interim Balance Sheet. With respect to all Employee Plans, all premiums, administrative fees and other payments which are due from the Seller Group have been paid.

(f) Neither the execution nor delivery of this Agreement, nor the consummation of any of the Contemplated Transactions, will (i) result in any payment (including without limitation any severance, bonus, unemployment compensation or "excess parachute" payment within the meaning of Section 280G of the Code) becoming due to any director or employee of the Seller Group from any Person; (ii) increase any benefit otherwise payable under any of the Employee Plans; (iii) result in the acceleration of the time of payment or vesting of any such benefit; or (iv) constitute or involve a prohibited transaction as defined under Section 406 of ERISA or Section 4975 of the Code for which an exemption is not available.

(g) Except as set forth in Part 4.12(g) of the Disclosure Letter, each member of the Seller Group has at all times (i) properly classified its workers as employees or independent contractors under IRS regulations; (ii) properly withheld and paid over to the IRS all applicable federal employment

Taxes and other payments required under applicable federal Legal Requirements; and (iii) provided benefits under each Employee Plan that is not a Multiemployer Plan to all eligible persons substantially in accordance with the provisions of the applicable plan and applicable Legal Requirements.

(h) Except as described in Part 4.12(h) of the Disclosure Letter, no prohibited transaction as defined under ERISA or the Code, or breach of fiduciary duty under Title I of ERISA, that could reasonably be expected to result in any material liability to any member of the Seller Group, has occurred with respect to any Employee Plan that is not a Multiemployer Plan; nor has any member of the Seller Group participated, with respect to any Multiemployer Plan, in any such prohibited transaction or breach of fiduciary duty that could reasonably be expected to result in any material liability to any member of the Seller Group.

(i) Except as described in Part 4.12(i) of the Disclosure Letter, the Seller Group does not maintain and has not maintained (i) a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the Code or (ii) a multiple employer welfare arrangement within the meaning of Section 3(40)(A) of ERISA.

(j) All filings required by ERISA and the Code to be delivered to any Governmental Body with respect to the Employee Plans that are not Multiemployer Plans have been timely made.

(k) All disclosures required to be made to participants and beneficiaries with respect to the Employee Plans that are not Multiemployer Plans have been timely made.

(l) Except as described in Part 4.12(l) of the Disclosure Letter, each Employee Plan that is not a Multiemployer Plan can be terminated at the election of the applicable member or members of the Seller Group or Sellers without either (i) payment of any additional contributions or amounts by any Person pursuant to such plan or any applicable Legal Requirement, except for amounts that are not yet due and have been accrued in full on the Interim Balance Sheet; and (ii) the acceleration of any benefits under such Employee Plan.

4.13 Compliance with Legal Requirements. Except as set forth in Part 4.13 of the Disclosure Letter: (i) each Member of the Seller Group is and, to the Knowledge of Sellers, each member of the Seller Group has been since January 1, 2005 in compliance with each Legal Requirement that is applicable to it or to the conduct or operation of its Business or the ownership or use of any of its assets, except to the extent that the failure to so comply would not have a Material Adverse Effect on the Seller Group; and (ii) Sellers have not received, at any time since January 1, 2005, any written notice or other communication from any Person regarding any actual or alleged violation of, or failure to comply with, any Legal Requirement, except to the extent that the failure to comply with such notice or other communication would not have a Material Adverse Effect on the Seller Group.

4.14 Governmental Authorizations.

(a) Part 4.14(a) of the Disclosure Letter contains a complete and accurate list of each Governmental Authorization that is held by the Seller Group or that otherwise relates to the business of, or to any of the assets owned or used by, the Seller Group. Each Governmental Authorization listed or required to be listed in Part 4.14(a) of the Disclosure Letter is valid and in full force and effect.

(b) Except as set forth in Part 4.14(b) of the Disclosure Letter: (i) to the Knowledge of Sellers, each member of the Seller Group is in compliance in all material respects with all of the terms and requirements of each Governmental Authorization listed or required to be listed in Part 4.14(a) of the Disclosure Letter; (ii) no Seller has received, at any time since January 1, 2010, any written notice or other communication from any Person regarding any actual or alleged violation of or failure to comply with any term or requirement of any Governmental Authorization; (iii) all applications required to have

been filed for the renewal of the Governmental Authorizations listed or required to be listed in Part 4.14(a) of the Disclosure Letter have been duly filed on a timely basis with the appropriate Governmental Body, and (iv) all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Body. The Governmental Authorizations listed in Part 4.14(a) of the Disclosure Letter collectively constitute all of the Governmental Authorizations necessary to permit the Seller Group to lawfully conduct and operate the Business in the manner it currently conducts and operates such business and to permit the Seller Group to own and use its assets in the manner in which it currently owns and uses such assets, except to the extent the failure to obtain any of the foregoing will not have a Material Adverse Effect on the Seller Group.

4.15 Legal Proceedings; Orders.

(a) Except as set forth in Part 4.15(a) of the Disclosure Letter, there is no pending Proceeding, and to the Knowledge of the Sellers, no Proceeding has been threatened: (i) by or against the Seller Group; or (ii) that challenges any of the Contemplated Transactions.

(b) Except as set forth in Part 4.15(b) of the Disclosure Letter, (i) there is no Order to which the Seller Group, or any of the assets owned or to the Knowledge of Seller used by the Seller Group, is subject; and (ii) no Seller or Nordic Land is subject to any Order that relates to the business of, or any of the assets owned or used by, the Seller Group. The Seller Group is, and has been, in compliance with all of the terms and requirements of each Order to which it, or any of the assets owned or, to the Knowledge of Sellers, used by it, is or has been subject. Sellers have not received, at any time since January 1, 2010, any written notice or other communication from any Governmental Body or any other Person regarding any actual or alleged violation of, or failure to comply with, any material term or requirement of any Order to which the Seller Group, or any of the assets owned or used by the Seller Group, is or has been subject.

4.16 Absence of Certain Changes and Events. Except as set forth in Part 4.16 of the Disclosure Letter, since the date of the Interim Balance Sheet (or, for subsections (f), (g), (h), and (i), since December 31, 2009), the Seller Group has conducted its business only in the ordinary course of business and consistent with past practice and there has not been:

(a) any change in Minnesota Limited's authorized or issued capital stock; grant of any stock option or right to purchase shares of capital stock of Minnesota Limited; issuance of any security convertible into such capital stock; grant of any registration rights of such capital stock; or purchase, redemption, retirement, or other acquisition by Minnesota Limited of any shares of any such capital stock, or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock other than cash dividends;

(b) any change in Nordic Land's or any member of the LLC Group's issued membership interests; grant of any option or right to purchase any membership interests of Nordic Land or any member of the LLC Group; issuance of any security convertible into such membership interests; grant of any registration rights of such membership interests; purchase, redemption, retirement, or other acquisition by Nordic Land or any member of the LLC Group of any membership interests, or declaration or payment of any distribution or payment in respect of any membership interests other than cash dividends;

(c) any amendment to the Organizational Documents of Nordic Land or any member of the Seller Group;

(d) any material increase by the Seller Group of any bonuses, salaries, or other compensation to any director, manager, officer, or employee or entry into any employment, bonus, severance, or similar Contract with any director, manager, officer, or employee;

(e) any adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Seller Group;

(f) any material damage, destruction, loss or claim, whether or not covered by insurance, or condemnation or other taking adversely affecting any of the assets of the Seller Group or the Business;

(g) any intentional acceleration or delay in the collection of Accounts Receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of the business consistent with past practice;

(h) any intentional delay or acceleration in the payment of any material account payable or other material liability of the Seller Group beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of the business consistent with past practice;

(i) any institution of, becoming a party to, any settlement or agreement to settle any Proceeding;

(j) any change in the accounting principles and practices used by the Seller Group from those applied in the preparation of the Annual Financial Statements or Interim Financial Statements, including, without limitation, any change in any assumption underlying or methods of calculating reserves, provisions or accruals; or

(k) any Contract to do any of the foregoing.

4.17 Contracts; No Defaults.

(a) Part 4.17(a) of the Disclosure Letter contains a complete and accurate list, and Sellers have delivered or made available to Buyer true and complete copies (or written descriptions if unwritten), of the types of Seller Group Contracts described below (the "Listed Seller Group Contracts"):

(i) each Seller Group Contract that involves performance of services or delivery of goods or materials by any member of the Seller Group for an amount (on a project by project basis if pursuant to a master agreement) payable to such member of the Seller Group in excess of \$100,000 in the next twelve months, each of which Seller Group Contract shall be designated as a fixed price Contract or a time and materials Contract on Part 4.17(a);

(ii) each Seller Group Contract that involves performance of services for or delivery of goods or materials to any member of the Seller Group which will require, by its specific terms, such member of the Seller Group to pay in excess of \$100,000 in the next twelve months;

(iii) each Seller Group Contract that has any written warranty period that has not expired by its terms (which remaining warranty period shall be specifically disclosed for each such Seller Group Contract), which Contract resulted in payments to such member of the Seller Group in excess of \$100,000;

(iv) each Seller Group Contract that relates to the borrowing of money by or the extension of credit to any member of the Seller Group;

763862

KD3319265

PAGE 16

VEC000241

(v) each lease (other than the Leases), rental or occupancy agreement, license, and installment and conditional sale agreement affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any personal property (except personal property leases having aggregate annual payments of less than \$26,000);

(vi) each Seller Group Contract with respect to Intellectual Property (other than standard agreements with current or former employees, consultants, or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property, forms of which have been delivered or made available to Buyer), but not including any "shrink wrap" Software;

(vii) each collective bargaining agreement and other Seller Group Contract with any labor union or other employee representative of a group of employees of the Seller Group;

(viii) each form of Seller Group Contract relating to the employment of an individual;

(ix) each joint venture Contract or Contract intending to create a partnership to which any member of the Seller Group is a party;

(x) each Contract containing covenants that in any way purport to restrict the business activity of the Seller Group or limit the freedom of the Seller Group to engage in any line of business or to compete with any Person;

(xi) each Seller Group Contract that requires any member of the Seller Group to spend more than \$100,000 for capital expenditures in any one year period;

(xii) each Seller Group Contract relating to the guarantee of the obligations of any third party (including, without limitation, customers, suppliers, stockholders, or members) by the Seller Group;

(xiii) each other Contract to which a member of Seller Group is a party involving the payment by or to the Seller Group in excess of \$100,000 in the next 12 months that is not cancelable on 30 days or less notice;

(xiv) each power of attorney that is currently in effect;

(xv) each master services agreement that is currently in effect; and

(xvi) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

The disclosure of any Contract above shall not be construed as a guarantee of future performance or revenues received by any member of the Seller Group or Buyer.

(b) Other than as set forth in Part 4.17(b) of the Disclosure Letter, each Listed Seller Group Contract is in full force and effect and is valid and enforceable against such member of the Seller Group in accordance with its terms and will not discontinue to be in full force and effect or invalid or unenforceable in accordance with its terms as a direct result of the consummation of the Contemplated Transactions. Other than the Lease Agreement and as set forth Part 4.17(b) of the Disclosure Letter, no Seller or Nordic Land (and no Affiliate of any Seller or Nordic Land) has or may acquire any rights under, and no Seller has or may become subject to any obligation or liability under, any Contract that relates to the business of, or any of the assets owned or used by the Seller Group.

(c) Other than as set forth in Part 4.17(c) of the Disclosure Letter, the Seller Group is in compliance with all applicable terms and requirements of each Listed Seller Group Contract. To the Knowledge of the Sellers, each other Person that has any obligation or liability under any Listed Seller Group Contract is in compliance with all applicable terms and requirements of such Listed Seller Group Contract. Except as set forth in Part 4.17(c) of the Disclosure Letter, the Sellers have not given to or received from any other Person any notice regarding any actual or alleged violation or breach of, or default under, or lapse or termination of any Listed Seller Group Contract.

(d) Other than as set forth in Part 4.17(d) of the Disclosure Letter, to the Knowledge of Sellers, there are no current renegotiations of any material amounts paid or payable to the Seller Group under current or completed Listed Seller Group Contract with any Person.

For purposes of Sections 4.17(b), 4.17(c), and 4.17(d), the term "Listed Seller Group Contract" shall be deemed to include any Seller Group Contract that should have been listed in Part 4.17(a) of the Disclosure Letter.

4.18 Insurance. Part 4.18 of the Disclosure Letter sets forth a list and brief description (including nature of coverage, limits, deductibles, premiums and the loss experience for the most recent five years with respect to each type of coverage) of all policies of insurance maintained, owned or held by the Seller Group on the date hereof, all of which are currently in force and provide coverage pursuant to their respective terms. Except as set forth in Part 4.18 of the Disclosure Letter, such policies shall not be terminated as a result of the consummation of the Contemplated Transactions and the premium payments of such policies are not in default. Except as set forth in Part 4.18 of the Disclosure Letter, there is no self-insurance arrangement by or affecting the Seller Group. The Seller Group has complied with and performed all of its obligations under each of such insurance policies and, to the Knowledge of the Sellers, has not failed to present any material claim thereunder in a due and timely manner. The Seller Group has delivered or made available to Buyer correct and complete copies of the most recent inspection reports, if any, received from insurance underwriters as to the condition of the assets of the Seller Group. Part 4.18 of the Disclosure Letter sets out all claims made by the Seller Group under any policy of insurance during the past two years.

4.19 Environmental Matters. Except as set forth in Part 4.19 of the Disclosure Letter:

(a) Permits. All Governmental Authorizations that relate to Environmental Laws or Occupational Health and Safety Laws applicable to the Business ("Environmental Permits") are identified in Part 4.19(a) of the Disclosure Letter. To the Knowledge of the Sellers, the Seller Group currently holds all such Environmental Permits necessary to or required for the Business. The Seller Group has not been notified in writing by any relevant Governmental Body that any Environmental Permit will be modified, suspended, canceled or revoked, or cannot be renewed in the ordinary course of business.

(b) Compliance. To the Knowledge of the Sellers, the Seller Group is in material compliance with and is not in violation of any Environmental Law, Occupational Health and Safety Law or Environmental Permit nor has Sellers received any actual or, to the Knowledge of the Sellers, threatened Order, notice, citation, directive, inquiry, summons, warning or other written communication from (i) any Governmental Body of any actual or potential violation or failure to comply with any Environmental Law or Occupational Health and Safety Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities in which the Seller Group has a present interest, or with respect to any Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, disposed of, or processed by the Seller Group, or any other Person for whose conduct they are or may be held responsible which has not been corrected or remedied. To the Knowledge of the Seller Group, the Seller Group is in present compliance with all Legal Requirements related to the disposal and handling of its wastes.

(c) No Claims. To the Knowledge of the Sellers, there are no pending or threatened claims, Encumbrances, or other restrictions of any nature, arising under or pursuant to any Environmental Law or Occupational Health and Safety Law, with respect to or affecting any of the Facilities in which the Seller Group has or had an interest.

(d) No Liability. To the Knowledge of the Sellers, the Seller Group has no liabilities under any Environmental Law with respect to the Facilities in which the Seller Group has or had an interest.

(e) No Hazardous Materials. To the Knowledge of the Sellers, and except for limited amounts used in the ordinary course of business in compliance with all applicable Environmental Laws and Environmental Permits or other laws, statutes or regulations applicable thereto, there are no Hazardous Materials present on or in the Environment at the Facilities in which the Seller Group has or had an interest, including without limitation, any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, machinery, equipment (whether moveable or fixed) or other containers, either temporary or permanent, or deposited or located in land, water, sumps, or any other part of the Facilities in which the Seller Group has or had an interest, or incorporated into any structure therein or thereon. The Seller Group has not intentionally permitted or conducted, nor is any Seller aware of, any Hazardous Activity conducted with respect to the Facilities in which the Seller Group has or had an interest, except in compliance with all applicable Environmental Laws and Environmental Permits.

(f) No Release. To the Knowledge of the Sellers, there has been no material Release of any Hazardous Materials at or from the Facilities in which the Seller Group has or had an interest or at any other locations where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, disposed of, or processed from or by the Facilities in which the Seller Group has or had an interest.

4.20 Employees. Except as set forth in Part 4.20 of the Disclosure Letter, to the Knowledge of the Sellers, no employee of the Seller Group intends, within the next six months, to terminate his or her employment with the Seller Group. Part 4.20 of the Disclosure Letter contains a complete and accurate list of the following information for each employee of the Seller Group, including each employee on leave of absence or layoff status: name; job title; date of hiring; current compensation paid or payable; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan. The Seller Group has not violated the WARN Act.

4.21 Labor Relations; Compliance. Except as set forth in Part 4.21 of the Disclosure Letter, there has not been in the past three years, there is not presently pending or existing, and to the Knowledge of the Sellers, there is not threatened, (a) any strike, slowdown, picketing, work stoppage, or employee grievance process, (b) any Proceeding against or affecting the Seller Group relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters including, without limitation, any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any comparable Governmental Body, organizational activity, or other labor or material employment dispute against or affecting the Seller Group or its premises, or (c) any application for certification of a collective bargaining agent. There is no lockout of any employees by the Seller Group, and no such action is currently contemplated by the Seller Group. To the Knowledge of Sellers, the Seller Group has complied in all material respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, and plant closing. Except as set forth in Part 4.21 of the Disclosure Letter, to the Knowledge of Sellers, the Seller Group is not liable for the payment of any compensation, damages, taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements. No arbitration proceeding arising out of or under any collective

bargaining or other labor agreement is pending, and no claim therefor has been asserted in writing to the Seller Group. To the Knowledge of Sellers, there is no organizational activity involving the Seller Group pending or threatened by any labor union or group of employees. There are no representation proceedings involving the Seller Group pending or, to the Knowledge of the Sellers, threatened with the National Labor Relations Board, and no labor union or group of Seller Group employees has made a demand for recognition which is currently pending. All labor Contracts are set forth in Part 4.17(a) of the Disclosure Letter.

4.22 Intellectual Property.

(a) Title. Part 4.22(a) of the Disclosure Letter contains a complete and accurate list and summary description of all Intellectual Property owned, licensed or used by the Seller Group ("Intellectual Property Assets"), indicating which are owned, licensed or used, provided that Trade Secrets, know-how, and other proprietary rights may be omitted from such list. The Seller Group is the owner of all right, title, and interest in and to, or has the right to use, each item of Intellectual Property Asset as currently used. Except as set forth in Part 4.22(a) of the Disclosure Letter, to the Knowledge of the Sellers, no employee of the Seller Group is a party to any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his or her work to anyone other than the Seller Group.

(b) No Infringement. To the Knowledge of the Sellers, the conduct of the Business does not infringe any rights of any Person in respect of any Intellectual Property. To the Knowledge of Sellers, none of the Intellectual Property Assets is being infringed or otherwise used or available for use, by any other Person.

(c) Licensing Arrangements. Part 4.22(c) of the Disclosure Letter sets forth all Contracts (i) pursuant to which the Seller Group has licensed Intellectual Property Assets to, or the use of Intellectual Property Assets is otherwise permitted (through non-assertion, settlement or similar agreements) by, any other Person; and (ii) pursuant to which the Seller Group has had Intellectual Property licensed to it, or has otherwise been permitted to use Intellectual Property (through non-assertion, settlement or similar agreements). All of the agreements or arrangements set forth or required to be set forth on Part 4.22(c) of the Disclosure Letter (x) are in full force and effect in accordance with their terms and no material default exists thereunder by the Seller Group or, to the Knowledge of the Sellers, by any other party thereto, and (y) do not contain any change in control or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the Contemplated Transactions. The Seller Group has delivered or made available to Buyer true and complete copies of all Contracts set forth on Part 4.22(c) of the Disclosure Letter.

(d) No Intellectual Property Litigation. Sellers have not received any written claim or demand of any Person nor is there any Proceeding pending, or to the Knowledge of the Sellers, threatened, which (i) challenges the rights of the Seller Group in respect of any Intellectual Property, (ii) asserts that the Seller Group is infringing or otherwise in conflict with, or is required to pay any royalty, license fee, charge or other amount with regard to, any Intellectual Property, or (iii) claims that any default exists under any Contract listed or required to be listed on Part 4.22(c) of the Disclosure Letter. To the Knowledge of Sellers, none of the Seller Group's Intellectual Property are subject to any outstanding Order or have been the subject of any Proceeding within the last five years, whether or not resolved in favor of the Seller Group.

4.23 Customers. Part 4.23 of the Disclosure Letter sets forth the names of the Seller Group's ten (10) largest customers, based on revenues for calendar years 2009 and 2010. To the Knowledge of Sellers, no such customer currently intends to terminate any agreement with the Seller Group.

4.24 Warranty.

(a) Except as set forth in Part 4.24 of the Disclosure Letter, no customer of the Seller Group has made any warranty claims in respect of any service rendered prior to the Closing by or on behalf of the Seller Group or any predecessor of the Seller Group which work has not been completed.

(b) Except as set forth in Part 4.24 of the Disclosure Letter, in the past two years, there has been no single claim, or series of claims based on the same alleged underlying facts or defects, against any member of the Seller Group in excess of \$100,000, against or involving the Seller Group.

4.25 Books and Records; Bank Accounts.

(a) The minute books of the Seller Group, all of which have been made available to Buyer, contain current Organizational Documents and accurate and complete, in all material respects, records of all meetings held, and corporate action taken by, the shareholders or members, as applicable, the board of directors and boards of managers, as applicable, and committees of the board of directors and boards of managers, as applicable, of the Seller Group. At the Closing, all of those books and records will be in the possession of the Seller Group.

(b) Part 4.25(b) of the Disclosure Letter lists the names, account numbers and locations of all banks and other financial institutions of which the Seller Group has any accounts or safe deposit boxes, and the names of all Persons authorized to draft or have access to any such accounts.

4.26 Relationship with Related Persons. Except for Sellers' ownership in Nordic Land, the Seller Group, MLBL, LLC, Nordic Investments, LLLP and as otherwise set forth in Part 4.26 of the Disclosure Letter, no Seller or any Affiliate or immediate family member of any Seller has any interest in any property (whether real, personal, or mixed and whether tangible or intangible), used in or by the Seller Group's businesses. Except for Sellers' ownership in Nordic Land, Nordic Land's interest in the LLC Group, the Seller Group, MLBL, LLC, Nordic Investments, LLLP and as otherwise set forth in Part 4.26 of the Disclosure Letter, no Seller or any Affiliate or immediate family member of any Seller owns (of record or as a beneficial owner) an equity interest or any other financial or profit interest in, a Person that has (i) has current business dealings or a current financial interest in any on-going transaction with the Seller Group or (ii) engaged in competition with the Seller Group with respect to any line of products or services of the Seller Group (a "Competing Business") except for less than five percent of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Part 4.26 of the Disclosure Letter, no Seller or Affiliate or immediate family member of any Seller has, to the Knowledge of Sellers, any claim or right against Nordic Land or the Seller Group.

4.27 Disclosure. To the Knowledge of Sellers, no representation, warranty or other statement made by Sellers in Section 4 of this Agreement, as qualified by the Disclosure Letter, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make that representation, warranty or statement made, in the light of the circumstances under which it was made, not misleading.

4.28 Brokers or Finders. Except for Greene Holcomb & Fisher LLC, no Seller nor any member of the Seller Group has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement. Sellers shall be solely responsible for the payment of any brokerage or other fees payable to Greene Holcomb & Fisher LLC and shall indemnify Buyer from any claim for such fees.

Other than the representations and warranties set forth in this Section 4, neither Nordic Land nor the Sellers make, and each further disclaims, any other representations and warranties. Buyer is not relying on any representations or warranties, or any other information or facts outside those set forth in this Agreement and the Related Agreements in making its decision to proceed with the execution of this

Agreement and the Contemplated Transactions. Neither Nordic Land nor the Sellers make any representations or warranties regarding the future results, prospects or revenue of the Seller Group.

5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers, on the date hereof and as of the Closing Date, as follows:

5.1 Organization and Good Standing. Buyer is a corporation duly organized and validly existing under the laws of the State of Indiana.

5.2 Authority; No Conflict; Consents.

(a) This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Related Agreements to which Buyer is a party, such Related Agreements will constitute the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Related Agreements to which it is a party and to perform its obligations under this Agreement and such Related Agreements. This Agreement, the Related Agreements to which Buyer is a party, and the Contemplated Transactions have been duly authorized by all necessary corporate action on the part of Buyer.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to: (i) any provision of Buyer's Organizational Documents; (ii) any resolution adopted by the board of directors or the stockholders of Buyer; (iii) any Legal Requirement or Order to which Buyer may be subject; or (iv) any Contract to which Buyer is a party or by which Buyer may be bound.

5.3 Certain Proceedings. There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

5.4 Investment Intent. Buyer is acquiring the Equity Interests for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the Equity Interests in a manner that would violate the registration requirements of the Securities Act.

5.5 Brokers or Finders. Buyer and its Representatives have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

6. INTENTIONALLY BLANK

7. POST-CLOSING COVENANTS

7.1 Tax Matters.

(a) Transfer Taxes. All excise, sales, use, transfer (including stock transfer, real property transfer or gains), stamps, documentary, filing, recordation and other similar Taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties (the "Transfer Taxes") resulting under applicable Tax Legal Requirements from the transfer

763862

KD3319265

PAGE 22

VEC000247

of the Equity Interests pursuant to this Agreement or the Contemplated Transactions shall be borne by Buyer.

(b) Responsibility for Income Tax Returns. Sellers and Nordic Land shall cause to be prepared on behalf of the Seller Group all Tax Returns and any other filings that any member of the Seller Group is required to file with respect to federal and state income or franchise Taxes accruing during a Taxable period ending on or before the Closing Date (each, a “Pre-Closing Tax Period”) or for any Taxable period that includes (but does not end on) the Closing Date (a “Straddle Period”), on a basis consistent with this Agreement. Such Tax Returns shall be prepared in consultation with and subject to the reasonable advance review of Buyer; and Sellers and Nordic Land shall, at least thirty (30) business days before the respective due dates (as may be extended by the applicable member of the Seller Group) for filing such Tax Returns, deliver such Tax Returns to Buyer for signing and Buyer shall timely file them on behalf of the applicable member of the Seller Group. Such Tax Returns shall include without limitation a federal income Tax return of Minnesota Limited for the Taxable period ending on the Closing Date for the “S short year” (within the meaning of Section 1362(e)(1)(A) of the Code, as modified by Section 1.338(h)(10)-1(d)(3) of the Treasury Regulations). Such Taxes, Tax Returns and filings for each Pre-Closing Tax Period shall be determined by closing the Seller Group’s books and records as of and including the Closing Date, and the Parties shall make all elections to cause that result, including an election under Section 1362(e)(3) of the Code.

(c) Filing of Other Tax Returns. Except for the Tax Returns to be prepared by Sellers and Nordic Land under subsection (b) above, Buyer shall prepare and file or shall cause to be prepared and filed all Tax Returns that are required under applicable Legal Requirements to be filed after the Closing Date by or with respect to each member of the Seller Group or in respect of its business, assets or operations.

(d) Cooperation on Tax Matters.

(i) The Parties and their respective Affiliates shall cooperate in the preparation of all Tax Returns for any Taxable periods for which one party could reasonably require the assistance of the other party in obtaining any necessary information and any Proceeding with respect to Taxes of any member of the Seller Group. Such cooperation shall include, but not be limited to: (A) timely signing and delivering such certificates or forms as may be reasonably necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Transfer Taxes; (B) furnishing prior years’ Tax Returns or Tax Return preparation packages to the extent related to any member of the Seller Group and illustrating previous reporting practices or containing historical information relevant to the preparation of such Tax Returns; and (C) furnishing such other information within such Party’s possession, as reasonably requested by the Party filing such Tax Returns, or in the case of Sellers and Nordic Land, information for their Tax Returns that relate to the Seller Group, as is relevant to their preparation, and the provision of other records and information reasonably relevant to any Proceeding. Such cooperation and information also shall include without limitation promptly forwarding copies of appropriate notices and forms or other communications received from or sent to any applicable Governmental Body responsible for the imposition of Taxes (a “Taxing Authority”) that relate to any member of the Seller Group; and providing copies of all relevant Tax Returns to the extent related to any member of the Seller Group together with the applicable schedules and related workpapers, documents relating to rulings or other determinations by any Taxing Authority, and records concerning the ownership and Tax basis of property, which the requested Party may possess. The Parties and their respective Affiliates shall make their respective Representatives and facilities available on a mutually convenient basis to explain any documents or information provided hereunder. Each of the Parties further agrees upon reasonable request to provide to any other Party all information that the requesting Party may be required to report pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder.

(ii) Buyer shall have the sole right to represent the Seller Group's interests in any audit, examination, claims, assessments, or similar events by any Taxing Authority ("Tax Matters") relating to Taxable periods ending after the Closing Date and to employ counsel of its choice at its sole expense; provided, however, that in the case of a Straddle Period, (A) Sellers and Nordic Land shall be entitled to participate at their expense in any Tax Matter relating in any part to Taxes attributable to such Taxable period; and (B) to the extent a Tax Matter could increase the Tax liability of any of the Sellers or Nordic Land for such period, Buyer shall settle any issue only with the consent of such Seller or Nordic Land, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer will keep Sellers and Nordic Land reasonably informed with respect to the commencement, status and nature of any Tax Matter relating to a Straddle Period.

(iii) Sellers and Nordic Land shall have the sole right to represent the Seller Group's interests in any Tax Matters relating to Pre-Closing Tax Periods and to employ counsel of their choice at their sole expense; provided, however, that (A) Buyer shall be entitled to participate at its expense in any Tax Matter relating in any part to Taxes attributable to such Taxable period; and (B) to the extent any such Tax Matter could increase the Tax liability of Buyer or any member of the Seller Group for any later Taxable period, Sellers and Nordic Land shall settle any issue only with the consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Sellers and Nordic Land will keep Buyer reasonably informed with respect to the commencement, status and nature of any Tax Matter relating to a Pre-Closing Tax Period.

(e) Section 338(h)(10) Election.

(i) Requesting, Making and Preserving the Election. Sellers and Buyer shall, upon the written request of Buyer (the "Election Request"), jointly make the election provided for by Section 338(h)(10) of the Code and Section 1.338(h)(10)-1 of the Treasury Regulations and any comparable election under state or local Tax laws, with respect to the purchase and sale of the stock of Minnesota Limited hereunder (collectively, the "338(h)(10) Election"). If Buyer decides, in its sole discretion, to request the 338(h)(10) Election, its Election Request shall be made to Sellers at any time on or after the date this Agreement is executed and before the 15th day of the third month beginning after the month in which the Closing occurs. Within thirty (30) days after the Aggregate Consideration and Allocation (as defined below) are finally determined under the following paragraph (ii), Buyer shall prepare and deliver to Sellers a completed Form 8023 for review by Sellers. Within thirty (30) days after such delivery, and in no event later than the due date for filing the 338(h)(10) Election with the Internal Revenue Service (the 15th day of the ninth month beginning after the month in which the Closing occurs), each of Buyer and Sellers shall sign such Form 8023 and furnish a signed copy to the other Party. Moreover, Buyer and Sellers shall cooperate with each other to take all other actions, at Buyer's expense, necessary and appropriate (including filing such additional forms, returns, elections, schedules and other documents as may be required) to effect and preserve a timely 338(h)(10) Election in accordance with the provisions of Section 1.338(h)(10)-1 of the Treasury Regulations (or any comparable provisions of state or local Tax Legal Requirements) or any successor provisions.

(ii) Determination of Aggregate Consideration and Allocation. Within 60 days after Buyer delivers any Election Request, Sellers and Buyer shall act together in good faith to (A) determine and agree upon the Aggregate Consideration (in accordance with Sections 1.338(h)(10)-1(d)(3) and 1.338-4 of the Treasury Regulations) and (B) determine and agree upon the proper allocations of the Aggregate Consideration among the assets of Minnesota Limited (in accordance with Code Section 338(b)(5) and the Treasury Regulations promulgated thereunder); provided, however, notwithstanding the foregoing, Buyer shall use its best efforts (i) to have the Aggregate Consideration equal to the Purchase Price minus \$16,596,603.01 (which amount is being paid to Nordic Land Company) and (ii) to have the allocation as contemplated by subsection (B) allocated pursuant to Schedule 7.1(e)(ii) (the "Allocation"). In addition, if any asset of the Seller Group has been expensed and not previously capitalized, such asset shall not be allocated any portion of the Purchase Price. In the event Sellers and Buyer fail to agree on the

Aggregate Consideration and the Allocation, all such unresolved matters shall be submitted for resolution, as soon as practicable, to the Final Accounting Firm for final determination. The determinations of the Final Accounting Firm as to all such unresolved matters shall be final and binding on Sellers and Buyer. Sellers and Buyer shall each bear an equal portion of the costs and expenses of the Final Accounting Firm. Sellers and Buyer shall (A) be bound by such determination and such allocation for purposes of determining any Taxes, (B) prepare and file their respective Tax Returns (including without limitation Tax Returns of Minnesota Limited) on a basis consistent with such determination of the Aggregate Consideration and such Allocation (Minnesota Limited's preparation and filing of any such Tax Returns shall be on an accrual basis and subject to Sellers' approval, which approval shall not be unreasonably withheld, conditioned or delayed), and (C) take no position inconsistent with such determination and Allocation on any applicable Tax Return, in any Proceeding before any Taxing Authority or otherwise, except as may be required by applicable Legal Requirements. Buyer shall pay all out-of-pocket costs directly related to the preparation of Form 8023.

(iii) Section 338 Tax Claim. In the event that any of the Allocation, Aggregate Consideration, or the amount of Taxable gain or loss resulting therefrom is disputed by any Taxing Authority (a "Section 338 Tax Claim"), the Party receiving notice of the dispute shall promptly notify the other Parties. Sellers and Buyer shall jointly control all Proceedings taken concerning any such Section 338 Tax Claim. In no event shall either Buyer or Sellers settle or otherwise compromise any Section 338 Tax Claim without the others' prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Sellers and Buyer shall cooperate with each other in contesting such Section 338 Tax Claim, which cooperation shall include, without limitation, the reasonable retention and (upon Sellers' request) the provision to the other party of records and information that are relevant to such Section 338 Tax Claim; and making employees, accountants or other agents available to provide additional information or explanation of any material provided hereunder or to testify at Proceedings relating to such Section 338 Tax Claim, all at the expense of Buyer, except that no party hereto shall be compensated for its or their time or the time of anyone employed by it or them on a full-time basis.

7.2 Covenants regarding Buyer's Parents and Affiliates. Sellers hereby acknowledge and agree that their Knowledge of the Contemplated Transactions may be considered material, non-public information, and that trading on the basis of material, non-public information, or insider trading, or otherwise using such information for their personal gain, is prohibited under federal securities laws. For a period of ninety (90) days after the Closing, neither Seller shall acquire or enter into any Contract to acquire any securities or other equity or ownership interest in, or control, any Parent or Affiliate of Buyer that is publicly traded.

7.3 Confidential Information. Each Seller acknowledges and agrees that the Confidential Information of the Seller Group is an asset which Buyer will acquire pursuant to this Agreement. Each Seller agrees to maintain the confidentiality of, and refrain from using or disclosing to any Person, all Confidential Information, except to the extent disclosure of any such information is required by Legal Requirements. Confidential Information shall cease to be such when it is in the public domain through no wrongful act on the part of any Seller or any of their respective Affiliates or Representatives.

7.4 Seller Release.

(a) Anything contained herein to the contrary notwithstanding, effective as of the Closing Date, in consideration of the mutual covenants and agreements contained herein, including, without limitation, the Purchase Price to be directly or indirectly received by the Sellers, the Sellers and Nordic Land hereby irrevocably release and forever discharge the Seller Group (for the benefit of the Seller Group, and their past and present directors, managers, officers, employees and agents, and each of their respective successors, heirs, assigns, executors and administrators (collectively, the "Released Persons")) of and from all manner of action and actions, cause and causes of action, suits, rights, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, omissions, promises,

variances, trespasses, losses, judgments, executions, claims and demands whatsoever, in law or in equity which the Sellers ever had, now have or which it hereafter can, shall or may have, against the Released Persons, whether known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, for, upon or by reason of any matter or cause arising at any time prior to the Closing, other than with respect to the rights under this Agreement and the Related Documents and rights related to compensation and benefits through the Closing Date and any rights under Minnesota Statutes 302A.521 or 322B.699, or any statute providing similar benefits or rights.

(b) Each Seller and Nordic Land represents and warrants to the Released Persons that such Seller or Nordic Land has not assigned any such claim set forth in Section 7.4(a).

(c) Anything contained herein to the contrary notwithstanding, effective as of the Closing Date, in consideration of the mutual covenants and agreements contained herein, each member of the Seller Group hereby irrevocably release and forever discharge each Seller and Nordic Land of and from all manner of action and actions, cause and causes of action, suits, rights, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, omissions, promises, variances, trespasses, losses, judgments, executions, claims and demands whatsoever, in law or in equity which any member of the Seller Group ever had, now have or which it hereafter can, shall or may have, against any Seller and/or Nordic Land, whether known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, for, upon or by reason of any matter or cause arising at any time on or prior to the Closing, other than with respect to the rights under this Agreement and the Related Documents.

7.5 WARN Act. It is the present intent of the Parties that the Contemplated Transactions will not violate the WARN Act, and Buyer shall not take, or cause to be taken, any actions within six months following Closing that will violate the WARN Act with respect to the Seller Group.

7.6 Insurance.

(a) If any of the Contractors Professional Liability Protection Policy, Contractors Pollution Liability Policy or Employment Protection Liability Policy that are maintained by the Seller Group and in effect immediately prior to Closing are terminated, expire or are not renewed for any or no reason during the period ending (i) with respect to the Contractors Pollution Liability Policy, five years following the Closing Date and (ii) with respect to the Contractors Professional Liability Protection Policy and Employment Practices Liability Policy, three years following the Closing Date, Buyer and the Seller Group, at their sole cost and expense, shall cause to be maintained in effect an extended reporting period insurance policy with coverage limits of not less than such limits in effect immediately prior to Closing ("Comparable Coverage") for each such policy for a period of at least (i) with respect to the Contractors Pollution Liability Policy, five years from the Closing Date and (ii) with respect to the Contractors Professional Liability Protection Policy and Employment Protection Liability Policy, three years from the Closing Date (the "Comparable Coverage Period"). The Comparable Coverage shall be non-cancelable upon payment of the applicable premium.

(b) In addition to the insurance required to be maintained by Buyer and the Seller Group in subsection (a) above, during the fourteen month period following the Closing Date, Buyer and Seller Group shall maintain insurance coverage for the Seller Group with protections and limits which are at least as comprehensive and protective as those policies maintained by the Seller Group prior to the Closing and disclosed to Buyer on Part 4.18 of the Disclosure Letter.

7.7 Workers Compensation Insurance. The Seller Group's workers compensation insurance through Travelers Insurance is a paid loss program which is secured by a letter of credit written by M&I Bank for the benefit of Minnesota Limited in the aggregate amount of \$1,335,000 (the "L/C"). The collateral securing the Seller Group's line of credit with M&I Bank serves as collateral for the L/C, which

line of credit will be terminated as of the Closing Date. Buyer acknowledges and agrees that it must supply replacement collateral for the L/C effective as of the Closing Date.

7.8 Labor Matters. It is the present intent of the Parties that (a) none of the Contemplated Transactions will interrupt, discontinue, or otherwise interfere with the membership of any member of the Seller Group in any multi-employer bargaining unit; (b) none of the Contemplated Transactions will cause or require any entity in the Seller Group to withdraw recognition of any labor organization that represents such entity's employees; (c) none of the Contemplated Transactions will cause or require any member of the Seller Group to cease abiding by any collective bargaining agreement to which it is currently a party. In no event shall either of the Sellers nor Nordic Land be responsible or liable for any Multiemployer Plan withdrawal liability that is incurred (a) at any time by Buyer, or (b) by any member of the Seller Group with respect to a withdrawal occurring on or after the Closing Date.

7.9 Nordic Land Superior, LLC.

(a) **Background.** Nordic Superior is a wholly-owned subsidiary of Nordic Land. Nordic Superior owns real property located at 3116 James Day Avenue, Superior, Wisconsin 54888, tax parcel identification number: 02-802-07114-01 and 02-802-07114-00, County of Douglas, State of Wisconsin, described as follows: Lot Thirteen (13), and the South 210.50 feet of Lot Fourteen (14), Block Two (2), Superior Industrial Park, in the City of Superior, Douglas County, Wisconsin (the "Property"). Prior to the Closing, Nordic Superior leased the Property to Minnesota Limited pursuant to a Lease Agreement (3116 James Day Avenue, Superior Facility) dated as of January 1, 2005. The Property was contaminated with Hazardous Materials prior to the date Nordic Superior acquired the Property and Minnesota Limited leased the Property. After remediation efforts, the Wisconsin Department of Commerce issued a final closure letter dated August 24, 2004. In connection with the Contemplated Transactions, Buyer performed Phase I and Phase II tests on the Property, the results of which are set forth in that certain Phase I Environmental Site Assessment conducted by American Engineering Testing, Inc. dated November 24, 2010 and that certain Report of Phase II Environmental Site Assessment conducted by American Environmental Testing, Inc. dated December 23, 2010 (collectively, the "Reports"). As a result of the Reports, Nordic Superior and Minnesota Limited filed *Form 4400-237 Technical Assistance and Environmental Liability Clarification Request* dated January 1, 2011 with the State of Wisconsin Department of Natural Resources ("WDNR"). In response thereto, Nordic Superior and Minnesota Limited received a letter dated February 14, 2011, from the WDNR relating to the legal responsibilities associated with the reported contamination at the Property and a letter dated February 14, 2011, from the WDNR relating to the Department of Natural Resources' Remediation and Redevelopment program associated with the reported contamination at the Property.

(b) **Voluntary Party Liability Exemption ("VPLE").** Nordic Superior has filed a separate application on behalf of each of Nordic Superior and Minnesota Limited to participate in the State of Wisconsin Voluntary Party Liability Exemption ("VPLE") program (the "Program") (the Program is authorized by Wisconsin Statute Section 292.15) by filing *Form 4400-178 Voluntary Party Liability Exemption Application* dated February 16, 2011 with the WDNR. Sellers shall use their reasonable commercial efforts to, at their sole expense, obtain a Certificate of Completion from the WDNR under the procedures and requirements established by law and practice for the Program for each of Nordic Superior and Minnesota Limited within a reasonable time following the Closing Date. Nordic Superior and Sellers shall, to the extent not independently provided to Minnesota Limited by the WDNR, provide to Minnesota Limited copies of all reports, submissions, letters, and correspondence to and from the WDNR as soon as practicable after receipt or transmittal thereof. Upon receipt of a Certificate of Completion from the WDNR with Minnesota Limited named on such Certificate, subparagraph (ii) of the definition of Excluded Liabilities shall be deleted; provided, however, that the representations and warranties set forth in Section 4.19, subject to the Disclosure Letter, shall continue to apply to the Property as contemplated by this Agreement. Buyer shall cause Minnesota Limited to cooperate with Sellers in connection with obtaining the Certificates of Completion contemplated by this Section. Upon

obtaining the Certificates of Completion, Sellers shall have no indemnification obligations whatsoever with respect to any Proceedings by the WDNR or any other Government Body upon which the Certificate of Completion naming Minnesota Limited as a recipient and beneficiary thereof is binding.

7.10 Greater Minnesota Transmission LLC Settlement Stipulation and Order. Minnesota Limited commenced an action against Greater Minnesota Transmission LLC and certain other parties in Minnesota state court, First Judicial District, Dakota County, Minnesota, with a court file number of 19-HA-CV-08-4937, pursuant to which the parties to such action entered into that certain Settlement Stipulation and Order (the "GMT Lawsuit"). The account receivable associated with the claim underlying the GMT Lawsuit has been written off the 2010 financial statements of Minnesota Limited. At the Closing, Minnesota Limited shall assign all rights and obligations with respect to the GMT Lawsuit (including, without limitation, the rights associated with such written off account receivable) to the Sellers or an entity designated by Sellers.

7.11 LLC Agreements and Shareholder Agreement. Effective immediately before the Closing, the Sellers hereby terminate the LLC Agreements and that certain Shareholder Control and Buy and Sell Agreement between the Sellers dated January 10, 2007.

7.12 Intentionally blank.

7.13 Post Closing True-ups.

(a) Accounts Receivable. During the fourteen (14) month period following the Closing Date (the "Collection Period"), Buyer and the Seller Group shall use commercially reasonable efforts to collect the accounts receivable of the Seller Group that existed on the Closing Date and reflected on the Preliminary Net Working Capital Schedule (as updated by the schedules used to calculate the Closing Net Working Capital) ("Accounts Receivable"); provided, however, that neither Buyer nor the Seller Group shall be obligated to resort to litigation or arbitration, nor shall the Seller Group or Buyer turn any Accounts Receivable over to a collection agency. Any payments received by the Seller Group after the Closing Date from a third party who has Accounts Receivable as of the Closing Date shall be applied to such Accounts Receivable in the order that such Accounts Receivable were accrued. After the expiration of the Collection Period, Buyer shall determine the amount of the Accounts Receivable that remain outstanding (the "Outstanding Accounts") and shall provide written notice to the Sellers' Representative of the Outstanding Accounts along with reasonably available records supporting such conclusion (collectively, the "A/R Details"). The Sellers' Representative shall have fifteen (15) days to review the A/R Details; if the Sellers' Representative disputes the A/R Details, it shall provide written notice to Buyer within two business days following the end of the foregoing review period. Any disputes shall be resolved by the Final Accounting Firm consistent with the procedures set forth in Section 1.4. That amount, if any, by which the Outstanding Accounts is more than one percent of the Accounts Receivable amount shall be paid by Sellers to Buyer within two (2) business days following any final determination of such amount. If Sellers pay any amount to Buyer for such Outstanding Accounts, then the Seller Group shall assign all such Outstanding Accounts to Sellers. If the Seller Group receives payment for any of the Outstanding Accounts after the determination of the Outstanding Accounts, then, if Sellers have paid Buyer under this Section, such payment shall be paid to Sellers within two (2) business days and, if Sellers have not so paid Buyer, the Outstanding Accounts amount shall be reduced by such collected amount. The obligations under this Section with respect to Accounts Receivable and Outstanding Accounts shall not be qualified or changed as a result of any disclosures made on the Disclosure Letter.

(b) Workers Compensation. Within fifteen days following the Collection Period, Buyer shall provide written notice to Sellers' Representative that shall include (i) the amounts actually paid as of the last day of the Collection Period by the Seller Group ("Paid Workers Compensation Claims") on the workers compensation claims that existed as of the Closing Date and were reflected in

the Closing Net Working Capital (the "Original WC Reserve"), (ii) the reserve for workers compensation claims as of the last day of the Collection Period by the Seller Group that is recommended by Travelers Insurance (the "New WC Reserve"), and (iii) supporting documents to reflect such paid amounts and New WC Reserve amount (collectively, "Workers Compensation Details"). The Sellers' Representative shall have fifteen (15) days to review the Workers Compensation Details; if the Sellers' Representative disputes the Workers Compensation Details, it shall provide written notice to Buyer within two business days following the end of the foregoing review period. Any disputes shall be resolved by the Final Accounting Firm consistent with the procedures set forth in Section 1.4. If the sum of the Paid Workers Compensation Claims and the New WC Reserve are greater than the Original WC Reserve, Sellers shall pay to the Seller Group an amount equal to such difference. If the Original WC Reserve is greater than the sum of the Paid Workers Compensation Claims and the New WC Reserve, then Buyer or the Seller Group shall pay to Sellers an amount equal to such difference.

7.14 Accrued Bonuses. To the extent any bonuses or similar compensation is included within the final Closing Net Working Capital, then the Sellers' Representative shall have the sole and exclusive right to determine how and to whom such amounts are paid.

7.15 Audited Financial Statements. As of the date hereof, the Seller Group is in the process of conducting their audit of the financial statements prepared by company management for the annual period ending December 31, 2010 (including the notes thereto, balance sheets and related statements of operations, retained earnings and cash flows, the "Audited 2010 Financial Statement"). Buyer acknowledges and agrees that each of Sellers' Representatives, on behalf of the Sellers, and the accountants that are preparing the Audited 2010 Financial Statement, shall have the right to access materials of the Seller Group that are reasonably necessary to conduct their audit of the Audited 2010 Financial Statement. The Audited 2010 Financial Statement shall be the sole property of the Seller Group; provided, however, that the Sellers shall be entitled to retain a copy of the Audited 2010 Financial Statement.

8. INTENTIONALLY BLANK

9. INDEMNIFICATION; REMEDIES

9.1 Survival. Except for the representations and warranties underlying the Exception Items, all representations, warranties, and agreements in this Agreement will survive the Closing until and shall expire 14 months from the Closing Date; provided, however, those agreements that by their terms are intended to be performed after such 14 month period shall survive beyond such 14 month period. The representations and warranties underlying each Exception Item shall survive until the last date of the indemnification period for each such Exception Item as set forth in Section 9.4(d).

9.2 Indemnification by Sellers. Sellers will Severally (except for any Damages reimbursed from the Escrow Account, which shall be deemed a joint and several obligation) indemnify and hold harmless Buyer, the Seller Group, and their officers and directors, and Affiliates (collectively, the "Indemnified Persons") for, and will pay to the Indemnified Persons the amount of, any out-of-pocket loss, liability, claim, damage, expense (including reasonable costs of investigation and defense and reasonable attorneys' fees), (in all cases, excluding incidental, special and consequential damages or damages related to shareholder claims), whether or not involving a third-party claim (collectively, "Damages"), arising or resulting from:

(a) any breach of any representation or warranty made by any Seller in Section 4 of this Agreement, as qualified by the Disclosure Letter; and/or

(b) any breach by any Seller of any covenant or agreement of any Seller in this Agreement or the Escrow Agreement; and/or

- (c) any and all Excluded Liabilities.

For purposes of this Section 9, “Severally” shall mean that each Seller shall be responsible for one-half of the Damages as a result of the indemnification obligations described herein, and the inclusion of Nordic Land as a party to this Agreement or the payment of any amount of the Purchase Price to Nordic Land shall be ignored for purposes of determining the proportionate responsibility for indemnification. Except to the extent specifically set forth for any Exception Item during the applicable Exception Period in Section 9.4(d) for an Exception Item, and Sellers’ payment obligations under Sections 1.4(b) (Payments), 7.1 (Tax Matters) and 7.13 (Post Closing True-Ups) (“Sellers Post Closing Payment Obligations”), (i) any and all amounts payable by the Sellers pursuant to this Section 9.2 shall be reimbursed to Buyer, in cash, only out of such account established pursuant to the Escrow Agreement pursuant to the rights and procedures set forth herein and in the Escrow Agreement; (ii) the existence of any escrowed funds under the Escrow Agreement is the exclusive remedy of Buyer under this Agreement and is the limit of the amount of any allowable claims by Buyer pursuant to this Agreement or the Escrow Agreement for Damages; and (iii) Sellers will not be individually or collectively responsible or liable for any indemnification claims under this Section 9 or any other claims under this Agreement or the Escrow Agreement.

9.3 Indemnification by Buyer. Buyer and the Seller Group will, jointly and severally, indemnify and hold harmless Sellers and will pay to Sellers the amount of any Damages arising or resulting from:

- (a) any breach of any representation or warranty made by Buyer or the Seller Group in this Agreement; and/or
- (b) any breach by Buyer of any covenant or agreement of Buyer or the Seller Group in this Agreement or the Escrow Agreement; and/or
- (c) any personal guaranties, performance or other bonds or similar instruments executed by either Seller on behalf or for the benefit of any member of the Seller Group.

Either Seller, or both, shall have the right to assert all claims that Nordic Land has under this Agreement as if Nordic Land were a “Seller” or on its own behalf.

9.4 Limitations - Sellers.

(a) Time. Except as set forth in Section 9.4(d), Sellers will have no liability for indemnification under Section 9.2 or any other liability to Buyer or the Indemnified Persons under this Agreement or the Escrow Agreement unless on or before 14 months after the Closing Date (“Indemnification Termination Date”) Buyer notifies Sellers of a claim indemnifiable under Section 9.2, which notice shall specify in reasonable detail the facts and circumstances giving rise to such claim.

(b) Insurance. Concurrently with making any claims for indemnification under this Section 9 against Sellers, Buyer and the Seller Group shall, to the extent such Damages are likely to be insurable, submit and tender all Damages to the applicable insurance carriers. Liability for indemnification shall be limited to amounts not covered by insurance with respect to such claims. The Seller Group, Buyer, each Indemnified Person and their Affiliates (individually, an “Insured Party” and collectively, “Insured Parties”) shall have the obligation to make any and all insurance claims under all policies held by the Insured Parties or under which the Insured Parties are beneficiaries. No Insured Party shall have an obligation to sue its insurance carrier or any other third party to collect upon such insurance payments, provided, however, at the request of either Seller, such Insured Party shall, if assignable, assign its rights to such insurance claim to such Seller (or its assigns).

(c) Amount. Except as set forth in Section 9.4(d), Sellers will have no liability for indemnification under Section 9.2 until the aggregate amount of such claims exceeds Seven Hundred Thousand Dollars (\$700,000) (the "Basket") and then only for the amount by which such claims exceed the Basket. Any indemnifiable claim pursuant to which insurance amounts are obtained under Section 9.4(b) shall not be applied to the Basket. Sellers' maximum liability for indemnification under Section 9.2 shall not exceed as much of the Escrow Amount remaining in the Escrow Account from time to time (the "Maximum Amount").

(d) Exception Items. Notwithstanding Sections 9.4(a) and (c), the limits as to time, Maximum Amount and Basket for the following claims shall be adjusted, if any, to the extent set forth in this Section 9.4(d) (the "Exception Items"):

(i) claims for breaches of representations and warranties contained in Section 4.12 (Employee Benefits) shall survive until the three year anniversary of the Closing Date and the Maximum Amount for indemnification under Section 9.2 for such Section shall not exceed Sixteen Million Dollars (\$16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise);

(ii) claims pursuant to Section 7.1(e) and for breaches of representations and warranties contained in Section 4.10 (Taxes) shall survive until the three (3) year anniversary of the Closing Date and the Maximum Amount for indemnification under Section 9.2 for such Section shall not exceed Sixteen Million Dollars (\$16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise);

(iii) claims for breaches of representations and warranties contained in Section 4.19 (Environmental Matters) (excluding claims to the extent related to Occupational Health and Safety Laws) shall survive until the five year anniversary of the Closing Date and the Maximum Amount for indemnification under Section 9.2 for such Section shall not exceed the following, as applicable: (A) during the three year period following the Closing Date, Sixteen Million Dollars (\$16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise); and (B) during the two year period following the expiration of the foregoing three year period, Twelve Million Dollars (\$12,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise); provided, however, that in the event that Buyer or any Indemnified Person has made a good faith claim for breach of representations and warranties contained in Section 4.19 (Environmental Matters) (excluding claims to the extent related to Occupational Health and Safety Laws) prior to the expiration of the foregoing three year period, and Damages related to such good faith claim or claims in excess of Twelve Million Dollars (\$12,000,000) are ultimately awarded to Buyer or an Indemnified Person (whether before or after the expiration of the foregoing three year period), the Maximum Amount for the two year period following the expiration of the foregoing three year period shall remain at Sixteen Million Dollars (\$16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise);

(iv) claims arising from Sellers deliberate and knowing breach of a representation and warranty contained in Section 4 of this Agreement, with the intent to deprive Buyer of its rights under this Agreement or harm Buyer shall survive until the five year anniversary of the Closing Date and Sellers' liability for indemnification under Section 9.2 for such claims shall not be subject to the Maximum Amount nor shall the Basket apply to such claims; and

(v) claims for breaches of representations and warranties contained in the first, third and seventh sentence of Section 4.3(b) (Capitalization) and Excluded Liabilities shall survive the Indemnification Termination Date indefinitely, and Sellers' liability for indemnification under Section 9.2 for such claims shall not be subject to the Maximum Amount nor shall the Basket apply to such claims.

To the extent not specifically changed by this Section 9.4(d), all limits (including, without limitation, time, Basket and Maximum Amount) on each and all of the foregoing claims shall be controlled by Sections 9.4(a) and (c). The period of time an Exception Item extends beyond the Indemnification Termination Date shall be referred to as the “Exception Period” for such item. Notwithstanding the foregoing, any and all claims for Damages prior to the Indemnification Termination Date shall first be made to and, as applicable, paid from the Escrow Account.

9.5 Limitations - Buyer. Neither Buyer nor the Seller Group will have any liability for indemnification for breaches of representations or warranties contained in Section 5 unless on or before 14 months following the Closing Date, a Seller notifies Buyer of a claim with respect thereto. All other claims for indemnification against either of Buyer or any member of the Seller Group shall survive the Closing. All claim notices against Buyer or any member of the Seller Group shall specify in reasonable detail the facts and circumstances giving rise to such claim.

9.6 Procedure for Indemnification -- Third Party Claims.

(a) Promptly after receipt by an indemnified Party of notice of the commencement of any Proceeding against it involving indemnifiable Damages arising under Section 9.2 or Section 9.3 (an “Indemnifiable Proceeding”), such indemnified Party will, if a claim is to be made against an indemnifying Party under such Section, give notice to the indemnifying Party of the commencement of such claim, but the failure to notify the indemnifying Party will not relieve the indemnifying Party of any liability that it may have to any indemnified Party, except to the extent that the indemnifying Party demonstrates that the defense of such action is prejudiced by the indemnified Party’s failure to give such notice. Notwithstanding the foregoing, any Tax Matters issue that is also a “Proceeding” shall be handled pursuant to Section 7.1(d).

(b) If any Indemnifiable Proceeding is brought against an indemnified Party, the indemnifying Party whether or not so notified under Section 9.6(a) will be entitled to participate in such Indemnifiable Proceeding and, to the extent that it wishes (unless (i) the indemnifying Party is also a party to such Indemnifiable Proceeding and the indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying Party fails to provide reasonable assurance to the indemnified Party of its financial capacity to defend such Indemnifiable Proceeding), to assume the defense of such Indemnifiable Proceeding with counsel reasonably satisfactory to the indemnified Party. After notice from the indemnifying Party to the indemnified Party of its election to assume the defense of such Indemnifiable Proceeding, the indemnifying Party will not, as long as it diligently conducts such defense, be liable to the indemnified Party under this Section 9 for any fees of other counsel or any other expenses with respect to the defense of such Indemnifiable Proceeding, in each case subsequently incurred by the indemnified Party in connection with the defense of such Indemnifiable Proceeding. The parties further acknowledge and agree that the indemnified Party shall have the right (i) to assume the defense if the indemnifying Party is not diligently conducting such defense, and (ii) to, based on the time-sensitive nature of an Indemnifiable Proceeding, assume the defense on a temporary basis prior to receipt of notice from the indemnifying Party that it intends to assume the defense. If the indemnifying Party assumes the defense of a Indemnifiable Proceeding, (i) no compromise or settlement of such claims may be effected by the indemnifying Party without the indemnified Party’s consent, which consent shall not be unreasonably withheld, conditioned or delayed, unless (A) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the indemnified Party, and (B) the sole relief provided is monetary damages that are paid in full by the indemnifying Party; and (ii) the indemnifying Party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying Party of the commencement of any Indemnifiable Proceeding and the indemnifying Party does not, within thirty (30) days after the indemnified Party’s notice is given, give notice to the indemnified Party of its election to assume the defense of such Indemnifiable Proceeding, the indemnified Party shall have the right to assume the defense of such Indemnifiable Proceeding. The

assumption of any defense by an indemnifying Party shall not by itself obligate or bind such indemnifying Party to any indemnification obligation under this Agreement.

(c) Notwithstanding the foregoing, if (i) a Indemnifiable Proceeding is an investigation or audit by a Governmental Body or a criminal lawsuit or (ii) there is a substantial likelihood that a Indemnifiable Proceeding may materially adversely affect an Indemnified Person or its Affiliates other than as a result of monetary damages or mere damage to reputation for which it would be entitled to indemnification under this Agreement, the indemnified Party may, by notice to the indemnifying Party, assume the exclusive right to defend, compromise, or settle such Indemnifiable Proceeding, but the indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

9.7 Procedure for Indemnification -- Other Claims. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the Party from whom indemnification is sought.

9.8 Exclusive Remedy. From and after the Closing Date, the indemnification obligations of Sellers and Buyer under this Section 9 and any remedies specifically set forth in this Agreement shall constitute the sole and exclusive remedies of the Sellers, each member of the Seller Group, Buyer and each of the Indemnified Persons defined in Section 9.2, and their respective successors and assigns, under each and all of this Agreement and the Related Agreements (except as set forth in the last sentence of this section), and Sellers and Buyer shall not be entitled to any further remedies or claims of any nature whatsoever in respect of this Agreement, the Related Agreements (except as set forth in the last sentence of this section) or the Contemplated Transactions, whether such remedies or claims are based on Legal Requirements, breach of duty, tort, express or implied warranty, contract or otherwise, all of which Sellers and Buyer waive and agree not to assert or pursue; provided, however, that all equitable remedies for injunctive relief and specific performance shall remain available and shall not require an election of remedies. In addition, the parties shall have all remedies available under the Lease Agreement, Non-Competition Agreement and the Employment Agreement.

10. GENERAL PROVISIONS

10.1 Sellers' Representative. Each Seller and Nordic Land irrevocably constitutes and appoints Christopher T. Leines (the "Sellers' Representative") as such Seller's and Nordic Land's true and lawful agent, proxy and attorney-in-fact and agent and authorizes the Sellers' Representative acting for Nordic Land and such Seller and in Nordic Land's and such Seller's name, place and stead, in any and all capacities to do and perform every act and thing required or permitted to be done by Nordic Land or the Sellers or the Sellers' Representative hereunder or otherwise in connection with the agreements and transactions contemplated by this Agreement, as fully to all intents and purposes as such Person might or could do in person. Nordic Land and each Seller, by executing this Agreement, agrees that such agency, proxy and power of attorney are coupled with an interest, and are therefore irrevocable without the mutual consent of the Sellers' Representative and Nordic Land or such Seller and shall survive the death, incapacity, or bankruptcy of such Seller or Nordic Land. The Sellers' Representative shall not have by reason of this Agreement a fiduciary relationship in respect of Nordic Land or any Seller, except in respect of amounts received on behalf of Nordic Land or such Seller. The Buyer shall be entitled to rely on instructions given and information provided by the Sellers' Representative.

10.2 Expenses. Except as otherwise expressly provided in this Agreement and except for the obligation of Buyer to pay all fees and amounts (excluding legal costs in the preparation of such filing) of all parties hereto and the Seller Group under the HSR Act, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of its Representatives.

Sellers will cause the Seller Group to pay as of the Closing all expenses in connection with the preparation, execution and performance of this Agreement and the Contemplated Transactions.

10.3 Public Announcements. Any public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer and Sellers mutually determine, unless required by Legal Requirements. Sellers and Buyer will consult with each other concerning the means by which the Seller Group's employees, customers, dealers, suppliers and others will be informed of the Contemplated Transactions and Buyer will have the right to be present for any such communication.

10.4 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a Party may designate by notice to the other Parties):

Sellers or Nordic Land: Christopher T. Leines, Shareholders' Representative
18640 200th Street
Big Lake, MN 55309
Facsimile No.: (763)-262-7500

with a copy to: Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attention: Shawn R. McIntee, Esq.
Facsimile No.: (612) 642-8316

Buyer: Vectren Infrastructure Services Corporation
8850 Crawfordsville Road
P.O. Box 34141
Indianapolis, Indiana 46234
Attention: Douglas Banning, President
Facsimile No.: (317) 293-8502

with a copy to: Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204
Attention: Michael E. Williams, Esq.
Facsimile No.: (317) 636-1507

10.5 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement, the Contemplated Transactions or any Related Agreement shall be brought against any of the Parties only in the courts of Hennepin County of the State of Minnesota and, if it has or can acquire jurisdiction, in the United States District Court for the District of Minnesota, and each of the Parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

10.6 Further Assurances. The Parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Related Agreements.

10.7 Waiver. Except as otherwise set forth in this Agreement or any Related Agreement, (i) neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the Related Agreements will operate as a waiver of such right, power, or privilege, and (ii) no single or partial exercise of any such right, power, remedy, or privilege will preclude any other or further exercise of such right, power, remedy, or privilege or the exercise of any other right, power, remedy, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the Related Agreements can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the Related Agreements.

10.8 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter (including the Letter of Intent between Sellers, Miller Pipeline, and Minnesota Limited dated October 19, 2010) and constitutes (along with the Related Agreements) a complete and exclusive statement of the terms of the agreement among the Parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the Party to be charged with the amendment.

10.9 Disclosure Letter. The disclosures in the Disclosure Letter are arranged in sections corresponding to the numbered and lettered sections contained in Section 4 of this Agreement, but the disclosures in any section of the Disclosure Letter shall qualify any other section in Section 4 to the extent that it is reasonably apparent from the face of such disclosure that it is or could be relevant to such other section.

10.10 Assignments, Successors, and No Third-Party Rights. No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties, except that Buyer may assign any of its rights under this Agreement to any Affiliate or Subsidiary of Buyer, provided, however, Buyer shall remain liable as "Buyer" under this Agreement if such Affiliate or Subsidiary fails to perform under this Agreement. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and permitted assigns.

10.11 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

10.12 Section Headings. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement.

10.13 Governing Law. This Agreement will be governed by the laws of the State of Minnesota, without regard to conflicts of laws principles.

10.14 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile transmission or by electronic transmission in Adobe Acrobat format shall be deemed to be their original signatures for any purposes whatsoever.

10.15 Interpretation. In this Agreement, unless a clear contrary intention appears: (i) references to the Seller Group shall include and specifically be applicable to each of Minnesota Limited, Nordic Equipment, Nordic Pipeline, Nordic Bemidji, and Nordic Altamont; (ii) references to the LLC Group shall include and specifically be applicable to each of Nordic Equipment, Nordic Pipeline, Nordic Bemidji, and Nordic Altamont; (iii) the singular number includes the plural number and vice versa; (iv) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement; (v) reference to any gender includes each other gender; (vi) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (vii) reference to any Legal Requirement means such Legal Requirement as in effect at the time applicable by the use of such term; (viii) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (ix) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (x) "or" is used in the inclusive sense of "and/or"; (xi) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; (xii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and (xiii) whenever this Agreement or any Related Agreement addresses the enforceability of a Contract or other right or the right, authority or power of a Person, it shall be deemed qualified as follows: "except as to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (b) rules of law and equity governing specific performance, injunctive relief and other equitable remedies."

10.16 Legal Representation of the Parties. This Agreement and each of the Related Agreements were negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement or any of the Related Agreements to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof. Sellers hereby acknowledge and agree that he or she (i) has read this Agreement and the Related Agreements in their entirety prior to executing them, (ii) understands the provisions and effects of this Agreement and the Related Agreements, and (iii) has consulted with such attorneys, accountants, and other advisors as he or she has deemed appropriate in connection with his or her execution of this Agreement and the Related Agreements.

10.17 Post Closing Obligations. Following the Closing, each member of the Seller Group shall be jointly and severally liable for each and every obligation and liability of Buyer.

[Signature page immediately following.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Agreement as of the date first written above.

Sellers:

Christopher T. Leines
Christopher T. Leines, Individually

Paulette A. Britzius
Paulette A. Britzius, Individually

Nordic Land:

Nordic Land Company, LLC

By: Christopher T. Leines
Christopher T. Leines, President

Buyer:

Vectren Infrastructure Services Corporation

By: _____
Douglas S. Banning, Jr., President

The following signatures are for post Closing obligations:

Minnesota Limited, Inc.

By: _____
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Equipment, LLC

By: _____
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Pipeline Services LLC

By: _____
Douglas S. Banning, Jr., Chief Executive Officer

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Agreement as of the date first written above.

Sellers:

Christopher T. Leines, Individually

Paulette A. Britzius, Individually

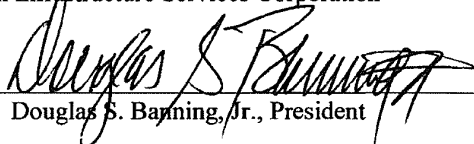
Nordic Land:

Nordic Land Company, LLC

By: _____
Christopher T. Leines, President

Buyer:

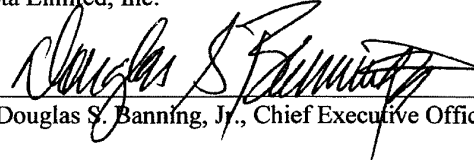
Vectren Infrastructure Services Corporation

By: 

Douglas S. Banning, Jr., President

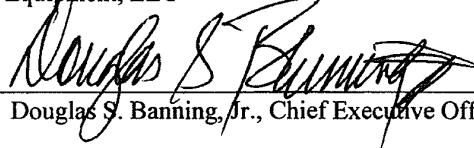
The following signatures are for post Closing obligations:

Minnesota Limited, Inc.

By: 

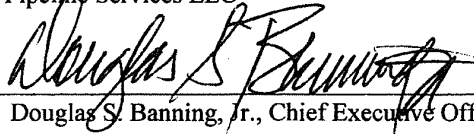
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Equipment, LLC

By: 

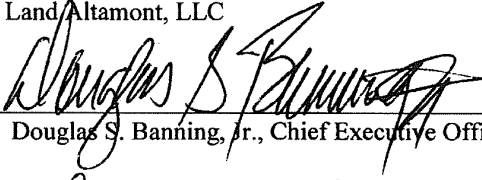
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Pipeline Services LLC

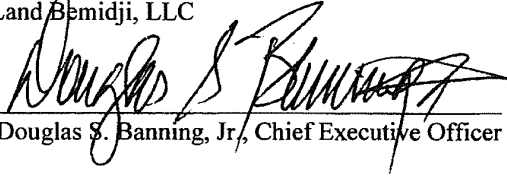
By: 

Douglas S. Banning, Jr., Chief Executive Officer

Nordic Land Altamont, LLC

By: 
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Land Bemidji, LLC

By: 
Douglas S. Banning, Jr., Chief Executive Officer

[SIGNATURE PAGE 2 OF 2 TO PURCHASE AGREEMENT]

VEC000264

EXHIBIT A**Definitions**

“338(h)(10) Election” has the meaning set forth in Section 7.1(e).

“Affiliate” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

“Aggregate Consideration” means (a) that portion of the Purchase Price allocated to the Shares, (b) that portion of the liabilities of the Seller Group allocated to Minnesota Limited, and (c) all other items required under Treasury Regulation Section 1.338-4 to be included in the amount realized from the sale of the Shares for federal income Tax purposes pursuant to the 338(h)(10) Election. The determination of Aggregate Consideration shall be made in accordance with Section 7.1(f)(ii).

“Agreement” has the meaning set forth in the first paragraph of this Agreement.

“Allocation” has the meaning set forth in Section 7.1(e).

“Annual Financial Statements” has the meaning set forth in Section 4.4.

“Balance Sheet” has the meaning set forth in Section 4.4.

“Basket” has the meaning set forth in Section 9.4(b).

“Business” has the meaning set forth in the seventh “Whereas” clause.

“Buyer” has the meaning set forth in the first paragraph of this Agreement.

“CERCLA” shall mean the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, as amended.

“Cleanup” has the meaning set forth in the definition of Environmental, Health and Safety Liabilities.

“Closing” has the meaning set forth in Section 1.3.

“Closing Date” has the meaning set forth in Section 1.3.

“Closing Date Balance Sheet” has the meaning set forth in Section 1.4(a)(i).

“Closing Net Working Capital” has the meaning set forth in Section 1.4(a)(i).

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Code” means the Internal Revenue Code of 1986 or any successor law, and regulations issued by the IRS pursuant to the Internal Revenue Code or any successor law.

“Competing Business” has the meaning set forth in Section 4.26.

“Confidential Information” means the Seller Group’s trade secrets, other Intellectual Property and other information regarding the Seller Group, the Business and the other business operations of the Seller Group, which information: (i) was used in the Business, is confidential and is proprietary to, about or

created by the Seller Group (including any of the Seller Group's personnel) for use in the Business; or (ii) is used in the Business as of the date of this Agreement, is confidential and is proprietary to, about or created by the Seller Group (including any of the Seller Group's personnel) for use in the Business. "Confidential Information" does not include any information which is (a) available to the public other than by breach of this Agreement by Sellers, (b) rightfully received by Sellers from a third party without confidential limitation, or (c) independently developed by a Seller without use or knowledge of the Seller Group Confidential Information.

"Contemplated Transactions" means all of the transactions contemplated by this Agreement, including, without limitation, the sale of the Equity Interests by Sellers to Buyer, and the execution, delivery, and performance of the Related Agreements.

"Contract" means any agreement, contract, obligation, promise, or undertaking (whether written or oral) that is legally binding and currently in effect.

"Copyrights" means United States and foreign copyrights, whether registered or unregistered, and pending applications to register the same.

"Damages" has the meaning set forth in Section 9.2.

"Disclosure Letter" means the disclosure letter delivered by Sellers to Buyer concurrently with the execution and delivery of this Agreement and contained in Exhibit B to this Agreement.

"EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Election Request" has the meaning set forth in Section 7.1(e).

"Employee Plan" has the meaning set forth in Section 4.12(a).

"Employment Agreements" has the meaning set forth in Section 2.2(f).

"Encumbrance" means (i) any charge, claim, lien, option, pledge, security interest, encroachment, right of first refusal, or other restriction, in each case on or against the title of an asset, or (ii) any kind of restrictions on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, except for those imposed by Legal Requirements, which are in each case not material in any respect.

"Environment" means soil, land, surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwater, storm-water, subsurface waters, drinking water, water stream sediments, ambient air (including indoor air), air, plant and animal life, and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities" means any out-of-pocket damages arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to: (a) any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, compliance, or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law; (c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions ("Cleanup") required by applicable Environmental Law or Occupational Safety and Health Law (but only to the extent the same is required by any Governmental Body or any other Person) and for any natural resource damages; or (d) any other compliance, corrective, investigative, or remedial measures required

763862

KD3319265

A-2

VEC000266

under Environmental Law or Occupational Safety and Health Law. The terms “removal,” “remedial,” and “response action,” include, without limitation, types of activities covered by CERCLA.

“Environmental Law” means any Legal Requirement that requires or relates to pollution or protection of the Environment, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes including, without limitation, CERCLA and the Resource Conservation and Recovery Act of 1976, each as amended and the rules and regulations promulgated thereunder, as well as state law equivalents. For purposes of this Agreement, petroleum and petroleum-based constituents are expressly included.

“Environmental Permits” has the meaning set forth in Section 4.19(a).

“ERISA” means the Employee Retirement and Income Security Act of 1974 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“ERISA Affiliate” means any entity which is a member of a controlled group of corporations with, under common control with or a member of an affiliated services group with, the Sellers or any member of the Seller Group, as defined in Sections 414(b), (c), (m) or (o) of the Code.

“Escrow Agent” has the meaning set forth in Section 1.2.

“Escrow Amount” has the meaning set forth in Section 1.2.

“Escrow Deposit” has the meaning set forth in Section 1.3.

“Estimated Purchase Price” has the meaning set forth in Section 1.2(b)(i).

“Exchange Act” means the Securities Exchange Act of 1934 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Excluded Liabilities” means (i) the liabilities arising directly out of the GMT Lawsuit, (ii) subject to Section 7.9(b), any liabilities arising out of Nordic Superior or the Property, including those matters disclosed on the Disclosure Letter, and (iii) those items set forth in the Schedule of Other Excluded Liabilities attached to the Agreement.

“Facilities” means any real property, leaseholds, or other real property owned, leased or operated by the Seller Group and any buildings, plants, structures, or fixtures owned, leased or operated by the Seller Group, including, without limitation, the Owned Real Property and the Leased Real Property.

“Final Accounting Firm” has the meaning set forth in Section 1.4(a)(ii).

“GAAP” means generally accepted United States accounting principles prevailing at the time.

“Governmental Authorization” means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Body” means any federal, state, local, municipal, foreign, or other governmental or quasi-governmental authority or regulatory body.

“Hazardous Activity” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, disposal, receipt, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about, or from the Facilities or any part thereof into the Environment.

“Hazardous Materials” means any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Income Statement” has the meaning set forth in Section 4.4.

“Indemnified Persons” has the meaning set forth in Section 9.2.

“Intellectual Property” means (a) all Patent Rights, (b) all Trademarks, (c) all Copyrights, (d) all mask works and all applications, registrations, and renewals in connection with such Patent Rights, Trademarks, Copyrights, and/or mask works, (e) all Trade Secrets, (f) all know-how, (g) all Software, (h) all other proprietary rights, (i) all domain names, websites, and URLs, and (j) all copies and tangible embodiments thereof (in whatever form or medium).

“Intellectual Property Assets” has the meaning set forth in Section 4.22(a).

“Interim Balance Sheet” has the meaning set forth in Section 4.4.

“Interim Financial Statements” has the meaning set forth in Section 4.4.

“Interim Income Statement” has the meaning set forth in Section 4.4.

“Inventory” means raw materials, work in process, finished goods and other inventory.

“IRS” means the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of the Treasury.

“Knowledge” means an individual will be deemed to have “Knowledge” of a particular fact or other matter if such individual is actually aware of such fact or other matter. In addition, the Sellers shall be deemed to have “Knowledge” of any fact actually disclosed to them after either Seller asks Ted Crowe, Glenn Furman, Rodger Nordland and Seazon Voss about such item qualified by “Knowledge”. Sellers shall ask the foregoing individuals about each underlying representation and warranty qualified by “knowledge” and, to the extent necessary, ask such individuals to perform a reasonable investigation or inquiry of the underlying facts.

“Leased Real Property” has the meaning set forth in Section 4.5.

“Leases” has the meaning set forth in Section 4.5.

“Legal Requirement” means any applicable federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty.

“Material Adverse Effect” or “Material Adverse Change” means, when used with respect to the Seller Group, any change, event, circumstance or effect that, individually, has a materially adverse effect upon the Business, assets, financial condition, or results of operations of the Seller Group taken as a whole.

“Maximum Amount” has the meaning set forth in Section 9.4(b).

“Net Working Capital” shall mean (i) the sum of the Seller Group’s current assets (excluding cash and cash equivalents) less (ii) the sum of the Seller Group’s current liabilities (excluding Closing Indebtedness). The foregoing shall be determined in good faith and in accordance with the Preliminary Net Working Capital Schedule and the methodology for computing Preliminary Net Working Capital.

“Net Working Capital Schedule” has the meaning set forth in Section 1.4(a)(i).

“Non-Competition Agreement” has the meaning set forth in Section 2.2(e).

“Occupational Safety and Health Law” means any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions including, without limitation, the Occupational Safety and Health Act of 1970, as amended and the rules and regulations promulgated thereunder.

“Order” means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Body or by any arbitrator, facilitator or mediator.

“Organizational Documents” means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the partnership agreement and any statement of partnership of a general partnership; (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (d) the articles of organization and the operating agreement of a limited liability company; (e) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (f) any amendment to any of the foregoing.

“Parent” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

“Parties” means Buyer, Sellers, and Nordic Land, collectively. For all post Closing obligations, “Parties” shall include each member of the Seller Group.

“Party” means Buyer, Nordic Land, or any Seller, individually. For all post Closing obligations, “Party” shall include each member of the Seller Group.

“Patent Rights” means United States and foreign patents, patent applications, patent continuations, patent continuations-in-part, patent divisions, patent reissues or patent disclosures.

“Payoff Letter” has the meaning set forth in Section 2.2.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Permitted Encumbrances” has the meaning set forth in Section 4.6(b).

“Percentage Interest” means with respect to each Seller, a fifty percent (50%) interest.

“Person” means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

“Pre-Closing Tax Period” has the meaning set forth in Section 7.1(b).

“Preliminary Net Working Capital” means the estimated Net Working Capital of the Seller Group as of the Closing Date as set forth in the Preliminary Net Working Capital Schedule.

“Preliminary Net Working Capital Schedule” means the statement of Preliminary Net Working Capital as set forth in Schedule 1.4, prepared by Buyer and the Sellers and their respective authorized representatives at least three (3) business days prior to the Closing, which quantifies in reasonable detail the items constituting the Net Working Capital, and which has been prepared in good faith and consistent with the Interim Balance Sheet. The methodology used in connection with the determination of the Preliminary Net Working Capital in Schedule 1.4 shall be binding on all Parties for all purposes with respect to the computation of Preliminary Net Working Capital and Closing Net Working Capital. All other computations of Net Working Capital under this Agreement shall use the same methodology in computing current assets, current liabilities and net working capital as was used in determination of Preliminary Net Working Capital.

“Prime Rate” means the interest rate for borrowed money designated as the prime rate and published in the most recent issue of the Wall Street Journal, Midwest Edition, immediately preceding the Closing Date.

“Proceeding” means any legal action, alternative dispute resolution proceeding, audit by a Governmental Body, hearing by a Governmental Body, investigation by a Governmental Body or litigation or suit (whether civil, criminal, administrative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body, arbitrator, facilitator or mediator.

“Prohibited Transactions” has the meaning set forth in Section 6.5.

“Purchase Price” has the meaning set forth in Section 1.2(c).

“Related Agreements” means the Escrow Agreement, the Non-Competition Agreement, the Employment Agreement, the Lease Agreement, and other documents, agreements, certificates, or affidavits entered into in connection with the Contemplated Transactions.

“Release” means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, or other releasing into the Environment, whether intentional or unintentional.

“Representatives” means with respect to a particular Person, any director, manager, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, brokers, and financial advisors.

“Securities Act” means the Securities Act of 1933 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Section 338 Tax Claim” has the meaning set forth in Section 7.1(e).

“Seller Group” has the meaning set forth in the fifth “Whereas” clause.

“Seller Group Contract” means any Contract (a) to which the Seller Group is a party, (b) under which the Seller Group has or may acquire any rights, (c) under which the Seller Group has or may

become subject to any obligation or liability, or (d) by which the Seller Group or any of the assets owned or used by it is or may become bound.

“Sellers” has the meaning set forth in the first paragraph of this Agreement.

“Shares” has the meaning set forth in Section 1.1.

“Software” means computer software programs and software systems, including, without limitation, all databases, compilations, tool sets, compilers, higher level or “proprietary” languages, related documentation and materials, whether in source code, object code or human readable form.

“Straddle Period” has the meaning set forth in Section 7.1(b).

“Subsidiary” means with respect to any Person, means any other Person whose securities or other interests having the power to elect a majority of that other Person’s board of directors or similar governing body, or otherwise having the power to direct the business and policies of that other Person are held by such Person or one or more of its Subsidiaries.

“Target Working Capital” means Six Million Two Hundred Thousand Dollars (\$6,200,000).

“Tax” (and with the corresponding meaning “Taxes” and “Taxable”) means any tax (including any income tax, capital gains tax, value-added tax, sales tax, use tax, transfer tax, property tax, gift tax, or estate tax), levy, assessment, tariff, duty (including any customs duty), deficiency, or other fee, and any related charge or amount (including any fine, penalty, interest, or addition to tax), imposed, assessed, or collected by or under the authority of any Governmental Body or Taxing Authority or payable pursuant to any Tax-sharing agreement or any other Contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee.

“Tax Matters” has the meaning set forth in Section 7.1(d).

“Tax Returns” means any return (including any information return), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body or Taxing Authority in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any Legal Requirement relating to any Tax.

“Taxing Authority” has the meaning set forth in Section 7.1(d).

“Title IV Employee Plan” has the meaning set forth in Section 4.12(b).

“Trademarks” means United States, state and foreign trademarks, service marks and trade names, whether registered or unregistered, and pending applications to register the foregoing.

“Trade Secrets” means confidential and proprietary: ideas, trade secrets, know-how, concepts, methods, processes, formulae, reports, data, customer lists, mailing lists, business plans, or other proprietary information.

“Transfer Taxes” has the meaning set forth in Section 7.1(a).

“USERRA” means the Uniformed Services Employment and Reemployment Rights Act of 1994 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

“Working Capital Adjustment” has the meaning set forth in Section 1.4(a).

EXHIBIT C
FORM OF ESCROW AGREEMENT

763862
KD3319265

C-1

VEC000272

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made as of March 31, 2011 ("Effective Date") by and among Vectren Infrastructure Services Corporation (the "Buyer"), Christopher T. Leines ("Leines" or "Sellers' Representative"), Paulette A. Britzius ("Britzius" and, together with Leines, "Sellers") and U.S. Bank National Association, a national banking association, as escrow agent (the "Escrow Agent"). The Buyer, Sellers and the Escrow Agent are sometimes collectively referred to herein as the "Parties" and individually as a "Party." Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, the Buyer and Sellers are parties to that certain Purchase Agreement dated as of the date hereof (as the same may be amended, modified, restated or supplemented from time to time in accordance with its terms, the "Purchase Agreement");

WHEREAS, pursuant to the terms of the Purchase Agreement and as part of the transactions contemplated thereby, the parties thereto agreed to enter into this Agreement and deliver the Escrow Amount (as defined below) to the Escrow Agent for the purposes set forth herein;

WHEREAS, pursuant to the terms of the Purchase Agreement, the parties thereto agreed that the Escrow Funds (as defined below) shall provide a non exclusive source of funds for the satisfaction of amounts that may become payable to the Buyer by Sellers under the Purchase Agreement during the term of this Agreement;

WHEREAS, Sellers and the Buyer desire to create an escrow account for the Escrow Amount, and appoint the Escrow Agent as the escrow agent for such account, upon the terms and conditions set forth below; and

WHEREAS, the execution and delivery of this Agreement is a closing deliverable under the Purchase Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. Appointment of the Escrow Agent. The Buyer and Sellers hereby appoint the Escrow Agent as the escrow agent under and pursuant to the terms, conditions and provisions of this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to perform the duties thereof subject to the terms, conditions and provisions of this Agreement.

2. Escrow Deposit. Simultaneously with the execution of this Agreement, the Buyer has deposited with the Escrow Agent cash in the amount of Four Million Dollars (\$4,000,000) in accordance with Section 1.3 of the Purchase Agreement (the "Escrow Amount"). The Escrow Agent hereby acknowledges receipt of the Escrow Amount and agrees to hold the Escrow Amount, together with all products and proceeds thereof (including all interest, dividend, gains and other income earned with respect thereto (collectively, the "Escrow Funds")), in a separate and distinct account (the "Escrow Account"), subject to the terms and conditions of this

Agreement. The Escrow Agent shall not distribute or release the Escrow Funds except in accordance with the express terms and conditions of this Agreement.

3. Permitted Investments. The Escrow Agent hereby agrees to establish and maintain the Escrow Funds in the Escrow Account and shall invest the Escrow Funds as jointly directed by Sellers' Representative and the Buyer, from time to time, in writing, in money market accounts and money market mutual funds (including those of the Escrow Agent), treasury bills, treasury notes or any other direct obligations issued by or guaranteed in full as to principal and interest by the United States of America, certificates of deposit issued by a commercial bank having capital, surplus and undivided profits of not less than \$500,000,000 (including the Escrow Agent and its Affiliates) and interest-bearing demand accounts of the Escrow Agent (collectively, the "Permitted Investments"). Investments made hereunder shall be made in the name of the Escrow Agent. Notwithstanding anything to the contrary contained herein, the Escrow Agent may, without notice to the Buyer or the Sellers, sell or liquidate any investments at any time if the proceeds thereof are required for any disbursement of Escrow Funds permitted or required hereunder. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Escrow Funds made pursuant to this Escrow Agreement. The Escrow Agent shall have no power or authority to invest or reinvest any Escrow Funds except in Permitted Investments as jointly instructed by Sellers' Representative and the Buyer; provided, that in the event the Escrow Agent shall receive joint written instructions signed by Sellers' Representative and the Buyer directing the Escrow Agent to invest Escrow Funds in an investment other than a Permitted Investment, the Escrow Agent shall invest such Escrow Funds in the manner specified in such joint written instructions. Notwithstanding the foregoing, if the Escrow Agent has not received instructions from Sellers' Representative and the Buyer as to investment of the Escrow Funds, the Escrow Agent shall invest the Escrow Funds in the Escrow Agent's U.S. Bank Money Market Deposit Account as described on Schedule II hereto.

4. Release of Escrow Funds. The Escrow Funds shall be held and disposed of by the Escrow Agent as follows:

(a) Payment Claims. At any time and from time to time prior to fourteen months from the Effective Date (the "Survival Date"), if the Buyer desires to make a claim permitted by and pursuant to Section 1.4 or 9 of the Purchase Agreement for which the Escrow Funds may be used to satisfy such claim, then the Buyer shall deliver to Sellers' Representative a written notice (a "Payment Notice") setting forth the amount of such claim for payment (a "Payment Claim") and setting forth in detail why Buyer is entitled to payment pursuant to the Purchase Agreement. Buyer agrees not to make a Payment Claim unless it believes in good faith that such Payment Claim is payable to Buyer pursuant to the Purchase Agreement. The Buyer shall also deliver to the Escrow Agent proof of delivery to Sellers' Representative of such Payment Notice (which proof may consist of a photocopy of the registered or certified mail or overnight courier receipt or the signed receipt if delivered by hand). If the Escrow Agent has not received a written objection to such Payment Claim from Sellers' Representative within ten (10) Business Days following the Escrow Agent's receipt of such proof of delivery to Sellers' Representative, then on the eleventh (11th) Business Day following such receipt, the Escrow

Agent shall release, by wire transfer to an account or accounts designated by the Buyer in the Payment Notice, an amount of Escrow Funds from the Escrow Account equal to the amount of such Payment Claim.

(b) Disputes. If Sellers' Representative delivers to the Escrow Agent and the Buyer a written objection (a "Dispute Notice") to any Payment Claim or portion thereof within ten (10) Business Days following the Escrow Agent's receipt of proof of delivery of such Payment Notice, then, except as otherwise provided in Section 4(c) below, the Escrow Agent shall not distribute to the Buyer any Escrow Funds that are the subject of the Dispute Notice until the Escrow Agent receives either (i) joint written instructions signed by Sellers' Representative and the Buyer authorizing the release to the Buyer of the Escrow Funds that are the subject of the Dispute Notice or (ii) a copy of a final decision of a court of competent jurisdiction or binding arbitral award directing the release to the Buyer of the Escrow Funds that are the subject of the Dispute Notice. Upon receipt of such joint written instructions or a copy of such final decision or binding arbitral award, as the case may be, the Escrow Agent shall release to the Buyer the Escrow Funds subject to dispute in accordance with such joint written instructions or final decision or binding arbitral award. In the event that Sellers' Representative is the prevailing party in whole or in part in connection with any such dispute, the portion of the Escrow Funds that were the subject of such Dispute Notice and that are not released to the Buyer as provided in the immediately preceding sentence shall remain in the Escrow Account and shall be available to satisfy other Payment Claims until released as provided in Section 4(d) below. Sellers' Representative agrees not to object to a Payment Claim unless it believes in good faith that such Payment Claim is not payable to the Buyer pursuant to the Purchase Agreement. Any Dispute Notice shall describe in reasonable detail the basis for any objection to the matters set forth in the Payment Notice and the portion of such Payment Claim (if less than all) which is the subject of such Dispute Notice.

(c) Partial Release. If any Dispute Notice includes an objection to only a portion of a Payment Claim, the Escrow Agent shall promptly release to the Buyer an amount of Escrow Funds equal to the portion of the Payment Claim for which there is no objection. No such partial release by the Escrow Agent shall terminate or otherwise prejudice either Party's rights with respect to the remainder of any Payment Claim set forth in a Payment Notice.

(d) Release of Remaining Escrow Funds.

(i) No later than five (5) Business Days following the Survival Date, the Escrow Agent shall release (without further instruction) to Sellers the remaining balance of the Escrow Funds in the Escrow Account as of the Survival Date, less the amount of all Unresolved Claims (as defined below). Sellers' Representative or the Buyer may give the Escrow Agent notice of the occurrence of the Survival Date; provided, such notice shall not be required for Escrow Agent to release such funds; provided, further, that the Party delivering such notice provides a copy of such notice to the other Parties. "Unresolved Claims" shall mean the aggregate amount of all Payment Claims claimed by the Buyer in accordance with Section 9.2 of the Purchase Agreement, which are unsatisfied as of the Survival Date.

(ii) Promptly upon the Escrow Agent's receipt of a signed agreement of the Buyer and Sellers' Representative or the final determination of a court of competent

jurisdiction or the arbitrator that is not appealed, as the case may be, of any Unresolved Claims that are the subject of a Dispute Notice or upon the expiration of the ten (10) Business Day objection period for any Unresolved Claims for which no Dispute Notice has been delivered, the Escrow Agent shall release by wire transfer to an account or accounts designated by the Buyer an amount of Escrow Funds equal to the amount of Escrow Funds to be released to the Buyer pursuant to such signed agreement or such final determination or the amount of such Unresolved Claim for which no Dispute Notice has been delivered, as the case may be. After the resolution of all Unresolved Claims, any remaining Escrow Funds not distributed to the Buyer pursuant to the immediately preceding sentence shall be released promptly thereafter by the Escrow Agent to Sellers.

(e) No Limitation of Remedies. The parties acknowledge and agree that the payment of Escrow Funds to the Buyer pursuant to this Agreement shall not limit any right of indemnification to which the Buyer may be entitled under the Purchase Agreement for the Exception Items, and that the Escrow Funds do not constitute an exclusive remedy for Damages incurred by Buyer with regard to such Exception Items. Accordingly, in the event that the amounts distributed to the Buyer pursuant to this Section 4 are insufficient to fully indemnify the Buyer for all Damages related to the Exception Items (including Damages arising after distribution of all of the Escrow Funds and the termination of this Agreement), Sellers shall be liable to the Buyer for all such amounts not otherwise satisfied by the Escrow Funds in accordance with the terms of the Purchase Agreement.

(f) Termination. This Agreement shall terminate when all of the Escrow Funds in the Escrow Account have been released and distributed in accordance with this Section 4. Upon such termination, this Agreement shall have no further force and effect, except that the provisions of Section 4(e) above, this Section 4(e) and Sections 5, 6, 7, and Sections 9 through 21 below shall survive such termination.

5. Conditions to Escrow. Sellers and the Buyer agree that the Escrow Agent shall not assume any responsibility for the failure of such Parties to perform in accordance with the Purchase Agreement or this Agreement. The acceptance by the Escrow Agent of its responsibilities hereunder is subject to the following terms and conditions which the Parties agree shall govern and control with respect to the Escrow Agent's rights, duties and liabilities hereunder:

(a) Documents. The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper or document furnished to it, not only as to its due execution and validity and the effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which the Escrow Agent in good faith believes to be genuine and what it purports to be. Should it be necessary for the Escrow Agent to act upon any instructions, directions, documents or instruments issued or signed by or on behalf of any Person acting on behalf of the Buyer, it shall not be necessary for the Escrow Agent to inquire into such Person's authority. The Escrow Agent is also relieved from the necessity of satisfying itself as to the authority of the Persons executing this Agreement in a representative capacity on behalf of Sellers or the Buyer.

(b) Liability. The Escrow Agent shall not be liable for any act or omission taken or suffered in good faith with respect to this Agreement unless such act or omission is the result of the gross negligence, bad faith or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage, unless such loss or damage is the result of the gross negligence, bad faith or willful misconduct of the Escrow Agent. The Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Purchase Agreement, or to appear in, prosecute or defend any such legal action or proceeding.

(c) Legal Counsel. The Escrow Agent may consult with, and obtain advice from, legal counsel in the event of any question as to any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel. The Buyer and Sellers, jointly and severally, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel.

(d) Limitation of Duties. The Escrow Agent shall have no duties except those which are expressly set forth herein and it shall not be bound by any agreement of the other Parties hereto, including the Purchase Agreement (whether or not it has any knowledge thereof).

(e) Resignation or Termination of the Escrow Agent. The Escrow Agent shall have the right to resign at any time by giving written notice of such resignation to Sellers' Representative and the Buyer, and Sellers' Representative and the Buyer shall have the right to terminate the services of the Escrow Agent hereunder at any time by giving written notice (with such written notice being signed by the Buyer and Sellers' Representative) of such termination to the Escrow Agent, in each case specifying the effective date of such resignation or termination. If within thirty (30) days after receiving or delivering either of the aforesaid notices, as the case may be, the Buyer and Sellers' Representative appoint a successor escrow agent, and such successor escrow agent accepts such appointment, the Escrow Agent shall distribute the Escrow Funds less the amount of any fees owing to the Escrow Agent hereunder as of such date to such successor escrow agent. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such 30-day period, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and each of the Buyer and Sellers shall be liable for 50% of the costs, expenses and reasonable attorney's fees incurred by the Escrow Agent in connection with any such proceeding. Any successor escrow agent shall be a banking corporation or trust company having total assets in excess of \$500,000,000. Except as otherwise agreed to in writing by Sellers' Representative and the Buyer, no Escrow Funds shall be released from the Escrow Account unless and until a successor escrow agent has (i) been appointed in accordance with this Section 5(e) and (ii) agreed, in writing, to be bound by the terms and conditions of this Agreement. After any such appointment, such successor escrow agent shall be the "Escrow Agent" hereunder. After any retiring Escrow Agent's resignation, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to

which all or substantially all of the escrow business of the Escrow Agent's corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

(f) Discharge of the Escrow Agent. Upon delivery of all of the Escrow Funds pursuant to the terms of Section 4 above or to a successor escrow agent in accordance with Section 5(e), the Escrow Agent shall thereafter be discharged from any further obligations hereunder. The Escrow Agent is hereby authorized, in any and all events, to comply with and obey any and all final judgments, orders and decrees of any court of competent jurisdiction which may be filed, entered or issued, and all final arbitration awards and, if it shall so comply or obey, it shall not be liable to any other Person by reason of such compliance or obedience.

6. Indemnification. The Buyer and Sellers, jointly and severally, hereby agree to indemnify the Escrow Agent and each director, officer, employee, attorney, agent and affiliate of the Escrow Agent (collectively, the "Indemnified Parties") for and to hold it harmless against any and all actions, claims (whether or not valid), losses, damages, liability or reasonable expense (including reasonable attorneys' fees and documented out-of-pocket expenses) incurred without gross negligence, willful misconduct or bad faith on the part of the Escrow Agent arising out of or in connection with its performance under this Agreement.

7. Escrow Costs. The Escrow Agent shall be entitled to be paid a fee for its services pursuant to the Fee Schedule attached as Schedule I and to be reimbursed for its reasonable costs and documented out-of-pocket expenses incurred in connection with maintaining the Escrow Account hereunder, which fees, costs and documented out-of-pocket expenses shall, unless expressly provided otherwise herein, be paid by Buyer. Obligations under this Section 7 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

8. Limitations on Rights to Escrow Funds. None of the Parties shall have any right, title or interest in or to, or possession of, the Escrow Account and therefore shall not have the ability to pledge, convey, hypothecate or grant as security all or any portion of the Escrow Funds unless and until such Escrow Funds have been released pursuant to Section 4 above. Accordingly, the Escrow Agent shall be in sole possession of the Escrow Funds and shall not act as custodian of Sellers and the Buyer under this Agreement for the purposes of perfecting a security interest therein, and no creditor of any of the Parties shall have any right to have or to hold or otherwise attach or seize all or any portion of the Escrow Funds as collateral for any obligation and shall not be able to obtain a security interest in any of the Escrow Funds unless and until such Escrow Funds have been released pursuant to Section 4 above.

9. Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be delivered by hand or overnight courier service or by facsimile to the Parties at the following addresses:

If to the Buyer, to:

Vectren Infrastructure Services Corporation
c/o Douglas S. Banning, Jr., President

8850 Crawfordsville Road
Indianapolis, IN 46234
Telephone: (317) 293-0278
Fax: (317) 293-8502

with a copy (which copy shall not constitute notice) to:

Krieg DeVault LLP
12800 North Meridian Street, Suite 300
Carmel, Indiana 46032
Telephone: (317) 238-6258
Fax: (317) 636-1507
Attention: Charles S. Coleman, II

If to Sellers, to:

Christopher Leines, Sellers' Representative
P.O. Box 353
4675 County Road 11
Medina, MN 55357
Telephone: 612-817-4545
Fax: (763) 262-7500

with a copy (which copy shall not constitute notice) to:

Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 672-8316
Fax: (612) 642-8316
Attention: Shawn R. McIntee

If to the Escrow Agent, to:

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107
Telephone: 651-495-3911
Fax: 651-495-8096
Attention: Tom Maple, Corporate Trust Services

or to such other Persons, addresses or facsimile numbers as may be designated in writing by the Person entitled to receive such communication as provided above. Each such communication shall be effective (a) if delivered by hand, when such delivery is made at the address specified in this Section 9, (b) if delivered by overnight courier service, the next Business Day after such

communication is sent to the address specified in this Section 9 or (c) if delivered by facsimile, when such facsimile is transmitted to the facsimile number specified in this Section 9 and appropriate confirmation is received.

10. Entire Agreement; Amendments. This Agreement, together with the Purchase Agreement to the extent referenced herein, contains the entire understanding of the Parties with respect to the holding, investment and disbursement of the Escrow Funds and supersedes any prior understandings or agreements by or among the Parties, whether written or oral, which may have related to the subject matter hereof in any way. This Agreement may be amended, or any provision of this Agreement may be waived, so long as such amendment or waiver is set forth in a writing executed by the Buyer and Sellers' Representative (a copy of which shall be promptly provided to the Escrow Agent); provided, that if any such amendment or waiver would have the effect of increasing or expanding the Escrow Agent's obligations or duties under this Agreement, the written consent of the Escrow Agent shall be required in addition to the written consent of the other Parties. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement of any rights or obligations of any Party under or by reason of this Agreement.

11. Assigns and Assignment. This Agreement and all actions taken hereunder shall inure to the benefit of and shall be binding upon all of the Parties and upon all of their respective successors and permitted assigns; provided, that the Escrow Agent shall not be permitted to assign its obligations hereunder except as provided in Section 5(e) above.

12. Taxation of Interest Earned on Investment of Escrow Amount. Sellers and the Buyer agree that, for federal and state income tax purposes, that Sellers will be treated as the owners of the Escrow Funds and will report all interest, dividends, or other income earned on the investment of the Escrow Amount (the "Income") as Sellers' income in the taxable year or years in which such Income is properly includable and pay or cause to be paid any taxes attributable thereto. Any such Income shall not be a part of the Escrow Funds from which it was earned or derived from. The Escrow Agent shall be responsible for reporting any Income earned to the Internal Revenue Service.

13. No Other Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or to give any Person other than the Escrow Agent, the Parties and their permitted assigns any rights or remedies under or by reason of this Agreement.

14. Interpretation. The headings in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof.

15. No Waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any right of further exercise or the exercise of any other right, power or privilege. The right of the Buyer or Sellers to receive all or a portion of the Escrow Funds under the circumstances described in Section 4 above is in addition to, and not in lieu of, any other remedies that any such Party may have against the other pursuant to the Purchase Agreement in the event of a breach of the Purchase Agreement.

16. Severability. The Parties agree that (a) the provisions of this Agreement shall be severable in the event that for any reason whatsoever the provisions hereof are invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provisions shall be automatically replaced by other provisions which are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions, but are valid and enforceable and (c) the remaining provisions shall remain enforceable to the fullest extent permitted by Legal Requirements.

17. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their collective mutual intent, and no rule of strict construction shall be applied against any person. The term “including” as used herein shall be by way of example, and shall not be deemed to constitute a limitation of any term or provision contained herein. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form.

18. Releases on Non-Business Days. In the event that a release of Escrow Funds hereunder is required to be made on a date that is not a Business Day, such release may be made on the next succeeding Business Day with the same force and effect as if made when required.

19. Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State of Minnesota without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the Legal Requirements of any jurisdiction other than the State of Minnesota. In furtherance of the foregoing, the internal laws of the State of Minnesota shall control the interpretation and construction of this Agreement, even though under that jurisdiction’s choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

20. Counterparts. This Agreement may be executed by the Parties individually or in any combination, in counterparts (including by means of telecopied, e-mailed or other means of electronically transmitted signature pages), each of which shall be an original and all of which shall together constitute one and the same agreement.

21. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Buyer and Sellers acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the “Act”), and Buyer and Sellers agree to provide any additional information requested by the Escrow Agent in connection with the Act or any similar legislation or regulation to which Escrow Agent is subject, in a timely manner.

22. Security Advice Waiver. The Buyer and Sellers acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Buyer and Sellers the right to receive brokerage confirmations for certain security transactions as they occur, the Buyer and Sellers specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Buyer and Sellers periodic cash transaction statements that include detail for all investment transactions made by the Escrow Agent.

23. Representatives. Each of the Buyer and Sellers agree that the applicable persons designated on Schedule III hereto have been duly appointed to act as its representatives hereunder and have full power and authority to execute and deliver any joint written instruction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as the Representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party.

24. Suspension of Performance Disbursement Into Court. If at any time, (i) there shall exist any dispute between the Buyer and Sellers with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or (iii) the Buyer and Sellers have not within 30 days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 5 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed (as the case may be).

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

The Escrow Agent shall have no liability to Buyer, Sellers, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Funds, without determination

by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

[Signature page immediately following.]

IN WITNESS WHEREOF, the Parties hereto have executed this Escrow Agreement as of the date first written above.

VECTREN INFRASTRUCTURE SERVICES CORPORATION

By: _____
Douglas S. Banning, Jr., President

Christopher T. Leines

Paulette A. Britzius

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

Schedule I

U.S. BANK NATIONAL ASSOCIATION

**Schedule of Fees for Services as Escrow Agent
Due Upon Closing**

- I. One Time Fee: \$1,500
The one time fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. It also includes performance of the routine duties of the escrow agent associated with the management of the account. This is a flat one-time fee, payable at closing.
- II. Out-of-Pocket Expenses: At Cost
Reimbursement of expenses associated with the performance of our duties, including but not limited to fees and expenses of legal counsel, accountants and other agents, tax preparation, reporting and filing, publications, and filing fees.
- III. Extraordinary Expenses:
Extraordinary services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the service and the responsibility involved. At our option, these charges will be billed at a flat fee or our hourly rate then in effect.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

VEC000285

Schedule II**U.S. BANK NATIONAL ASSOCIATION
MONEY MARKET ACCOUNT AUTHORIZATION FORM
DESCRIPTION AND TERMS**

The U.S. Bank Money Market account is a U.S. Bank National Association (“U.S. Bank”) interest-bearing money market deposit account designed to meet the needs of U.S. Bank’s Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank’s discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank’s trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

VEC000286

Schedule III

Representatives:

The following person(s) are hereby designated and appointed as Buyer Representative under the Escrow Agreement (only one signature shall be required for any direction):

Douglas S. Banning, Jr.
Name

Specimen signature

Name

Specimen signature

Name

Specimen signature

The following person(s) are hereby designated and appointed as Seller Representative under the Escrow Agreement (only one signature shall be required for any direction):

Christopher T. Leines
Name

Specimen signature

EXHIBIT D
Form of Non-Competition Agreement

NON-COMPETITION AGREEMENT

THIS NON-COMPETITION AGREEMENT (this "Agreement") is made and entered into this 31st day of March, 2011 (the "Effective Date"), by and among Christopher T. Leines, an individual residing in State of Minnesota ("Leines"), Minnesota Limited, Inc., a Minnesota corporation ("Minnesota Limited"), Nordic Equipment, LLC, a Minnesota limited liability company ("Nordic Equipment"), Nordic Pipeline Services LLC, a Minnesota limited liability company ("Nordic Pipeline"), Nordic Land Bemidji, LLC, a Minnesota limited liability company ("Nordic Bemidji"), Nordic Land Altamont, LLC, a Minnesota limited liability company ("Nordic Altamont," and, together with Minnesota Limited, Nordic Equipment, Nordic Pipeline, and Nordic Bemidji, the "Selling Entities"), Vectren Infrastructure Services Corporation, an Indiana corporation ("Buyer"), Miller Pipeline Corporation, an Indiana corporation ("Miller"), and Vectren Corporation, an Indiana corporation ("Vectren").

RECITALS

WHEREAS, Leines sold one hundred percent (100%) of his ownership in each of the Selling Entities (directly or indirectly) pursuant to that certain Purchase Agreement dated of even date herewith by and among Leines, Paulette Britzius, Nordic Land Company, LLC, a Minnesota limited liability company, and Buyer (the "Purchase Agreement");

WHEREAS, the Selling Entities are in the business of providing the following services for the natural gas and petroleum industries: (i) high-pressure, welded steel pipeline installation and construction services; (ii) pump station, compressor station, terminal, and refinery construction services related to such pipelines; (iii) gas distribution pipeline construction services; (iv) pipeline maintenance; and (v) hydrostatic testing (collectively, the "Business");

WHEREAS, Leines is intimately familiar with the Selling Entities, the Business, and the Confidential Information used by the Selling Entities; and

WHEREAS, Leines is a recipient of a portion of the Purchase Price (as defined in the Purchase Agreement) and has benefitted from the sale to Buyer of his ownership in the Selling Entities and, in partial consideration thereof, Leines agrees to limit his ability to take certain actions, including competing with the Selling Entities; and

WHEREAS, Leines acknowledges that the agreements and covenants contained in this Agreement are essential to protect the value of the Business and the Selling Entities and are a material inducement to Buyer's agreement to enter into the Purchase Agreement;

NOW, THEREFORE, the parties hereto incorporate the foregoing recitals, and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

AGREEMENT

1. Confidential Information. Leines acknowledges that Leines has occupied a position of trust and confidence with each of the Selling Entities and will continue to occupy a position of trust and confidence with each of the Selling Entities, Buyer, Miller, and Vectren, and has had access to and has become familiar with the confidential information described below, any and all of which constitute confidential information of the Selling Entities, Buyer, Vectren, and Miller, as applicable (collectively, the "Confidential Information"), including without limitation any of the following proprietary information: (i) any and all trade secrets concerning the business and affairs of the Selling Entities, Buyer,

Vectren, and Miller, and/or their successors and assigns, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), database technologies, systems, structures, architectures, processes, improvements, devices, know-how, discoveries, concepts, methods, and information of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns and any other information, however documented, of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns that is a trade secret within the meaning of Indiana law or under other applicable law; (ii) any and all information concerning the business and affairs of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns (which includes, without limitation, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, customers and potential customers, personnel training and techniques), however documented; and (iii) any and all notes, analysis, compilations, studies, summaries and other material prepared by or for the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns containing or based, in whole or in part, upon any information included in the foregoing. Confidential Information shall in no event include data or information that: (i) was generally available or accessible to the public prior to the date hereof; (ii) becomes available to the public after the date hereof other than as a result of disclosure by Leines in violation hereof or by Paulette Britzius in violation of her confidentiality restrictions imposed by the Selling Entities, Buyer, Vectren, or Miller; (iii) following the later of the termination of the Employment Agreement by and between Minnesota Limited and Leines executed on even date herewith (the "Employment Agreement") or Leines's employment with Minnesota Limited, is rightfully received by Leines from a third party without a confidential obligation to the Selling Entities, Buyer, Vectren or Miller, as long as Leines did not provide such information to such third party on behalf of the Selling Entities, Buyer, Vectren or Miller, (iv) following the later of the termination of the Employment Agreement or Leines's employment with Minnesota Limited, is independently developed by Leines without use of the Confidential Information of the Selling Entities, Buyer, Vectren, or Miller, or (v) is required to be disclosed by order of a court of competent jurisdiction, subpoena (including an administrative subpoena), or other compulsory legal process; provided, however, that with respect to clause (v), Leines shall give prompt written notice of such requirement to the Selling Entities, Buyer, Vectren, and Miller, as applicable, and shall give such party or parties the opportunity to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and Leines shall reasonably cooperate in such efforts.

2. Ownership of Confidential Information. As among the parties to this Agreement, all Confidential Information is and shall remain the exclusive property of the Selling Entities, Buyer, Vectren, or Miller, as applicable, whether or not prepared in whole or in part by Leines, and whether disclosed to or entrusted to the custody of Leines. Leines acknowledges and agrees that the protection of the Confidential Information is necessary to protect and preserve the value of each of the Selling Entities, Buyer, Vectren, and Miller. Therefore, Leines hereby agrees that he will not disclose to any individual, entity, or association (collectively, "Person"), or use for Leines's own account or for the benefit of any Person, any Confidential Information, whether or not such Confidential Information is embodied in writing or other physical form. Leines agrees to use his commercially reasonable best efforts to immediately deliver to the Selling Entities, Buyer, Vectren, or Miller, upon written request from such Person, all documents, memoranda, notes, plans, records, reports and other documentation, models, components, devices or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing) that contain Confidential Information and any other Confidential Information and property of the Selling Entities, Buyer, Vectren, or Miller, that Leines may then possess or have under Leines's control.

3. Noncompetition.

(a) For a term of five (5) years after the Effective Date (the "Non-Compete Period"), Leines will not, except on behalf of Buyer or the Selling Entities or their Affiliates:

(i) directly or indirectly, have any ownership interest in or, directly or indirectly, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, work for, advise, be associated with, or in any manner connected with, lend Leines's name or any similar name to, lend Leines's credit to, or render services or advice to, any Competitive Business (as hereinafter defined) in the United States;

(ii) directly or indirectly, either for Leines or any other Person, (x) induce or attempt to induce any employee of Buyer, Miller, or any of the Selling Entities to leave their employ or hire any such employees, (y) in any way interfere with the relationship between any of the Selling Entities and their employees, or (z) employ, or otherwise engage as an employee, independent contractor, or otherwise, any employee of any of the Selling Entities; and/or

(iii) directly or indirectly, either for Leines or any other Person, induce or attempt to induce any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities to cease doing business with Buyer, Miller, or any of the Selling Entities or, in a competitive capacity, to do business with the any other Person, or in any way interfere with the relationship between any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities.

(b) For the purposes of this Section 3, "Competitive Business" is defined as any Person that engages in any aspect of the Business.

(c) In the event of a breach by Leines of any covenant set forth this Section, the Non-Compete Period will be extended by the period of the duration of such breach.

Notwithstanding the foregoing, Leines shall not be prevented or limited from owning or operating the business, pipeline and other assets associated with or related to the GMT Lawsuit (as defined in the Purchase Agreement).

4. Reasonableness. Leines acknowledges that the covenants set forth in this Agreement are reasonable and necessary to protect and preserve the Buyer's and Vectren's interests in and right to the use and operation of the Selling Entities and the value of the Selling Entities.

5. Remedies. Any violation by Leines of this Agreement may cause Buyer, Vectren, Miller, and the Selling Entities to suffer irreparable harm for which they will not have an adequate remedy at law. Therefore, if Leines violates or threatens to violate any provision of this Agreement, each of Buyer, Vectren, Miller, and the Selling Entities shall be entitled to seek injunctive relief, including, without limitation, temporary restraining orders and/or preliminary or permanent injunctions, to restrain or enjoin any violation or threatened violation of this Agreement. Such right to seek injunctive relief shall be in addition to, and not in lieu of, any other legal or equitable remedies that may be available to Buyer, Vectren, Miller, and the Selling Entities, including, without limitation, monetary damages, including lost profits. Any claim or cause of action by Leines against Buyer (other than a final determination by a court of competent jurisdiction of Buyer's wrongful failure to pay (i) the Purchase Price, as defined in the Purchase Agreement, when and as the same becomes due pursuant to the terms of the Purchase Agreement or (ii) amounts under the Employment Agreement when and as the same becomes due

pursuant to the terms of such Employment Agreement), and/or any of the Selling Entities shall not constitute a defense to the enforcement of the restrictions and covenants set forth in this Agreement and shall not be used to prohibit the injunctive relief provided for in this Section. In no event will the Selling Entities or Buyer have the right to off set any amounts owed to the Selling Entities or Buyer (or any other person) by Leines against any amounts owed Leines under any agreement.

6. Waiver. The waiver by Buyer, Vectren, Miller, or any of the Selling Entities of a breach of any provision of this Agreement by Leines shall not operate or be construed as a waiver of any subsequent breach of the same or a different provision by Leines by such or any other party.

7. Governing Law. This Agreement shall be governed by, interpreted under, and construed in accordance with the laws of the State of Indiana, without regard to conflict-of-law principles.

8. Entire Agreement. The terms of this Agreement are intended by the parties as a complete, exclusive, and final expression of their agreement with respect to the subject matter contained herein. This Agreement may be altered or modified only by a writing signed by the parties hereto.

9. Successor and Assignment. This Agreement shall be binding upon and inure to the benefit of Leines and the Selling Entities and their respective successors and permitted assigns. This Agreement may be assigned by the Selling Entities, without the consent of Leines, to any affiliated person or entity and shall inure to the benefit of and may be enforceable by the Selling Entities or any such person or entity, including, but not limited to, any surviving entity that exists because of a merger, change in ownership, name, or form of business, or sale of the assets of the Selling Entities (provided that in the case of any merger, change in ownership, or sale of assets, any successor entity shall expressly assume the Selling Entities' obligations hereunder). Leines hereby consents to any such assignment. Leines may not assign or transfer this Agreement or any of Leines's rights or obligations hereunder.

10. Severability. Whenever possible, each provision and term of this Agreement will be interpreted in a manner to be effective and valid, but if any provision or term of this Agreement is held to be unreasonable, unenforceable, or invalid for any reason, then such provision or term will be ineffective only to the extent of such unreasonableness, unenforceability, or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement. If any term, provision or covenant of this Agreement is held to be unreasonable, arbitrary or against public policy, a court may limit the application of such term, provision or covenant or modify such term, provision or covenant and proceed to enforce this Agreement as so limited or modified, which limited or modified term, provision or covenant will be effective, binding and enforceable against Leines.

11. Notice. Any notice, request, demand, or other communication required to be given hereunder shall be made in writing and shall be deemed to have been fully given if personally delivered or if mailed by overnight delivery (the date on which such notice, request, demand, or other communication is received shall be the date of delivery).

12. Jurisdiction. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement shall be brought against any of the parties in the courts of Hennepin County of the State of Minnesota or, if it has or can acquire jurisdiction, in the United States District Court for the District of Minnesota, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13. Execution of Agreement. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic transmission in Adobe Acrobat format shall be deemed to be their original signatures for any purposes whatsoever.

14. Joint Drafting. This Agreement shall be deemed to have been drafted jointly by the parties, and in the event of an ambiguity in this Agreement, the same shall not be construed against any party.

15. Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof. Leines hereby acknowledges and agrees that he (i) has read this Agreement in its entirety prior to executing it, (ii) understands the provisions and effects of this Agreement, and (iii) has consulted with such attorneys, accountants, and other advisors as he has deemed appropriate in connection with his execution of this Agreement.

* * *

IN WITNESS WHEREOF, THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ THIS NON-COMPETITION AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. They further acknowledge that they have exercised due diligence in reviewing this Agreement, and that each has had adequate opportunity to consult with legal counsel or other advisors to the extent that each deemed such consultation necessary.

MINNESOTA LIMITED, INC.

NORDIC EQUIPMENT, LLC

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC LAND BEMIDJI, LLC

NORDIC LAND ALTAMONT, LLC

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC PIPELINE SERVICES, LLC

VECTREN INFRASTRUCTURE SERVICES CORPORATION

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Douglas S. Banning, Jr.,
President

MILLER PIPELINE CORPORATION

VECTREN CORPORATION

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Ronald E. Christian,
Executive Vice President, Chief Legal
and External Affairs Officer

Christopher T. Leines

NON-COMPETITION AGREEMENT

THIS NON-COMPETITION AGREEMENT (this "Agreement") is made and entered into this 31st day of March, 2011 (the "Effective Date"), by and among Paulette A. Britzius, an individual residing in State of Minnesota ("Britzius"), Minnesota Limited, Inc., a Minnesota corporation ("Minnesota Limited"), Nordic Equipment, LLC, a Minnesota limited liability company ("Nordic Equipment"), Nordic Pipeline Services LLC, a Minnesota limited liability company ("Nordic Pipeline"), Nordic Land Bemidji, LLC, a Minnesota limited liability company ("Nordic Bemidji"), Nordic Land Altamont, LLC, a Minnesota limited liability company ("Nordic Altamont," and, together with Minnesota Limited, Nordic Equipment, Nordic Pipeline, and Nordic Bemidji, the "Selling Entities"), Vectren Infrastructure Services Corporation, an Indiana corporation ("Buyer"), Miller Pipeline Corporation, an Indiana corporation ("Miller"), and Vectren Corporation, an Indiana corporation ("Vectren").

RECITALS

WHEREAS, Britzius sold one hundred percent (100%) of her ownership in each of the Selling Entities (directly or indirectly) pursuant to that certain Purchase Agreement dated of even date herewith by and among Britzius, Christopher T. Leines, Nordic Land Company, LLC, a Minnesota limited liability company, and Buyer (the "Purchase Agreement");

WHEREAS, the Selling Entities are in the business of providing the following services for the natural gas and petroleum industries: (i) high-pressure, welded steel pipeline installation and construction services; (ii) pump station, compressor station, terminal, and refinery construction services related to such pipelines; (iii) gas distribution pipeline construction services; (iv) pipeline maintenance; and (v) hydrostatic testing (collectively, the "Business");

WHEREAS, Britzius is intimately familiar with the Selling Entities, the Business, and the Confidential Information used by the Selling Entities; and

WHEREAS, Britzius is a recipient of a portion of the Purchase Price (as defined in the Purchase Agreement) and has benefitted from the sale to Buyer of her ownership in the Selling Entities and, in partial consideration thereof, Britzius agrees to limit her ability to take certain actions, including competing with the Selling Entities; and

WHEREAS, Britzius acknowledges that the agreements and covenants contained in this Agreement are essential to protect the value of the Business and the Selling Entities and are a material inducement to Buyer's agreement to enter into the Purchase Agreement;

NOW, THEREFORE, the parties hereto incorporate the foregoing recitals, and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

AGREEMENT

1. Confidential Information. Britzius acknowledges that Britzius has occupied a position of trust and confidence with each of the Selling Entities and will continue to occupy a position of trust and confidence with each of the Selling Entities, Buyer, Miller, and Vectren, and has had access to and has become familiar with the confidential information described below, any and all of which constitute confidential information of the Selling Entities, Buyer, Vectren, and Miller, as applicable (collectively, the "Confidential Information"), including without limitation any of the following proprietary information: (i) any and all trade secrets concerning the business and affairs of the Selling Entities, Buyer,

Vectren, and Miller, and/or their successors and assigns, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), database technologies, systems, structures, architectures, processes, improvements, devices, know-how, discoveries, concepts, methods, and information of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns and any other information, however documented, of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns that is a trade secret within the meaning of Indiana law or under other applicable law; (ii) any and all information concerning the business and affairs of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns (which includes, without limitation, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, customers and potential customers, personnel training and techniques), however documented; and (iii) any and all notes, analysis, compilations, studies, summaries and other material prepared by or for the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns containing or based, in whole or in part, upon any information included in the foregoing. Confidential Information shall in no event include data or information that: (i) was generally available or accessible to the public prior to the date hereof; (ii) becomes available to the public after the date hereof other than as a result of disclosure by Britzius in violation hereof or by Christopher T. Leines in violation of his confidentiality restrictions imposed by the Selling Entities, Buyer, Vectren, or Miller; (iii) is rightfully received by Britzius from a third party without a confidential obligation to the Selling Entities, Buyer, Vectren or Miller, as long as Britzius did not provide such information to such third party on behalf of the Selling Entities, Buyer, Vectren or Miller, (iv) is independently developed by Britzius without use of the Confidential Information of the Selling Entities, Buyer, Vectren, or Miller, or (v) is required to be disclosed by order of a court of competent jurisdiction, subpoena (including an administrative subpoena), or other compulsory legal process; provided, however, that with respect to clause (v), Britzius shall give prompt written notice of such requirement to the Selling Entities, Buyer, Vectren, and Miller, as applicable, and shall give such party or parties the opportunity to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and Britzius shall reasonably cooperate in such efforts.

2. Ownership of Confidential Information. As among the parties to this Agreement, all Confidential Information is and shall remain the exclusive property of the Selling Entities, Buyer, Vectren, or Miller, as applicable, whether or not prepared in whole or in part by Britzius, and whether disclosed to or entrusted to the custody of Britzius. Britzius acknowledges and agrees that the protection of the Confidential Information is necessary to protect and preserve the value of each of the Selling Entities, Buyer, Vectren, and Miller. Therefore, Britzius hereby agrees that she will not disclose to any individual, entity, or association (collectively, "Person"), or use for Britzius's own account or for the benefit of any Person, any Confidential Information, whether or not such Confidential Information is embodied in writing or other physical form. Britzius agrees to use his commercially reasonable best efforts to immediately deliver to the Selling Entities, Buyer, Vectren, or Miller, upon written request from such Person, all documents, memoranda, notes, plans, records, reports and other documentation, models, components, devices or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing) that contain Confidential Information and any other Confidential Information and property of the Selling Entities, Buyer, Vectren, or Miller, that Britzius may then possess or have under Britzius's control.

3. Noncompetition.

(a) For a term of five (5) years after the Effective Date (the “Non-Compete Period”), Britzius will not, except on behalf of Buyer or the Selling Entities or their Affiliates:

(i) directly or indirectly, have any ownership interest in or, directly or indirectly, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, work for, advise, be associated with, or in any manner connected with, lend Britzius’s name or any similar name to, lend Britzius’s credit to, or render services or advice to, any Competitive Business (as hereinafter defined) in the United States;

(ii) directly or indirectly, either for Britzius or any other Person, (x) induce or attempt to induce any employee of Buyer, Miller, or any of the Selling Entities to leave their employ or hire any such employees, (y) in any way interfere with the relationship between any of the Selling Entities and their employees, or (z) employ, or otherwise engage as an employee, independent contractor, or otherwise, any employee of any of the Selling Entities; and/or

(iii) directly or indirectly, either for Britzius or any other Person, induce or attempt to induce any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities to cease doing business with Buyer, Miller, or any of the Selling Entities or, in a competitive capacity, to do business with the any other Person, or in any way interfere with the relationship between any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities.

(b) For the purposes of this Section 3, “Competitive Business” is defined as any Person that engages in any aspect of the Business.

(c) In the event of a breach by Britzius of any covenant set forth this Section, the Non-Compete Period will be extended by the period of the duration of such breach.

Notwithstanding the foregoing, Britzius shall not be prevented or limited from owning or operating the business, pipeline and other assets associated with or related to the GMT Lawsuit (as defined in the Purchase Agreement).

4. Reasonableness. Britzius acknowledges that the covenants set forth in this Agreement are reasonable and necessary to protect and preserve the Buyer’s and Vectren’s interests in and right to the use and operation of the Selling Entities and the value of the Selling Entities.

5. Remedies. Any violation by Britzius of this Agreement may cause Buyer, Vectren, Miller, and the Selling Entities to suffer irreparable harm for which they will not have an adequate remedy at law. Therefore, if Britzius violates or threatens to violate any provision of this Agreement, each of Buyer, Vectren, Miller, and the Selling Entities shall be entitled to seek injunctive relief, including, without limitation, temporary restraining orders and/or preliminary or permanent injunctions, to restrain or enjoin any violation or threatened violation of this Agreement. Such right to seek injunctive relief shall be in addition to, and not in lieu of, any other legal or equitable remedies that may be available to Buyer, Vectren, Miller, and the Selling Entities, including, without limitation, monetary damages, including lost profits. Any claim or cause of action by Britzius against Buyer (other than a final determination by a court of competent jurisdiction of Buyer’s wrongful failure to pay the Purchase Price, as defined in the Purchase Agreement, when and as the same becomes due pursuant to the terms of the Purchase Agreement), and/or any of the Selling Entities shall not constitute a defense to the enforcement

of the restrictions and covenants set forth in this Agreement and shall not be used to prohibit the injunctive relief provided for in this Section. In no event will the Selling Entities or Buyer have the right to off set any amounts owed to the Selling Entities or Buyer (or any other person) by Britzius against any amounts owed Britzius under any agreement.

6. Waiver. The waiver by Buyer, Vectren, Miller, or any of the Selling Entities of a breach of any provision of this Agreement by Britzius shall not operate or be construed as a waiver of any subsequent breach of the same or a different provision by Britzius by such or any other party.

7. Governing Law. This Agreement shall be governed by, interpreted under, and construed in accordance with the laws of the State of Indiana, without regard to conflict-of-law principles.

8. Entire Agreement. The terms of this Agreement are intended by the parties as a complete, exclusive, and final expression of their agreement with respect to the subject matter contained herein. This Agreement may be altered or modified only by a writing signed by the parties hereto.

9. Successor and Assignment. This Agreement shall be binding upon and inure to the benefit of Britzius and the Selling Entities and their respective successors and permitted assigns. This Agreement may be assigned by the Selling Entities, without the consent of Britzius, to any affiliated person or entity and shall inure to the benefit of and may be enforceable by the Selling Entities or any such person or entity, including, but not limited to, any surviving entity that exists because of a merger, change in ownership, name, or form of business, or sale of the assets of the Selling Entities (provided that in the case of any merger, change in ownership, or sale of assets, any successor entity shall expressly assume the Selling Entities' obligations hereunder). Britzius hereby consents to any such assignment. Britzius may not assign or transfer this Agreement or any of Britzius's rights or obligations hereunder.

10. Severability. Whenever possible, each provision and term of this Agreement will be interpreted in a manner to be effective and valid, but if any provision or term of this Agreement is held to be unreasonable, unenforceable, or invalid for any reason, then such provision or term will be ineffective only to the extent of such unreasonableness, unenforceability, or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement. If any term, provision or covenant of this Agreement is held to be unreasonable, arbitrary or against public policy, a court may limit the application of such term, provision or covenant or modify such term, provision or covenant and proceed to enforce this Agreement as so limited or modified, which limited or modified term, provision or covenant will be effective, binding and enforceable against Britzius.

11. Notice. Any notice, request, demand, or other communication required to be given hereunder shall be made in writing and shall be deemed to have been fully given if personally delivered or if mailed by overnight delivery (the date on which such notice, request, demand, or other communication is received shall be the date of delivery).

12. Jurisdiction. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement shall be brought against any of the parties in the courts of Hennepin County of the State of Minnesota or, if it has or can acquire jurisdiction, in the United States District Court for the District of Minnesota, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13. Execution of Agreement. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic transmission in Adobe Acrobat format shall be deemed to be their original signatures for any purposes whatsoever.

14. Joint Drafting. This Agreement shall be deemed to have been drafted jointly by the parties, and in the event of an ambiguity in this Agreement, the same shall not be construed against any party.

15. Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof. Britzius hereby acknowledges and agrees that she (i) has read this Agreement in its entirety prior to executing it, (ii) understands the provisions and effects of this Agreement, and (iii) has consulted with such attorneys, accountants, and other advisors as she has deemed appropriate in connection with her execution of this Agreement.

* * *

IN WITNESS WHEREOF, THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ THIS NON-COMPETITION AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. They further acknowledge that they have exercised due diligence in reviewing this Agreement, and that each has had adequate opportunity to consult with legal counsel or other advisors to the extent that each deemed such consultation necessary.

MINNESOTA LIMITED, INC.

NORDIC EQUIPMENT, LLC

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC LAND BEMIDJI, LLC

NORDIC LAND ALTAMONT, LLC

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC PIPELINE SERVICES, LLC

VECTREN INFRASTRUCTURE SERVICES CORPORATION

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Douglas S. Banning, Jr.,
President

MILLER PIPELINE CORPORATION

VECTREN CORPORATION

By: _____
Douglas S. Banning, Jr.,
Chief Executive Officer

By: _____
Ronald E. Christian,
Executive Vice President, Chief Legal
and External Affairs Officer

Paulette A. Britzius

EXHIBIT E
Form of Lease Agreement

**LEASE AGREEMENT FOR HEADQUARTERS,
ADMINISTRATIVE OFFICES, SHOP AND YARD
OF MINNESOTA LIMITED, INC.**

(Big Lake Township)

THIS LEASE AGREEMENT (the "*Lease*") is executed effective March 31, 2011 (the "*Effective Date*") by and between MLBL, LLC, a Minnesota limited liability company ("*Landlord*") and Minnesota Limited, Inc., a Minnesota corporation ("*Tenant*");

1. **LEASED PREMISES:** In consideration of the rents, terms, provisions and covenants of this Lease, Landlord does hereby lease and let onto Tenant and Tenant does hereby lease from Landlord, that certain property located at Big Lake, Minnesota consisting of the entire office, commercial and warehouse building (the "*Building*"), together with parking areas and adjacent grounds serving as outside storage for Tenant's equipment, commonly known as 18640 200th Street, Big Lake, Minnesota 55309 (the "*Leased Premises*"), and shown on the sketch as set forth in Exhibit A attached.

At any time during the Term of this Lease, the Landlord may, by at least thirty (30) days written notice to Tenant (the "*Recapture Notice*"), elect to recapture that portion of the property adjacent to State Highway 25 as depicted on Exhibit A-1 attached (the "*Recapture Property*"). On the effective date of such notice, the Recapture Property shall no longer be part of the Leased Premises, but, except as set forth in Section 4.4 herein, no Rent due hereunder shall be changed by such recapture.

2. **TERM.** Tenant shall have and hold the Leased Premises for a term of one hundred twenty (120) months, plus the fractional month in which the Effective Date occurs, commencing on the Effective Date and continuing through the last day of the month in which the tenth anniversary of the Effective Date occurs (hereinafter called the "*Term*").

3. **USE:** The Leased Premises shall be used by the Tenant solely for the following purposes: administrative offices, storage, warehousing, light assembly operations, fabrication, exterior storage of equipment and materials.

4. **RENT:**

4.1 **Base Rent.** Tenant agrees to pay to Landlord as base rent (hereinafter called "*Base Rent*") for the Leased Premises, the sum of Eighty Three Thousand, Three Hundred Thirty Three and 33/100 Dollars (\$83,333.33) per month, said monthly installments to be due and payable by Tenant, without setoff or deduction, in advance at the office of Landlord as set forth in this Lease or at such other place as Landlord may designate in writing. One monthly installment of rent shall be due and payable on or before the first day of each calendar month during the Term of this Lease, or any extension or renewal thereof. The Base Rent for any partial month during the Term shall be prorated against a thirty (30) day month. All Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice, demand, set off, counter-claim, abatement, suspension, deduction or defense.

4.2 Intentionally Deleted.

4.3 **Maintenance of the Leased Premises and Operating Expenses.** During the Term, and any renewals and extensions thereof, Tenant shall, at its cost and expense, keep and maintain the Leased Premises, including without limitation the maintenance, operation, repair, replacement and care of all

766851
KD3229533

(1)

VEC000302

altered, rebuilt, additional or substituted buildings; the exterior and interior portions of all doors; glass and glass windows; all lighting, mechanical, plumbing, heating, air conditioning, ventilating and electrical equipment and systems within, affixed to (roof mounted, or otherwise), or serving the Leased Premises; the roof; interior walls; Building exterior (structural and non-structural); partitions; floors and ceilings; signs of Tenant; all fixtures, appliances and equipment furnished by Landlord; and structures or other improvements thereto; in as good a condition and repair as they were in at the time that Tenant took possession thereof, reasonable wear and tear excepted. Tenant will pay, directly to the providers, the cost of all (i) utilities (including without limitation, sewer rents and charges for water, L.P. gas, natural gas, electricity, or other energy sources, telephone, refuse removal and all other service or services furnished to the Leased Premises or to the occupants thereof), and (ii) maintenance for all parking lots, security lighting, cleaning, gardening, lawn maintenance, snow removal, and landscaping for the Leased Premises. Tenant will promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes and repairs of any kind which may be required to be made to keep and maintain the Leased Premises in good condition, repair and appearance and keep the Leased Premises orderly and free and clear of rubbish. Tenant covenants to perform or observe all terms, covenants or conditions or maintenance agreement to which it may at any time be a party or to which the Leased Premises are subject, including any and all protective covenants. Landlord shall not be required to maintain, repair or rebuild or to make any alterations, replacements or renewals of any nature to the Leased Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen or to maintain the Leased Premises or any part thereof in any way, regardless of the nature or cause of the work required hereunder. Tenant hereby expressly waives the right to make repairs at the expense of Landlord which may be provided for in any law in effect at the time of the commencement of the Term or which may thereafter be enacted.

Tenant will pay all Operating Expenses of the Leased Premises. The term "*Operating Expenses*" herein shall include without limitation, (i) all expenses, costs, fees and disbursements necessary for all of the foregoing or other items necessary to proper maintenance of the Leased Premises; (ii) the cost of any replacements of a capital nature ("*Capital Costs*") defined as capital improvements under GAAP ("*Capital Improvements*"), including, without limitation, the roof, HVAC or other mechanical systems, and parking areas or any capital improvements which are required under any governmental law or regulation that was not applicable to the Leased Premises at the time it was constructed during the first five (5) years of the Term; (iii) the cost of all service contracts (as set forth below); and (iv) reimbursements to Landlord, on demand, for all payments by Landlord for insurance premiums, including fire, extended coverage, liability, worker's compensation, rent loss (if Landlord determines Tenant's business interruption insurance to be inadequate) and other insurance which may be carried by Landlord, any management fees of Landlord and personnel employed by Landlord in connection with the foregoing, if Tenant fails to perform any obligations hereunder which Landlord then undertakes, legal and accounting expenses, water and sewer rents, rates and charges and other taxes and improvements which may be levied upon, assessed or imposed against the Leased Premises, but excluding from all of the foregoing, specifically, any improvements or alteration made at Tenant's request pursuant to Section 11 hereof, which shall be, in all cases, at the sole cost and expense of Tenant. Tenant shall provide to Landlord, on demand, evidence of payment of all utility expenses. Tenant shall inform Landlord, as soon as possible during the Term, of all proposed or recommended Capital Improvements, including those recommended by the service contracts (as set forth below), and such Capital Improvements shall be completed by contractors and in a manner as approved by Landlord pursuant to Section 11 herein. Tenant agrees to maintain the Leased Premises in a manner consistent with and at least equal to the manner in which the Landlord has maintained the Leased Premises prior to the Effective Date. Tenant shall be responsible for all Capital Improvements necessary after the first five (5) years of the Term (the "*Shared Capital Improvements*"), but Tenant's share of the cost of the Shared Capital Improvements

766851
KD3229533

(2)

VEC000303

shall be equal to the portion of the cost of such Shared Capital Improvements, amortized on a straight line basis over the estimated life of the Shared Capital Improvement in accordance with GAAP (“*Amortized Capital Costs*”), which is attributable to the period remaining in the Term of this Lease (the “*Tenant’s Share*”), and the balance shall be paid by Landlord (the “*Landlord’s Share*”). Landlord shall have the right to elect whether to make the Shared Capital Improvements, in which case Tenant shall pay Tenant’s Share of the Shared Capital Improvements directly to Landlord, on demand therefor by Landlord, or to pay Tenant’s Share monthly over the balance of the Term, with interest accruing at an interest rate equal to ten percent (10%) (the “*Amortization Rate*”). In the event that Landlord does not elect to make the Shared Capital Improvements, Tenant shall make such improvements, and Landlord may either pay the Landlord’s Share at the time of completion of such improvements or may elect to have the Tenant amortize the Landlord’s Share over the remaining Term of the Lease using the Amortization Rate, and the Tenant may deduct from other amounts due to Landlord hereunder such monthly amortization amount.

(a) Service Contracts. Tenant shall enter into appropriate service contracts with reputable vendors, approved by Landlord (which approval will not be unreasonably withheld, delayed or denied), with respect to all maintenance obligations not conducted by Tenant itself, including but not limited to those listed on Exhibit D attached hereto. Such contracts for HVAC shall require annual reports (and every third year there shall be a report on the overall condition of the Building and all its major components, including the roof and parking areas), as to the condition of the portions/components of the Building being serviced, including recommendations as to preventative maintenance and replacements upon reaching the end of the useful life of such portion/component, as well as such maintenance required to conform to any requirements of the roof warranty and/or guaranty. Copies of all required periodic certifications and recertifications, service contracts, together with all service reports (including such service performed directly by Tenant) shall be provided to Landlord. Subject to the preceding paragraph, Tenant shall be responsible for implementing the recommendations as contained in such reports relating to maintenance, repair and replacement of the Building and any components thereof, such as the parking areas, HVAC and roof.

(b) Trash Dumpsters/Waste Containers. Tenant shall provide its own dumpster and waste removal containers and comply with any and all requirements of the township and county where the Leased Premises are located. Tenant shall not leave or store any materials or trash on the Leased Premises and shall not litter the grounds and parking areas. All dumpsters and waste containers shall be properly secured and covered. Hazardous materials shall be separated, properly contained, and identified for removal in compliance with the representations of Section 6.

The payment of Operating Expenses set forth herein shall be in addition to the Base Rent payable pursuant to subsections 4.1 and 4.2 set forth above. Should this Lease commence or terminate at any time other than the first day of the calendar year, the Operating Expenses referred to herein shall be prorated such that Tenant shall pay only the operating expenses for the calendar days during such calendar year for which Tenant is obligated to pay rent with respect to the Leased Premises.

Notwithstanding the foregoing, at any time during the Term, (i) if Landlord elects to develop the Recapture Property (the “Development Extension”), or (ii) in the event of any default by Tenant which is not cured within any cure period contained herein, Landlord may, by written notice to Tenant, elect to maintain the Leased Premises, in which event, Landlord shall estimate the reasonable Operating Costs for each calendar year and provide such estimate to Tenant. Thereafter, until Landlord shall provide additional notice to Tenant that Tenant shall resume direct maintenance of the Leased Premises and subject to the limitations in the following paragraph, Tenant shall pay as additional rent hereunder

766851
KD3229533

(3)

VEC000304

("Additional Rent", and with the Base Rent and other amounts due from Tenant to Landlord hereunder, the "Rent"), along with its monthly Base Rent payments required under Section 4.1 of the Lease, one-twelfth (1/12) of such estimated Operating Expenses, and such Additional Rent shall be payable until subsequently adjusted for the following year pursuant to this paragraph. Within thirty (30) days after the expiration of each calendar year, Landlord shall inform Tenant of the actual Operating Expenses for the previous year. If such statement shows that Tenant's estimated monthly payments for the previous calendar year do not equal the actual Operating Expenses, then Tenant shall, within twenty (20) days after being informed by Landlord, pay such deficiency to Landlord or, in the event of an overpayment by Tenant, such overpayment shall be refunded to Tenant as soon as possible after the expiration of each calendar year in the form of an adjustment in the following year's estimated Operating Expenses.

Notwithstanding the foregoing paragraph, in the event that the Landlord elects to maintain the Leased Premises due to the Development Extension, rather than due to a Tenant default, Operating Expenses may include expenses relating to the Recapture Property, provided that they are prorated between the Leased Premises and the Recapture Property based upon the square footage of the area being maintained. In no event shall the Operating Expenses payable by the Tenant, excluding commercially reasonable management fees and increased costs reasonably commensurate with inflation, exceed the amount of the Operating Expenses incurred by the Tenant prior to the Landlord election to maintain the Leased Premises as a result of the Development Extension. Operating Expenses shall not include marketing fees and rental commissions, costs and legal fees in connection with Landlord's financing of the Leased Premises, negotiation and preparation of leases, and any disputes with tenants, franchise or income taxes imposed upon Landlord, the cost of painting, repainting, decorating or redecorating for any tenant, any penalties or fines assessed against Landlord, and the cost for complying with environmental laws unless resulting from Tenant's use of the Leased Premises. If Tenant does not agree with Landlord's annual statement of Operating Expenses, then Tenant shall have the right, if written notice is given to Landlord not later than six (6) months following receipt of such statement by Tenant and Landlord and Tenant are unable to resolve such disagreement by negotiation, to cause an audit to be made of Landlord's records concerning the Operating Expenses, by an independent certified public accountant designated by Landlord from a list of not less than three (3) such accountants provided by Tenant, at the expense of Tenant, unless such audit discloses an error in excess of five percent (5%) in the computation of Operating Expenses, in which event such audit shall be at the expense of Landlord. The results of such audit shall be binding upon Landlord and Tenant, and Tenant shall be entitled to reimbursement by Landlord of any excessive additional rent paid.

If Tenant shall fail to keep and preserve the Leased Premises in the state and condition required by the provisions of this Lease (including the failure to implement recommendations contained in third party reports), Landlord may, at its option and after 30 days written notice to Tenant (or such shorter period of time if required because of health, safety or emergency) put or cause the same to be put in the condition and state of repair agreed upon, and in such case, Tenant shall pay the reasonable cost thereof. Tenant, at its cost, shall move or remove fixtures whenever such moving or removal is requested by Landlord for purposes of necessary repair, however Landlord shall coordinate with Tenant so as to not cause unnecessary disruption of Tenant's business activities in connection with such removal or moving.

4.4 Payment of Real Estate Taxes. All Real Estate Taxes, as defined below, shall be paid directly by Tenant with proof of such payment being provided to Landlord prior to such time as penalties and/or interest accrues or would be imposed upon such Real Estate Taxes. Commencing with the calendar year in which Real Estate Taxes become payable for the year in which the Term commences and continuing for each calendar year thereafter, Landlord shall furnish Tenant with a statement of the Real Estate Taxes for the Leased Premises due and payable in said calendar year, consisting of a copy of the original tax statement issued by the taxing authority. If the Term covers only a portion of a calendar

766851
KD3229533

year, Tenant's share of the Real Estate Taxes shall be prorated for the period of the calendar year actually covered by the Term, as provided above. In the event said Real Estate Taxes are payable to the applicable governmental entity in installments, then Tenant may pay the amount of said installments not less than thirty (30) days prior to said installment becoming due and payable; provided, however, Landlord may, at Landlord's option at any time during the Term, require Tenant to pay a monthly deposit to Landlord for the Real Estate Taxes, in which case, Tenant shall make such deposit as Landlord may reasonably require, provided Tenant's deposits shall be limited to deposits for those months for which Tenant has held occupancy and for which taxes have not been paid, plus one month advance deposit. Real Estate Taxes mean all taxes, including special assessments, due and owing on the Leased Premises; provided, however, in the event that the Landlord gives a Recapture Notice to Tenant, then, in such event, the Landlord shall either (i) obtain a tax parcel split of the Leased Premises from the Recapture Property or (ii) equitably allocate the portion of the Real Estate Taxes allocated to land between Leased Premises and the Recapture Property, in Landlord's reasonable discretion, and the Tenant shall be responsible for the portion allocated to the Leased Premises. In the event that the tax parcel of which the Leased Premises is a part is separated such that the Leased Premises become an independent tax parcel, the Tenant shall pay, as set forth above, all of the Real Estate Taxes for the parcel containing the Leased Premises.

4.5 **Increases in Insurance Premiums.** If any increase in the fire and extended coverage and/or liability insurance premiums paid for the Leased Premises is caused by Tenant's use and occupancy of the Leased Premises, then Tenant shall pay as Additional Rent the amount of such increase to Landlord.

4.6 **Net Lease.** This is an absolutely net lease to Landlord, unless otherwise expressly provided in this Lease. It is the intent of the parties hereto that the Base Rent payable under this Lease shall be an absolutely net return to the Landlord and that the Tenant shall pay all costs and expenses relating to the Leased Premises and the business carried on therein, unless otherwise expressly provided in this Lease. Any amount or obligation herein relating to the Leased Premises is an obligation of the Tenant to be performed by the Tenant at the Tenant's expense.

5. **CONDITION OF LEASED PREMISES:** Tenant accepts the Leased Premises in an "as is, where is" condition, with all faults, latent or patent, subject to the continuing obligations of the parties for repair and maintenance as set forth herein. Tenant specifically agrees that the items of personalty listed on Exhibit B will be maintained as part of the Leased Premises, as if they were a fixture in the Building, to be replaced and maintained as provided for herein, and surrendered with the Leased Premises at the end of the Term of this Lease.

6. **ENVIRONMENTAL REPRESENTATIONS; INDEMNIFICATION:**

6.1 **Definitions.** For purposes of this section 6, the following definitions apply:

(a) **"Environmental Laws"** is defined as any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to, or imposing liability or standards concerning any hazardous materials as may now or at any time hereafter be in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Superfund Amendments and Reauthorization Act of 1986 (SARA), the Clean Air Act (CAA), the Clean Water Act (CWA), the Toxic Substances Control Act (TSCA), the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act (RCRA), and the Occupational Safety and Health Act of 1970 (OSHA), together with any amendments thereto., and

766851
KD3229533

any other federal, state or local laws, regulations or ordinances which deal with, regulate or pertain to either Hazardous Waste, oil or petroleum products, whether such laws, regulations or ordinances are currently existing, or are hereafter amended, adopted, or enacted and whether they are given retroactive or prospective effect.

(b) “*Hazardous Materials*” is defined as any hazardous or toxic waste, substance or material and any other waste, material, substance, pollutant or other contaminant, defined as such or defined as any similar term, by, in or for the purpose of the Environmental Laws. This includes petroleum products, flammable explosives, radioactive materials or waste, urea-formaldehyde, asbestos or any material containing asbestos and/or polychlorinated biphenyls.

6.2 Representations and Warranties. Tenant represents and warrants as follows:

(a) That Tenant will not use, store, dispose or install any Hazardous Material on, in or about the Leased Premises in violation of the Environmental Laws;

(b) That Tenant will not violate or permit any violation of any Environmental Laws relating to or affecting the Leased Premises or which will increase the insurance rates on the Leased Premises or which will be in violation of any insurance policy carried on the Leased Premises by Landlord;

(c) That there is not now existing any action, suit, investigation or proceeding against Tenant seeking to enforce any right or remedy under any of the Environmental Laws; and

(d) That the Leased Premises will not be used by Tenant as or for a mine, landfill, dump or other disposal facility.

(e) Tenant, at its expense, shall comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Leased Premises and its occupancy and shall promptly comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation upon, or in connection with the Leased Premises or Tenant's use or occupancy of the Leased Premises, including the making of any alterations or improvements to the Leased Premises, all at Tenant's sole cost and expense.

(f) Tenant shall immediately, upon receipt, provide Landlord with copies of all permits, inspection reports, monitoring reports, licenses, orders, demands, compliance requests, edicts or other documents filed, served, delivered or transmitted either with, to or from the Minnesota Department of Health, Minnesota Pollution Control Agency or the Environmental Protection Agency (or any successor organization) or other governmental body (hereafter “*Environmental Requirements*”). Tenant further agrees to comply with all Environmental Requirements. In no event shall any Hazardous Waste or substance or any pollutant or contaminate be disposed of on the Leased Premises through the sewer system serving the Leased Premises or stored underground. Tenant agrees to take all appropriate action, at its sole expense, to prevent any release or threatened release into the Leased Premises or the environment as a result of Hazardous Wastes or substances deposited, stored, placed on or which otherwise come to be located upon the Leased Premises or which is the result of the existence or emission of any Hazardous Waste or toxic chemicals, substances, materials or pollutants in, on or from the Leased Premises. Tenant's indemnification in Section 6.5 shall be deemed to include any breach of this representation and warranty. The representation and warranty of this Section shall survive the termination, expiration or cancellation of this Lease.

766851
KD3229533

(6)

VEC000307

6.3 **Inspection Rights.** Landlord shall have the right from time to time to enter upon and investigate the Leased Premises and at its sole option to obtain a report from a reputable environmental consultant of Landlord's choice as to the presence of any Hazardous Waste, which report shall be addressed and available to Landlord (its mortgage lender, if any) and Tenant. If such consultant's report shows that there is a threat of imminent release (or there has been a previous release) of Hazardous Waste onto the Leased Premises, or the surrounding environment within the meaning of Environmental Laws or if Hazardous Waste is located upon the Leased Premises in violation of Environmental Laws, then Tenant shall pay for the cost of said report and investigation and Landlord shall have the right in its sole discretion to make such further investigations on the Leased Premises and procure such reports from consultants as Landlord deems necessary, all at the sole cost and expense of Tenant.

6.4 **Corrective Actions.** If at any time it is determined that Hazardous Wastes are present on the Leased Premises and in violation of Environmental Laws, and Tenant fails or refuses to take timely corrective, remedial or responsive action, then Landlord may, but shall not be required to, take such action, after giving prior notice of 30 days, unless Landlord reasonably believes immediate or other sooner action is warranted by the circumstances, in which case such reasonable or contemporary notice as is warranted by the circumstances shall be given. Any such corrective, remedial or responsive action taken in connection therewith shall be at Tenant's sole expense, whether such corrective, remedial or responsive action is taken by Landlord or Tenant; and if taken by Landlord, Tenant shall reimburse Landlord for all such costs on demand. If any corrective, remedial or responsive action includes any alterations to the Leased Premises or such alterations are required by Environmental Laws, said alterations shall be performed in compliance with this Lease.

6.5 **Tenant Indemnification.** Tenant shall indemnify and hold harmless Landlord, Landlord's manager, and each of their former, present and future officers, directors, employees, agents, shareholders or members, and attorneys, and all of their respective successors and assigns, from and against any and all liability, loss, cost, damage and expense, including witnesses' and attorneys' fees, resulting from or due to the violation of this Section 6, including the release or threatened release of any Hazardous Waste that was or is claimed or alleged to have been deposited, stored, disposed of, placed or otherwise located or allowed to be located on the Leased Premises by any person at any time or in connection with the removal or contamination of such Hazardous Waste, provided however, this indemnification and hold harmless provision shall not be applicable with respect to any conditions relating to the Leased Premises or Land which existed prior to Tenant's taking possession of the Leased Premises, unless such conditions were exacerbated by Tenant's activities.

6.6 **Survival.** Tenant's representations, warranties and obligations under this Section 6 shall not be terminated, released, discharged, extinguished or otherwise affected by the expiration of the Term or the termination or cancellation of this Lease. This provision may be enforced at any time by Landlord, or its successors and assigns.

7. **ASSUMPTION OF RISK:** Tenant assumes all risk of loss or damage of Tenant's property within the Leased Premises, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or other cause. Landlord shall not be liable for and Tenant waives any claims against Landlord for injury or damage to the person or the property of Tenant, Tenant's employees, contractors, invitees, customers or any other person in or about the Leased Premises or the Building from any cause whatsoever, including, but not limited to, damage or injury which is caused by or results from: (i) fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or (ii) from the condition of the Leased Premises or the Building. Notwithstanding Landlord's negligence, gross negligence or breach of this Lease, Landlord shall under no circumstances be liable for

766851
KD3229533

(a) injury to Tenant's business, for any loss of income or profit therefrom or any indirect, consequential or punitive damages, or (b) any damage to property or injury to persons arriving from any act of God, such as earthquakes, hurricanes, floods or similar events.

8. UNLAWFUL USE: Tenant agrees not to occupy or use, or permit any portion of the Leased Premises to be occupied or used, for any business or purpose which is unlawful, disreputable or deemed to be extra-hazardous on account of fire or other reasons or permit anything to be done which would in any way increase the rate of fire insurance coverage on the Leased Premises and/or its contents.

9. COMPLIANCE WITH LAWS AND REGULATIONS: Tenant agrees to comply with all laws, ordinances, orders, rules or regulations (state, federal, municipal, or promulgated by other agencies or bodies having any jurisdiction thereof) relating to the use, condition or occupancy of the Leased Premises.

10. ENTRY FOR REPAIRS, INSPECTION: The Landlord or Landlord's employees or agents shall have the right without any diminution of rent or other charges payable hereunder by Tenant to enter the Leased Premises at all reasonable times during the last year of this Lease, for the purposes of exhibiting the Leased Premises to prospective tenants or purchasers, inspection, cleaning, repairing, altering or improving the same, but nothing contained in this Section shall be construed so as to impose any obligation on the Landlord to make any repairs, alterations or improvements.

11. ALTERATIONS/LEASEHOLD IMPROVEMENTS: Except for non-structural improvements which do not exceed \$50,000 in cost (per project), Tenant will not make any alterations, additions or improvements in or to the Leased Premises or add, subtract, or in any way change any locks, plumbing or wiring therein without the prior consent of the Landlord, which consent may be predicated on Landlord's approval of such alterations, additions or improvements, including the contractors, installation manner and other details, and Tenant providing evidence to Landlord of Tenant's ability to pay the cost of such alterations. Tenant at its own expense shall obtain all permits and government approvals. Notwithstanding such approvals, Tenant agrees to comply with all Landlord's instructions regarding such alterations, additions or improvements, which may include posting ownership and lien notices on the Leased Premises. Tenant is responsible for payment of all leasehold improvements to the Leased Premises throughout the duration of the Lease. Unless Landlord specifically agrees otherwise in writing, all such leasehold improvements shall inure to and remain the property of Landlord. Regardless of whether Landlord's approval for any improvements are required hereunder, complete plans, contracts (general and sub) and all related material relating to such improvements shall be provided to Landlord.

12. SIGNS: All sign, advertisement or notices placed or painted on any part of the outside or inside of the Building or otherwise on the Leased Premises must be installed in a manner and style as currently exist as of the date hereof. The signage on State Highway 25 shall be governed by Section 36 below.

13. QUIET ENJOYMENT: Landlord does hereby warrant that, subject to the terms and conditions hereof, Tenant shall peacefully have, hold and enjoy the Leased Premises during the full Term of this Lease and any extension or renewal thereof.

14. ASSIGNMENT AND SUBLETTING:

14.1 Tenant Transfer. Tenant agrees not to assign, sublet, license, mortgage or encumber this Lease, the Leased Premises, or any part thereof (each, a "*Transfer*"), whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Landlord in each instance, which

766851
KD3229533

consent shall be unreasonably withheld. If Tenant is a corporation or partnership or other entity, transfer of a controlling interest of Tenant (and multiple transfers that together, transfer a controlling interest) shall be considered an assignment of this Lease for purposes of this Section 14.1, provided, however, that this sentence shall not apply to Tenant, or any direct or indirect owner of Tenant, to the extent such entity is a publicly traded entity. Consent by Landlord in one such instance shall not be a waiver of Landlord's rights under this Section 14.1 as to requiring consent for any subsequent instance. In the event Tenant desires to sublet a part or all of the Leased Premises, or assign this Lease, Tenant shall give written notice to Landlord at least thirty (30) days prior to the proposed subletting or assignment, which notice shall state the name of the proposed subtenant or assignee, the terms of any sublease or assignment documents and copies of financial reports or other relevant financial information of the proposed subtenant or assignee. Tenant agrees that fifty percent (50%) of any additional rent or transfer consideration received by Tenant, beyond what Tenant is paid for its other assets, from a Transfer for which the Landlord's consent is required above shall be due to Landlord as Additional Rent hereunder. At Landlord's option, any and all payments by the proposed assignee or sublessee with respect to the assignment or sublease shall be paid directly to Landlord. In any event no subletting or assignment shall release Tenant of its obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the Term of this Lease or the Guarantor from its obligations under the Guaranty. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof.

14.2 Landlord Assignment. Landlord's right to assign this Lease is and shall remain unqualified upon any sale or transfer of the Leased Premises and, providing the purchaser succeeds to the interests of Landlord under this Lease, Landlord shall thereupon be entirely freed of all obligations of the Landlord's hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance.

15. LOSS BY CASUALTY:

15.1 Except as provided in Section 15.3, if fire or other casualty renders the whole or any material part of the Leased Premises untenable and Landlord determines (in Landlord's reasonable discretion) that it can make the Leased tenantable within one year after the date of the casualty, then Landlord will notify Tenant that Landlord will, within the one year period, repair and restore the Building and the Leased Premises to as near their condition prior to the casualty as is reasonably possible, provided that Landlord shall have no responsibility to replace any of the Tenant's personal property or the Personalty. Landlord will provide the notice within 30 days after the date of the casualty, provided, however, that Tenant may terminate this Lease in the event that there are two (2) years or less remaining in the Term at the time of the casualty, or in the event that the Leased Premises are not made tenantable on or before that date which is one year from the date of such casualty, subject to delays caused by delays by Tenant or events of force majeure, and provided further, if such casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers or agents, Tenant shall have no right to terminate whatsoever. If this Lease is not terminated and if the casualty is not caused, in whole or in part, by the negligence or intentional acts of Tenant, its employees, officers, invitees or agents, this Lease shall remain in full force and effect but Base Rent after the first twelve (12) months following such casualty shall abate pro rata (based upon the rentable area of the untenable portion of the Building premises as compared with the rentable area of the entire Building premises).

15.2 If fire or other casualty renders the whole or any material part of the Leased Premises untenable and Landlord determines (in Landlord's reasonable discretion) that it cannot make the Leased tenantable within one year after the date of the casualty, then Landlord will so notify Tenant within 30 days after the date of the casualty and may, in such notice, either party may terminate this

766851
KD3229533

Lease effective on the date as of the date of the casualty, by written notice of the same to the other party, except that if such casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers or agents, Tenant shall have no right to terminate whatsoever.

15.3 Notwithstanding the terms and conditions of Section 15.1, if the Building is damaged or destroyed by fire or other casualty and either (a) fewer than two (2) years remain in the Term, or (b) the damage reduces the value of the Building improvements on the Property by more than 50% (as Landlord reasonably determines value before and after the casualty) then, regardless whether Landlord determines (in Landlord's reasonable discretion) that it can make the Building tenantable within one year after the date of the casualty, Landlord, at Landlord's option, by notice to Tenant within 30 days after the casualty, may terminate this Lease effective on the date of the casualty.

15.4 Notwithstanding any contrary language in this Section 15, if this Section 15 obligates Landlord to repair damage to the Leased Premises or Building caused by fire or other casualty but Landlord does not receive sufficient insurance proceeds (excluding any deficiency caused by the amount of any policy deductible) to repair all of the damage, or Landlord's lender does not allow Landlord to use sufficient proceeds to repair all of the damage, then Landlord or Tenant, by notifying the other party within 30 days after the casualty, may terminate this Lease effective on the date of the casualty.

15.5 If this Lease is not terminated under Sections 15.2 through 15.4 following a fire or other casualty, then Landlord will repair and restore the Leased Premises and the Building to as near their condition prior to the fire or other casualty as is reasonably possible with all commercially reasonable diligence and speed (subject to delays caused by delays by Tenant or Force Majeure), and except in the event that any such casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers or agents, Tenant shall have no right to terminate whatsoever. Base Rent after the first six (6) months following such casualty shall abate pro rata (based upon the rentable area of the untenable portion of the Building premises as compared with the rentable area of the entire Building premises). In no event is Landlord obligated to repair, restore or replace any equipment or improvements installed, owned or maintained by Tenant, the Personalty or any personal or other property of Tenant.

15.6 If either Landlord or Tenant terminates this Lease under this Article 15, Landlord will apportion Base Rent on a per diem basis and Tenant will pay the Base Rent to (a) the date of the fire or other casualty if the event renders the Leased completely untenable or (b) if the event does not render the Leased Premises completely untenable, the effective date of such termination (provided that if a portion of the Leased Premises is rendered untenable, but the remaining portion is tenantable, then Tenant's obligation to pay Base Rent abates pro rata [based upon the rentable area of the untenable portion of the Building premises divided by the rentable area of the original Building premises] from the date of the casualty and Tenant will pay the unabated portion of the Rent to the date of such termination). Notwithstanding anything contained in this Lease to the contrary, in the event that the casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers, invitees or agents, Tenant shall have no right to terminate this Lease under this Section 15 and no Rent due hereunder shall abate.

16. CASUALTY INSURANCE: At Tenant's sole cost, Tenant shall at all times during the Term of this Lease maintain a policy or policies of insurance with the premiums paid in advance, insured by and binding upon an insurance company acceptable to Landlord, in Landlord's sole discretion, insuring the improvements on the Leased Premises against loss or damage by fire, explosion or other hazards and contingencies for the full replacement value, including complete business interruption insurance, which shall be in such amounts as to ensure that sufficient funds are present to pay all rents due hereunder, and which names Landlord, and any lender or other parties designated by Landlord, as the primary insured and loss payee thereunder. At Tenant's sole cost, Tenant shall also maintain policy(ies) insuring all of

766851
KD3229533

Tenant's personal property and the Personalty, on a full replacement cost basis, against loss or damage by fire, explosion or other hazards and contingencies for the full insurable value, naming Landlord, and any lender or other parties designated by Landlord, as an additional insured and loss payee thereunder as to the Personalty. Each such policy will contain a no coinsurance penalty provision. Landlord may, but shall not be obligated to, maintain such casualty insurance, in which event the cost of such insurance will be paid by Tenant as Additional Rent hereunder. Landlord is not, in any way or manner, required to insure any personal property of Tenant which Tenant may have upon or within the Leased Premises, the personalty or any fixtures installed by or paid for by Tenant upon or within the Leased Premises or any additional improvement which Tenant may construct on the Leased Premises.

17. PUBLIC LIABILITY INSURANCE: Tenant shall, during the Term hereof, keep in full force and effect at its expense (i) a policy or policies of public liability insurance with respect to the Leased Premises and the business of Tenant, in which both Tenant and Landlord shall be covered by being named as insured parties under reasonable limits of liability not less than \$10,000,000.00 in the aggregate, or such greater amount as may be required by Landlord from time to time, and (ii) a policy or policies of environmental liability insurance with respect to the Leased Premises and the business of Tenant, in which both Tenant and Landlord shall be covered by being named as insured parties under reasonable limits of liability as may be mutually agreed by Landlord and Tenant from time to time; provided, however, that Tenant shall maintain, and renew, as appropriate, the existing coverage until a mutually agreed change to the amount of such coverage is made. Such policy or policies shall provide that ten (10) days written notice must be given to Landlord prior to cancellation thereof. Tenant shall furnish evidence satisfactory to Landlord prior to the commencement date of this Lease that such coverage is in full force and effect.

At any time during the Term, Landlord may require evidence that Tenant carries other commercially reasonable insurance, including, without limitation, worker's compensation insurance, with statutory limits employer's liability insurance, business interruption insurance (covering a period of not less than six (6) months), and automobile liability insurance covering all owned, non-owned and hired vehicles, which insurance shall be carried in commercially reasonable amounts.

18. WAIVER OF SUBROGATION/INDEMNIFICATION: Anything in this Lease to the contrary notwithstanding, to the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers and employees for any loss or damage that may occur to the Leased Premises, improvements to the Building of which the Leased Premises are a part, or personal property (building contents) within the Building by reason of fire or other casualty actually covered by insurance actually carried or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees. Each party to this Lease agrees immediately to give each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of the mutual waiver as contained in this paragraph, and to have insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of the mutual waivers contained in this Section.

Tenant shall protect, indemnify and hold the Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of: any damage to any property (including but not limited to property of any Landlord) or death or injury to any person occurring in or about the Leased Premises or the Building to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault or omission by or of Tenant, its agents, servants, employees, invitees, or visitors; the conduct or management of any work or anything

766851
KD3229533

whatsoever done by the Tenant on or about the Leased Premises or from transactions of the Tenant concerning the Leased Premises; Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Leased Premises or its occupancy; or any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease. The provisions of this paragraph shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

19. CONDEMNATION: If during the Term or any extension or renewal of this Lease all or a substantial part of the Leased Premises are taken or condemned for any public purpose, and the taking would prevent or materially interfere with the use of the Leased Premises for the purpose for which they are being used, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease effective on the date physical possession is taken by the condemning authority. Tenant shall have no claim to any condemnation award, including its leasehold interest, except that Tenant shall be entitled to make a separate claim for its moving expenses.

20. NON-PAYMENT OF RENT, DEFAULTS:

20.1 If any one or more of the following occurs: (1) a rent payment or any other payment due from Tenant to Landlord shall be and remain unpaid in whole or in part after five (5) days notice that the same is due and payable (provided that Landlord agrees to provide written notice of such default to Tenant once in each calendar year, and for such month that written notice is required, the five (5) business days notice will run from the date such notice is mailed); (2) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein, and such violation or default shall continue for a period of ten (10) days after the mailing of written notice from Landlord of such violation or default, or such longer period as may be necessary given the nature of the default, provided that Tenant shall diligently prosecute such cure, and in no event shall any cure period exceed sixty (60) days; (3) if Tenant shall commence or have commenced against Tenant proceedings under a bankruptcy, receivership, insolvency or similar type of action; (4) Guarantor dissolves, sells or otherwise conveys all or substantially all of its assets or enters into an agreement to do any of the foregoing, and the transferee or successor of such business fails to reaffirm the Guaranty (as defined herein) in writing to Landlord prior to or upon the consummation of such transaction; or (5) Guarantor revokes the Guaranty (each, a "*Default*"), then Landlord shall have all the rights and remedies available as set forth herein or in law or in equity. For the sake of clarity, Guarantor shall have no right to revoke the Guaranty. A Default under items (4) and (5) above shall also constitute a breach of the Guaranty and this Lease.

20.2 In the event of a Default hereunder, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the following remedies:

(a) Terminate Tenant's right to possess the Leased Premises by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Leased Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord's termination of Tenant's right to possess the Leased Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant's obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant's right to possess the Leased Premises) and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant's right to possess the Leased Premises, Landlord is not obligated to but may re-enter the Leased Premises and remove all persons and property from the Leased Premises.

766851
KD3229533

Subject to applicable law, Landlord may store any property Landlord removes from the Leased Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. Landlord shall have no obligation to relet all or any part of the Leased Premises during the remainder of the Term for Tenant's account. Tenant is immediately liable to Landlord for all Re-entry Costs and must pay Landlord the same within five days after Landlord's notice to Tenant. Landlord may relet the Leased Premises for a period shorter or longer than the remaining Term. If Landlord relets all or any part of the Leased Premises, Tenant will continue to pay Rent when due under this Lease and Landlord will refund to Tenant the net rent Landlord actually receives from the reletting up to a maximum amount equal to the Rent Tenant paid that came due after Landlord's reletting. If the net rent Landlord actually receives from reletting exceeds such Rent, Landlord will apply the excess sum to future Rent due under this Lease. Landlord may retain any surplus net rent remaining at the expiration of the Term.

(b) Terminate this Lease effective on the date Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Leased Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant will pay to Landlord on demand all damages Landlord incurs by reason of Tenant's default, including, without limitation, (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) any amount necessary to compensate Landlord for any detriment proximately caused Landlord by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant's failure to perform, including, but not limited to, any Re-entry Costs, and (c) Tenant's Additional Rent to the extent Landlord is not otherwise reimbursed for such expenses. For purposes of this section, Landlord will compute present worth by utilizing a discount rate of 4% per annum. Nothing in this section limits or prejudices Landlord's right to prove and obtain damages in an amount equal to the maximum amount allowed by law, regardless whether such damages are greater than the amounts set forth in this section.

(c) Recover from Tenant, and Tenant will pay to Landlord on demand, an amount equal to the then present worth, as of the effective date of termination, of the aggregate of the Rent and any other charges payable by Tenant under this Lease for the unexpired portion of the Term. Landlord will employ a discount rate of 4% per annum to compute present worth.

(d) Perform the Tenant's obligation hereunder on Tenant's behalf without waiving Landlord's rights under this Lease, at law or in equity and without releasing Tenant from any obligation under this Lease. Tenant will pay to Landlord, as Additional Rent, all sums Landlord pays and obligations Landlord incurs on Tenant's behalf under this section.

(e) Any other right or remedy available to Landlord under this Lease, at law or in equity.

20.3 Costs. Tenant will reimburse and compensate Landlord on demand and as Additional Rent for any actual loss Landlord incurs in connection with, resulting from or related to a Default, regardless whether suit is commenced or judgment is entered. Such loss includes all reasonable legal fees, costs and expenses (including paralegal fees and other professional fees and expenses) Landlord incurs investigating, negotiating, settling or enforcing any of Landlord's rights or remedies or otherwise protecting Landlord's interests under this Lease. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, but not limited to, reasonable attorneys' fees and paralegal and other professional fees and expenses, Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including, without limitation, any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and

766851
KD3229533

objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

20.4 Waiver and Release by Tenant. Except to the extent done in violation of this Lease or applicable law, Tenant waives and releases all claims Tenant may have resulting from Landlord's re-entry and taking possession of the Leased Premises by any lawful means and removing and storing Tenant's property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under the Laws, Tenant releases and will indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord from and against any and all Claims occasioned by Landlord's lawful re-entry of the Leased Premises and disposition of Tenant's property.

21. SURRENDER: On the last day of the Term of this Lease, and any extension thereof, or on the sooner termination thereof in accordance with the terms hereof, Tenant shall peaceably surrender the Leased Premises, with the Personalty, in good condition and repair consistent with Tenant's duty to make repairs as provided for in this Lease. On or before said last day, Tenant shall at its expense remove all of its equipment from the Leased Premises, repairing any damage caused thereby, and any property not removed shall be deemed abandoned. All alterations, additions and fixtures which have been made or installed by either Landlord or Tenant upon the Leased Premises shall remain as Landlord's property and shall be surrendered with the Leased Premises as a part thereof, or shall be removed by Tenant, at the option of Landlord, in which event Tenant shall at its expense repair any damage caused thereby. If the Leased Premises are not surrendered at the end of the Term or the sooner termination thereof, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Premises including, with limitation, claims made by any succeeding tenant founded on such delay. Tenant shall promptly surrender all keys for the Leased Premises to Landlord at the place then fixed for payment of rent and shall inform Landlord of combinations on any locks and safes on the Leased Premises.

22. WAIVER: Failure of Landlord to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord shall have the right to declare any such default at any time thereafter.

23. HOLDING OVER. Tenant will, at the expiration of this Lease, whether by lapse of time or termination, give up immediate possession to Landlord. If Tenant fails to give up possession the Landlord may, at its option, serve written notice upon Tenant that such holdover constitutes any one of (i) creation of a month-to-month tenancy, or (ii) creation of a tenancy at sufferance. If Landlord does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any such event the tenancy shall be upon the terms and conditions of this Lease, except that the Base Rent shall be 150% the Base Rent Tenant was obligated to pay Landlord under this Lease immediately prior to termination (in the case of tenancy at sufferance such Base Rent shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to gain repossession of the Leased Premises. In the case of a tenancy at sufferance, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as otherwise available to Landlord; nor shall receipt of any rent or any other act in apparent affirmation of the tenancy operate as a waiver of the right to terminate this Lease for a breach by Tenant hereof.

24. SUBORDINATION TO MORTGAGE: Tenant agrees that this Lease shall be subordinate to any mortgage that may now or hereafter be placed upon the Leased Premises, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof,

766851
KD3229533

provided the mortgagees named in such mortgages shall agree to recognize this Lease or Tenant in the event of foreclosure provided the Tenant is not in default. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument as reasonably required by Landlord's mortgagee.

25. ESTOPPEL CERTIFICATES: Tenant agrees, at Landlord's request, to promptly execute either an estoppel certificate addressed to any mortgagee of Landlord or any purchaser of Landlord's interest or a third party agreement among Landlord, Tenant and such mortgagee(s) certifying as to such facts (if true) and agreeing to such notice provisions and other matters as may be reasonably required by Landlord or Landlord's mortgagee.

26. AGREEMENT TO PROVIDE FINANCIAL STATEMENTS. Tenant agrees to provide to any mortgage holder encumbering the Leased Premises, upon request by Landlord, copies of Tenant's most recent financial statements. If no financial statements are in existence, Tenant shall provide financial information, which generally would be disclosed on financial statements. For purposes of this Section 26, "financial statements" shall mean profit and loss statements and balance sheets. Tenant shall certify as to the accuracy of such financial statements, if requested by Landlord.

27. ATTORNEY'S FEES: In the event either party places the enforcement of this Lease or any part thereof, or the collection of any rent due, or to become due hereunder, or recovery of the possession of the Leased Premises in the hands of an attorney, or files suit upon the same, the non-prevailing party shall pay the other party's reasonable attorney's fees and court costs.

28. NOTICES: All rent and other payments required to be made by Tenant shall be payable to Landlord at the address set forth below, or any other address Landlord may specify from time to time by written notice delivered to Tenant. All payments required to be made by Landlord to Tenant shall be payable to Tenant at the address set forth below, or at any other address within the United States as Tenant may specify from time to time by written notice. Any written notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in United States mail, postage paid, certified mail, return receipt requested, addressed to the parties at their respective address set forth below, or at such other address as either party may designate in writing to the other party.

LANDLORD:

MLBL, LLC,
c/o Nordic Investments LLLP
P.O. Box 353
4675 County Road 11
Medina, MN 55357
Attn: Christopher T. Leines

TENANT:

Minnesota Limited, Inc.
c/o Miller Pipeline Corp.
P.O. Box 34141
Indianapolis IN 46234-0141
ATTN: Douglas S. Banning, Jr.

29. Intentionally Deleted.

30. GUARANTY: This Lease is expressly contingent on execution of a guaranty of Tenant's obligations under this Lease in the form attached hereto as Exhibit C (the "Guaranty") and full compliance by the guarantor thereunder.

31. MEMORANDUM OF LEASE. The parties agree that neither this Lease, nor a memorandum of this Lease, shall be recorded.

766851
KD3229533

32. SECURITY DEPOSIT. Upon the execution hereof, Tenant agrees to pay Landlord an amount equal to two months Rent (Base and Additional), as a Security Deposit to guarantee the payment of rent and the performance by Tenant of all the terms of this Lease. All such amounts held as a security deposit shall bear no interest. Upon the occurrence of any default hereunder by Tenant, Landlord may use said Security Deposit to the extent necessary to cure such default, whether rent or otherwise. Any remaining balance of said Security Deposit shall be returned to Tenant upon compliance with the terms hereof and acceptance of the vacated Leased Premises by Landlord. Tenant understands that its potential liability under this Lease is not limited to the amount of the Security Deposit. Use of such Security Deposit by Landlord shall not constitute a waiver, but is in addition to other remedies available to Landlord under this Lease and under law. Upon the use of all or any part of the Security Deposit to cure any default of Tenant, Tenant shall forthwith deposit with Landlord the amount of Security Deposit so used.

33. TENANT REMEDIES. If at any time during the Term there shall be a default by Landlord in, or other noncompliance with, any of the duties imposed upon Landlord in this Lease, and so long as any such default continues for thirty (30) days after written notice has been provided to Landlord of such default, or such longer period as may be necessary given the nature of the default, Tenant may reasonably remedy any such default or other noncompliance and expend any sums necessary therefor at the cost and expense of the Landlord and the sums so expended shall be payable to the Tenant on demand and if not paid within sixty (60) days shall be deducted by Tenant from the rents or other sums due or to become due hereunder. In the event of any litigation by the parties concerning this Lease and enforcement of obligations hereunder, the prevailing party shall be entitled to recover from the opposing party reasonable attorneys' fees and other expenses of litigation.

34. RIGHT TO BUY THE LEASED PREMISES. For the period from the Effective Date until the ninth (9th) anniversary of the Effective Date, Landlord agrees that if it decides to sell the Leased Premises, it shall notify Tenant in writing (“Initial Notice”). Said Initial Notice shall set forth the proposed sale price for the Leased Premises. Within ten (10) business days of such Initial Notice, Tenant shall respond to Landlord in writing whether or not Tenant wishes to proceed with negotiations for the purchase and sale of the Leased Premises as set forth in Landlord's Initial Notice. If Tenant is not interested in the purchase of the Leased Premises, its response shall include a waiver by it of its rights under this Right of First Offer provision, in which event, Tenant's rights under this Section 34 shall be terminated, void and without further effect. In the event Tenant is interested in negotiating for the purchase of the Leased Premises as listed in the Initial Notice, the parties shall proceed in good faith with such negotiations for a reasonable period of time, but in no event to exceed forty five (45) days from the date of the Initial Notice. If the parties are unable to reach a satisfactory agreement as to the price and terms at which to sell the Leased Premises within such time, then the Tenant's rights under this Section 34 are terminated, void and without further effect, and the Landlord shall thereafter be free to enter into a purchase agreement with any other person or entity for the sale of the Leased Premises. Any rights of Tenant under this Section 34 shall be void, expire and be of no further force and effect as of the ninth (9th) anniversary of the date hereof. Further, the rights granted hereunder are personal to Tenant. In the event of an assignment or sublease, this Section 34 shall be void, expire and be of no further force and effect as to any successors or assigns of Tenant.

35. EXCULPATION. Tenant agrees to look solely to Landlord's interest in the Leased Premises for the recovery of any judgment from Landlord, it being agreed that Landlord and Landlord's partners, whether general or limited (if Landlord is a partnership) or its directors, governors, officers, managers, members or shareholders (if Landlord is a limited liability company or corporation), shall never be personally liable for any such judgment.

766851
KD3229533

36. **TERMINATION OF PRIOR LEASE.** This Lease replaces that certain lease dated April 1, 2008, by and between Nordic Investments, LLLP , as Landlord, and Minnesota Limited, Inc., as Tenant (the “**Prior Lease**”). The parties hereto agree that the Prior Lease is hereby terminated in its entirety.

37. **SIGNAGE.** The parties agree that the existing signage, on State Highway 25, may remain in place until such time that any municipal authority required removal or relocation, or until the Landlord sells or begins development of the land bordering State Highway 25, at which time, Tenant shall relocate the sign to an area on the Leased Premises, at no cost to Landlord.

38. **SUCCESSORS AND ASSIGNEES:** This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assignees, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent assignments may be approved by Landlord hereunder, Tenant’s assigns.

39. **RIGHTS CUMULATIVE; GOVERNING LAW:** All rights and remedies of Landlord under this Lease shall be cumulative and none shall exclude any of the rights or remedies allowed by law; and this Lease is declared to be a Minnesota contract, and all of terms hereof shall be construed according to the laws of the State of Minnesota. This Lease is not intended to supersede or control over that certain Purchase Agreement dated as of March 31, 2011, by and among Vectren Infrastructure Services Company, an Indiana corporation, as Buyer, Nordic Land Company, LLC, a Minnesota corporation, and Christopher T. Leines and Paulette A. Britzius, individually as Sellers, or any other agreement entered into by the parties in connection with such agreement.

40. **COMMISSION:** Each party will defend the other against, indemnify it against, and hold it harmless from, any claim for a broker's or finder's fee or commission claimed as having been earned as a consequence of this Lease being entered into as a result of any association the defending party had with said claimant.

40. **GENERAL:** This Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of landlord and tenant. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. Each term and each provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition. The marginal or topical headings of the several paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such paragraphs or clauses. All preliminary negotiations are merged into and incorporated in this Lease. This Lease can only be modified or amended by an agreement in writing signed by the parties hereto.

SIGNATURE PAGES TO FOLLOW

766851
KD3229533

IN WITNESS WHEREOF, the parties have executed and delivered this Lease Agreement as of the date first written above.

TENANT:

Minnesota Limited, Inc.

Douglas S. Banning, Jr.,
Chief Executive Officer

[SIGNATURE PAGE 1 OF 2 TO LEASE AGREEMENT]

VEC000319

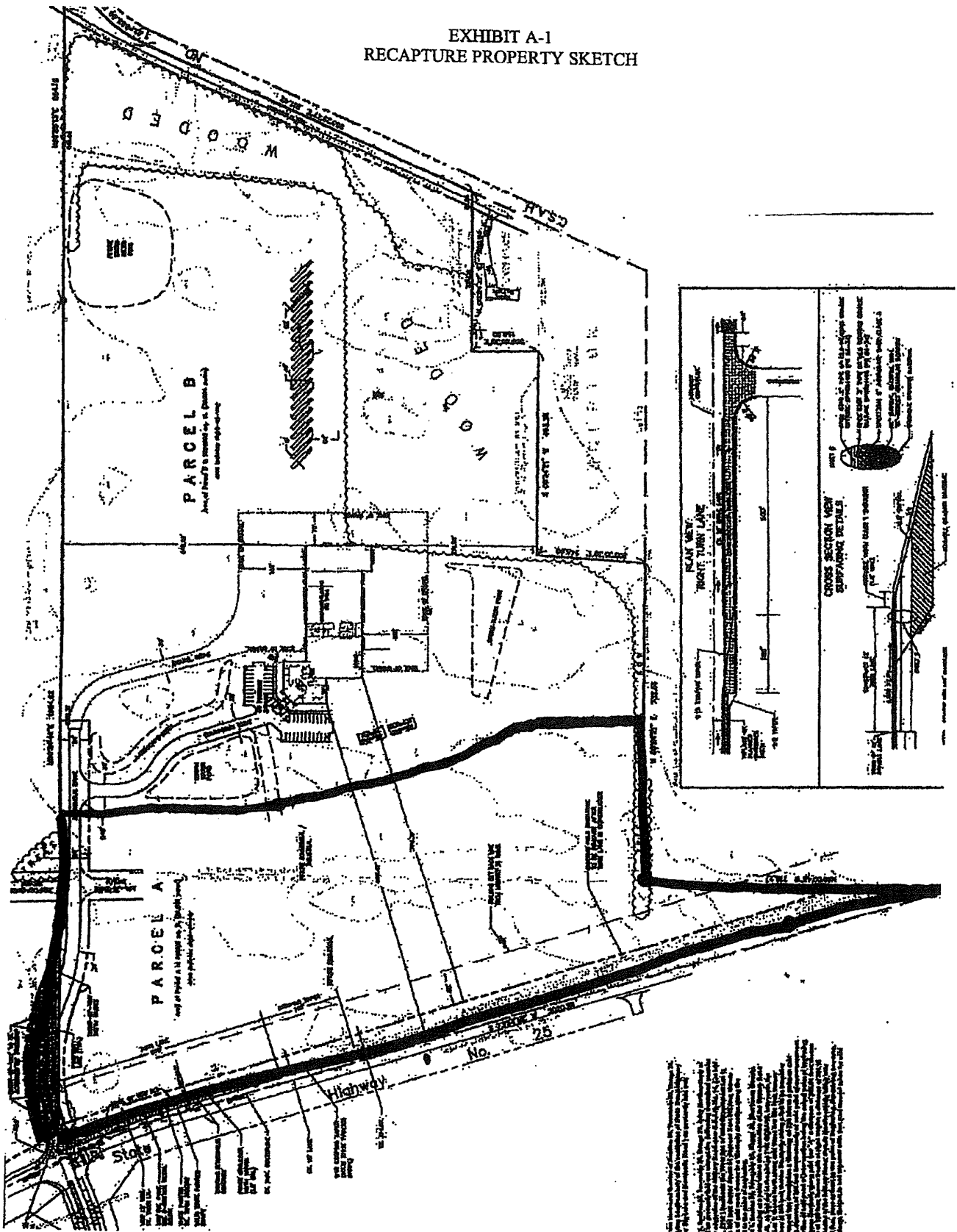
LANDLORD:

MLBL, LLC

By:
Its: _____

By:
Its: _____

EXHIBIT A-1
RECAPTURE PROPERTY SKETCH



THIS SKETCH IS A RECAPTURE PROPERTY SKETCH AND IS NOT A SURVEY. IT IS BASED ON AERIAL PHOTOGRAPHS AND FIELD NOTES. THE BOUNDARIES AND AREAS SHOWN ARE APPROXIMATE AND SHOULD NOT BE USED FOR LEGAL PURPOSES WITHOUT A SURVEY. THE SKETCH IS FOR INFORMATIONAL PURPOSES ONLY.

VEC000322

EXHIBIT B

PERSONALTY

All the following personal property, as presently located on the Leased Premises, or as improved, replaced or maintained under the Lease:

- 1) All wiring and cabling.
- 2) All furniture
- 3) Existing telephone system
- 4) Window treatments
- 5) Cranes
- 6) Cold Storage building and improvements
- 7) Appliances
- 8) Fencing
- 9) Landscaping
- 10) Fire Protection System
- 11) Audio Visual Entertainment System
- 12) Satellite Television System
- 13) Warehouse racking/shelving

EXHIBIT C
LEASE GUARANTY

FOR VALUE RECEIVED, in consideration for, and as an inducement to MBL, LLC, a Minnesota limited liability company (hereinafter referred to as "Landlord") to enter into that certain Lease Agreement dated March 31, 2011, pertaining to the premises located in the building commonly known as 18640 200th Street, Big Lake, Minnesota 55309 (hereafter referred to as the "Lease") with Minnesota Limited, Inc., a Minnesota corporation (hereafter referred to as "Tenant"), the undersigned hereby absolutely, unconditionally and irrevocably guaranties to Landlord the full and complete performance of all of the Tenant's covenants and obligations under the Lease, and the full payment by Tenant of all rents, and other charges and amounts required to be paid thereunder, including all of Landlord's expenses, including attorneys' fees, incurred in enforcing the obligations of Tenant under the Lease or incurred in enforcing this Guaranty.

The undersigned further represents to Landlord as an inducement for Landlord to make said Lease, that the execution and delivery of this Guaranty is not in contravention of any other lease, mortgage, loan agreement or other agreement of which the undersigned is a party. This Guaranty shall be binding upon the undersigned for obligations which accrue during the term of the Lease, as the same is amended or extended from time to time. The undersigned acknowledges and covenants to Landlord that the undersigned has a beneficial interest in Tenant and, accordingly, has a direct financial interest in the making of the Lease.

The undersigned hereby waives all demands or requirements for performance, notices of performance, and notices of the acceptance of this Guaranty, notices of breach or non-performance by Tenant, and any and all defenses, claims, and setoffs of the Tenant. The undersigned also waives: (i) presentment and demand for payment and (ii) notice of any amendment to or modification of any of the terms and provisions of the Lease. The undersigned's obligations hereunder shall remain fully binding although Landlord may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned or misapplied other collateral given as additional security (including other guaranties) or released Tenant from the performance of all or part of Tenant's obligations under the Lease. The undersigned further agrees that the undersigned's liability under this Guaranty is an absolute, primary, and continuing guaranty of payment and performance and is independent of Tenant's obligations under the Lease, and that in any right of action which shall accrue to Landlord under said Lease, Landlord may, at Landlord's option, proceed against the undersigned (or any of them) and Tenant, jointly or severally, or may proceed against the undersigned (or any of them) without having commenced any action against or having obtained any judgment against Tenant. The undersigned's obligations hereunder shall remain fully binding, notwithstanding any course of dealings between Landlord and Tenant and notwithstanding that Tenant have assigned the Lease or sublet all or part of the Leased Premises to third parties. Without notice to or consent by the undersigned and without affecting the liability of the undersigned hereunder, Landlord and Tenant may at any time, compromise, modify, extend, amend, or make other covenants respecting the Lease Agreement as they may deem appropriate. The undersigned shall not be released, but shall continue to be fully liable for payment and performance of all liabilities, obligations, and duties of Tenant under the Lease Agreement as modified, extended, amended or assigned.

The liability of the undersigned under this Guaranty will not be affected by (1) the release or discharge of Tenant from, or impairment, limitation or modification of, Tenant's obligations under the Lease in any bankruptcy, receivership, or other debtor relief proceeding, whether state or federal and whether voluntary or involuntary; (2) the rejection or disaffirmance of the Lease in any such proceeding; or (3) the cessation from any cause whatsoever of the liability of Tenant under the Lease. The undersigned agrees to pay to Landlord all costs incurred by Landlord in enforcing this Guaranty (including, without limitation, reasonable attorneys' fees and expenses).

This Guaranty shall be binding upon the undersigned and their respective successors and assigns. This Guaranty may be enforced by Landlord or the successors or assigns of Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned guarantor has caused this Guaranty to be executed as of the same date as the Lease.

Vectren Enterprises, Inc.

By: _____

Its: _____

766851
KD3229533

VEC000324

EXHIBIT D

LIST OF SERVICE CONTRACTS

Minnesota Limited, Inc.
 Big Lake Facility
 List of Vendors Supplying Service On A
 Recurring Basis

Vendor	Type of Service	Address	Annual Estimated Cost
Wright Hennepin Security	Monthly security monitoring for building/elevator	PO Box 77027 Minneapolis, MN 55480-7727	500
Pro Building Maintenance	Office cleaning	19810 159th Street NW Elk River, MN 55330	22,000
Duane's Septic Service, LLC	Septic tank removal	10502 31st Place NE St Michael, MN 55376	3,800
Nutri Green	Lawn fertilizer and weed control	2486 Bobolink Road Long Lake MN 55356	3,000
Country Side Pest Control, Inc.	pest control	PO Box 543 Princeton, MN 55371	800
Architect Mechanical, Inc.	Monthly HVAC service	2917 Anthony Lane North St. Anthony MN 55418	15,000
Thyssenkrupp Elevator Corp.	Elevator maintenance	PO Box 933004 Atlanta GA 31193	800
Ditsch Property Management	Lawn service	6076 Meridian Avenue South Montrose MN 55363	7,700
Mineral Service Plus, LLC	Water treatment and pond pump	16409 371st Avenue Grenn Isle MN 55338	1,000
Blue Line Enterprises, Inc.	Landscaping service	6143 10th Street NW Buffalo, MN 55313	5,000
Midwest Landscapes	Irrigation system winterization	6221 Oakwood Avenue NE Otsego MN 55330	400
Total Estimated Annual Operating Costs			60,000

VEC000325

766851
 KD3229533

**Schedule 1.2(a)(ii)
Closing Indebtedness**

Revolving Credit Agreement, by and between Minnesota Limited and M&I Marshall & Ilesley Bank, dated as of October 27, 2010 in the amount set forth in the Payoff Letter provided by M&I Marshall & Ilesley Bank in connection with the Closing.

Minnesota Limited, Nordic Equipment, NPS, Nordic Land
As of 3/30/11

Schedule 1.4 - Preliminary Net Working Capital Schedule

Current Assets	
Cash - Citizens Bank Michigan	\$100,940
Cash - Monarch Community Bank	\$40,000
Accounts receivable	\$16,649,033
Retainage receivable	\$1,102,561
Accrued job revenue	\$4,974,965
Receivable - Other	\$99,788
Receivable from related party	\$0
Prepaid insurance (net)	\$7,591
Employee Advances	\$11,825
Other Prepaid Expenses	\$200,509
Costs & Est. Profits in excess of billings (est)	\$0
Total current assets	\$25,187,212

Current Liabilities	
Accounts payable - Trade	\$2,619,298
Accounts payable - Subcontract	\$586,350
Accrued Payroll Payable	\$799,340
Reserve - Loss on Fixed Contract	\$0
Accrued Closed Job Costs	\$482,465
Accrued Union Fringes Payable	\$112,764
Other accrued expenses	\$47,485
Accrued real estate taxes	\$303,983
Sales/Use Tax Payable	\$39,849
Workers Compensation Payable	\$348,423
General Liability Insurance Payable	\$0
Billings in Excess of Costs and Profits	\$1,177,691
Other payroll withholdings	\$0
Accrued Payroll Taxes	\$24,194
Payroll Tax Withholdings	\$14,207
Vacation payable	\$80,259
Total current liabilities	\$6,636,308

Preliminary Net Working Capital	\$16,550,904
Target Working Capital	\$6,200,000
Excess Working Capital	\$10,350,904

1. Accrued payroll balance includes estimated payroll for the period of 3/28 to 3/31, along with employer payroll taxes and union fringes. Net payroll for PPE 3/27 that was paid out on 4/1 was funded separately from this schedule as a final settlement of the bank account before closing on 3/31. Employee deductions, payroll taxes and union fringes for this period are reflected in this balance

2. An estimated accrued liability of \$8,485 is reflect here for Michigan personal property taxes. The actual tax is not calculated by the state until June 2011

3. This balance includes a estimated liability for the MinnCan warranty claim of \$282,465. The remainder of balance is an estimate for punch list items for jobs initially performed in 2010

The insurance premium for the workers compensation stop/loss policy that expires on 3/31/11 was amortized on a straight-line basis. An insurance audit will be performed in April 2011 to ascertain whether an additional premium will be owed or refunded. The April audit will also audit the premium for the general liability policy and auto. A estimated prepayment nor liability is reflected in this schedule

VEC000327

**Schedule of
Other Excluded Liabilities**

The Sellers shall collectively have the exclusive right to exercise, resolve and control, each at their own expense, all of the Excluded Liabilities set forth below (the "Other Excluded Liabilities") (including the right to settle or otherwise terminate any contest with respect thereto), including without limitation, the handling, disposition and/or settlement of any and all issues and Proceedings related thereto, and Buyer shall reasonably cooperate with Seller upon the reasonable request of Sellers with respect thereto. The Sellers and Buyer shall keep the other parties reasonably informed of the status of the settlement and status of the Other Excluded Liabilities. With respect to Item 2 of the Other Excluded Liabilities, the Sellers shall provide to Buyer at least 15 days' advance notice of its intent to initiate a Proceeding against Northern Border Pipeline or TransCanada Keystone Pipeline, LP, an affiliate of Northern Border Pipeline, to recover or finally determine such Other Excluded Liability. Upon receipt of such notice, Buyer shall have 15 days to determine if it desires to assume such Other Excluded Liability, in which case Buyer shall assume the full amount of such Other Excluded Liability and Sellers shall be fully and finally released from any liability related thereto. If Buyer determines not to assume such Other Excluded Liability, it shall retain the right to such assumption during the pendency of the Proceeding, and upon such assumption, shall pay the full amount sought by Sellers with respect to such Proceeding. Upon proper assumption by Buyer of such Other Excluded Liability, Sellers and Buyer shall execute additional documents as required to fully transfer its rights with respect to such Other Excluded Liability and Proceeding, if applicable, which documents shall include indemnification of Sellers by Buyer with respect thereto. Buyer acknowledges that the Excluded Liabilities shall not be a part of the Preliminary Net Working Capital or Closing Net Working Capital, and Buyer waives any and all claims that the Excluded Liabilities are required to be a part thereof, whether on the basis of GAAP or any other basis.

The following are additional Excluded Liabilities:

1. Those matters specifically set forth in a Notice of Intent to Levy dated February 7, 2011, sent by the IRS to Minnesota Limited, claiming that Minnesota Limited owes an aggregate of \$65,799.77 in unpaid federal Taxes for the Tax Period ending September 30, 2010.
2. Those matters specifically set forth in the letter dated October 28, 2010, sent by Northern Border Pipeline to Minnesota Limited, related to invoices that Minnesota Limited issued to Northern Border Pipeline between April 2007 and December 2009; *provided, however*, that in connection with the settlement of such matters, if such payment made by Minnesota Limited in connection with the foregoing matter is deductible for income tax purposes, Sellers shall be obligated to pay only 59.475% of such amounts to Minnesota Limited.

Schedule 7.1(e)(ii)

MINNESOTA LIMITED/NORDIC EQUIPMENT SALE
SALE PRICE ALLOCATION

TOTAL SALE PRICE 80,000,000

ALLOCATION OF SALE PRICE

MLI EQUIPMENT	18,240,400
NORDIC EQUIPMENT	16,596,603
MLI WORKING CAPITAL	6,200,000
GOODWILL	38,962,997

TOTAL 80,000,000

NOTES:

1. GOODWILL IS ASSUMED ALL MINNESOTA LIMITED GOODWILL
2. VALUES PER SCHEDULE PROVIDED BY MANAGEMENT

EXECUTION VERSION

Part 4.21
Labor Relations; Compliance

In or about September 2008, Charles Adams, a former employee of Minnesota Limited, commenced an action against Minnesota Limited alleging violations of, among other things, Title VII and the Minnesota Human Rights Act. This dispute was settled pursuant to a Confidential Settlement Agreement & Release, dated as of February 17, 2009.

In or about September 2008, Calvin Larson, a former employee of Minnesota Limited, alleged he was owed \$19,635 from Minnesota Limited as a result of not being paid for five hours of work on Tuesday, June 24, 2008. Minnesota Limited disputed Mr. Larson's claim, and in or about June 2009, offered to settle such claim for approximately \$500, which was not accepted. Minnesota Limited has not recently heard from Mr. Larson and it has been advised that his claim is currently barred by the statute of limitations.

The Seller Group receives informal threats of employee grievances from time to time, which are not recorded by the Seller Group.

Seller Group utilizes independent contractors from time to time that may be considered employees of Seller Group.

In connection with the DEED audit of Minnesota Limited regarding unemployment tax for the calendar year 2005, DEED classified Steve Kuledge as an employee of Minnesota Limited, when Minnesota Limited classified him as a subcontractor.

The disclosures set forth in Part 4.12 are incorporated herein.

EXECUTION VERSION

Part 4.22
Intellectual Property

(a) Intellectual Property – Title

Minnesota Limited has a pending application for the mark: Minnesota Limited, Inc.

Minnesota Limited uses the following unregistered Trademark:



Minnesota Limited is the registrant of the following domain names:

www.mnlimited.com
www.nordicpipeline.com

The Seller Group uses the following trade names:

Minnesota Limited, Inc.
Nordic Equipment, LLC
Nordic Pipeline Services LLC
Nordic Land Bemidji, LLC
Nordic Land Altamont, LLC
Minn Limited, Inc.
Minnesota Limited Pipeline Contractors, Inc.

The Seller Group owns unregistered Copyrights in various material produced by or for such entities, including, without limitation, manuals, pamphlets, and websites.

Seller Group uses a custom database for equipment management and transportation, which uses a Microsoft Access program.

Seller Group uses a custom database for safety department, which uses a Microsoft Access program.

Seller Group uses a Bid Estimator, which is a SQL database.

Seller Group uses an Estimating Template, which uses Microsoft Excel.

The disclosures set forth in Part 4.22(c) are incorporated herein.

(c) Intellectual Property - Licensing Arrangements

Master Software License Agreement, Contract No. 6144, by and between Viewpoint Construction Software, and Minnesota Limited, dated as of April 6, 2009, including the corresponding Addendum to Master Software License Agreement, dated as of March 31, 2009.

EXECUTION VERSION

Subscriber Service Agreement, by and between Guardian Global Technologies, Inc. (including its affiliate XacTrac), and Minnesota Limited, dated as of January 12, 2009.

The Seller Group uses the following vendors for the purposes listed below:

Name of Vendor	Purpose
CDW Direct	Software licensing
Kenison Technical Services, Inc.	Programming/customizing Crystal Reports
Atlanta Information Technology Services	Data conversion consultant
Netrix IT	Microsoft windows server consultant
Sage Software	Fixed asset management software licensing
Cloudnet, Inc.	DNS & Website hosting
JJ Keller & Associates	DOT compliance software licensing/support
Securance	E-mail spam filter service
Ziegler	CAT SIS web-based software license/support
FAS Software	Depreciation
Timberline Accounting Software	Accounting

The Seller Group uses the following Software for the purposes listed below:

Software Title	Purpose
Keri System	Keycard Access Software
Websense	Internet Filtering
Microsoft Licensing	Terminal Server, SQL, Exchange, Windows, Office, Project, Visio, Streets and Trips, CALs
Crystal Reports Server	1 License
Crystal Reports Client Software	3 Licenses
Kaspersky Antivirus	Antivirus and Administrative Kit
Blackberry Enterprise Server	BES Server
JJKellerScan	Driver Log Scanning Software
JJKeller Log Checker	Driver Log Software
Viewpoint Software Assurance	ERP
SourceOne	Email Archive
Microsoft Visio Standard 2007	3 Boxed Versions
Microsoft Visio Pro 2007	1 Boxed Version
AutoCad 2009	2 Licenses
AutoCAD LT 2009	1 License
Oracle Primavera Contractor	2 Boxed Versions
Symantec Ghost	Imaging Software
CA Brightstor Backup	Backup Software
Exclaimer Signature Manager	Email Signature Software
WSUS	Microsoft Patches
NetWrix Password Expiration Notifier	Password Expiration Notifying Software
Sage FAS	Fixed Asset Software
Xactrac	Webhosted GPS Software
Access Databases for Equipment and Safety	
BidEstimator	Custom.NET Estimating Software

EXECUTION VERSION

Management Reporter	Financial Reporting Bundled with Viewpoint
Sage Timberline	Old ERP Software
Delorme	Multiple Boxed Versions in the Field
Snagit	10 Licenses
Adobe Acrobat	6 Licenses
SSL Certificates for vpn.mnlimited.com and mail.mnlimited.com	
Adobe Create Suite 3 Web Premium	1 Boxed License

The Seller Group has the following support commitments:

Websense
 SonicWall
 GoToAssist
 SourceOne
 Watchguard Firewall
 Watchguard Edge Devices
 Sage FAS Software
 BES Support
 Cisco Service Agreements (router and 3 switches)

The Seller Group utilizes the following services for the purposes listed below:

Name of Vendor	Purpose
Iron Mountain	Offsite Tape Storage
Cloudnet	External DNS Hosting and Website Hosting (mnlimited.com and nordicpipeline.com)
Securance	Spam Filtering for Both Domains

The Seller Group has the following subscriptions:

DNSStuff.com
 ISNetworld

The Seller Group uses various "shrink wrap" Software.

EXECUTION VERSION

Part 4.23
Customers

<u>Customer</u>	<u>2009 Revenue (in thousands)</u>
Northern Natural Gas Company	\$35,410
EB Enbridge	\$29,405
Consumers Energy Company	\$22,272
EN Enbridge	\$12,682
Minnesota Pipeline Company, LLC	\$12,608
Alliance Pipeline L.P.	\$2,098
BP	\$1,320
Spearhead	\$638
Kinder Morgan Operating L.P. "A"	\$613
Viking Gas Transmission Company	\$583

<u>Customer</u>	<u>2010 Revenue</u>
Enbridge Energy Partners	\$38,444,386
Northern Natural Gas Company	\$28,170,614
Consumers Energy Company	\$17,774,842
Minnesota Pipeline	\$11,185,683
Enbridge Pipelines ND	\$3,862,360
CenterPoint Energy	\$3,018,277
BP Pipelines North America	\$1,518,491
Florida Gas Transmission	\$1,190,516
Lake Superior Consulting	\$995,389
Koch Pipeline Company	\$991,769

EXECUTION VERSION

Part 4.24
Product Warranty

Minnesota Limited received an aggregate of three letters regarding warranty claims from Minnesota Pipe Line Company, LLC, dated May 8, 2009, July 15, 2009, and September 15, 2009. The claims related to seven locations that required pipeline lowering. As of the date hereof, Minnesota Limited has completed all work to settle such claims with the exception of the installation of a 700-800 foot pipeline, which is currently scheduled to occur in the spring of 2011. Minnesota Limited expects the costs of this installation to be approximately \$282,465. Minnesota Limited has not included any owned equipment expenses or overhead costs to complete such work or in the calculation of such reserve. The parties have agreed that such treatment is appropriate and will apply to the remaining work. With respect to the remaining work to be completed, the Buyer agrees that no charges related to equipment expenses or related labor and other related overhead costs shall be charged against Minnesota Limited with respect to operation of equipment owned by Minnesota Limited.

Minnesota Limited received a letter, dated December 20, 2010, from Koch Companies Public Sector, LLC, alleging Minnesota Limited performed defective work in connection with that certain Intermittent Services Agreement #950019 and Scope of Work Agreement dated November 5, 2010, between Minnesota Limited and Koch Pipeline Company, L.P. ("KPL"), and that KPL will be looking to Minnesota Limited to recover any and all loss, damage, or expense KPL has incurred or may thereafter incur arising out of the performance of defective work. Minnesota Limited believes that its applicable insurance policies will cover these claims if the subcontractor that performed this work does not. The cost of deductibles related to such insurance policies may be \$1,000 or \$100,000, depending upon which insurance policy may apply, if any.

Minnesota Limited routinely receives requests to complete "punch-list" type work, but does not consider such requests to be warranty claims. As of the date hereof, the estimated cost for such work is \$482,465, including the warranty claims of Minnesota Pipe Line Company set forth above.

EXECUTION VERSION

Part 4.25
Bank Accounts

(b) Bank Accounts

Company Name	Financial Institution	Type of Account	Account Number	Signatory Authority
Minnesota Limited	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	██████████	Christopher Leines Paulette Britzius Glenn Furman
Minnesota Limited	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Overnight; Investment Sweep	██████████	N/A
Minnesota Limited	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Draft Checking	██████████	Christopher Leines Paulette Britzius Glenn Furman
Minnesota Limited	Monarch Community Bank 375 North Willowbrook Road Coldwater, MI 49036	Checking	██████████	Christopher Leines Paulette Britzius
Minnesota Limited	Citizens Bank 328 South Saginaw Street Flint, MI 48502	Checking	██████████	Christopher Leines Dale Britzius
Nordic Pipeline	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	██████████	Christopher Leines Paulette Britzius Glenn Furman
Nordic Equipment	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	██████████	Christopher Leines Paulette Britzius Glenn Furman
Nordic Bemidji	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	██████████	Christopher Leines Paulette Britzius Glenn Furman
Nordic Altamont	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	██████████	Christopher Leines Paulette Britzius Glenn Furman

To the extent not otherwise restricted by the Agreement, the Company will distribute to the Sellers amounts equal to the aggregate amounts in each of the checking and draft checking accounts set forth above at or prior to the Closing, except with respect to those accounts set forth on the Preliminary Net Working Capital Schedule as "current assets."

EXECUTION VERSION

Part 4.26
Affiliated Party Transactions

Minnesota Limited leases real property from the Leines Family Limited Partnership, pursuant to a Lease Agreement (Big Lake Storage Facility), dated as of September 1, 2009. Such lease has been terminated immediately prior to Closing.

Minnesota Limited leases the Property from Nordic Superior, pursuant to a Lease Agreement dated as of January 1, 2005. Such lease has been terminated immediately prior to Closing.

Dale Britzius, an immediate family member of the Sellers, has indicated that he plans to continue his employment with the Seller Group in a reduced capacity to ensure that, upon the termination of Mr. Britzius' employment, (i) Minnesota Limited has proper personnel in place at the time of to continue to hold those Governmental Authorizations set forth in Part 4.1 of the Disclosure Letter, and (ii) that certain Certified Specialty Contractor, issued by State of Florida Department of Business and Professional Regulation Construction Industry Licensing Board, dated July 22, 2010, in the name of Mr. Britzius, may be transferred to Minnesota Limited, or Minnesota Limited is able to qualify to for a similar Governmental Authorization permitting it to conduct similar operations in the State of Florida as Minnesota Limited currently conducts.

The GMT Lawsuit was transferred from Minnesota Limited to Nordic Enterprises, LLC in exchange for membership interests in Nordic Enterprises, LLC. Immediately prior to the Closing, Minnesota Limited distributed such membership interests to the Sellers.

EXECUTION VERSION

(j) The Seller Group has not properly accrued vacation time as required by GAAP. Seller Group estimates that the current accrued amount for 2010 is approximately \$80,259. Seller Group has begun accruing such vacation time.

In January 2010, Minnesota Limited started using a new accounting software, Viewpoint.

(k) None, other than as set forth in this Part 4.16.

EXECUTION VERSION

**Part 4.17
Contracts**

(a)

- (i) Minnesota Limited is a party to the following Contracts that have an amount payable to it in excess of \$100,000 in the next twelve months:

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
Centerpoint Energy – Illinois Gas Transmission Company	Pipeline Construction Contract	August 1, 2010	N/A	FP
Enbridge Energy, Limited Partnership	Work Order and Field Purchase Order	June 30, 2010	JHP 19134-2010	FP
Florida Gas Transmission Company, LLC	Capital Construction Agreement	July 13, 2010	CCA-FGT-50282	FP
Koch Pipeline Company L.P.	Scope of Work Agreement	November 5, 2010	N/A	FP
Northern Natural Gas Company	Capital Construction Agreement	November 8, 2010	CCA-179-2010-7075	FP

- (ii) Member Agreement, by and between Minnesota Limited and Celco Partnership (on behalf of itself and its controlled and/or managed affiliates doing business as Verizon Wireless), dated as of December 12, 2008.

The Leases.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

- (iii) Minnesota Limited is a party to the following Contracts that resulted in payments to it in excess of \$100,000 and that have a written warranty period that expires on the dates set forth below:

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Centerpoint Energy – Illinois Gas Transmission Company	Pipeline Construction Contract	August 1, 2010	N/A	12/2011
Consumers Energy Company	Contract	March 19, 2009	GTSE-RJD-08.053	11/2011
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on August 6, 2009	August 14, 2008	0730272000-02-SL-CLS	9/2013
Enbridge Energy Limited Partnership	Agreement, as amended on September 8, 2009	August 14, 2008	0791243100-01-AC-CLS	7/2013
Enbridge Energy Limited Partnership	Agreement, as amended on September 10, 2009	October 10, 2008	0791243100-02 AC-DRS	6/2013
Enbridge Pipelines (North Dakota) LLC	Agreement	November 3, 2008	0790401121-07 SICIM	10/2013
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	December 4, 2008	WBH-07127-08	6/2012
Enbridge Energy Limited Partnership	Agreement	December 12, 2008	0691218A101-06 SA-DS-MBS	6/2012

EXECUTION VERSION

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-VP-01	11/2012
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-DN-01	11/2012
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-AM-01	12/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order, and corresponding letter dated March 9, 2009	March 9, 2009	WBH-07181-09	10/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	March 9, 2009	WBH-07173-09	12/2012
Enbridge Pipelines (North Dakota) LLC	Agreement	March 16, 2009	0790401121-11 MSM	9/2012
Enbridge Pipelines (North Dakota) LLC	Agreement	April 17, 2009	0790401121-12 BLSM	12/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	May 7, 2009	WBH-07285-09	10/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	July 10, 2009	WBH-07326-09	12/2012
Enbridge Energy Limited Partnership	Amendment	September 8, 2009	Amendment to 0791243100-03 AC-VS	7/2013
Enbridge Energy, Limited Partnership	Work Order Contract	January 27, 2010	WSA-20759-10	1/2013
Enbridge Energy, Limited Partnership	Work Order Contract	February 2, 2010	WSA-20758-10	1/2013
Enbridge Energy, Limited Partnership	Work Order and Field Purchase Order	June 30, 2010	JHP 19134-2010	10/2013
Enbridge Pipelines (North Dakota) LLC	Letter of Intent Berthold Trap Modifications Mechanical, Berthold, North Dakota 2010 Construction	October 7, 2010	N/A	12/2013
Florida Gas Transmission Company, LLC	Capital Construction Agreement	July 13, 2010	CCA-FGT-50282	1/2013
Koch Pipeline Company L.P.	Scope of Work Agreement	November 5, 2010	N/A	6/2012
Marathon Petroleum Company LLC	Job Order	August 11, 2010	2010-581314-Min-001	12/2011
Northern Natural Gas Company	Capital Construction Agreement	September 22, 2008	CCA-179-2008-6098	12/2011
Northern Natural Gas Company	Capital Construction Agreement	January 29, 2009	CCA-179-2009-6187	10/2012
Northern Natural Gas Company	Capital Construction Agreement	February 16, 2009	CCA-179-2009-6202	6/2011
Northern Natural Gas Company	Capital Construction Agreement	July 24, 2009	CCA-179-2009-6495	9/2011
Northern Natural Gas Company	Work Offer	September 8, 2009	GSMA-179-2009-6237 Work Offer No. 1216	10/2011

EXECUTION VERSION

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Northern Natural Gas Company	Work Order	October 14, 2009	GSMA-179-2009-6237 Work Offer No. 1495	10/2011
Northern Natural Gas Company	Work Order	October 21, 2009	GSMA-179-2009-6237 Work Offer No. Willmar Projects	12/2011
Northern Natural Gas Company	Work Offer	May 7, 2010	GMSA-179-2009-6237 Work Offer No. 2407	12/2012
Northern Natural Gas Company	Capital Construction Agreement	May 10, 2010	CCA-179-2010-6840	11/2012
Northern Natural Gas Company	Capital Construction Agreement	August 9, 2010	CCA-179-2010-6949	12/2012
Northern Natural Gas Company	Capital Construction Agreement	August 23, 2010	CCA-179-2010-6965	11/2012
Northern Natural Gas Company	Capital Construction Agreement	September 13, 2010	CCA-179-2010-6987	11/2012
Northern Natural Gas Company	Capital Construction Agreement	September 13, 2010	CCA-179-2010-6989	11/2012
Northern Natural Gas Company	Work Offer	October 4, 2010	GSMA-179-2009-6237 Work Offer No. 3363	11/2012
Northern Natural Gas Company	Capital Construction Agreement	October 11, 2010	CCA-179-2010-7026	11/2012
Northern Natural Gas Company	Capital Construction Agreement	November 8, 2010	CCA-179-2010-7075	5/2013
Northern Natural Gas Company	Work Offer	N/A	GSMA-179-2009-6237 Work Offer No. 1074	7/2011
Northern Natural Gas Company	Work Offer	N/A	GSMA-179-2009-6237 Work Offer No. 1268	9/2011

- (iv) Revolving Credit Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010, and each Loan Document, as defined in such agreement, including:

Amended and Restated Revolving Note No. 1, issued by Minnesota Limited to M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Revolving Note No. 2, issued by Minnesota Limited to M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Security Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Limited Personal Guaranty, by Christopher Leines to M&I Marshall & Ilsley Bank, dated as of October 27, 2010.

EXECUTION VERSION

Limited Personal Guaranty, by Paulette Britzius to M&I Marshall & Ilsley Bank, dated as of October 27, 2010.

Clean Irrevocable Letter of Credit No. SB 56769, issued by M&I Marshall & Ilsley Bank, with The Travelers Indemnity Company as the beneficiary and Minnesota Limited as the applicant, dated as of May 28, 2010.

The foregoing items will be terminated effective as of the Closing.

Master Loan Agreement, by and between Nordic Equipment and U.S. Bancorp Equipment Financing, dated as of February 20, 2008, and each Schedule thereunder, as defined in such agreement, including:

Schedule Number 893367-AFS, dated as of February 29, 2008

Schedule Number 893367-AFS, dated as of November 11, 2008

Schedule Number 893367-AFS, dated as of December 10, 2008

Loan Contract – Security Agreement, by and between Minnesota Limited and John Deere Construction & Forestry Company, dated as of April 27, 2010.

Wright Express Business Charge Account Agreement, by and between Minnesota Limited and Wright Express Financial Services Corporation, as amended by that certain Wright Express Tailored Fee Schedule dated December 27, 2006, and by that certain Amendment dated December 27, 2006.

The Seller Group has Contracts related to credit cards and other products or services for which Seller Group pays in arrears, for which there are no reserves on the financial statements.

- (v) The Contracts set forth in Part 4.6 are incorporated herein.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

Lease Agreement, by and between Minnesota Limited and IKON Financial Services, dated as of July 28, 2010, and the corresponding Additional Equipment Addendum, Equipment Removal Authorization, Work Order-US, Sales Order/Service Order, Master Maintenance and Sale Agreement, and Bill of Sale and Assignment, each dated as of July 28, 2010.

Minnesota Limited leases personal property from third parties from time to time in the ordinary course of business. Such leases may result in Minnesota Limited making aggregate annual payment of greater than \$26,000, but such leases are generally on a month-to-month basis (or shorter timeframe) and the payments are based on the amount of time Minnesota Limited uses such personal property. Therefore, it is uncertain as to whether Minnesota Limited will have to make aggregate annual payments of greater than \$26,000 under any such lease.

- (vi) The Contracts set forth in Part 4.22 are incorporated herein.

Field Services Agreement (Multiple Work Order), by and between Minnesota Limited and Alliance Pipeline L.P., dated as of October 1, 2009.

EXECUTION VERSION

Major Service Contract, by and between Minnesota Limited and Marathon Petroleum Company LLC, dated as of April 2, 2006.

Construction Services Agreement, by and between Minnesota Limited and Alliance Pipeline L.P., dated as of September 1, 2009.

Minnesota Limited has the following oral Contracts with the following Persons:

Dennis Anderson

Mr. Anderson does consulting in Minnesota Limited's Compliance department assisting its compliance director. Mr. Anderson's daily billing rate is \$500 and works 4 days a week. Mr. Anderson bills Minnesota Limited semi-monthly and is reimbursed for his business-related expenses. He has been a consultant for Minnesota Limited since April of 2008. In March 2011, Minnesota Limited informed Mr. Anderson that his services were no longer needed at the frequency in which he had been engaged previously. It is currently anticipated that Mr. Anderson may continue to provide consulting to Minnesota Limited in the future, but in a reduced capacity.

Tom Poe

Mr. Poe started consulting with Minnesota Limited in May 2009 as a process reengineer and has performed process assessments in the equipment/transportation, finance/accounting and operations department. He is currently assisting Minnesota Limited with implementing a costing system in our equipment department, as well as assisting with implementing Viewpoint's equipment module. Mr. Poe is also assisting in implementing a formal budgeting process/plan for 2011. He invoices Minnesota Limited on an hourly basis of \$100 per hour and averages 30 to 35 hours a week.

Atlanta Information Technology Services (Tim Denison)

Mr. Denison does data conversion for Minnesota Limited. He handled the conversion of data from Timberline (old accounting system) to Viewpoint at the beginning of 2010 when Minnesota Limited went live with the new system. Mr. Denison's services are still needed when data needs to be reconfigured within Viewpoint. He invoices Minnesota Limited on an hourly basis at \$195 per hour. He currently is able to access Minnesota Limited's software system via VPN.

Kenison Technology Services, Inc. (KTSI)

KTSI does Crystal Reports custom report programming for Minnesota Limited. Crystal Reports is the reporting program platform for Viewpoint. KTSI's hourly billing rate is \$100. KTSI is based out of Butte, Montana and have access to Minnesota Limited's accounting system via VPN connection.

Rick Volz & Associates

Minnesota Limited engages Rick annually to perform a desktop appraisal of its off-road equipment and transportation fleet. Appraisal fees range from \$2,000 to \$3,000.

- (vii) National Pipe Line Agreement, by and between the Pipe Line Contractors Association and the International Brotherhood of Teamsters, for the period November 1, 2005 to January 31, 2011. (By letter of August 16, 2010, Minnesota Limited notified the Union of its intent to terminate the Agreement on January 31, 2011).

EXECUTION VERSION

National Pipe Line Agreement, by and between the Pipe Line Contractors Association and The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, for the period November 1, 2005 to December 31, 2010. (By letter of August 16, 2010, Minnesota Limited notified the United Association of its intent to terminate the Agreement on December 31, 2010).

National Pipe Line Agreement, by and between the Pipe Line Contractors Association and the International Union of Operating Engineers, for the period November 1, 2005 to January 31, 2011. (By letter of August 16, 2010, Minnesota Limited notified the Union of its intent to terminate the Agreement on January 31, 2011).

National Pipe Line Agreement, by and between the Pipe Line Contractors Association and the Laborers' International Union of North America, for the period November 1, 2005 to January 31, 2011. (By letter of August 16, 2010, Minnesota Limited notified the Union of its intent to terminate the Agreement on January 31, 2011).

National Distribution Pipeline Agreement, by and between the Distribution Contractors Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, for the period November 16, 2009 to May 31, 2015.

Agreement, between MCAA of East Central Illinois and Local Union Number 65 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, for the period June 16, 2009 through June 15, 2011.

National Distribution and Utilities Construction and Maintenance Agreement, by and between the Distribution Contractors Association and the International Union of Operating Engineers (Local No. 49), for the period June 1, 2008 to May 31, 2012.

Commercial Agreement with Lakes and Plains Regional Council of Carpenters & Joiners of Minnesota, North Dakota, South Dakota, & Parts of Wisconsin, Local 361, for the period ending April 30, 2009. Minnesota Limited sent a letter dated February 18, 2011 to Local 361 notifying Local 361 that Minnesota Limited was terminating the agreement upon the expiration thereof, on April 30, 2011.

National Distribution Pipeline Agreement, by and between the Distribution Contractors Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (AFL-CIO) (Local #15), for the period November 16, 1999 to November 15, 2004.

Working Agreement, by and between the Minnesota Mechanical Contractors Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local No. 455, for the period May 1, 2008 through April 30, 2011.

Standard Labor Agreement, by and between Western Lake Superior Plumbing Contractors Association and Plumbers and Steamfitters Local No. 11, for the period May 6, 2002 through April 30, 2005.

National Distribution Agreement, by and between the Distribution Contractors Association and the Laborers' International Union of North America, for the period June 1, 2010 to May 31, 2015.

EXECUTION VERSION

Building, Heavy and Municipal/Utilities Construction Master Agreement Area II, between Associated General Contractors of Wisconsin, Inc. and the AGC Municipal/Utilities Division and the International Union of Operating Engineers, Local Union No. 139, for the period June 1, 2008 to May 31, 2011. (By letter of March 1, 2011, Minnesota Limited sent notification of its intent to terminate the Agreement on May 31, 2011).

- (viii) See attached forms.
- (ix) Minnesota Limited has recently orally agreed with Barnard Construction Co., out of Bozeman Montana, to submit a bid to install certain pipeline spreads for TransCanada's Keystone Phase IV 36" pipeline in the state of Montana. Minnesota Limited's share of the work could either be a 65 mile spread or 75 mile spread, but not both. If awarded the bid, the project is anticipated to start in 2012.
- (x) The disclosures set forth in Part 4.17(a)(vii) are incorporated herein.

Confidential Document Destruction Service Agreement, by and between Minnesota Limited and Randy's Sanitation Document Destruction Division, dated as of March 26, 2008.

Agreement for Supply of G&K Services, by and between Minnesota Limited and G&K Services, dated as of February 26, 2010.

Field Services Agreement (Multiple Work Order), by and between Minnesota Limited and Alliance Pipeline L.P., dated as of October 1, 2009.

Master Supply Agreement – Field Services, by and between Minnesota Limited and TransCanada Keystone Pipeline, LP, dated as of March 15, 2010.

Master Services Agreement, by and between Minnesota Limited and Ledcor Industrial Maintenance Inc., dated as of April 1, 2009.

Major Service Contract, by and between Minnesota Limited and Marathon Petroleum Company LLC, dated as of April 2, 2006.

Construction Services Agreement, by and between Minnesota Limited and Alliance Pipeline L.P., dated as of September 1, 2009.

Certain of the Contracts set forth in this Part 4.17 restrict such member of the Seller Group that is a party thereto from using sub-contractors or hiring the employees of the other party with respect to such Contracts.

- (xi) None.
- (xii) None.
- (xiii) The Contracts set forth in Part 4.17(a)(i) and (a)(ii) are incorporated herein.
- (xiv) Pursuant to that certain Master Loan Agreement, by and between Nordic Equipment and U.S. Bancorp Equipment Finance, Inc., dated as of February 20, 2008, Nordic Equipment appointed U.S. Bancorp Equipment Finance, Inc. as attorney-in-fact for the matters described therein.

EXECUTION VERSION

Pursuant to that certain Power of Attorney and Declaration of Representative, on Form 2848, dated as of August 16, 2010, Minnesota Limited appointed Seazon Herezi-Vozz and Glenn Furman as attorneys in fact to represent Minnesota Limited before the Internal Revenue Service with respect to employment Taxes on Form 941 for the tax year ending 2010.

Pursuant to that certain General Agreement of Indemnity, by and between Minnesota Limited and Travelers Casualty and Surety Company of America, dated as of April 26, 2005, under which bonds were issued and are currently outstanding, Minnesota Limited appointed Travelers Casualty and Surety Company of America, St. Paul Fire and Marine Insurance Company, and its affiliates and successors and assigns, as attorney in fact for the matters described therein.

Pursuant to the Zurich Agreement, Minnesota Limited appointed Surety (as defined therein) as its attorney-in-fact for the matters described therein.

- (xv) Minnesota Limited is a party to the following master services agreements:

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
Alliance Pipeline L.P.	Field Services Agreement (Multiple Work Order)	October 1, 2009	02 LEG 23 5814 00	T/M
Chicago Pipe Line Company	Master Services Agreement	May 22, 2006	CHI-2006MSA002	T/M
EOG Resources, Inc.	Master Service Contract	April 1, 2009	N/A	T/M
Great Lakes Gas Transmission Limited Partnership	Agreement, as amended on October 12, 2009	June 10, 1996	N/A	T/M
Great Lakes Transmission Limited Partnership	Agreement, as amended on October 12, 2009	October 1, 2003	N/A	T/M
Guardian Pipeline, L.L.C.	Blanket Work Order	July 31, 2010	ENTMSA-226-2009-7587-7	T/M
Integrus Business Support, LLC	Contractor Agreement	August 11, 2008	08IBS-0003-TJK	T/M
Kinder Morgan Operating L.P. "A"	General Services Agreement	May 6, 2010	23866	T/M
Koch Refining Company	Field Services Agreement, as amended by letter agreement dated September 14, 2010	April 10, 1995	3074	T/M
Koch Pipeline Co., L.P., Koch Fertilizer Storage & Terminal, Koch Hydrocarbon Co., Koch Nitrogen Co., and Koch Service, Inc.	Intermittent Services Agreement, as amended pursuant to letter agreements dated, February 27, 1997, December 11, 2001, March 25, 2002, March 10, 2004, June 27, 2005, October 21, 2005	November 9, 1995	N/A	T/M
Marathon Petroleum Company LLC	Major Service Contract	April 2, 2006	MS06SP13	T/M
Northern Natural Gas Company	General Services and Maintenance Agreement	March 16, 2009	GSMA-179-2009-6237	T/M

EXECUTION VERSION

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
ONEOK Partners Intermediate Limited Partnership	Master Service Agreement	April 1, 2009	ENTMSA-226-2009-7587	T/M
Panhandle Eastern Pipe Line Company, LP; Trunkline Gas Company, LLC and Pan Gas Storage, LLC, d/b/a Southwest Gas Storage Company	General Services and Maintenance Agreement	July 23, 2008	GSMA-PE-23041	T/M
TransCanada Keystone Pipeline, LP by its agent TC Oil Pipeline Operations, Inc.	Master Supply Agreement – Field Services	March 15, 2010	8102	T/M
Viking Gas Transmission Company	Blanket Work Order	June 17, 2010	ENTMSA-226-2009-7587-5	T/M
Ledcor Industrial Maintenance Inc.	Master Service Agreement	April 23, 2010	US 2005-2	T/M
Natural Gas Pipeline Company of America	General Services Agreement	August 13, 2007	07GA69571LKW	T/M
Midwestern Gas Transmission Company	Blanket Work Order	July 31, 2010	ENTMSA-226-2009-7587-8	T/M

Nordic Pipeline is a party to the following master agreements:

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
Northern Natural Gas Company	General Services and Maintenance Agreement	May 1, 2009	GSMA-179-2009-6354	T/M
TransCanada Northern Border Inc.	General Services and Maintenance Agreement, as amended by Amendment #1, dated April 1, 2007	April 1, 2007	GSMA-210-2007-5515	T/M
CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas	Construction Agreement	April 1, 2009	N/A	T/M

- (xvi) The amendments, supplements and modifications set forth in Part 4.17(a) above, and the change orders with respect to Minnesota Limited attached hereto.

Change Order No. 10-01 SAP Contract 4600021745 requested March 18, 2010 by and between CenterPoint Energy and Nordic Pipeline.

- (b) The disclosures set forth in Part 4.2 are incorporated herein.

Minnesota Limited leases real property from the Leines Family Limited Partnership, pursuant to a Lease Agreement (Big Lake Storage Facility), dated as of September 1, 2009. Such lease has been terminated immediately prior to Closing.

EXECUTION VERSION

Minnesota Limited leases the Property from Nordic Superior, pursuant to a Lease Agreement dated as of January 1, 2005. Such lease has been terminated immediately prior to Closing.

The Leases among members of the Seller Group.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

Pursuant to that certain General Agreement of Indemnity, by and between Minnesota Limited and Travelers Casualty and Surety Company of America, dated as of April 26, 2005, under which bonds were issued and are currently outstanding, the Contemplated Transactions are deemed to be a default under such agreement. Pursuant to a letter to Minnesota Limited dated March 15, 2011, Travelers Casualty and Surety Company of America waived the foregoing default provision with respect to the Contemplated Transactions.

Limited Personal Guaranty by Christopher Leines to M&I Marshall & Ilsley Bank, dated as of October 27, 2010, which shall be terminated effective as of the Closing.

Limited Personal Guaranty by Paulette Britzius to M&I Marshall & Ilsley Bank, dated as of October 27, 2010, which shall be terminated effective as of the Closing.

Each Seller may become subject to an obligation or liability under the Zurich Agreement.

Each Seller may become subject to an obligation or liability under that certain U.S. Bank FlexPerks Business Travel Rewards Visa Agreement, dated effective as of December 30, 2010.

(c)

Minnesota Limited received an aggregate of three letters regarding warranty claims from Minnesota Pipe Line Company, LLC, dated May 8, 2009, July 15, 2009, and September 15, 2009. The claims related to seven locations that required pipeline lowering. As of the date hereof, Minnesota Limited has completed all work to settle such claims with the exception of the installation of a 700-800 foot pipeline, which is currently scheduled to occur in the spring of 2011. Minnesota Limited expects the costs of this installation to be approximately \$282,465. Minnesota Limited has not included any owned equipment expenses or overhead costs to complete such work or in the calculation of such reserve. The parties have agreed that such treatment is appropriate and will apply to the remaining work. With respect to the remaining work to be completed, the Buyer agrees that no charges related to equipment expenses or related labor and other related overhead costs shall be charged against Minnesota Limited with respect to operation of equipment owned by Minnesota Limited.

Minnesota Limited received a letter, dated December 20, 2010, from Koch Companies Public Sector, LLC, alleging Minnesota Limited performed defective work in connection with that certain Intermittent Services Agreement #950019 and Scope of Work Agreement dated November 5, 2010, between Minnesota Limited and Koch Pipeline Company, L.P. ("KPL"), and that KPL will be looking to Minnesota Limited to recover any and all loss, damage, or expense KPL has incurred or may thereafter incur arising out of the performance of defective work. Minnesota Limited believes that its applicable insurance policies will cover these claims if the subcontractor that performed this work does not. The cost of deductibles related to such insurance policies may be \$1,000 or \$100,000, depending upon which insurance policy may apply, if any.

EXECUTION VERSION

Minnesota Limited has not received annual funding notices from the Multiemployer Plans in which Minnesota Limited's unionized employees participate.

Minnesota Limited routinely receives requests to complete "punch-list" type work.

(d)

Minnesota Limited renegotiates labor and equipment rates at the end of each year in the ordinary course of business.

OFFER LETTER

DATE

EMPLOYEE NAME
ADDRESS 1
ADDRESS 2

Dear _____,

This letter is to confirm in writing our offer and your acceptance of _____ position in the Big Lake, MN office of Minnesota Limited, Inc. You will report directly to the _____. We would anticipate that your first day of work will be DATE. Please formally accept our offer and signify your agreement with the terms and conditions of your employment by signing and returning one copy of this letter at your earliest convenience.

This offer is contingent upon your passing a drug-screening test, which can be arranged at a convenient location. Please contact the Big Lake office at 763.262.7000 to schedule an appointment for the drug-screening test. The drug screen must be taken within three days of receipt of this offer, or the offer may be withdrawn.

Your employment is conditioned upon your signing a standard (Confidentiality Agreement and/or Employment Agreement). A sample copy of the agreement(s) you will be asked to sign is enclosed for your review. This document does not promise you employment for a specified period. Employees of the Company are subject to the employment-at-will doctrine, which means either you or the Company may terminate the relationship at any time.

Your initial hourly rate of pay will be _____ and are qualified to earn time and half overtime pay when necessary. You will also be paid a daily non-taxable travel per diem of _____. You will be eligible for a compensation review on or about DATE, in accordance with the Company's normal compensation administration procedures. Your hourly rate may be adjusted, upward or downward, upon such compensation review date, or from time-to-time. Your compensation will be paid to you on a weekly basis for weeks in which you are performing work for the Company.

Under the guidelines of the Immigration Reform and Control Act of 1986, the Company must request proof of identification and authorization to work. Acceptable documentation could

VEC000350

include a current U.S. passport, social security card or birth certificate plus a state issued driver's license or ID card with a photograph. This documentation must be presented and verified on your first day of employment.

Minnesota Limited, Inc. has assembled some of the best professionals in the pipeline construction industry. We are convinced that your experience and expertise will help us maintain and enhance our reputation. We look forward to your joining the Limited team.

Sincerely,

Glenn L. Furman
Director of Finance & Administration

Enclosure

Offer Accepted:

SIGNATURE

Date: _____

Please initial:

Received and filled out Sign-up information _____

Received and signed confidentiality and employment agreement _____

III

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** ("Agreement") is made to be effective the _____ day of _____, _____, between **MINNESOTA LIMITED, INC.** ("Employer"), and _____ ("Employee").

Employer wishes to employ Employee, and Employee wishes to be employed by Employer.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Employment, Compensation and Benefits.** During the period of this Agreement, Employer agrees to employ Employee and to pay Employee such compensation as is set forth in the offer letter attached hereto as Exhibit A. Such compensation may be changed by Employer pursuant to its normal compensation review procedures or from time to time.

2. **Ownership of Business.** All business activity participated in by Employee as an employee of Employer ("Business Activity") is the sole property of Employer. Employee shall have no right to share in any commission or fee resulting from such Business Activity other than the compensation referred to in Paragraph 1, and any monies due to Employer as a result of Business Activity shall be collected on behalf of and promptly paid over to Employer.

3. **Confidential Information.** Employer agrees that it shall provide, and Employee acknowledges and agrees that, in the course of Employee's employment, Employee will receive, access to nonpublic Employer information reasonably necessary to the performance of Employee's job duties (including, but not limited to, information regarding Employer's clients and customers). Employee shall (a) execute the Confidentiality Agreement attached hereto as Exhibit B, and (b) use Employee's best efforts, both during the course of employment hereunder and at all times hereafter, to prevent the taking or disclosure of nonpublic information to which Employee is exposed during Employee's period of employment with Employer. Upon termination of Employee's employment hereunder, Employee shall promptly return to Employer all Employer materials, information and any other property belonging to Employer, including (but not limited to) all files, computer discs, manuals and other Employer property, as may then be in Employee's possession or control.

4. **Employee Loyalty, Noncompetition and Nonsolicitation.** Employee agrees to devote Employee's entire business time and best efforts to the furtherance of the business of Employer during the term of this Agreement. All references in this paragraph to "Employer / Minnesota Limited, Inc." shall be understood to refer to Employer and Employer's parent, sister, and subsidiary companies, as well as their successors and assigns. Upon termination of employee's employment with Minnesota Limited, Inc., Employee agrees that for a period of three (3) years thereafter, the Employee shall not, either on his own or in conjunction with, or for any other person, company, or employer:

- a. within the "Territories" described below, directly or indirectly solicit, accept, or perform pipeline and station contracting, pipeline maintenance, supervising, estimating, project management, marketing, safety direction, or consulting for any (i) customers of Employer / Minnesota Limited, Inc. for which services were provided or (ii) prospective customers of Employer / Minnesota Limited, Inc. with whom Employer had solicited on bid business within two years prior to termination of Employee's Employment with Employer.
- b. accept employment with any person, company or entity which performs pipeline construction, maintenance or repair under contract with pipeline owners, utilities or their agents and assigns in any of the Territories described below.
- c. directly or indirectly solicit any of Employer's employees or any of the employees of Employer's parent, sister or subsidiary companies to work for Employee or any competitor (whether an individual or a competing company) of Employer.

For purposes of this paragraph 4, "Territories" shall refer to those states where the clients or prospective clients of Employer / Minnesota Limited, Inc. are present and available for solicitation and servicing and are deemed to include, but are not limited to, the states of Minnesota, Illinois, Iowa, Wisconsin and North and South Dakota.

Employee acknowledges that in the event of breach of this paragraph, the Employer has no adequate remedy at law and shall be entitled to immediate injunctive or other equitable relief. Further, Employee agrees that in the event Employer seeks equitable, it shall not be required to post more than a minimal bond.

5. **Term and Termination.** This Agreement shall commence upon the effective date first set forth above and shall continue until terminated (i) by either party, with or without cause, upon fifteen calendar days prior written notice or (ii) immediately by Employer upon any willful or gross misconduct or material breach by Employee of this Agreement. Should Employer give Employee fifteen days notice of employment termination, (i) Employee will not, thereafter, be entitled to access to the office premises of Employer and (ii) said fifteen calendar days shall be treated as two weeks' pay under any severance or termination arrangement between Employer and Employee. This

Agreement shall also terminate automatically upon the Employee's death or disability. Paragraphs 3 (including Exhibit B), 4, 6 and 8 shall survive termination of this Agreement.

6. **Mandatory Binding Arbitration.** Except for a claim which includes a request for injunctive relief by Employer for paragraph 4 violations or breach of the confidentiality agreement; Employer and Employee agree that any dispute arising either under this Agreement or from the employment relationship shall be resolved by arbitration, with such arbitration process to include the following:

- a. the party invoking arbitration under this Agreement shall notify the other party in writing, and such notice shall propose an arbitrator, who shall be required to complete a disclosure of interest form;
- b. each party may exercise one preemptory strike of an otherwise competent arbitrator (provided the party objecting to the proposed arbitrator proposes an alternative arbitrator). The parties shall exercise their best efforts, in good faith, to agree upon selection of a single arbitrator. If the parties are unable to agree upon selection of a single arbitrator, they shall so notify the American Arbitration Association ("AAA") and shall request that the AAA work with the parties to select a single arbitrator pursuant to the method and manner contemplated by the AAA's National Rules for the Resolution of Employment Disputes;
- c. the arbitration shall be conducted by a single arbitrator in a manner consistent with the American Arbitration Association's National Rules for the Resolution of Employment Disputes;
- d. the arbitration shall be conducted at a location reasonably convenient to that office of the Employer at which the Employee had most recently been assigned;
- e. the arbitration, including the arbitrator's decision, shall be completed within ninety days of receipt of notice by the party other than the party invoking this Paragraph 6;
- f. the arbitrator shall have no authority to assess punitive or exemplary damages as to any dispute (i) arising out of or concerning the provisions of this Agreement or (ii) otherwise arising out of the employment relationship, except as and unless such damages are expressly authorized by otherwise applicable and controlling statutes;
- g. the arbitrator's decision shall be final and binding and enforceable in any court of competent jurisdiction; and
- h. each party shall bear its own costs, including attorneys, fees, and share all costs of the arbitration equally; except however, this provision shall not (i)

interfere with either party's right to seek or receive damages as may be allowed by relevant statutory law, if any, or (ii) require Employee to pay all or a portion of the arbitrator's fees if the issues submitted to arbitration primarily concern Employee allegations of unlawful discrimination in the terms and/or conditions of employment.

7. **Representations and Warranties.** Employee represents and warrants the following:

- a. Except as set forth in Exhibit C attached hereto, Employee is not subject to (1) any oral or written agreement with any former employer, (2) or any existing order, judgment or decree involving any former employment, independent contractor or other business relationship. Employee agrees to provide (or describe in writing, in the case of past oral agreements) any such agreement, order, judgment or decree for attachment as Exhibit C.
- b. Employee has received and read a copy of, and will at all times abide by, Minnesota Limited, Inc.'s Code of Ethics (or any variant of such adapted for use by Employer).

Employee agrees to indemnify and hold Employer harmless against any and all losses, damages, costs and expenses (including legal fees) incurred by Employer by reason of any breach of this Paragraph 7. This indemnification provision is subject to arbitration, as provided in Paragraph 6.

8. **Miscellaneous.** This Agreement sets forth the entire agreement between Employer and Employee, supersedes any and all prior agreements and understandings regarding the subject matter herein, and may be modified only by a written instrument signed by both parties (and, in the case of Employer, only by a duly authorized officer). If any term of this Agreement is rendered invalid or unenforceable by judicial, legislative or administrative action, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Any notices given pursuant to this Agreement shall be sent by certified mail to the addresses set forth below (or, in the event of an address change by either party, to the then current address of the party, with both parties agreeing to promptly provide the other party with written notice of any change in address). This Agreement shall be governed by Minnesota law without giving effect to its conflicts of law principles. The waiver by either party of any breach of this Agreement shall not operate or be construed as a waiver of that party's rights upon any subsequent breach. This Agreement shall inure to the benefit of and be binding upon and enforceable against the heirs, legal representatives and assigns of Employee and the successors and assigns of Employer. Should Employee be transferred or reassigned from Employer to a parent, sister, or subsidiary company of Employer, this agreement shall be automatically assigned by Employer to such new employer, and Employee's acceptance of Employer's first payment of compensation from such new employer shall be deemed as Employee's acknowledgement of such assignment. Upon the commencement by the

Employee of employment with any third party, during the two (2) year period following termination, the Employee shall promptly furnish such new employer with a copy of this Agreement.

9. **Survivability/Assignment.** The provisions of paragraphs 3, 4, 6, and 7 should survive employee's termination. Employee may not assign his obligations under this agreement to any Third party. The employer may assign the assignment to a successor company. Except as otherwise set forth above. This Agreement shall be binding on to the parties heir, executors and successor assignees.

10. **Governance** This Agreement shall be governed exclusively by the laws of the State of Minnesota, regardless of the venue of any court or arbitration proceeding.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement as of the date first above written.

EMPLOYER

EMPLOYEE

MINNESOTA LIMITED, INC.
18640 200th STREET
BIG LAKE, MN 55309

BY: _____

SIGNATURE:

TITLE: _____

SSN: _____

II
EXHIBIT ____

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT, dated as of the ____ day of _____, _____, between MINNESOTA LIMITED, INC., a corporation ("Employer") and _____, an employee of the Employer ("Employee").

NOW, THEREFORE, Employer and Employee hereby agree as follows:

1. Employee acknowledges that all non-public information (including, but not limited to, information regarding Employer's clients and customers), owned or possessed by Employer, its affiliated, sister, subsidiary, parent and predecessor companies (collectively, "Confidential Information") constitutes a valuable, special and unique asset of the Employer's business, access to and knowledge of which are essential to the performance of Employee's duties. Given the value of this Confidential Information, Employee agrees as a condition of his/her employment that Employee shall not, during or after the period of his/her employment with the Employer, in whole or in part, disclose such Confidential Information to any third party without the consent of Employer for any reason or purpose whatsoever. In addition, Employee shall not make use of any such Confidential Information for his/her own purposes or for the benefit of any third party under any circumstances, during or after the period of Employee's employment with Employer; provided, however, that, during and after such term of employment, these restrictions shall not apply to such Confidential Information which is then in the public domain (provided that Employee was not responsible, directly or indirectly, for the fact that such secrets or information have entered the public domain without the Employer's consent).

2. Employee hereby assigns and transfers to Employer all his/her right and interest to all intellectual property (whether an invention, discovery or refinement) (including but not limited to computer programs, manuals, training materials and other proprietary compilations of information) developed or made by Employee in his/her capacity as an employee during Employee's period of employment with Employer (collectively, "Proprietary Materials"), including any such Proprietary Materials developed or made before execution of this Confidentiality Agreement. Employee acknowledges that all Proprietary Materials shall be considered as "work made for hire", and shall be considered the sole property of Employer. Employee agrees (i) to disclose promptly the existence of all Proprietary Materials to Employer, (ii) not to disclose such Proprietary Materials to any third party without the consent of Employer, and (iii) to cooperate fully in Employer's efforts to establish and protect Employer's rights to such Proprietary Materials against all other parties. Employee shall not be entitled to additional compensation for his/her role in developing or making such Proprietary Materials.

3. Employee acknowledges and agrees that monetary damages will not be an adequate remedy for a breach by Employee of any of the provisions of this Agreement and that, in the event of such a breach, irreparable injury will result to Employer, its affiliated, sister, subsidiary or parent companies and their businesses and property. Accordingly, Employee

acknowledges that Employer may, in addition to recovering legal damages, including lost commissions, fees and revenues, proceed in equity to enjoin Employee from violating any of the provisions noted.

4. Employee agrees that any obligations under this Confidentiality Agreement shall be independent of, and unaffected by, any other agreement binding Employee, which applies to Employee's business activities during or subsequent to his/her period of employment with Employer. This Confidentiality Agreement shall inure to the benefit of any and all of Employer's successors, assigns, parent companies, sister companies, subsidiary companies and affiliated companies. If any term of this Agreement is rendered invalid or unenforceable by judicial, legislative or administrative action, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The waiver by Employer of any breach of this Agreement shall not operate or be construed as a waiver of Employer's rights upon any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

EMPLOYER:

**MINNESOTA LIMITED, INC.
18640 200th Street
BIG LAKE, MN 55309**

By: _____

TITLE: _____

EMPLOYEE:

Job Number	COR Date	COR #	COR Description	COR Total
Centerpoint Energy - Illinois Gas Transmission Company - Pipeline Construction Contract August 1, 2010				
CP10127	09/17/2010	COR 1	CHANGE IN WALL THICKNESS FOR HDD	\$13,738.59
CP10127	11/09/2010	COR 2	COR 2	\$13,060.28
CP10127	12/09/2010	COR 3	GRAVEL ACCESS RDS PER LAND AGT AGREEMENT W/ LANDOWNER	\$2,272.14
CP10127	12/09/2010	COR 4	ROW CLEARING	\$38,218.26
CP10127	12/09/2010	COR 5	PLACE RIP-RAP AT KINDER MORGAN LOCATION	\$15,381.84
CP10127	12/09/2010	COR 6	MISC EXTRAS	\$13,545.77
CP10127	12/09/2010	COR 7	ADDT'L COST FOR PIG RUN	\$13,200.00
CP10127	12/14/2010	COR 8	EXTRA ELECTRICAL WORK BY STATE GROUP	\$30,107.44
CP10127	01/28/2011	COR 9	ADJUST FOR ACTUAL FOOTAGE LAID	-\$48,305.00
CP10127	01/28/2011	COR 10	ADJUST FOR ADDT'L UPI'S AND HDD LENGTH (AS OF 1/28/11)	\$85,416.18
Enbridge Energy Agreement 0691218A101-06 SA-DS-MBS December 12, 2008				
EB08322	1/19/2009	1	Hot Work for Vesper Tie-in - Extra ground thaw, installing double face blinds, installing spicalical's	\$48,701.94
EB08322	1/19/2009	2	24" U/G Valve removal at Delavan - Install doubleface on line	\$6,893.45
EB08322	1/19/2009	4	Repair work on damaged Flow-cell	\$459.10
EB08322	1/19/2009	5	Night Shift Labor to monitor Ground Thaw Units	\$19,867.68
EB08322	1/19/2009	7	Purchased 6 - 4" saddles in lieu of WOI	\$14,401.54
EB08322	1/22/2009	8	Assist with Hydro-test of Mainline at west end of Station	\$5,317.43
EB08322	1/26/2009	9	Additional Hydro-test on Flow-cell	\$12,791.29
EB08322	1/26/2009	10	Apply SP-2888 coating to underground 42" bare pipe that was thought to be coated	\$14,136.53
EB08322	1/26/2009	11	X-ray cost for delay procedure on transitions	\$5,927.67
EB08322	1/26/2009	12	Place flowable fill at new 42" pipe (materials only)	\$3,887.00
EB08322	1/26/2009	13	Additional Concrete Installation at Delavan - 42" Flange support/Sleeper Pads	\$1,014.14
EB08322	6/24/2009	17	haul scrap pipping for vesper	\$3,050.00
Enbridge Energy Agreement 0791243100-02 AC-DRS October 10, 2008 as amended on September 10, 2009				
EB09307	5/25/10	CS-VG-01	Settlement of Alberta Clipper/Southern Lights Claims	\$100,000.00
EB09307	10/22/09	VG-01	Unload Transformer	\$27,877.91
EB09307	10/22/09	VG-02	Unload Cooling Unit	\$1,197.51
EB09307	10/22/09	VG-03	Pump house elevation Revisions	\$4,600.00
EB09307	10/22/09	VG-04	5000 PSI concrete with superplasticize	\$2,088.00
EB09307	10/22/09	VG-05	Pre-tie revar	\$4,358.00
EB09307	10/22/09	VG-06	Set of forms	\$6,036.00
EB09307	10/22/09	VG-07	Chromalox	\$10,322.00
EB09307	10/22/09	VG-08	Delay Charges - Naylor and Electrical Builder Inc.	\$29,650.00

\$176,635.50

\$136,447.77

VEC000359

Job Number	COR Date	COR #	COR Description	COR Total
EB09307	10/22/09	VG-09	Heat Tracing and O'Brien Vipak	\$14,231.25
EB09307	10/22/09	VG-10	Additional cost for epoxy grout in cold weather	\$2,976.00
EB09307	10/22/09	VG-11	1. Additional cable tray support	\$2,440.80
EB09307	10/20/09	VG-12	Sunday grouting	\$3,659.88
EB09307	10/22/09	VG-14	Delay Charges-Naylor	\$3,782.00
EB09307	10/28/09	VG-15	fiber optic and auxiliary power	\$17,525.10
EB09307	11/16/09	VG-16	EXTENDING THE 4" DRAIN LINE BEYOND THE FOOTING WALL	\$4,995.00
EB09307	11/11/09	VG-17	FENCE GROUNDING	\$8,632.07
EB09307	11/18/09	VG-18	Modify high voltage junction boxes on line 67 ESBs	\$1,671.60
EB09307	11/19/09	VG-20	Install (2) 20" 600# flanges and (2) TORs	\$13,900.00
EB09307	11/18/09	VG-21	Working slab under 36" main line valve area	\$2,836.08
EB09307	11/18/09	VG-22	Cable tray requested by Enbridge	\$5,080.28
EB09307	11/18/09	VG-23	Add 6-3 MCHL cable from the ESB to the densitometer	\$2,108.17
EB09307	11/18/09	VG-24	Connect 5KV cables between VFD and softstarts and main 5KV gear in ESB and VFD buildings	\$25,687.55
EB09307	11/19/09	VG-25	Work Associated with Stub End Replacements	\$123,299.73
EB09307	12/3/09	VG-26	Substation Shelter	\$16,443.72
EB09307	12/3/09	VG-27	Ground thaw unit/heaters	\$5,807.50
EB09307	12/9/09	VG-28	ground shelters	\$28,014.01
EB09307	1/5/10	VG-29	Extra cost to erect pump building	\$9,600.00
EB09307	2/3/10	VG-30	temp sheltering and heating needed during commissioning	\$3,265.31
EB09307	2/11/10	VG-31	2" and larger material	\$14,201.16
EB09307	12/3/09	VG-32	Personal Shelters	\$3,539.70
EB09307	2/12/10	VG-33	pump drain piping revision	\$2,581.68
EB09307	2/18/10	VG-34	Additional grounding	\$2,966.67
EB09307	2/22/10	VG-35	Densitometer	\$4,800.00
EB09307	3/5/10	VG-36	Auxiliary / Temp power	\$2,581.75
EB09307	2/25/10	VG-37	Add fluid switch wiring to REXA valve	\$958.35
EB09307	3/5/10	VG-38	Cost to go to 6-10s	\$2,502.40
EB09307	2/18/10	VG-39	Credit for previous incorrect markups	-\$1,761.04
EB09307	5/10/10	VG-41	Densitometer pads	\$4,218.60
EB09307	5/10/10	VG-42	new perimeter fencing	\$31,090.25
EB09307	5/10/10	VG-43	Flowmeter installation	\$5,000.00
EB09307	6/4/10	VG-46	densitometer and flow cell	\$22,007.44
EB09307	6/28/10	VG-47	Viking grading revision	\$13,702.00
EB09307	8/12/10	VG-48	Sump Tank Heat Tracing	\$7,809.00
EB09307	8/20/10	VG-49	VFD Sensor	\$298.23
EB09307	9/7/10	VG-50	PT Stands	\$2,404.04

\$600,985.70

VEC000360

Job Number	COR Date	COR #	COR Description	COR Total
Enbridge Pipelines LLC 0791243100-01-AC-CLS August 14, 2008 as amended on August 6, 2009				
EB09308	9/4/09	CR-AC-01	Prep Clearbrook yard for pipe	\$13,532.22
EB09308	9/4/09	CR-AC-02	Install gravel surfacing at Clearbrook boneyard	\$3,800.00
EB09308	10/6/09	CR-AC-03	Crane service to move and set transformer at Enbridge Clearbrook Station.	\$3,210.81
EB09308	9/4/09	CR-AC-05	Otter Tail Power Company	\$51,100.59
EB09308	9/4/09	CR-AC-06	Price to re-feed line 1 valve.	\$10,228.98
EB09308	9/4/09	CR-AC-08	Additional footing for substation	\$1,483.00
EB09308	9/4/09	CR-AC-09	6" PVC sleeves on 5kv cables	\$4,375.52
EB09308	10/16/09	CR-AC-11	Pump buildings foundations construction	\$8,000.00
EB09308	10/21/09	CR-AC-12	Fiber optic feeds	\$15,063.24
EB09308	10/16/09	CR-AC-14	Furnish and install Helical Pier Foundations systems	\$22,368.00
EB09308	10/21/09	CR-AC-15	Pump foundation concrete additive	\$1,656.00
EB09308	10/16/09	CR-AC-16	Remove 2300 cu yards of excess fill	\$11,500.00
EB09308	10/16/09	CR-AC-17	Naylor and Electrical Builder Inc.	\$31,703.00
EB09308	10/21/09	CR-AC-18	Changes to receiver foundations	\$15,917.61
EB09308	10/16/09	CR-AC-20	Launcher foundations	\$3,164.25
EB09308	10/17/09	CR-AC-22	SI Cross under	\$2,095.53
EB09308	10/17/09	CR-AC-23	Trap Modifications	\$60,000.00
EB09308	10/15/09	CR-AC-25	Heat tracing and O'Brien Vipak	\$19,666.15
EB09308	10/15/09	CR-AC-26	Add 4" pup due to launcher moving West	\$11,200.00
EB09308	10/15/09	CR-AC-27	33 (added 7 more) Helical piers Gustafson & Goudge	\$73,382.40
EB09308	10/21/09	CR-AC-28	Sunday Grouting CR	\$3,763.68
EB09308	10/19/09	CR-AC-29	Revised cable routing	\$31,826.80
EB09308	10/21/09	CR-AC-30	Delay charges	\$4,674.00
EB09308	10/15/09	CR-AC-32	Modification to pipe support by W manifold tie-in	\$76,565.60
EB09308	10/16/09	CR-AC-33	adder for PVC	\$1,282.80
EB09308	10/28/09	CR-AC-34	REPLACE 36" FLANGE ON AC LAUNCHER	\$20,540.90
EB09308	11/11/09	CR-AC-37	Substation Fencing	\$8,595.22
EB09308	11/13/09	CR-AC-38	MODIFY HIGH VOLTAGE BOXES ON LINE 67	\$1,671.60
EB09308	11/19/09	CR-AC-40	Foundation at West Manifold tie-in area	\$1,080.00
EB09308	11/19/09	CR-AC-41	cable tray requested by Enbridge	\$5,756.40
EB09308	11/19/09	CR-AC-42	Add 6-3 MCHL cable	\$4,077.97
EB09308	11/19/09	CR-AC-43	Connect 5KV cables between VFD and softstarter and main 5KV gear in main E58 and VFD buildings	\$58,924.45
EB09308	11/19/09	CR-AC-44	Install offset to miss fire hydrant at relief line	\$15,000.00
EB09308	11/19/09	CR-AC-45	Work Associated with Stub End Failure	\$138,761.92
EB09308	11/19/09	CR-AC-45-M11	Mount and wire federal signal alarm horn	\$815.95
EB09308	11/23/09	CR-AC-46	Flowable fill at the relief line road crossing West of the manifold	\$5,360.85

VEC000361

Job Number	COR Date	COR #	COR Description	COR Total
EB093008	12/3/09	CR-AC-48	Densitometer Shelter	\$9,451.26
EB093008	12/9/09	CR-AC-49	Pump Shelters	\$37,277.79
EB093008	12/14/09	CR-AC-50	Shortage of 8 triad 16	\$2,507.21
EB093008	12/14/09	CR-AC-51	Revised platform walkways and pier addition to South Manifold	\$43,067.50
EB093008	12/15/09	CR-AC-53	Provide circuits for temporary power to motor heaters	\$1,402.64
EB093008	12/15/09	CR-AC-54	provide additional temporary power for substation commissioning	\$1,706.52
EB093008	12/15/09	CR-AC-55	Tape substation breaker connections at both breakers in substation	\$1,697.15
EB093008	12/16/09	CR-AC-56	Densitometer heat trace	\$35,485.65
EB093008	1/5/10	CR-AC-57	Slab for Nitrogen bottle	\$2,978.89
EB093008	12/2/09	CR-AC-58	Redo Pressure Test of East Clearbrook Piping	\$35,422.32
EB093008	12/30/09	CR-AC-59	handrail modifications	\$714.60
EB093008	1/7/10	CR-AC-60	2" valve bodies, leaking, testing	\$55,424.36
EB093008	2/11/10	CR-AC-65	2" and larger material	\$17,313.08
EB093008	2/12/10	CR-AC-66	Nitrogen Cabinet Install	\$3,576.80
EB093008	2/12/10	CR-AC-67	personal shelters	\$1,769.85
EB093008	2/12/10	CR-AC-68	Pump drain piping revision	\$7,602.21
EB093008	2/15/10	CR-AC-69	2" valves with internal reliefs	\$4,154.30
EB093008	2/18/10	CR-AC-70	Grounding in manifold and manifold densitometer areas	\$3,651.73
EB093008	2/18/10	CR-AC-71	Cable shortages	\$2,927.76
EB093008	2/25/10	CR-AC-75	Misc tasks authorized by commissioning crew or inspector	\$2,649.04
EB093008	2/25/10	CR-AC-76	Line 67 ESB densitometer	\$4,585.41
EB093008	3/5/10	CR-AC-77	cost to go to 6-10s	\$8,680.20
EB093008	3/5/10	CR-AC-78	Misc shelters	\$7,462.61
EB093008	2/18/10	CR-AC-79	Credit for previous incorrect markups	-\$7,797.78
EB093008	4/28/10	CR-AC-80	Underground valve support	\$1,495.00
EB093008	5/12/10	CR-AC-81	Washout slab	\$3,328.88
EB093008	5/14/10	CR-AC-82	Additional site grading and rock surfacing around the flow meter.	\$6,212.48
EB093008	6/28/10	CR-AC-84	Heat tracing on sump tank	\$6,032.00
EB093008	8/5/10	CR-AC-85	Bollards and Barriers	\$9,836.06
EB093008	8/20/10	CR-AC-86	VFD Sensor	\$582.62
EB093008	9/7/10	CR-AC-87	PT Stands	\$2,511.07
EB093008	5/25/10	C5-CR-AC-01	Settlement of Alberta Clipper/Southern Lights Claims	\$200,000.00
EB093008	10/21/09	CR-SL-01	Prep CR yard for pipe	\$15,532.22
EB093008	10/6/09	CR-SL-02	Install gravel surfacing at Clearbrook boneyard.	\$3,800.00
EB093008	9/4/09	CR-SL-03	Crane service to move and set transformer.	\$3,210.81
EB093008	11/24/09	CR-SL-05	Ottertail Power Company	\$51,100.59

VEC000362

Job Number	COR Date	COR #	COR Description	COR Total
E809308	9/4/09	CR-SL-06	Price to re-feed line 1 valve.	\$6,322.77
E809308	9/4/09	CR-SL-07	High strength, low water content mix for pump foundations	\$1,242.88
E809308	10/21/09	CR-SL-08	Additional footing for substation	\$1,483.00
E809308	9/4/09	CR-SL-09	6" PVC sleeves on 5kv cables	\$3,168.48
E809308	10/16/09	CR-SL-10	Additional non shrink grout	\$1,489.00
E809308	10/21/09	CR-SL-12	Fiber optic feeds	\$15,063.24
E809308	10/16/09	CR-SL-13	Stand by time	\$20,051.76
E809308	10/16/09	CR-SL-16	Remove 2300 cu yards of excess fill	\$11,500.00
E809308	10/17/09	CR-SL-21	Underground pipe supports	\$974.40
E809308	11/4/09	CR-SL-22	SL Cross under	\$2,095.53
E809308	10/27/09	CR-SL-23	Trap Modifications	\$37,000.00
E809308	10/21/09	CR-SL-24	Heat tracing and O'Brien Vipak	\$14,231.25
E809308	10/21/09	CR-SL-31	Delay Charges SL	\$2,889.00
E809308	10/16/09	CR-SL-33	adder for PVC	\$1,282.80
E809308	11/11/09	CR-SL-35	Substation Fencing	\$8,595.22
E809308	11/19/09	CR-SL-36	PCV foundation change	\$1,456.80
E809308	11/19/09	CR-SL-37	cable tray cover requested by Enbridge	\$3,502.72
E809308	12/9/09	CR-SL-38	Pump Shelters	\$35,698.60
E809308	12/15/09	CR-SL-39	Provide circuits for temporary power to motor heaters	\$1,402.64
E809308	12/15/09	CR-SL-40	provide additional temporary power for substation commissioning	\$1,706.52
E809308	12/15/09	CR-SL-41	Tape substation breaker connections at both breakers in substation	\$1,770.94
E809308	12/30/09	CR-SL-42	Handrail modifications	\$714.60
E809308	2/11/10	CR-SL-44	2" and larger material	\$17,313.09
E809308	2/12/10	CR-SL-45	personal shelters	\$1,769.85
E809308	2/12/10	CR-SL-46	Pump drain piping revision	\$7,932.51
E809308	2/25/10	CR-SL-47	Add fluid switch wiring to REXA valve	\$958.35
E809308	3/5/10	CR-SL-48	cost to go to 6-10s	\$8,680.20
E809308	3/11/10	CR-SL-49	Installation of SL spacer rings on pump units	\$12,991.64
E809308	2/18/10	CR-SL-50	Credit for previous incorrect markups	-\$581.05
E809308	5/14/10	CR-SL-51	Install rock surfacing in lieu of gravel surfacing.	\$6,032.00
E809308	6/28/10	CR-SL-52	Misc tasks	\$1,092.78
E809308	6/28/10	CR-SL-53	Heat tracing from EWA 24	\$7,573.37
E809308	8/19/10	CR-SL-55	Bollards and Barriers	\$3,278.69
E809308	9/17/10	CR-SL-56	PT Stands	\$2,447.85
Enbridge Pipelines LLC SL-CM-CTR-AM-01 January 16, 2009 as amended May 22, 2009				
E809309	5/4/2009	1	Load and haul pipe	\$6,000.00
E809309	5/5/2009	3	IFB to IFC changes Electrical (price increase on wire)	\$8,000.00

\$1,528,599.33

Job Number	COR Date	COR #	COR Description	COR Total
E809309	5/18/2009	5	Additional grounding & revised cable schedules	\$15,254.00
E809309	5/28/2009	10	IFB to IFC changes structural steel	\$353.00
E809309	6/5/2009	11	Added whistles	\$48,500.00
E809309	7/29/2009	28	Jersey Barriers	\$9,510.00
Enbridge Pipelines LLC SL-CM-CTR-VP-01 January 16, 2009 as amended May 22, 2009				
E809313	5/18/2009	2	Added Reinforcement	\$8,317.50
E809313	5/5/2009	3	IFB to IFC changes Electrical (price increase on wire)	\$15,115.00
E809313	5/28/2009	8	Install rock laydown	\$13,500.00
E809313	5/28/2009	10	IFB to IFC changes structural steel	\$4,960.00
E809313	6/22/2009	14	Concrete changes	\$5,092.20
E809313	7/22/2009	17	IFB to IFC Electrical changes	\$32,533.50
E809313	11/9/2009	19	U-Bolts - needed to get correct size	\$686.87
E809313	6/17/2009	20	Buss Bar	\$1,162.51
E809313	11/9/2009	27	ESB Communication Cables	\$8,955.11
E809313	7/31/2009	30	Credit for epoxy grout	-\$24,150.00
E809313	8/3/2009	34	4 cable tray supports	\$2,512.50
E809313	8/17/2009	37	Insulator Credit	-\$2,282.76
E809313	8/24/2009	39	Supply and Install cables	\$2,000.00
E809313	9/1/2009	43	7 additional cable tray supports	\$5,610.31
E809313	11/4/2009	45	Correct Cables	\$19,700.44
E809313	11/4/2009	48	Additional Grounding	\$1,895.27
E809313	11/4/2009	50	MCC Heaters	\$798.84
E809313	9/24/2009	53	Additional pipe supports	\$519.92
E809313	10/6/2009	56	Final Grade	\$44,602.00
E809313	11/6/2009	57	Relocate heater and jumpers	\$465.69
E809313	11/11/2009	62	Insulation blankets	\$18,814.00
E809313	11/11/2009	63	materials	\$14,040.09
E809313	1/11/2010	73	REXA Panel	\$1,019.58
E809313		EWA 10-01	Spring work requested by Enbridge	\$2,598.55
E809313	6/14/2010	EWA 10-03	Spring Clean up and punch list	\$7,391.13
E809313	6/14/2010	EWA 10-015A	Cleanup - Punchlist	\$19,681.62
E809313	1/13/2010	L61-01	5KV Fuses for transformers	\$889.69
E809313	1/13/2010	L61-03	Fab and install supports for existing cable tray	\$998.61
E809313	1/13/2010	L61-05	Fill 17 seal off	\$421.67
Enbridge Pipelines LLC SL-CM-CTR-DN-01 January 16, 2009 as amended May 22, 2009				
E809314	5/18/2009	2	Added Reinforcement	\$10,987.50
E809314	5/5/2009	3	IFB to IFC changes Electrical (price increase on wire)	\$15,115.00

\$87,617.00

\$207,649.84

VEC000364

Job Number	COR Date	COR #	COR Description	COR Total
E809314	5/18/2009	4	Standby for MLI and civil crew	\$12,000.00
E809314	5/28/2009	9	Added 2 ESB piers	\$3,360.00
E809314	5/28/2009	10	IFB to IFC changes structural steel	\$4,960.00
E809314	7/2/2009	15	Concrete changes	\$2,070.00
E809314	7/22/2009	18	IFB to IFC Electrical changes	\$32,533.50
E809314	11/9/2009	22	New transformer control wiring	\$5,344.58
E809314	11/9/2009	26	ESB Communication Cables	\$9,029.77
E809314	7/31/2009	29	Credit for epoxy grout	-\$24,150.00
E809314	8/3/2009	33	4 cable tray supports	\$2,512.50
E809314	8/12/2009	35	8 additional underground pipe supports	\$5,326.08
E809314	9/24/2009	38	Supply and install cables	\$1,500.00
E809314	6/24/2009	40	Remove and Relocate tree	\$1,207.50
E809314	10/29/2009	42	Final Grade	\$109,440.25
E809314	11/4/2009	44	Correct Cables	\$19,818.57
E809314	11/4/2009	46	Additional hardware for substation	\$1,673.63
E809314	11/4/2009	47	Additional grounding	\$1,945.62
E809314	12/7/2009	49	MCC Heaters	\$615.37
E809314	9/22/2009	51	2 pipe supports	\$1,346.19
E809314	11/6/2009	54	Fence grouting	\$9,663.68
E809314	10/29/2009	58	SL Cross over	\$6,703.64
E809314	10/29/2009	59	Clean up tires	\$368.29
E809314	10/26/2009	60	Install fire extinguisher on platforms	\$259.89
E809314	11/11/2009	61	Insulation blankets	\$15,356.40
E809314	11/11/2009	64	materials	\$9,100.00
E809314	11/19/2009	68	ESB Door	\$2,518.50
E809314	1/11/2010	70	REXA Panel	\$908.33
E809314	12/18/2009	71	Extra Work	\$17,457.44
E809314	8/14/2010	EWA 10-03	Spring Clean up and punch list	\$2,996.45
E809314	1/11/2010	L61-02	Repair of light	\$368.45
Embridge Energy, Limited Partnership JHP 191134-2010 June 30, 2010				
E810123	07/14/2010	EWA 1	IFB TO IFC CHANGES	\$33,816.56
E810123	07/23/2010	EWA 2	MLI TO DO EXCAVATION FOR PLM	\$225,254.37
E810123	07/28/2010	EWA 3	CONCRETE PADS DUE TO BEDROCK BEING DEEPER	\$15,147.80
E810123	09/10/2010	EWA 4	INSTALL PIERS UNDER DENSIOMETER FND	\$5,332.55
E810123	09/10/2010	EWA 5	INSTALL ADDITL PT CABINET	\$3,887.38
E810123	09/10/2010	EWA 6	MISC ELECTRICAL ITEMS	\$7,477.30
E810123	09/10/2010	EWA 7	OT COSTS FOR DELAY OF HYDRO	\$2,034.63

\$281,337.13

VEC000365

Job Number	COR Date	COR #	COR Description	COR Total
EB10123	09/27/2010	EWA 8	PUMP HOUSE RECOAT	\$60,900.00
EB10123	10/01/2010	EWA 10	Added Platform	\$55,917.25
EB10123	10/01/2010	EWA 9	ADDITIONAL ELECTRIC WORK	\$4,219.35
EB10123	10/05/2010	EWA 11	Backfill and Compact Pump House	\$33,546.30
Enbridge Pipelines (North Dakota) LLC WBH-07127-08 December 4, 2008				
EN08379	4/23/2009	31	Weld Qualification test and travel	\$7,333.00
EN08379	3/31/2009	22	Night Shift	\$52,000.00
EN08379	12/4/2008	-	Pipe Removal	\$27,522.62
EN08379	8/10/2009	117	Install flowable fill to stabilize piping	\$14,791.00
EN08379	8/18/2009	129	Strip sandblast and recoat exposed portions of station suction line	\$7,955.88
EN08379	8/26/2009	141	Miscellaneous Work	\$10,317.79
EN08379	9/1/2009	143	Additional Demo Work	\$12,281.38
EN08379	7/16/2009	97	Additional Mech Work	\$1,641.46
Enbridge Pipelines (North Dakota) LLC 0790401121-07 SICIM November 3, 2008				
EN08380	2/18/2009	18	Modification to Tank lines	\$27,000.00
EN08380	4/23/2009	32	Grout 2 vert. can pumps	\$6,140.00
EN08380	5/27/2009	62	Night Shift for tie-in	\$21,388.00
EN08380	6/30/2009	79	Additional Mechanical Work	\$104,875.00
EN08380	8/10/2009	116	Install additional drain line	\$21,516.00
EN08380	9/10/2010	5	Tank Line Install	\$20,764.00
Enbridge Pipelines (North Dakota) LLC WBH-07181-09 March 9, 2009				
EN09377	07/22/2010	WEA 272	DRA DRAIN VALVE PIPING	\$3,000.00
Enbridge Pipelines (North Dakota) LLC WBH-07173-09 March 9, 2009				
				\$447,533.49
				\$133,843.13
				\$201,683.00
				\$3,000.00

VEC000366

Job Number	COR Date	COR #	COR Description	COR Total
EN09378	4/24/2009	34	Grouting	\$25,830.00
EN09378	7/30/2009	111	Move motor to Minot Station	\$9,340.00
EN09378	9/1/2009	144	Hydrotesting on Swageelok	\$7,163.00
EN09378	10/23/2009	210	Rotate 4 valve actuators	\$6,350.00
EN09378	12/11/2009	267	REDESIGN/ REWORKING OF COPPER LINES	\$5,000.00
EN09378	11/10/2009	274	Transfer new pump & existing pump	\$1,441.00
Enbridge Pipelines (North Dakota) LLC 0790401121-11 MSM March 16, 2009				
EN09379	7/22/2010	WEA 272	DRA Drain valve Piping	\$3,000.00
Enbridge Pipelines (North Dakota) LLC 0790401121-12 BLSM April 17, 2009				
EN09381	8/11/2009	120	tube oil skid	\$21,875.00
EN09381	8/14/2009	123	ite-ins	\$30,310.75
Enbridge Pipelines (North Dakota) LLC Berthold Trap Modifications October 7, 2010				
EN10143	11/19/2010	COR 1	Install and Supply Extra materials	\$4,775.39
Florida Gas Transmission Company LLC CCA-FGT-50282 July 13, 2010				
FG10126	09/13/2010	COR 1	GATE GUARD @ COMPRESSOR STATION 18 - 8/30 TO 9/25	\$15,845.89
FG10126	11/01/2010	COR 2	TRAFFIC CONTROL / MAINTENANCE @ ALL LOCATIONS	\$112,527.64
FG10126	11/09/2010	COR 3	PERMIT FEES	\$5,521.44
FG10126	12/18/2010	COR 12	DENT #1	\$534,358.48
FG10126	12/21/2010	COR 4	WORK STOPPED BY FGT OPERATIONS FOR STATION BLOWDOWN	\$8,372.56
FG10126	12/21/2010	COR 5	INSTALL TEMPORARY FENCE PANELS @ LAUNCHER/RECEIVER	\$3,514.50
FG10126	12/21/2010	COR 6	SEED, FERTILIZE AND MULCH @ FITTINGS 1, 2 AND 5	\$673.28
FG10126	12/21/2010	COR 7	CHECK FOR GOOD SPOT TO WELD STOPPLE TEE & TOR @ FITTING 1	\$12,682.96
FG10126	12/22/2010	COR 8	GATE GUARD @ COMPRESSOR STATION 18 - 9/27 - 11/27	\$38,569.36
FG10126	12/25/2010	COR 13	DENT #2	\$4,613.52
FG10126	01/11/2011	COR 9	GATE GUARD @ COMPRESSOR STATION 18 - 11/29 TO 12/25	\$16,233.56
FG10126	01/11/2011	COR 10	FITTING REPLACEMENT #8 - UNACCEPTABLE STOPPLE	\$57,351.89
FG10126	01/11/2011	COR 11	SCHEDULED TIE-IN ABORTED BY OPERATIONS & GAS CONTROL	\$19,235.25
FG10126	01/20/2011	COR 14	GATE GUARD @ COMPRESSOR STATION 18 - 12/27 TO 1/15	\$11,338.13
FG10126	02/24/2011	COR 15	GATE GUARD @ COMPRESSOR STATION 18 - 1/17 TO 2/24	\$22,712.30
FG10126	03/09/2011	COR 16	MISC. EXTRA WORK	\$14,562.28
FG10126	03/24/2011	COR 17	ADDT'L SUPERINTENDENT TIME RELATING TO MOT ISSUES	\$51,255.88
FG10126	03/24/2011	COR 18	MOT SUPERVISOR TIME	\$60,677.32
Koch Pipeline Company LP Scope of Work Agreement November 5, 2010				
MN10146	11/12/2010	COR 4	Removing trees on the Arndt's Property	\$5,417.48
MN10146	12/02/2010	COR 2	Check valve leak during test	\$7,278.57
MN10146	12/02/2010	COR 3	Change in coating material	\$1,214.40
				\$990,046.24
				\$13,910.45

VEC000367

Job Number	COR Date	COR #	COR Description	COR Total
Northern Natural Gas Company CCA-179-2008-6098 September 22, 2008				
NN08512	7/7/2009	COR 1	Install Fiberglass floor in meter building	\$7,347.00
NN08512	7/8/2009	COR 2	Fill Meter bldg with Class 5	\$5,970.85
Northern Natural Gas Company CCA-179-2009-6202 February 16, 2009				
NN09505	5/8/2009	1	MODIFY 10" VALVE/FLANGE @ TAPPING TEE	\$2,824.63
NN09505	5/7/2009	2	HAUL MATS	\$10,418.18
NN09505	5/7/2009	3	ASSIST OPERATIONS & HAULING	\$3,476.86
NN09505	5/18/2009	4	ASSIST OPERATIONS IN CONNECTING COMPRESSORS TO LINE	\$1,052.43
NN09505	5/7/2009	5	HAUL TRACK HOE	\$1,677.36
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09507	1/25/2010	62	Tested Traps (50/50 for each pkg)	\$12,255.54
NN09507	1/25/2010	64	Install open cut driveway per landowner req	\$16,400.00
NN09507	1/25/2010	66	Install & remove add'l road approaches	\$52,404.77
NN09507	1/25/2010	67	Install & remove add'l road approaches	\$26,202.39
NN09507	1/27/2010	70	add'l powercrete coating	\$5,756.01
NN09507	1/27/2010	71	Add'l HDD ft at CR 17 due to IFB to IFC changes	\$30,155.00
NN09507	2/15/2010	73	remove antique tractors & equip	\$4,962.38
NN09507	2/15/2010	74	Safety Training for rev. 2010 NNG policies	\$34,626.80
NN09507	3/16/2010	75	Fab & Hydrotest piping on farm taps	\$6,481.60
NN09507	3/31/2010	76	Fix fences on tract CA-077, MP10	\$4,783.46
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09508	5/1/2009	2	Driveway Installation	\$3,480.00
NN09508	6/15/2009	9	blacktopping of 146th Lane In Andover	\$164,656.00
NN09508	6/15/2009	10	6 additional road approaches	\$34,981.60
NN09508	7/2/2009	12	Additional Ditch Depth	\$14,455.48
NN09508	7/15/2009	13	Reduced Workspace	\$222,855.00
NN09508	7/15/2009	14	Lanced Leaved Violets	\$35,500.00
NN09508	7/15/2009	15	Oak Wilt Move Arouns	\$73,233.93
NN09508	8/19/2009	18	remove and replace rusted culvert	\$1,839.63
NN09508	8/19/2009	19	matts over septic	\$3,425.55
NN09508	8/19/2009	20	remove grave and replace w/rock	\$10,886.22
NN09508	7/16/2009	21	Pipe issues	\$10,498.62
NN09508	8/19/2009	22	load and haul landowner debris	\$2,480.07
NN09508	8/14/2009	23	Install additional road approaches	\$14,798.36
NN09508	8/19/2009	24	Reduced Workspace	\$25,165.00
NN09508	8/16/2009	25	Wait time re: leaky valve	\$2,523.68
NN09508	8/14/2009	26	remove access roads	\$7,026.31

\$13,317.85

\$19,449.46

\$194,027.95

VEC000368

Job Number	COR Date	COR #	COR Description	COR Total
NN09508	7/31/2009	27	Load and haul debris	\$4,328.73
NN09508	8/27/2009	34	excavation looking for missing stopple	\$31,457.68
NN09508	8/19/2009	36	install access road & haul rubble	\$2,094.00
NN09508	10/8/2009	54	Additional welding	\$224,000.00
NN09508	12/4/2009	59	fix wrong valve extension	\$8,211.22
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09509	12/4/2009	57	12" Valve Extension installation	\$9,371.71
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09510	6/26/2009	11	Move EFM Building	\$2,930.00
NN09510	12/8/2009	61	Rewire building	\$2,920.94
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09511	4/1/2009	1	Install meter run & concrete piers	\$19,600.00
NN09511	5/22/2009	7	Rubber Boot install	\$1,450.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09513	2/1/2010	72	Travel to Waterloo to pick up traps for NNG	\$1,900.00
NN09513	12/2/2009	58	IF8 to IFC Changes	\$55,544.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09514	7/29/2009	17	Land Owner Sod Installation	\$26,950.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09515	8/18/2009	30.1	30" Valve Re-work	\$5,356.25
NN09515		31-R	combination of 30 & 31	\$14,374.46
NN09515	8/17/2009	29	Lost coupon	\$5,238.02
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09520	9/21/2009	46	Add'l work req to jeep and repair coating	\$57,560.80
NN09520	6/2/2009	8	4" Tapping	\$4,655.04
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09521	10/31/2009	47	Fab & Eng of MI Block Valve	\$6,500.00
NN09521	5/15/2009	5	removal of contaminated Heater Bundle	\$5,040.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009				
NN09522	1/25/2010	63	Belknap Electric	\$1,150.00
NN09522	9/21/2009	48	Shutdown delay due to pinhole leak on private gas line	\$7,500.00
NN09522	12/4/2009	60	Heater piping	\$15,490.24
Northern Natural Gas Company CCA-179-2009-6495 July 24, 2009				
NN09526	10/8/2009	53	install and remove add'l road approaches	\$52,404.77
Northern Natural Gas Company GSMA-179-2009-6237 No. 1216 September 8, 2009				
NN09528	9/25/2009	2	INSTALL RELIEF VALVE	\$5,126.74
NN09528	9/21/2009	1	STANDBY TIME	\$5,902.34

\$897,897.08
 \$9,371.71
 \$5,850.94
 \$21,050.00
 \$57,444.00
 \$26,950.00
 \$24,968.73
 \$62,215.84
 \$11,540.00
 \$24,140.24
 \$52,404.77
 \$5,902.34

VEC000369

Job Number	COR Date	COR #	COR Description	COR Total
Northern Natural Gas Company CCA-179-2010-6840 May 10, 2010				
NN10108	05/18/2010	1	INSTALL MATS OVER LINE A	\$1,000.00
NN10108	06/10/2010	2	Credit for SOW change - removal of 2 stopples	-\$7,500.00
NN10108	07/21/2010	3	PROJECT COMPLETION DELAY OF 17 DAYS	\$0.00
NN10108	07/21/2010	4	ADDITIONAL CUTS AND WELDS DUE TO DRAWING REVISION	\$7,721.35
NN10108	07/21/2010	5	MATS OVER HOT LINES	\$2,800.00
NN10108	07/22/2010	6	PROJECT COMPLETION DELAY OF 14 DAYS	\$0.00
NN10108	07/26/2010	7	DEWATERING	\$17,500.00
NN10108	12/09/2010	8	PIPE PICK-UP - OGDEN TO REDFIELD	\$8,578.12
Northern Natural Gas Company GSMA-179-2009-6237 No. 2407 May 7, 2010				
NN10114	07/21/2010	1	INSTALL MATS OVER A-LINE	\$2,000.00
NN10114	07/21/2010	2	WELDERS TRAVELING FOR NEW PROCEDURE	\$19,679.08
NN10114	08/13/2010	COR 3	WORKING ON EXCAVATION TO FIND LEAKY VALVE	\$53,557.46
NN10114	09/10/2010	4	INSTALL MATS & ROCK ON ACCESS RD DUE TO CHG ON IFC PRINTS	\$37,965.00
NN10114	10/13/2010	5	DE-MOB AND RE-MOB DUE TO PIPE SIZE CHG	\$28,000.00
NN10114	10/13/2010	6	EXTRA WORK DUE TO INCREASE IN PIPING SIZE	\$241,500.00
NN10114	10/28/2010	7	COMPLETION DELAY DUE TO EXCESSIVE RAIN AND FLOODING	\$0.00
NN10114	11/16/2010	10	CHECK FOR WATER INFILTRATION	\$9,136.85
NN10114	11/22/2010	11	ISSUES WITH TD WILLIAMSON	\$24,669.24
NN10114	11/22/2010	12	PREMIUM TIME 11/20 DUE TO TIE-IN	\$5,908.80
Northern Natural Gas Company CCA-179-2010-6965 August 23, 2010				
NN10131	09/07/2010	COR 1	PIPING MODIFICATIONS TO METER/REG SKID	\$6,468.63
NN10131	09/27/2010	COR 2	Replace 2-4" valves and a 4" spool piece	\$1,320.00
Northern Natural Gas Company CCA-179-2010-6949 August 9, 2010				
NN10132	09/17/2010	COR 1	WELDED ON SLEEVE FOR MICHELS	\$4,499.52
NN10132	09/30/2010	COR 4	Additional Days due to larger excavations	\$0.00
NN10132	10/14/2010	COR 5	PICK UP STOPPLE IN WATERLOO	\$1,246.92
NN10132	10/18/2010	COR 6	LAKE LINDEN (349,006)	\$195,400.00
NN10132	10/18/2010	COR 7	KORPI ROAD (360,928)	\$350,500.00
NN10132	11/01/2010	COR 8	ADD'L MATS AT DIG SITE 5	\$142,400.00
NN10132	11/03/2010	COR 9	STANDBY DUE TO STOPPLE TOWER FAILURE	\$26,581.69
NN10132	11/03/2010	COR 10	EXTRA WELDING @ LAKE LINDEN	\$4,800.00
NN10132	11/03/2010	COR 11	EXTRA WELDING @ LAKE LINDEN & KORPI ROAD	\$20,000.00
NN10132	11/03/2010	COR 12	WAIT TIME FOR STOPPLE REPAIR	\$8,168.11
NN10132	11/03/2010	COR 13	TIME DUE TO INCREASE IN CHANGE OUT LENGTH	\$23,970.52
NN10132	11/15/2010	COR 14	Marquette Verification Digs 33578 & 330536 - WCO 1	\$99,439.40
NN10132	11/15/2010	COR 15	Marquette Verification Digs - Mats - WCO 2	\$247,895.00

\$30,099.47

\$422,416.43

\$7,788.63

\$1,124,901.16

VEC000370

Job Number	COR Date	COR #	COR Description	COR Total
Northern Natural Gas Company CCA-179-2010-6987 September 13, 2010				
NN10138	09/14/2010	COR 1	Temporary Skid Muds	\$1,000.00
NN10138	10/01/2010	COR 2	Pickup and Deliver 2 Regulators	\$1,274.64
NN10138	10/20/2010	COR 3	Fab and Test (2) 6" Spool Pieces	\$2,300.00
NN10138	10/20/2010	COR 5	Remove and dispose of 50' of sidewalk	\$500.00
NN10138	10/26/2010	COR 6	Modify supports	\$2,400.00
NN10138	10/27/2010	COR 7	Haul PCB contaminated pipe	\$1,800.00
Northern Natural Gas Company CCA-179-2010-6989 September 13, 2010				
NN10139	10/04/2010	COR 2	ADDTL STOPPLE AND BY-PASS	\$337,700.00
NN10139	12/03/2010	COR 3	HAUL REMOVED PIPE	\$8,578.12
Northern Natural Gas Company CCA-179-2010-7026 October 11, 2010				
NN10141	10/27/2010	COR 1	Disconnect separator trailer	\$4,663.46
NN10141	12/01/2010	COR 3	Extra Electrical Work	\$3,231.50
Northern Natural Gas Company CCA-179-2010-7075 November 8, 2010				
NN10145	11/18/2010	COR 1	REMOVAL OF UNKNOWN DISCOVERED CONCRETE	\$9,141.48

\$9,274.64

\$346,278.12

\$7,894.96

\$9,141.48

\$8,308,699.52

VEC000371

EXECUTION VERSION

Part 4.18
Insurance

The list attached hereto sets forth a list and brief description of all policies of insurance maintained, owned or held by the Seller Group on the date hereof.

The insurance broker of Minnesota Limited has advised Minnesota Limited that coverage has been bound for a new policy period April 1, 2011 through March 31, 2012.

The list attached hereto sets out all claims made by the Seller Group under any policy of insurance during the past two years.

The disclosures set forth in Part 4.12(a) are incorporated herein.

Pursuant to that certain Employment Practices Liability Policy No. 105259222 issued April 1, 2010 by Travelers Casualty to Minnesota Limited, coverage will cease with respect to Claims for Wrongful Acts committed after the Contemplated Transactions, and the Liability Policy may not be canceled by the Named Insured and the entire premium for the Liability Policy will be deemed fully earned. In addition, the right to elect the Run-Off Extended Reporting Period shall terminate unless written notice of such election, together with payment of the additional premium due, is received by the Company within 30 days of the Closing. (Capitalized terms not defined herein or in the Agreement have the meanings set forth in such policy). Pursuant to a letter dated March 16, 2011 sent by Erin D. Ramsey of Travelers Casualty to Andrew Mahoney, Travelers Casualty has agreed to waive the change of control provisions set forth above upon the receipt of the notice of the consummation of the Contemplated Transaction.

Part 4.18
List of Insurance Policies

Policy	Insurance Carrier	Policy Period	Description/Nature of Coverage	Coverage Limits Per occ./Agg.	Deductible	12 Month Premium	Loss Experience Last 5 Years
Automobile	Travelers	4/1/10-3/31/11	Property and liability coverage for over-the-road vehicles	\$1,000,000	1,000	143,109	138,417
General liability	Travelers	4/1/10-3/31/11	3rd party liability coverage including completed operations	\$1,000,000/\$2,000,000	100,000	168,845	12,340
Workers Compensation	Travelers	4/1/10-3/31/11	Statutory coverage for employee work-related injuries	Statutory requirements	250,000	464,086	2,003,389
Crime	Travelers	4/1/10-3/31/11	Employee theft and ERISA fidelity	\$1,000,000	10,000	2,660	-
Property	Travelers	4/1/10-3/31/11	Damage to off-road equipment	Replacement/cash value	1,000	123,390	141,616
Non-owned aircraft	StarNet	4/1/10-3/31/11	Aircraft liability coverage when hiring plane/helicopter to survey jobs	\$1,000,000	N/A	2,869	-
Employment practices liability	Travelers	4/1/10-3/31/11	Liability to employees for non-compliance of federal/state labor/benefit laws	\$1,000,000	25,000	6,724	-
Umbrella liability	Everest National	4/1/10-3/31/11	Excess liability coverage for general liability policy	\$10,000,000	30,000	107,550	-
Excess liability	Avia Surplus	4/1/10-3/31/11	Liability coverage after primary \$10M is exhausted with Everest	\$15,000,000	N/A	48,828	-
Excess liability	CSU Indemnity	4/1/10-3/31/11	Liability coverage after primary \$10M is exhausted with Avia	\$25,000,000	N/A	29,700	-
Contractor's Pollution Liability	Charis	7/2/10-7/1/13	3rd party liability for release of pollutants	\$1,000,000/\$10,000,000	25,000 *	181,088	-
Contractor's Professional Liability	Travelers	4/1/10-3/31/11	3rd party damages for negligent acquisition consulting	\$1,000,000	100,000	11,860	-
ND Workers Compensation	ND Workforce Safety & Insurance	8/1/10-7/31/11	Indemnity and medical costs for ND workers injured on the job	Statutory requirements	N/A	1,294	-
Ohio Workers Compensation	Ohio Bureau of Workers Comp.	7/1/10-12/31/10	Indemnity and medical costs for OH workers injured on the job	Statutory requirements	N/A	2,272	-

* - premium amount is for 3 years

VEC000373

Part 4.18
Claims Detail

Insurance Policy	Claimant	Claim Date	Claim Number	Status	MU Incurred Cost
Auto	Don Hedlund, Jr	4/21/09	A419485	Closed	-
Auto	Don Hedlund, Jr	4/21/09	B6A3816	Closed	-
Auto	Mike Hegge	10/15/09	EGV1544	Closed	\$ 4,534
Auto	Jonathan Hyke	3/4/09	A415166	Closed	\$ 14,053
Auto	John Nelson	5/27/09	CLK2748	Closed	\$ -
Auto	John Nelson	7/27/09	EGE7631	Closed	\$ 3,857
Auto	Michael Nepean	1/5/10	FZL3095	Closed	\$ 5,983
Auto	Michael Simpson	4/8/09	A418043	Closed	\$ 7,688
Auto	Michael Simpson	5/11/10	EKZ2388	Open	\$ 4,736
Auto	Unknown	4/23/09	A5E3730	Closed	\$ 5,385
General Liability	Vicky Kunshier	8/10/09	CLK2839	Closed	\$ 11,090
General Liability	Qwest	8/13/10	CLK3217	Open	\$ 1,250
General Liability	Charles Skinner	4/23/09	CLK2725	Closed	\$ -
Workers Compensation	Danny Allen	10/15/09	A4P7842	Closed	\$ 432
Workers Compensation	Dave Bebus	6/29/10	EGJ3794	Open	\$ 49,267
Workers Compensation	Jeffrey Bergkamp	6/12/10	EJA0676	Closed	\$ -
Workers Compensation	Nick Billiet Jr	7/18/09	A5K2429	Closed	\$ 2,533
Workers Compensation	Kenneth Doyle	10/7/10	EM55487	Closed	\$ -
Workers Compensation	James Eckhoff	10/12/10	EGJ7610	Open	\$ 184,992
Workers Compensation	Kenny Gates	5/15/09	A6H1163	Closed	\$ -
Workers Compensation	Todd Goedker	4/24/09	A8B9919	Closed	\$ 13,005
Workers Compensation	James Gumpert	7/19/10	EJA2621	Open	\$ 24,074
Workers Compensation	Don Hedlund, Jr	4/21/09	A8B9379	Closed	\$ 58
Workers Compensation	Matthew Hutchinson	9/10/10	EJA6669	Open	\$ 5,400
Workers Compensation	Robert Johnson	9/4/09	A5K3789	Closed	\$ -
Workers Compensation	Arthur Kobberdahl	5/21/09	A5K2080	Closed	\$ 102
Workers Compensation	Paul Mertens	7/15/09	A5K2080	Closed	\$ -
Workers Compensation	Gerald Molitor	9/11/09	A5K4192	Open	\$ 74,742
Workers Compensation	Bradford Nevill	7/23/09	A5K5554	Closed	\$ 1,176
Workers Compensation	Greg Oeltjenbruns	7/15/09	A5K2081	Closed	\$ 439
Workers Compensation	Justin Price	2/3/10	A5K8594	Open	\$ 78,629
Workers Compensation	John Rosten	8/11/09	A5K3019	Closed	\$ 19,930
Workers Compensation	Cory Schwartz	11/12/09	A5K6094	Closed	\$ 914
Workers Compensation	Zachary Sedarski	7/22/10	EJA3097	Open	\$ 1,443
Workers Compensation	Zachary Sedarski	12/9/09	A5K6721	Closed	\$ 22,411
Workers Compensation	Eric Swenson	1/8/10	A5K7767	Open	\$ 89,100
Workers Compensation	Derek Yaklin	7/17/09	A5K2136	Closed	\$ 2,938
					\$ 630,161

VEC000374

EXECUTION VERSION

Part 4.19
Environmental Matters

(a) Environmental Matters – Permits

Hazardous Materials Certificate of Registration for Registration Year(s) 2010-2013, issued to Minnesota Limited, dated as of 6/18/2010, by United States of America Department of Transportation Pipeline and Hazardous Materials Safety Administration.

Hazardous Waste Generator License, issued to location MNS000135210, Minnesota Limited, 18640 200th St., Big Lake, MN 55309, issued by Minnesota Pollution Control Agency, with an expiration date of June 30, 2011.

Asbestos Contractor License, issued to Minnesota Limited, dated as of August 25, 2010, issued by Minnesota Department of Health.

Minnesota Limited obtains various stormwater permits from time to time in the ordinary course of business, including, without limitation, the following:

General Stormwater Permit for Construction Activity, dated October 7, 2010, issued by Minnesota Pollution Control Agency, for Directional Drill Proj on MN Pipeline at CSW (ID# C00030922).

General Stormwater Permit for Construction Activity, dated May 28, 2010, issued by Minnesota Pollution Control Agency, for Willow River 2 in BL Reloc/CR 41 Bridges CSW (ID# C00029957).

General Stormwater Permit for Construction Activity, dated June 9, 2010, issued by Minnesota Pollution Control Agency, for Lake Elmo 1B Modifications CSW (ID# C00030036).

General Stormwater Permit for Construction Activity, dated July 3, 2010, issued by Minnesota Pollution Control Agency, for Carlton ML Line Lowering MP 58.12 CSW (ID# C00030260).

General Stormwater Permit for Construction Activity, dated May 28, 2010, issued by Minnesota Pollution Control Agency, for Carlton M432 Replacement 0.00-0.78 CSW (ID# C00029953).

General Stormwater Permit for Construction Activity, for construction start date of September 27, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 125.9.

General Stormwater Permit for Construction Activity, for construction start date of September 27, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 124.3.

General Stormwater Permit for Construction Activity, for construction start date of October 25, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 184.3.

EXECUTION VERSION

General Stormwater Permit for Construction Activity, for construction start date of October 18, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 88.2.

General Permit No. 2 for Storm Water Discharge Associated with Industrial Activity for Construction Activities, dated July 6, 2010.

Sherburne County Septic Certification, inspected on August 8, 2007, relating to property located at 18640 200th Street, Big Lake, Minnesota 55309.

(b)-(f)

Those matters set forth in that certain letter dated January 27, 2011 sent by the Michigan Occupational Safety and Health Administration to Minnesota Limited, and attachments thereto.

The Owned Real Property located in Altamont, Illinois, may need a septic certification.

List of potential Hazardous Material & industrial waste generated:		
Type of Waste	Disposed By Vendor	Monthly Amount
Oil Waste Water	Duane's Septic	Varies
Septic Tanks	Duane's Septic	Varies
Oil From Separator	Duane's Septic	Varies
Used Antifreeze	OSI	Varies
Used Oil Filters	OSI	Varies
Oily Rags	OSI	Varies
Paint	OSI	Varies
Epoxy Hardener	OSI	Varies
Solvent	OSI	Varies

Minnesota Limited burns used oil in waste oil burners on the Owned and Leased Real Property from time to time.

Minnesota Limited received a letter dated February 14, 2011, from the State of Wisconsin Department of Natural Resources, relating to the legal responsibilities associated with the reported contamination at the Property.

Minnesota Limited received a letter dated February 14, 2011, from the WDNR, relating to the WDNR's Remediation and Redevelopment program associated with the reported contamination at the Property. Each of Nordic Superior and Minnesota Limited received a letter dated March 23, 2011, from the WDNR, notifying such parties that they had received approval to proceed in the Program.

An underground storage tank was removed from the Seller Group's previous headquarters, located in Rogers, Minnesota, and from the Property.

A monitoring well is located on the Owned Real Property located in Bemidji, Minnesota. Widseth Smith and Nolting, an environmental firm located in Baxter, Minnesota, has the right to enter the property to monitor such well on behalf of the Minnesota Department of Agriculture.

EXECUTION VERSION

Minnesota Limited utilizes mobile aboveground storage tanks in the ordinary course of business.

In connection with refueling trucks and other equipment, de minimis amounts of gasoline and diesel fuel are spilled from time to time in the ordinary course of business.

The Property was previously contaminated with Hazardous Materials and, after remediation efforts for such contamination, the Wisconsin Department of Commerce issued a final closure letter dated August 24, 2004.

The conditions identified in that certain Phase I Environmental Site Assessment, by American Engineering Testing, Inc., dated November 24, 2010, for the Leased Real Property located in Big Lake, Minnesota, are incorporated herein.

The conditions identified in that certain Phase I Environmental Site Assessment, by American Engineering Testing, Inc., dated November 24, 2010, for the Owned Real Property located in Bemidji, Minnesota, are incorporated herein.

The conditions identified in that certain Phase I Environmental Site Assessment, by American Engineering Testing, Inc., dated November 24, 2010, for the Property, are incorporated herein.

The conditions identified in that certain Phase One Environmental Site Assessment, by SCI Engineering, Inc., dated November 29, 2010, for the Owned Real Property located in Altamont, Illinois, are incorporated herein.

The conditions identified in that certain Report of Phase II Environmental Site Assessment, by American Environmental Testing, Inc., dated December 22, 2010, for the Owned Real Property located in Bemidji, Minnesota, are incorporated herein. The Buyer is solely responsible with respect to any and all liabilities related to its decision to notify or not notify the Minnesota Duty Officer of the matters described in such report.

The conditions identified in that certain Report of Phase II Environmental Site Assessment, by American Environmental Testing, Inc., dated December 23, 2010, for Property, are incorporated herein.

EXECUTION VERSION

Part 4.20
Employees

The Employee List is attached hereto.

Seller Group utilizes independent contractors from time to time that may be considered employees of Seller Group.

In connection with the DEED audit of Minnesota Limited regarding unemployment tax for the calendar year 2005, DEED classified Steve Kuledge as an employee of Minnesota Limited, when Minnesota Limited classified him as a subcontractor.

Paulette Britzius currently intends to terminate her employment with each member of the Seller Group upon Closing.

Dale Britzius, an immediate family member of the Sellers, has indicated that he plans to continue his employment with the Seller Group in a reduced capacity to ensure that, upon the termination of Mr. Britzius' employment, (i) Minnesota Limited has proper personnel in place at the time of to continue to hold those Governmental Authorizations set forth in Part 4.1 of the Disclosure Letter, and (ii) that certain Certified Specialty Contractor, issued by State of Florida Department of Business and Professional Regulation Construction Industry Licensing Board, dated July 22, 2010, in the name of Mr. Britzius, may be transferred to Minnesota Limited, or Minnesota Limited is able to qualify to for a similar Governmental Authorization permitting it to conduct similar operations in the State of Florida as Minnesota Limited currently conducts.

Minnesota Limited, Inc.

**Financial Statements
and Supplementary Information**

December 31, 2010 and 2009

TAX DEPARTMENT COPY

CONFIDENTIAL

VEC000925

Minnesota Limited, Inc.

CONTENTS

	<u>Page(s)</u>
Independent Auditor's Report	1
Financial Statements	
Balance Sheets	2
Statements of Income and Retained Earnings	3
Statements of Cash Flows	4
Notes to Financial Statements	5 - 11
Independent Auditor's Report on Supplementary Information	12
Schedules of:	
Completed Contracts	13 - 20
Uncompleted Contracts	21
Schedules of:	
Construction Costs	22
Unallocated Construction Equipment Costs	23
General and Administrative Expenses	24

CONFIDENTIAL

VEC000926

Lurie Besikof Lapidus
& Company, LLP

Independent Auditor's Report

The Board of Directors and Stockholders
Minnesota Limited, Inc.
Big Lake, Minnesota

We have audited the accompanying balance sheets of Minnesota Limited, Inc. as of December 31, 2010 and 2009, and the related statements of income and retained earnings and of cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Minnesota Limited, Inc. as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Lurie Besikof Lapidus & Company, LLP

Lurie Besikof Lapidus & Company, LLP

April 22, 2011

phone 612.377.4404
fax 612.377.1325

address 2501 Wayzata Boulevard
Minneapolis, MN 55405

website www.lblco.com



Accounting & Auditing | Tax | Private Investment Banking | Actuarial & Benefits Consulting | Valuation & Litigation Support
LBL Leadership Consulting | Entrepreneurial Services | China Strategies Consulting | LBL Technology Partners

CONFIDENTIAL

VEC000927

Minnesota Limited, Inc.

Balance Sheets

December 31	2010	2009
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 140,940	\$ 100,998
Contracts receivable, including retainages of \$2,979,800 and \$5,750,300	26,682,245	20,722,694
Costs and estimated earnings in excess of billings on uncompleted contracts	384,977	1,819,788
Other	597,020	915,472
Total Current Assets	27,805,182	23,558,952
Property and Equipment	4,668,392	6,466,983
Total Assets	\$ 32,473,574	\$ 30,025,935
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Checks issued in excess of deposits	\$ 352,206	\$ 1,796,272
Bank lines of credit	11,929,175	7,031,682
Accounts payable	4,717,843	7,627,454
Accrued expenses	3,509,882	2,020,363
Billings in excess of costs and estimated earnings on uncompleted contracts	1,169,599	12,840
Total Current Liabilities	21,678,705	18,488,611
Stockholders' Equity		
Common stock, par value \$10 (authorized - 2,500 shares; issued and outstanding - 2,055 shares)	20,550	20,550
Additional paid-in capital	51,554	51,554
Retained earnings	10,722,765	11,465,220
Total Stockholders' Equity	10,794,869	11,537,324
Total Liabilities and Stockholders' Equity	\$ 32,473,574	\$ 30,025,935

See notes to financial statements.

Minnesota Limited, Inc.

Statements of Income and Retained Earnings

Years Ended December 31	2010	2009
Revenues Earned	\$ 110,365,790	\$ 121,058,702
Construction Costs	97,169,065	104,963,089
Gross Profit	13,196,725	16,095,613
General and Administrative Expenses	11,542,503	9,171,104
Income from Operations	1,654,222	6,924,509
Other Income (Expense)		
Interest income	569	6,799
Gain (loss) on sales of property and equipment	12,138	(39,798)
Interest expense	(146,656)	(57,715)
Other income (expense)	219,135	(22,634)
Total Other Income (Expense), net	85,186	(113,348)
Net Income	1,739,408	6,811,161
Retained Earnings		
Beginning of year	11,465,220	17,733,786
Distributions	(2,481,863)	(13,079,727)
End of year	\$ 10,722,765	\$ 11,465,220

See notes to financial statements.

3

CONFIDENTIAL

VEC000929

Appellee's App'x
Vol II, p 878

Minnesota Limited, Inc.

Statements of Cash Flows

Years Ended December 31	2010	2009
Operating Activities		
Net income	\$ 1,739,408	\$ 6,811,161
Adjustments to reconcile net income to net cash provided (used) by operating activities:		
Depreciation	2,096,288	2,252,140
Bad debt expense	840,333	-
Loss (gain) on sales of property and equipment	(12,138)	39,798
Changes in operating assets and liabilities:		
Contracts receivable	(6,799,884)	(5,626,388)
Net billings, costs and estimated earnings on uncompleted contracts	2,591,570	(1,803,315)
Other assets	301,328	(577,536)
Accounts payable	(2,909,611)	3,119,828
Accrued expenses	1,489,519	(324,964)
Net Cash Provided (Used) by Operating Activities	(663,187)	3,890,724
Investing Activities		
Net proceeds from related parties	17,124	606,045
Purchases of property and equipment	(322,634)	(2,030,389)
Proceeds from sales of property and equipment	37,075	37,155
Net Cash Used by Investing Activities	(268,435)	(1,387,189)
Financing Activities		
Increase (decrease) in checks issued in excess of deposits	(1,444,066)	542,139
Net proceeds on bank lines of credit	4,897,493	7,031,682
Distributions to stockholders	(2,481,863)	(12,087,370)
Net Cash Provided (Used) by Financing Activities	971,564	(4,513,549)
Net Increase (Decrease) in Cash and Cash Equivalents	39,942	(2,010,014)
Cash and Cash Equivalents		
Beginning of year	100,998	2,111,012
End of year	\$ 140,940	\$ 100,998

See notes to financial statements.

4

CONFIDENTIAL

VEC000930

Minnesota Limited, Inc.

Notes to Financial Statements

1. The Company and Summary of Significant Accounting Policies

Nature of Business

Minnesota Limited, Inc. (Company) is a specialty general contractor serving the natural gas and petroleum industry. The Company focuses on pipeline construction; pump station, compressor station, terminal, and refinery construction; pipeline maintenance; and hydrostatic testing. The Company is headquartered in Big Lake, Minnesota, with facilities in Bemidji, Minnesota; Superior, Wisconsin; and Altamont, Illinois. The Company's revenue is earned on projects throughout the United States, primarily in the midwestern and central states.

The Company's stock was acquired by a publicly held utility based in Indiana on March 31, 2011.

Use of Estimates

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that may affect the reported amounts and disclosures in the financial statements and accompanying notes. Actual results could differ from those estimates. The most significant management estimates relate to the determination of the percentage of completion on construction contracts in progress, the workers' compensation insurance reserve, warranty costs, and the allowance for doubtful accounts. It is reasonably possible these significant management estimates may change in the near term and the effect of the change could be material. Revisions in estimated contract profits are made in the year they become known.

Revenue and Cost Recognition

Revenue from fixed price construction contracts is recognized on the percentage of completion method, measured by the percentage of costs incurred to date to the estimated total costs for each contract. Management considers costs incurred as the best measure of progress on contracts. Because of inherent uncertainties in estimating costs, it is reasonably possible that the estimates used will change in the near term. Contracts typically last from one month to one year. Approximately 55% and 81% of revenues were derived from fixed price construction contracts in 2010 and 2009, respectively.

Revenues on cost plus fee contracts are recognized to the extent of costs incurred during the period plus a proportionate amount of fee earned, measured by the cost to cost method. Approximately 45% and 19% of revenues were derived from cost plus fee contracts in 2010 and 2009, respectively.

Contract costs include all direct material, subcontract, and labor costs, and those indirect costs related to contract performance including depreciation, equipment maintenance and repairs, and supplies. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions, and estimated profitability, including those arising from contract penalty provisions and final contract settlements, may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

Cash Equivalents

All highly liquid investments purchased with an original maturity of three months or less are considered cash equivalents.

Credit Risk

The Company maintains cash at financial institutions in deposit and money market accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses on such accounts and management believes it is not exposed to any significant credit risk on cash.

Minnesota Limited, Inc.

Notes to Financial Statements

1. The Company and Summary of Significant Accounting Policies (continued)

Contracts Receivable

Management reviews individual contracts receivable as they become past due to determine collectability. The allowance for doubtful accounts is adjusted based on management's consideration of past due contracts receivable. Individual accounts are charged against the allowance when collection efforts have been exhausted. The allowance for doubtful accounts was \$100,000 and \$450,000 at December 31, 2010 and 2009, respectively.

Contracts receivable includes approximately \$2,852,000 and \$1,360,000 of unbilled receivables at December 31, 2010 and 2009, respectively.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation is provided using straight line and accelerated methods over the estimated useful lives of the assets.

Income Taxes

The Company, with the consent of the stockholders, elected S corporation status effective April 1, 1996. Earnings and losses are included in the personal income tax returns of the stockholders. The Company is subject to income taxes in certain states in which it conducts business. Income taxes charged to expense, net of certain fuel tax credits received, were approximately \$297,000 and \$242,000 for 2010 and 2009, respectively.

Reclassifications

Certain reclassifications were made to the 2009 financial statements to make them comparable to the 2010 presentation. The reclassifications did not have any effect on previously reported stockholders' equity, net income, or net cash flows.

2. Uncompleted Contracts

Billings, costs and estimated earnings on uncompleted contracts consisted of the following:

December 31	2010	2009
Costs incurred on uncompleted contracts	\$ 5,957,092	\$ 28,703,830
Estimated earnings	62,103	4,313,972
Costs incurred and estimated earnings	6,019,195	33,017,802
Less billings to date	(6,803,817)	(31,210,854)
Total	\$ (784,622)	\$ 1,806,948

Minnesota Limited, Inc.

Notes to Financial Statements

2. Uncompleted Contracts (continued)

Uncompleted contracts are included in the balance sheets as follows:

December 31	2010	2009
Costs and estimated earnings in excess of billings on uncompleted contracts	\$ 384,977	\$1,819,788
Billings in excess of costs and estimated earnings on uncompleted contracts	(1,169,599)	(12,840)
Total	\$ (784,622)	\$1,806,948

3. Property and Equipment

Property and equipment consisted of the following:

December 31	2010	2009
Construction equipment	\$ 14,989,269	\$ 16,184,082
Transportation equipment	13,043,610	13,460,954
Office equipment and software	1,017,862	992,573
Buildings	210,403	210,403
Total cost	29,261,144	30,848,012
Less accumulated depreciation	24,592,752	24,381,029
Property and Equipment	\$ 4,668,392	\$ 6,466,983

In 2010, the Company exchanged certain property and equipment totaling \$206,945 for similar property and equipment. The transaction is considered to not significantly change the Company's future cash flows. Under accounting principles generally accepted in the United States of America, exchanges that do not significantly change future cash flows are measured at recorded amounts. For income tax purposes in 2010, the Company deferred recognition of a gain on the exchange of approximately \$183,600.

4. Bank Lines of Credit

The Company has an agreement with a bank providing two revolving bank lines of credit in the amounts of \$20,000,000 and \$10,000,000. The revolving lines of credit expire on October 31, 2012 and September 30, 2011, respectively. The Company had a \$15,000,000 credit agreement that expired on October 31, 2010. Advances are due on demand, bear interest at 2.25% plus the one-month London Interbank Offered Rate (LIBOR) (0.26% and 0.23% at December 31, 2010 and 2009, respectively) with a floor rate of 3.0%, and are collateralized by contracts receivable, specific property and equipment, and the personal guarantees of the Company's stockholders. The credit agreement includes an annual unused line of credit fee of 0.25% and requires the Company to maintain certain levels of tangible net worth, debt service coverage and debt to tangible net worth, as defined. The lines of credit were paid off upon the sale of the Company's stock (Note 1).

The bank agreement provides for up to \$2,000,000 of irrevocable standby letters of credit. Any outstanding letters of credit generally reduces otherwise available borrowings on the lines of credit (Note 6).

Minnesota Limited, Inc.

Notes to Financial Statements

5. Related Party Transactions and Balances

Related party transactions and balances were as follows:

December 31	2010	2009
Transactions:		
Facilities rent expense to entities controlled by the Company's stockholders	\$ 1,653,400	\$ 1,498,616
Advances to related party lessor controlled by the Company's stockholders to facilitate construction of and improvements to the Company's Big Lake, Minnesota headquarters	6,800	95,038
Advances to pipeline services company related through common ownership	4,960	10,292
Purchases from pipeline services company related through common ownership	310,871	281,082
Off-road equipment rent expense to equipment leasing company controlled by the Company's stockholders	4,325,295	6,168,501
Advances to equipment leasing company controlled by the Company's stockholders to facilitate purchasing equipment	-	1,000
Balances:		
Due from related party lessor of Company Big Lake, Minnesota headquarters	\$ 7,268	\$ 24,473
Due from the equipment leasing company	1,081	1,000
Receivable from Related Parties	\$ 8,349	\$ 25,473

The Company leases certain off road equipment from an entity related through common ownership. The lease is treated as an operating lease for accounting purposes. The Company is responsible for all maintenance and insurance cost of the equipment. The transactions are governed by a blanket lease agreement. The agreement contained a minimum lease term of 24 months for each specific piece of equipment leased and can be renewed for another 24 months thereafter. No purchase option exists in the agreement. This agreement was terminated upon the sale of the Company's stock (Note 1).

The Company leased its Big Lake facility beginning in March 2008, and other branch facilities from a related party owned by the Company's stockholders. The other branch facilities are leased on a year-to-year basis. The Big Lake facility lease required base monthly rents of \$120,000 and \$110,000 for most of 2010 and 2009, respectively. The Big Lake facility lease also requires the Company to pay facility operating costs and real estate taxes. The Big Lake facility lease was renewed March 2011 and expires March 2021. The new lease requires base monthly rents of \$83,333 and the Company is responsible for all real estate taxes and operating expenses of the facility as defined in the lease.

During 2006, the Company began advancing funds to the related party lessor, an entity related through common ownership to finance the construction of the Big Lake facility. Advances are repaid periodically and some advances have been distributed to stockholders. The receivables from related parties are noninterest bearing. Related party balances are unsecured.

Minnesota Limited, Inc.

Notes to Financial Statements

5. Related Party Transactions and Balances (continued)

Future minimum lease payments are as follows:

Year Ending December 31	Other Facilities	Equipment	Big Lake Facility	Total
2011	\$ 57,300	\$ 1,512,800	\$ 1,110,000	\$ 2,680,100
2012	-	-	1,000,000	1,000,000
2013	-	-	1,000,000	1,000,000
2014	-	-	1,000,000	1,000,000
2015	-	-	1,000,000	1,000,000
Thereafter	-	-	5,250,000	5,250,000
Total	\$ 57,300	\$ 1,512,800	\$ 10,360,000	\$ 11,930,100

6. Worker's Compensation Insurance

The Company self-insures its worker's compensation losses up to \$250,000 per individual claim. The Company also maintains stop-loss coverage limiting its maximum workers' compensation claims exposure to approximately \$1,450,000 annually. The Company's insurance provider administers the claims, including assisting management's estimate of the losses, and processing payments. Prior to 2010, the Company maintained a cash collateral balance with the insurance provider to facilitate claim payments. This balance was approximately \$507,000 at December 31, 2009, and was recorded as a prepaid expense at December 31, 2009. In 2010, the Company modified its workers compensation plan and the collateral balance was refunded. Worker's compensation expense was approximately \$1,485,000 and \$148,600 in 2010 and 2009, respectively.

In 2010, the Company received a refund of reserve balances that had not been paid to claimants from its workers' compensation insurance provider of approximately \$899,000. This amount represents the approximate excess of estimated reserves of claims paid by the Company over claims incurred in earlier policy years. The amount is recorded in construction costs.

The Company maintained a letter of credit for \$1,534,784 that expired on March 31, 2011 with the Company's workers' compensation insurance provider named a beneficiary. A new letter of credit was obtained for \$1,335,000, expires April 1, 2012, and has the same beneficiary.

7. Collective Bargaining Agreements

A majority of the Company's employees are covered under national collective bargaining agreements. The collective bargaining agreements are each negotiated separately and expired on December 31, 2010 and January 31, 2011. Management has obtained short-term extensions of these agreements while they are being renegotiated.

8. Employee Benefit Plans

Multi-Employer Pension Plan

The Company participates in multi employer pension plans for the benefit of its union employees. The Company contributed \$5,247,063 and \$4,945,339 in 2010 and 2009, respectively.

Minnesota Limited, Inc.

Notes to Financial Statements

8. Employee Benefit Plans (continued)

Defined Contribution Profit Sharing Plan

The Company has a 401(k) profit sharing plan for the benefit of all employees with one year of service and not participating in a collective bargain agreement. The plan allows employees to contribute the maximum amount of compensation permitted by the Internal Revenue Service. Company contributions to the plan were approximately \$80,800 and \$72,700 for 2010 and 2009, respectively.

9. Contingencies

The Company has agreed to perform warranty work on a previously completed project. The estimated cost of the warranty work is \$1,000,000. The Company has paid and recorded costs of approximately \$700,000 through December 31, 2010. The remaining estimated warranty work of \$300,000 at December 31, 2010 is recorded in accrued expenses.

In the normal course of business, the Company is subject to various claims and assessments. Management defends such matters and believes the outcome of such claims and assessments will not have a material adverse effect on the Company's financial position.

10. Concentrations

Sales to significant customers, expressed as a percentage of revenues and contracts receivable, as of and for the years ended December 31 were as follows:

December 31	% of Revenue		% of Receivables	
	2010	2009	2010	2009
Customer				
1	35 %	25 %	64 %	34 %
2	26	28	14	15
3	16	19	*	*
4	10	10	*	20
5	*	11	*	*

* less than 10%

Minnesota Limited, Inc.

Notes to Financial Statements

11. Supplementary Disclosures of Cash Flow Information

Additional cash flow information consisted of the following:

Years Ended December 31	2010	2009
Cash paid for interest	\$ 146,656	\$ 63,995
Noncash investing and financing activities:		
Receivable from related parties distributed to stockholders	-	992,357
Property and equipment exchanged for like-kind property and equipment	206,945	-
Line of credit to bank refinanced	12,552,539	-

12. Subsequent Events

Management has evaluated subsequent events through April 22, 2011, the date at which the financial statements were available to be issued.

Lurie Besikof Lapidus
& Company, LLP

Independent Auditor's Report on Supplementary Information

The Board of Directors and Stockholders
Minnesota Limited, Inc.
Big Lake, Minnesota

We have audited the financial statements of Minnesota Limited, Inc. as of and for the years ended December 31, 2010 and 2009, and our report thereon dated April 22, 2011, which expressed an unqualified opinion on those financial statements, appears on page 1. Our audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information on pages 13 to 24, which is the responsibility of management, is presented for purposes of additional analysis and is not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audits of the financial statements and, accordingly, we do not express an opinion or provide any assurance on it.

Lurie Besikof Lapidus & Company, LLP

Lurie Besikof Lapidus & Company, LLP

April 22, 2011

phone 612.377.4404
fax 612.377.1325

address 2501 Wayzata Boulevard
Minneapolis, MN 55405

website www.lblco.com



Accounting & Auditing | Tax | Private investment Banking | Actuarial & Benefits Consulting | Valuation & Litigation Support
LBL Leadership Consulting | Entrepreneurial Services | China Strategies Consulting | LBL Technology Partners

CONFIDENTIAL

VEC000938

Minnesota Limited, Inc.

Schedule of Completed Contracts - Fixed Price

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010				
AL09854	ND - Bantry Meter Station	\$ 21,592	\$ 108,690	\$ (87,098)
AL10144	Albert Lea 2" Compressor Line Repair	6,875	5,765	1,110
BP09009	Dubuque Manifold Piping Mods	20,388	(200)	20,588
BP10110	IA - 2010 Restoration	8,500	(84)	8,584
BP10111	MN - 2010 Restoration	9,500	9,593	(93)
CP10103	Burnsville-ROW Clearing - Black Dog Transmssion Lines	212,250	47,631	164,619
CP10133	Coon Rapids, MN - Northgate Project - 400' of 24"	136,469	143,357	(6,888)
EB09307	AC Viking Station Construction	1,109,488	1,141,172	(31,684)
EB09308	AC/SL Clearbrook Station	1,867,630	1,464,208	403,422
EB09309	Southern Lights - Adams Str	3,748	6,220	(2,472)
EB09313	Southern Lights - Vesper Str	89,023	30,342	58,681
EB09314	Southern Lights - Delavan Str	26,873	35,297	(8,424)
EB09324	AC Deer River Station Const.	2,221,259	2,116,435	104,824
EB09327	MN IL Line 13 Remote Press Tra	24,338	22,033	2,305
EB09328	WI SA Vesp Delvn Platform Mods	9,115	304,316	(295,201)
EB10100	IL - SL Cath Prot Install Svcs - Streator to Manhattan	298,278	189,594	108,684
EB10121	Hydro-testing of 80' of 30" Mainline Pipeline	22,802	15,087	7,715
EN08379	Stanley Str Mechanical 08	8,800	(86)	8,886
EN08380	Stanley Injection Capacity Inc	65,313	238,430	(173,117)
EN09377	NDSE 6 - Bartlett Str Mech	3,000	11,807	(8,807)
EN09378	NDSE 6 - Denbigh Str Mech	15,400	11,429	3,971
EN09379	NDSE 6 - Minot Station Mech	113,000	118,167	(5,167)
EN09380	ND - Beaver Lodge Str Mech	41,637	213,548	(171,911)
EN09381	ND Blaisdell Str Mech	19,800	9,995	9,805
EN09383	MN - Clearbrook Str Mechanical	29,550	42,780	(13,230)
KM10117	Mankato, MN - 12" Pipeline Adjustments	328,640	341,231	(12,591)
KP10118	Clearbrook, MN - Tank 1 Project	165,041	139,535	25,506
KP10142	Cottage Grove, MN - Tank 22 Tank Repair	211,458	166,627	44,831
MN09233	Blaine-MP 215 Sod Farm Consult	296	(165)	461
MN10101	Blaine, MN - MP 215 Sod Farm 2	396,835	299,187	97,648

Minnesota Limited, Inc.

Schedule of Completed Contracts - Fixed Price - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
MN10235	MN - Clearbrook to Cottage Grove - MPL2 Crossover Mods	\$ 1,305,875	\$ 917,302	\$ 388,573
MN10237	MN - Staples - Emergency Oil Leak MPL2	385,215	310,529	74,686
MR10134	Cottage Grove, MN - Wood River Relief System	393,000	268,848	124,152
MW10104	IL - Chan. ANR Launcher/Receiver & Hydrostatic Testing	718,250	799,301	(81,051)
NN09507	NL 09/10 Rkfrd & Corc 16" BL	14,287,333	15,852,427	(1,565,094)
NN09508	NL 09/10 #3 Elk River Loop 16"	281,814	30,881	250,933
NN09509	NL 09/10 #4 Willmar 12" BL Ext	9,324	502	8,822
NN09510	NL 09/10 #5 Dawson Regulator	2,906	24,631	(21,725)
NN09513	NL 09/10 #9 Corcoran TBS	226,496	278,594	(52,098)
NN09514	NL 09/10 # 10 Fmgt N Brmch C	(176,796)	41,915	(218,711)
NN09515	NL 09/10 #11 Frbit Frmgt D	12,438	(5,176)	17,614
NN09522	NL 09/10 #6 Grantsburg TBS Mod	15,265	(150)	15,415
NN10107	Carlton, MN - Superior Branch Line Regulators Install	129,895	119,162	10,733
NN10108	NE, IA - Large HDD Projects	1,152,792	1,301,447	(148,655)
NN10109	NNG - IA, NE - 2010 Shallow Exposed / Lower Project	1,036,545	1,127,640	(91,095)
NN10112	MN - Willow River BL Relocation	57,446	63,076	(5,630)
NN10113	NE - Omaha 3rd BL Relocation	276,130	257,821	18,309
NN10114	MN - Minneapolis Integrity Package	1,040,513	889,238	151,275
NN10115	IA - Alexander & AGP Stabilization Projects	74,018	75,554	(1,536)
NN10116	IA - Royal Estates Upgrade Project	176,724	201,712	(24,988)
NN10119	MN - Minneapolis Station Projects	518,235	494,388	23,847
NN10120	MN - Lake Elmo 1B TBS Modifications	270,919	221,915	49,004
NN10122	MN - Carlton Replacement & Wrenshall Recoat	1,133,735	1,082,645	51,090
NN10124	WI - Marquette ML Block Valve 5 Regulator Install	169,261	103,976	65,285
NN10125	MN - Appleton, Kandiyohi & Glencoe Heater Remediation Proj.	52,000	35,021	16,979
NN10128	IA - IPL TBS Modifications Project	511,375	438,469	72,906
NN10129	Mankato, MN - Sp Modifications Project	219,094	170,741	48,353
NN10130	MN - M500A Ventura to Farmington ML Relocate MP 82	610,077	369,367	240,710
NN10131	IA, MN, SD - 2010 TBS Stabilization Package	467,789	487,359	(19,570)
NN10132	MI - Marquette BL Replacement Project	2,115,886	2,132,067	(16,181)

See Independent Auditor's Report on Supplemental Information.

14

CONFIDENTIAL

VEC000940

Minnesota Limited, Inc.

Schedule of Completed Contracts - Fixed Price - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
NN10137	MN - Grand Rapids BL Abandonment	\$ 68,500	\$ 36,361	\$ 32,139
NN10138	SD - Yankton & Willow Lake TBS Projects	263,775	289,166	(25,391)
NN10139	IA - Grinnell BL@ Mp 0.31 800' of 16" HDD	897,778	707,804	189,974
NN10140	MN - Waseca 1A TBS Modifications Project	110,000	103,394	6,606
NN10147	New Ulm, Watkins and Mable TBS work	88,850	46,866	41,984
NN10148	MN - Montevideo TBS Modifications	70,000	48,462	21,538
XX10102	MI - 2010 W Oakland and DeWitt Pipeline Project	17,774,842	16,038,266	1,736,576
XX10106	Precision Pipeline 36" Manifolds	200,744	176,012	24,732
XX10135	Owatonna, MN - Valve Replacement (Owatonna Public Utilities)	2,983	2,088	895
XX10136	U of IL - 8" Cut Out	17,742	16,875	867
	Non Revenue Jobs	(37,859)	930,169	(968,028)
	Unallocated Equipment Costs	-	1,214,038	(1,214,038)
	Unallocated Workers' Compensation Insurance Costs	-	(159,492)	159,492
Total		\$ 54,417,807	\$ 54,773,152	\$ (355,345)

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010				
AL10517	IL - Anomaly Digs	\$ 27,635	\$ 22,891	\$ 4,744
AL10593	Bantry Heater Repair Project	46,404	39,923	6,481
AL10614	MN - Albert Lea CS Tie-In	63,588	55,360	8,228
BP10504	IA - Dubuque ILI Digs	122,115	74,813	47,302
BP10505	MN - Spring Valley to Twin Cities ILI Digs	205,630	132,586	73,044
BP10522	Welder Testing	7,619	7,827	(208)
BP10526	IA - 2010 Maintenance / Valve Change Outs	729,342	444,354	284,988
BP10527	MN - 2010 Maintenance / Valve Change-Outs	57,562	36,987	20,575
BP10538	IA - Dubuque Station Parallel PRV's	23,360	17,214	6,146
BP10589	IA - Drainage System upgrade @ Dubuque Station	334,476	217,164	117,322
CP10562	MN - Riverside project Warranty Work	-	11,873	(11,873)
EB10503	2010 Superior Region Work	286,290	141,153	145,137
EB10506	MN - Line 3 34" Digs	1,370,102	1,004,130	365,972
EB10510	IN & MI - Line 6B Integrity Digs	856,680	595,248	261,432
EB10511	Neche, ND - Emergency Leak Response	367,174	222,534	144,640
EB10512	ND - Line 3 34" Digs	53,747	43,770	9,977
EB10513	MN - Grand Rapids Area Maintenance Digs	20,931	15,420	5,511
EB10514	MN & ND - Line 2 26" Digs	992,900	721,418	271,482
EB10529	MN - Pig Run Assist & Transport	19,323	10,844	8,479
EB10530	Clearbrook, MN - Hauling Hoe	807	322	485
EB10531	Clearbrook, MN - SL Reversal / Tie-In	374,380	270,829	103,551
EB10532	MN - Leak at Deer River Station	287,049	198,479	88,570
EB10536	WI - Valve Change Outs at Vesper, Delavan & Adams	23,124	15,262	7,862
EB10537	MN - Line 3 (34") Dent	855,515	600,303	255,212
EB10544	MN - Line 1 20" Crack Digs	358,705	267,702	91,003
EB10569	Viking, MN - PLM Assistance	14,110	6,033	8,077
EB10574	Marshall, MI - Clean Up	14,627,549	9,266,063	5,361,486
EB10583	IL & WI - Pressure Transmitters	29,360	25,648	3,712
EB10587	Clearbrook, MN - AC Line Fill Assistance	34,894	29,432	5,462
EB10596	MI - Line 6B Integrity Work	8,903,130	6,334,028	2,569,102

See Independent Auditor's Report on Supplemental Information.

16

CONFIDENTIAL

VEC000942

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
EB10599	MN - Line 4 48" Digs	\$ 799,676	\$ 568,845	\$ 230,831
EB10602	MN - Deer River Line 2 Repair	553,546	361,367	192,159
EB10611	WI - Line 6A Integrity Digs	896,715	661,122	235,593
EB10612	Deer River Clean Up	15,679	10,856	4,823
EB10615	Plummer, MN - Densitometer	66,822	57,473	9,349
EB10627	Iron River, WI - Ino Station Check Valve Repair	46,467	34,145	12,322
EN10520	Clearbrook, MN - Vac Truck Services @ Porto Station	1,610	750	860
EN10555	MN & ND - Check Valve Repair	193,911	147,672	46,239
EN10556	MN - 2010 Misc. Work In Grand Forks Area	604	955	(351)
EN10570	ND - Line 26 Rehab Program	401,700	309,383	92,317
EN10577	MN, ND - High Priority Digs	219,952	160,101	59,851
EN10582	EN - ND - Line 81 Digs	2,089,943	1,462,508	627,435
EN10592	Minot Tie-In Assistance	4,985	3,426	1,559
EN10605	ND - Alexander - Beaver Lodge Line 84 Dig Program	77,639	56,560	21,079
EN10621	MN - Clearbrook Capacity Increase Project	258,679	183,456	75,223
FH10525	MN - 2010 Barge Dock Pressure Test	10,626	7,496	3,130
GL10542	MN - Shevlin Station Repair	63,401	43,730	19,671
KP10507	2010 Koch Pipeline MN Work	142,729	84,833	57,896
KP10519	Cottage Grove, MN - Valve Replacement/Pipeline Maintenance	96,947	88,272	8,675
KP10546	MN - Assist Tool Runs	6,352	(5,431)	11,783
KP10576	Cottage Grove, MN - Raise tank legs	11,657	8,636	3,021
KP10578	Trap Modifications	8,652	5,429	3,223
KP10591	Inver Grove Heights - Gate 11 Pipeline Mods	68,425	54,726	13,699
KP10597	Inver Grove Heights - MPL 4 Smart Tool Removal @ Gate 15	1,588	777	811
KP10607	Inver Grove Heights - 24" Valve Change Out	11,487	8,492	2,995
KP10613	Inver Grove Heights - Pavement Repair	2,243	1,928	315
KP10617	Clearbrook, MN - Tank 7 Repair	245,500	195,143	50,357
KP10629	Cottage Grove Tank Farm Spill	8,044	5,297	2,747
KP10631	MN - Cut Up Pipe at Cottage Grove	15,066	9,934	5,132
MN10500	2010 MPL Digs - Clearbrook to Cottage Grove	5,122,802	3,611,172	1,511,630

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
MN10501	Bloomington, MN - Airport Pipeline (APL) Digs Project	\$ 167,748	\$ 122,224	\$ 45,524
MN10509	MN - 2010 Line 4 Punch List Clean-up	504,382	553,361	(48,979)
MN10516	MN - Little Falls - Repair Test Leads	3,194	3,210	(16)
MN10534	MN - Restoration Work - P1 Digs	15,399	10,555	4,844
MN10539	MN - IR Drop Test Stations / CP Install	29,820	27,625	2,195
MN10543	MN - Right-of-Way Restoration Work	39,301	31,056	8,245
MN10545	Zimmerman, MN - Remove Contaminated Soil from Launcher sit	16,392	11,132	5,260
MN10547	MN - Oil leak Response Itasca Launcher	12,629	8,953	3,676
MN10550	Mendota Heights, MN - Vent Pipe Extension	19,251	15,260	3,991
MN10551	MN - Line 2 Isolation Work	525,870	332,999	192,871
MN10553	MN - Spill Clean-up at Albany Station	11,790	8,850	2,940
MN10554	Staples, MN - 1000' of 16" Replacement on MPL1	632,828	435,607	197,221
MN10558	Park Rapids, MN - MPL Valve Change Outs	78,237	52,060	26,177
MN10565	MN - Repsonse to MPL1 Line Investigation	10,757	6,620	4,137
MN10566	MN - MinnCan Warranty Work	-	1,022,456	(1,022,456)
MN10571	Lino Lakes, MN - Casing Repair	13,896	9,887	4,009
MN10572	Inver Grove Helghts, MN - Tool Run	7,880	5,053	2,827
MN10573	Little Falls, MN - Sidewalk Repair @ LF Station	4,399	3,555	844
MN10590	Little Falls, MN - Driveway Approaches	8,018	5,554	2,464
MN10594	MN - Valve Change Out in Philbrook	56,492	36,767	19,725
MN10600	2010 MPL1 P-3 & P-4 Digs - Clearbrook to Cottage Grove	1,174,459	882,929	291,530
MN10601	MN - Station Fencing	43,010	36,977	6,033
MN10606	Macon, MO - Little Chariton River Integrity Dig	86,211	69,155	17,056
MN10608	Clrbrk, Ltl Falls, Ctg Grv- Smart Tool Launch/Receiver Mods	164,737	149,011	15,726
MN10618	Foley, MN - Verify Pipeline Depth @ Hwy 23	2,546	749	1,797
MN10619	Jacksonville, MO - Fab spool piece for Station	6,500	6,941	(441)
MN10625	Albany, MN - MPL4 Emergency Dig	47,990	29,590	18,400
MN10628	Eden Valley, MN - MPL 4 Cathodic Protection Work	6,625	4,131	2,494
MR10540	St. Paul Park, MN - Pigging Project	23,604	19,275	4,329
MR10622	Cottage Grove - Injection Pump Pad & Chemical Injection Syst	61,310	40,456	20,854

See Independent Auditor's Report on Supplemental Information.

18

CONFIDENTIAL

VEC000944

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
MR10623	Cottage Grove - Thermal Pressure Relief Project	\$ 11,305	\$ 687	\$ 10,618
MW10603	IL - NDT on 2" T	1,191	1,075	116
NB10620	MN - 2010 IMP Dig Program	257,137	220,850	36,287
NN09535	MN WI 09 MPLS Heater	400	(4)	404
NN10523	Albert Lea Compressor Station Dewatering	48,306	28,709	19,597
NN10524	Ventura, IA - 16" Leak at Apple Road	117,127	69,853	47,274
NN10528	North Branch, MN - Replace Roof Panels	4,567	3,299	1,268
NN10533	St Joseph, MN - Line Hit	12,294	6,381	5,913
NN10535	Garner, IA - Mainline Leak Repair	44,149	29,851	14,298
NN10552	MI - Michigan Integrity Digs	344,560	193,618	150,942
NN10559	MN - Emergency Response to 6" Leak @ LeSueur BL	522,570	349,773	172,797
NN10560	WI - Wisconsin Integrity Digs	61,997	40,550	21,447
NN10579	Fairbank, IA - Pipe Replacement @ Hawkeye Renewable TBS	47,102	30,102	17,000
NN10584	Elk River, MN - Install EKOF Filter @ ER TBS #1	85,461	57,756	27,705
NN10604	2010 Misc. Work	11,248	80,686	(69,438)
NN10609	2010 ILI Digs-Pynsvl,St Cid,St Michael, Princeton/ER,Mankato	231,472	140,527	90,945
NN10610	Elk River, MN - Assist with MNB95101 Block Valve Replacement	10,327	6,813	3,514
NN10626	MN & SD - EKOF Filter Work	32,581	18,477	14,104
OK10585	Seymour, WI - Work at W Green Bay Mtr Stn (Guardian)	56,115	40,071	16,044
SP10595	IL - Line 55 Integrity Work	89,465	55,171	34,294
TC10548	Carpenter, SD - Leak Response	154,070	78,428	75,642
TC10564	Howard, SD - Oil Leak Response	77,398	50,748	26,650
TC10581	Freeman, SD - Contaminated Soil Removal	11,257	7,543	3,714
TC10586	Hartington, NE - Clean Up	33,196	17,676	15,520
TC10588	IL - ANR Shelbyville Compressor Station Sound Attenuation	61,552	47,824	13,728
VG10588	2010 Maintenance	25,514	19,507	6,007
VG10575	Minnesota Sealcoating - Humbolt and Ada, MN	8,366	7,193	1,173
WP10587	WI - Pipeline Integrity Digs	119,931	89,149	30,782
WP10624	Junction City, WI - Junction City Fab & Install Spool Piece	3,689	3,887	(198)
WR10630	St Louis, MO - Wood River P1 Digs	134,391	104,162	30,229

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
XX10502	MN - Clearbrook Line 2 & 3 Densitometer	\$ 23,421	\$ 19,046	\$ 4,375
XX10508	Misc. Equipment Rental	56,500	(555)	57,055
XX10518	MN - Cathodic Protection	995,389	608,040	387,349
XX10521	Donaldson, MN - Vac Truck Services	7,320	1,817	5,503
XX10541	Bemidji, MN - 4" Dehydration Project	11,009	1,587	9,422
XX10549	MN - 2010 Misc Work (Swan Engineering)	1,564	1,397	167
XX10557	2010 Misc Customers - T&M Work	770	600	170
XX10561	Viking L13 Electrical Work (Naylor Electric)	88,566	58,686	29,880
XX10598	Farmington, MN - Assist OSI with Plg Install / Removal	7,973	5,229	2,744
	Miscellaneous Revenues and Costs	(22,588)	61,057	(83,645)
	Unallocated Equipment Costs	-	1,117,729	(1,117,729)
	Unallocated Workers' Compensation Insurance Costs	-	(146,840)	146,840
Total		\$ 50,100,885	\$ 36,438,826	\$ 13,662,059

Minnesota Limited, Inc.**Schedule of Uncompleted Contracts**

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010				
CP10127	IL - NGPL to IGTC Interconnect Project	\$ 2,669,558	\$ 2,377,107	\$ 292,451
EB10123	MI - Rapid River Station Re-Piping 2010	917,158	874,810	42,348
EN10143	ND - Berthold Trap Modifications	316,839	307,447	9,392
FG10126	Orlando, FL - 6" Lateral Pigging Project	1,216,011	1,683,172	(467,161)
MN10146	Little Falls, MN - Mississippi River HDD	300,795	313,948	(13,153)
NN10141	MN - Eagan 1B Control Valve Replacements	222,028	185,848	36,180
NN10145	NE - Hooper to S Sioux City SP Mods	204,709	214,755	(10,046)
Total		\$ 5,847,098	\$ 5,957,087	\$ (109,989)

Minnesota Limited, Inc.

Schedules of Construction Costs

Years Ended December 31	2010	2009
Equipment rental	\$ 19,417,752	\$ 17,456,717
Labor	30,119,222	28,736,761
Materials and supplies	10,402,489	10,051,002
Other construction costs	1,091,505	1,199,672
Payroll taxes and employee benefits	14,648,188	17,703,489
Safety costs	278,643	475,264
Subcontracts	18,879,499	23,309,525
Total	94,837,298	98,932,430
Unallocated construction equipment costs	2,331,767	6,030,659
Construction Costs	\$ 97,169,065	\$ 104,963,089

See independent auditor's report on supplementary information.

22

CONFIDENTIAL

VEC000948

Appellee's App'x
Vol II, p 897

Minnesota Limited, Inc.

Schedules of Unallocated Construction Equipment Costs

Years Ended December 31	2010	2009
Depreciation	\$ 1,850,606	\$ 2,177,736
Equipment rental	8,399,833	8,927,273
Fuel and oil	208,820	328,701
Insurance	210,697	189,658
Licenses and permits	403,247	415,802
Miscellaneous	113,714	299,262
Repairs and maintenance	2,099,196	2,715,329
Safety expenses	295,621	295,317
Shop labor	1,264,374	1,397,617
Shop labor burden	487,929	718,808
Shop occupancy	1,126,759	1,087,910
Shop supplies	951,228	1,032,829
Subcontract	10,804	268,451
Total	17,422,828	19,854,693
Allocated to jobs	(15,091,061)	(13,824,034)
Construction Equipment Costs	\$ 2,331,767	\$ 6,030,659

See independent auditor's report on supplementary information.

23

CONFIDENTIAL

VEC000949

Appellee's App'x
Vol II, p 898

Minnesota Limited, Inc.

Schedules of General and Administrative Expenses

Years Ended December 31	2010	2009
Management salaries	\$ 800,010	\$ 799,629
Office salaries	2,409,694	1,980,443
Bonuses	1,304,500	1,830,200
Payroll taxes and employee benefits	873,535	689,364
Advertising	51,112	65,061
Bad debt expense	840,333	-
Depreciation	245,682	74,404
Drug testing	57,224	54,238
Education and training	147,484	-
Insurance - general	333,325	310,125
Dues and subscriptions	81,825	70,944
Miscellaneous	417,925	200,225
Office expense and postage	412,739	448,071
Office occupancy	905,816	867,292
Other operating expense	393,571	350,629
Professional fees	774,388	324,988
Purchased services	975,765	690,465
Telephone	194,815	65,738
Travel and entertainment	322,760	349,288
General and Administrative Expenses	\$ 11,542,503	\$ 9,171,104

See independent auditor's report on supplementary information.

24

CONFIDENTIAL

VEC000950

Appellee's App'x
Vol II, p 899

Iowa Department of Revenue
www.state.ia.us/tax

2010 IA 1120S

Iowa Income Tax Return for S Corporations

For Calendar Year 2010 or other fiscal year

From 01 / 01 / 10 to 12 / 31 / 10 ▲

Check all that apply: (1) Name/Address Change (2) Short Period ▲
 Amended Return

Part I: Corporation Name and Address ▲

Name: MINNESOTA LIMITED, INC.
Street Address: 18640 200TH STREET
City State ZIP Code: BIG LAKE MN 55309
Name of contact person: GLENN FURMAN
Phone No.: 763-428-4444

FEI: [REDACTED] ▲ Business Code: 237990 ▲
County No.: 00 ▲ Number of Shareholders: 2.
Is this a first or final return? If yes, check the appropriate box.
First Return ▲ New Business Successor Entering Iowa
Final Return ▲ Reorganized Merged Dissolved
 Withdrawn Bankruptcy Other

Part II: Corporation Information

Type of Return: ▲ 1. S Corporation 2. IC Domestic International Sales Corporation 3. Foreign Sales Corporation
Is this an inactive corporation? ▲ Yes No
Was federal income or tax changed for any prior period(s)? ... ▲ Yes No Periods: _____
Is the corporation's business carried on entirely within Iowa? ▲ Yes No
Date of S corporation election: 04/01/1996

Part III: Modification of Corporation Income

	USE WHOLE DOLLARS
1. Net income per federal Schedule K. See instructions	1. <u>4,234,731.</u>
2. Interest and dividends exempt from federal income tax. See instructions	2. _____
3. Other additions. Attach schedule	3. _____
4. Total additions. Add lines 2 and 3	4. _____
5. 50% of federal income tax	5. _____
6. Interest and dividends from federal securities. See instructions	6. _____
7. Other reductions. Attach schedule <u>SEE STATEMENT 1</u>	7. <u>481,387.</u>
8. Total reductions. Add lines 5, 6, and 7	8. <u>481,387.</u>
9. Net modifications. Subtract line 8 from line 4	9. <u>-481,387.</u>
10. Modified federal net income. Add line 1 and line 9	10. <u>3,753,344.</u>
11. Tax on built-in gains or passive investment income. See instructions	11. _____ ▲

Make check payable to Treasurer-State of Iowa. If a refund of estimated payments is needed, see instructions.

PART IV: Business Activity Ratio (BAR)

Types of Income	See instructions.	Enter Whole Dollar Amounts.	
		Column A Iowa Receipts	Column B Receipts Everywhere
1. Gross Receipts	1.	<u>4,551,659.</u>	<u>110,365,790.</u>
2. Net Dividends. See instructions	2.		
3. Exempt Interest	3.		
4. Accounts Receivable Interest	4.		
5. Other Interest	5.		
6. Rent	6.		
7. Royalties	7.		
8. Capital Gains / Loss	8.		
9. Ordinary Gains / Loss	9.		
10. Partnership Gross Receipts. Attach schedule	10.		
11. Other. Must attach schedule	11.		
12. TOTALS	12.	<u>4,551,659.</u>	<u>110,365,790.</u>
13. BAR to six decimal places. Divide line 12, column A, by line 12, column B.			<u>4.1242%</u>

Part V. Information from Prior Period Iowa Return:

Corporation Name: MINNESOTA LIMITED, INC. Net Income/(Loss): \$ 6,165,782. FEIN: [REDACTED]

A complete copy of your federal return MUST be filed with this return, not including federal K-1s.
Under penalties of perjury, I declare that I have examined this return and any attached schedules/statements, and, to the best of my knowledge, believe it to be true, correct and complete. If prepared by a person other than the taxpayer, the declaration is based on all information of which there is any knowledge.

Officer's Signature: _____ Date: _____ Title: OFFICER

Preparer's Signature: _____ Date: _____ Preparer's ID No.: _____

LURIE BESIKOF LAPIDUS & COMPANY, LLP
2501 WAYZATA BOULEVARD
MINNEAPOLIS, MN 55405-2197

Preparer's Address:
051501
10-14-10

42-004a (06/18/10) CGH

Mail to: Corporate Tax Return Processing, Iowa Department of Revenue, P.O. Box 10468, Des Moines IA 50306-0468

MINNESOTA LIMITED, INC.



IA 1120S	OTHER REDUCTIONS	STATEMENT	1
DESCRIPTION		AMOUNT	
DEPRECIATION ADJUSTMENT DUE TO FEDERAL BONUS		481,387.	
TOTAL TO FORM IA 1120S, LINE 7		481,387.	

RECEIVED by MSC 5/25/2022 9:09:54 PM

Shareholder's Share of Iowa Income, Deductions, Modifications

1

Part I: General Information

Corporation Information:

Name: MINNESOTA LIMITED, INC.

FEIN: [REDACTED]

Shareholder Information:

Name: CHRISTOPHER LEINES

Social Security Number / FEIN: [REDACTED]

Address: PO BOX 353

City State ZIP Code: MEDINA, MN 55357

Amended K-1

Shareholder's Entity Type:

Individual Estate Trust

Bank Exempt Organization

Resident Shareholder Nonresident Shareholder

▲ Shareholder's Ownership Percentage: 50.0000%

▲ S Corp Iowa Receipts: \$ 4,551,659.

S Corp Total Receipts: \$ 110,365,790.

S Corp BAR from page 1, Part IV, line 13: 4.1242%

Part II: Shareholder's Pro Rata Share Items

	(a) Federal K-1 Amount	NONRESIDENT SHAREHOLDERS ONLY	
		(b) Business Activity Ratio (Same ratio applies to each line item)	(c) Apportionable To Iowa (a) x (b)
1. Ordinary business income (loss)	1. 2,280,744.	.041242	94,062.
2. Net rental real estate income (loss)	2.		
3. Other net rental income (loss)	3.		
4. Interest income	4. 285.	.041242	12.
5. Dividends line 5a, federal K-1	5.		
6. Royalties	6.		
7. Net short-term capital gain (loss)	7.		
8. Net long-term capital gain (loss) line 8a, federal K-1	8.		
9. Net section 1231 gain (loss)	9.		
10. Other income (loss)	10.		
Total Income. Add lines 1 through 10.	2,281,029.		94,074.
11. Section 179 deduction	11. 163,663.	.041242	6,750.
12. Other deductions	12. 4,550.	.041242	188.
Total deductions. Add lines 11 and 12.	168,213.		6,938.
Balance. Subtract total deductions from total income.	2,112,816.		87,136.▲
13. Credits from the credit section of federal K-1	13.		
14. a) Post-1986 depreciation adjustment	14a. -145,544.	.041242	-6,003.
b) Adjusted gain or loss	14b. -2,404.	.041242	-99.
c) Depletion other than oil and gas	14c.		
d) Gross income from oil, gas, and geothermal properties	14d.		
e) Deductions allocable to oil, gas, and geothermal properties	14e.		
f) Other adjustments and tax preference items. Attach schedule	14f.		
	(a) All Source Modifications	(b) Business Activity Ratio	(c) Apportionable To Iowa (a) x (b)
15. MODIFICATIONS SCHEDULE	15. -240,694.	.041242	-9,927.

Part III: Shareholder's Portion of IA Credits / Withholding

Type of Iowa Credit	Certificate Number	Current Year Amount
IA Income Tax Withheld		0.

TO THE SHAREHOLDER: You may have a filing requirement with the State of Iowa, regardless of whether or not you are a resident of another state. The corporation may file a composite return on behalf of its nonresident shareholders and should notify you if they have done so. To claim any withholding or tax credits, a return must be filed. Filing information for individuals, corporations, and other entities are provided on our Web site: www.state.ia.us/tax/ or by calling (515) 281-3114 or 1-800-367-3388.

RECEIVED by MSC 5/25/2022 9:09:54 PM

42-004b (10/13/10) CCH

MINNESOTA LIMITED, INC.



IA K-1 FOOTNOTES

COMPOSITE RETURN FILED ON YOUR BEHALF. NO SEPARATE
INDIVIDUAL TAX FILINGS REQUIRED.

RECEIVED by MSC 5/25/2022 9:09:54 PM

2

Shareholder's Share of Iowa Income, Deductions, Modifications

Part I: General Information

Corporation Information:

Name: MINNESOTA LIMITED, INC.
FEIN: [REDACTED]

Shareholder Information:

Name: PAULETTE BRITZIUS
Social Security Number / FEIN: [REDACTED]
Address: 16570 248TH AVENUE N.W.
City State ZIP Code: BIG LAKE, MN 55309

Amended K-1

Shareholder's Entity Type:

Individual Estate Trust
 Bank Exempt Organization
 Resident Shareholder Nonresident Shareholder
▲ Shareholder's Ownership Percentage: 50.0000%
▲ S Corp Iowa Receipts: \$ 4,551,659.
S Corp Total Receipts: \$ 110,365,790.
S Corp BAR from page 1, Part IV, line 13: 4.1242%

Part II: Shareholder's Pro Rata Share Items

	(a) Federal K-1 Amount	NONRESIDENT SHAREHOLDERS ONLY	
		(b) Business Activity Ratio (Same ratio applies to each line item)	(c) Apportionable To Iowa (a) x (b)
1. Ordinary business income (loss)	2,280,744.	.041242	94,062.
2. Net rental real estate income (loss)			
3. Other net rental income (loss)			
4. Interest income	284.	.041242	12.
5. Dividends line 5a, federal K-1			
6. Royalties			
7. Net short-term capital gain (loss)			
8. Net long-term capital gain (loss) line 8a, federal K-1			
9. Net section 1231 gain (loss)			
10. Other income (loss)			
Total Income. Add lines 1 through 10.	2,281,028.		94,074.
11. Section 179 deduction	163,663.	.041242	6,750.
12. Other deductions	4,550.	.041242	188.
Total deductions. Add lines 11 and 12.	168,213.		6,938.
Balance. Subtract total deductions from total income.	2,112,815.		87,136.▲
13. Credits from the credit section of federal K-1			
14. a) Post-1986 depreciation adjustment	-145,544.	.041242	-6,003.
b) Adjusted gain or loss	-2,403.	.041242	-99.
c) Depletion other than oil and gas			
d) Gross income from oil, gas, and geothermal properties			
e) Deductions allocable to oil, gas, and geothermal properties			
f) Other adjustments and tax preference items. Attach schedule			
15. MODIFICATIONS SCHEDULE	(a) All Source Modifications	(b) Business Activity Ratio	(c) Apportionable To Iowa (a) x (b)
	-240,693.	.041242	-9,927.

Part III: Shareholder's Portion of IA Credits / Withholding

Type of Iowa Credit	Certificate Number	Current Year Amount
IA Income Tax Withheld		0.

TO THE SHAREHOLDER: You may have a filing requirement with the State of Iowa, regardless of whether or not you are a resident of another state. The corporation may file a composite return on behalf of its nonresident shareholders and should notify you if they have done so. To claim any withholding or tax credits, a return must be filed. Filing information for individuals, corporations, and other entities are provided on our Web site: www.state.ia.us/tax/ or by calling (515) 281-3114 or 1-800-367-3388.

MINNESOTA LIMITED, INC.



IA K-1 FOOTNOTES

COMPOSITE RETURN FILED ON YOUR BEHALF. NO SEPARATE
INDIVIDUAL TAX FILINGS REQUIRED.

RECEIVED by MSC 5/25/2022 9:09:54 PM

2010 IA 1040C Composite Individual Income Tax Return Partnerships, Subchapter S Corporations, Trusts, and Limited Liability Companies for filing on behalf of Nonresident Partners, Shareholders, Beneficiaries, or Members

For Calendar Year 2010 or fiscal year beginning _____, 2010, and ending _____, 20__

MAIL TO: COMPOSITE RETURN PROCESSING DEPARTMENT OF REVENUE PO BOX 10469 DES MOINES IA 50306-0469

PLEASE NOTE: A copy of federal Schedule K-1 for ALL Iowa nonresidents must be attached to this return, regardless of whether or not they are reporting income or remitting tax with this form.

STEP 1 Complete Company Name MINNESOTA LIMITED, INC. FEIN [REDACTED] Name and Address 18640 200TH STREET BIG LAKE MN 55309 GLENN FURMAN 763-428-4444

STEP 2 Figure Your Exemption Credits Enter the number of individuals whose Iowa-source income exceeds the minimum amount required to be included in this return. See instructions. 2 x \$40 = 80.

STEP 3 Composite Income 1. Enter the total Iowa-source income of all individuals whose Iowa-source income exceeds the minimum amount required to be included in this return. SEE STATEMENT 4 1. 154,418.

STEP 4 Figure Your Deductions 2. Deduction in lieu of federal tax deduction. See instructions. 15,442. 3. Standard deduction. See instructions. 3,620. 4. Total deductions. ADD lines 2 and 3. 19,062. 5. Composite taxable income. SUBTRACT line 4 from line 1. 135,356.

STEP 5 Figure Your Tax 6. Computed tax. Apply line 5 to rate schedule. 10,445. 7. Minimum tax. See instructions. 10,445. 8. Total tax. ADD lines 6 and 7. 10,445.

STEP 6 Figure Your Credits 9. Personal exemption credits - Nonrefundable. See Step 2 above. 80. 10. Other nonrefundable credits. Attach IA 148 Tax Credits Schedule. 10. 11. Total nonrefundable credits. ADD lines 9 and 10. 80. 12. Balance. SUBTRACT line 11 from line 8. If less than zero, enter zero. 10,365. 13. Estimated payments for 2010 and/or prior-year credit carryover. 15,409. 14. Other refundable credits. Attach IA 148 Tax Credits Schedule. 14. 15. Total credits. ADD lines 13 and 14. 15,409.

STEP 7 Figure Your Refund or the Amount You Owe 16. If line 15 is more than line 12, SUBTRACT line 12 from line 15. This is the amount you OVERPAID. 5,044. 17. Amount of line 16 to be REFUNDED to you. 17. 18. Amount of line 16 to be applied to your 2011 estimated tax 5,044. 19. If line 15 is less than line 12, SUBTRACT line 15 from line 12. This is the AMOUNT OF TAX YOU OWE. 19. 20. Penalty. See instructions. 20. 21. Interest. See instructions. 21. 22. TOTAL AMOUNT DUE. ADD lines 19, 20, and 21, and enter here. 22.

Make your check payable to TREASURER, STATE OF IOWA

SIGN AND DATE YOUR RETURN FOR A CALENDAR YEAR FILER, THIS RETURN IS DUE BY May 2, 2011

I (We), the undersigned, declare under penalty of perjury that I (we) have examined this return and attachments, and, to the best of my (our) knowledge and belief, it is a true, correct, and complete return. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

Signature of Officer: OFFICER Date: Preparer's Signature: Preparer's ID No.: LURIE BESIKOF LAPIDUS & COMPANY, LL Preparer's Address: MINNEAPOLIS, MN 55405-2197

051641 10-14-10

41-006a (05/24/10) CCH

RECEIVED by MSC 5/25/2022 9:09:54 PM

MINNESOTA LIMITED, INC.



IA 1040C IOWA COMPOSITE SHAREHOLDER INFORMATION STATEMENT 4

SHAREHOLDER NAME, SSN OR EIN	SHAREHOLDER SHARE OF IA SOURCE INCOME	SHAREHOLDER SHARE OF COMPOSITE TAX	SHAREHOLDER IOWA ALT. MIN. TAX	SHAREHOLDER NONREFUN. CREDITS	SHAREHOLDER OTHER CREDITS
CHRISTOPHER LEINES [REDACTED]	77,209.	5,223.			
PAULETTE BRITZIUS [REDACTED]	77,209.	5,223.			
TOTAL TO IA 1040C	154,418.	10,446.			

RECEIVED by MSC 5/25/2022 9:09:54 PM

MINNESOTA LIMITED, INC.

Illinois Department of Revenue

IL-505-B Automatic Extension Payment

What is the purpose of Form IL-505-B?

Form IL-505-B, Automatic Extension Payment, provides taxpayers who are unable to file their return by the due date a means of calculating and remitting their tentative tax liability on or before the original due date of the return (see "When should I file and pay?").

Who must file Form IL-505-B?

You must file Form IL-505-B if all of the following apply to you:

- you are a corporation, small business corporation, partnership, fiduciary, or an exempt organization and you cannot file your annual tax return by the due date, and
• you complete the Tax Payment Worksheet on page 2 and determine that you will owe a tentative tax, and
• you submit your payment by paper check or money order (i.e., you do not use any electronic means, such as electronic funds transfer, to make your payments).

If Line 9 of the worksheet shows you owe tentative tax, you must file this form and pay the full amount due. An extension of time to file does not extend the amount of time you have to make your payment.

Unitary group: If you are a member of a unitary business group that is filing a combined return, your designated agent must complete one Form IL-505-B for the entire group as though it is one taxpayer.

Federal consolidated group: If you are a member of a federal consolidated group, you must file a separate Form IL-505-B for each member that is required to file an Illinois tax return. We will not grant "blanket" or consolidated extensions.

Form IL-1023-C filers: If you are filing Form IL-505-B for an extension to file your Form IL-1023-C, you must write "666" on the "SEQ" line on this form.

Do not file Form IL-505-B if:

- after completing the Tax Payment Worksheet, you find that you do not owe additional tax, or
• you make your extension payment by Electronic Funds Transfer or WebPay.

Note: Please be aware that if an unpaid liability is disclosed when you file your return, you may owe penalty and interest charges in addition to the tax. See "What are the penalties and interest?"

What are the extensions?

Automatic Illinois extension - We grant you an automatic six-month (seven-month for corporations) extension to file your annual return whether or not you request the automatic extension. You are not required to file Form IL-505-B to obtain this extension if no tentative tax is due.

Additional federal extension beyond six months - We will grant you an additional extension to file of more than six months (seven months for corporations) if the Internal Revenue Service (IRS) grants you an additional extension.

If you do not owe any tentative tax, you are not required to file Form IL-505-B. However, you must attach a copy of the approved federal extension to your annual return when you file it.

When should I file and pay?

You must file your completed Form IL-505-B, and pay any tentative tax amount you owe by the original due date of your tax return or as soon as you realize you owe tentative tax. This includes annual and short-year returns. The due date depends on the type of tax return that you file. Refer to the following list of return due dates.

All dates refer to the months following the close of the taxable year.

Table with 2 columns: For (corporations, partnerships, exempt organizations, cooperatives) and Due date (15th day of the 3rd, 4th, 5th, 9th month).

Note: If you file federal Form 1120, U.S. Corporation Income Tax Return, and the original due date is later than the 15th day of the 3rd month, your Form IL-1120 and your payment will be due at the same time as your federal Form 1120.

Make your check or money order payable to "Illinois Department of Revenue." Be sure to write your FEIN, tax year, and "IL-505-B" on your payment. Mail your Form IL-505-B, with your payment, to

ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19045
SPRINGFIELD IL 62794-9045

Special Note: You may be required to make your payments electronically. For more information, see Informational Bulletin FY 2011-01.

What are the penalties and interest?

Penalties - You will owe

- a late-filing penalty if you do not file a processable return by the extended due date;
• a late-payment penalty if you do not pay the tax you owe by the original due date of the return;

Illinois Department of Revenue

IL-505-B (R-12/10) Automatic Extension Payment for 2010

Official use only

STOP If no payment is due or you make your payment by Electronic Funds Transfer or WebPay, do not file this form.

Tax year ending
12 2010
Month Year

FEIN: [redacted] SEQ: _____

Name of Organization: MINNESOTA LIMITED, INC.

C/O: _____
Mailing address: 18640 200TH STREET
City: BIG LAKE State: MN ZIP: 55309
Phone: 763-262-7000

\$ 2,000.
Print your payment amount on this line.
Make your check or money order payable to "Illinois Department of Revenue" and return the voucher and payment to
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19045
SPRINGFIELD IL 62794-9045

049981
11-19-10

ID: 2BX



VEC000416



Illinois Department of Revenue

2010 FORM IL-1120-ST

Small Business Corporation Replacement Tax Return

Due on or before the 15th day of the 3rd month following the close of the tax year.

If this return is not for calendar year 2010, write your fiscal tax year here.

Tax year beginning 01/01/10, ending 12/31/10

Write the amount you are paying. \$

Step 1: Identify your small business corporation

- A Write your complete legal business name. If you have a name change check this box. Name: MINNESOTA LIMITED, INC.
B If you have an address change or this is a first return, check this box and complete the following information. C/O: Mailing address: City: State: ZIP:
C Check the box if one of the following apply. first return final return (If final, write the date.
D If this is a final return because you sold this business, write the date sold (mm dd yy), and the new owner's FEIN.
E Special Apportionment Formulas. If you use a special apportionment formula, check the appropriate box and see Special Apportionment Formula instructions. Financial organizations Transportation companies
F Check the box if you attached Form IL-4562.
G Check the box if you attached Illinois Schedule M (for businesses).
H Check the box if you attached Schedule 80/20.

- I Write your federal employer identification no. (FEIN).
J Check the box if you are a member of a unitary business group, and write the FEIN of the member filing the Schedule UB, Combined Apportionment for Unitary Business Groups.
K Write your Illinois corporate file (charter) number issued by the Secretary of State.
L Write the city, state, and ZIP code where your accounting records are kept. (Use the two-letter postal abbreviation, e.g., IL, GA, etc.) MN 55309
M If you are making the business income election to treat all nonbusiness income as business income, check the box and write "0" on Lines 36 and 44.
N If you have completed the following federal forms, check the box and attach them to this return. Federal Form 8886 Federal Sch. M-3
O If you are making a Discharge of Indebtedness adjustment on Line 48, or Schedules NLD or UB/NLD check the box and attach federal Form 982.

Step 2: Figure your ordinary income or loss

Table with 2 columns: Description and Amount. Rows include Ordinary income or loss, Net income or loss from rental activities, Portfolio income or loss, and Total ordinary income or loss of 4,562,057.00.

Step 3: Figure your unmodified base income or loss

Table with 2 columns: Description and Amount. Rows include Charitable contributions, Expense deduction, Interest on investment indebtedness, and Total unmodified base income or loss of 4,225,631.00.



14 Write your unmodified base income or net loss from Line 13.

14 4,225,631 .00

Step 4: Figure your income or loss

- 15 State, municipal, and other interest income excluded from Line 14.
16 Illinois replacement tax deducted in arriving at Line 14.
17 Illinois special depreciation addition. Attach Form IL-4562.
18 Related-party expenses addition. Attach Schedule 80/20.
19 Distributive share of additions. Attach Schedule(s) K-1-P or K-1-T.
20 The amount of loss distributable to a shareholder subject to replacement tax. Attach Schedule B.
21 Other additions. Attach Illinois Schedule M (for businesses).
22 Add Lines 14 through 21. This amount is your income or loss.

15 .00
16 2,001 .00
17 .00
18 .00
19 .00
20 .00
21 .00
22 4,227,632 .00

Step 5: Figure your Illinois base income or net loss

- 23 Interest income from U.S. Treasury obligations or other exempt federal obligations.
24 Share of income distributable to a shareholder subject to replacement tax. Attach Schedule B.
25 Enterprise Zone or River Edge Redevelopment Zone Dividend subtraction. Attach Schedule 1299-A.
26 Enterprise Zone or River Edge Redevelopment Zone Interest subtraction. Attach Schedule 1299-A.
27 High Impact Business Dividend subtraction. Attach Schedule 1299-A.
28 High Impact Business Interest subtraction. Attach Schedule 1299-A.
29 Contribution subtraction. Attach Schedule 1299-A.
30 Illinois Special Depreciation subtraction. Attach Form IL-4562.
31 Related-party expenses subtraction. Attach Schedule 80/20.
32 Distributive share of subtractions. Attach Schedule(s) K-1-P or K-1-T.
33 Other subtractions. Attach Schedule M (for businesses).
34 Total subtractions. Add Lines 23 through 33.
35 Base income or net loss. Subtract Line 34 from Line 22.

23 .00
24 .00
25 .00
26 .00
27 .00
28 .00
29 .00
30 483,322 .00
31 .00
32 .00
33 .00
34 483,322 .00
35 3,744,310 .00

STOP If the amount on Line 35 is derived inside and outside Illinois, complete Step 6; otherwise go to Step 7.

Step 6: Figure your income allocable to Illinois

- 36 Nonbusiness income or loss. Attach Schedule NB.
37 Trust, estate, and non-unitary partnership business income or loss included in Line 35.
38 Add Lines 36 and 37.
39 Business income or loss. Subtract Line 38 from Line 35.
40 Total sales everywhere. This amount cannot be negative.
41 Total sales inside Illinois. This amount cannot be negative.
42 Apportionment factor. Divide Line 41 by Line 40 (carry to six decimal places).
43 Business income or loss apportionable to Illinois. Multiply Line 39 by Line 42.
44 Nonbusiness income or loss allocable to Illinois. Attach Schedule NB.
45 Trust, estate, and non-unitary partnership business income or loss apportionable to Illinois.
46 Base income or net loss allocable to Illinois. Add Lines 43 through 45.

36 .00
37 .00
38 .00
39 3,744,310 .00
40 110,365,790
41 3,931,966
42 .035627
43 133,399 .00
44 .00
45 .00
46 133,399 .00

MINNESOTA LIMITED, INC.



Step 7: Figure your net income

47	Base income or net loss from Step 5, Line 35, or Step 6, Line 46.	47	<u>133,399</u>	.00
48	Discharge of Indebtedness adjustment. Attach federal Form 982. See instructions.	48		.00
49	Adjusted base income or net loss. Add Lines 47 and 48.	49	<u>133,399</u>	.00
50	Illinois net loss deduction. Attach Schedule NLD. If Line 49 is zero or a negative amount, write "0".	50		.00
51	Net income. Subtract Line 50 from Line 49.	51	<u>133,399</u>	.00

Step 8: Figure your net replacement tax

52	Replacement tax. Multiply Line 51 by 1.5% (.015).	52	<u>2,001</u>	.00
53	Recapture of investment credits. Attach Schedule 4255.	53		.00
54	Replacement tax before investment credits. Add Lines 52 and 53.	54	<u>2,001</u>	.00
55	Investment credits. Attach Form IL-477.	55		.00
56	Net replacement tax. Subtract Line 55 from Line 54. Write "0" if this is a negative amount.	56	<u>2,001</u>	.00

Step 9: Figure your refund or balance due

57	Payments			
a	Credit from 2009 overpayment.	57a	<u>164</u>	.00
b	Form IL-505-B (extension) payment.	57b	<u>2,000</u>	.00
c	Pass-through entity payments. Attach Schedule(s) K-1-P or K-1-T.	57c		.00
d	Gambling withholding. Attach Form(s) W-2G.	57d		.00
58	Total payments. Add Lines 57a through 57d.	58	<u>2,164</u>	.00
59	Overpayment. If Line 58 is greater than Line 56, subtract Line 56 from Line 58.	59	<u>163</u>	.00
60	Amount to be credited to 2011 .	60	<u>163</u>	.00
61	Refund. Subtract Line 60 from Line 59. This is the amount to be refunded.	61		.00
62	Tax Due. If Line 56 is greater than Line 58, subtract Line 58 from Line 56. This is the amount you owe.	62		.00

► **Make your check payable to "Illinois Department of Revenue" and attach to the first page of this form.** ◀
Special Note → Write the amount of your payment on the top of Page 1 in the space provided.

Step 10: Sign here

Under penalties of perjury, I state that I have examined this return and, to the best of my knowledge, it is true, correct, and complete.

_____ Signature of authorized officer	_____ Date	<u>OFFICER</u> Title	<u>763-262-7000</u> Phone
_____ Signature of preparer	_____ Date	<u>[REDACTED]</u> Preparer's Social Security number or firm's FEIN	
<u>2501 WAYZATA BOULEVARD</u> <u>MINNEAPOLIS, MN</u>			
<u>LURIE BESI KOF LAPIDUS & C55405-2197</u> Preparer firm's name (or yours, if self-employed)	<u>Address</u>	<u>612-377-4404</u> Phone	

► **Mail this return to: Illinois Department of Revenue, P.O. Box 19032, Springfield, IL 62794-9032** ◀

049303
04-28-11

ID: 2BX

IL-1120-ST (R-12/10)

<p>This form is authorized as outlined by the Illinois Income Tax Act. Disclosure of this information is REQUIRED. Failure to provide information could result in a penalty. This form has been approved by the Forms Management Center.</p>
--

IL-492-0073

Illinois Department of Revenue
Schedule B
 Partners' or Shareholders' Identification
 Attach to your Form IL-1065 or Form IL-1120-ST



CONFIDENTIAL

Year ending
 12 10
 Month Year

IL Attachment no. 1

Write your name as shown on your Form IL-1065 or Form IL-1120-ST.

Write your federal employer identification number (FEIN).

MINNESOTA LIMITED, INC.

Step 1: Provide the following information

1 Write the amount of base income or net loss from your Form IL-1065 or Form IL-1120-ST, Line 47. 1 133,399.00
 2 Write the apportionment factor from your Form IL-1065 or Form IL-1120-ST, Line 42. 2 .035627

Step 2: Identify your partners or shareholders. Attach additional sheets if necessary.

A	B	C	D	E	F	G
Name and Address	SSN or FEIN	Partner or Shareholder type (See instructions.)	Total amount of base income (loss) distributable (See inst.)	Member subject to Illinois replacement tax (See inst.)	Pass-through entity payment amount (See inst.)	Excluded from pass-through entity payments (See inst.)
1 CHRISTOPHER LEINES PO BOX 353 MEDINA, MN 55357	[REDACTED]	I	1,872,156.	<input type="checkbox"/>	0.	C
2 PAULETTE BRITZIUS 16570 248TH AVENUE N.W. BIG LAKE, MN 55309	[REDACTED]	I	1,872,154.	<input type="checkbox"/>	0.	C
3				<input type="checkbox"/>		
4				<input type="checkbox"/>		
5				<input type="checkbox"/>		
6				<input type="checkbox"/>		
7						
7 Add the amounts shown in Column D for partners or shareholders for which you have entered a check mark in Column E. Write the total here. (See instructions.)			7	0.		

Tax year ending

Illinois Department of Revenue



IL-4562

Special Depreciation

12 2010

Month Year

For tax years ending on or after September 11, 2001. Attach to your Illinois tax return.

IL Attachment No. 11

Step 1: Provide the following information

MINNESOTA LIMITED, INC.

Write your name as shown on your return.

Write your Social Security number (SSN) or federal employer identification number (FEIN).

Special Note -> You must read the instructions before completing Form IL-4562

Step 2: Figure your Illinois special depreciation addition

- 1 Write the total amount claimed as a special depreciation allowance on federal Form 4562, Depreciation and Amortization, Line 14 or Line 25, for property acquired after September 10, 2001.
2 Individuals only: Write the total amount claimed as a special depreciation allowance from federal Form 2106, Employee Business Expenses.
3 Last year of regular depreciation: Write the total amount of all Illinois depreciation subtractions claimed on prior year IL-4562 forms, Step 3, Line 8, for this property.
4 Add Lines 1 through 3. This is your Illinois special depreciation addition. Write the total here and see instructions for the list of Illinois form and line references to report this addition.

Step 3: Figure your Illinois depreciation subtraction

- 5 a Write the portion of depreciation allowance claimed on federal Form 4562, Line 17, plus Line 19, Column g, plus Line 26, Column h, for property for which you claimed a special depreciation allowance on federal Form 4562, Line 14 or 25, for this tax year, or any other tax year ending after September 10, 2001, for bonus depreciation equal to 30 percent of your basis in the property.
b Individuals only: If you completed a federal Form 2106 for this tax year, write the portion of any depreciation deductions included in Lines 4 and 38 for this tax year or any prior tax year for bonus depreciation equal to 30 percent of your basis in the property.
c Add Lines 5a and 5b.
6 Multiply Line 5c by 42.9% (0.429).
7 a Write the portion of depreciation allowance claimed on federal Form 4562, Line 17, plus Line 19, Column g, plus Line 26, Column h, for property for which you claimed a special depreciation allowance on federal Form 4562, Line 14 or 25, for this tax year, or any other tax year ending after September 10, 2001, for bonus depreciation equal to 50 percent of your basis in the property.
b Individuals only: If you completed a federal Form 2106 for this tax year, write the portion of any depreciation deductions included in Lines 4 and 38 for this tax year or any prior tax year for bonus depreciation equal to 50 percent of your basis in the property.
c Add Lines 7a and 7b.
d For tax years ending on or before December 31, 2005, multiply Line 7c by 42.9% (0.429). For tax years ending after December 31, 2005, write the amount from Line 7c.
8 Add Lines 6 and 7d.
9 Last year of regular depreciation: Write the Illinois special depreciation addition reported on any prior year Form IL-4562, Step 2, Line 1 plus Line 2, for that asset.
10 Add Lines 8 and 9. This is your Illinois depreciation subtraction for this year. Write the total here and see instructions for the list of Illinois form and line references to report this subtraction.

Attach this form to your Illinois return.

049211 02-16-11

IL-4562 (R-2/11) ID: 2BX

This form is authorized as outlined by the Illinois Income Tax Act. Disclosure of this information is REQUIRED. Failure to provide information could result in a penalty. This form has been approved by the Forms Management Center. IL-492-4328

VEC000421

RECEIVED by MSC 5/25/2022 9:09:54 PM

SCHEDULE M-3 (Form 1120S)

Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More

OMB No. 1545-0130

2010

Department of the Treasury Internal Revenue Service

Attach to Form 1120S. See separate instructions.

Name of corporation: MINNESOTA LIMITED, INC. Employer identification number: [REDACTED]

Part I Financial Information and Net Income (Loss) Reconciliation (see instructions)

1a Did the corporation prepare a certified audited non-tax-basis income statement for the period ending with or within this tax year? [X] Yes. Skip line 1b and complete lines 2 through 11 with respect to that income statement.

b Did the corporation prepare a non-tax-basis income statement for that period? [] Yes. Complete lines 2 through 11 with respect to that income statement. [] No. Skip lines 2 through 3b and enter the corporation's net income (loss) per its books and records on line 4a.

2 Enter the income statement period: Beginning 01/01/2010 Ending 12/31/2010

3a Has the corporation's income statement been restated for the income statement period on line 2? [] Yes. (If "Yes," attach an explanation and the amount of each item restated.) [X] No.

b Has the corporation's income statement been restated for any of the five income statement periods preceding the period on line 2? [] Yes. (If "Yes," attach an explanation and the amount of each item restated.) [X] No.

Table with 2 columns: Description and Amount. Row 4a: Worldwide consolidated net income (loss) from income statement source identified in Part I, line 1. Amount: 1,739,408.

12 Enter the total amount (not just the corporation's share) of the assets and liabilities of all entities included or removed on the following lines:

Table with 2 columns: Description and Amount. Row a: Included on Part I, line 4. Total Assets: 32,472,727. Total Liabilities: 21,677,858.

For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.

Schedule M-3 (Form 1120S) 2010

Name of corporation

MINNESOTA LIMITED, INC.

Employer identification number

Part II Reconciliation of Net Income (Loss) per Income Statement of the Corporation With Total Income (Loss) per Return (see instructions)

Table with 4 columns: (a) Income (Loss) per Income Statement, (b) Temporary Difference, (c) Permanent Difference, (d) Income (Loss) per Tax Return. Rows include various income and expense items such as interest income, cost of goods sold, and reconciliation totals.

Note. Line 26, column (a), must equal the amount on Part I, line 11, and column (d) must equal Form 1120S, Schedule K, line 18.

RECEIVED by MSC 5/25/2022 9:09:54 PM

Name of corporation

MINNESOTA LIMITED, INC.

Employer identification number

Part III Reconciliation of Net Income (Loss) per Income Statement of the Corporation With Total Income (Loss) per Return - Expense/Deduction Items (see instructions)

Expense/Deduction Items	(a) Expense per Income Statement	(b) Temporary Difference	(c) Permanent Difference	(d) Deduction per Tax Return
1 U.S. current income tax expense				
2 U.S. deferred income tax expense				
3 State and local current income tax expense	325,705.	86,569.		412,274.
4 State and local deferred income tax expense				
5 Foreign current income tax expense (other than foreign withholding taxes)				
6 Foreign deferred income tax expense				
7 Equity-based compensation				
8 Meals and entertainment STMT 4	1,367,296.		-683,648.	683,648.
9 Fines and penalties				
10 Judgments, damages, awards, and similar costs				
11 Pension and profit-sharing	80,781.			80,781.
12 Other post-retirement benefits				
13 Deferred compensation				
14 Charitable contribution of cash and tangible property STMT 5	9,100.			9,100.
15 Charitable contribution of intangible property				
16 Current year acquisition or reorganization investment banking fees				
17 Current year acquisition or reorganization legal and accounting fees				
18 Current year acquisition/reorganization other costs				
19 Amortization/impairment of goodwill				
20 Amortization of acquisition, reorganization, and start-up costs				
21 Other amortization or impairment write-offs				
22 Section 198 environmental remediation costs				
23a Depletion - Oil & Gas				
b Depletion - Other than Oil & Gas				
24 Depreciation	2,096,288.	-471,730.		1,624,558.
25 Bad debt expense STMT 6	840,333.	350,000.		1,190,333.
26 Interest expense (attach Form 8916-A)	146,656.			146,656.
27 Corporate owned life insurance premiums				
28 Purchase versus lease (for purchasers and/or lessees)				
29 Research and development costs (attach schedule)				
30 Section 118 exclusion (attach schedule)				
31 Other expense/deduction items with differences (attach schedule) STMT 7	5,017,789.	-370,575.	-6,672.	4,640,542.
32 Total expense/deduction items. Combine lines 1 through 31. Enter here and on Part II, line 24, reporting positive amounts as negative and negative amounts as positive	9,883,948.	-405,736.	-690,320.	8,787,892.

Schedule M-3 (Form 1120S) 2010

RECEIVED by MSC 5/25/2022 9:09:54 PM

MINNESOTA LIMITED, INC.



RECEIVED by MSC 5/25/2022 9:09:54 PM

SCHEDULE M-3 OTHER INCOME (LOSS) ITEMS WITH DIFFERENCES STATEMENT 1

DESCRIPTION	INCOME (LOSS)		PERMANENT DIFFERENCE	INCOME (LOSS) PER TAX RETURN
	PER INCOME STATEMENT	TEMPORARY DIFFERENCE		
FEDERAL TAX REFUND	84,825.		-84,825.	0.
TAX CREDITS ADJUSTMENT	0.		33,794.	33,794.
TOTAL TO M-3, PART II, LINE 22	84,825.		-51,031.	33,794.

SCHEDULE M-3 OTHER INCOME (LOSS) AND EXPENSE / DEDUCTION STATEMENT 2
ITEMS WITH NO DIFFERENCES

DESCRIPTION	PER INCOME STATEMENT	PER TAX RETURN
OTHER INCOME (LOSS)	110570634.	110570634.
OTHER EXPENSE / DEDUCTION	-4,873,135.	-4,873,135.
TOTAL TO SCHEDULE M-3, PART II, LINE 25	105697499.	105697499.

SCHEDULE M-3 OTHER INCOME (LOSS) ITEMS WITH NO DIFFERENCES STATEMENT 3

DESCRIPTION	INCOME (LOSS) PER INCOME STATEMENT	INCOME (LOSS) PER TAX RETURN
	MISCELLANEOUS INCOME	204,844.
SALES	110365790.	110365790.
TOTAL TO SCHEDULE M-3, PART II, LINE 25	110570634.	110570634.

MINNESOTA LIMITED, INC.



RECEIVED by MSC 5/25/2022 9:09:54 PM

SCHEDULE M-3		MEALS AND ENTERTAINMENT		STATEMENT	4
DESCRIPTION	EXPENSE PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	DEDUCTION PER TAX RETURN	
MEALS AND ENTERTAINMENT FROM TRADE OR BUSINESS	1,367,296.		-683,648.	683,648.	
TOTAL	1,367,296.		-683,648.	683,648.	

SCHEDULE M-3		CHARITABLE CONTRIBUTION OF CASH AND TANGIBLE PROPERTY		STATEMENT	5
DESCRIPTION	EXPENSE/ DEDUCTION PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	EXPENSE/ DEDUCTION PER TAX RETURN	
CASH CONTRIBUTIOINS	9,100.		0.	9,100.	
TOTAL	9,100.		0.	9,100.	

SCHEDULE M-3		BAD DEBT EXPENSE		STATEMENT	6
DESCRIPTION	EXPENSE PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	DEDUCTION PER TAX RETURN	
BAD DEBTS FROM TRADE OR BUSINESS	840,333.	350,000.	0.	1,190,333.	
TOTAL	840,333.	350,000.	0.	1,190,333.	



RECEIVED by MSC 5/25/2022 9:09:54 PM

SCHEDULE M-3 OTHER EXPENSE/DEDUCTION ITEMS WITH DIFFERENCES STATEMENT 7

DESCRIPTION	EXPENSE/ DEDUCTION PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	EXPENSE/ DEDUCTION PER TAX RETURN
LEGAL & PROFESSIONAL	496,913.	-361,171.	0.	135,742.
OFFICERS COMPENSATION	1,505,882.	2,201.	0.	1,508,083.
PENALTIES	6,672.		-6,672.	0.
SALARIES AND WAGES	3,008,322.	-11,605.	0.	2,996,717.
TOTAL TO M-3, PART III, LINE 31	5,017,789.	-370,575.	-6,672.	4,640,542.

SCHEDULE M-3 OTHER EXPENSE/DEDUCTION ITEMS WITH NO DIFFERENCES STATEMENT 8

DESCRIPTION	EXPENSE/ DEDUCTION PER INCOME STATEMENT	EXPENSE/ DEDUCTION PER TAX RETURN
ADVERTISING	51,112.	51,112.
BANK CHARGES	58,387.	58,387.
CONSULTING	1,229,642.	1,229,642.
CONTRACT SERVICES	23,598.	23,598.
CONVENTIONS	8,305.	8,305.
DRUG TESTING EXPENSE	57,224.	57,224.
DUES & SUBSCRIPTIONS	81,825.	81,825.
EDUCATION/TRAINING	147,484.	147,484.
EMPLOYEE BENEFIT PROGRAMS	403,545.	403,545.
FUEL AND OIL	69,812.	69,812.
INSURANCE	31,402.	31,402.
MISCELLANEOUS EXPENSE	35,271.	35,271.
OFFICE SUPPLIES	156,036.	156,036.
PAYROLL TAXES	452,943.	452,943.
POSTAGE & FREIGHT	49,259.	49,259.
REAL ESTATE TAX	239,961.	239,961.
RENT EXPENSE	693,977.	693,977.
REPAIRS	87,782.	87,782.
SAFTEY EQUIPMENT/SUPPLIES	326,244.	326,244.
SUBSISTENCE	138,328.	138,328.
TELEPHONE	194,815.	194,815.
TRAVEL	298,723.	298,723.
UTILITIES	37,460.	37,460.
TOTAL TO SCHEDULE M-3, PART II, LINE 25	4,873,135.	4,873,135.

Illinois Department of Revenue
Schedule K-1-P

Partner's or Shareholder's Share of Income,
Deductions, Credits, and Recapture

Year ending

12 10

Month Year

IL Attachment No. 10

To be completed by partnerships filing Form IL-1065 or S corporations filing Form IL-1120-ST
Partners and Shareholders receiving Schedule K-1-P should attach this to their Illinois tax return.

Step 1: Identify your partnership or S corporation

1 Check your business type partnership S corporation

2 MINNESOTA LIMITED, INC.

Write your name as shown on your Form IL-1065 or Form IL-1120-ST.

3 [REDACTED]
Write your federal employer identification number (FEIN).

4 Write the apportionment factor from Form IL-1065 or Form IL-1120-ST, Line 42. Otherwise, write "1." .035627

Step 2: Identify your partner or shareholder

5 CHRISTOPHER LEINES

Name

6 PO BOX 353

Mailing address

MEDINA, MN 55357

City

State

ZIP

7 [REDACTED]
Social Security number or FEIN

8 50.000000
Share (%)

9 Check the appropriate box
 individual corporation trust
 partnership S corporation estate

Step 3: Figure your partner's or shareholder's share of your nonbusiness income

A
Member's share
(See instructions.)

B
Nonresident member's
share allocable to Illinois

10 Interest	10	
11 Dividends	11	
12 Rental income	12	
13 Patent royalties	13	
14 Copyright royalties	14	
15 Other royalty income	15	
16 Capital gain or loss from real property	16	
17 Capital gain or loss from tangible personal property	17	
18 Capital gain or loss from intangible personal property	18	
19 Other income and expense	19	

Specify

Step 4: Figure your partner's or shareholder's share of your business income (loss)

A
Member's share
from U.S. Schedule K-1,
less nonbusiness income

B
Nonresident member's
share apportioned to Illinois

20 Ordinary income (loss) from trade or business activity	20	2,280,744.	81,256.
21 Net income (loss) from rental real estate activities	21		
22 Net income (loss) from other rental activities	22		
23 Interest	23	285.	10.
24 Dividends	24		
25 Royalties	25		
26 Net short-term capital gain (loss)	26		
27 Net long-term capital gain (loss). Total for year.	27		
28 Unrecaptured Section 1250 gain	28		
29 Guaranteed payments to partner (U.S. Form 1065 only)	29		
30 Net Section 1231 gain (loss) (other than casualty or theft). Total for year.	30		
31 Other income and expense	31	-168,213.	-5,993.

Specify STATEMENT STATEMENT



This form is authorized as outlined by the Illinois Income Tax Act. Disclosure of this information is REQUIRED. This form has been approved by the Forms Management Center. IL-492-3873

Step 5: Figure your partner's or shareholder's share of Illinois additions and subtractions

Table with 3 columns: Description, A (Member's share from Form IL-1065 or IL-1120-ST), and B (Nonresident member's share apportioned or allocated to Illinois). Rows include Additions (32-37) and Subtractions (38a-47).

Step 6: Figure your partner's or shareholder's (except a corporate partner or shareholder) share of your Illinois August 1, 1969, appreciation amounts

Table with 3 columns: Description, A (Member's share from Illinois Schedule F (Form IL-1065 or IL-1120-ST)), and B (Nonresident member's share apportioned or allocated to Illinois). Rows include 48-51.

Step 7: Figure your partner's or shareholder's share of your Illinois credits and recapture and pass-through entity payments

Table with 3 columns: Description, A (Member's or nonresident member's share from Illinois tax return), and B (Nonresident member's share apportioned or allocated to Illinois). Rows include 52 (Illinois credits), 53 (Recapture), and 54 (Pass-through entity payment).

SHAREHOLDERS SHARE OF INCOME INCLUDED ON FORM IL-1023-C 66,699.



MINNESOTA LIMITED, INC.



RECEIVED by MSC 5/25/2022 9:09:54 PM

IL K-1 FOOTNOTES

COMPOSITE RETURN FILED ON YOUR BEHALF. NO SEPARATE INDIVIDUAL TAX FILINGS REQUIRED.

IL SCHEDULE K-1-P OTHER BUSINESS INCOME AND EXPENSE

DESCRIPTION	AMOUNT
CHARITABLE CONTRIBUTIONS	-4,550.
SECTION 179 EXPENSE	-163,663.
TOTAL TO LINE 31(A)	-168,213.

IL SCHEDULE K-1-P NONRESIDENT OTHER INCOME AND EXPENSE

DESCRIPTION	AMOUNT
CHARITABLE CONTRIBUTIONS	-162.
SECTION 179 EXPENSE	-5,831.
TOTAL TO LINE 31(B)	-5,993.

Illinois Department of Revenue
Schedule K-1-P

Partner's or Shareholder's Share of Income,
Deductions, Credits, and Recapture

Year ending

12 10

Month Year

IL Attachment No. 10

To be completed by partnerships filing Form IL-1065 or S corporations filing Form IL-1120-ST
Partners and Shareholders receiving Schedule K-1-P should attach this to their Illinois tax return.

Step 1: Identify your partnership or S corporation

1 Check your business type partnership S corporation

2 MINNESOTA LIMITED, INC.

Write your name as shown on your Form IL-1065 or Form IL-1120-ST.

3 [REDACTED]
Write your federal employer identification number (FEIN).

4 Write the apportionment factor from Form IL-1065 or Form IL-1120-ST, Line 42. Otherwise, write "1." .035627

Step 2: Identify your partner or shareholder

5 PAULETTE BRITZIUS

Name

6 16570 248TH AVENUE N.W.

Mailing address

BIG LAKE, MN 55309

City

State

ZIP

7 [REDACTED]
Social Security number or FEIN

8 50.000000
Share (%)

9 Check the appropriate box
 individual corporation trust
 partnership S corporation estate

Step 3: Figure your partner's or shareholder's share of your nonbusiness income

	A Member's share (See instructions.)	B Nonresident member's share allocable to Illinois
10 Interest	10	
11 Dividends	11	
12 Rental income	12	
13 Patent royalties	13	
14 Copyright royalties	14	
15 Other royalty income	15	
16 Capital gain or loss from real property	16	
17 Capital gain or loss from tangible personal property	17	
18 Capital gain or loss from intangible personal property	18	
19 Other income and expense	19	

Specify

Step 4: Figure your partner's or shareholder's share of your business income (loss)

	A Member's share from U.S. Schedule K-1, less nonbusiness income	B Nonresident member's share apportioned to Illinois
20 Ordinary income (loss) from trade or business activity	20 2,280,744.	81,256.
21 Net income (loss) from rental real estate activities	21	
22 Net income (loss) from other rental activities	22	
23 Interest	23 284.	10.
24 Dividends	24	
25 Royalties	25	
26 Net short-term capital gain (loss)	26	
27 Net long-term capital gain (loss). Total for year.	27	
28 Unrecaptured Section 1250 gain	28	
29 Guaranteed payments to partner (U.S. Form 1065 only)	29	
30 Net Section 1231 gain (loss) (other than casualty or theft). Total for year.	30	
31 Other income and expense	31 -168,213.	-5,993.

Specify STATEMENT STATEMENT



This form is authorized as outlined by the Illinois Income Tax Act. Disclosure of this information is REQUIRED. This form has been approved by the Forms Management Center. IL-492-3873

Step 5: Figure your partner's or shareholder's share of Illinois additions and subtractions

Table with 3 columns: Description, A (Member's share from Form IL-1065 or IL-1120-ST), and B (Nonresident member's share apportioned or allocated to Illinois). Rows include Additions (32-37) and Subtractions (38a-47).

Step 6: Figure your partner's or shareholder's (except a corporate partner or shareholder) share of your Illinois August 1, 1969, appreciation amounts

Table with 3 columns: Description, A (Member's share from Illinois Schedule F (Form IL-1065 or IL-1120-ST)), and B (Nonresident member's share apportioned or allocated to Illinois). Rows include 48-51.

Step 7: Figure your partner's or shareholder's share of your Illinois credits and recapture and pass-through entity payments

Table with 3 columns: Description, A (Member's or nonresident member's share from Illinois tax return), and B (Nonresident member's share apportioned or allocated to Illinois). Rows include 52 (Illinois credits), 53 (Recapture), and 54 (Pass-through entity payment).

SHAREHOLDERS SHARE OF INCOME INCLUDED ON FORM IL-1023-C 66,699.



MINNESOTA LIMITED, INC.



IL K-1 FOOTNOTES

COMPOSITE RETURN FILED ON YOUR BEHALF. NO SEPARATE INDIVIDUAL TAX FILINGS REQUIRED.

IL SCHEDULE K-1-P OTHER BUSINESS INCOME AND EXPENSE

DESCRIPTION	AMOUNT
CHARITABLE CONTRIBUTIONS	-4,550.
SECTION 179 EXPENSE	-163,663.
TOTAL TO LINE 31(A)	-168,213.

IL SCHEDULE K-1-P NONRESIDENT OTHER INCOME AND EXPENSE

DESCRIPTION	AMOUNT
CHARITABLE CONTRIBUTIONS	-162.
SECTION 179 EXPENSE	-5,831.
TOTAL TO LINE 31(B)	-5,993.

RECEIVED by MSC 5/25/2022 9:09:54 PM

Illinois Department of Revenue

2010 FORM IL-1023-C

Composite Income and Replacement Tax Return

Due on or before the 15th day of the 4th month following the close of the tax year.

If this return is not for calendar year 2010, write your fiscal tax year here.

Tax year beginning _____, 2010, ending _____

Write the amount you are paying.
\$ _____

Step 1: Provide the following information

A Write your complete legal business name.
If you have a name change check this box.
Name: MINNESOTA LIMITED, INC.

D Write your federal employer identification no. (FEIN).
██████████ 666
Seq. code

B If you have an address change or this is a first return, check this box and complete the following information.
C/O: _____
Mailing address: _____
City: _____ State: _____ ZIP: _____

E Check the box that identifies the return you filed.
Form IL-1065
Form IL-1120-ST

C Check the box if one of the following apply.
 first return final return (If final, write the date. _____)

F Check if the partners or shareholders included are trust members.

G Check if the partners or shareholders included are individuals and/or estate members only.

Step 2: Figure your income and net income tax ^{TMT} 15

1 a Modified base income of the partnership or S corporation.	1a	<u>3,744,310.00</u>	
b Total percentage of ownership for resident members. (Write the percentage as a decimal and carry to six decimal places)	1b	<u>.000000</u>	
c Multiply Line 1a by Line 1b.			1c <u>.00</u>
2 a Modified base income allocable to Illinois.	2a	<u>133,399.00</u>	
b Total percentage of ownership for nonresident members. (Write the percentage as a decimal and carry to six decimal places)	2b	<u>1.000000</u>	
c Multiply Line 2a by Line 2b.			2c <u>133,399.00</u>
3 Add Lines 1c and 2c. This amount is your income.	3	<u>133,399.00</u>	
4 Income tax. Multiply Line 3 by 3% (.03).	4	<u>4,002.00</u>	
5 Recapture of investment credits. Attach Schedule 4255.	5	<u>.00</u>	
6 Income tax before investment credits. Add Lines 4 and 5.	6	<u>4,002.00</u>	
7 Income tax credits. Attach Schedule 1299-A. (See instructions.)	7	<u>.00</u>	
8 Net income tax. Subtract Line 7 from Line 6.	8	<u>4,002.00</u>	

Step 3: Figure your net replacement tax (Complete only if this return includes any trust members.)

9 Income included in Line 3 that is subject to replacement tax.	9	<u>.00</u>
10 Replacement tax. Multiply Line 9 by 1.5% (.015).	10	<u>.00</u>
11 Recapture of investment credits. Attach Schedule 4255.	11	<u>.00</u>
12 Replacement tax before investment credits. Add Lines 10 and 11.	12	<u>.00</u>
13 Investment credits. Attach Form IL-477.	13	<u>.00</u>
14 Net replacement tax. Subtract Line 13 from Line 12.	14	<u>.00</u>





Step 4: Figure your refund or balance due

15 Total net income and replacement taxes. Add Lines 8 and 14.	15	4,002 .00
16 Payments.		
a Credit from 2009 overpayment.	16a	4,711 .00
b Form IL-1023-CES payments.	16b	.00
c Form IL-505-B (extension) payment.	16c	.00
d Pass-through entity payments. Attach Schedule(s) K-1-P and K-1-T.	16d	.00
17 Total payments. Add Lines 16a through 16d.	17	4,711 .00
18 Overpayment. If Line 17 is greater than Line 15, subtract Line 15 from Line 17.	18	709 .00
19 Amount to be credited to 2011.	19	709 .00
20 Refund. Subtract Line 19 from Line 18. This is the amount to be refunded.	20	.00
21 Tax due. If Line 15 is greater than Line 17, subtract Line 17 from Line 15. This is the amount you owe.	21	0 .00

▶ **Make your check payable to "Illinois Department of Revenue" and attach to the first page of this return.** ◀

Note → Write the amount of your payment on the top of Page 1 in the space provided.

Step 5: Sign here

Under penalties of perjury, I state that I have examined this return and, to the best of my knowledge, it is true, correct, and complete and that each of the qualifying partners or shareholders is aware of, and complies with, the rules and regulations set forth and made binding by this composite return.

Signature of authorized agent	Date	OFFICER	763-262-7000
		Title	Phone

Signature of preparer	Date	Preparer's Social Security number or firm's FEIN
-----------------------	------	--

LURIE BESIKOF LAPIDUS & COMPANY, LLP

Preparer firm's name (or yours, if self-employed)

2501 WAYZATA BOULEVARD

MINNEAPOLIS, MN

Address

55405-2197

612-377-4404

Phone

▶ **Mail this return to: Illinois Department of Revenue, P.O. Box 19009, Springfield, IL 62794-9009** ◀

ID: 2BX

049592
12-01-10

This form is authorized as outlined by the Illinois Income Tax Act. Disclosure of this information is REQUIRED. Failure to provide information could result in a penalty. This form has been approved by the Forms Management Center. IL-492-2056

SCHEDULE BC Composite Return Membership

Attach to your Form IL-1023-C

Year ending
12 10
Month Year

IL Attachment no. 1

Write your name as shown on your Form IL-1023-C.

Write your federal employer identification number (FEIN).

MINNESOTA LIMITED, INC.

Identify the members included in your composite return

A	B	C	D	E	F
Name and Address	Social Security number or FEIN	Partner or Shareholder type (See instructions.)	Share of income or loss (%)	Check the box if the member is an Illinois resident and is included based on department-approved petition.	Pass-through entity payment amount.
1 CHRISTOPHER LEINES PO BOX 353 MEDINA, MN 55357	[REDACTED]	I	50.000000	<input type="checkbox"/>	0.
2 PAULETTE BRITZIUS 16570 248TH AVENUE N.W. BIG LAKE, MN 55309	[REDACTED]	I	50.000000	<input type="checkbox"/>	0.
3				<input type="checkbox"/>	
4				<input type="checkbox"/>	
5				<input type="checkbox"/>	
6				<input type="checkbox"/>	
7				<input type="checkbox"/>	
8				<input type="checkbox"/>	

049431 11-29-10





IL IL-1023-C MODIFIED BASE INCOME ALLOCABLE TO ILLINOIS STATEMENT 15

Table with columns for description and amount. Rows include: BASE INCOME, 1. UNMODIFIED BASE INCOME (LOSS) 4,225,631, 2. ADDITIONS: A. STATE, MUNICIPAL, AND OTHER INTEREST EXCLUDED IN LINE 1, B. ILLINOIS REPLACEMENT TAX DEDUCTED IN LINE 1 2,001, C. ILLINOIS BONUS DEPRECIATION ADDITION, D. RELATED-PARTY EXPENSES ADDITION, E. DISTRIBUTIVE SHARE OF ADDITIONS, F. OTHER ADDITIONS 2,001, 3. TOTAL INCOME 4,227,632, 4. SUBTRACTIONS: A. INTEREST INCOME FROM U.S. TREASURY OBLIGATIONS, B. EXPENSES INCURRED IN PRODUCING CERTAIN FEDERALLY TAX-EXEMPT INCOME 0, C. ENTERPRISE ZONE OR RIVER EDGE REDEVELOPMENT ZONE DIVIDEND SUBTRACTION 0, D. HIGH IMPACT BUSINESS DIVIDEND SUBTRACTION, E. ILLINOIS BONUS DEPRECIATION SUBTRACTION 483,322, F. RELATED-PARTY EXPENSES SUBTRACTION, G. DISTRIBUTIVE SHARE OF SUBTRACTIONS, H. OTHER SUBTRACTIONS 483,322, 5. MODIFIED BASE INCOME (LOSS) - SUBTRACT LINE 6 FROM LINE 4 CARRY TO FORM IL-1023-C, STEP 1, LINE 1A 3,744,310

BASE INCOME (LOSS) ALLOCABLE TO ILLINOIS
* NOTE: THIS PORTION IS FILLED OUT ONLY IF IL-1120-ST STEP 6 HAS BEEN COMPLETED.

Table with columns for description and amount. Rows include: 1. BASE INCOME (LOSS) FROM LINE 5 ABOVE 3,744,310, 2. A. NONBUSINESS INCOME (LOSS) NET OF DEDUCTIONS DIRECTLY ALLOCABLE TO SUCH INCOME, B. NON-UNITARY PARTNERSHIP BUSINESS INCOME (LOSS), 3. TOTAL. ADD LINES 2A AND 2B, 4. BUSINESS INCOME (LOSS) 3,744,310, 5. BUSINESS INCOME APPORTIONMENT FORMULA:

Table with 5 columns: 1. TOTAL EVERYWHERE, 2. WITHIN ILLINOIS, 3. RATIO (6 DEC), 4. WEIGHTED FACTORS, 5. WEIGHTED TOTALS. Row C SALES: 110,365,790 | 3,931,966 | 0.035627 | 1.00000 = | 0.035627. Row 6 APPORTIONMENT FACTOR. COLUMN 5, LINES 5A THROUGH 5C 0.035627, Row 7 BUSINESS INCOME (LOSS) APPORTIONABLE TO ILLINOIS 133,399, Row 8 NONBUSINESS INCOME (LOSS) ALLOCABLE TO ILLINOIS (SCH. NB), Row 9 PARTNERSHIP BUSINESS INCOME (LOSS) APPORTIONABLE TO IL, Row 10 BASE INCOME OR NET LOSS ALLOCABLE TO ILLINOIS CARRY TO FORM IL-1023-C, STEP 1, LINE 2A 133,399

RECEIVED by MSC 5/25/2022 9:09:54 PM

State Form
49100
(R8/8-10)

FORM DB020W-NR

Payment of Indiana Withholding Tax for Nonresident Shareholders, Partners, or Beneficiaries of Trusts and Estates

INDIANA TAXPAYER IDENTIFICATION NUMBER:

[REDACTED]

(IF NONE, INDICATE FEDERAL ID NUMBER BELOW)

[REDACTED]

LOCATION

TAXPAYER'S NAME AND ADDRESS:

NAME MINNESOTA LIMITED, INC.

STREET 18640 200TH STREET

CITY BIG LAKE

STATE MN ZIP CODE 55309

ENTER YOUR FEDERAL IDENTIFICATION NUMBER:

[REDACTED]

IS THIS A ONE-TIME ANNUAL

DISTRIBUTION? YES NO

X

AUTHORIZED SIGNATURE

DATE _____ DAYTIME TELEPHONE NUMBER 763 262 7000

TAX PERIOD ENDING:

12 2010

MM YYYY

[REDACTED]

(CODE-DEPT. USE ONLY)

A. 1500.00

TOTAL AMOUNT OF PAYMENT

B. 1500.00

TOTAL AMOUNT DUE

**DO NOT SEND CASH
MAKE CHECK OR MONEY ORDER
IN U.S. FUNDS PAYABLE TO:
INDIANA DEPARTMENT OF REVENUE**

**MAIL COMPLETED FORM TO:
INDIANA DEPARTMENT OF REVENUE
P.O. BOX 6197
INDIANAPOLIS, IN 46206-6197**

DO NOT USE THIS FORM FOR REPORTING PAYROLL WITHHOLDING TAX



RECEIVED by MSC 5/25/2022 9:09:54 PM

ALLOCATION OF MISSOURI S CORPORATION ADJUSTMENT TO SHAREHOLDERS				
CORPORATION NAME		MO TAX I.D. NUMBER	CHARTER NUMBER	FEDERAL ID NUMBER
MINNESOTA LIMITED, INC.			F00370660	
1. NAME OF EACH SHAREHOLDER. ALL SHAREHOLDERS MUST BE LISTED. USE ATTACHMENT IF NECESSARY.	2. CHECK BOX IF SHAREHOLDER IS NONRESIDENT	3. SOCIAL SECURITY NUMBER	4. SHAREHOLDER'S SHARE %	5. SHAREHOLDER'S CORPORATION ADJUSTMENT <input checked="" type="checkbox"/> ADDITION <input type="checkbox"/> SUBTRACTION
a) CHRISTOPHER LEINES	<input checked="" type="checkbox"/>		50.0000%	2,197 00
b) PAULETTE BRITZIUS	<input checked="" type="checkbox"/>		50.0000%	2,197 00
c)	<input type="checkbox"/>		%	00
d)	<input type="checkbox"/>		%	00
e)	<input type="checkbox"/>		%	00
f)	<input type="checkbox"/>		%	00
g)	<input type="checkbox"/>		%	00
h)	<input type="checkbox"/>		%	00
i)	<input type="checkbox"/>		%	00
j)	<input type="checkbox"/>		%	00
k)	<input type="checkbox"/>		%	00
l)	<input type="checkbox"/>		%	00
m)	<input type="checkbox"/>		%	00
n)	<input type="checkbox"/>		%	00
o)	<input type="checkbox"/>		%	00
p)	<input type="checkbox"/>		%	00
q)	<input type="checkbox"/>		%	00
r)	<input type="checkbox"/>		%	00
s)	<input type="checkbox"/>		%	00
t)	<input type="checkbox"/>		%	00
u)	<input type="checkbox"/>		%	00
v)	<input type="checkbox"/>		%	00
w)	<input type="checkbox"/>		%	00
x)	<input type="checkbox"/>		%	00
TOTAL			100 %	4,394 00

COLUMN 4 - Enter percentages from Federal Schedule K-1(s). Round percentages to whole numbers.
 COLUMN 5 - Enter Missouri S corporation adjustment from Form MO-1120S, Line 13 or 14, as total of Column 5. Multiply each percentage in Column 4 by the total in Column 5. Indicate at the top of Column 5 whether the adjustments are additions or subtractions. The amount after each shareholder's name in Column 5 must be reported as a modification by the shareholder on his/her Form MO-1040, Individual Income Tax Return either as an addition to, or subtraction from, federal adjusted gross income.

061312 MO 860-1102 (10-2010)
 10-13-10 PFX

15491212 766681 30250.201 2010.05030 MINNESOTA LIMITED, INC. 30250_03
 VEC000719

Appellee's App'x
 Vol II, p 931

MISSOURI DEPARTMENT OF REVENUE
**S CORPORATION
NONRESIDENT SCHEDULE**

**SCHEDULE
MO-NRS**

Attachment Sequence No. 1120S-03

COMPLETE THIS SCHEDULE FOR EACH NONRESIDENT SHAREHOLDER WHO HAS MISSOURI SOURCE INCOME.

CORPORATION NAME MINNESOTA LIMITED, INC.	MO TAX I.D. NUMBER [REDACTED]	CHARTER NUMBER F00370660	FEDERAL I.D. NUMBER [REDACTED]
--	----------------------------------	------------------------------------	-----------------------------------

PART 1- S CORPORATION'S DISTRIBUTIVE SHARE ITEMS		NONRESIDENT SHAREHOLDER'S NAME [REDACTED]	
---	--	--	--

	MISSOURI SOURCE				
	(a)	(b)	(c)	(d)	(e)
	FEDERAL SCHEDULE K	AMOUNT	MO %	FEDERAL SCHEDULE K-1	MISSOURI SOURCE
1. Ordinary business income (loss) ...	17,089,417 00	832,015 00	4.8686	8,544,709 00	416,008 00
2. Net rental real estate income (loss)	00	00		00	00
3. Other net rental income (loss) (Federal Schedule K, Line 3c) ...	00	00		00	00
4. Interest income	00	00		00	00
5a. Ordinary dividends	00	00		00	00
5b. Qualified dividends	00	00		00	00
6. Royalties	00	00		00	00
7. Net short-term capital gain (loss)	00	00		00	00
8a. Net long-term capital gain (loss) ...	37,044,407 00	0 00	.0000	18,522,204 00	0 00
8b. Collectibles (28%) gain (loss) ...	00	00		00	00
8c. Unrecaptured section 1250 gain ...	00	00		00	00
9. Net section 1231 gain (loss) ...	00	00		0 00	00
10. Other income (loss)	00	00		00	00
11. Section 179 deduction	00	00		00	00
12. Other deductions	300 00	15 00	4.8686	150 00	7 00

PART 2 - SHARE OF MISSOURI S CORPORATION ADJUSTMENT - NONRESIDENT SHAREHOLDERS

The lines below and Column (a) correspond to the lines on Form MO-1120S.	(a) MISSOURI S CORPORATION ADJUSTMENT	(b) MISSOURI SOURCE	(c) MO %	(d) SHAREHOLDER'S S CORPORATION ADJUSTMENT	(e) MISSOURI SOURCE
ADDITIONS					
1. Net state and local income taxes deducted on Federal Form 1120S	4,394 00	214 00	4.8686		
2. Net state and local bond interest (except Missouri)	00	00			
3. <input type="checkbox"/> Partnership <input type="checkbox"/> Fiduciary <input type="checkbox"/> Other adjustments	00	00			
4. Pantry Tax Credit that were deducted from federal taxable income, Section 135.647, RSMo ...	00	00			
5. Total of Lines 1 through 4	4,394 00	214 00			
SUBTRACTIONS					
6. Net int from exempt fed obligations	00	00			
7. Amount of any state inc tax refund included in federal ordinary income	00	00			
8. Fed taxable - MO exempt obligations	00	00			
9. <input type="checkbox"/> Partnership <input type="checkbox"/> Fiduciary <input type="checkbox"/> Other adjustments <input type="checkbox"/> Build America & Rec. Zone Bond Int. <input type="checkbox"/> MO Public-Private Transportation Act	00	00			
10. MO depreciation basis adjustment (Section 143.121.3(7), RSMo) ...	00	00			
11. Depreciation recovery on qualified property that is sold (Section 143.121.3(9), RSMo) ...	00	00			
12. Total of Lines 6 through 11	00	00			
13. Missouri S corporation adjustment - NET ADDITION	4,394 00	214 00	4.8686	2,197 00	107 00
14. Missouri S corporation adjustment - NET SUBTRACTION	00	00		00	00

NOTE: Each item shown in Parts 1 and 2, Columns (d) and (e) should be entered on the appropriate lines of Form MO-NRI of each nonresident shareholder.

RECEIVED by MSC 5/25/2022 9:09:54 PM

MISSOURI DEPARTMENT OF REVENUE
**S CORPORATION
 NONRESIDENT SCHEDULE**

**SCHEDULE
 MO-NRS**

Attachment Sequence No. 1120S-03

COMPLETE THIS SCHEDULE FOR EACH NONRESIDENT SHAREHOLDER WHO HAS MISSOURI SOURCE INCOME.

CORPORATION NAME MINNESOTA LIMITED, INC.	MO TAX I.D. NUMBER [REDACTED]	CHARTER NUMBER F00370660	FEDERAL I.D. NUMBER [REDACTED]
--	----------------------------------	------------------------------------	-----------------------------------

PART 1- S CORPORATION'S DISTRIBUTIVE SHARE ITEMS	NONRESIDENT SHAREHOLDER'S NAME PAULETTE BRITZIUS
	SOCIAL SECURITY NUMBER [REDACTED]

	MISSOURI SOURCE				
	(a)	(b)	(c)	(d)	(e)
	FEDERAL SCHEDULE K	AMOUNT	MO %	FEDERAL SCHEDULE K-1	MISSOURI SOURCE
1. Ordinary business income (loss) ...	17,089,417 00	832,015 00	4.8686	8,544,708 00	416,008 00
2. Net rental real estate income (loss)	00	00		00	00
3. Other net rental income (loss) (Federal Schedule K, Line 3c) ...	00	00		00	00
4. Interest income	00	00		00	00
5a. Ordinary dividends	00	00		00	00
5b. Qualified dividends	00	00		00	00
6. Royalties	00	00		00	00
7. Net short-term capital gain (loss)	00	00		00	00
8a. Net long-term capital gain (loss) ...	37,044,407 00	0 00	.0000	18,522,203 00	0 00
8b. Collectibles (28%) gain (loss) ...	00	00		00	00
8c. Unrecaptured section 1250 gain ...	00	00		00	00
9. Net section 1231 gain (loss) ...	00	00		0 00	00
10. Other income (loss)	00	00		00	00
11. Section 179 deduction	00	00		00	00
12. Other deductions	300 00	15 00	4.8686	150 00	7 00

PART 2 - SHARE OF MISSOURI S CORPORATION ADJUSTMENT - NONRESIDENT SHAREHOLDERS

The lines below and Column (a) correspond to the lines on Form MO-1120S.	(a) MISSOURI S CORPORATION ADJUSTMENT	(b) MISSOURI SOURCE	(c) MO %	(d) SHAREHOLDER'S S CORPORATION ADJUSTMENT	(e) MISSOURI SOURCE
ADDITIONS					
1. Net state and local income taxes deducted on Federal Form 1120S	4,394 00	214 00	4.8686		
2. Net state and local bond interest (except Missouri)	00	00			
3. <input type="checkbox"/> Partnership <input type="checkbox"/> Fiduciary <input type="checkbox"/> Other adjustments	00	00			
4. Pantry Tax Credit that were deducted from federal taxable income, Section 135.647, RSMo ...	00	00			
5. Total of Lines 1 through 4	4,394 00	214 00			
SUBTRACTIONS					
6. Net int from exempt fed obligations	00	00			
7. Amount of any state inc tax refund included in federal ordinary income	00	00			
8. Fed taxable - MO exempt obligations	00	00			
9. <input type="checkbox"/> Partnership <input type="checkbox"/> Fiduciary <input type="checkbox"/> Other adjustments <input type="checkbox"/> Build America & Rec. Zone Bond Int. <input type="checkbox"/> MO Public-Private Transportation Act	00	00			
10. MO depreciation basis adjustment (Section 143.121.3(7), RSMo) ...	00	00			
11. Depreciation recovery on qualified property that is sold (Section 143.121.3(9), RSMo) ...	00	00			
12. Total of Lines 6 through 11	00	00			
13. Missouri S corporation adjustment - NET ADDITION	4,394 00	214 00	4.8686	2,197 00	107 00
14. Missouri S corporation adjustment - NET SUBTRACTION	00	00		00	00

NOTE: Each item shown in Parts 1 and 2, Columns (d) and (e) should be entered on the appropriate lines of Form MO-NRI of each nonresident shareholder.

RECEIVED by MSC 5/25/2022 9:09:54 PM

MISSOURI DEPARTMENT OF REVENUE
**S CORPORATION ALLOCATION
 AND APPORTIONMENT SCHEDULE**

SCHEDULE MO-MSS	Attachment Sequence No. 1120S-04

DO NOT USE THIS SCHEDULE IF ALL INCOME IS FROM MISSOURI SOURCES.

CORPORATION NAME MINNESOTA LIMITED, INC.	MO TAX I.D. NUMBER 	CHARTER NUMBER F00370660	FEDERAL I.D. NUMBER
--	------------------------	------------------------------------	-------------------------

APPORTIONMENT ELECTION

- Missouri Statutes provide seven methods of determining income from Missouri sources. Check only ONE of the seven boxes.
 - Method One - MULTISTATE ALLOCATION AND THREE FACTOR APPORTIONMENT - Multistate Tax Compact - Section 32.200, RSMo - Complete Parts 3 and 2.
 - Method Two - BUSINESS TRANSACTION SINGLE FACTOR APPORTIONMENT - Section 143.451.2(2), RSMo - Complete Parts 3 and 1.
 - Special Methods Number 3 to 7 - Attach Detailed Explanation
 - Three - Transportation - Section 143.451.3, RSMo
 - Four - Railroad - Section 143.451.4, RSMo
 - Five - Interstate Bridge - Section 143.451.5, RSMo
 - Six - Telephone and Telegraph - Section 143.451.6, RSMo
 - Seven - Other Approved Method - Section 143.461.2, RSMo
- Letter of Approval from the Director of Revenue must be attached.

PART 1 - METHOD TWO - SINGLE FACTOR APPORTIONMENT

- Enter on Line 1 the amount of sales which are transacted wholly in Missouri.
 - Enter on Line 2 the amount of sales which are transacted partly within Missouri and partly without Missouri.
 - Enter on Line 3 the amount of sales which are transacted wholly without Missouri.
 - In determining income from Missouri sources in cases where sales do not express the volume of business, enter on Line 1 the amount of business transacted wholly in Missouri and enter on Line 2 the amount of business transacted partly in Missouri and partly outside Missouri.
- Attach an explanation reconciling Line 4 with specific data on Federal Form 1120S.

	TOTAL	MISSOURI
1. Amount wholly in Missouri	1	00
2. Amount partly within and partly without Missouri	2	00
3. Amount wholly without Missouri	3	00
4. Total amount (all sources) add Lines 1, 2, and 3	4	00
5. One-half of Line 2	5	00
6. Total amount (Missouri) - add Lines 1 and 5	6	00
7. Missouri single factor apportionment fraction (Divide Line 6 by Line 4). Enter on Schedule MO-NRS, Parts 1 and 2, Column (c)	7	%

PART 2 - METHOD ONE - THREE FACTOR APPORTIONMENT

	TOTAL MISSOURI (a)	TOTAL EVERYWHERE (b)	PERCENT WITHIN MISSOURI (a) ÷ (b)
1. Average yearly value of real and tangible personal property used in the business, whether owned or rented. <i>Owned property: (at original cost, see instructions) (Exclude property not connected with the business and value of construction in progress.)</i>			
Land	00	00	
Depreciable assets	1,592,401	28,881,586	
Inventory and supplies	00	00	
Other (attach schedule)	00	00	
Net annual rental of property, times eight	318,528	26,338,736	
TOTAL PROPERTY VALUES	1a 1,910,929	1b 55,220,322	1 3.4606 %
2. Wages, salaries, commissions, and other compensation of employees related to business income			
TOTAL WAGES AND SALARIES	2a 539,395	2b 7,467,030	2 7.2237 %
3. Sales (gross receipts, less returns and allowances):			
(a) Sales delivered or shipped to Missouri purchasers:			
(1) Shipped from outside Missouri	2,408,677		
(2) Shipped from within Missouri	0		
(b) Sales shipped from Missouri to:			
(1) The United States Government	0		
(2) Purchasers in a state where the taxpayer would not be taxable (e.g., under Public Law 86-272)	0		
(c) Other gross receipts (rents, royalties, interest, etc.)	0		
TOTAL SALES	3a 2,408,677	3b 61,421,225	3 3.9216 %
4. APPORTIONMENT FACTOR - add percentages on Lines 1, 2, and 3, and divide by factors present (see instructions) Enter on Schedule MO-NRS, Parts 1 and 2, Column (c).			4 4.8686 %

MO 860-1811 (09-2010) PFx This form is available upon request in alternative accessible format(s).

061351
12-09-10

SCHEDULE MO-MSS

CORPORATION NAME MINNESOTA LIMITED, INC.	MO TAX I.D. NUMBER [REDACTED]	CHARTER NUMBER F00370660	FEDERAL I.D. NUMBER [REDACTED]
--	----------------------------------	------------------------------------	-----------------------------------

PART 3 - MULTISTATE OR SINGLE FACTOR ALLOCATION

• Directly allocable nonbusiness income. Do not allocate expenses that have been excluded from federal taxable income.	ALLOCATION OF NONBUSINESS INCOME					
	GROSS INCOME		DIRECTLY RELATED EXPENSES		INDIRECTLY RELATED EXPENSES	
	(1) EVERYWHERE	(2) MISSOURI	(3) EVERYWHERE	(4) MISSOURI	(5) EVERYWHERE	(6) MISSOURI
1. Interest income	00	00	00	00	00	00
2. Royalties	00	00	00	00	00	00
3. Rents	00	00	00	00	00	00
4. Net capital gains	37044407 00	00	00	00	00	00
5. Dividends	00	00	00	00	00	00
6. Total each column	37044407 00	0 00	00	00	00	00

All income is presumed to be business income unless you can clearly show the income to be nonbusiness income.

ALLOCATION/APPORTIONMENT OF DISTRIBUTIVE SHARE ITEMS

The following steps must be followed for each distributive share item that is being allocated as nonbusiness income. Attach an explanation and computations detailing the nature of the nonbusiness or Missouri source income.

EXAMPLE: Assume \$15,000 in total rents of which \$12,000 is business income and \$3,000 is nonbusiness of which \$1,000 is directly allocated to Missouri income. Assume an apportionment factor of 33.333% (from Part 1, Line 7 or Part 2, Line 4):

Step 1	\$15,000	Total rents
Step 2	<u>-3,000</u>	Allocated to Missouri as nonbusiness or Missouri source income
	\$12,000	Business income
Step 3	\$12,000	X 33.333% = 4,000
Step 4	\$ 1,000	Missouri source income
Step 5	<u>+ 4,000</u>	From Step 3
	\$ 5,000	Enter on Schedule MO-NRS, Part 1, Line 3, Column (b).
Step 6	\$ 5,000/15,000 = 30% This percentage is entered on Schedule MO-NRS, Part 1, Line 3, Column (c).	

APPORTIONMENT OF PARTNERSHIP INTEREST

EXAMPLE: Assume S corporation's only activity is a 10 percent ownership in partnership. Partnership's Schedule MO-MSS reflects single factor with \$1,000,000 as wholly within and \$275,000 as partly within. S corporation method 2 Single Method Apportionment is calculated as follows:

1.	Amount wholly in Missouri (\$1,000,000 x .10)	=	\$100,000
2.	Amount wholly within and without Missouri (\$275,000 x .10)	=	\$27,500
3.	Amount wholly without Missouri (0 x .10)	=	0
4.	Total amount (all source)		127,500
5.	One half of Line 2		13,750
6.	Total Amount (Missouri) add Line 1 and Line 5		113,750
7.	Missouri Single Factor Apportionment (Divide Line 6 by Line 4) Enter on Schedule MO-NRS, Parts 1 and 2, Column (e).		89.216%

MO 860-1811 (09-2010)
061352
12-09-10 PFX

RECEIVED by MSC 5/25/2022 9:09:54 PM

MINNESOTA LIMITED, INC.



MO-1120S STATE AND LOCAL INCOME TAXES DEDUCTED STATEMENT 1

DESCRIPTION	AMOUNT
ILLINOIS TAXES - BASED ON INCOME	4,067.
WISCONSIN TAXES - BASED ON INCOME	327.
TOTAL TO FORM MO-1120S, LINE 1A	4,394.

RECEIVED by MSC 5/25/2022 9:09:54 PM

RECEIVED by MSC 5/25/2022 9:09:54 PM

MISSOURI SCHEDULE K-1 EQUIVALENT	Shareholder's Information For Calendar Year 2010, or Fiscal Year Beginning JANUARY 1, 2011 , and Ending MARCH 31, 2011	2010
---	---	-------------

SHAREHOLDER'S NAME, ADDRESS, AND ZIP CODE CHRISTOPHER LEINES PO BOX 353 MEDINA, MN 55357	SHAREHOLDER'S SS#: [REDACTED] SHAREHOLDER NO. <u>1</u> PERCENTAGE <u>50.0000</u> RESIDENCY STATUS: RESIDENT <input type="checkbox"/> NONRESIDENT <input checked="" type="checkbox"/>
--	--

S CORPORATION NAME, ADDRESS, AND ZIP CODE MINNESOTA LIMITED, INC. 18640 200TH STREET BIG LAKE, MN 55309	MITS/MO ID NO. [REDACTED] FEDERAL ID NO. [REDACTED]
---	---

PART I - DISTRIBUTIVE SHARE ITEMS	
Shareholder Adjustment - Net Addition	2,197
Shareholder Adjustment - Net Subtraction	

PART II - DISTRIBUTIVE MISSOURI CREDITS	
New or Expanded Business Facility Credit	
Development Reserve Credit	
Infrastructure Development Credit	
Export Finance Credit	
Missouri Low Income Housing Credit	
Missouri Business Modernization and Technology (Seed Capital) Credit	
Neighborhood Assistance Credit	
Affordable Housing Assistance Credit	
Enterprise Zone Credit	
Small Business Incubator Credit	
Small Business Investment (Capital) Credit	
Community Bank Investment Credit	
Qualified Research Expense Credit	
Special Needs Adoption Credit	
Brownfield Jobs and Investment Credit	
Youth Opportunities Credit	
Processed Wood Energy Credit	
Missouri Business Use Incentives for Large-Scale Development (BUILD) Credit	
Maternity Home Credit	
Shelter for Victims of Domestic Violence Credit	
Historic Preservation Credit	
New Market Tax Credit	
Charcoal Producers Credit	
Film Production Credit	
Wine and Grape Production Credit	
Rebuilding Communities Credit	
Agricultural Product Utilization Contributor Credit	
New Generation Cooperative Incentive Credit	
Bank Tax Credit for S Corporation shareholders	
Family Development Account Credit	
New Enterprise Creation Credit	
Remediation Credit	
Rebuilding Communities and Neighborhood Preservation Act Credit	
Disabled Access Credit	
Bank Franchise Tax Credit	
Demolition Credit	
Transportation Development Credit	
Development Tax Credit	
Small Business Guaranty Fees Credit	
Bond Enhancement Credit	
Missouri Quality Jobs Credit	
New Enhanced Enterprise Zone Credit	



MISSOURI SCHEDULE K-1 EQUIVALENT

PART II - DISTRIBUTIVE MISSOURI CREDITS - CONTINUED

Dry Fire Hydrant Credit	
Children in Crisis Credit	
Food Pantry Tax Credit	
Family Farms Act Credit	
Pregnancy Resource Credit	
Residential Treatment Agency Credit	
Distressed Area Land Assemblage Credit	
Qualified Beef Credit	
Alternative Fuel Infrastructure Credit	

YOUR SHARE OF THE MISSOURI SOURCE INCOME HAS BEEN INCLUDED IN THE MISSOURI FORM 1040, COMPOSITE TAX RETURN, AND THE RESPECTIVE INCOME TAX HAS BEEN PAID ON YOUR BEHALF.

COMPOSITE SOURCE INCOME	416,108.
MISSOURI NONRESIDENT TAX	24,966.

RECEIVED by MSC 5/25/2022 9:09:54 PM

RECEIVED by MSC 5/25/2022 9:09:54 PM

MISSOURI SCHEDULE K-1 EQUIVALENT	Shareholder's Information For Calendar Year 2010, or Fiscal Year Beginning JANUARY 1, 2011 , and Ending MARCH 31, 2011	2010
SHAREHOLDER'S NAME, ADDRESS, AND ZIP CODE PAULETTE BRITZIUS 16570 248TH AVENUE N.W. BIG LAKE, MN 55309		SHAREHOLDER'S SS#: [REDACTED] SHAREHOLDER NO. <u>2</u> PERCENTAGE <u>50.0000</u> RESIDENCY STATUS: RESIDENT <input type="checkbox"/> NONRESIDENT <input checked="" type="checkbox"/>
S CORPORATION NAME, ADDRESS, AND ZIP CODE MINNESOTA LIMITED, INC. 18640 200TH STREET BIG LAKE, MN 55309		MTS/MO ID NO. [REDACTED] FEDERAL ID NO. [REDACTED]

PART I - DISTRIBUTIVE SHARE ITEMS	
Shareholder Adjustment - Net Addition	2,197
Shareholder Adjustment - Net Subtraction	

PART II - DISTRIBUTIVE MISSOURI CREDITS	
New or Expanded Business Facility Credit	
Development Reserve Credit	
Infrastructure Development Credit	
Export Finance Credit	
Missouri Low Income Housing Credit	
Missouri Business Modernization and Technology (Seed Capital) Credit	
Neighborhood Assistance Credit	
Affordable Housing Assistance Credit	
Enterprise Zone Credit	
Small Business Incubator Credit	
Small Business Investment (Capital) Credit	
Community Bank Investment Credit	
Qualified Research Expense Credit	
Special Needs Adoption Credit	
Brownfield Jobs and Investment Credit	
Youth Opportunities Credit	
Processed Wood Energy Credit	
Missouri Business Use Incentives for Large-Scale Development (BUILD) Credit	
Maternity Home Credit	
Shelter for Victims of Domestic Violence Credit	
Historic Preservation Credit	
New Market Tax Credit	
Charcoal Producers Credit	
Film Production Credit	
Wine and Grape Production Credit	
Rebuilding Communities Credit	
Agricultural Product Utilization Contributor Credit	
New Generation Cooperative Incentive Credit	
Bank Tax Credit for S Corporation shareholders	
Family Development Account Credit	
New Enterprise Creation Credit	
Remediation Credit	
Rebuilding Communities and Neighborhood Preservation Act Credit	
Disabled Access Credit	
Bank Franchise Tax Credit	
Demolition Credit	
Transportation Development Credit	
Development Tax Credit	
Small Business Guaranty Fees Credit	
Bond Enhancement Credit	
Missouri Quality Jobs Credit	
New Enhanced Enterprise Zone Credit	



MISSOURI SCHEDULE K-1 EQUIVALENT

PART II - DISTRIBUTIVE MISSOURI CREDITS - CONTINUED

Dry Fire Hydrant Credit	
Children in Crisis Credit	
Food Pantry Tax Credit	
Family Farms Act Credit	
Pregnancy Resource Credit	
Residential Treatment Agency Credit	
Distressed Area Land Assemblage Credit	
Qualified Beef Credit	
Alternative Fuel Infrastructure Credit	

YOUR SHARE OF THE MISSOURI SOURCE INCOME HAS BEEN INCLUDED IN THE MISSOURI FORM 1040, COMPOSITE TAX RETURN, AND THE RESPECTIVE INCOME TAX HAS BEEN PAID ON YOUR BEHALF.

COMPOSITE SOURCE INCOME	416,108.
MISSOURI NONRESIDENT TAX	24,966.

RECEIVED by MSC 5/25/2022 9:09:54 PM

MISSOURI DEPARTMENT OF REVENUE
**APPLICATION FOR EXTENSION
 OF TIME TO FILE**

FORM MO-60 (REV. 08-2010)	Enclosure Sequence No. 1040-05 DLN
--	---------------------------------------

NOTE: INDIVIDUAL INCOME TAX FILERS: IF YOU HAVE AN APPROVED FEDERAL EXTENSION, YOU MAY NOT BE REQUIRED TO FILE THIS FORM. ALSO, YOU MAY NOT BE REQUIRED TO FILE AN EXTENSION IF YOU DO NOT EXPECT TO OWE ADDITIONAL INCOME TAX OR IF YOU ANTICIPATE RECEIVING A REFUND. SEE THE INSTRUCTIONS FOR DETAILS. NOTE: The Missouri extension to file a corporate tax return is a separate form. See Form MO-7004.

LAST NAME, FIRST NAME, INITIAL	DEPARTMENT OF REVENUE USE ONLY	M M D D Y Y
--------------------------------	--------------------------------	-------------

SPOUSE'S LAST NAME, FIRST NAME, INITIAL
MINNESOTA LIMITED, INC.

IN CARE OF NAME (ATTORNEY, GUARDIAN, EXECUTOR, ETC.)	TELEPHONE NUMBER 763-262-7000
--	---

ADDRESS (INCLUDE APARTMENT NUMBER OR ROUTE NUMBER) 18640 200TH STREET	CITY, STATE, ZIP CODE BIG LAKE, MN 55309
---	--

TYPE OF RETURN / EXTENSION (Only one box may be checked below. Separate request must be made for each return.)	TAXPAYER IDENTIFICATION NUMBER (Enter the taxpayer's social security number or FEIN below.)
Mail to: MISSOURI DEPARTMENT OF REVENUE P.O. BOX 3400 JEFFERSON CITY, MO 65105-3400	Your Social Security Number
<input checked="" type="checkbox"/> Individual Income Tax Return, Form MO-1040	Spouse's Social Security Number
<input type="checkbox"/> Fiduciary Income Tax Return, Form MO-1041	Federal Employer Identification Number (FEIN)
<input type="checkbox"/> Partnership Income Tax Return, Form MO-1065	
Note: If filing a composite Form MO-1040, mark individual income tax return box. COMPOSITE RETURN	

YEAR / DATE OF EXTENSION (if based on federal extension, attach a copy of your federal form.)

Tax Year Beginning **JAN 1 2011** Tax Year Ending **MAR 31 2011** An Extension of Time Until **JAN 17 2012**

TAX PAYMENT SCHEDULE - THIS SCHEDULE MUST BE COMPLETED
 (SEE LINE-BY-LINE INSTRUCTIONS)

1. Tentative amount of the tax for the taxable year	1	48,000	
2. Total payments and credits (see instructions)	2		
3. Balance due (Subtract Line 2 from Line 1). Make remittance payable to the MISSOURI DEPARTMENT OF REVENUE BEFDRE MAILING - Write your social security number(s) or FEIN on your check or money order	3	= 48,000	

Check this box to receive notification that your extension was approved. If this extension is denied, you will receive a denial letter.

If you pay by check, you authorize the Department of Revenue to process the check electronically. Any check returned unpaid may be presented again electronically.

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he/she has any knowledge.

SIGNATURE <i>Jim W. Starb P CPA</i>	DATE 6-15-11	PREPARER'S SIGNATURE <i>Jeffrey Starbird CPA</i> JEFFREY STARBIRD	DATE 6-15-11 06/14/11
SPOUSE'S SIGNATURE	DAYTIME TELEPHONE 612-377-4404	PREPARER'S ADDRESS AND ZIP CODE 2501 WAYZATA BOULEVARD MINNEAPOLIS, MN 55405-2197	FEIN, SSN, OR PTIN P00034491

MAILING ADDRESS: MISSOURI DEPARTMENT OF REVENUE, P.D. BOX 3400, JEFFERSON CITY, MO 65105.

MO 800-1104 (08-2010) PFX
061121
01-04-11

5540614 766681 30250.201 2010.03060 MINNESOTA LIMITED, INC. 30250_03

VEC000729

MISSOURI DEPARTMENT OF REVENUE 2010 FORM MO-1040 INDIVIDUAL INCOME TAX RETURN - LONG FORM

FOR CALENDAR YEAR JAN. 1-DEC. 31, 2010, OR FISCAL YEAR BEGINNING JAN 1 2010, ENDING MAR 31 20 11

AMENDED RETURN - CHECK HERE [] SOFTWARE VENDOR CODE 019

NAME AND ADDRESS SOCIAL SECURITY NUMBER SPOUSE'S SOCIAL SECURITY NUMBER

MINNESOTA LIMITED, INC. DECEASED IN 2010

COMPOSITE RETURN

IN CARE OF NAME (ATTORNEY, EXECUTOR, PERSONAL REPRESENTATIVE, ETC.) COUNTY OF RESIDENCE

PRESENT ADDRESS (INCLUDE APARTMENT NUMBER OR RURAL ROUTE) CITY, TOWN, OR POST OFFICE, STATE, ZIP CODE 18640 200TH STREET BIG LAKE, MN 55309

You may contribute to any one or all of the trust funds on Line 45. See instructions for a description of each trust fund, as well as trust fund codes to enter on Line 45.

PLEASE CHECK THE APPROPRIATE BOXES THAT APPLY TO YOURSELF OR YOUR SPOUSE AS OF DECEMBER 31, 2010. AGE 62 THROUGH 64, AGE 65 OR OLDER, BLIND, 100% DISABLED, NON-OBLIGATED SPOUSE

Table with columns for INCOME and rows for 1-7. Includes sub-columns for Yourself and Spouse. Values include 832,216.00.

Table with columns for EXEMPTIONS AND DEDUCTIONS and rows for 8-23. Includes sub-columns for Yourself and Spouse. Values include 00.

		Yourself		Spouse									
TAX	24. Taxable income amount from Lines 23Y and 23S.	24Y	1 00	24S	1 00								
	25. Tax (See tax table in the instructions.)	25Y	1 00	25S	1 00								
	26. Resident credit -- Attach Form MO-CR and other states' income tax return(s)	26Y	1 00	26S	1 00								
	27. Missouri income percentage--Enter 100% unless you are completing Form MO-NRI. Attach Form MO-NRI and a copy of your federal return if less than 100% . Check the box if you or your spouse is a professional entertainer or a member of a professional athletic team. <input type="checkbox"/> YOURSELF <input type="checkbox"/> SPOUSE	27Y	%	27S	%								
	28. Balance - Subtract Line 26 from Line 25; OR Multiply Line 25 by percentage on Line 27.	28Y	1 00	28S	1 00								
	29. Other taxes (Check box and attach federal form indicated.) <input type="checkbox"/> Lump sum distribution (Form 4972) <input type="checkbox"/> Recapture of low income housing credit (Form 8611)	29Y	1 00	29S	1 00								
	30. Subtotal -- Add Lines 28 and 29.	30Y	1 00	30S	1 00								
	31. Total Tax -- Add Lines 30Y and 30S.	31	49,933 00										
	PAYMENTS / CREDITS	32. MISSOURI tax withheld -- Attach Forms W-2 and/or 1099	32	1 00									
		33. 2010 Missouri estimated tax payments (include overpayment from 2009 applied to 2010).	33	1 00									
34. Missouri tax payments for nonresident partners or S corporation shareholders -- Attach Forms MO-2NR and MO-NRP ..		34	1 00										
35. Missouri tax payments for nonresident entertainers -- Attach Form MO-2ENT		35	1 00										
36. Amount paid with Missouri extension of time to file (Form MO-60).		36	48,000 00										
37. Miscellaneous tax credits (from Form MO-TC, Line 13) -- Attach Form MO-TC		37	1 00										
38. Property tax credit -- Attach Form MO-PTS		38	1 00										
39. Total payments and credits -- Add Lines 32 through 38.		39	48,000 00										
AMENDED RETURN		Skip Lines 40-42 if you are not filing an amended return.											
	40. Amount paid on original return.	40	1 00										
	41. Overpayment as shown (or adjusted) on original return. INDICATE REASON FOR AMENDING. <input type="checkbox"/> A. Federal audit Enter date of IRS report. <input type="checkbox"/> B. Net operating loss carryback Enter year of loss. <input type="checkbox"/> C. Investment tax credit carryback Enter year of credit. <input type="checkbox"/> D. Correction other than A, B, or C Enter date of federal amended return, if filed.	41	1 00										
	42. Amended Return - total payments and credits. Add Line 40 to Line 39 or subtract Line 41 from Line 39.	42	1 00										
REFUND	43. If Line 39, or if amended return, Line 42, is larger than Line 31, enter difference (amount of OVERPAYMENT) here.	43	1 00										
	44. Amount of Line 43 to be applied to your 2011 estimated tax.	44	1 00										
	45. Enter the amt of your donation in the trust fund boxes to the right. See instr. for trust fund codes:	45	Children's Trust Fund	Veterans Trust Fund	Elderly Home Delivered Meals Trust Fund	Missouri National Guard Trust Fund	Workers' Memorial Trust Fund	Childhood Lead Testing Trust Fund	MO Military Family Relief Trust Fund	General Revenue Trust Fund	After School Retreat Trust Fund	Addl. Trust Fund Code (See Instr.)	Addl. Trust Fund Code (See Instr.)
	46. Overpayment to be refunded to you. Subtract Lines 44 and 45 from Line 43 and enter here. Sign below and mail return to: Department of Revenue, PO BOX 3222, JEFFERSON CITY, MO 65105-3222 REFUND	46	1 00										
AMOUNT DUE	47. If Line 31 is larger than Line 39 or Line 42, enter the difference (amount of UNDERPAYMENT) here.	47	1,933 00										
	48. Underpayment of estimated tax penalty -- Attach Form MO-2210 . Enter penalty amount here.	48	1 00										
	49. Total amount due -- Add Lines 47 and 48 and enter here. Sign below and mail return and payment to: Department of Revenue, PO BOX 3370, JEFFERSON CITY, MO 65105-3370. Please write your social security number(s) and daytime phone number on your check or money order (U.S. funds only). Make payable to Missouri Department of Revenue. AMOUNT YOU OWE	49	1,933 00										
If you pay by check, you authorize the Dept. of Revenue to process the check electronically. Any check returned unpaid may be presented again electronically.													
SIGNATURE	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he/she has any knowledge. As provided in Chapter 143, RSMo, a penalty of up to \$500 shall be imposed on any individual who files a frivolous return. I also declare under penalties of perjury that I employ no illegal or unauthorized aliens as defined under federal law and that I am not eligible for any tax exemption, credit or abatement if I employ such aliens.												
	I authorize the Director of Revenue or delegate to discuss my return and attachments with the preparer or any member of the preparer's firm. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			E-MAIL ADDRESS		PREPARER'S TELEPHONE							
	SIGNATURE		DATE	PREPARER'S SIGNATURE		FEIN, SSN, OR PTIN							
	SPOUSE'S SIGNATURE (if filing combined, BOTH must sign)		DAYTIME TELEPHONE	PREPARER'S ADDRESS AND ZIP CODE		DATE							
		763-262-7000	2501 WAYZATA BOULEVARD MINNEAPOLIS, MN 55405-2197										

MO 860-1094 (12-2010) PFX
061002 01-14-11

This form is available upon request in alternative accessible format(s).

MISSOURI
COMPOSITE INCOME TAX SCHEDULE

2011

(Year)

For the taxable year beginning JAN 1, 2011 ending MAR 31, 2011

2022 9:09:54 PM

Name of S Corporation or Partnership MINNESOTA LIMITED, INC.						Employer Identification Number 41-0881999		
Tax Preparer's Name JEFFREY STARBIRD						Tax Preparer's Telephone Number 612-377-4404		
(1) Nonresident Owner Name	(2) Nonresident Owner Address	(3) Social Security/ID Number	(4) State of Residence	(5) Missouri Taxable Income	(6) Missouri Nonresident Tax	(7) Missouri Estimate Tax Paid	(8) MO-2NR Payments	(9) Balance Due or (Refund)
CHRISTOPHER LEINES	PO BOX 353 MEDINA, MN 55357	[REDACTED]	MN	416,108.	24,966.	0.	0.	24,966.
PAULETTE BRITZIUS	16570 248TH AVENUE N.W. BIG LAKE, MN 55309	[REDACTED]	MN	416,108.	24,966.	0.	0.	24,966.
TOTALS					49,932.	0.	0.	49,932.

Form CLT-4S

2010 Montana S Corporation Information and Composite Tax Return

Attach a copy of federal Form 1120S and Schedule(s) K-1

For calendar year 2010 or tax year beginning 0101, 2010 and ending 03312011
Name MINNESOTA LIMITED INC FEIN
Mailing Address 18640 200TH STREET Federal Business Code/NAICS 237990
City BIG LAKE State MN ZIP + 4 55309 State Incorporated in MN on 03211959
Date Qualified in Montana 01012009

Check if: New address Requesting a refund. Do not need Form CLT-4S sent next year. MT Secretary of State ID
Check if this is an initial return Check if this is an amended return
X Check if this is a final return If you check the box above, check below all the reasons for amending your return:
Reason for final return: a. Federal Revenue Agent Report (a complete copy of this report is required)
X b. Dissolved b. Apportionment factor changes (attach a statement explaining adjustments)
c. Merged c. Amended federal return
d. Reorganized d. Amended composite return
e. Other (attach a statement explaining all adjustments in detail)

Shareholders' Pro Rata Share of Income Items (Form 1120S, Schedule K)

Table with 3 columns: Line number, Description, and Amount. Includes items like Ordinary business income (loss), Net rental real estate income, Interest income, etc.

Shareholders' Distributive Share of Deduction Items (Form 1120S, Schedule K)

Table with 3 columns: Line number, Description, and Amount. Includes items like Section 179 deduction, Contributions, Investment interest expense, etc.

Shareholders' Distributive Share of Montana Additions and Deductions to Income

Table with 3 columns: Line number, Description, and Amount. Includes items like Interest and dividends not taxable under the Internal Revenue Code, Taxes based on income or profits, etc.

Shareholders' Distributive Share of Multistate Apportionment and Allocation

Table with 3 columns: Line number, Description, and Amount. Includes items like Income apportioned to Montana, Income allocated to Montana, etc.

CCH 062351 12-14-10



15491212 766681 30250.201

2010.05030 MINNESOTA LIMITED, INC.

30250_03

MINNESOTA LIMITED INC

Form CLT-4S, Page 2

FEIN [REDACTED]

Calculation of Amount Owed or Refund

21. Enter your Montana total composite tax from Schedule III, column F 21. 00
22. Enter the amount of total shareholder withholding from Schedule III, column G 22. 00

S Corporation Montana Mineral Royalty Tax Withheld

23. a. Total Montana mineral royalty tax withheld as reported on federal Form(s) 1099 23a. 00
b. Mineral royalty tax withheld attributable to Montana residents 23b. 00
c. Mineral royalty tax withheld attributable to nonresidents not reporting on Schedule IV 23c. 00
d. Add lines 23b and 23c. This is the total mineral royalty tax withheld reported by shareholders on their income tax returns 23d. 00
e. Subtract line 23d from 23a. This is the mineral royalty tax withheld attributable to nonresidents reporting on Schedule IV 23e. 00

Return Payments

24. a. 2009 overpayment applied to 2010 24a. 110 00
b. 2010 estimated payments 24b. 00
c. 2010 extension payment 24c. 00
d. Montana income tax withheld. Attach Form PT-WH 24d. 00
e. For amended returns only - payments made with original return 24e. 00
f. For amended returns only - previously issued refunds (see instructions) 24f. 00
g. Add lines 24a through 24e; then subtract line 24f. This is your total return payments. 24g. 110 00
25. Add lines 21 and 22, then subtract lines 23e and 24g. This is your amount due or (overpaid). 25. -110 00

Penalties and Interest (see instructions)

26. a. S corporation information return late filing penalty 26a. 00
b. Interest on underpayment of estimated composite tax 26b. 00
c. Composite income tax return late filing penalty 26c. 00
d. Late payment penalty 26d. 00
e. Interest 26e. 00
f. Add lines 26a through 26e. This is your total penalties and interest. 26f. 00

Amount Owed or Refund

27. Add lines 25 and 26f; enter the result here 27. -110 00
28. If line 27 results in an amount due, enter it here. This is the amount you owe. 28. 00
29. If line 27 results in an overpayment, enter it here. This is your overpayment. Enter as a positive number. 29. 110 00
30. Enter the amount from line 29 that you want applied to your 2011 composite estimated tax 30. 00
31. Subtract line 30 from line 29 and enter the amount here. This is your refund. 31. 110 00

For Direct Deposit of your refund, complete 1, 2, 3 and 4. Please see instructions.
1. RTN # 2. ACCT #
3. If using direct deposit, you are required to mark one box. [X] Checking [] Savings
4. Is this refund going to an account that is located outside of the United States or its territories? Yes No

MONTANA e-file Did you know? You have e-file options. , revenue.mt.gov/efile
Name, address and telephone number of paid preparer JEFFREY STARBIRD 612-377-4404
PTIN, SSN or FEIN of paid preparer:
Check this box and attach a copy of your federal Form 7004 to receive your Montana extension.

May the DOR discuss this return with your tax preparer? [X] Yes [] No
This return has to be signed by one of the following: president, vice president, treasurer, assistant treasurer, or chief accounting officer.
Declaration - Under penalties of false swearing, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.
Signature of officer x Date Printed name and title OFFICER Telephone number 763-262-7000

Questions? Call us toll free at (866) 859-2254 (in Helena, 444-6900), or TDD (406) 444-2830 for hearing impaired.

CCH 062352 11-24-10



RECEIVED by MSC 5/25/2022 9:09:54 PM

MINNESOTA LIMITED INC

Form CLT-4S, Page 3

FEIN [REDACTED]

Schedule I - Apportionment Factors for Multistate S Corporations

Enter amounts in columns A and B. Enter percentages in column C.

Table with columns: Description, A. Everywhere, B. Montana, C. Factor. Rows include Property Factor (1a-1m), Payroll Factor (2a-2g), and Sales (Gross Receipts) Factor (3a-3j).

CCH 062353 01-18-11



RECEIVED by MSC 5/25/2022 9:09:54 PM

Schedule II - Montana S Corporation Tax Credits

Type of Credit	Amount of Credit
1. Montana Dependent Care Assistance Credit attach Form DCAC	00
2. Montana College Contribution Credit attach Form CC	00
3. Health Insurance for Uninsured Montanans Credit attach Form HI	00
4. Montana Recycle Credit attach Form RCYL	00
5. Alternative Energy Production Credit attach Form AEPC	00
6. Contractor's Gross Receipts Tax Credit attach supporting schedule	00
7. Alternative Fuel Credit attach Form AFCR	00
8. Infrastructure Users Fee Credit attach Form IUFC	00
9. Qualified Endowment Credit attach Form QEC	00
10. Historic Property Preservation Credit attach federal Form 3468	00
11. Increase Research and Development Activities Credit attach Form RSCH	00
12. Mineral and Coal Exploration Incentive Credit attach Forms MINE-CERT and MINE-CRED	00
13. Empowerment Zone Credit	00
14. Film Production Credit attach Form FPC	00
15. Biodiesel Blending and Storage Credit attach Form BBSC	00
16. Oilseed Crushing and Biodiesel/Biolubricant Production Credit attach Form OSC	00
17. Insure Montana Small Business Health Insurance Credit.	00
Business FEIN:	00
18. Temporary Emergency Lodging Credit attach Form TELC	00

Type of Credit Recapture	Amount of Credit Recapture
19. Qualified Endowment Credit Recapture	00
20. Historic Property Preservation Credit Recapture	00
21. Film Production Credit Recapture	00
22. Biodiesel Blending and Storage Credit Recapture	00
23. Oilseed Crushing and Biodiesel/Biolubricant Production Credit Recapture	00

Any credit or credit recapture from an S corporation has to be attributed to its shareholders using the same proportion that is used when it reported that shareholder's income or loss for Montana income tax purposes. Please attach a detailed breakdown that shows each shareholder's share of the credit or credit recapture.

Please notify each shareholder of the amount of credit available to that shareholder by using Montana Schedule K-1.

062354 11-24-10 CCH



MINNESOTA LIMITED, INC.



DESCRIPTION	EVERYWHERE	MONTANA
OTHER RECEIPTS	21978478.00	0.00
TOTAL TO FORM CLT-4S, SCHEDULE I, LINE 3F	21978478.00	0.00

RECEIVED by MSC 5/25/2022 9:09:54 PM

2022 9:09:54 PM

MINNESOTA LIMITED INC
Form CLT-4S, Page 5

FEIN

Schedule III - Montana S Corporation Information
Summary Schedule of Income and Supplemental Information

Section A: Resident Shareholders

A	B	C	D				
Name Street Address or P O Box City / State / ZIP Code	Identification Number SSN/FEIN	Ownership %	Montana Source Income (see instructions)	Shareholder Withholding:			
1.	SSN FEIN		00	yes	<input checked="" type="checkbox"/>	no	
				Composite Income Tax:	<input checked="" type="checkbox"/>	yes	no
2.	SSN FEIN		00	Number of Resident Shareholders			
				Number of Nonresident Shareholders		2	
				Total Number of Shareholders		2	
3.	SSN FEIN		00				
4.	SSN FEIN		00				
Section A Totals			00				



For each nonresident shareholder, complete ONLY one of these three columns: F, G or H. Please refer to the instructions for Schedule III.

Section B: Nonresident Individual Shareholders or Second Tier Pass-Through Entity Owners

A	B	C	D	E	F	G	H
Name Street Address or P O Box City / State / ZIP Code	Identification Number SSN/FEIN	Ownership %	Montana Source Income (see instructions)	Federal Income from Entity (from federal Schedule K-1)	Composite Income Tax (from Schedule IV, column H)	Shareholder Withholding (see instructions)	Consent Agreement (year)
1. CHRISTOPHER LEINES PO BOX 353 MEDINA MN 55357	SSN FEIN	50.00	249361	0027066763 00	0 00	0 00	
2. PAULETTE BRITZIUS 16570 248TH AVENUE BIG LAKE MN 55309	SSN FEIN	50.00	249361	0027066761 00	0 00	0 00	
3.	SSN FEIN			00 00	00	00	
Section B Totals		100.00	498722	00	00	00	
Total of Sections A and B, columns C and D		100.00	498722	00			

Transfer the total from Column F to Form CLT-4S, page 2, line 21.
Transfer the total from Column G to Form CLT-4S, page 2, line 22.
Use additional sheets if necessary or you may use a document with columns ordered as shown above.

CCH
062355
11-24-10

VEC000739



2022 9:09:54 PM

Schedule IV - Montana S Corporation Composite Income Tax Schedule

Eligible Participating Shareholders: An eligible participant is a shareholder who is a nonresident individual or a pass-through entity whose only Montana source income for the tax year is from this entity and from other pass-through entities who have elected to file a composite return and pay a composite tax on behalf of the eligible participating shareholder. The entity must retain an executed power of attorney signed by the eligible participating shareholder, authorizing the S corporation to file a composite return and act on the shareholder's behalf.

Part I Enter the number of participating shareholders 2 Composite Tax Ratio 0%

Part II Enter below in columns A through H the required information and amounts for each eligible participating shareholder.

Table with 8 columns (A-H) and 13 rows. Column A: Name; Column B: Social security number or federal employer identification number; Column C: Shareholders' share of federal income from entity; Column D: Standard deduction; Column E: Exemption \$2,130; Column F: Calculate Montana taxable income; Column G: Enter the appropriate tax from the tax table below; Column H: Montana composite income tax. Rows 1-2 contain data for CHRISTOPHER LEINES and PAULETTE BRITZIUS. Rows 3-13 are empty. Row 12 is labeled 'Column H Total'.

Transfer the amounts from column H to Form CLT-4S, Schedule III, Section B, column F.

Use additional sheets if necessary or you may use a document with columns ordered as shown above.

062356 11-24-10 CCH

Table with 5 columns: If Your Taxable Income Is More Than, But Not More Than, Multiply Your Taxable Income By, And Subtract, This Is Your Tax. Rows show brackets from \$0 to \$9,400 with corresponding rates and amounts.

Table with 5 columns: If Your Taxable Income Is More Than, But Not More Than, Multiply Your Taxable Income By, And Subtract, This Is Your Tax. Rows show brackets from \$9,400 to More Than \$15,600 with corresponding rates and amounts.



1

Montana Schedule K-1 (CLT-4S and PR-1)

Partner's/Shareholder's Share of Income (Loss), Deductions, Credits, etc.

For the calendar year 2010, or tax year beginning 0101 and ending 03312011

Form with sections: Part 1 Pass-Through Entity Information, Part 2 Partner/Shareholder Information, Part 3 All Partners/Shareholders - Montana Adjustments, Part 4 Nonresident Partner/Shareholder Only - Montana Source Income (Loss), Part 5 Supplemental Information, Part 6 Montana Tax Credits and Recapture. Includes checkboxes for Form CLT-4S, Form PR-1, and Final Schedule K-1. Lists income items like Federal tax-exempt interest and Montana additions/deductions.



MINNESOTA LIMITED, INC.



SCHEDULE K-1 FOOTNOTES

COMPOSITE RETURN FILED ON YOUR BEHALF. NO SEPARATE INDIVIDUAL TAX FILINGS REQUIRED.

RECEIVED by MSC 5/25/2022 9:09:54 PM

2

Montana Schedule K-1 (CLT-4S and PR-1)

Partner's/Shareholder's Share of Income (Loss), Deductions, Credits, etc.

For the calendar year 2010, or tax year beginning 0101 and ending 03312011

Part 1 Pass-Through Entity Information. Check applicable boxes: X Form CLT-4S, Form PR-1, Amended Schedule K-1, X Final Schedule K-1. A Entity's federal employer identification number (FEIN) [REDACTED]. B Entity's name and mailing address MINNESOTA LIMITED INC, 18640 200TH STREET, BIG LAKE, MN 55309.

Part 2 Partner/Shareholder Information. A Partner's/shareholder's identifying number (SSN/FEIN) [REDACTED]. B Partner's/shareholder's name and mailing address PAULETTE BRITZIUS, 16570 248TH AVENUE N.W., BIG LAKE, MN 55309. C What type of entity is this partner/shareholder? INDIVIDUAL. F Partner's: Beginning, Ending. D Check this box if partner/shareholder is a nonresident: X. If a nonresident, please check this box if a Montana Form PT-AGR has been filed for partner/shareholder: Profit, Loss, Capital. E Shareholder's percentage of stock ownership 50.000000.

Part 3 - All Partners/Shareholders - Montana Adjustments. A Montana additions to income: 1. Federal tax-exempt interest A1. 00; 2. Taxes based on income or profits A2. 249361 00; 3. Other additions. List type and amount A3. 00. B Montana deductions from income: 1. Interest from U.S. Treasury obligations B1. 00; 2. Deduction for purchasing recycle material B2. 00; 3. Other deductions. List type and amount B3. 00.

Part 4 Nonresident Partner/Shareholder Only - Montana Source Income (Loss). 1. Ordinary business income (loss) 1. 00; 2. Net rental real estate income (loss) 2. 00; 3. Other net rental income (loss) 3. 00; 4. Guaranteed payments 4. 00; 5. Interest income 5. 00; 6. Ordinary dividends 6. 00; 7. Royalties 7. 00; 8. Net short-term capital gain (loss) 8. 00; 9. Net long-term capital gain (loss) 9. 00; 10. Net section 1231 gain (loss) 10. 00; 11. Other income (loss). List type and amount 11. 00.

Part 5 Supplemental Information. 1. Montana composite income tax paid on behalf of partner/shareholder 1. 0 00; 2. Montana income tax withheld on behalf of partner/shareholder 2. 00; 3. Premiums for Insure Montana Small Business Health Insurance credit expenses 3. 00; 4. Montana mineral royalty tax withheld 4. 00; 5. Other information. List type and amount 5. 00.

Part 6 Montana Tax Credits and Recapture. 1. Insure Montana Small Business Health Insurance credit. Business FEIN 1. 00; 2. Contractor's gross receipts tax credit 2. 00; 3. Other credit/recapture information. List type and amount 3. 00.



MINNESOTA LIMITED, INC.



SCHEDULE K-1 FOOTNOTES

COMPOSITE RETURN FILED ON YOUR BEHALF. NO SEPARATE INDIVIDUAL TAX FILINGS REQUIRED.

RECEIVED by MSC 5/25/2022 9:09:54 PM



Pipeline and Station Contractors

July 6, 2010

Charter Township of Independence
6483 Waldon Center Drive
PO Box 69
Clarkson, MI 48347-0069

RE: 2010 personal property tax report

To Whom It May Concern:

Enclosed is our completed 2010 personal property tax statement. I do realize that this report is late. Please accept my apologies. One item of note is that the person who inventoried our equipment included two Komatsu trackhoes (picture attached). This equipment is not owned by us, but by a subcontractor working on our job last year. The following is the contact information for who owns the equipment:

Southeast Directional Drilling
Attention: Steve Ugrich
3117 North Cessna Avenue
Casa Grande, AZ 85122

Please let me know if you need any further information for assessing the tax value of the property. You can reach me at (763) 262-7000 or email: glenn.furman@mnlimited.com.

Sincerely,


Glenn Furman
Director of Finance & Administration



18640 - 200th Street • PO Box 410 • Big Lake, MN 55309
763.262.7000 • Fax 763.262.7500

CONFIDENTIAL



VEC000895

Parcel No.
99-99-113-1081

L-4175 **2010**

2010 Personal Property Statement (As of 12-31-09)

FROM: (Name and Address of Assessor)

INDEPENDENCE TOWNSHIP
ASSESSING DEPARTMENT
PO BOX 69
CLARKSTON, MI 48347

Location(s) of Personal Property Reported on This Statement.
LIST ALL LOCATIONS. Attach additional sheets if necessary.

ESTIMATES ARE
FINAL FOR 2010
AVOID ESTIMATED
VALUE, FILE BY
DEADLINE FEB. 20, 2010

TO: (Name and Address of Taxpayer)

Minnesota Limited, Inc.
18640 200th Street PO Box 410
Big Lake, MN 55309

Date of Organization 8/21/1959 Date Business Began at above location 3/2009

Assumed Names Used by Legal Entity, if any

Names of Owner(s) or Partners
(If sole proprietorship or partnership)

If Sole Proprietorship, Taxpayer's Residential Address

Please file by February 1, 2010.* Read instructions carefully. Additional notices are found in the instructions. Form approved by STC on 10-13-09. Issued under authority of P.A. 206 of 1893.

Square Feet Occupied	Michigan Sales Tax No.	Check One Only:
		<input type="checkbox"/> Sole Proprietorship
Preparer's Name, Address and Telephone Number and E-mail address		<input type="checkbox"/> Partnership
<u>Glenn Furman</u>		<input type="checkbox"/> Limited Liability Co.
<u>18640 200th Street P.O. Box 410</u>		MI ID# _____
<u>Big Lake, MN. 55309</u>		<input checked="" type="checkbox"/> Corporation
		MI ID# _____

Legal Name of Taxpayer
Minnesota Limited, Inc.

Address Where Personal Property Records are Kept
18640 200th Street P.O. Box 410

Name of Person in Charge of Records
Glenn Furman Taxpayer Telephone No. 763-262-7000

Description of Taxpayer's Business Activity and NAICS Code
Pipeline Construction 237990

SUMMARY AND CERTIFICATION. Complete ALL questions.

- Have you excluded any exempt "Special Tools" from this statement? Yes No If Yes, state total original cost excluded _____
- Have you excluded any air and water pollution control facilities and/or wind or water energy conversion devices for which an exemption certificate has been issued? Yes No If Yes, attach itemized list.
- Have you, to the best of your knowledge, reported all of your assessable tangible personal property located in Michigan to the appropriate assessment jurisdiction? Yes No If No, attach explanation.
- Did you hold a legal or equitable interest in personal property assessable in this jurisdiction which you have not reported on this statement (see instructions)? Yes No If Yes, attach itemized list.
- Are you a party (as either a landlord or a tenant) to a rental or lease agreement relating to real property in this jurisdiction? Yes No If Yes, complete Section O.
- Have any of your assets been subjected to "rebooking" of costs for accounting purposes or been purchased used (see instructions)? Yes No If Yes, attach itemized list.
- Is any of your property "daily rental property," per P.A. 537 of 1998? Yes No If Yes, attach Form 3595.
- Have you reported all fully depreciated or expensed assets that are assessable? Yes No
- Are other businesses operated at your location(s)? Yes No If Yes, attach itemized list.

Enter zero if appropriate.

10. Grand total from page 2	10a. <u>803,389</u>
11. Grand total from page 3	11a. <u>600,000</u>
12. Grand total from page 4	12a. _____
13. Total cost of Idle Equipment from Form 2698	13a. _____
14. Total cost of Personal Property Construction in Progress	14a. _____ X .50
15. Total cost of Cable TV, Utility and Wind Energy Assets from Forms 633, 3589 and 4565	15a. _____
16. Total cost of cellular site equipment from Form(s) 4452	16a. _____
TOTAL	<u>1,403,389</u>

Assessor Calculations	
10b.	
11b.	
12b.	
13b.	
14b.	
15b.	
16b.	

The undersigned certifies that he/she is an owner, officer and/or the duly authorized agent for the above named taxpayer and that the above summary, with its supporting documents, provides a full and true statement of all tangible personal property owned or held by the taxpayer at the locations listed above on December 31, 2009.

Signature of Certifier [Signature] Date 2/6/10

ASSESSOR'S ADJUSTMENT(S) _____
EXEMPTION(S) _____
TRUE CASH VALUE _____
ASSESSED VALUE (50% of TCV) _____

CONFIDENTIAL

VEC000896

INSTRUCTIONS. Read carefully to obtain directions for the allocation of your personal property to Sections A - N.

All Tangible Personal Property in your possession at this location, including fully depreciated and expensed assets, must be reported in one of the Sections A through N. If you had "Move-Ins" of used property, you must also complete Form 3966, 2010 Taxpayer Report of Personal Property "Move-Ins" Occurring During 2009. "Move-Ins" are items of assessable personal property (hereafter referred to as "property") that were not assessed in this city or township in 2009, including (1) purchases of used property, (2) used property you moved in from a location outside this city or township, (3) property that was exempt in 2009 (such as exempt Industrial Facilities Tax property), and (4) property that you mistakenly omitted from your statement in 2009. "Move-Ins" DO NOT include property that has been moved from another location WITHIN this city or township or that was assessed to another taxpayer within this city or township in 2009 (i.e., property reported by a previous owner or previously leased property reported by the lessor in 2009). All "Move-Ins" must be reported on this page 2 and on Form 3966. Do not report 2009 acquisitions of new property on Form 3966.

Did you have "move-ins"? Yes No

SECTION A: Including Furniture and Fixtures			Assessor Calculations
2009		.91	
2008		.80	
2007		.69	
2006		.61	
2005		.53	
2004		.47	
2003		.42	
2002		.37	
2001		.33	
2000		.29	
1999		.27	
1998		.24	
1997		.22	
1996		.19	
1995		.12	
Prior		.12	
TOTALS	A1		A2 - 0 -

SECTION D: Including Office, Electronic, Video and Testing Equipment			Assessor Calculations
2009		.84	
2008		.64	
2007		.55	
2006		.49	
2005		.44	
2004		.41	
2003		.38	
2002		.35	
2001		.33	
2000		.31	
1999		.29	
1998		.28	
1997		.26	
1996		.25	
1995		.17	
Prior		.17	
TOTALS	D1		D2 - 0 -

SECTION B: Including Machinery and Equipment			Assessor Calculations
2009	283,829	.89	
2008	121,939	.76	
2007	146,844	.67	
2006		.60	
2005		.54	
2004	57,360	.49	
2003		.45	
2002		.42	
2001		.38	
2000		.36	
1999	169,000	.33	
1998		.31	
1997		.29	
1996		.28	
1995		.23	
Prior	31,417	.23	
TOTALS	B1 863,389		B2

SECTION E: Including Consumer Coin Operated Equipment			Assessor Calculations
2009		.92	
2008		.85	
2007		.77	
2006		.69	
2005		.61	
2004		.54	
2003		.46	
2002		.38	
2001		.30	
2000		.23	
1999		.15	
Prior		.15	
TOTALS	E1		E2 - 0 -

SECTION C: Including Rental Videotapes and Games			Assessor Calculations
2009		.76	
2008		.53	
2007		.29	
2006		.05	
Prior		.05	
TOTALS	C1		C2

SECTION F: Including Computer Equipment			Assessor Calculations
2009		.60	
2008		.44	
2007		.32	
2006		.24	
2005		.19	
2004		.15	
2003		.08	
Prior		.08	
TOTALS	F1		F2 - 0 -

COST GRAND TOTAL (for page 2)

TAXPAYER: Add totals from cost columns of Sections A-F (A1-F1). Enter grand total here and carry to line 10a, page 1.

\$ 863,389

TRUE CASH VALUE GRAND TOTAL (for page 2)

ASSESSOR: Add True Cash Value totals from Sections A-F (A2-F2). Enter grand total here and carry to line 10b, page 1.

\$

CONFIDENTIAL

VEC000897

Parcel No.

SECTION G - Other Assessable Personal Property Which You Own

Assessable Tangible Personal Property in your possession that is not entitled to depreciation under Generally Accepted Accounting Principals (GAAP) (e.g. fine art) or that the assessor has told you to report in this section or that is otherwise described in the instructions should be reported under this section. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. See instructions. Attach additional sheets, if necessary.

Description of Property	Acquisition Cost New	Acquisition Year	True Cash Value Assessor's Calculations
Total Acquisition Cost New	G1		G2

SECTION H - Standard Tooling

You must report your standard tooling in this Section. Complete both columns. Notice that GAAP (Generally Accepted Accounting Principals) net book value, as reported in this section, must implement accounting "changes in estimate", even if not otherwise material. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. See Instructions.

Acquisition Year	Acquisition Cost New	GAAP Net Book Value
2009		
2008		
2007		
Prior		
Total Acquisition Cost		H2

SECTION I - Qualified Personal Property

INCLUDE ONLY "Qualified Personal Property" as defined by Michigan Compiled Laws 211.8a (6)(c). See instructions. Attach extra schedules, if necessary, following the same format as below. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

Description of Equipment and Model or Serial Number	Owner Name and Complete Mailing Address	Original Cost Installed	Date of Installation	Lease Term In Months	Year of Manufacture	Total Average Monthly Rental	%	TCV to be Completed by Assessor
Total Installed Cost								I2

SECTION J - Leased Property in Your Possession Which Is Not Qualified Personal Property

Property you are leasing from another person or entity should be reported under this section. "Qualified" Personal Property should be reported under Section I. See instructions. Attach additional sheets if necessary. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

Lease No.	Name & Address of Lessor	Description of Equipment	Lease Term (in months)	Monthly Rental	1st Year in Service	Selling Price New (estimate, if necessary)
Total Selling Price New						J1

SECTION K - Other Personal Property in Your Possession Which You Do Not Own

Property not owned by you but in your possession on December 31, 2009 under arrangements other than a lease agreement should be reported under this section. See instructions. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. Attach additional sheets if necessary.

Name & Address of Owner	Description of Equipment	Age (estimate if necessary)	Selling Price New (estimate, if necessary)
Total Selling Price New			K1

COST GRAND TOTAL (for page 3)

TRUE CASH VALUE GRAND TOTAL (for page 3)

TAXPAYER: Add Total Costs and Selling Prices from Sections G-K (G1-K1). Enter grand total here and carry to line 11a, page 1.

\$ 600,000

ASSESSOR: Add True Cash Value totals from Sections G-I (G2-I2). Enter grand total here and carry to line 11b, page 1.

\$

CONFIDENTIAL

VEC000898

SECTION L - Detail of Leases (This Section is Completed by Leasing Companies)

Equipment that you lease to others should be reported under this section. Notice: You must also complete Sections A - F on Page 2. See instructions. You may use attachments in lieu of completing this section if the attachments contain the information requested below, in the same format, and if you complete the Tables on Page 2. Attach additional sheets, if necessary.

Are you a manufacturer of equipment? Yes No

Lease No.	Name & Address of Lessee	Location of Equipment	Type of Equipment	Lease Period (Mo.)	Monthly Rental	1st Year in Service	Manufacturer Cost	Original Selling Price
Total Original Selling Price								

SECTION M - Leasehold Improvements

All Leasehold Improvements made at your place of business should be reported under this section, even if you believe that the improvements are not subject to assessment as Personal Property. Provide as much detail as possible so that the assessor can determine whether an assessment should be made. You may attach additional explanations and/or copies of "fixed asset" records, if the documents attached provide all of the information requested below and if you insert the total original cost in "Total Cost Incurred" below. Trade fixtures and installation costs of machinery and equipment must be reported in Sections A through I. See Instructions. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

Year Installed	Description (Describe in detail)	Original Cost	STC Multiplier	True Cash Value Assessor's Calculation
Total Cost Incurred		M1		M2

SECTION N - Buildings and Other Structures on Leased or Public Land and All Freestanding Signs and Billboards
 Costs of Freestanding Communications Towers and Equipment Buildings at Tower sites (unless reported on Form 4452), and Costs of Freestanding Signs and Billboards must also be reported under this Section. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. Attach additional sheets, if necessary.

Check this box if you believe that these structures are already assessed as part of the real property.

Address or Location of Building	Year Originally Built	Total Capitalized Cost	True Cash Value Assessor's Calculation *
Total Capitalized Cost		N1	N2

SECTION O - Rental Information. See Instructions. (Attach additional sheets, if necessary.)

IF YOU ARE THE TENANT

Name and address of landlord _____

Is your landlord the owner of the property? Yes No If you are a sublessee, enter the name and address of the owner of the property _____

IF YOU ARE THE LANDLORD

Name and address of tenant _____

Are you the owner of the property? Yes No If you are a sublessor, enter the name and address of the owner of the property _____

TO BE COMPLETED REGARDLESS OF WHETHER YOU ARE THE LANDLORD OR TENANT

Address of property rented or leased _____

Date that current lease or rental arrangement started _____

Date current lease will expire, if other than a month to month tenancy _____ Monthly rental \$ _____

Are there options to renew the lease? Yes No

Expenses (e.g. taxes, electric, gas, etc.) paid by the tenant _____

Square feet of space occupied by the tenant _____

Assessor Value
O2

COST GRAND TOTAL (for page 4)

TAXPAYER: Add Total Cost Incurred from Section M and Total Capitalized Cost from Section N (M1 and N1). Enter grand total here and carry to line 12a, page 1.

\$	- 0 -
----	-------

TRUE CASH VALUE GRAND TOTAL (for page 4)

ASSESSOR: Add True Cash Value totals from Sections M-O (M2-O2). Enter grand total here and carry to line 12b, page 1.

\$	
----	--

* Note to Assessor: Certain buildings and structures on leased land (but not including freestanding signs and billboards) must be assessed on the real property roll. See Bulletin 1 of 2003.

CONFIDENTIAL

VEC000899

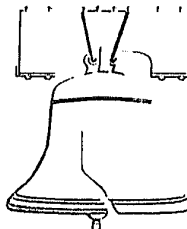
TOWNSHIP OFFICES
(248) 625-5111
FAX: (248) 625-2585

DAVID H. WAGNER
Supervisor

SHELAGH VANDERVEEN
Clerk

CURT CARSON
Treasurer

TOWNSHIP TRUSTEES
DAVID LOHMEIER
MARK A. PETTERSON
LARRY ROSSO
NEIL WALLACE



CHARTER TOWNSHIP OF INDEPENDENCE
6483 WALDON CENTER DRIVE P.O. BOX 69 CLARKSTON, MICHIGAN 48347-0069
www.twp.independence.mi.us

January 5, 2010

TAX DAY: December 31, 2009

LOCATION (SITUS): Vacant Lot on White Lake CT

See Attached

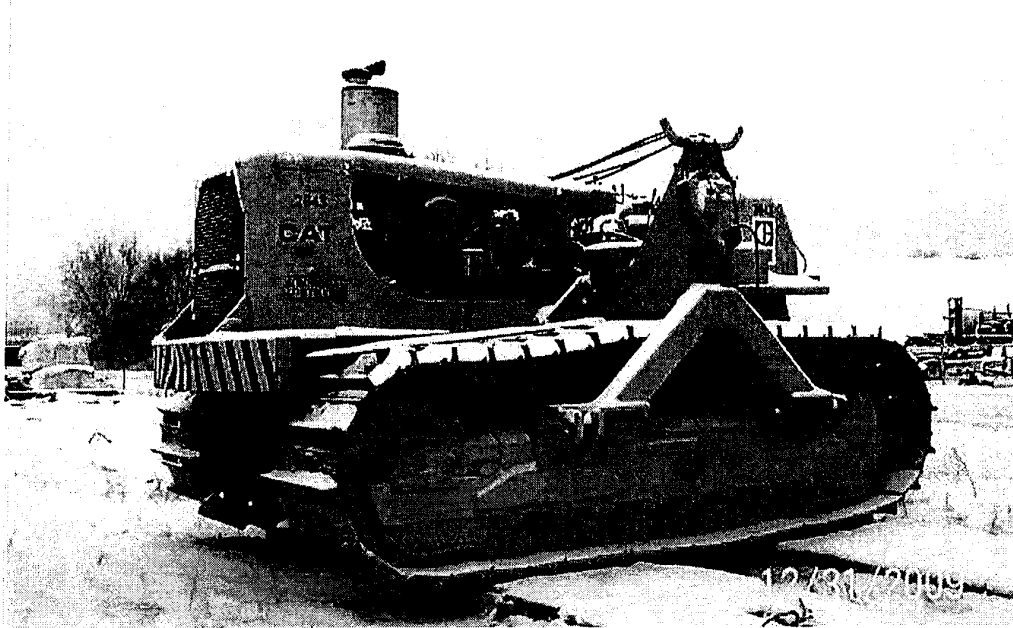
Equipment belonging to you, or others, was inventoried at the above location on tax day. To assure that we accurately assess the value on this equipment, please complete the attached personal property statement and return it to our office **within 10 days**.

If the equipment is leased or owned by a subcontractor please supply the Assessing Department with a list of valid lessors or subcontractors and their addresses. If no response, we will assume all equipment at that location belongs to you, and you will be taxed accordingly.

If you have any questions, please feel free to contact either of us below at 248-625-8114.

Jennifer Yingling
Appraiser CMAE II

SB2043
2009
259,629



TW0861
1994
31,417



CONFIDENTIAL

VEC000901

✓ Two John Deere CT322: #27006 & #22011

✓ Komatsu #KMTPC161J02041115

✓ Komatsu #KMTPC183T54A89030

✓ Storage Container #GLDU 324011

✓ Two Vacuworx RC10's #1282 & # 1284

✓ Two Tractor Rototillers for Trac7015

✓ Sled with Jobmaster Chest

✓ 3 Pumps #1031, #1032, #1036

✓ 4 Thompson Pumps 6TS400 #1699, #1700, #1701, #1702

✓ John Deere Tractor #28200 Serial #W00673C002283

✓ Bombardier 30,000 #50011 Serial #521950011

✓ CAT 594H #2043 ID# 96V00175

Also, many pieces of misc. equipment and parts across ground, see two pictures.

Owned by Southeast Directional
Drilling -

3117 North Cessna Avenue
Casa Grande, AZ 85722

Contact Person Steve Ugrich



2007
3,320



2008
350,000
275,000

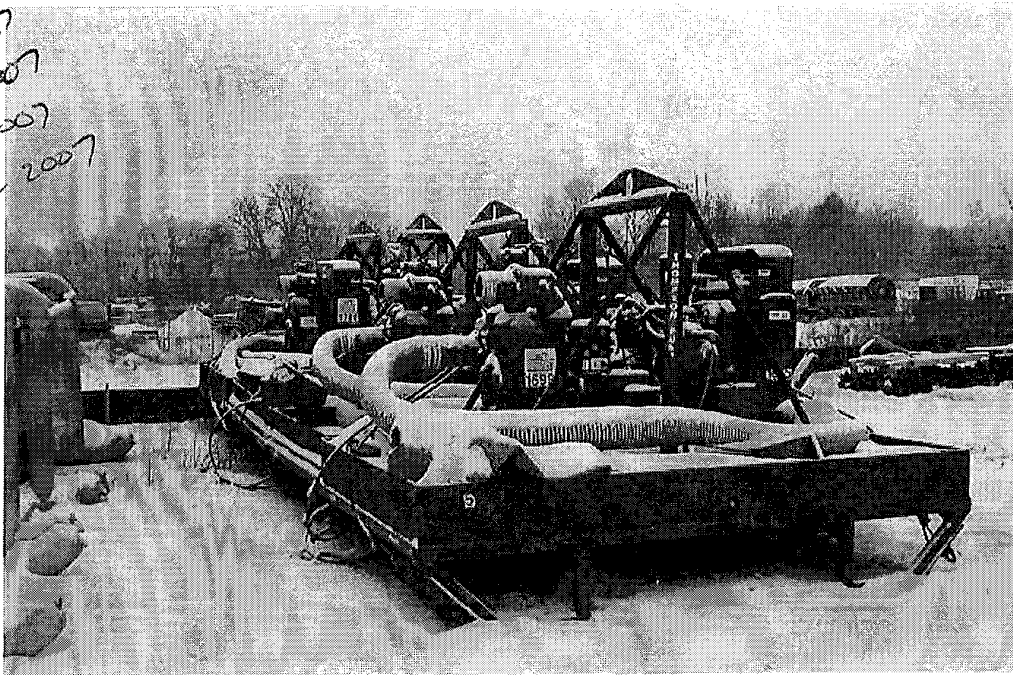
CONFIDENTIAL

VEC000903

2008
FI 1831
76388



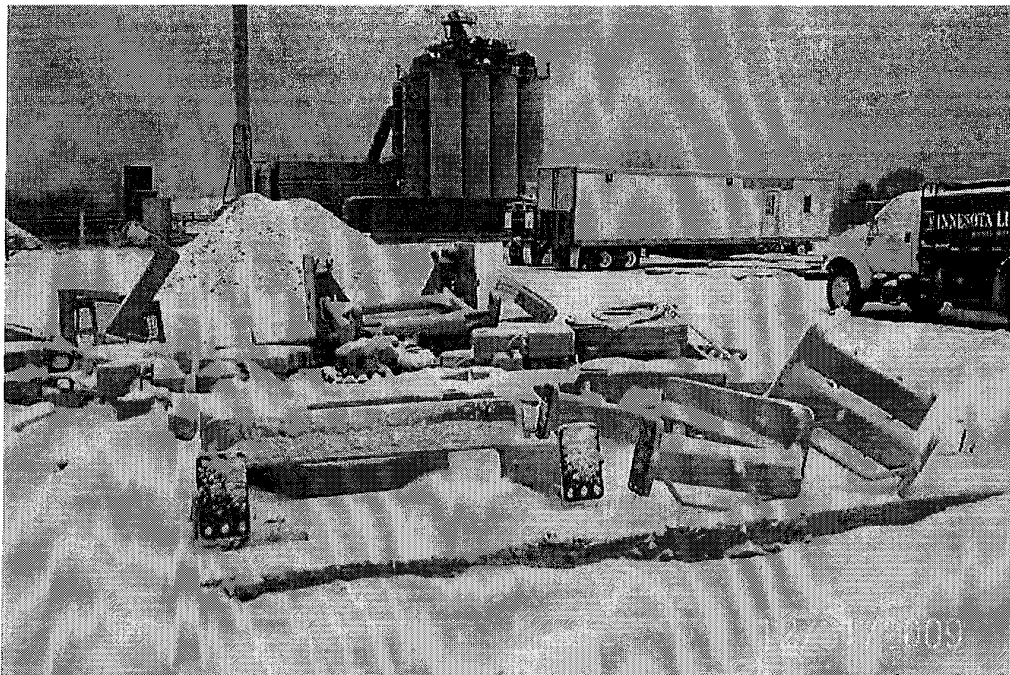
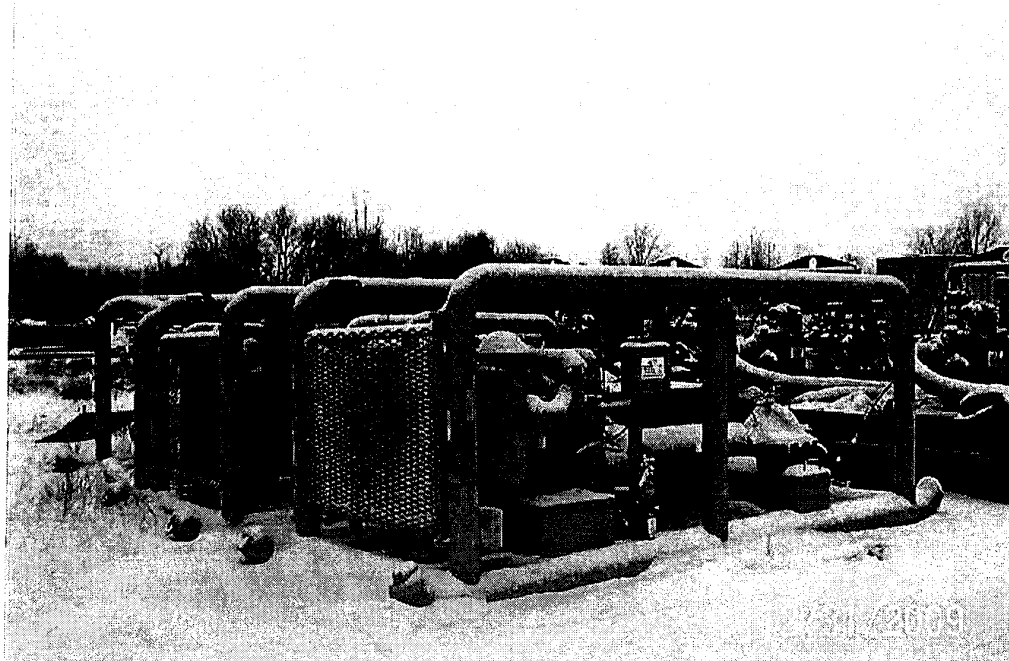
PP1699 2007
1708 2007
1701 2007
1702 2007
25,361
x4
102,524



CONFIDENTIAL

VEC000904

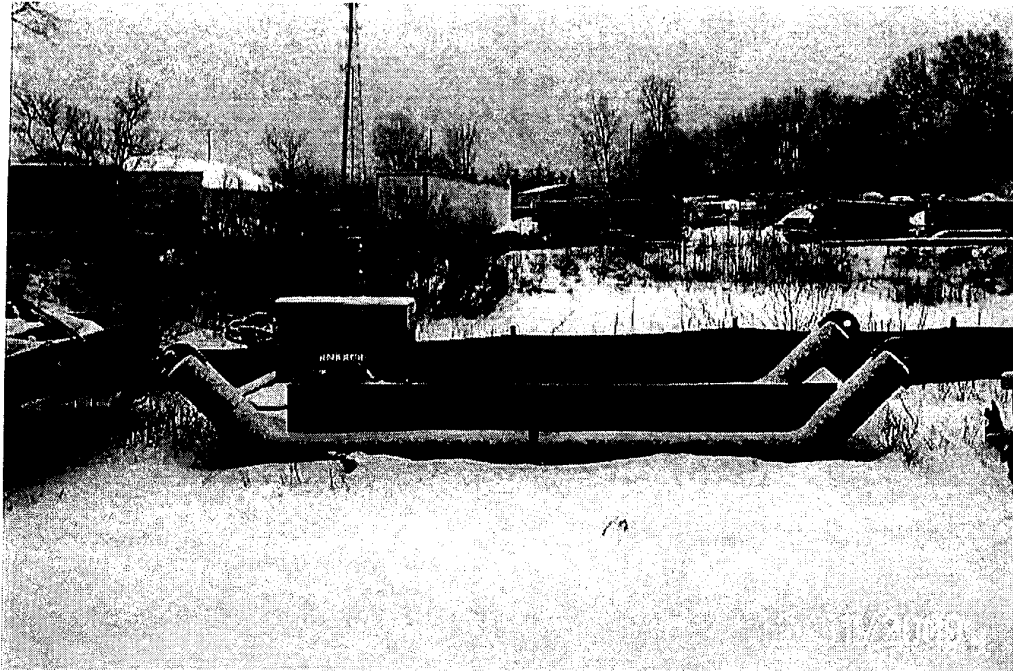
1999
TP631,32,
36
56,000
x 3
168,000



CONFIDENTIAL

VEC000905

3,500
2007



2,900
2008

5,259
2008



CONFIDENTIAL

VEC000906



2009 - 12/100
12/100

2004 25650
25650

CONFIDENTIAL

VEC000907



2007 - 37,580
2008 37,500



CONFIDENTIAL

VEC000908

CONFIDENTIAL

VEC000909

INSTRUCTIONS. Read carefully to obtain directions for the allocation of your personal property to Sections A - N.

All Tangible Personal Property in your possession at this location, including fully depreciated and expensed assets, must be reported in one of the Sections A through N. If you had "Move-Ins" of used property, you must also complete Form 3966, 2011 Taxpayer Report of Personal Property "Move-Ins" Occurring During 2010. "Move-Ins" are items of assessable personal property (hereafter referred to as "property") that were not assessed in this city or township in 2010, including (1) purchases of used property, (2) used property you moved in from a location outside this city or township, (3) property that was exempt in 2010 (such as exempt industrial Facilities Tax property), and (4) property that you mistakenly omitted from your statement in 2010. "Move-Ins" DO NOT include property that has been moved from another location WITHIN this city or township or that was assessed to another taxpayer within this city or township in 2010 (i.e., property reported by a previous owner or previously leased property reported by the lessor in 2010). All "Move-Ins" must be reported on this page 2 and on Form 3966. Do not report 2010 acquisitions of new property on Form 3966.

Did you have "move-ins"? Yes No

SECTION A: Including Furniture and Fixtures		Assessor Calculations
2010		.91
2009		.80
2008		.69
2007		.61
2006		.53
2005		.47
2004		.42
2003		.37
2002		.33
2001		.29
2000		.27
1999		.24
1998		.22
1997		.19
1996		.12
Prior		.12
TOTALS	A1	A2

SECTION D: including Office, Electronic, Video and Testing Equipment		Assessor Calculations
2010		.84
2009		.64
2008		.55
2007		.49
2006		.44
2005		.41
2004		.38
2003		.35
2002		.33
2001		.31
2000		.29
1999		.28
1998		.26
1997		.25
1996		.17
Prior		.17
TOTALS	D1	D2

SECTION B: Including Machinery and Equipment		Assessor Calculations
2010	2217.50	.89
2009	24200 m	.76
2008	40,000.00	.67
2007	99650.21	.60
2006		.54
2005		.49
2004	51360.00	.45
2003	216333.94	.42
2002		.38
2001		.36
2000		.33
1999	24210.00	.31
1998		.29
1997		.28
1996		.23
Prior		.23
TOTALS	B1 267,977.65	B2

SECTION E: Including Consumer Coin Operated Equipment		Assessor Calculations
2010		.92
2009		.85
2008		.77
2007		.69
2006		.61
2005		.54
2004		.46
2003		.38
2002		.30
2001		.23
2000		.15
Prior		.15
TOTALS	E1	E2

SECTION C: Including Rental Videotapes and Games		Assessor Calculations
2010		.76
2009		.53
2008		.29
2007		.05
Prior		.05
TOTALS	C1	C2

SECTION F: Including Computer Equipment		Assessor Calculations
2010		.60
2009		.44
2008		.32
2007		.24
2006		.19
2005		.15
2004		.08
Prior		.08
TOTALS	F1	F2

COST GRAND TOTAL (for page 2)

TAXPAYER: Add totals from cost columns of Sections A-F (A1-F1). Enter grand total here and carry to line 10a, page 1.

\$ 267,977.65

TRUE CASH VALUE GRAND TOTAL (for page 2)

ASSESSOR: Add True Cash Value totals from Sections A-F (A2-F2). Enter grand total here and carry to line 10b, page 1.

\$

CONFIDENTIAL

VEC000911

SECTION L - Detail of Leases (This Section Is Completed by Leasing Companies)

Equipment that you lease to others should be reported under this section. Notice: You must also complete Sections A - F on Page 2. See Instructions. You may use attachments in lieu of completing this section if the attachments contain the information requested below, in the same format, and if you complete the Tables on Page 2. Attach additional sheets, if necessary.

Are you a manufacturer of equipment? Yes No

Lease No.	Name & Address of Lessee	Location of Equipment	Type of Equipment	Lease Period (Mo.)	Monthly Rental	1st Year In Service	Manufacturer Cost	Original Selling Price
Total Original Selling Price								

SECTION M - Leasehold Improvements

All Leasehold improvements made at your place of business should be reported under this section, even if you believe that the improvements are not subject to assessment as Personal Property. Provide as much detail as possible so that the assessor can determine whether an assessment should be made. You may attach additional explanations and/or copies of "fixed asset" records, if the documents attached provide all of the information requested below and if you insert the total original cost in "Total Cost Incurred" below. Trade fixtures and installation costs of machinery and equipment must be reported in Sections A through I. See Instructions. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

Year Installed	Description (Describe in detail)	Original Cost	STC Multiplier	True Cash Value Assessor's Calculation
Total Cost Incurred		M1		M2

SECTION N - Buildings and Other Structures on Leased or Public Land and All Freestanding Signs and Billboards

Costs of Freestanding Communications Towers and Equipment Buildings at Tower sites (unless reported on Form 4452), and Costs of Freestanding Signs and Billboards must also be reported under this Section. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. Attach additional sheets, if necessary.

Check this box if you believe that these structures are already assessed as part of the real property.

Address or Location of Building	Year Originally Built	Total Capitalized Cost	True Cash Value Assessor's Calculation *
Total Capitalized Cost		N1	N2

SECTION O - Rental Information. See Instructions. (Attach additional sheets, if necessary.)

IF YOU ARE THE TENANT

Name and address of landlord _____
 Is your landlord the owner of the property? Yes No If you are a sublessee, enter the name and address of the owner of the property _____

IF YOU ARE THE LANDLORD

Name and address of tenant _____
 Are you the owner of the property? Yes No If you are a sublessor, enter the name and address of the owner of the property _____

TO BE COMPLETED REGARDLESS OF WHETHER YOU ARE THE LANDLORD OR TENANT

Address of property rented or leased _____
 Date that current lease or rental arrangement started _____
 Date current lease will expire, if other than a month to month tenancy _____ Monthly rental \$ _____
 Are there options to renew the lease? Yes No
 Expenses (e.g. taxes, electric, gas, etc.) paid by the tenant _____
 Square feet of space occupied by the tenant _____

Assessor Value
O2

COST GRAND TOTAL (for page 4)

TAXPAYER: Add Total Cost Incurred from Section M and Total Capitalized Cost from Section N (M1 and N1). Enter grand total here and carry to line 12a, page 1. \$ _____

TRUE CASH VALUE GRAND TOTAL (for page 4)

ASSESSOR: Add True Cash Value totals from Sections M-O (M2-O2). Enter grand total here and carry to line 12b, page 1. \$ _____

* Note to Assessor: Certain buildings and structures on leased land (but not including freestanding signs and billboards) must be assessed on the real property roll. See Bulletin 1 of 2003.

CONFIDENTIAL

VEC000913

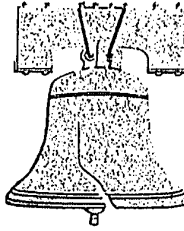
TOWNSHIP OFFICES
(248) 625-5111
FAX: (248) 625-2585

DAVID H. WAGNER
Supervisor

SHELAGH VANDERVEEN
Clerk

CURT CARSON
Treasurer

TOWNSHIP TRUSTEES
DAVID LOHMEIER
MARK A. PETTERSON
LARRY ROSSO
NEIL WALLACE



CHARTER TOWNSHIP OF INDEPENDENCE

6483 WALDON CENTER DRIVE P.O. BOX 69 CLARKSTON, MICHIGAN 48347-0069
www.twp.independence.mi.us

January 3, 2011

TAX DAY: December 31, 2010

LOCATION (SITUS): Vacant lot on White Lake Ct.

See attached pictures.

Equipment belonging to you, or others, was inventoried at the above location on tax day. To assure that we accurately assess the value on this equipment, please complete the attached personal property statement and return it to our office **within 10 days**.

If the equipment is leased or owned by a subcontractor please supply the Assessing Department with a list of valid lessors or subcontractors and their addresses. If no response, we will assume all equipment at that location belongs to you, and you will be taxed accordingly.

If you have any questions, please feel free to contact either of us below at 248-625-8114.

Jennifer Yingling
Appraiser CMAE 3

CONFIDENTIAL

VEC000914



J -99-99-913-680

12-30-10 VACUWORK (2)

Owned

*Vacuwork pipe
Handler*

42801 04 25680

42803 01 25680

42980 09 12,100

42981 09 12,100

CONFIDENTIAL

VEC000915



J -99-99-913-680

12-30-10 VERMEER EVACUATOR

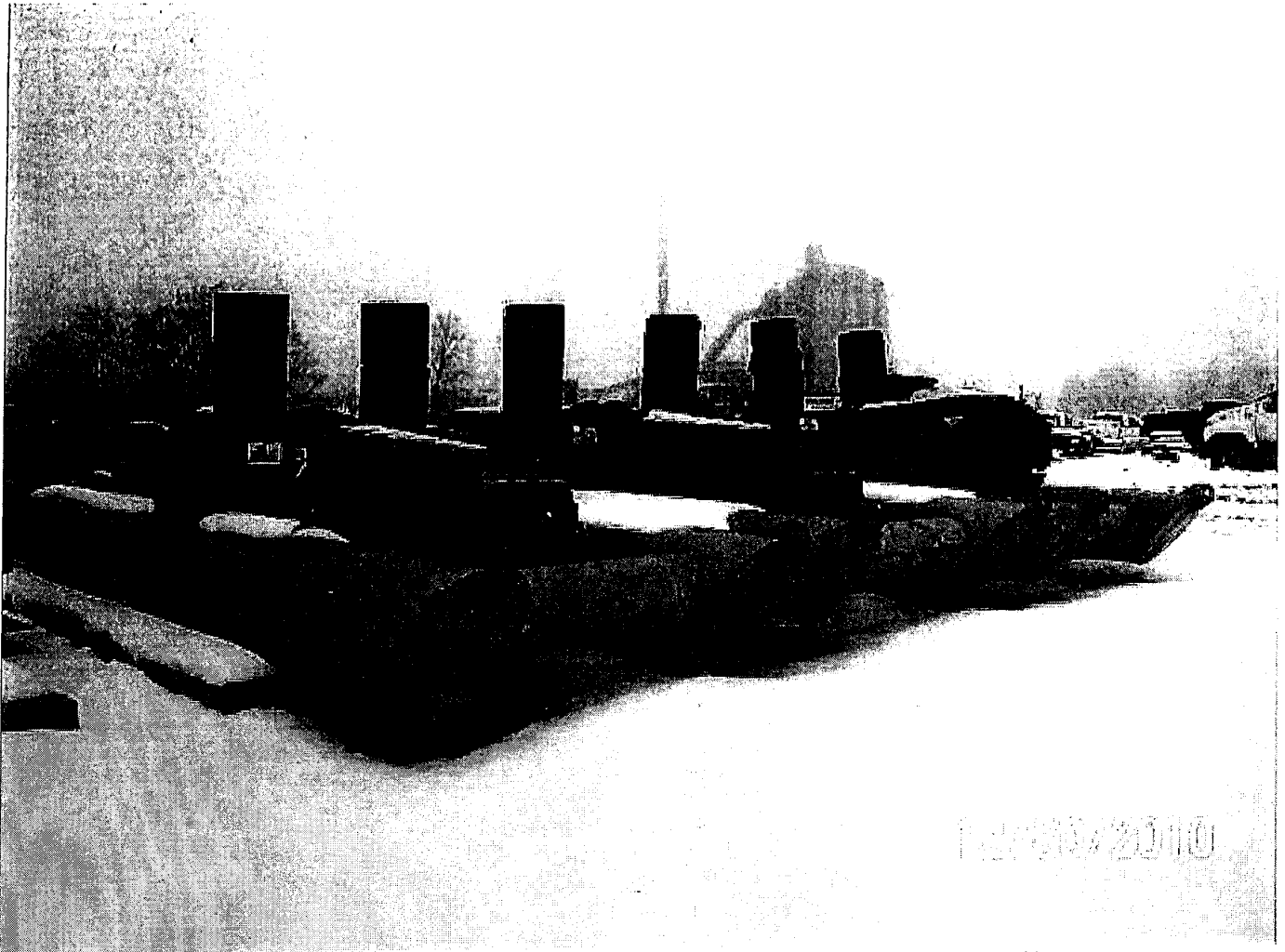
Owned Vac Trailer

16500 03'

26,333.94

CONFIDENTIAL

VEC000916



J -99-99-913-680

12-30-10 EQUIPMENT (3)

Ownes Push Rollers
27903 07 11591.90
27901 07 15970.52
27900 07 14854.95

CONFIDENTIAL

VEC000917



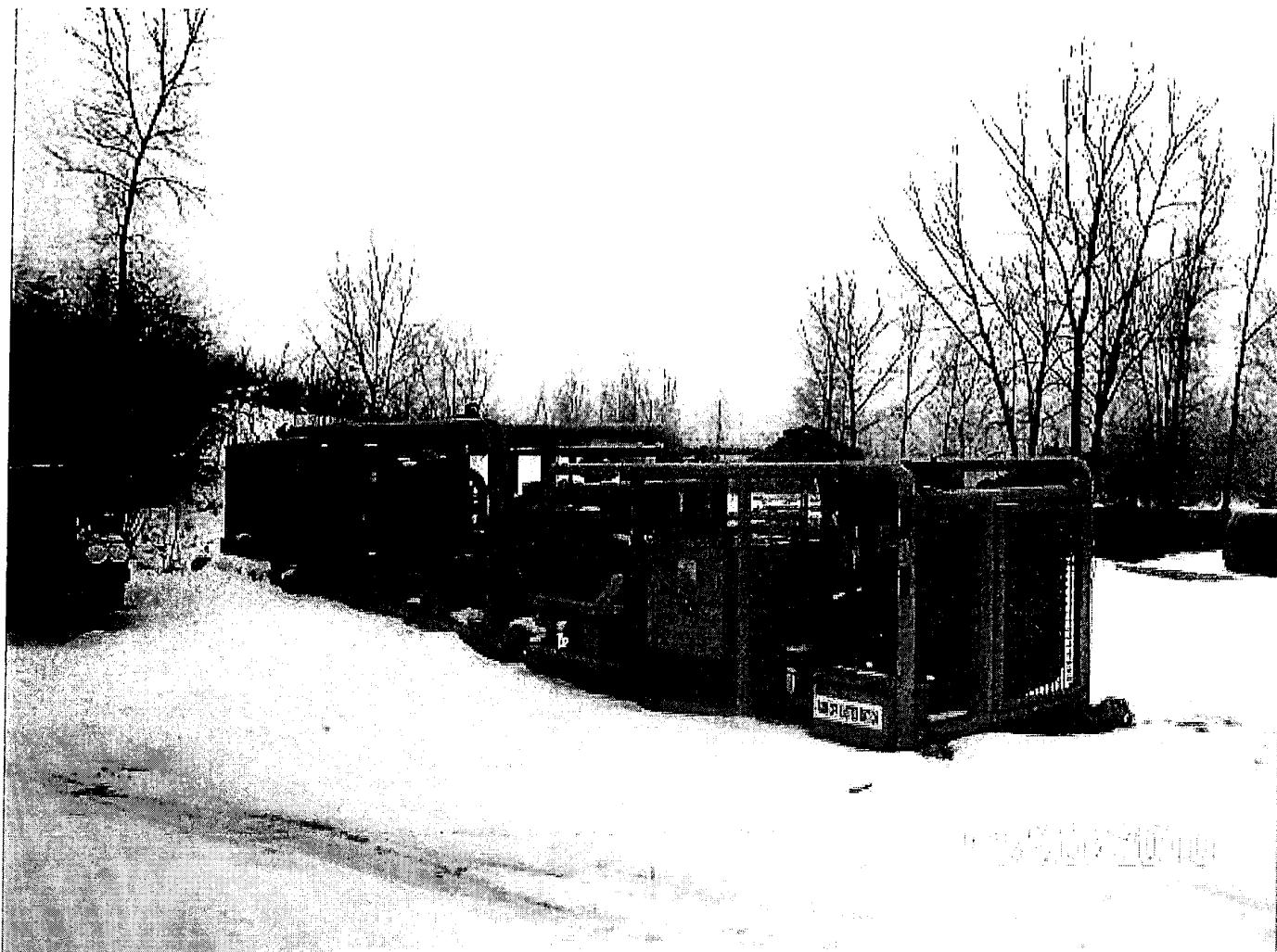
J -99-99-913-680

12-30-10 MISC EQUIP

Owned Pipe cradles
99' 27860 \$ 5105
99' 27861 5105

CONFIDENTIAL

VEC000918



J -99-99-913-680

12-30-10 PUMPS (5)

Owned Pumps

30710	7000	99'
30705	7000	99'
31013	2861942	07
31014	"	
31528	2217.50	16

CONFIDENTIAL

VEC000919



J -99-99-913-680

12-30-10 MISC

Owned

2) lineup clamps

Owned

1) counter weights for

JD450 excavators

25900 & 25901

\$1161562

\$170512

0811

081

CONFIDENTIAL

VEC000920

2008	1999	2007	2010	2003	2004	2009
20000	7000	28619.42	2217.5	26333.94	25680	12100
20000	7000	28619.42			25680	12100
	5105	11591.9				
	5105	15970.52				
		14854.95				
\$ 40,000.00	\$ 24,210.00	\$ 99,656.21	\$ 2,217.50	\$ 26,333.94	\$ 51,360.00	\$ 24,200.00
						\$ 267,977.65

CONFIDENTIAL

VEC000921

CONFIDENTIAL

VEC000922

Michigan Department of Treasury
618 (Rev. 2-07)

18

Petition to Board of Review

L-4035

This form is issued under the authority of P.A. 206 of 1893, as amended. Filing is voluntary, however you may not appeal to the Michigan Tax Tribunal or the State Tax Commission unless you first protest to the Board of Review

TO BE COMPLETED BY OWNER OR OWNER'S AGENT

Petition #

Owner's Name (Please Print or Type)

MINNESOTA LIMITED, INC

Petitioner's Name (If Other than Owner, Please Print or Type)

Township or City

INDEPENDENCE TOWNSHIP

County

OAKLAND

The undersigned protests the assessed value and/or the tentative taxable value and/or the property classification and/or the qualified agricultural property exemption of the following described property:

Property Identified (Parcel code required. Property address & legal description optional):

J -99-99-913-680

PERSONAL PROPERTY

Protested Item Assessed Value Tentative Taxable Value Classification Qualified Agricultural Property Exemption

1. PROTEST OF ASSESSMENT

(Complete this section for a protest of assessed value and/or tentative taxable value)

Assessed Amount	Owner's Estimated True Cash Value	Tentative Taxable Value	Year
231,000	148,037	231,000	2011

2. PROTEST OF CLASSIFICATION

(Complete this section for a request to change the classification. The Board of Review must make their decision regarding classification in accordance with section 211.34c of the Michigan Compiled Laws. The Board of Review shall not be influenced by the effect that a particular classification has on that property's status as a homeowner's principal residence or qualified agricultural property.)

Classification of property on this year's assessment roll: **251**

Classification should be: (Please check one of the following)

Agricultural Industrial Timber Cutover Utility (Personal Property Only)

Commercial Residential Developmental

3. PROTEST OF EXEMPTION FOR QUALIFIED AGRICULTURAL PROPERTY

(If the assessor has denied or changed the percentage of the exemption from the 18 mills of local school operating tax for qualified agricultural property, the owner may appeal this action to the March Board of Review. THE BOARD OF REVIEW HAS NO AUTHORITY TO CONSIDER OR ACT UPON THE EXEMPTION FROM THE 18 SCHOOL OPERATING MILLS FOR HOMEOWNER'S PRINCIPAL RESIDENCE PROPERTIES.)

Percent Qualified Agricultural Exemption Granted by Assessor: Enter 0 if exemption is denied) Percent Qualified Agricultural Exemption Requested by Owner: (Enter 100 if full exemption requested)

4. REASON FOR PROTEST

State reason(s) for protest of assessed value and/or the tentative taxable value and/or classification and/or qualified agricultural property exemption.

A/P to correct PP value.

CERTIFICATION:

Signature

Date

03/04/11

Address

Phone Number

www.michigan.gov/treasury
CONFIDENTIAL

VEC000923

FOR BOARD OF REVIEW USE ONLY

INSTRUCTIONS: Incorporate a copy of this form and the assigned number in the Board of Review minutes.

Petition Number <i>218</i>	Parcel Code J -99-99-913-680
-------------------------------	--

1. ASSESSED VALUE

Disposition by Board of Review. The Board of Review must state the reason for its action below.

Denied Assessed Value Changed From: **231,000** To: **74,300**

Record of Vote - Board or three member committee of board

Chairperson: YES NO *JMH* Initials Member: YES NO *A* Initials Member: YES NO *RLH* Initials

Reason for Board Action:

- PERSONAL PROPERTY CORRECTION -

If you disagree with the decision of the Board of Review regarding tentative assessed value, further appeal may be made to the Michigan Tax Tribunal, P.O. Box 30232, Lansing, Mi. 48909 by May 31 for Commercial Real, Industrial Real, Developmental Real, Commercial Personal, Industrial Personal and Utility Personal Property by July 31 for Agricultural Real, Residential Real, Timber - Cut Over Real, and Agricultural Personal Property.

2. TENTATIVE TAXABLE VALUE

Disposition by Board of Review. The Board of Review must state the reason for its action below.

Denied Tentative Taxable Value Changed From: **231,000** To: **74,300**

Record of Vote - Board or three member committee of board

Chairperson: YES NO *JMH* Initials Member: YES NO *A* Initials Member: YES NO *RLH* Initials

Reason for Board Action:

If you disagree with the decision of the Board of Review regarding tentative taxable value, further appeal may be made to the Michigan Tax Tribunal, P.O. Box 30232, Lansing, Mi. 48909 by May 31 for Commercial Real, Industrial Real, Developmental Real, Commercial Personal, Industrial Personal and Utility Personal Property by July 31 for Agricultural Real, Residential Real, Timber - Cut Over Real, and Agricultural Personal Property.

3. CLASSIFICATION

Disposition by Board of Review. The Board of Review must state the reason for its action below.

Denied Classification Changed From: **251** To: _____

Record of Vote - Board or three member committee of board

Chairperson: YES NO _____ Initials Member: YES NO _____ Initials Member: YES NO _____ Initials

Reason for Board Action:

If you disagree with the decision of the Board of Review regarding classification, appeals made by sending Form 2167 to the State Tax Commission, P.O. Box 30471, Lansing, Mi. 48909 by June 30.

4. QUALIFIED AGRICULTURAL PROPERTY EXEMPTION

Disposition by Board of Review. The Board of Review must state the reason for its action below.

Exemption Request Denied Exemption percent modified from _____ % To: _____ %

Record of Vote - Board or three member committee of board

Chairperson: YES NO _____ Initials Member: YES NO _____ Initials Member: YES NO _____ Initials

Reason for Board Action:

If you disagree with the decision of the Board of Review regarding qualified agricultural property exemption, further appeal may be made to the Michigan Tax Tribunal, P.O. Box 30232, Lansing, MI 48909.

5. Adjournment

Date of Final adjournment of Board of Review

Board of Review Secretary Signature *[Signature]*

Date **3-9-11**

CONFIDENTIAL

VEC000924

EXECUTION VERSION

Part 4.17
Contracts

(a)

- (i) Minnesota Limited is a party to the following Contracts that have an amount payable to it in excess of \$100,000 in the next twelve months:

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
Centerpoint Energy – Illinois Gas Transmission Company	Pipeline Construction Contract	August 1, 2010	N/A	FP
Enbridge Energy, Limited Partnership	Work Order and Field Purchase Order	June 30, 2010	JHP 19134-2010	FP
Florida Gas Transmission Company, LLC	Capital Construction Agreement	July 13, 2010	CCA-FGT-50282	FP
Koch Pipeline Company L.P.	Scope of Work Agreement	November 5, 2010	N/A	FP
Northern Natural Gas Company	Capital Construction Agreement	November 8, 2010	CCA-179-2010-7075	FP

- (ii) Member Agreement, by and between Minnesota Limited and Cellco Partnership (on behalf of itself and its controlled and/or managed affiliates doing business as Verizon Wireless), dated as of December 12, 2008.

The Leases.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

- (iii) Minnesota Limited is a party to the following Contracts that resulted in payments to it in excess of \$100,000 and that have a written warranty period that expires on the dates set forth below:

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Centerpoint Energy – Illinois Gas Transmission Company	Pipeline Construction Contract	August 1, 2010	N/A	12/2011
Consumers Energy Company	Contract	March 19, 2009	GTSE-RJD-08.053	11/2011
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on August 6, 2009	August 14, 2008	0730272000-02-SL-CLS	9/2013
Enbridge Energy Limited Partnership	Agreement, as amended on September 8, 2009	August 14, 2008	0791243100-01-AC-CLS	7/2013
Enbridge Energy Limited Partnership	Agreement, as amended on September 10, 2009	October 10, 2008	0791243100-02 AC-DRS	6/2013
Enbridge Pipelines (North Dakota) LLC	Agreement	November 3, 2008	0790401121-07 SICIM	10/2013
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	December 4, 2008	WBH-07127-08	6/2012
Enbridge Energy Limited Partnership	Agreement	December 12, 2008	0691218A101-06 SA-DS-MBS	6/2012

EXECUTION VERSION

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-VP-01	11/2012
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-DN-01	11/2012
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-AM-01	12/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order, and corresponding letter dated March 9, 2009	March 9, 2009	WBH-07181-09	10/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	March 9, 2009	WBH-07173-09	12/2012
Enbridge Pipelines (North Dakota) LLC	Agreement	March 16, 2009	0790401121-11 MSM	9/2012
Enbridge Pipelines (North Dakota) LLC	Agreement	April 17, 2009	0790401121-12 BLSM	12/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	May 7, 2009	WBH-07285-09	10/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	July 10, 2009	WBH-07326-09	12/2012
Enbridge Energy Limited Partnership	Amendment	September 8, 2009	Amendment to 0791243100-03 AC-VS	7/2013
Enbridge Energy, Limited Partnership	Work Order Contract	January 27, 2010	WSA-20759-10	1/2013
Enbridge Energy, Limited Partnership	Work Order Contract	February 2, 2010	WSA-20758-10	1/2013
Enbridge Energy, Limited Partnership	Work Order and Field Purchase Order	June 30, 2010	JHP 19134-2010	10/2013
Enbridge Pipelines (North Dakota) LLC	Letter of Intent Berthold Trap Modifications Mechanical, Berthold, North Dakota 2010 Construction	October 7, 2010	N/A	12/2013
Florida Gas Transmission Company, LLC	Capital Construction Agreement	July 13, 2010	CCA-FGT-50282	1/2013
Koch Pipeline Company L.P.	Scope of Work Agreement	November 5, 2010	N/A	6/2012
Marathon Petroleum Company LLC	Job Order	August 11, 2010	2010-581314-Min-001	12/2011
Northern Natural Gas Company	Capital Construction Agreement	September 22, 2008	CCA-179-2008-6098	12/2011
Northern Natural Gas Company	Capital Construction Agreement	January 29, 2009	CCA-179-2009-6187	10/2012
Northern Natural Gas Company	Capital Construction Agreement	February 16, 2009	CCA-179-2009-6202	6/2011
Northern Natural Gas Company	Capital Construction Agreement	July 24, 2009	CCA-179-2009-6495	9/2011
Northern Natural Gas Company	Work Offer	September 8, 2009	GSMA-179-2009-6237 Work Offer No. 1216	10/2011

EXECUTION VERSION

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Northern Natural Gas Company	Work Order	October 14, 2009	GSMA-179-2009-6237 Work Offer No. 1495	10/2011
Northern Natural Gas Company	Work Order	October 21, 2009	GSMA-179-2009-6237 Work Offer No. Willmar Projects	12/2011
Northern Natural Gas Company	Work Offer	May 7, 2010	GMSA-179-2009-6237 Work Offer No. 2407	12/2012
Northern Natural Gas Company	Capital Construction Agreement	May 10, 2010	CCA-179-2010-6840	11/2012
Northern Natural Gas Company	Capital Construction Agreement	August 9, 2010	CCA-179-2010-6949	12/2012
Northern Natural Gas Company	Capital Construction Agreement	August 23, 2010	CCA-179-2010-6965	11/2012
Northern Natural Gas Company	Capital Construction Agreement	September 13, 2010	CCA-179-2010-6987	11/2012
Northern Natural Gas Company	Capital Construction Agreement	September 13, 2010	CCA-179-2010-6989	11/2012
Northern Natural Gas Company	Work Offer	October 4, 2010	GSMA-179-2009-6237 Work Offer No. 3363	11/2012
Northern Natural Gas Company	Capital Construction Agreement	October 11, 2010	CCA-179-2010-7026	11/2012
Northern Natural Gas Company	Capital Construction Agreement	November 8, 2010	CCA-179-2010-7075	5/2013
Northern Natural Gas Company	Work Offer	N/A	GSMA-179-2009-6237 Work Offer No. 1074	7/2011
Northern Natural Gas Company	Work Offer	N/A	GSMA-179-2009-6237 Work Offer No. 1268	9/2011

- (iv) Revolving Credit Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010, and each Loan Document, as defined in such agreement, including:

Amended and Restated Revolving Note No. 1, issued by Minnesota Limited to M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Revolving Note No. 2, issued by Minnesota Limited to M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Security Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Limited Personal Guaranty, by Christopher Leines to M&I Marshall & Ilsley Bank, dated as of October 27, 2010.

Lurie Besikof Lapidus
& Company, LLP

Independent Auditor's Report

The Board of Directors and Stockholders
Minnesota Limited, Inc.
Big Lake, Minnesota

We have audited the accompanying balance sheets of Minnesota Limited, Inc. as of December 31, 2010 and 2009, and the related statements of income and retained earnings and of cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Minnesota Limited, Inc. as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Lurie Besikof Lapidus & Company, LLP

Lurie Besikof Lapidus & Company, LLP

April 22, 2011

phone 612.377.4404
fax 612.377.1325

address 2501 Wayzata Boulevard
Minneapolis, MN 55405

website www.lblco.com



Accounting & Auditing | Tax | Private Investment Banking | Actuarial & Benefits Consulting | Valuation & Litigation Support
LBL Leadership Consulting | Entrepreneurial Services | China Strategies Consulting | LBL Technology Partners

CONFIDENTIAL

VEC000927

Minnesota Limited, Inc.

Balance Sheets

December 31	2010	2009
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 140,940	\$ 100,998
Contracts receivable, including retainages of \$2,979,800 and \$5,750,300	26,682,245	20,722,694
Costs and estimated earnings in excess of billings on uncompleted contracts	384,977	1,819,788
Other	597,020	915,472
Total Current Assets	27,805,182	23,558,952
Property and Equipment	4,668,392	6,466,983
Total Assets	\$ 32,473,574	\$ 30,025,935
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Checks issued in excess of deposits	\$ 352,206	\$ 1,796,272
Bank lines of credit	11,929,175	7,031,682
Accounts payable	4,717,843	7,627,454
Accrued expenses	3,509,882	2,020,363
Billings in excess of costs and estimated earnings on uncompleted contracts	1,169,599	12,840
Total Current Liabilities	21,678,705	18,488,611
Stockholders' Equity		
Common stock, par value \$10 (authorized - 2,500 shares; issued and outstanding - 2,055 shares)	20,550	20,550
Additional paid-in capital	51,554	51,554
Retained earnings	10,722,765	11,465,220
Total Stockholders' Equity	10,794,869	11,537,324
Total Liabilities and Stockholders' Equity	\$ 32,473,574	\$ 30,025,935

See notes to financial statements.

Minnesota Limited, Inc.

Statements of Income and Retained Earnings

Years Ended December 31	2010	2009
Revenues Earned	\$ 110,365,790	\$ 121,058,702
Construction Costs	97,169,065	104,963,089
Gross Profit	13,196,725	16,095,613
General and Administrative Expenses	11,542,503	9,171,104
Income from Operations	1,654,222	6,924,509
Other Income (Expense)		
Interest income	569	6,799
Gain (loss) on sales of property and equipment	12,138	(39,798)
Interest expense	(146,656)	(57,715)
Other income (expense)	219,135	(22,634)
Total Other Income (Expense), net	85,186	(113,348)
Net Income	1,739,408	6,811,161
Retained Earnings		
Beginning of year	11,465,220	17,733,786
Distributions	(2,481,863)	(13,079,727)
End of year	\$ 10,722,765	\$ 11,465,220

See notes to financial statements.

3

CONFIDENTIAL

VEC000929

Appellee's App'x
Vol II, p 992

Minnesota Limited, Inc.

Statements of Cash Flows

Years Ended December 31	2010	2009
Operating Activities		
Net income	\$ 1,739,408	\$ 6,811,161
Adjustments to reconcile net income to net cash provided (used) by operating activities:		
Depreciation	2,096,288	2,252,140
Bad debt expense	840,333	-
Loss (gain) on sales of property and equipment	(12,138)	39,798
Changes in operating assets and liabilities:		
Contracts receivable	(6,799,884)	(5,626,388)
Net billings, costs and estimated earnings on uncompleted contracts	2,591,570	(1,803,315)
Other assets	301,328	(577,536)
Accounts payable	(2,909,611)	3,119,828
Accrued expenses	1,489,519	(324,964)
Net Cash Provided (Used) by Operating Activities	(663,187)	3,890,724
Investing Activities		
Net proceeds from related parties	17,124	606,045
Purchases of property and equipment	(322,634)	(2,030,389)
Proceeds from sales of property and equipment	37,075	37,155
Net Cash Used by Investing Activities	(268,435)	(1,387,189)
Financing Activities		
Increase (decrease) in checks issued in excess of deposits	(1,444,066)	542,139
Net proceeds on bank lines of credit	4,897,493	7,031,682
Distributions to stockholders	(2,481,863)	(12,087,370)
Net Cash Provided (Used) by Financing Activities	971,564	(4,513,549)
Net Increase (Decrease) in Cash and Cash Equivalents	39,942	(2,010,014)
Cash and Cash Equivalents		
Beginning of year	100,998	2,111,012
End of year	\$ 140,940	\$ 100,998

See notes to financial statements.

4

CONFIDENTIAL

VEC000930

Minnesota Limited, Inc.

Notes to Financial Statements

1. The Company and Summary of Significant Accounting Policies

Nature of Business

Minnesota Limited, Inc. (Company) is a specialty general contractor serving the natural gas and petroleum industry. The Company focuses on pipeline construction; pump station, compressor station, terminal, and refinery construction; pipeline maintenance; and hydrostatic testing. The Company is headquartered in Big Lake, Minnesota, with facilities in Bemidji, Minnesota; Superior, Wisconsin; and Altamont, Illinois. The Company's revenue is earned on projects throughout the United States, primarily in the midwestern and central states.

The Company's stock was acquired by a publicly held utility based in Indiana on March 31, 2011.

Use of Estimates

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that may affect the reported amounts and disclosures in the financial statements and accompanying notes. Actual results could differ from those estimates. The most significant management estimates relate to the determination of the percentage of completion on construction contracts in progress, the workers' compensation insurance reserve, warranty costs, and the allowance for doubtful accounts. It is reasonably possible these significant management estimates may change in the near term and the effect of the change could be material. Revisions in estimated contract profits are made in the year they become known.

Revenue and Cost Recognition

Revenue from fixed price construction contracts is recognized on the percentage of completion method, measured by the percentage of costs incurred to date to the estimated total costs for each contract. Management considers costs incurred as the best measure of progress on contracts. Because of inherent uncertainties in estimating costs, it is reasonably possible that the estimates used will change in the near term. Contracts typically last from one month to one year. Approximately 55% and 81% of revenues were derived from fixed price construction contracts in 2010 and 2009, respectively.

Revenues on cost plus fee contracts are recognized to the extent of costs incurred during the period plus a proportionate amount of fee earned, measured by the cost to cost method. Approximately 45% and 19% of revenues were derived from cost plus fee contracts in 2010 and 2009, respectively.

Contract costs include all direct material, subcontract, and labor costs, and those indirect costs related to contract performance including depreciation, equipment maintenance and repairs, and supplies. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions, and estimated profitability, including those arising from contract penalty provisions and final contract settlements, may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

Cash Equivalents

All highly liquid investments purchased with an original maturity of three months or less are considered cash equivalents.

Credit Risk

The Company maintains cash at financial institutions in deposit and money market accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses on such accounts and management believes it is not exposed to any significant credit risk on cash.

Minnesota Limited, Inc.

Notes to Financial Statements

1. The Company and Summary of Significant Accounting Policies (continued)

Contracts Receivable

Management reviews individual contracts receivable as they become past due to determine collectability. The allowance for doubtful accounts is adjusted based on management's consideration of past due contracts receivable. Individual accounts are charged against the allowance when collection efforts have been exhausted. The allowance for doubtful accounts was \$100,000 and \$450,000 at December 31, 2010 and 2009, respectively.

Contracts receivable includes approximately \$2,852,000 and \$1,360,000 of unbilled receivables at December 31, 2010 and 2009, respectively.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation is provided using straight line and accelerated methods over the estimated useful lives of the assets.

Income Taxes

The Company, with the consent of the stockholders, elected S corporation status effective April 1, 1996. Earnings and losses are included in the personal income tax returns of the stockholders. The Company is subject to income taxes in certain states in which it conducts business. Income taxes charged to expense, net of certain fuel tax credits received, were approximately \$297,000 and \$242,000 for 2010 and 2009, respectively.

Reclassifications

Certain reclassifications were made to the 2009 financial statements to make them comparable to the 2010 presentation. The reclassifications did not have any effect on previously reported stockholders' equity, net income, or net cash flows.

2. Uncompleted Contracts

Billings, costs and estimated earnings on uncompleted contracts consisted of the following:

December 31	2010	2009
Costs incurred on uncompleted contracts	\$ 5,957,092	\$ 28,703,830
Estimated earnings	62,103	4,313,972
Costs incurred and estimated earnings	6,019,195	33,017,802
Less billings to date	(6,803,817)	(31,210,854)
Total	\$ (784,622)	\$ 1,806,948

Minnesota Limited, Inc.

Notes to Financial Statements

2. Uncompleted Contracts (continued)

Uncompleted contracts are included in the balance sheets as follows:

December 31	2010	2009
Costs and estimated earnings in excess of billings on uncompleted contracts	\$ 384,977	\$1,819,788
Billings in excess of costs and estimated earnings on uncompleted contracts	(1,169,599)	(12,840)
Total	\$ (784,622)	\$1,806,948

3. Property and Equipment

Property and equipment consisted of the following:

December 31	2010	2009
Construction equipment	\$ 14,989,269	\$ 16,184,082
Transportation equipment	13,043,610	13,460,954
Office equipment and software	1,017,862	992,573
Buildings	210,403	210,403
Total cost	29,261,144	30,848,012
Less accumulated depreciation	24,592,752	24,381,029
Property and Equipment	\$ 4,668,392	\$ 6,466,983

In 2010, the Company exchanged certain property and equipment totaling \$206,945 for similar property and equipment. The transaction is considered to not significantly change the Company's future cash flows. Under accounting principles generally accepted in the United States of America, exchanges that do not significantly change future cash flows are measured at recorded amounts. For income tax purposes in 2010, the Company deferred recognition of a gain on the exchange of approximately \$183,600.

4. Bank Lines of Credit

The Company has an agreement with a bank providing two revolving bank lines of credit in the amounts of \$20,000,000 and \$10,000,000. The revolving lines of credit expire on October 31, 2012 and September 30, 2011, respectively. The Company had a \$15,000,000 credit agreement that expired on October 31, 2010. Advances are due on demand, bear interest at 2.25% plus the one-month London Interbank Offered Rate (LIBOR) (0.26% and 0.23% at December 31, 2010 and 2009, respectively) with a floor rate of 3.0%, and are collateralized by contracts receivable, specific property and equipment, and the personal guarantees of the Company's stockholders. The credit agreement includes an annual unused line of credit fee of 0.25% and requires the Company to maintain certain levels of tangible net worth, debt service coverage and debt to tangible net worth, as defined. The lines of credit were paid off upon the sale of the Company's stock (Note 1).

The bank agreement provides for up to \$2,000,000 of irrevocable standby letters of credit. Any outstanding letters of credit generally reduces otherwise available borrowings on the lines of credit (Note 6).

Minnesota Limited, Inc.

Notes to Financial Statements

5. Related Party Transactions and Balances

Related party transactions and balances were as follows:

December 31	2010	2009
Transactions:		
Facilities rent expense to entities controlled by the Company's stockholders	\$ 1,653,400	\$ 1,498,616
Advances to related party lessor controlled by the Company's stockholders to facilitate construction of and improvements to the Company's Big Lake, Minnesota headquarters	6,800	95,038
Advances to pipeline services company related through common ownership	4,960	10,292
Purchases from pipeline services company related through common ownership	310,871	281,082
Off-road equipment rent expense to equipment leasing company controlled by the Company's stockholders	4,325,295	6,168,501
Advances to equipment leasing company controlled by the Company's stockholders to facilitate purchasing equipment	-	1,000
Balances:		
Due from related party lessor of Company Big Lake, Minnesota headquarters	\$ 7,268	\$ 24,473
Due from the equipment leasing company	1,081	1,000
Receivable from Related Parties	\$ 8,349	\$ 25,473

The Company leases certain off road equipment from an entity related through common ownership. The lease is treated as an operating lease for accounting purposes. The Company is responsible for all maintenance and insurance cost of the equipment. The transactions are governed by a blanket lease agreement. The agreement contained a minimum lease term of 24 months for each specific piece of equipment leased and can be renewed for another 24 months thereafter. No purchase option exists in the agreement. This agreement was terminated upon the sale of the Company's stock (Note 1).

The Company leased its Big Lake facility beginning in March 2008, and other branch facilities from a related party owned by the Company's stockholders. The other branch facilities are leased on a year-to-year basis. The Big Lake facility lease required base monthly rents of \$120,000 and \$110,000 for most of 2010 and 2009, respectively. The Big Lake facility lease also requires the Company to pay facility operating costs and real estate taxes. The Big Lake facility lease was renewed March 2011 and expires March 2021. The new lease requires base monthly rents of \$83,333 and the Company is responsible for all real estate taxes and operating expenses of the facility as defined in the lease.

During 2006, the Company began advancing funds to the related party lessor, an entity related through common ownership to finance the construction of the Big Lake facility. Advances are repaid periodically and some advances have been distributed to stockholders. The receivables from related parties are noninterest bearing. Related party balances are unsecured.

Minnesota Limited, Inc.

Notes to Financial Statements

5. Related Party Transactions and Balances (continued)

Future minimum lease payments are as follows:

Year Ending December 31	Other Facilities	Equipment	Big Lake Facility	Total
2011	\$ 57,300	\$ 1,512,800	\$ 1,110,000	\$ 2,680,100
2012	-	-	1,000,000	1,000,000
2013	-	-	1,000,000	1,000,000
2014	-	-	1,000,000	1,000,000
2015	-	-	1,000,000	1,000,000
Thereafter	-	-	5,250,000	5,250,000
Total	\$ 57,300	\$ 1,512,800	\$ 10,360,000	\$ 11,930,100

6. Worker's Compensation Insurance

The Company self-insures its worker's compensation losses up to \$250,000 per individual claim. The Company also maintains stop-loss coverage limiting its maximum workers' compensation claims exposure to approximately \$1,450,000 annually. The Company's insurance provider administers the claims, including assisting management's estimate of the losses, and processing payments. Prior to 2010, the Company maintained a cash collateral balance with the insurance provider to facilitate claim payments. This balance was approximately \$507,000 at December 31, 2009, and was recorded as a prepaid expense at December 31, 2009. In 2010, the Company modified its workers compensation plan and the collateral balance was refunded. Worker's compensation expense was approximately \$1,485,000 and \$148,600 in 2010 and 2009, respectively.

In 2010, the Company received a refund of reserve balances that had not been paid to claimants from its workers' compensation insurance provider of approximately \$899,000. This amount represents the approximate excess of estimated reserves of claims paid by the Company over claims incurred in earlier policy years. The amount is recorded in construction costs.

The Company maintained a letter of credit for \$1,534,784 that expired on March 31, 2011 with the Company's workers' compensation insurance provider named a beneficiary. A new letter of credit was obtained for \$1,335,000, expires April 1, 2012, and has the same beneficiary.

7. Collective Bargaining Agreements

A majority of the Company's employees are covered under national collective bargaining agreements. The collective bargaining agreements are each negotiated separately and expired on December 31, 2010 and January 31, 2011. Management has obtained short-term extensions of these agreements while they are being renegotiated.

8. Employee Benefit Plans

Multi-Employer Pension Plan

The Company participates in multi employer pension plans for the benefit of its union employees. The Company contributed \$5,247,063 and \$4,945,339 in 2010 and 2009, respectively.

Minnesota Limited, Inc.

Notes to Financial Statements

8. Employee Benefit Plans (continued)

Defined Contribution Profit Sharing Plan

The Company has a 401(k) profit sharing plan for the benefit of all employees with one year of service and not participating in a collective bargain agreement. The plan allows employees to contribute the maximum amount of compensation permitted by the Internal Revenue Service. Company contributions to the plan were approximately \$80,800 and \$72,700 for 2010 and 2009, respectively.

9. Contingencies

The Company has agreed to perform warranty work on a previously completed project. The estimated cost of the warranty work is \$1,000,000. The Company has paid and recorded costs of approximately \$700,000 through December 31, 2010. The remaining estimated warranty work of \$300,000 at December 31, 2010 is recorded in accrued expenses.

In the normal course of business, the Company is subject to various claims and assessments. Management defends such matters and believes the outcome of such claims and assessments will not have a material adverse effect on the Company's financial position.

10. Concentrations

Sales to significant customers, expressed as a percentage of revenues and contracts receivable, as of and for the years ended December 31 were as follows:

December 31	% of Revenue		% of Receivables	
	2010	2009	2010	2009
Customer				
1	35 %	25 %	64 %	34 %
2	26	28	14	15
3	16	19	*	*
4	10	10	*	20
5	*	11	*	*

* less than 10%

Minnesota Limited, Inc.

Notes to Financial Statements

11. Supplementary Disclosures of Cash Flow Information

Additional cash flow information consisted of the following:

Years Ended December 31	2010	2009
Cash paid for interest	\$ 146,656	\$ 63,995
Noncash investing and financing activities:		
Receivable from related parties distributed to stockholders	-	992,357
Property and equipment exchanged for like-kind property and equipment	206,945	-
Line of credit to bank refinanced	12,552,539	-

12. Subsequent Events

Management has evaluated subsequent events through April 22, 2011, the date at which the financial statements were available to be issued.

Lurie Besikof Lapidus
& Company, LLP

Independent Auditor's Report on Supplementary Information

The Board of Directors and Stockholders
Minnesota Limited, Inc.
Big Lake, Minnesota

We have audited the financial statements of Minnesota Limited, Inc. as of and for the years ended December 31, 2010 and 2009, and our report thereon dated April 22, 2011, which expressed an unqualified opinion on those financial statements, appears on page 1. Our audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information on pages 13 to 24, which is the responsibility of management, is presented for purposes of additional analysis and is not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audits of the financial statements and, accordingly, we do not express an opinion or provide any assurance on it.

Lurie Besikof Lapidus & Company, LLP

Lurie Besikof Lapidus & Company, LLP

April 22, 2011

phone 612.377.4404
fax 612.377.1325

address 2501 Wayzata Boulevard
Minneapolis, MN 55405

website www.lblco.com



Accounting & Auditing | Tax | Private Investment Banking | Actuarial & Benefits Consulting | Valuation & Litigation Support
LBL Leadership Consulting | Entrepreneurial Services | China Strategies Consulting | LBL Technology Partners

CONFIDENTIAL

VEC000938

Minnesota Limited, Inc.

Schedule of Completed Contracts - Fixed Price

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010				
AL09854	ND - Bantry Meter Station	\$ 21,592	\$ 108,690	\$ (87,098)
AL10144	Albert Lea 2" Compressor Line Repair	6,875	5,765	1,110
BP09009	Dubuque Manifold Piping Mods	20,388	(200)	20,588
BP10110	IA - 2010 Restoration	8,500	(84)	8,584
BP10111	MN - 2010 Restoration	9,500	9,593	(93)
CP10103	Burnsville-ROW Clearing - Black Dog Transmssion Lines	212,250	47,631	164,619
CP10133	Coon Rapids, MN - Northgate Project - 400' of 24"	136,469	143,357	(6,888)
EB09307	AC Viking Station Construction	1,109,488	1,141,172	(31,684)
EB09308	AC/SL Clearbrook Station	1,867,630	1,464,208	403,422
EB09309	Southern Lights - Adams Str	3,748	6,220	(2,472)
EB09313	Southern Lights - Vesper Str	89,023	30,342	58,681
EB09314	Southern Lights - Delavan Str	26,873	35,297	(8,424)
EB09324	AC Deer River Station Const.	2,221,259	2,116,435	104,824
EB09327	MN IL Line 13 Remote Press Tra	24,338	22,033	2,305
EB09328	WI SA Vesp Delvln Platform Mods	9,115	304,316	(295,201)
EB10100	IL - SL Cath Prot Install Svcs - Streator to Manhattan	298,278	189,594	108,684
EB10121	Hydro-testing of 80' of 30" Mainline Pipeline	22,802	15,087	7,715
EN08379	Stanley Str Mechanical 08	8,800	(86)	8,886
EN08380	Stanley Injection Capacity Inc	65,313	238,430	(173,117)
EN09377	NDSE 6 - Bartlett Str Mech	3,000	11,807	(8,807)
EN09378	NDSE 6 - Denbigh Str Mech	15,400	11,429	3,971
EN09379	NDSE 6 - Minot Station Mech	113,000	118,167	(5,167)
EN09380	ND - Beaver Lodge Str Mech	41,637	213,548	(171,911)
EN09381	ND Blaisdell Str Mech	19,800	9,995	9,805
EN09383	MN - Clearbrook Str Mechanical	29,550	42,780	(13,230)
KM10117	Mankato, MN - 12" Pipeline Adjustments	328,640	341,231	(12,591)
KP10118	Clearbrook, MN - Tank 1 Project	165,041	139,535	25,506
KP10142	Cottage Grove, MN - Tank 22 Tank Repair	211,458	166,627	44,831
MN09233	Blaine-MP 215 Sod Farm Consult	296	(165)	461
MN10101	Blaine, MN - MP 215 Sod Farm 2	396,835	299,187	97,648

Minnesota Limited, Inc.

Schedule of Completed Contracts - Fixed Price - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
MN10235	MN - Clearbrook to Cottage Grove - MPL2 Crossover Mods	\$ 1,305,875	\$ 917,302	\$ 388,573
MN10237	MN - Staples - Emergency Oil Leak MPL2	385,215	310,529	74,686
MR10134	Cottage Grove, MN - Wood River Relief System	393,000	268,848	124,152
MW10104	IL - Chan. ANR Launcher/Receiver & Hydrostatic Testing	718,250	799,301	(81,051)
NN09507	NL 09/10 Rkfrd & Corc 16" BL	14,287,333	15,852,427	(1,565,094)
NN09508	NL 09/10 #3 Elk River Loop 16"	281,814	30,881	250,933
NN09509	NL 09/10 #4 Willmar 12" BL Ext	9,324	502	8,822
NN09510	NL 09/10 #5 Dawson Regulator	2,906	24,631	(21,725)
NN09513	NL 09/10 #9 Corcoran TBS	226,496	278,594	(52,098)
NN09514	NL 09/10 # 10 Fmgt N Brmch C	(176,796)	41,915	(218,711)
NN09515	NL 09/10 #11 Frbit Frmgt D	12,438	(5,176)	17,614
NN09522	NL 09/10 #6 Grantsburg TBS Mod	15,265	(150)	15,415
NN10107	Carlton, MN - Superior Branch Line Regulators Install	129,895	119,162	10,733
NN10108	NE, IA - Large HDD Projects	1,152,792	1,301,447	(148,655)
NN10109	NNG - IA, NE - 2010 Shallow Exposed / Lower Project	1,036,545	1,127,640	(91,095)
NN10112	MN - Willow River BL Relocation	57,446	63,076	(5,630)
NN10113	NE - Omaha 3rd BL Relocation	276,130	257,821	18,309
NN10114	MN - Minneapolis Integrity Package	1,040,513	889,238	151,275
NN10115	IA - Alexander & AGP Stabilization Projects	74,018	75,554	(1,536)
NN10116	IA - Royal Estates Upgrade Project	176,724	201,712	(24,988)
NN10119	MN - Minneapolis Station Projects	518,235	494,388	23,847
NN10120	MN - Lake Elmo 1B TBS Modifications	270,919	221,915	49,004
NN10122	MN - Carlton Replacement & Wrenshall Recoat	1,133,735	1,082,645	51,090
NN10124	WI - Marquette ML Block Valve 5 Regulator Install	169,261	103,976	65,285
NN10125	MN - Appleton, Kandiyohi & Glencoe Heater Remediation Proj.	52,000	35,021	16,979
NN10128	IA - IPL TBS Modifications Project	511,375	438,469	72,906
NN10129	Mankato, MN - Sp Modifications Project	219,094	170,741	48,353
NN10130	MN - M500A Ventura to Farmington ML Relocate MP 82	610,077	369,367	240,710
NN10131	IA, MN, SD - 2010 TBS Stabilization Package	467,789	487,359	(19,570)
NN10132	MI - Marquette BL Replacement Project	2,115,886	2,132,067	(16,181)

Minnesota Limited, Inc.

Schedule of Completed Contracts - Fixed Price - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
NN10137	MN - Grand Rapids BL Abandonment	\$ 68,500	\$ 36,361	\$ 32,139
NN10138	SD - Yankton & Willow Lake TBS Projects	263,775	289,166	(25,391)
NN10139	IA - Grinnell BL@ Mp 0.31 800' of 16" HDD	897,778	707,804	189,974
NN10140	MN - Waseca 1A TBS Modifications Project	110,000	103,394	6,606
NN10147	New Ulm, Watkins and Mable TBS work	88,850	46,866	41,984
NN10148	MN - Montevideo TBS Modifications	70,000	48,462	21,538
XX10102	MI - 2010 W Oakland and DeWitt Pipeline Project	17,774,842	16,038,266	1,736,576
XX10106	Precision Pipeline 36" Manifolds	200,744	176,012	24,732
XX10135	Owatonna, MN - Valve Replacement (Owatonna Public Utilities)	2,983	2,088	895
XX10136	U of IL - 8" Cut Out	17,742	16,875	867
	Non Revenue Jobs	(37,859)	930,169	(968,028)
	Unallocated Equipment Costs	-	1,214,038	(1,214,038)
	Unallocated Workers' Compensation Insurance Costs	-	(159,492)	159,492
Total		\$ 54,417,807	\$ 54,773,152	\$ (355,345)

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010				
AL10517	IL - Anomaly Digs	\$ 27,635	\$ 22,891	\$ 4,744
AL10593	Bantry Heater Repair Project	46,404	39,923	6,481
AL10614	MN - Albert Lea CS Tie-In	63,588	55,360	8,228
BP10504	IA - Dubuque ILI Digs	122,115	74,813	47,302
BP10505	MN - Spring Valley to Twin Cities ILI Digs	205,630	132,586	73,044
BP10522	Welder Testing	7,619	7,827	(208)
BP10526	IA - 2010 Maintenance / Valve Change Outs	729,342	444,354	284,988
BP10527	MN - 2010 Maintenance / Valve Change-Outs	57,562	36,987	20,575
BP10538	IA - Dubuque Station Parallel PRV's	23,360	17,214	6,146
BP10589	IA - Drainage System upgrade @ Dubuque Station	334,476	217,154	117,322
CP10562	MN - Riverside project Warranty Work	-	11,873	(11,873)
EB10503	2010 Superior Region Work	286,290	141,153	145,137
EB10506	MN - Line 3 34" Digs	1,370,102	1,004,130	365,972
EB10510	IN & MI - Line 6B Integrity Digs	856,680	595,248	261,432
EB10511	Neche, ND - Emergency Leak Response	367,174	222,534	144,640
EB10512	ND - Line 3 34" Digs	53,747	43,770	9,977
EB10513	MN - Grand Rapids Area Maintenance Digs	20,931	15,420	5,511
EB10514	MN & ND - Line 2 26" Digs	992,900	721,418	271,482
EB10529	MN - Pig Run Assist & Transport	19,323	10,844	8,479
EB10530	Clearbrook, MN - Hauling Hoe	807	322	485
EB10531	Clearbrook, MN - SL Reversal / Tie-In	374,380	270,829	103,551
EB10532	MN - Leak at Deer River Station	287,049	198,479	88,570
EB10536	WI - Valve Change Outs at Vesper, Delavan & Adams	23,124	15,262	7,862
EB10537	MN - Line 3 (34") Dent	855,515	600,303	255,212
EB10544	MN - Line 1 20" Crack Digs	358,705	267,702	91,003
EB10569	Viking, MN - PLM Assistance	14,110	6,033	8,077
EB10574	Marshall, MI - Clean Up	14,627,549	9,266,063	5,361,486
EB10583	IL & WI - Pressure Transmitters	29,360	25,648	3,712
EB10587	Clearbrook, MN - AC Line Fill Assistance	34,894	29,432	5,462
EB10596	MI - Line 6B Integrity Work	8,903,130	6,334,028	2,569,102

See Independent Auditor's Report on Supplemental Information.

16

CONFIDENTIAL

VEC000942

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
EB10599	MN - Line 4 48" Digs	\$ 799,676	\$ 568,845	\$ 230,831
EB10602	MN - Deer River Line 2 Repair	553,546	361,367	192,159
EB10611	WI - Line 6A Integrity Digs	896,715	661,122	235,593
EB10612	Deer River Clean Up	15,679	10,856	4,823
EB10615	Plummer, MN - Densitometer	66,822	57,473	9,349
EB10627	Iron River, WI - Ino Station Check Valve Repair	46,467	34,145	12,322
EN10520	Clearbrook, MN - Vac Truck Services @ Porto Station	1,610	750	860
EN10555	MN & ND - Check Valve Repair	193,911	147,672	46,239
EN10556	MN - 2010 Misc. Work In Grand Forks Area	604	955	(351)
EN10570	ND - Line 26 Rehab Program	401,700	309,383	92,317
EN10577	MN, ND - High Priority Digs	219,952	160,101	59,851
EN10582	EN - ND - Line 81 Digs	2,089,943	1,462,508	627,435
EN10592	Minot Tie-In Assistance	4,985	3,426	1,559
EN10605	ND - Alexander - Beaver Lodge Line 84 Dig Program	77,639	56,560	21,079
EN10621	MN - Clearbrook Capacity Increase Project	258,679	183,456	75,223
FH10525	MN - 2010 Barge Dock Pressure Test	10,626	7,496	3,130
GL10542	MN - Shevlin Station Repair	63,401	43,730	19,671
KP10507	2010 Koch Pipeline MN Work	142,729	84,833	57,896
KP10519	Cottage Grove, MN - Valve Replacement/Pipeline Maintenance	96,947	88,272	8,675
KP10546	MN - Assist Tool Runs	6,352	(5,431)	11,783
KP10576	Cottage Grove, MN - Raise tank legs	11,657	8,636	3,021
KP10578	Trap Modifications	8,652	5,429	3,223
KP10591	Inver Grove Heights - Gate 11 Pipeline Mods	68,425	54,726	13,699
KP10597	Inver Grove Heights - MPL 4 Smart Tool Removal @ Gate 15	1,588	777	811
KP10607	Inver Grove Heights - 24" Valve Change Out	11,487	8,492	2,995
KP10613	Inver Grove Heights - Pavement Repair	2,243	1,928	315
KP10617	Clearbrook, MN - Tank 7 Repair	245,500	195,143	50,357
KP10629	Cottage Grove Tank Farm Spill	8,044	5,297	2,747
KP10631	MN - Cut Up Pipe at Cottage Grove	15,066	9,934	5,132
MN10500	2010 MPL Digs - Clearbrook to Cottage Grove	5,122,802	3,611,172	1,511,630

Minnesota Limited, Inc.**Schedule of Completed Contracts - Cost-Plus-Fee - (continued)**

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
MN10501	Bloomington, MN - Airport Pipeline (APL) Digs Project	\$ 167,748	\$ 122,224	\$ 45,524
MN10509	MN - 2010 Line 4 Punch List Clean-up	504,382	553,361	(48,979)
MN10516	MN - Little Falls - Repair Test Leads	3,194	3,210	(16)
MN10534	MN - Restoration Work - P1 Digs	15,399	10,555	4,844
MN10539	MN - IR Drop Test Stations / CP Install	29,820	27,625	2,195
MN10543	MN - Right-of-Way Restoration Work	39,301	31,056	8,245
MN10545	Zimmerman, MN - Remove Contaminated Soil from Launcher sit	16,392	11,132	5,260
MN10547	MN - Oil leak Response Itasca Launcher	12,629	8,953	3,676
MN10550	Mendota Heights, MN - Vent Pipe Extension	19,251	15,260	3,991
MN10551	MN - Line 2 Isolation Work	525,870	332,999	192,871
MN10553	MN - Spill Clean-up at Albany Station	11,790	8,850	2,940
MN10554	Staples, MN - 1000' of 16" Replacement on MPL1	632,828	435,607	197,221
MN10558	Park Rapids, MN - MPL Valve Change Outs	78,237	52,060	26,177
MN10565	MN - Repsonse to MPL1 Line Investigation	10,757	6,620	4,137
MN10566	MN - MinnCan Warranty Work	-	1,022,456	(1,022,456)
MN10571	Lino Lakes, MN - Casing Repair	13,896	9,887	4,009
MN10572	Inver Grove Helghts, MN - Tool Run	7,880	5,053	2,827
MN10573	Little Falls, MN - Sidewalk Repair @ LF Station	4,399	3,555	844
MN10590	Little Falls, MN - Driveway Approaches	8,018	5,554	2,464
MN10594	MN - Valve Change Out in Philbrook	56,492	36,767	19,725
MN10600	2010 MPL1 P-3 & P-4 Digs - Clearbrook to Cottage Grove	1,174,459	882,929	291,530
MN10601	MN - Station Fencing	43,010	36,977	6,033
MN10606	Macon, MO - Little Chariton River Integrity Dig	86,211	69,155	17,056
MN10608	Clrbrk, Ltl Falls, Ctg Grv- Smart Tool Launch/Receiver Mods	164,737	149,011	15,726
MN10618	Foley, MN - Verify Pipeline Depth @ Hwy 23	2,546	749	1,797
MN10619	Jacksonville, MO - Fab spool piece for Station	6,500	6,941	(441)
MN10625	Albany, MN - MPL4 Emergency Dig	47,990	29,590	18,400
MN10628	Eden Valley, MN - MPL 4 Cathodic Protection Work	6,625	4,131	2,494
MR10540	St. Paul Park, MN - Pigging Project	23,604	19,275	4,329
MR10622	Cottage Grove - Injection Pump Pad & Chemical Injection Syst	61,310	40,456	20,854

See Independent Auditor's Report on Supplemental Information.

18

CONFIDENTIAL

VEC000944

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
MR10623	Cottage Grove - Thermal Pressure Relief Project	\$ 11,305	\$ 687	\$ 10,618
MW10603	IL - NDT on 2" T	1,191	1,075	116
NB10620	MN - 2010 IMP Dig Program	257,137	220,850	36,287
NN09535	MN WI 09 MPLS Heater	400	(4)	404
NN10523	Albert Lea Compressor Station Dewatering	48,306	28,709	19,597
NN10524	Ventura, IA - 16" Leak at Apple Road	117,127	69,853	47,274
NN10528	North Branch, MN - Replace Roof Panels	4,567	3,299	1,268
NN10533	St Joseph, MN - Line Hit	12,294	6,381	5,913
NN10535	Garner, IA - Mainline Leak Repair	44,149	29,851	14,298
NN10552	MI - Michigan Integrity Digs	344,560	193,618	150,942
NN10559	MN - Emergency Response to 6" Leak @ LeSueur BL	522,570	349,773	172,797
NN10560	WI - Wisconsin Integrity Digs	61,997	40,550	21,447
NN10579	Fairbank, IA - Pipe Replacement @ Hawkeye Renewable TBS	47,102	30,102	17,000
NN10584	Elk River, MN - Install EKOF Filter @ ER TBS #1	85,461	57,756	27,705
NN10604	2010 Misc. Work	11,248	80,686	(69,438)
NN10609	2010 ILI Digs-Pynsvl,St Cid,St Michael, Princeton/ER,Mankato	231,472	140,527	90,945
NN10610	Elk River, MN - Assist with MNB95101 Block Valve Replacement	10,327	6,813	3,514
NN10626	MN & SD - EKOF Filter Work	32,581	18,477	14,104
OK10585	Seymour, WI - Work at W Green Bay Mtr Stn (Guardian)	56,115	40,071	16,044
SP10595	IL - Line 55 Integrity Work	89,465	55,171	34,294
TC10548	Carpenter, SD - Leak Response	154,070	78,428	75,642
TC10564	Howard, SD - Oil Leak Response	77,398	50,748	26,650
TC10581	Freeman, SD - Contaminated Soil Removal	11,257	7,543	3,714
TC10586	Hartington, NE - Clean Up	33,196	17,676	15,520
TC10588	IL - ANR Shelbyville Compressor Station Sound Attenuation	61,552	47,824	13,728
VG10588	2010 Maintenance	25,514	19,507	6,007
VG10575	Minnesota Sealcoating - Humbolt and Ada, MN	8,366	7,193	1,173
WP10587	WI - Pipeline Integrity Digs	119,931	89,149	30,782
WP10624	Junction City, WI - Junction City Fab & Install Spool Piece	3,689	3,887	(198)
WR10630	St Louis, MO - Wood River P1 Digs	134,391	104,162	30,229

Minnesota Limited, Inc.

Schedule of Completed Contracts - Cost-Plus-Fee - (continued)

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010 - (continued)				
XX10502	MN - Clearbrook Line 2 & 3 Densitometer	\$ 23,421	\$ 19,046	\$ 4,375
XX10508	Misc. Equipment Rental	56,500	(555)	57,055
XX10518	MN - Cathodic Protection	995,389	608,040	387,349
XX10521	Donaldson, MN - Vac Truck Services	7,320	1,817	5,503
XX10541	Bemidji, MN - 4" Dehydration Project	11,009	1,587	9,422
XX10549	MN - 2010 Misc Work (Swan Engineering)	1,564	1,397	167
XX10557	2010 Misc Customers - T&M Work	770	600	170
XX10561	Viking L13 Electrical Work (Naylor Electric)	88,566	58,686	29,880
XX10598	Farmington, MN - Assist OSI with Plg Install / Removal	7,973	5,229	2,744
	Miscellaneous Revenues and Costs	(22,588)	61,057	(83,645)
	Unallocated Equipment Costs	-	1,117,729	(1,117,729)
	Unallocated Workers' Compensation Insurance Costs	-	(146,840)	146,840
Total		\$ 50,100,885	\$ 36,438,826	\$ 13,662,059

Minnesota Limited, Inc.**Schedule of Uncompleted Contracts**

Job #	Name/Location	Revenue Earned	Construction Costs	Gross Profit (Loss)
Year Ended December 31, 2010				
CP10127	IL - NGPL to IGTC Interconnect Project	\$ 2,669,558	\$ 2,377,107	\$ 292,451
EB10123	MI - Rapid River Station Re-Piping 2010	917,158	874,810	42,348
EN10143	ND - Berthold Trap Modifications	316,839	307,447	9,392
FG10126	Orlando, FL - 6" Lateral Pigging Project	1,216,011	1,683,172	(467,161)
MN10146	Little Falls, MN - Mississippi River HDD	300,795	313,948	(13,153)
NN10141	MN - Eagan 1B Control Valve Replacements	222,028	185,848	36,180
NN10145	NE - Hooper to S Sioux City SP Mods	204,709	214,755	(10,046)
Total		\$ 5,847,098	\$ 5,957,087	\$ (109,989)

Minnesota Limited, Inc.

Schedules of Construction Costs

Years Ended December 31	2010	2009
Equipment rental	\$ 19,417,752	\$ 17,456,717
Labor	30,119,222	28,736,761
Materials and supplies	10,402,489	10,051,002
Other construction costs	1,091,505	1,199,672
Payroll taxes and employee benefits	14,648,188	17,703,489
Safety costs	278,643	475,264
Subcontracts	18,879,499	23,309,525
Total	94,837,298	98,932,430
Unallocated construction equipment costs	2,331,767	6,030,659
Construction Costs	\$ 97,169,065	\$ 104,963,089

See independent auditor's report on supplementary information.

22

CONFIDENTIAL

VEC000948

Appellee's App'x
Vol II, p 1011

Minnesota Limited, Inc.

Schedules of Unallocated Construction Equipment Costs

Years Ended December 31	2010	2009
Depreciation	\$ 1,850,606	\$ 2,177,736
Equipment rental	8,399,833	8,927,273
Fuel and oil	208,820	328,701
Insurance	210,697	189,658
Licenses and permits	403,247	415,802
Miscellaneous	113,714	299,262
Repairs and maintenance	2,099,196	2,715,329
Safety expenses	295,621	295,317
Shop labor	1,264,374	1,397,617
Shop labor burden	487,929	718,808
Shop occupancy	1,126,759	1,087,910
Shop supplies	951,228	1,032,829
Subcontract	10,804	268,451
Total	17,422,828	19,854,693
Allocated to jobs	(15,091,061)	(13,824,034)
Construction Equipment Costs	\$ 2,331,767	\$ 6,030,659

See independent auditor's report on supplementary information.

Minnesota Limited, Inc.

Schedules of General and Administrative Expenses

Years Ended December 31	2010	2009
Management salaries	\$ 800,010	\$ 799,629
Office salaries	2,409,694	1,980,443
Bonuses	1,304,500	1,830,200
Payroll taxes and employee benefits	873,535	689,364
Advertising	51,112	65,061
Bad debt expense	840,333	-
Depreciation	245,682	74,404
Drug testing	57,224	54,238
Education and training	147,484	-
Insurance - general	333,325	310,125
Dues and subscriptions	81,825	70,944
Miscellaneous	417,925	200,225
Office expense and postage	412,739	448,071
Office occupancy	905,816	867,292
Other operating expense	393,571	350,629
Professional fees	774,388	324,988
Purchased services	975,765	690,465
Telephone	194,815	65,738
Travel and entertainment	322,760	349,288
General and Administrative Expenses	\$ 11,542,503	\$ 9,171,104

See independent auditor's report on supplementary information.

TAB 1

Confidential - Submitted as an offer of
settlement and subject to MRE 408

VEC000009

Confidential - Submitted as an offer of settlement and subject to MRE 408

Minnesota Limited, Inc. (MLI)
March 31, 2011

Proposed Alternative Apportionment Alternatives

MI source income - option #1

Calculate the Sales Factor treating Sale of Business Assets as "Sales" included in the Sales Factor As Reported

Sales receipts from MI operations	14756147	
Sale Proceeds of Assets located in MI	<u>0</u>	
Michigan Sales		14756147
Sales receipts from operations	21093137	
Sales Proceeds of Assets	<u>77372495</u>	
Total Sales		98465632
Gross Receipts Apportionment %		0.149861

Part 1: Modified Gross Receipts Tax

Gross Receipts		99029125
Subtractions:		
Inventory Acquired		
Depreciable Assets Acquired	7879	
Materials & Supplies	661915	
Staffing Compensation	0	
Contractors	1206160	
Miscellaneous	0	
Total Subtractions		<u>1875954</u>
Modified Gross Receipts		97153171
Prorated Modified Gross Receipts		<u>97153171</u>
Apportioned Modified Gross Receipts Tax Base		14559460
Tax Rate		0.80%
Gross Receipts Tax before Enrichment		<u>116476</u>

Part 2: Business Income Tax

Business Income		
Operations	375169	
Sales of Tangible Assets	16713948	
Sale of Intangible Assets	<u>37044407</u>	
Total Income		54133524
Additions:		
Taxes on Measured by Net Income	4394	
Tax Imposed under MBT	633733	
Total Additions		<u>638127</u>
Subtractions:		
Dividends & Royalties Received	0	
Miscellaneous	0	
Total Subtractions		<u>0</u>
Business Income Tax Base		54771651
Prorated Business Income Tax Base		<u>54771651</u>
Apportioned Business Income Tax Base		8208128
Tax Rate		4.95%
Business Income Tax before Credits		<u>406302</u>

Part 3: Total Michigan Business Tax

Total Tax before Surcharge & Credits		522778
Annual Surcharge (21.99%)		<u>114959</u>
Total Liability before All Credits		637737
Credits		<u>0</u>
Total Tax		<u>637737</u>

VEC000010

TAB 2

Confidential - Submitted as an offer of
settlement and subject to MRE 408

VEC000011

Confidential - Submitted as an offer of settlement and subject to MRE 408

Minnesota Limited, Inc. (MLI)
March 31, 2011

Proposed Alternative Apportionment Alternatives

MI source income - option #2

Source Operational Gain by Statutory Sales Factor-Excluding Business Assets and Source Gain on Sale of Business Assets by Location of Assets

(Sale proceeds of Assets)

Sales receipts from MI operations	14756147	
Sale Proceeds of Assets located in MI	<u>4264528</u>	
Michigan Sales		19020675

Sales receipts from operations	21093137	
Sales Proceeds of Assets	<u>77372495</u>	
Total Sales		98465632

Gross Receipts Apportionment %

		0.699571	0.055117
		Operations	Asset Sale
Part 1: Modified Gross Receipts Tax			
Gross Receipts	99029125	21656630	77372495
Subtractions:			
Inventory Acquired	0	0	0
Depreciable Assets Acquired	7879	7879	0
Materials & Supplies	661915	661915	0
Staffing Compensation	0	0	0
Contractors	1206160	1206160	0
Miscellaneous	0	0	0
Total Subtractions	<u>1875954</u>	<u>1875954</u>	<u>0</u>
Modified Gross Receipts	97153171	19780676	77372495
Prorated Modified Gross Receipts	<u>97153171</u>	<u>19780676</u>	<u>77372495</u>
Apportioned Modified Gross Receipts Tax Base		13837987	4264528
Tax Rate		<u>0.80%</u>	<u>0.80%</u>
Gross Receipts Tax before Enrichment		110704	34116

		0.699571	0.055117
		Operations	Asset Sale
Part 2: Business Income Tax			
Business Income			
Operations	375169	375169	
Sales of Tangible Assets	16713948		16713948
Sale of Intangible Assets	<u>37044407</u>		<u>37044407</u>
Total Income	54133524		
Additions:			
Taxes on Measured by Net Income	4394	30	4364
Tax Imposed under MBT	633733	4392	629341
Total Additions	<u>638127</u>	<u>4422</u>	<u>633705</u>
Subtractions:			
Dividends & Royalties Received	0		
Miscellaneous	0		
Total Subtractions	<u>0</u>	<u>0</u>	<u>0</u>
Business Income Tax Base	54771651	379591	54392060
Prorated Business Income Tax Base	<u>54771651</u>		
Apportioned Business Income Tax Base		265551	2997919
Tax Rate		<u>4.95%</u>	<u>4.95%</u>
Business Income Tax before Credits		13145	148397

Part 3: Total Michigan Business Tax	
Total Tax before Surcharge & Credits	306362
Annual Surcharge (21.99%)	<u>67369</u>
Total Liability before All Credits	373731
Credits	<u>0</u>
Total Tax	373731

VEC000012

TAB 3

Confidential - Submitted as an offer of
settlement and subject to MRE 408

VEC000013

Confidential - Submitted as an offer of settlement
and subject to MRE 408

SYS NO	DATE	ACQ VALUE	METHOD	LIFE	BONUS/179	DEPR BASIS	PRIOR THRU	PRIOR ACCUM	DEPR THIS	CY DEPR	CURR ACCUM	CODE		
000013	04/24/87	1,240.00	P	MF200	05	00	0.00	1,240.00	11/30/11	1,240.00	0.00	0.00	1,240.00	sm
000018	04/17/87	2,880.81	P	MF200	05	00	0.00	2,880.81	11/30/11	2,880.81	0.00	0.00	2,880.81	sm
000020	05/27/87	1,600.00	P	MF200	05	00	0.00	1,600.00	11/30/11	1,600.00	0.00	0.00	1,600.00	sm
000022	05/27/87	2,750.00	P	MF200	05	00	0.00	2,750.00	11/30/11	2,750.00	0.00	0.00	2,750.00	sm
000035	07/22/87	1,650.00	P	MF200	05	00	0.00	1,650.00	11/30/11	1,650.00	0.00	0.00	1,650.00	sm
000037	07/27/87	875.56	P	MF200	05	00	0.00	875.56	11/30/11	875.56	0.00	0.00	875.56	sm
000049	09/11/87	1,101.22	P	MF200	05	00	0.00	1,101.22	11/30/11	1,101.22	0.00	0.00	1,101.22	sm
000052	10/16/87	5,139.73	P	MF200	05	00	0.00	5,139.73	11/30/11	5,139.73	0.00	0.00	5,139.73	sm
000053	10/21/87	520.00	P	MF200	05	00	0.00	520.00	11/30/11	520.00	0.00	0.00	520.00	sm
000059	11/23/87	550.00	P	MF200	05	00	0.00	550.00	11/30/11	550.00	0.00	0.00	550.00	sm
000060	11/23/87	550.00	P	MF200	05	00	0.00	550.00	11/30/11	550.00	0.00	0.00	550.00	sm
000085	08/18/88	2,883.25	P	MF200	05	00	0.00	2,883.25	11/30/11	2,883.25	0.00	0.00	2,883.25	s
000087	10/24/88	1,959.71	P	MF200	05	00	0.00	1,959.71	11/30/11	1,959.71	0.00	0.00	1,959.71	s
000088	10/24/88	1,959.70	P	MF200	05	00	0.00	1,959.70	11/30/11	1,959.70	0.00	0.00	1,959.70	s
000103	04/25/88	1,600.77	P	MF200	05	00	0.00	1,600.77	11/30/11	1,600.77	0.00	0.00	1,600.77	s
000128	08/31/88	1,236.25	P	MF200	05	00	0.00	1,236.25	11/30/11	1,236.25	0.00	0.00	1,236.25	s
000134	09/12/88	740.50	P	MF200	05	00	0.00	740.50	11/30/11	740.50	0.00	0.00	740.50	s
000135	09/02/88	1,883.10	P	MF200	05	00	0.00	1,883.10	11/30/11	1,883.10	0.00	0.00	1,883.10	s
000137	09/16/88	1,222.25	P	MF200	05	00	0.00	1,222.25	11/30/11	1,222.25	0.00	0.00	1,222.25	s
000139	09/19/88	838.12	P	MF200	05	00	0.00	838.12	11/30/11	838.12	0.00	0.00	838.12	s
000141	09/22/88	635.99	P	MF200	05	00	0.00	635.99	11/30/11	635.99	0.00	0.00	635.99	s
000146	09/16/88	5,458.00	P	MF200	05	00	0.00	5,458.00	11/30/11	5,458.00	0.00	0.00	5,458.00	s
000147	09/16/88	925.00	P	MF200	05	00	0.00	925.00	11/30/11	925.00	0.00	0.00	925.00	s
000149	09/26/88	7,000.00	P	MF200	05	00	0.00	7,000.00	11/30/11	7,000.00	0.00	0.00	7,000.00	s
000150	09/26/88	7,500.00	P	MF200	05	00	0.00	7,500.00	11/30/11	7,500.00	0.00	0.00	7,500.00	s
000157	10/10/88	1,097.10	P	MF200	05	00	0.00	1,097.10	11/30/11	1,097.10	0.00	0.00	1,097.10	s
000158	10/01/88	4,611.00	P	MF200	05	00	0.00	4,611.00	11/30/11	4,611.00	0.00	0.00	4,611.00	s
000159	10/06/88	9,295.70	P	MF200	05	00	0.00	9,295.70	11/30/11	9,295.70	0.00	0.00	9,295.70	s
000160	10/31/88	1,964.18	P	MF200	05	00	0.00	1,964.18	11/30/11	1,964.18	0.00	0.00	1,964.18	s
000161	10/20/88	952.94	P	MF200	05	00	0.00	952.94	11/30/11	952.94	0.00	0.00	952.94	s
000163	10/13/88	613.25	P	MF200	05	00	0.00	613.25	11/30/11	613.25	0.00	0.00	613.25	s
000165	11/14/88	766.34	P	MF200	05	00	0.00	766.34	11/30/11	766.34	0.00	0.00	766.34	s
000166	11/18/88	1,653.60	P	MF200	05	00	0.00	1,653.60	11/30/11	1,653.60	0.00	0.00	1,653.60	s
000167	01/26/89	1,112.47	P	MF200	05	00	0.00	1,112.47	11/30/11	1,112.47	0.00	0.00	1,112.47	s
000168	01/24/89	1,149.04	P	MF200	05	00	0.00	1,149.04	11/30/11	1,149.04	0.00	0.00	1,149.04	s
000169	02/02/89	7,000.00	P	MF200	05	00	0.00	7,000.00	11/30/11	7,000.00	0.00	0.00	7,000.00	s
000171	02/22/89	4,558.00	P	MF200	05	00	0.00	4,558.00	11/30/11	4,558.00	0.00	0.00	4,558.00	s
000183	03/31/89	34,185.00	P	MF200	05	00	0.00	34,185.00	11/30/11	34,185.00	0.00	0.00	34,185.00	s
000185	03/31/89	34,185.00	P	MF200	05	00	0.00	34,185.00	11/30/11	34,185.00	0.00	0.00	34,185.00	s
000186	03/31/89	34,185.00	P	MF200	05	00	0.00	34,185.00	11/30/11	34,185.00	0.00	0.00	34,185.00	s
000187	03/31/89	34,185.00	P	MF200	05	00	0.00	34,185.00	11/30/11	34,185.00	0.00	0.00	34,185.00	s
000188	03/31/89	34,185.00	P	MF200	05	00	0.00	34,185.00	03/31/11	34,185.00	0.00	0.00	34,185.00	ds
000189	09/20/88	32,591.17	P	MF200	05	00	0.00	32,591.17	11/30/11	32,591.17	0.00	0.00	32,591.17	s
000191	09/01/88	31,539.73	P	MF200	05	00	0.00	31,539.73	11/30/11	31,539.73	0.00	0.00	31,539.73	s
000192	11/14/88	2,198.00	P	MF200	05	00	0.00	2,198.00	11/30/11	2,198.00	0.00	0.00	2,198.00	s
000198	04/25/89	2,685.00	P	MF200	05	00	0.00	2,685.00	11/30/11	2,685.00	0.00	0.00	2,685.00	s
000200	05/31/89	11,000.00	P	MF200	05	00	0.00	11,000.00	11/30/11	11,000.00	0.00	0.00	11,000.00	s
000201	05/24/89	2,685.00	P	MF200	05	00	0.00	2,685.00	11/30/11	2,685.00	0.00	0.00	2,685.00	s
000204	09/15/89	1,081.75	P	MF200	05	00	0.00	1,081.75	03/31/11	1,081.75	0.00	0.00	1,081.75	ds
000214	08/25/89	603.88	P	MF200	05	00	0.00	603.88	11/30/11	603.88	0.00	0.00	603.88	s
000217	09/07/89	4,134.00	P	MF200	05	00	0.00	4,134.00	11/30/11	4,134.00	0.00	0.00	4,134.00	s
000222	09/22/89	3,700.46	P	MF200	05	00	0.00	3,700.46	11/30/11	3,700.46	0.00	0.00	3,700.46	s
000223	09/18/89	8,003.00	P	MF200	05	00	0.00	8,003.00	11/30/11	8,003.00	0.00	0.00	8,003.00	s
000225	09/13/89	2,712.97	P	MF200	05	00	0.00	2,712.97	11/30/11	2,712.97	0.00	0.00	2,712.97	s
000230	09/26/89	609.50	P	MF200	05	00	0.00	609.50	11/30/11	609.50	0.00	0.00	609.50	s
000234	09/28/89	809.00	P	MF200	05	00	0.00	809.00	11/30/11	809.00	0.00	0.00	809.00	s
000235	09/27/89	809.00	P	MF200	05	00	0.00	809.00	11/30/11	809.00	0.00	0.00	809.00	s
000236	10/01/89	1,586.74	P	MF200	05	00	0.00	1,586.74	11/30/11	1,586.74	0.00	0.00	1,586.74	s
000247	05/01/89	717.62	P	MF200	05	00	0.00	717.62	11/30/11	717.62	0.00	0.00	717.62	s
000276	04/11/89	10,335.00	P	MF200	05	00	0.00	10,335.00	11/30/11	10,335.00	0.00	0.00	10,335.00	s
000281	04/12/89	895.70	P	MF200	05	00	0.00	895.70	11/30/11	895.70	0.00	0.00	895.70	s
000282	04/12/89	895.70	P	MF200	05	00	0.00	895.70	11/30/11	895.70	0.00	0.00	895.70	s
000283	04/12/89	895.70	P	MF200	05	00	0.00	895.70	11/30/11	895.70	0.00	0.00	895.70	s
000285	04/04/89	4,134.00	P	MF200	05	00	0.00	4,134.00	11/30/11	4,134.00	0.00	0.00	4,134.00	s
000290	04/17/89	4,134.00	P	MF200	05	00	0.00	4,134.00	11/30/11	4,134.00	0.00	0.00	4,134.00	s
000291	04/17/89	4,134.00	P	MF200	05	00	0.00	4,134.00	11/30/11	4,134.00	0.00	0.00	4,134.00	s
000293	04/18/89	468.10	P	MF200	05	00	0.00	468.10	11/30/11	468.10	0.00	0.00	468.10	s
000294	04/18/89	468.10	P	MF200	05	00	0.00	468.10	11/30/11	468.10	0.00	0.00	468.10	s
000295	04/18/89	468.11	P	MF200	05	00	0.00	468.11	11/30/11	468.11	0.00	0.00	468.11	s
000297	04/28/89	950.82	P	MF200	05	00	0.00	950.82	11/30/11	950.82	0.00	0.00	950.82	s
000298	04/28/89	950.82	P	MF200	05	00	0.00	950.82	11/30/11	950.82	0.00	0.00	950.82	s
000303	04/29/89	805.59	P	MF200	05	00	0.00	805.59	11/30/11	805.59	0.00	0.00	805.59	s
000304	05/05/89	7,261.00	P	MF200	05	00	0.00	7,261.00	11/30/11	7,261.00	0.00	0.00	7,261.00	s
000308	05/19/89	7,261.00	P	MF200	05	00	0.00	7,261.00	11/30/11	7,261.00	0.00	0.00	7,261.00	s
000329	05/01/89	14,500.00	P	MF200	05	00	0.00	14,500.00	11/30/11	14,500.00	0.00	0.00	14,500.00	s
000331	05/01/89	14,500.00	P	MF200	05	00	0.00	14,500.00	11/30/11	14,500.00	0.00	0.00	14,500.00	s
000334	03/27/90	1,468.07	P	MF200	05	00	0.00	1,468.07	11/30/11	1,468.07	0.00	0.00	1,468.07	s
000335	03/27/90	1,468.09	P	MF200	05	00	0.00	1,468.09	11/30/11	1,468.09	0.00	0.00	1,468.09	s
000336	03/27/90	1,468.09	P	MF200	05	00	0.00	1,468.09	11/30/11	1,468.09	0.00	0.00	1,468.09	s
000340	05/01/89	33,317.00	P	MF200	05</									

Confidential - Submitted as an offer of settlement and subject to MRE 408

000438	07/15/90	1,325.00	P	MF200	05	00	0.00	1,325.00	11/30/11	1,325.00	0.00	0.00	1,325.00	s
000439	06/15/90	30,663.65	P	MF200	05	00	0.00	30,663.65	11/30/11	30,663.65	0.00	0.00	30,663.65	s
000442	06/07/90	4,654.93	P	MF200	05	00	0.00	4,654.93	11/30/11	4,654.93	0.00	0.00	4,654.93	s
000453	05/15/90	9,746.70	P	MF200	05	00	0.00	9,746.70	11/30/11	9,746.70	0.00	0.00	9,746.70	s
000456	12/15/90	2,388.39	P	MF200	05	00	0.00	2,388.39	11/30/11	2,388.39	0.00	0.00	2,388.39	s
000462	01/15/91	24,000.00	P	MF200	05	00	0.00	24,000.00	11/30/11	24,000.00	0.00	0.00	24,000.00	s
000483	03/15/91	4,770.00	P	MF200	05	00	0.00	4,770.00	11/30/11	4,770.00	0.00	0.00	4,770.00	s
000486	11/13/90	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000495	03/08/91	1,192.50	P	MF200	05	00	0.00	1,192.50	11/30/11	1,192.50	0.00	0.00	1,192.50	s
000496	03/08/91	1,192.50	P	MF200	05	00	0.00	1,192.50	11/30/11	1,192.50	0.00	0.00	1,192.50	s
000499	03/12/91	1,192.50	P	MF200	05	00	0.00	1,192.50	11/30/11	1,192.50	0.00	0.00	1,192.50	s
000500	03/12/91	1,192.50	P	MF200	05	00	0.00	1,192.50	11/30/11	1,192.50	0.00	0.00	1,192.50	s
000501	03/12/91	1,192.50	P	MF200	05	00	0.00	1,192.50	11/30/11	1,192.50	0.00	0.00	1,192.50	s
000506	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000507	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000508	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000509	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000510	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000511	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000512	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000513	03/15/91	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000551	05/15/90	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000552	05/15/90	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000553	05/15/90	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
000583	05/03/91	4,145.73	P	MF200	05	00	0.00	4,145.73	11/30/11	4,145.73	0.00	0.00	4,145.73	s
000594	07/01/91	4,302.60	P	MF200	05	00	0.00	4,302.60	11/30/11	4,302.60	0.00	0.00	4,302.60	s
000599	09/04/91	4,792.50	P	MF200	05	00	0.00	4,792.50	11/30/11	4,792.50	0.00	0.00	4,792.50	s
000602	11/18/91	90,601.32	P	MF200	03	00	0.00	90,601.32	11/30/11	90,601.32	0.00	0.00	90,601.32	s
000604	02/07/92	2,130.00	P	MF200	05	00	0.00	2,130.00	11/30/11	2,130.00	0.00	0.00	2,130.00	s
000605	02/20/92	4,047.00	P	MF200	05	00	0.00	4,047.00	11/30/11	4,047.00	0.00	0.00	4,047.00	s
000607	02/21/92	558.06	P	MF200	05	00	0.00	558.06	11/30/11	558.06	0.00	0.00	558.06	s
000608	03/13/92	4,686.00	P	MF200	05	00	0.00	4,686.00	11/30/11	4,686.00	0.00	0.00	4,686.00	s
000621	03/26/92	6,517.80	P	MF200	05	00	0.00	6,517.80	11/30/11	6,517.80	0.00	0.00	6,517.80	s
000643	04/22/91	580.24	P	MF200	05	00	0.00	580.24	11/30/11	580.24	0.00	0.00	580.24	s
000677	05/30/91	40,386.00	P	MF200	05	00	0.00	40,386.00	11/30/11	40,386.00	0.00	0.00	40,386.00	s
000678	06/07/91	1,264.05	P	MF200	05	00	0.00	1,264.05	11/30/11	1,264.05	0.00	0.00	1,264.05	s
000679	06/07/91	1,264.05	P	MF200	05	00	0.00	1,264.05	11/30/11	1,264.05	0.00	0.00	1,264.05	s
000680	06/07/91	1,264.05	P	MF200	05	00	0.00	1,264.05	11/30/11	1,264.05	0.00	0.00	1,264.05	s
000681	06/07/91	1,264.05	P	MF200	05	00	0.00	1,264.05	11/30/11	1,264.05	0.00	0.00	1,264.05	s
000698	06/27/91	2,538.70	P	MF200	05	00	0.00	2,538.70	11/30/11	2,538.70	0.00	0.00	2,538.70	s
000699	06/27/91	2,395.00	P	MF200	05	00	0.00	2,395.00	11/30/11	2,395.00	0.00	0.00	2,395.00	s
000702	07/03/91	1,830.26	P	MF200	05	00	0.00	1,830.26	11/30/11	1,830.26	0.00	0.00	1,830.26	s
000703	06/25/91	583.00	P	MF200	05	00	0.00	583.00	11/30/11	583.00	0.00	0.00	583.00	s
000704	06/25/91	583.00	P	MF200	05	00	0.00	583.00	11/30/11	583.00	0.00	0.00	583.00	s
000705	06/25/91	583.00	P	MF200	05	00	0.00	583.00	11/30/11	583.00	0.00	0.00	583.00	s
000706	06/30/91	664.62	P	MF200	05	00	0.00	664.62	11/30/11	664.62	0.00	0.00	664.62	s
000707	06/30/91	664.62	P	MF200	05	00	0.00	664.62	11/30/11	664.62	0.00	0.00	664.62	s
000708	06/30/91	583.00	P	MF200	05	00	0.00	583.00	11/30/11	583.00	0.00	0.00	583.00	s
000709	06/30/91	583.00	P	MF200	05	00	0.00	583.00	11/30/11	583.00	0.00	0.00	583.00	s
000710	06/30/91	583.00	P	MF200	05	00	0.00	583.00	11/30/11	583.00	0.00	0.00	583.00	s
000711	06/30/91	712.32	P	MF200	05	00	0.00	712.32	11/30/11	712.32	0.00	0.00	712.32	s
000712	06/30/91	712.32	P	MF200	05	00	0.00	712.32	11/30/11	712.32	0.00	0.00	712.32	s
000713	06/30/91	712.32	P	MF200	05	00	0.00	712.32	11/30/11	712.32	0.00	0.00	712.32	s
000718	07/31/91	950.87	P	MF200	05	00	0.00	950.87	11/30/11	950.87	0.00	0.00	950.87	s
000719	07/31/91	950.87	P	MF200	05	00	0.00	950.87	11/30/11	950.87	0.00	0.00	950.87	s
000722	08/20/91	657.20	P	MF200	05	00	0.00	657.20	11/30/11	657.20	0.00	0.00	657.20	s
000723	08/20/91	657.20	P	MF200	05	00	0.00	657.20	11/30/11	657.20	0.00	0.00	657.20	s
000725	08/29/91	1,054.35	P	MF200	05	00	0.00	1,054.35	11/30/11	1,054.35	0.00	0.00	1,054.35	s
000727	09/19/91	3,112.13	P	MF200	05	00	0.00	3,112.13	11/30/11	3,112.13	0.00	0.00	3,112.13	s
000728	09/20/91	2,730.00	P	MF200	05	00	0.00	2,730.00	11/30/11	2,730.00	0.00	0.00	2,730.00	s
000730	09/23/91	2,730.00	P	MF200	05	00	0.00	2,730.00	11/30/11	2,730.00	0.00	0.00	2,730.00	s
000731	10/01/91	2,343.00	P	MF200	05	00	0.00	2,343.00	11/30/11	2,343.00	0.00	0.00	2,343.00	s
000734	10/15/91	811.75	P	MF200	05	00	0.00	811.75	11/30/11	811.75	0.00	0.00	811.75	s
000735	10/15/91	811.75	P	MF200	05	00	0.00	811.75	11/30/11	811.75	0.00	0.00	811.75	s
000739	09/18/91	572.43	P	MF200	05	00	0.00	572.43	11/30/11	572.43	0.00	0.00	572.43	s
000740	09/18/91	572.44	P	MF200	05	00	0.00	572.44	11/30/11	572.44	0.00	0.00	572.44	s
000741	09/18/91	572.44	P	MF200	05	00	0.00	572.44	11/30/11	572.44	0.00	0.00	572.44	s
000742	09/18/91	572.44	P	MF200	05	00	0.00	572.44	11/30/11	572.44	0.00	0.00	572.44	s
000743	10/31/91	532.50	P	MF200	05	00	0.00	532.50	11/30/11	532.50	0.00	0.00	532.50	s
000744	10/15/91	1,400.48	P	MF200	05	00	0.00	1,400.48	11/30/11	1,400.48	0.00	0.00	1,400.48	s
000745	10/22/91	2,495.00	P	MF200	05	00	0.00	2,495.00	11/30/11	2,495.00	0.00	0.00	2,495.00	s
000746	11/16/91	637.94	P	MF200	05	00	0.00	637.94	11/30/11	637.94	0.00	0.00	637.94	s
000747	10/15/91	2,910.65	P	MF200	05	00	0.00	2,910.65	11/30/11	2,910.65	0.00	0.00	2,910.65	s
000748	11/19/91	590.43	P	MF200	05	00	0.00	590.43	11/30/11	590.43	0.00	0.00	590.43	s
000749	11/19/91	590.43	P	MF200	05	00	0.00	590.43	11/30/11	590.43	0.00	0.00	590.43	s
000750	11/27/91	23,630.22	P	MF200	05	00	0.00	23,630.22	11/30/11	23,630.22	0.00	0.00	23,630.22	s
000751	11/27/91	23,630.22	P	MF200	05	00	0.00	23,630.22	11/30/11	23,630.22	0.00	0.00	23,630.22	s
000752	11/27/91	23,630.22	P	MF200	05	00	0.00	23,630.22	11/30/11	23,630.22	0.00	0.00	23,630.22	s
000753	11/27/91	23,630.22	P	MF200	05	00	0.00	23,630.22	11/30/11	23,630.22	0.00	0.00	23,630.22	s
000754	10/30/91	798.75	P	MF200	05	00	0.00	798.75	11/30/11	798.75	0.00	0.00	798.75	s
000755	11/27/91	11,709.67	P	MF200	05	00	0.00	11,709.67	11/30/11	11,709.67	0.00	0.00	11,709.67	s
000756	11/27/91	11,709.67	P	MF200	05	00	0.00	11,709.67	11/30/11	11,709.67	0.00	0.00		

Confidential - Submitted as an offer of settlement
and subject to MRE 408

000774	05/03/91	43,000.00	P	MF200	05	00	0.00	43,000.00	11/30/11	43,000.00	0.00	0.00	43,000.00	s
000775	08/04/91	514.99	P	MF200	05	00	0.00	514.99	11/30/11	514.99	0.00	0.00	514.99	s
000776	03/10/92	1,491.00	P	MF200	05	00	0.00	1,491.00	11/30/11	1,491.00	0.00	0.00	1,491.00	s
000777	03/05/92	3,750.00	P	MF200	05	00	0.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	s
000778	03/31/92	1,065.00	P	MF200	05	00	0.00	1,065.00	11/30/11	1,065.00	0.00	0.00	1,065.00	s
000779	03/31/92	1,383.44	P	MF200	05	00	0.00	1,383.44	11/30/11	1,383.44	0.00	0.00	1,383.44	s
000780	02/07/92	2,236.50	P	MF200	05	00	0.00	2,236.50	11/30/11	2,236.50	0.00	0.00	2,236.50	s
000781	02/24/92	924.42	P	MF200	05	00	0.00	924.42	11/30/11	924.42	0.00	0.00	924.42	s
000782	03/20/92	5,154.60	P	MF200	05	00	0.00	5,154.60	11/30/11	5,154.60	0.00	0.00	5,154.60	s
000783	01/15/92	1,437.75	P	MF200	05	00	0.00	1,437.75	11/30/11	1,437.75	0.00	0.00	1,437.75	s
000784	01/15/92	1,760.98	P	MF200	05	00	0.00	1,760.98	11/30/11	1,760.98	0.00	0.00	1,760.98	s
000785	03/31/92	28,145.00	P	MF200	05	00	0.00	28,145.00	11/30/11	28,145.00	0.00	0.00	28,145.00	s
000787	03/30/92	1,597.50	P	MF200	05	00	0.00	1,597.50	11/30/11	1,597.50	0.00	0.00	1,597.50	s
000788	03/25/92	1,401.54	P	MF200	05	00	0.00	1,401.54	11/30/11	1,401.54	0.00	0.00	1,401.54	s
000789	03/25/92	1,401.54	P	MF200	05	00	0.00	1,401.54	11/30/11	1,401.54	0.00	0.00	1,401.54	s
000790	03/19/92	15,975.00	P	MF200	05	00	0.00	15,975.00	11/30/11	15,975.00	0.00	0.00	15,975.00	s
000791	03/05/92	604.92	P	MF200	05	00	0.00	604.92	11/30/11	604.92	0.00	0.00	604.92	s
000792	03/31/92	3,527.71	P	MF200	05	00	0.00	3,527.71	11/30/11	3,527.71	0.00	0.00	3,527.71	s
000793	03/31/92	1,145.30	P	MF200	05	00	0.00	1,145.30	11/30/11	1,145.30	0.00	0.00	1,145.30	s
000794	03/20/92	7,449.68	P	MF200	05	00	0.00	7,449.68	11/30/11	7,449.68	0.00	0.00	7,449.68	s
000795	03/17/92	1,596.40	P	MF200	05	00	0.00	1,596.40	11/30/11	1,596.40	0.00	0.00	1,596.40	s
000796	03/17/92	1,596.40	P	MF200	05	00	0.00	1,596.40	11/30/11	1,596.40	0.00	0.00	1,596.40	s
000797	03/17/92	1,596.40	P	MF200	05	00	0.00	1,596.40	11/30/11	1,596.40	0.00	0.00	1,596.40	s
000798	03/17/92	1,596.40	P	MF200	05	00	0.00	1,596.40	11/30/11	1,596.40	0.00	0.00	1,596.40	s
000799	03/31/92	3,255.71	P	MF200	05	00	0.00	3,255.71	11/30/11	3,255.71	0.00	0.00	3,255.71	s
000800	03/14/92	2,106.31	P	MF200	05	00	0.00	2,106.31	11/30/11	2,106.31	0.00	0.00	2,106.31	s
000801	03/14/92	2,336.88	P	MF200	05	00	0.00	2,336.88	11/30/11	2,336.88	0.00	0.00	2,336.88	s
000802	03/14/92	1,944.80	P	MF200	05	00	0.00	1,944.80	11/30/11	1,944.80	0.00	0.00	1,944.80	s
000803	03/31/92	2,115.47	P	MF200	05	00	0.00	2,115.47	11/30/11	2,115.47	0.00	0.00	2,115.47	s
000804	02/10/92	2,495.00	P	MF200	05	00	0.00	2,495.00	11/30/11	2,495.00	0.00	0.00	2,495.00	s
000805	05/15/91	4,112.80	P	MF200	05	00	0.00	4,112.80	11/30/11	4,112.80	0.00	0.00	4,112.80	s
000806	05/15/91	2,671.20	P	MF200	05	00	0.00	2,671.20	11/30/11	2,671.20	0.00	0.00	2,671.20	s
000807	05/24/91	978.38	P	MF200	05	00	0.00	978.38	11/30/11	978.38	0.00	0.00	978.38	s
000808	05/24/91	713.38	P	MF200	05	00	0.00	713.38	11/30/11	713.38	0.00	0.00	713.38	s
000809	07/30/91	4,332.42	P	MF200	05	00	0.00	4,332.42	11/30/11	4,332.42	0.00	0.00	4,332.42	s
000810	10/30/91	3,413.33	P	MF200	05	00	0.00	3,413.33	11/30/11	3,413.33	0.00	0.00	3,413.33	s
000811	10/30/91	7,087.57	P	MF200	05	00	0.00	7,087.57	11/30/11	7,087.57	0.00	0.00	7,087.57	s
000812	03/04/92	830.96	P	MF200	05	00	0.00	830.96	11/30/11	830.96	0.00	0.00	830.96	s
000813	03/25/92	521.85	P	MF200	05	00	0.00	521.85	11/30/11	521.85	0.00	0.00	521.85	s
000814	03/30/92	1,403.67	P	MF200	05	00	0.00	1,403.67	11/30/11	1,403.67	0.00	0.00	1,403.67	s
000815	03/30/92	1,403.67	P	MF200	05	00	0.00	1,403.67	11/30/11	1,403.67	0.00	0.00	1,403.67	s
000819	05/27/92	4,500.00	P	MT200	05	00	0.00	4,500.00	11/30/11	4,500.00	0.00	0.00	4,500.00	sf
000820	05/27/92	20,427.77	P	MT200	05	00	0.00	20,427.77	11/30/11	20,427.77	0.00	0.00	20,427.77	sf
000821	07/15/92	1,277.99	P	MT200	05	00	0.00	1,277.99	11/30/11	1,277.99	0.00	0.00	1,277.99	sf
000822	07/31/92	1,766.84	P	MT200	05	00	0.00	1,766.84	11/30/11	1,766.84	0.00	0.00	1,766.84	sf
000823	07/31/92	2,396.25	P	MT200	05	00	0.00	2,396.25	11/30/11	2,396.25	0.00	0.00	2,396.25	sf
000824	07/31/92	25,506.75	P	MT200	05	00	0.00	25,506.75	11/30/11	25,506.75	0.00	0.00	25,506.75	sf
000825	08/10/92	2,428.15	P	MT200	05	00	0.00	2,428.15	11/30/11	2,428.15	0.00	0.00	2,428.15	sf
000828	10/12/92	2,495.00	P	MT200	05	00	0.00	2,495.00	11/30/11	2,495.00	0.00	0.00	2,495.00	sf
000829	10/14/92	2,839.29	P	MT200	05	00	0.00	2,839.29	11/30/11	2,839.29	0.00	0.00	2,839.29	sf
000830	10/14/92	2,126.85	P	MT200	05	00	0.00	2,126.85	11/30/11	2,126.85	0.00	0.00	2,126.85	sf
000831	10/14/92	2,126.85	P	MT200	05	00	0.00	2,126.85	11/30/11	2,126.85	0.00	0.00	2,126.85	sf
000832	10/28/92	1,230.00	P	MT200	05	00	0.00	1,230.00	11/30/11	1,230.00	0.00	0.00	1,230.00	sf
000833	10/28/92	1,250.00	P	MT200	05	00	0.00	1,250.00	11/30/11	1,250.00	0.00	0.00	1,250.00	sf
000834	10/28/92	4,542.90	P	MT200	05	00	0.00	4,542.90	11/30/11	4,542.90	0.00	0.00	4,542.90	sf
000835	10/28/92	1,595.50	P	MT200	05	00	0.00	1,595.50	11/30/11	1,595.50	0.00	0.00	1,595.50	sf
000836	12/29/92	7,369.80	P	MT200	05	00	0.00	7,369.80	11/30/11	7,369.80	0.00	0.00	7,369.80	sf
000840	02/26/93	36,500.00	P	MT200	05	00	0.00	36,500.00	11/30/11	36,500.00	0.00	0.00	36,500.00	sf
000841	03/17/93	75,000.00	P	MT200	05	00	0.00	75,000.00	11/30/11	75,000.00	0.00	0.00	75,000.00	sf
000842	03/30/93	2,544.17	P	MT200	05	00	0.00	2,544.17	11/30/11	2,544.17	0.00	0.00	2,544.17	sf
000843	03/30/93	2,544.17	P	MT200	05	00	0.00	2,544.17	11/30/11	2,544.17	0.00	0.00	2,544.17	sf
000844	03/30/93	2,544.16	P	MT200	05	00	0.00	2,544.16	11/30/11	2,544.16	0.00	0.00	2,544.16	sf
000845	03/30/93	4,539.68	P	MT200	05	00	0.00	4,539.68	11/30/11	4,539.68	0.00	0.00	4,539.68	sf
000846	03/31/93	1,312.50	P	MT200	05	00	0.00	1,312.50	11/30/11	1,312.50	0.00	0.00	1,312.50	sf
000847	03/31/93	1,312.50	P	MT200	05	00	0.00	1,312.50	11/30/11	1,312.50	0.00	0.00	1,312.50	sf
000848	03/31/93	1,312.50	P	MT200	05	00	0.00	1,312.50	11/30/11	1,312.50	0.00	0.00	1,312.50	sf
000850	03/22/93	1,155.00	P	MT200	05	00	0.00	1,155.00	11/30/11	1,155.00	0.00	0.00	1,155.00	sf
000851	05/13/92	6,749.32	P	MT200	05	00	0.00	6,749.32	11/30/11	6,749.32	0.00	0.00	6,749.32	sf
000853	05/21/92	6,749.32	P	MT200	05	00	0.00	6,749.32	11/30/11	6,749.32	0.00	0.00	6,749.32	sf
000854	05/21/92	6,749.28	P	MT200	05	00	0.00	6,749.28	11/30/11	6,749.28	0.00	0.00	6,749.28	sf
000856	06/12/92	6,749.28	P	MT200	05	00	0.00	6,749.28	11/30/11	6,749.28	0.00	0.00	6,749.28	sf
000857	06/12/92	2,000.00	P	MT200	05									

Confidential - Submitted as an offer of settlement
and subject to MRE 408

000919	08/16/94	69,708.83	P	MF150	05 00	0.00	69,708.83	11/30/11	69,708.83	0.00	0.00	69,708.83	s
000921	11/18/94	2,500.00	P	MF150	05 00	0.00	2,500.00	11/30/11	2,500.00	0.00	0.00	2,500.00	s
000925	08/04/94	70,290.00	P	MF150	06 00	0.00	70,290.00	11/30/11	70,290.00	0.00	0.00	70,290.00	s
000926	09/03/94	1,461.98	P	MF150	06 00	0.00	1,461.98	11/30/11	1,461.98	0.00	0.00	1,461.98	s
000928	10/24/94	16,507.50	P	MF150	06 00	0.00	16,507.50	11/30/11	16,507.50	0.00	0.00	16,507.50	s
000929	10/27/94	44,421.00	P	MF150	06 00	0.00	44,421.00	11/30/11	44,421.00	0.00	0.00	44,421.00	s
000930	11/04/94	31,417.50	P	MF150	06 00	0.00	31,417.50	11/30/11	31,417.50	0.00	0.00	31,417.50	s
000932	07/15/94	73,234.73	P	MF150	06 00	0.00	73,234.73	11/30/11	73,234.73	0.00	0.00	73,234.73	s
000933	07/15/94	49,176.38	P	MF150	06 00	0.00	49,176.38	11/30/11	49,176.38	0.00	0.00	49,176.38	s
000937	05/01/95	2,000.00	P	MF150	05 00	0.00	2,000.00	11/30/11	2,000.00	0.00	0.00	2,000.00	s
000938	05/01/95	4,500.00	P	MF150	05 00	0.00	4,500.00	11/30/11	4,500.00	0.00	0.00	4,500.00	s
000939	05/01/95	4,500.00	P	MF150	05 00	0.00	4,500.00	11/30/11	4,500.00	0.00	0.00	4,500.00	s
000940	05/15/95	75,179.98	P	MF150	05 00	0.00	75,179.98	11/30/11	75,179.98	0.00	0.00	75,179.98	s
000944	03/12/96	59,000.00	P	MF150	04 00	0.00	59,000.00	11/30/11	59,000.00	0.00	0.00	59,000.00	s
000946	05/18/95	4,500.00	P	MF150	06 00	0.00	4,500.00	11/30/11	4,500.00	0.00	0.00	4,500.00	s
000947	05/18/95	4,500.00	P	MF150	06 00	0.00	4,500.00	11/30/11	4,500.00	0.00	0.00	4,500.00	s
000948	05/23/95	1,418.00	P	MF150	06 00	0.00	1,418.00	11/30/11	1,418.00	0.00	0.00	1,418.00	s
000951	05/23/95	21,000.00	P	MF150	06 00	0.00	21,000.00	11/30/11	21,000.00	0.00	0.00	21,000.00	s
000953	07/21/95	1,384.49	P	MF150	06 00	0.00	1,384.49	11/30/11	1,384.49	0.00	0.00	1,384.49	s
000954	05/25/95	2,763.68	P	MF150	06 00	0.00	2,763.68	11/30/11	2,763.68	0.00	0.00	2,763.68	s
000955	08/25/95	2,763.67	P	MF150	06 00	0.00	2,763.67	11/30/11	2,763.67	0.00	0.00	2,763.67	s
000957	09/08/95	1,341.40	P	MF150	06 00	0.00	1,341.40	11/30/11	1,341.40	0.00	0.00	1,341.40	s
000958	09/08/95	1,341.40	P	MF150	06 00	0.00	1,341.40	11/30/11	1,341.40	0.00	0.00	1,341.40	s
000959	06/30/95	254,535.00	P	MF150	06 00	0.00	254,535.00	11/30/11	254,535.00	0.00	0.00	254,535.00	s
000960	09/13/95	722.25	P	MF150	06 00	0.00	722.25	11/30/11	722.25	0.00	0.00	722.25	s
000961	09/13/95	722.25	P	MF150	06 00	0.00	722.25	11/30/11	722.25	0.00	0.00	722.25	s
000963	03/14/96	86,166.00	P	MF150	06 00	0.00	86,166.00	11/30/11	86,166.00	0.00	0.00	86,166.00	s
000964	09/12/95	1,033.05	P	MF150	06 00	0.00	1,033.05	11/30/11	1,033.05	0.00	0.00	1,033.05	s
000965	09/12/95	1,033.05	P	MF150	06 00	0.00	1,033.05	11/30/11	1,033.05	0.00	0.00	1,033.05	s
000966	09/12/95	1,033.05	P	MF150	06 00	0.00	1,033.05	11/30/11	1,033.05	0.00	0.00	1,033.05	s
000967	09/12/95	1,033.05	P	MF150	06 00	0.00	1,033.05	11/30/11	1,033.05	0.00	0.00	1,033.05	s
000970	04/24/96	105,477.84	P	MF150	05 00	0.00	105,477.84	11/30/11	105,477.84	0.00	0.00	105,477.84	s
000971	05/09/96	7,107.13	P	MF150	05 00	0.00	7,107.13	11/30/11	7,107.13	0.00	0.00	7,107.13	s
000973	04/01/96	180,075.53	P	MF150	06 00	0.00	180,075.53	11/30/11	180,075.53	0.00	0.00	180,075.53	s
000974	04/22/96	27,113.83	P	MF150	06 00	0.00	27,113.83	11/30/11	27,113.83	0.00	0.00	27,113.83	s
000975	05/18/96	5,844.72	P	MF150	06 00	0.00	5,844.72	11/30/11	5,844.72	0.00	0.00	5,844.72	s
000976	06/12/96	907.29	P	MF150	06 00	0.00	907.29	11/30/11	907.29	0.00	0.00	907.29	s
000977	06/03/96	1,286.63	P	MF150	06 00	0.00	1,286.63	11/30/11	1,286.63	0.00	0.00	1,286.63	s
000980	06/11/96	1,873.34	P	MF150	06 00	0.00	1,873.34	11/30/11	1,873.34	0.00	0.00	1,873.34	s
000981	06/11/96	1,873.34	P	MF150	06 00	0.00	1,873.34	11/30/11	1,873.34	0.00	0.00	1,873.34	s
000982	06/24/96	31,405.79	P	MF150	06 00	0.00	31,405.79	11/30/11	31,405.79	0.00	0.00	31,405.79	s
000983	06/12/96	5,500.00	P	MF150	06 00	0.00	5,500.00	11/30/11	5,500.00	0.00	0.00	5,500.00	s
000984	07/09/96	7,295.25	P	MF150	06 00	0.00	7,295.25	11/30/11	7,295.25	0.00	0.00	7,295.25	s
000985	08/02/96	5,154.18	P	MF150	06 00	0.00	5,154.18	11/30/11	5,154.18	0.00	0.00	5,154.18	s
000994	07/16/96	5,500.00	P	MF150	06 00	0.00	5,500.00	11/30/11	5,500.00	0.00	0.00	5,500.00	s
001000	07/16/96	7,500.00	P	MF150	06 00	0.00	7,500.00	11/30/11	7,500.00	0.00	0.00	7,500.00	s
001001	07/16/96	1,750.00	P	MF150	06 00	0.00	1,750.00	11/30/11	1,750.00	0.00	0.00	1,750.00	s
001002	07/16/96	9,000.00	P	MF150	06 00	0.00	9,000.00	11/30/11	9,000.00	0.00	0.00	9,000.00	s
001004	09/11/96	64,850.84	P	MF150	06 00	0.00	64,850.84	11/30/11	64,850.84	0.00	0.00	64,850.84	s
001005	09/06/96	3,800.00	P	MF150	06 00	0.00	3,800.00	11/30/11	3,800.00	0.00	0.00	3,800.00	s
001006	09/06/96	3,800.00	P	MF150	06 00	0.00	3,800.00	11/30/11	3,800.00	0.00	0.00	3,800.00	s
001007	09/10/96	3,800.00	P	MF150	06 00	0.00	3,800.00	11/30/11	3,800.00	0.00	0.00	3,800.00	s
001008	09/10/96	3,800.00	P	MF150	06 00	0.00	3,800.00	11/30/11	3,800.00	0.00	0.00	3,800.00	s
001011	09/10/96	7,500.00	P	MF150	06 00	0.00	7,500.00	11/30/11	7,500.00	0.00	0.00	7,500.00	s
001013	09/10/96	7,500.00	P	MF150	06 00	0.00	7,500.00	11/30/11	7,500.00	0.00	0.00	7,500.00	s
001014	07/26/96	2,500.00	P	MF150	06 00	0.00	2,500.00	11/30/11	2,500.00	0.00	0.00	2,500.00	s
001015	07/12/96	5,021.48	P	MF150	06 00	0.00	5,021.48	11/30/11	5,021.48	0.00	0.00	5,021.48	s
001016	07/16/96	2,196.43	P	MF150	06 00	0.00	2,196.43	11/30/11	2,196.43	0.00	0.00	2,196.43	s
001019	11/12/96	64,421.19	P	MF150	05 00	0.00	64,421.19	11/30/11	64,421.19	0.00	0.00	64,421.19	s
001025	11/24/96	4,047.00	P	MF150	06 00	0.00	4,047.00	11/30/11	4,047.00	0.00	0.00	4,047.00	s
001026	11/01/96	3,035.25	P	MF150	06 00	0.00	3,035.25	11/30/11	3,035.25	0.00	0.00	3,035.25	s
001027	11/21/96	3,977.50	P	MF150	06 00	0.00	3,977.50	11/30/11	3,977.50	0.00	0.00	3,977.50	s
001028	11/21/96	3,977.50	P	MF150	06 00	0.00	3,977.50	11/30/11	3,977.50	0.00	0.00	3,977.50	s
001031	05/05/97	68,010.90	P	MF150	06 00	0.00	68,010.90	11/30/11	68,010.90	0.00	0.00	68,010.90	s
001033	05/05/97	36,009.78	P	MF150	06 00	0.00	36,009.78	11/30/11	36,009.78	0.00	0.00	36,009.78	s
001035	05/05/97	42,605.33	P	MF150	06 00	0.00	42,605.33	11/30/11	42,605.33	0.00	0.00	42,605.33	s
001036	09/09/97	23,492.84	P	MF150	06 00	0.00	23,492.84	11/30/11	23,492.84	0.00	0.00	23,492.84	s
001037	05/28/97	124,204.50	P	MF150	06 00	0.00	124,204.50	11/30/11	124,204.50	0.00	0.00	124,204.50	s
001038	05/02/97	31,891.43	P	MF150	06 00	0.00	31,891.43	11/30/11	31,891.43	0.00	0.00	31,891.43	s
001040	06/06/97	55,000.00	P	MF150	06 00	0.00	55,000.00	11/30/11	55,000.00	0.00	0.00	55,000.00	s
001041	06/06/97	34,000.00	P	MF150	06 00	0.00	34,000.00	11/30/11	34,000.00	0.00	0.00	34,000.00	s
001042	06/06/97	25,000.00	P	MF150	06 00	0.00	25,000.00	11/30/11	25,000.00	0.00	0.00	25,000.00	s
001043	06/06/97	6,500.00	P	MF150	06 00	0.00	6,500.00	11/30/11	6,500.00	0.00	0.00	6,500.00	s
001044	06/06/97	6,500.00	P	MF150	06 00	0.00	6,500.00	11/30/11	6,500.00	0.00	0.00	6,500.00	s
001046	07/08/97	18,655.00	P	MF150	05 00	0.00	18,655.00	11/30/11	18,655.00	0.00	0.00	18,655.00	s
001047	07/08/97	18,654.75	P	MF150	05 00	0.00	18,654.75	11/30/11	18,654.75	0.00	0.00	18,654.75	s
001048	07/10/97	5,768.75	P	MF150	05 00	0.00	5,768.75	11/30/11	5,768.75	0.00	0.00	5,768.75	s
001050	07/28/97	34,326.12	P	MF150	05 00	0.00	34,326.12	11/30/11	34,326.12	0.00	0.00	34,326.12	s
001051	07/25/97	11,500.00	P	MF150	05 00	0.00	11,500.00	11/30/11	11,500.00	0.00	0.00	11,500.00	s
001053	08/01/97	5,750.00	P	MF150	05 00	0.00	5,750.00	11/30/11	5,750.00	0.00	0.00	5,750.00	s
001057	08/06/97	19,500.00	P	MF150	05 00	0.00	19,500.00	11/30/1					

Confidential - Submitted as an offer of settlement and subject to MRE 408

001077	12/18/97	1,132.43	P	MF150	06	00	0.00	1,132.43	11/30/11	1,132.43	0.00	0.00	1,132.43	s
001078	12/18/97	1,132.42	P	MF150	06	00	0.00	1,132.42	11/30/11	1,132.42	0.00	0.00	1,132.42	s
001079	01/20/98	100,765.00	P	MF150	06	00	0.00	100,765.00	11/30/11	100,765.00	0.00	0.00	100,765.00	s
001080	01/20/98	205,467.00	P	MF150	06	00	0.00	205,467.00	11/30/11	205,467.00	0.00	0.00	205,467.00	s
001081	01/20/98	230,296.00	P	MF150	06	00	0.00	230,296.00	11/30/11	230,296.00	0.00	0.00	230,296.00	s
001082	01/20/98	230,296.00	P	MF150	06	00	0.00	230,296.00	11/30/11	230,296.00	0.00	0.00	230,296.00	s
001085	10/21/97	4,500.00	P	MF150	05	00	0.00	4,500.00	11/30/11	4,500.00	0.00	0.00	4,500.00	s
001086	12/09/97	3,500.00	P	MF150	05	00	0.00	3,500.00	11/30/11	3,500.00	0.00	0.00	3,500.00	s
001087	12/09/97	3,500.00	P	MF150	05	00	0.00	3,500.00	11/30/11	3,500.00	0.00	0.00	3,500.00	s
001088	12/09/97	3,500.00	P	MF150	05	00	0.00	3,500.00	11/30/11	3,500.00	0.00	0.00	3,500.00	s
001089	12/09/97	3,500.00	P	MF150	05	00	0.00	3,500.00	11/30/11	3,500.00	0.00	0.00	3,500.00	s
001090	01/29/98	5,220.75	P	MF150	05	00	0.00	5,220.75	11/30/11	5,220.75	0.00	0.00	5,220.75	s
001091	01/22/98	3,843.50	P	MF150	06	00	0.00	3,843.50	11/30/11	3,843.50	0.00	0.00	3,843.50	s
001093	06/10/97	9,372.00	P	MF150	06	00	0.00	9,372.00	11/30/11	9,372.00	0.00	0.00	9,372.00	s
001094	07/29/97	3,173.06	P	MF150	06	00	0.00	3,173.06	11/30/11	3,173.06	0.00	0.00	3,173.06	s
001095	07/29/97	3,173.07	P	MF150	06	00	0.00	3,173.07	11/30/11	3,173.07	0.00	0.00	3,173.07	s
001096	07/29/97	3,173.06	P	MF150	06	00	0.00	3,173.06	11/30/11	3,173.06	0.00	0.00	3,173.06	s
001097	07/29/97	3,173.06	P	MF150	06	00	0.00	3,173.06	11/30/11	3,173.06	0.00	0.00	3,173.06	s
001098	07/29/97	3,173.06	P	MF150	06	00	0.00	3,173.06	11/30/11	3,173.06	0.00	0.00	3,173.06	s
001099	07/29/97	0.00	P	MF150	06	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001100	03/01/98	30,000.00	P	MF150	06	00	0.00	30,000.00	11/30/11	30,000.00	0.00	0.00	30,000.00	s
001104	04/21/98	79,500.00	P	MF150	06	00	0.00	79,500.00	11/30/11	79,500.00	0.00	0.00	79,500.00	s
001105	05/01/98	0.00	P	MF150	06	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001106	05/01/98	0.00	P	MF150	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001107	05/01/98	0.00	P	MF150	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001108	05/01/98	0.00	P	MF150	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001110	05/21/98	26,353.28	P	MF150	05	00	0.00	26,353.28	11/30/11	26,353.28	0.00	0.00	26,353.28	s
001111	05/01/98	7,188.75	P	MF150	06	00	0.00	7,188.75	11/30/11	7,188.75	0.00	0.00	7,188.75	s
001112	05/01/98	12,722.84	P	MF150	06	00	0.00	12,722.84	11/30/11	12,722.84	0.00	0.00	12,722.84	s
001113	05/06/98	3,140.17	P	MF150	06	00	0.00	3,140.17	11/30/11	3,140.17	0.00	0.00	3,140.17	s
001114	05/06/98	795.00	P	MF150	06	00	0.00	795.00	11/30/11	795.00	0.00	0.00	795.00	s
001115	05/01/98	6,390.00	P	MF150	06	00	0.00	6,390.00	11/30/11	6,390.00	0.00	0.00	6,390.00	s
001116	05/06/98	28,169.25	P	MF150	06	00	0.00	28,169.25	11/30/11	28,169.25	0.00	0.00	28,169.25	s
001117	05/06/98	5,153.26	P	MF150	06	00	0.00	5,153.26	11/30/11	5,153.26	0.00	0.00	5,153.26	s
001119	06/25/98	160,865.07	P	MF150	06	00	0.00	160,865.07	11/30/11	160,865.07	0.00	0.00	160,865.07	s
001120	06/25/98	126,447.76	P	MF150	06	00	0.00	126,447.76	11/30/11	126,447.76	0.00	0.00	126,447.76	s
001121	07/01/98	2,662.50	P	MF150	06	00	0.00	2,662.50	11/30/11	2,662.50	0.00	0.00	2,662.50	s
001122	07/06/98	3,713.54	P	MF150	06	00	0.00	3,713.54	11/30/11	3,713.54	0.00	0.00	3,713.54	s
001124	08/17/98	6,040.00	P	MF150	05	00	0.00	6,040.00	11/30/11	6,040.00	0.00	0.00	6,040.00	s
001125	08/17/98	6,040.00	P	MF150	05	00	0.00	6,040.00	11/30/11	6,040.00	0.00	0.00	6,040.00	s
001126	08/17/98	6,040.00	P	MF150	05	00	0.00	6,040.00	11/30/11	6,040.00	0.00	0.00	6,040.00	s
001127	08/17/98	10,540.00	P	MF150	05	00	0.00	10,540.00	11/30/11	10,540.00	0.00	0.00	10,540.00	s
001128	08/17/98	10,540.00	P	MF150	05	00	0.00	10,540.00	11/30/11	10,540.00	0.00	0.00	10,540.00	s
001129	08/19/98	6,390.38	P	MF150	05	00	0.00	6,390.38	11/30/11	6,390.38	0.00	0.00	6,390.38	s
001130	08/25/98	13,352.50	P	MF150	05	00	0.00	13,352.50	11/30/11	13,352.50	0.00	0.00	13,352.50	s
001131	08/13/98	1,469.89	P	MF150	06	00	0.00	1,469.89	11/30/11	1,469.89	0.00	0.00	1,469.89	s
001132	08/13/98	1,469.88	P	MF150	06	00	0.00	1,469.88	11/30/11	1,469.88	0.00	0.00	1,469.88	s
001133	08/13/98	1,469.88	P	MF150	06	00	0.00	1,469.88	11/30/11	1,469.88	0.00	0.00	1,469.88	s
001134	08/13/98	1,469.88	P	MF150	06	00	0.00	1,469.88	11/30/11	1,469.88	0.00	0.00	1,469.88	s
001135	08/13/98	1,469.88	P	MF150	06	00	0.00	1,469.88	11/30/11	1,469.88	0.00	0.00	1,469.88	s
001136	08/13/98	1,469.88	P	MF150	06	00	0.00	1,469.88	11/30/11	1,469.88	0.00	0.00	1,469.88	s
001140	09/09/98	70,000.00	P	MF150	06	00	0.00	70,000.00	11/30/11	70,000.00	0.00	0.00	70,000.00	s
001141	09/10/98	258,219.00	P	MF150	06	00	0.00	258,219.00	11/30/11	258,219.00	0.00	0.00	258,219.00	s
001142	09/10/98	258,219.00	P	MF150	06	00	0.00	258,219.00	11/30/11	258,219.00	0.00	0.00	258,219.00	s
001144	11/10/98	10,130.58	P	MF150	06	00	0.00	10,130.58	11/30/11	10,130.58	0.00	0.00	10,130.58	s
001145	11/01/98	1,196.94	P	MF150	05	00	0.00	1,196.94	11/30/11	1,196.94	0.00	0.00	1,196.94	s
001146	12/11/98	58,750.00	P	MF150	06	00	0.00	58,750.00	11/30/11	58,750.00	0.00	0.00	58,750.00	s
001147	12/11/98	30,500.00	P	MF150	06	00	0.00	30,500.00	11/30/11	30,500.00	0.00	0.00	30,500.00	s
001149	01/16/99	121,410.00	P	MF150	06	00	0.00	121,410.00	11/30/11	121,410.00	0.00	0.00	121,410.00	s
001150	01/16/99	34,367.55	P	MF150	06	00	0.00	34,367.55	11/30/11	34,367.55	0.00	0.00	34,367.55	s
001151	01/16/99	24,307.56	P	MF150	06	00	0.00	24,307.56	11/30/11	24,307.56	0.00	0.00	24,307.56	s
001153	01/16/99	7,271.82	P	MF150	06	00	0.00	7,271.82	11/30/11	7,271.82	0.00	0.00	7,271.82	s
001154	01/16/99	56,300.16	P	MF150	06	00	0.00	56,300.16	11/30/11	56,300.16	0.00	0.00	56,300.16	s
001155	01/16/99	97,561.46	P	MF150	06	00	0.00	97,561.46	11/30/11	97,561.46	0.00	0.00	97,561.46	s
001158	01/20/99	16,388.50	P	MF150	06	00	0.00	16,388.50	11/30/11	16,388.50	0.00	0.00	16,388.50	s
001159	01/22/99	10,834.37	P	MF150	06	00	0.00	10,834.37	11/30/11	10,834.37	0.00	0.00	10,834.37	s
001160	01/25/99	4,591.00	P	MF150	06	00	0.00	4,591.00	11/30/11	4,591.00	0.00	0.00	4,591.00	s
001161	03/18/99	130,284.62	P	MF150	06	00	0.00	130,284.62	11/30/11	130,284.62	0.00	0.00	130,284.62	s
001162	03/18/99	187,482.00	P	MF150	06	00	0.00	187,482.00	11/30/11	187,482.00	0.00	0.00	187,482.00	s
001163	01/20/99	3,946.93	P	MF150	06	00	0.00	3,946.93	11/30/11	3,946.93	0.00	0.00	3,946.93	s
001164	01/18/99	2,737.88	P	MF150	06	00	0.00	2,737.88	11/30/11	2,737.88	0.00	0.00	2,737.88	s
001165	05/05/99													

Confidential - Submitted as an offer of settlement and subject to MRE 408

001196	07/20/99	22,500.00	P	MF150	05	00	0.00	22,500.00	11/30/11	22,500.00	0.00	0.00	22,500.00	s
001198	06/09/99	19,500.00	P	MF150	06	00	0.00	19,500.00	11/30/11	19,500.00	0.00	0.00	19,500.00	s
001199	07/12/99	4,152.44	P	MF150	06	00	0.00	4,152.44	11/30/11	4,152.44	0.00	0.00	4,152.44	s
001200	06/18/99	3,141.75	P	MF150	06	00	0.00	3,141.75	11/30/11	3,141.75	0.00	0.00	3,141.75	s
001201	07/29/99	7,987.50	P	MF150	06	00	0.00	7,987.50	11/30/11	7,987.50	0.00	0.00	7,987.50	s
001202	08/20/99	1,600.00	P	MF150	06	00	0.00	1,600.00	11/30/11	1,600.00	0.00	0.00	1,600.00	s
001203	08/20/99	1,225.51	P	MF150	06	00	0.00	1,225.51	11/30/11	1,225.51	0.00	0.00	1,225.51	s
001204	08/20/99	1,225.51	P	MF150	06	00	0.00	1,225.51	11/30/11	1,225.51	0.00	0.00	1,225.51	s
001205	10/08/99	0.00	P	NoDep	00	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
001206	10/18/99	88,609.00	P	MF150	05	00	0.00	88,609.00	11/30/11	88,609.00	0.00	0.00	88,609.00	s
001207	10/18/99	88,609.00	P	MF150	05	00	0.00	88,609.00	11/30/11	88,609.00	0.00	0.00	88,609.00	s
001209	11/24/99	30,855.21	P	MF150	05	00	0.00	30,855.21	11/30/11	30,855.21	0.00	0.00	30,855.21	s
001210	12/01/99	35,677.50	P	MF150	06	00	0.00	35,677.50	11/30/11	35,677.50	0.00	0.00	35,677.50	s
001211	12/01/99	38,340.00	P	MF150	06	00	0.00	38,340.00	11/30/11	38,340.00	0.00	0.00	38,340.00	s
001212	12/17/99	74,778.00	P	MF150	06	00	0.00	74,778.00	11/30/11	74,778.00	0.00	0.00	74,778.00	s
001213	12/17/99	74,778.00	P	MF150	06	00	0.00	74,778.00	11/30/11	74,778.00	0.00	0.00	74,778.00	s
001214	12/17/99	74,778.00	P	MF150	06	00	0.00	74,778.00	11/30/11	74,778.00	0.00	0.00	74,778.00	s
001215	12/17/99	74,778.00	P	MF150	06	00	0.00	74,778.00	11/30/11	74,778.00	0.00	0.00	74,778.00	s
001216	08/01/99	3,983.08	P	MF150	06	00	0.00	3,983.08	11/30/11	3,983.08	0.00	0.00	3,983.08	s
001219	02/08/00	2,500.00	P	MF150	05	00	0.00	2,500.00	11/30/11	2,500.00	0.00	0.00	2,500.00	s
001220	01/18/00	107,032.50	P	MF150	06	00	0.00	107,032.50	11/30/11	107,032.50	0.00	0.00	107,032.50	s
001221	01/18/00	71,419.00	P	MF150	06	00	0.00	71,419.00	11/30/11	71,419.00	0.00	0.00	71,419.00	s
001222	01/18/00	54,424.70	P	MF150	06	00	0.00	54,424.70	11/30/11	54,424.70	0.00	0.00	54,424.70	s
001224	01/31/00	16,648.27	P	MF150	06	00	0.00	16,648.27	11/30/11	16,648.27	0.00	0.00	16,648.27	s
001225	01/31/00	16,141.03	P	MF150	06	00	0.00	16,141.03	11/30/11	16,141.03	0.00	0.00	16,141.03	s
001226	01/31/00	4,618.42	P	MF150	06	00	0.00	4,618.42	11/30/11	4,618.42	0.00	0.00	4,618.42	s
001227	02/08/00	15,000.00	P	MF150	06	00	0.00	15,000.00	11/30/11	15,000.00	0.00	0.00	15,000.00	s
001228	02/08/00	25,000.00	P	MF150	06	00	0.00	25,000.00	11/30/11	25,000.00	0.00	0.00	25,000.00	s
001229	02/08/00	9,000.00	P	MF150	06	00	0.00	9,000.00	11/30/11	9,000.00	0.00	0.00	9,000.00	s
001230	02/08/00	3,000.00	P	MF150	06	00	0.00	3,000.00	11/30/11	3,000.00	0.00	0.00	3,000.00	s
001231	02/08/00	2,000.00	P	MF150	06	00	0.00	2,000.00	11/30/11	2,000.00	0.00	0.00	2,000.00	s
001236	05/12/00	20,000.00	P	MF150	04	00	0.00	20,000.00	11/30/11	20,000.00	0.00	0.00	20,000.00	s
001237	06/12/00	4,736.68	P	MF150	05	00	0.00	4,736.68	11/30/11	4,736.68	0.00	0.00	4,736.68	s
001238	07/06/00	1,188.05	P	MF150	06	00	0.00	1,188.05	11/30/11	1,188.05	0.00	0.00	1,188.05	s
001239	10/01/00	2,058.65	P	MF150	06	00	0.00	2,058.65	11/30/11	2,058.65	0.00	0.00	2,058.65	s
001240	10/01/00	1,052.08	P	MF150	05	00	0.00	1,052.08	11/30/11	1,052.08	0.00	0.00	1,052.08	s
001242	10/16/00	5,259.18	P	MF150	05	00	0.00	5,259.18	11/30/11	5,259.18	0.00	0.00	5,259.18	s
001243	10/06/00	1,300.61	P	MF150	05	00	0.00	1,300.61	11/30/11	1,300.61	0.00	0.00	1,300.61	s
001244	10/16/00	1,703.99	P	MF150	06	00	0.00	1,703.99	11/30/11	1,703.99	0.00	0.00	1,703.99	s
001245	11/03/00	1,894.00	P	MF150	06	00	0.00	1,894.00	11/30/11	1,894.00	0.00	0.00	1,894.00	s
001246	11/09/00	837.88	P	MF150	05	00	0.00	837.88	11/30/11	837.88	0.00	0.00	837.88	s
001247	01/26/01	80,482.05	P	MF150	06	00	0.00	80,482.05	11/30/11	80,482.05	0.00	0.00	80,482.05	s
001248	12/05/00	10,189.71	P	MF150	06	00	0.00	10,189.71	11/30/11	10,189.71	0.00	0.00	10,189.71	s
001249	07/17/00	0.00	P	MF150	06	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	s
001251	04/01/01	36,166.47	P	MF150	05	00	0.00	36,166.47	11/30/11	36,166.47	0.00	0.00	36,166.47	s
001252	04/01/01	119,075.00	P	MF150	06	00	0.00	119,075.00	11/30/11	119,075.00	0.00	0.00	119,075.00	s
001255	04/01/01	5,024.80	P	MF150	06	00	0.00	5,024.80	11/30/11	5,024.80	0.00	0.00	5,024.80	s
001256	04/23/01	11,000.00	P	MF150	05	00	0.00	11,000.00	11/30/11	11,000.00	0.00	0.00	11,000.00	s
001258	05/09/01	31,092.56	P	MF150	05	00	0.00	31,092.56	11/30/11	31,092.56	0.00	0.00	31,092.56	s
001259	05/09/01	31,092.56	P	MF150	05	00	0.00	31,092.56	11/30/11	31,092.56	0.00	0.00	31,092.56	s
001261	05/10/01	80,000.00	P	MF150	06	00	0.00	80,000.00	11/30/11	80,000.00	0.00	0.00	80,000.00	s
001262	05/10/01	80,000.00	P	MF150	06	00	0.00	80,000.00	11/30/11	80,000.00	0.00	0.00	80,000.00	s
001263	05/10/01	80,000.00	P	MF150	06	00	0.00	80,000.00	11/30/11	80,000.00	0.00	0.00	80,000.00	s
001264	06/01/01	52,536.84	P	MF150	05	00	0.00	52,536.84	11/30/11	52,536.84	0.00	0.00	52,536.84	s
001265	06/01/01	58,479.60	P	MF150	05	00	0.00	58,479.60	11/30/11	58,479.60	0.00	0.00	58,479.60	s
001266	07/09/01	53,590.48	P	MF150	05	00	0.00	53,590.48	11/30/11	53,590.48	0.00	0.00	53,590.48	s
001267	07/16/01	37,898.50	P	MF150	05	00	0.00	37,898.50	11/30/11	37,898.50	0.00	0.00	37,898.50	s
001268	10/01/01	1,778.54	P	MA150	06	00	533.56	1,244.98	11/30/11	1,244.98	0.00	0.00	1,244.98	sr
001270	10/12/01	5,857.48	P	MA150	05	00	1,757.24	4,100.24	11/30/11	4,100.24	0.00	0.00	4,100.24	sr
001271	10/19/01	3,500.00	P	MA150	05	00	1,050.00	2,450.00	11/30/11	2,450.00	0.00	0.00	2,450.00	sr
001272	11/01/01	125,705.80	P	MA150	05	00	37,711.74	87,994.06	11/30/11	87,994.06	0.00	0.00	87,994.06	sr
001273	12/20/89	10,800.00	P	MF200	06	00	0.00	10,800.00	11/30/11	10,800.00	0.00	0.00	10,800.00	s
001274	04/27/89	600.00	P	MF200	05	00	0.00	600.00	11/30/11	600.00	0.00	0.00	600.00	s
001276	08/14/89	1,200.00	P	MF200	05	00	0.00	1,200.00	11/30/11	1,200.00	0.00	0.00	1,200.00	s
001277	12/26/89	29,600.00	P	MF200	05	00	0.00	29,600.00	11/30/11	29,600.00	0.00	0.00	29,600.00	s
001279	04/11/89	9,500.00	P	MF200	05	00	0.00	9,500.00	11/30/11	9,500.00	0.00	0.00	9,500.00	s
001280	12/21/82	8,000.00	P	ACRS	05	00	0.00	8,000.00	11/30/11	8,000.00	0.00	0.00	8,000.00	s
001282	08/03/90	8,911.42	P	MF200	05	00	0.00	8,911.42	11/30/11	8,911.42	0.00	0.00	8,911.42	s
001284	07/31/91	11,709.68	P	MF200	05	00	0.00	11,709.68	11/30/11	11,709.68	0.00	0.00	11,709.68	s
001288	01/25/96	75,323.19	P	MF150	06	00	0.00	75,323.19	11/30/11	75,323.19	0.00	0.00	75,323.19	s
001292	10/31/88	1,833.33	P	MF150	06	00	0.00	1,833.33	11/30/11	1,				

Confidential - Submitted as an offer of settlement and subject to MRE 408

001333	06/21/02	83,469.48	P	MA150	05 00	25,040.84	58,428.64	11/30/11	58,428.64	0.00	0.00	58,428.64	sr
001334	07/15/02	4,575.00	P	MF150	06 00	0.00	4,575.00	11/30/11	4,575.00	0.00	0.00	4,575.00	s
001335	08/21/02	49,120.00	P	MA150	06 00	14,736.00	34,384.00	11/30/11	34,384.00	0.00	0.00	34,384.00	sr
001336	08/30/02	5,541.58	P	MA150	05 00	1,662.47	3,879.11	11/30/11	3,879.11	0.00	0.00	3,879.11	sr
001337	08/19/02	44,741.97	P	MA150	06 00	13,422.59	31,319.38	11/30/11	31,319.38	0.00	0.00	31,319.38	sr
001339	10/01/02	5,982.02	P	MA150	05 00	1,794.61	4,187.41	11/30/11	4,187.41	0.00	0.00	4,187.41	sr
001340	10/01/02	8,559.62	P	MA150	05 00	2,567.89	5,991.73	11/30/11	5,991.73	0.00	0.00	5,991.73	sr
001341	10/16/02	31,338.50	P	MA150	05 00	9,401.55	21,936.95	11/30/11	21,936.95	0.00	0.00	21,936.95	sr
001343	10/01/02	15,846.48	P	MA150	06 00	4,753.84	11,092.54	11/30/11	11,092.54	0.00	0.00	11,092.54	sr
001344	10/15/02	1,586.84	P	MA150	06 00	476.05	1,110.79	11/30/11	1,110.79	0.00	0.00	1,110.79	sr
001345	10/22/02	1,533.59	P	MA150	06 00	460.08	1,073.51	11/30/11	1,073.51	0.00	0.00	1,073.51	sr
001346	10/22/02	1,533.59	P	MA150	06 00	460.08	1,073.51	11/30/11	1,073.51	0.00	0.00	1,073.51	sr
001347	10/22/02	1,533.59	P	MA150	06 00	460.08	1,073.51	11/30/11	1,073.51	0.00	0.00	1,073.51	sr
001348	11/19/02	35,130.00	P	MA150	05 00	10,539.00	24,591.00	11/30/11	24,591.00	0.00	0.00	24,591.00	sr
001349	11/19/02	35,158.00	P	MA150	05 00	10,547.40	24,610.60	11/30/11	24,610.60	0.00	0.00	24,610.60	sr
001350	12/17/02	51,221.18	P	MA150	06 00	15,366.35	35,854.83	11/30/11	35,854.83	0.00	0.00	35,854.83	sr
001351	12/17/02	78,524.58	P	MA150	06 00	23,557.37	54,967.21	11/30/11	54,967.21	0.00	0.00	54,967.21	sr
001352	12/17/02	115,190.40	P	MF150	06 00	0.00	115,190.40	11/30/11	115,190.40	0.00	0.00	115,190.40	s
001353	12/17/02	125,670.00	P	MA150	06 00	37,701.00	87,969.00	11/30/11	87,969.00	0.00	0.00	87,969.00	sr
001354	12/17/02	127,192.95	P	MA150	06 00	38,157.89	89,035.06	11/30/11	89,035.06	0.00	0.00	89,035.06	sr
001355	12/17/02	131,048.15	P	MA150	06 00	39,314.45	91,733.70	11/30/11	91,733.70	0.00	0.00	91,733.70	sr
001356	12/16/02	25,500.00	P	MF150	06 00	0.00	25,500.00	11/30/11	25,500.00	0.00	0.00	25,500.00	s
001357	12/12/02	83,413.00	P	MA150	05 00	25,023.90	58,389.10	11/30/11	58,389.10	0.00	0.00	58,389.10	sr
001358	12/12/02	83,413.00	P	MA150	05 00	25,023.90	58,389.10	11/30/11	58,389.10	0.00	0.00	58,389.10	sr
001359	12/20/02	91,346.00	P	MA150	05 00	27,403.80	63,942.20	11/30/11	63,942.20	0.00	0.00	63,942.20	sr
001360	12/20/02	91,346.00	P	MA150	05 00	27,403.80	63,942.20	11/30/11	63,942.20	0.00	0.00	63,942.20	sr
001361	12/17/02	56,498.55	P	MA150	05 00	16,949.57	39,548.98	11/30/11	39,548.98	0.00	0.00	39,548.98	sr
001362	12/17/02	56,498.55	P	MA150	05 00	16,949.57	39,548.98	11/30/11	39,548.98	0.00	0.00	39,548.98	sr
001363	11/29/02	3,567.75	P	MA150	06 00	1,070.33	2,497.42	11/30/11	2,497.42	0.00	0.00	2,497.42	sr
001364	12/16/02	3,471.90	P	MA150	06 00	1,041.57	2,430.33	11/30/11	2,430.33	0.00	0.00	2,430.33	sr
001365	12/04/02	2,076.75	P	MA150	06 00	623.03	1,453.72	11/30/11	1,453.72	0.00	0.00	1,453.72	sr
001367	09/12/02	2,608.19	P	MA150	06 00	782.46	1,825.73	11/30/11	1,825.73	0.00	0.00	1,825.73	sr
001368	01/29/03	33,392.00	P	MA200	05 00	10,017.60	23,374.40	11/30/11	23,374.40	0.00	0.00	23,374.40	sr
001369	01/23/03	52,185.00	P	MA200	05 00	15,655.50	36,529.50	11/30/11	36,529.50	0.00	0.00	36,529.50	sr
001370	03/26/03	1,917.00	P	MA200	05 00	575.10	1,341.90	11/30/11	1,341.90	0.00	0.00	1,341.90	sr
001371	03/25/03	131,535.00	P	MA200	05 00	39,460.50	92,074.50	11/30/11	92,074.50	0.00	0.00	92,074.50	sr
001372	01/13/03	23,860.00	P	MA200	05 00	7,158.00	16,702.00	11/30/11	16,702.00	0.00	0.00	16,702.00	sr
001373	03/25/03	178,687.00	P	MA200	05 00	53,606.10	125,080.90	11/30/11	125,080.90	0.00	0.00	125,080.90	sr
001374	04/21/03	10,697.93	P	MA200	05 00	3,209.38	7,488.55	11/30/11	7,488.55	0.00	0.00	7,488.55	sr
001375	04/17/03	5,989.02	P	MA200	05 00	1,796.71	4,192.31	11/30/11	4,192.31	0.00	0.00	4,192.31	sr
001376	04/24/03	3,940.50	P	MA200	05 00	1,182.15	2,758.35	11/30/11	2,758.35	0.00	0.00	2,758.35	sr
001377	04/16/03	19,360.48	P	MA200	05 00	5,808.14	13,552.34	11/30/11	13,552.34	0.00	0.00	13,552.34	sr
001378	03/19/03	2,130.00	P	MA200	05 00	639.00	1,491.00	11/30/11	1,491.00	0.00	0.00	1,491.00	sr
001379	04/25/03	4,068.30	P	MA200	05 00	1,220.49	2,847.81	11/30/11	2,847.81	0.00	0.00	2,847.81	sr
001380	04/25/03	4,068.30	P	MA200	05 00	1,220.49	2,847.81	11/30/11	2,847.81	0.00	0.00	2,847.81	sr
001381	04/18/03	19,360.48	P	MA200	05 00	5,808.14	13,552.34	11/30/11	13,552.34	0.00	0.00	13,552.34	sr
001382	04/29/03	1,917.00	P	MA200	05 00	575.10	1,341.90	11/30/11	1,341.90	0.00	0.00	1,341.90	sr
001383	04/01/03	2,104.64	P	MA200	05 00	631.39	1,473.25	11/30/11	1,473.25	0.00	0.00	1,473.25	sr
001384	05/05/03	5,273.68	P	MA200	05 00	1,582.10	3,691.58	11/30/11	3,691.58	0.00	0.00	3,691.58	sr
001385	05/06/03	6,077.12	P	MA200	05 00	3,038.56	3,038.56	11/30/11	3,038.56	0.00	0.00	3,038.56	sr
001386	05/06/03	19,360.48	P	MA200	05 00	9,680.24	9,680.24	11/30/11	9,680.24	0.00	0.00	9,680.24	sr
001387	05/13/03	33,326.76	P	MA200	05 00	16,663.38	16,663.38	11/30/11	16,663.38	0.00	0.00	16,663.38	sr
001388	06/09/03	33,643.55	P	MA200	05 00	16,821.77	16,821.77	11/30/11	16,821.77	0.00	0.00	16,821.77	sr
001389	06/18/03	1,095.00	P	MA200	05 00	547.50	547.50	11/30/11	547.50	0.00	0.00	547.50	sr
001391	07/29/03	5,987.02	P	MA200	05 00	2,993.51	2,993.51	11/30/11	2,993.51	0.00	0.00	2,993.51	sr
001392	07/29/03	36,857.20	P	MA200	05 00	18,428.60	18,428.60	11/30/11	18,428.60	0.00	0.00	18,428.60	sr
001393	09/03/03	23,000.00	P	MA200	05 00	11,500.00	11,500.00	11/30/11	11,500.00	0.00	0.00	11,500.00	sr
001394	09/03/03	23,000.00	P	MA200	05 00	11,500.00	11,500.00	11/30/11	11,500.00	0.00	0.00	11,500.00	sr
001395	06/30/03	15,969.00	P	MA200	05 00	7,984.50	7,984.50	11/30/11	7,984.50	0.00	0.00	7,984.50	sr
001396	06/30/03	2,897.47	P	MA200	05 00	1,448.73	1,448.73	11/30/11	1,448.73	0.00	0.00	1,448.73	sr
001397	07/31/03	2,236.50	P	MA200	05 00	1,118.25	1,118.25	11/30/11	1,118.25	0.00	0.00	1,118.25	sr
001398	08/05/03	25,321.44	P	MA200	05 00	12,660.72	12,660.72	11/30/11	12,660.72	0.00	0.00	12,660.72	sr
001399	08/11/03	5,407.43	P	MA200	05 00	2,703.72	2,703.72	11/30/11	2,703.72	0.00	0.00	2,703.72	sr
001400	08/21/03	2,800.00	P	MA200	05 00	1,400.00	1,400.00	11/30/11	1,400.00	0.00	0.00	1,400.00	sr
001401	09/01/03	220,000.00	P	MA200	05 00	110,000.00	110,000.00	11/30/11	110,000.00	0.00	0.00	110,000.00	sr
001402	08/14/03	30,095.60	P	MA200	05 00	15,047.80	15,047.80	11/30/11	15,047.80	0.00	0.00	15,047.80	sr
001403	08/14/03	38,331.95	P	MA200	05 00	19,165.97	19,165.97	11/30/11	19,165.97	0.00	0.00	19,165.97	sr
001404	08/14/03	24,399.60	P	MA200	05 00	12,199.80	12,199.80	11/30/11	12,199.80	0.00	0.00	12,199.80	sr
001405	08/14/03	24,399.60	P	MA200	05 00	12,199.80	12,199.80	11/30/11	12,199.80	0.00	0.00	12,199.80	sr
001406	09/24/03	220,000.00	P	MA200	05 00	110,000.00	110,000.00	11/30/11	110,000.00	0.00	0.00	110,000.00	sr
001407	09/16/03	91,364.00	P	MA200	05 00	45,682.00	45,682.00	11/30/11	45,682.00	0.00	0.00	45,682.00	sr
001408	09/23/03	111,111.00	P	MA200	05 00	55,555.50	55,555.50	11/30/11	55,555.50	0.00	0.00	55,555.50	sr
001409	09/26/03	52,050.00	P	MA200	05 00	26,025.00	26,025.00	11/30/11	26,025.00	0.00	0.00	26,025.00	sr
001410	09/08/03	2,257.80	P	MA200	05 00	1,128.90	1,128.90	11/30/11	1,128.90	0.00	0.00	1,128.90	sr
001411	09/08/03	2,257.80	P	MA200	05 00	1,128.90	1,128.90	11/30/11	1,128.90	0.00	0.00	1,128.90	sr
001412	09/08/03	2,257.80	P	MA200	05 00	1,128.90	1,128.90	11/30/11	1,128.90	0.00	0.00	1,128.90	sr
001413	09/25/03	2,875.50	P	MA200	05 00	1,437.75	1,437.75	11/30/11	1,437.75	0.00	0.00	1,437.75	sr
001414	09/24/03	57,454.02	P	MA200	05 00	28,727.01	28,727.01						

Confidential - Submitted as an offer of settlement and subject to MRE 408

001434	11/18/03	27,109.58	P	MA200	05 00	13,554.79	13,554.79	11/30/11	13,554.79	0.00	0.00	13,554.79	sr
001435	11/29/03	6,070.50	P	MA200	05 00	3,035.25	3,035.25	11/30/11	3,035.25	0.00	0.00	3,035.25	sr
001436	09/01/03	26,333.94	P	MA200	05 00	13,166.97	13,166.97	11/30/11	13,166.97	0.00	0.00	13,166.97	sr
001438	09/18/03	91,057.50	P	MA200	05 00	45,528.75	45,528.75	11/30/11	45,528.75	0.00	0.00	45,528.75	sr
001439	04/22/03	94,039.50	P	MA200	05 00	28,211.85	65,827.65	11/30/11	65,827.65	0.00	0.00	65,827.65	sr
001440	09/22/03	105,073.98	P	MA200	05 00	52,536.99	52,536.99	11/30/11	52,536.99	0.00	0.00	52,536.99	sr
001441	04/26/03	114,508.80	P	MA200	05 00	34,352.64	80,156.16	11/30/11	80,156.16	0.00	0.00	80,156.16	sr
001442	09/25/03	201,285.00	P	MA200	05 00	100,642.50	100,642.50	11/30/11	100,642.50	0.00	0.00	100,642.50	sr
001443	10/24/03	114,508.80	P	MA200	05 00	57,254.40	57,254.40	11/30/11	57,254.40	0.00	0.00	57,254.40	sr
001444	10/02/03	213,579.36	P	MA200	05 00	106,789.68	106,789.68	11/30/11	106,789.68	0.00	0.00	106,789.68	sr
001445	11/21/03	36,795.75	P	MA200	05 00	18,397.88	18,397.87	11/30/11	18,397.87	0.00	0.00	18,397.87	sr
001446	05/09/03	114,622.50	P	MA200	05 00	57,311.25	57,311.25	11/30/11	57,311.25	0.00	0.00	57,311.25	sr
001447	08/13/03	151,747.44	P	MA200	05 00	75,873.72	75,873.72	11/30/11	75,873.72	0.00	0.00	75,873.72	sr
001448	08/15/03	60,118.14	P	MA200	05 00	30,059.07	30,059.07	11/30/11	30,059.07	0.00	0.00	30,059.07	sr
001449	08/20/03	119,303.39	P	MA200	05 00	59,651.70	59,651.69	11/30/11	59,651.69	0.00	0.00	59,651.69	sr
001450	08/28/03	6,081.00	P	MA200	05 00	3,040.50	3,040.50	11/30/11	3,040.50	0.00	0.00	3,040.50	sr
001451	02/12/04	20,000.00	P	MA200	05 00	10,000.00	10,000.00	11/30/11	10,000.00	0.00	0.00	10,000.00	sr
001453	02/18/04	25,000.00	P	MA200	05 00	12,500.00	12,500.00	11/30/11	12,500.00	0.00	0.00	12,500.00	sr
001455	03/29/04	32,895.70	P	MA200	05 00	16,447.85	16,447.85	11/30/11	16,447.85	0.00	0.00	16,447.85	sr
001456	02/16/04	3,961.79	P	MA200	05 00	1,980.90	1,980.89	11/30/11	1,980.89	0.00	0.00	1,980.89	sr
001457	03/26/04	25,680.00	P	MA200	05 00	12,840.00	12,840.00	11/30/11	12,840.00	0.00	0.00	12,840.00	sr
001458	03/26/04	25,680.00	P	MA200	05 00	12,840.00	12,840.00	11/30/11	12,840.00	0.00	0.00	12,840.00	sr
001459	03/26/04	25,680.00	P	MA200	05 00	12,840.00	12,840.00	11/30/11	12,840.00	0.00	0.00	12,840.00	sr
001460	03/26/04	3,745.00	P	MA200	05 00	1,872.50	1,872.50	11/30/11	1,872.50	0.00	0.00	1,872.50	sr
001461	03/29/04	54,187.50	P	MA200	05 00	27,093.75	27,093.75	11/30/11	27,093.75	0.00	0.00	27,093.75	sr
001462	03/29/04	54,187.50	P	MA200	05 00	27,093.75	27,093.75	11/30/11	27,093.75	0.00	0.00	27,093.75	sr
001463	03/29/04	54,187.50	P	MA200	05 00	27,093.75	27,093.75	11/30/11	27,093.75	0.00	0.00	27,093.75	sr
001464	03/29/04	2,125.00	P	MA200	05 00	1,062.50	1,062.50	11/30/11	1,062.50	0.00	0.00	1,062.50	sr
001465	03/29/04	17,743.75	P	MA200	05 00	8,871.88	8,871.87	11/30/11	8,871.87	0.00	0.00	8,871.87	sr
001466	03/29/04	5,000.00	P	MA200	05 00	2,500.00	2,500.00	11/30/11	2,500.00	0.00	0.00	2,500.00	sr
001467	03/29/04	5,500.00	P	MA200	05 00	2,750.00	2,750.00	11/30/11	2,750.00	0.00	0.00	2,750.00	sr
001468	03/29/04	5,500.00	P	MA200	05 00	2,750.00	2,750.00	11/30/11	2,750.00	0.00	0.00	2,750.00	sr
001469	03/29/04	5,000.00	P	MA200	05 00	3,000.00	3,000.00	11/30/11	3,000.00	0.00	0.00	3,000.00	sr
001470	03/29/04	5,250.00	P	MA200	05 00	2,625.00	2,625.00	11/30/11	2,625.00	0.00	0.00	2,625.00	sr
001471	03/29/04	5,250.00	P	MA200	05 00	2,625.00	2,625.00	11/30/11	2,625.00	0.00	0.00	2,625.00	sr
001472	04/05/04	10,101.53	P	MA200	05 00	5,050.77	5,050.76	11/30/11	5,050.76	0.00	0.00	5,050.76	sr
001473	04/09/04	31,344.75	P	MA200	05 00	15,672.38	15,672.37	11/30/11	15,672.37	0.00	0.00	15,672.37	sr
001474	04/26/04	37,275.00	P	MA200	05 00	18,637.50	18,637.50	11/30/11	18,637.50	0.00	0.00	18,637.50	sr
001475	04/16/04	34,200.00	P	MA200	05 00	17,100.00	17,100.00	11/30/11	17,100.00	0.00	0.00	17,100.00	sr
001476	04/12/04	26,360.50	P	MA200	05 00	13,180.25	13,180.25	11/30/11	13,180.25	0.00	0.00	13,180.25	sr
001477	04/12/04	4,419.75	P	MA200	05 00	2,209.88	2,209.87	11/30/11	2,209.87	0.00	0.00	2,209.87	sr
001478	04/12/04	31,344.75	P	MA200	05 00	15,672.38	15,672.37	11/30/11	15,672.37	0.00	0.00	15,672.37	sr
001479	04/12/04	31,344.75	P	MA200	05 00	15,672.38	15,672.37	11/30/11	15,672.37	0.00	0.00	15,672.37	sr
001480	04/12/04	26,360.50	P	MA200	05 00	13,180.25	13,180.25	11/30/11	13,180.25	0.00	0.00	13,180.25	sr
001481	04/15/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001482	04/15/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001483	04/15/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001484	04/15/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001485	04/15/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001486	04/15/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001487	04/28/04	23,500.00	P	MA200	05 00	11,750.00	11,750.00	11/30/11	11,750.00	0.00	0.00	11,750.00	sr
001488	04/28/04	110,770.14	P	MA200	05 00	55,385.07	55,385.07	11/30/11	55,385.07	0.00	0.00	55,385.07	sr
001489	04/16/04	2,554.94	P	MA200	07 00	1,277.47	1,277.47	11/30/11	1,277.47	0.00	57.01	1,277.47	sr
001491	04/20/04	4,390.14	P	MA200	07 00	2,195.07	2,195.07	03/31/11	2,097.12	0.00	48.98	2,146.10	sdr
001492	02/28/04	2,662.50	P	MA200	07 00	1,331.25	1,331.25	11/30/11	1,271.84	0.00	59.41	1,331.25	sr
001493	05/04/04	34,567.75	P	MA200	05 00	17,283.88	17,283.87	11/30/11	17,283.87	0.00	0.00	17,283.87	sr
001495	05/14/04	4,468.00	P	MA200	07 00	2,234.00	2,234.00	11/30/11	2,134.31	0.00	99.69	2,234.00	sr
001496	05/10/04	6,000.00	P	MA200	07 00	3,000.00	3,000.00	11/30/11	2,866.13	0.00	133.87	3,000.00	sr
001497	05/10/04	6,000.00	P	MA200	07 00	3,000.00	3,000.00	11/30/11	2,866.13	0.00	133.87	3,000.00	sr
001498	05/10/04	4,000.00	P	MA200	07 00	2,000.00	2,000.00	11/30/11	1,910.75	0.00	89.25	2,000.00	sr
001499	05/18/04	6,011.93	P	MA200	07 00	3,005.97	3,005.96	11/30/11	2,871.82	0.00	134.14	3,005.96	sr
001500	06/28/04	31,632.75	P	MA200	05 00	15,816.38	15,816.37	11/30/11	15,816.37	0.00	0.00	15,816.37	sr
001503	06/10/04	5,000.00	P	MA200	05 00	2,500.00	2,500.00	11/30/11	2,500.00	0.00	0.00	2,500.00	sr
001504	09/10/04	100,000.00	P	MA200	05 00	50,000.00	50,000.00	11/30/11	50,000.00	0.00	0.00	50,000.00	sr
001505	06/10/04	30,000.00	P	MA200	05 00	15,000.00	15,000.00	11/30/11	15,000.00	0.00	0.00	15,000.00	sr
001506	06/10/04	27,500.00	P	MA200	05 00	13,750.00	13,750.00	11/30/11	13,750.00	0.00	0.00	13,750.00	sr
001507	06/10/04	7,500.00	P	MA200	05 00	3,750.00	3,750.00	11/30/11	3,750.00	0.00	0.00	3,750.00	sr
001508	06/10/04	10,625.00	P	MA200	05 00	5,312.50	5,312.50	11/30/11	5,312.50	0.00	0.00	5,312.50	sr
001509	06/10/04	10,000.00	P	MA200	05 00	5,000.00	5,000.00	11/30/11	5,000.00	0.00	0.00	5,000.00	sr
001510	06/10/04	14,500.00	P	MA200	05 00	7,250.00	7,250.00	11/30/11	7,250.00	0.00	0.00	7,250.00	sr
001511	06/10/04	14,500.00	P	MA200	05 00	7,250.00	7,250.00	11/30/11	7,250.00	0.00	0.00	7,250.00	sr
001512	06/10/04	34,000.00	P	MA200	05 00	17,000.00	17,000.00	11/30/11	17,000.00	0.00	0.00	17,000.00	sr
001513	06/10/04	32,937.50	P	MA200	05 00	16,468.75	16,468.75	11/30/11	16,468.75	0.00	0.00	16,468.75	sr
001515	06/15/04	6,612.00	P	MA200	05 00	3,306.00	3,306.00	11/30/11	3,306.00	0.00	0.00	3,306.00	sr
001516	06/17/04	2,527.35	P	MA200	05 00	1,263.68	1,263.67	11/30/11	1,263.67	0.00	0.00	1,263.67	sr
001517	06/09/04	2,527.35	P	MA200	05 00	1,263.68	1,263.67	11/30/11	1,263.67	0.00	0.00	1,263.67	sr
001518	06/30/04	12,620.25	P	MA200	05 00	6,310.13	6,310.12	11/30/11	6,310.12	0.00	0.00	6,310.12	sr
001519	06/30/04	12,620.25	P	MA									

Confidential - Submitted as an offer of settlement and subject to MRE 408

001538	08/18/04	63,842.35	P	MA200	05	00	31,921.18	31,921.17	11/30/11	31,921.17	0.00	0.00	31,921.17	sr
001539	08/01/04	113,896.00	P	MA200	05	00	56,948.00	56,948.00	11/30/11	56,948.00	0.00	0.00	56,948.00	sr
001540	08/06/04	113,896.00	P	MA200	05	00	56,948.00	56,948.00	11/30/11	56,948.00	0.00	0.00	56,948.00	sr
001541	08/18/04	3,704.13	P	MA200	05	00	1,852.07	1,852.06	11/30/11	1,852.06	0.00	0.00	1,852.06	sr
001542	08/01/04	2,032.73	P	MA200	05	00	1,016.37	1,016.36	11/30/11	1,016.36	0.00	0.00	1,016.36	sr
001543	08/01/04	2,032.74	P	MA200	05	00	1,016.37	1,016.37	11/30/11	1,016.37	0.00	0.00	1,016.37	sr
001544	08/01/04	5,623.20	P	MA200	05	00	2,811.60	2,811.60	11/30/11	2,811.60	0.00	0.00	2,811.60	sr
001545	08/27/04	3,799.32	P	MA200	05	00	1,899.66	1,899.66	11/30/11	1,899.66	0.00	0.00	1,899.66	sr
001546	08/31/04	67,636.20	P	MA200	05	00	33,818.10	33,818.10	11/30/11	33,818.10	0.00	0.00	33,818.10	sr
001547	09/01/04	76,984.00	P	MA200	05	00	38,492.00	38,492.00	11/30/11	38,492.00	0.00	0.00	38,492.00	sr
001548	09/01/04	65,416.03	P	MA200	05	00	32,708.02	32,708.01	11/30/11	32,708.01	0.00	0.00	32,708.01	sr
001549	09/01/04	65,416.03	P	MA200	05	00	32,708.02	32,708.01	11/30/11	32,708.01	0.00	0.00	32,708.01	sr
001550	09/01/04	76,984.00	P	MA200	05	00	38,492.00	38,492.00	11/30/11	38,492.00	0.00	0.00	38,492.00	sr
001551	08/31/04	2,449.50	P	MA200	05	00	1,224.75	1,224.75	11/30/11	1,224.75	0.00	0.00	1,224.75	sr
001552	09/03/04	6,846.00	P	MA200	05	00	3,423.00	3,423.00	11/30/11	3,423.00	0.00	0.00	3,423.00	sr
001553	08/31/04	21,300.00	P	MA200	05	00	10,650.00	10,650.00	11/30/11	10,650.00	0.00	0.00	10,650.00	sr
001554	09/20/04	69,986.01	P	MA200	05	00	34,993.01	34,993.00	11/30/11	34,993.00	0.00	0.00	34,993.00	sr
001555	08/31/04	18,893.10	P	MA200	05	00	9,446.55	9,446.55	11/30/11	9,446.55	0.00	0.00	9,446.55	sr
001556	09/02/04	6,017.06	P	MA200	05	00	3,008.53	3,008.53	11/30/11	3,008.53	0.00	0.00	3,008.53	sr
001557	09/15/04	6,427.51	P	MA200	05	00	3,213.76	3,213.75	11/30/11	3,213.75	0.00	0.00	3,213.75	sr
001558	09/15/04	24,443.50	P	MA200	05	00	12,221.75	12,221.75	11/30/11	12,221.75	0.00	0.00	12,221.75	sr
001559	09/15/04	24,443.50	P	MA200	05	00	12,221.75	12,221.75	11/30/11	12,221.75	0.00	0.00	12,221.75	sr
001561	09/15/04	24,177.25	P	MA200	05	00	12,088.63	12,088.62	11/30/11	12,088.62	0.00	0.00	12,088.62	sr
001562	08/31/04	2,624.05	P	MA200	05	00	1,312.03	1,312.02	11/30/11	1,312.02	0.00	0.00	1,312.02	sr
001563	09/20/04	5,332.75	P	MA200	05	00	2,666.37	2,666.37	11/30/11	2,666.37	0.00	0.00	2,666.37	sr
001565	10/15/04	2,167.00	P	MA200	05	00	1,083.50	1,083.50	11/30/11	1,083.50	0.00	0.00	1,083.50	sr
001566	10/20/04	113,896.00	P	MA200	05	00	56,948.00	56,948.00	11/30/11	56,948.00	0.00	0.00	56,948.00	sr
001567	10/26/04	4,950.00	P	MA200	05	00	2,475.00	2,475.00	11/30/11	2,475.00	0.00	0.00	2,475.00	sr
001568	10/26/04	2,475.00	P	MA200	05	00	1,237.50	1,237.50	11/30/11	1,237.50	0.00	0.00	1,237.50	sr
001569	10/26/04	7,150.00	P	MA200	05	00	3,575.00	3,575.00	11/30/11	3,575.00	0.00	0.00	3,575.00	sr
001570	10/15/04	4,693.55	P	MA200	05	00	2,346.77	2,346.77	11/30/11	2,346.77	0.00	0.00	2,346.77	sr
001571	11/22/04	113,896.00	P	MA200	05	00	56,948.00	56,948.00	11/30/11	56,948.00	0.00	0.00	56,948.00	sr
001572	11/02/04	2,511.43	P	MA200	05	00	1,255.72	1,255.71	11/30/11	1,255.71	0.00	0.00	1,255.71	sr
001573	10/29/04	21,300.00	P	MA200	05	00	10,650.00	10,650.00	11/30/11	10,650.00	0.00	0.00	10,650.00	sr
001574	10/29/04	21,300.00	P	MA200	05	00	10,650.00	10,650.00	11/30/11	10,650.00	0.00	0.00	10,650.00	sr
001576	12/06/04	42,102.75	P	MA200	05	00	21,051.38	21,051.37	11/30/11	21,051.37	0.00	0.00	21,051.37	sr
001577	12/21/04	2,448.44	P	MA200	05	00	1,224.22	1,224.22	11/30/11	1,224.22	0.00	0.00	1,224.22	sr
001578	12/21/04	2,448.44	P	MA200	05	00	1,224.22	1,224.22	11/30/11	1,224.22	0.00	0.00	1,224.22	sr
001579	12/21/04	2,448.44	P	MA200	05	00	1,224.22	1,224.22	11/30/11	1,224.22	0.00	0.00	1,224.22	sr
001580	12/15/04	2,513.40	P	MA200	05	00	1,256.70	1,256.70	11/30/11	1,256.70	0.00	0.00	1,256.70	sr
001581	12/17/04	2,304.83	P	MA200	05	00	1,152.42	1,152.41	11/30/11	1,152.41	0.00	0.00	1,152.41	sr
001582	12/14/04	2,000.00	P	MA200	05	00	1,000.00	1,000.00	11/30/11	1,000.00	0.00	0.00	1,000.00	sr
001583	12/14/04	3,000.00	P	MA200	05	00	1,500.00	1,500.00	11/30/11	1,500.00	0.00	0.00	1,500.00	sr
001584	12/29/04	5,964.00	P	MA200	05	00	2,982.00	2,982.00	11/30/11	2,982.00	0.00	0.00	2,982.00	sr
001585	12/13/04	8,837.75	P	MA200	05	00	4,418.88	4,418.87	11/30/11	4,418.87	0.00	0.00	4,418.87	sr
001586	04/20/04	84,258.59	P	MA200	05	00	42,129.30	42,129.29	11/30/11	42,129.29	0.00	0.00	42,129.29	sr
001587	12/24/04	5,681.77	P	MA200	05	00	2,840.89	2,840.88	11/30/11	2,840.88	0.00	0.00	2,840.88	sr
001588	01/03/05	3,000.00	P	MF200	05	00	0.00	3,000.00	11/30/11	3,000.00	0.00	0.00	3,000.00	s
001589	01/17/05	5,506.05	P	MF200	05	00	0.00	5,506.05	11/30/11	5,506.05	0.00	0.00	5,506.05	s
001590	01/25/05	22,900.00	P	MF200	05	00	0.00	22,900.00	11/30/11	22,900.00	0.00	0.00	22,900.00	s
001591	01/07/05	6,922.50	P	MF200	05	00	0.00	6,922.50	11/30/11	6,922.50	0.00	0.00	6,922.50	s
001592	01/07/05	4,260.00	P	MF200	05	00	0.00	4,260.00	11/30/11	4,260.00	0.00	0.00	4,260.00	s
001593	01/17/05	9,802.26	P	MF200	05	00	0.00	9,802.26	11/30/11	9,802.26	0.00	0.00	9,802.26	s
001594	01/27/05	31,614.00	P	MF200	05	00	0.00	31,614.00	11/30/11	31,614.00	0.00	0.00	31,614.00	s
001598	02/28/05	4,854.70	P	MF200	05	00	0.00	4,854.70	11/30/11	4,854.70	0.00	0.00	4,854.70	s
001600	02/28/05	4,714.80	P	MF200	05	00	0.00	4,714.80	11/30/11	4,714.80	0.00	0.00	4,714.80	s
001601	02/28/05	3,150.00	P	MF200	07	00	0.00	3,150.00	03/31/11	2,728.30	0.00	140.57	2,868.87	ds
001602	03/16/05	28,435.95	P	MF200	05	00	0.00	28,435.95	11/30/11	28,435.95	0.00	0.00	28,435.95	s
001603	03/16/05	28,116.45	P	MF200	05	00	0.00	28,116.45	11/30/11	28,116.45	0.00	0.00	28,116.45	s
001604	03/08/05	5,710.17	P	MF200	05	00	0.00	5,710.17	11/30/11	5,710.17	0.00	0.00	5,710.17	s
001605	03/09/05	3,594.38	P	MF200	05	00	0.00	3,594.38	11/30/11	3,594.38	0.00	0.00	3,594.38	s
001606	03/01/05	25,725.08	P	MF200	05	00	0.00	25,725.08	11/30/11	25,725.08	0.00	0.00	25,725.08	s
001607	03/02/05	3,365.36	P	MF200	07	00	0.00	3,365.36	11/30/11	2,914.83	25.03	300.35	3,215.18	s
001608	04/22/05	38,200.00	P	MF200	05	00	0.00	38,200.00	11/30/11	38,200.00	0.00	0.00	38,200.00	s
001609	04/11/05	11,510.52	P	MF200	05	00	0.00	11,510.52	11/30/11	11,510.52	0.00	0.00	11,510.52	s
001611	06/03/05	11,182.50	P	MF200	05	00	0.00	11,182.50	11/30/11	11,182.50	0.00	0.00	11,182.50	s
001612	06/03/05	11,182.50	P	MF200	05	00	0.00	11,182.50	11/30/11	11,182.50	0.00	0.00	11,182.50	s
001613	05/06/05	2,661.44	P	MF200	05	00	0.00	2,661.44	11/30/11	2,661.44	0.00	0.00	2,661.44	s
001614	05/31/05	45,840.50	P	MF200	05	00	0.00	45,840.50	11/30/11	45,840.50	0.00	0.00	45,840.50	s
001615	05/24/05	41,067.50	P	MF200	05	00	0.00	41,067.50	11/30/11	41,067.50	0.00	0.00	41,067.50	s
001624	06/12/05	8,326.50	P	MF200	05	00	0.00	8,326.50	11/30/11	8,326.50	0.00	0.00	8,326.50	s
001625	06/12/05	8,326.50	P	MF200	05	00	0.00	8,326.50	11/30/11	8,326.50	0.00	0.00	8,326.50	s
001626	06/01/05	6,557.63	P	MF200	05	00	0.00	6,557.63	11/30/11	6,557.63	0.00	0.00	6,557.63	s
001627	07/21/05	20,000.00	P	MF200	05	00	0.00	20,000.00	11/30/11	20,000.00	0.00	0.00	20,000.00	s
001628	07/01/05	35,815.22	P	MF200	05	00	0.00	35,815.22	11/30/11	35,815.22	0.00	0.00	35,815.22	s
001629	07/01/05	2,556.00	P	MF200	05	00	0.00	2,556.00	11/30/11	2,556.00	0.00	0.00	2,556.00	s
001630	07/01/05	3,301.50	P	MF200	05	00	0.00	3,301.50	11/30/11	3,301.50				

Confidential - Submitted as an offer of settlement and subject to MRE 408

001650	10/12/05	5,500.00	P	MF200	05	00	0.00	5,500.00	11/30/11	5,500.00	0.00	0.00	5,500.00	s
001651	10/12/05	5,500.00	P	MF200	05	00	0.00	5,500.00	11/30/11	5,500.00	0.00	0.00	5,500.00	s
001652	11/03/05	2,899.30	P	MF200	05	00	0.00	2,899.30	11/30/11	2,899.30	0.00	0.00	2,899.30	s
001653	12/29/05	3,381.00	P	MF200	05	00	0.00	3,381.00	11/30/11	3,381.00	0.00	0.00	3,381.00	s
001654	12/14/05	4,277.45	P	MF200	05	00	0.00	4,277.45	11/30/11	4,277.45	0.00	0.00	4,277.45	s
001655	11/30/05	3,165.00	P	MF200	05	00	0.00	3,165.00	11/30/11	3,165.00	0.00	0.00	3,165.00	s
001656	11/30/05	3,312.45	P	MF200	05	00	0.00	3,312.45	11/30/11	3,312.45	0.00	0.00	3,312.45	s
001657	11/30/05	3,312.45	P	MF200	05	00	0.00	3,312.45	11/30/11	3,312.45	0.00	0.00	3,312.45	s
001658	11/30/05	3,312.45	P	MF200	05	00	0.00	3,312.45	11/30/11	3,312.45	0.00	0.00	3,312.45	s
001659	12/08/05	4,277.98	P	MF200	05	00	0.00	4,277.98	11/30/11	4,277.98	0.00	0.00	4,277.98	s
001660	11/19/05	8,170.63	P	MF200	05	00	0.00	8,170.63	11/30/11	8,170.63	0.00	0.00	8,170.63	s
001661	12/21/05	3,252.25	P	MF200	05	00	0.00	3,252.25	11/30/11	3,252.25	0.00	0.00	3,252.25	s
001662	12/20/05	3,727.50	P	MF200	05	00	0.00	3,727.50	11/30/11	3,727.50	0.00	0.00	3,727.50	s
001663	11/16/05	6,776.86	P	MF200	05	00	0.00	6,776.86	11/30/11	6,776.86	0.00	0.00	6,776.86	s
001664	10/21/05	4,191.00	P	MF200	05	00	0.00	4,191.00	11/30/11	4,191.00	0.00	0.00	4,191.00	s
001665	11/29/05	2,715.75	P	MF200	05	00	0.00	2,715.75	11/30/11	2,715.75	0.00	0.00	2,715.75	s
001666	11/29/05	2,556.00	P	MF200	05	00	0.00	2,556.00	11/30/11	2,556.00	0.00	0.00	2,556.00	s
001667	10/14/05	7,018.35	P	MF200	05	00	0.00	7,018.35	11/30/11	7,018.35	0.00	0.00	7,018.35	s
001668	10/14/05	7,018.35	P	MF200	05	00	0.00	7,018.35	11/30/11	7,018.35	0.00	0.00	7,018.35	s
001669	10/14/05	7,018.35	P	MF200	05	00	0.00	7,018.35	11/30/11	7,018.35	0.00	0.00	7,018.35	s
001670	10/14/05	7,018.35	P	MF200	05	00	0.00	7,018.35	11/30/11	7,018.35	0.00	0.00	7,018.35	s
001671	12/27/05	8,072.34	P	MF200	05	00	0.00	8,072.34	11/30/11	8,072.34	0.00	0.00	8,072.34	s
001672	12/15/05	3,306.97	P	MF200	07	00	0.00	3,306.97	09/31/11	2,864.26	0.00	147.67	3,011.83	ds
001673	05/12/05	24,355.55	P	MF200	05	00	0.00	24,355.55	11/30/11	24,355.55	0.00	0.00	24,355.55	s
001674	05/12/05	11,201.21	P	MF200	05	00	0.00	11,201.21	11/30/11	11,201.21	0.00	0.00	11,201.21	s
001675	05/12/05	11,201.21	P	MF200	05	00	0.00	11,201.21	11/30/11	11,201.21	0.00	0.00	11,201.21	s
001676	05/12/05	11,201.21	P	MF200	05	00	0.00	11,201.21	11/30/11	11,201.21	0.00	0.00	11,201.21	s
001677	05/12/05	11,201.21	P	MF200	05	00	0.00	11,201.21	11/30/11	11,201.21	0.00	0.00	11,201.21	s
001678	05/12/05	11,201.21	P	MF200	05	00	0.00	11,201.21	11/30/11	11,201.21	0.00	0.00	11,201.21	s
001679	01/19/06	45,050.00	P	MF200	05	00	0.00	45,050.00	11/30/11	44,429.90	0.00	620.10	45,050.00	sm
001680	01/19/06	32,505.10	P	MF200	05	00	0.00	32,505.10	11/30/11	32,057.68	0.00	447.42	32,505.10	sm
001681	01/26/06	36,809.25	P	MF200	05	00	0.00	36,809.25	11/30/11	36,302.58	0.00	506.67	36,809.25	sm
001682	01/04/06	3,100.00	P	MF200	05	00	0.00	3,100.00	11/30/11	3,057.33	0.00	42.67	3,100.00	sm
001683	02/08/06	26,500.00	P	MF200	05	00	0.00	26,500.00	11/30/11	26,135.24	0.00	364.76	26,500.00	sm
001684	02/08/06	26,500.00	P	MF200	05	00	0.00	26,500.00	11/30/11	26,135.24	0.00	364.76	26,500.00	sm
001685	03/31/06	27,622.29	P	MF200	05	00	0.00	27,622.29	11/30/11	27,242.08	0.00	380.21	27,622.29	sm
001686	03/31/06	32,156.09	P	MF200	05	00	0.00	32,156.09	11/30/11	31,713.47	0.00	442.62	32,156.09	sm
001687	03/31/06	31,793.99	P	MF200	05	00	0.00	31,793.99	11/30/11	31,356.36	0.00	437.63	31,793.99	sm
001688	03/20/06	19,400.00	P	MF200	05	00	0.00	19,400.00	11/30/11	19,132.97	0.00	267.03	19,400.00	sm
001689	03/20/06	19,400.00	P	MF200	05	00	0.00	19,400.00	11/30/11	19,132.97	0.00	267.03	19,400.00	sm
001690	03/20/06	19,400.00	P	MF200	05	00	0.00	19,400.00	11/30/11	19,132.97	0.00	267.03	19,400.00	sm
001691	03/02/06	69,688.12	P	MF200	05	00	0.00	69,688.12	11/30/11	68,728.88	0.00	959.24	69,688.12	sm
001693	04/01/06	40,384.85	P	MF200	05	00	0.00	40,384.85	11/30/11	38,663.18	0.00	1,721.67	40,384.85	sm
001694	05/24/06	31,647.02	P	MF200	05	00	0.00	31,647.02	11/30/11	30,297.86	0.00	1,349.16	31,647.02	sm
001695	01/01/06	6,390.00	P	MF150	15	00	0.00	6,390.00	11/30/11	2,564.37	31.88	382.56	6,390.00	m
001696	06/29/06	31,614.00	P	MF200	05	00	0.00	31,614.00	11/30/11	30,266.25	0.00	1,347.75	31,614.00	sm
001697	06/22/06	8,000.00	P	MF200	05	00	0.00	8,000.00	11/30/11	7,658.95	0.00	341.05	8,000.00	sm
001698	05/23/06	3,500.00	P	MF200	05	00	0.00	3,500.00	11/30/11	3,350.79	0.00	149.21	3,500.00	sm
001699	04/03/06	2,940.00	P	MF200	05	00	0.00	2,940.00	11/30/11	2,814.66	0.00	125.34	2,940.00	sm
001701	07/12/06	21,305.00	P	MF200	05	00	0.00	21,305.00	11/30/11	19,800.54	0.00	1,504.46	21,305.00	sm
001702	07/06/06	5,532.68	P	MF200	05	00	0.00	5,532.68	11/30/11	5,141.99	0.00	390.69	5,532.68	sm
001703	07/31/06	118,259.00	P	MF200	05	00	0.00	118,259.00	11/30/11	109,908.10	0.00	8,350.90	118,259.00	sm
001704	07/12/06	171,761.35	P	MF200	05	00	0.00	171,761.35	11/30/11	159,632.36	0.00	12,128.99	171,761.35	sm
001705	07/12/06	171,761.35	P	MF200	05	00	0.00	171,761.35	11/30/11	159,632.36	0.00	12,128.99	171,761.35	sm
001706	07/07/06	27,103.93	P	MF200	05	00	0.00	27,103.93	11/30/11	25,189.98	0.00	1,913.95	27,103.93	sm
001707	08/09/06	29,432.75	P	MF200	05	00	0.00	29,432.75	11/30/11	27,354.35	0.00	2,078.40	29,432.75	sm
001708	07/24/06	7,342.30	P	MF200	05	00	0.00	7,342.30	11/30/11	6,823.82	0.00	518.48	7,342.30	sm
001709	08/01/06	6,801.89	P	MF200	05	00	0.00	6,801.89	11/30/11	6,321.57	0.00	480.32	6,801.89	sm
001710	08/29/06	6,709.79	P	MF200	05	00	0.00	6,709.79	11/30/11	6,235.98	0.00	473.81	6,709.79	sm
001711	08/22/06	2,550.68	P	MF200	05	00	0.00	2,550.68	11/30/11	2,370.56	0.00	180.12	2,550.68	sm
001712	08/15/06	6,167.62	P	MF200	05	00	0.00	6,167.62	11/30/11	5,732.09	0.00	435.53	6,167.62	sm
001713	08/15/06	6,167.62	P	MF200	05	00	0.00	6,167.62	11/30/11	5,732.09	0.00	435.53	6,167.62	sm
001714	08/16/06	5,597.42	P	MF200	05	00	0.00	5,597.42	11/30/11	5,202.16	0.00	395.26	5,597.42	sm
001715	07/24/06	2,550.68	P	MF200	05	00	0.00	2,550.68	11/30/11	2,370.56	0.00	180.12	2,550.68	sm
001716	07/27/06	1,750.00	P	MF200	05	00	0.00	1,750.00	11/30/11	1,626.42	0.00	123.58	1,750.00	sm
001717	09/01/06	2,148.67	P	MF200	05	00	0.00	2,148.67	11/30/11	1,996.94	0.00	151.73	2,148.67	sm
001718	09/01/06	2,758.35	P	MF200	05	00	0.00	2,758.35	11/30/11	2,563.57	0.00	194.78	2,758.35	sm
001719	09/06/06	9,203.60	P	MF200	05	00	0.00	9,203.60	11/30/11	8,553.69	0.00	649.91	9,203.60	sm
001720	09/04/06	2,697.47	P	MF200	05	00	0.00	2,697.47	11/30/11	2,506.99	0.00	190.48	2,697.47	sm
001721	09/15/06	6,600.00	P	MF200	05	00	0.00	6,600.00	11/30/11	6,133.94	0.00	466.06	6,600.00	sm
001722	10/01/06	69,012.00	P	MF200	05	00	0.00	69,012.00	11/30/11	62,403.41	0.00	6,608.59	69,012.00	sm
001723	10/01/06	16,193.23	P	MF200	05	00	0.00	16,193.23	11/30/11	14,642.57	0.00	1,550.66	16,193.23	sm
001724	08/01/06	19,702.50	P	MF200	05	00	0.00	19,702.50	11/30/11	18,311.20	0.00	1,391.30	19,702.50	sm
001725	10/02/06	3,303.18	P	MF200	05	00	0.00	3,303.18	11/30/11	2,986.87	0.00	316.31	3,303.18	sm
001726	10/02/06	3,303.18	P	MF200	05	00	0.00	3,303.18	11/30/11	2,986.87	0.00	316.31	3,303.18	sm
001727	08/22/06	2,550.68	P	MF200	05	00	0.00	2,550.68	11/30/11	2,370.56	0.00	180.12	2,550.68	sm
001729	11/01/06	20,000.00	P	MF200	05	00	0.00	20,000.00	11/30/11	18,084.80	0.00	1,915.20	20,000.00	sm
001730	11/01/06	20,000.00	P	MF200	05	0								

Confidential - Submitted as an offer of settlement and subject to MRE 408

001750	12/26/06	41,000.00	P	MF200	05	00	0.00	41,000.00	11/30/11	37,073.84	0.00	3,926.16	41,000.00	sm
001751	12/26/06	41,000.00	P	MF200	05	00	0.00	41,000.00	11/30/11	37,073.84	0.00	3,926.16	41,000.00	sm
001752	12/26/06	41,000.00	P	MF200	05	00	0.00	41,000.00	11/30/11	37,073.84	0.00	3,926.16	41,000.00	sm
001754	01/05/07	6,893.98	P	MF200	05	00	0.00	6,893.98	11/30/11	5,702.70	66.19	794.19	6,496.89	s
001755	01/08/07	7,362.50	P	MF200	05	00	0.00	7,362.50	11/30/11	6,090.26	70.68	848.16	6,938.42	s
001756	01/08/07	7,362.50	P	MF200	05	00	0.00	7,362.50	11/30/11	6,090.26	70.68	848.16	6,938.42	s
001757	01/08/07	7,362.50	P	MF200	05	00	0.00	7,362.50	11/30/11	6,090.26	70.68	848.16	6,938.42	s
001758	11/29/06	3,639.91	P	MF200	05	00	0.00	3,639.91	11/30/11	3,291.35	0.00	348.56	3,639.91	sm
001759	01/12/07	94,760.51	P	MF200	05	00	0.00	94,760.51	11/30/11	78,041.28	928.85	11,146.15	89,187.43	s
001760	02/14/07	3,998.00	P	MF200	05	00	0.00	3,998.00	11/30/11	3,307.15	38.39	460.57	3,767.72	s
001761	03/23/07	14,854.95	P	MF200	05	00	0.00	14,854.95	11/30/11	12,298.63	142.02	1,704.21	14,002.84	s
001762	03/23/07	15,970.52	P	MF200	05	00	0.00	15,970.52	11/30/11	13,222.71	152.66	1,831.87	15,054.58	s
001763	03/23/07	18,433.42	P	MF200	05	00	0.00	18,433.42	11/30/11	15,279.36	175.23	2,102.71	17,382.07	s
001764	03/23/07	11,591.90	P	MF200	05	00	0.00	11,591.90	11/30/11	9,616.01	109.78	1,317.26	10,933.27	s
001765	03/19/07	9,819.90	P	MF200	05	00	0.00	9,819.90	11/30/11	8,123.02	94.28	1,131.25	9,254.27	s
001766	03/23/07	131,567.50	P	MF200	05	00	0.00	131,567.50	11/30/11	108,832.64	1,263.05	15,156.57	123,989.21	s
001767	03/23/07	131,567.50	P	MF200	05	00	0.00	131,567.50	11/30/11	108,832.64	1,263.05	15,156.57	123,989.21	s
001768	03/29/07	45,197.46	P	MF200	05	00	0.00	45,197.46	11/30/11	37,387.34	433.90	5,206.75	42,594.09	s
001769	03/27/07	3,454.52	P	MF200	05	00	0.00	3,454.52	11/30/11	2,855.59	33.28	399.29	3,254.88	s
001770	03/27/07	3,342.02	P	MF200	05	00	0.00	3,342.02	11/30/11	2,763.99	32.12	385.35	3,149.34	s
001771	03/27/07	3,342.02	P	MF200	05	00	0.00	3,342.02	11/30/11	2,763.99	32.12	385.35	3,149.34	s
001772	03/27/07	3,342.02	P	MF200	05	00	0.00	3,342.02	11/30/11	2,763.99	32.12	385.35	3,149.34	s
001773	03/27/07	3,342.02	P	MF200	05	00	0.00	3,342.02	11/30/11	2,763.99	32.12	385.35	3,149.34	s
001774	03/27/07	3,342.02	P	MF200	05	00	0.00	3,342.02	11/30/11	2,763.99	32.12	385.35	3,149.34	s
001775	03/22/07	13,277.92	P	MF200	05	00	0.00	13,277.92	11/30/11	10,983.50	127.47	1,529.61	12,513.11	s
001776	03/22/07	13,277.93	P	MF200	05	00	0.00	13,277.93	11/30/11	10,983.51	127.47	1,529.61	12,513.12	s
001777	04/09/07	2,661.00	P	MF200	05	00	0.00	2,661.00	11/30/11	2,208.85	25.12	301.43	2,510.28	s
001778	04/12/07	20,900.00	P	MF200	05	00	0.00	20,900.00	11/30/11	17,288.48	200.64	2,407.68	19,696.16	s
001779	04/12/07	20,900.00	P	MF200	05	00	0.00	20,900.00	11/30/11	17,288.48	200.64	2,407.68	19,696.16	s
001780	04/12/07	20,900.00	P	MF200	05	00	0.00	20,900.00	11/30/11	17,288.48	200.64	2,407.68	19,696.16	s
001781	04/12/07	20,900.00	P	MF200	05	00	0.00	20,900.00	11/30/11	17,288.48	200.64	2,407.68	19,696.16	s
001782	04/12/07	20,900.00	P	MF200	05	00	0.00	20,900.00	11/30/11	17,288.48	200.64	2,407.68	19,696.16	s
001783	04/12/07	20,900.00	P	MF200	05	00	0.00	20,900.00	11/30/11	17,288.48	200.64	2,407.68	19,696.16	s
001784	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001785	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001786	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001787	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001788	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001789	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001790	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001791	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001792	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001793	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001794	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001795	04/05/07	12,700.00	P	MF200	05	00	0.00	12,700.00	11/30/11	10,505.44	121.92	1,463.04	11,968.48	s
001796	04/23/07	5,700.31	P	MF200	05	00	0.00	5,700.31	11/30/11	4,715.30	54.73	656.67	5,371.97	s
001797	04/15/07	5,134.89	P	MF200	05	00	0.00	5,134.89	11/30/11	4,247.58	49.30	591.54	4,839.12	s
001798	04/15/07	6,246.50	P	MF200	05	00	0.00	6,246.50	11/30/11	5,167.11	59.97	719.59	5,886.70	s
001799	05/08/07	43,000.00	P	MF200	05	00	0.00	43,000.00	11/30/11	35,569.60	412.80	4,953.60	40,523.20	s
001800	05/11/07	2,025.29	P	MF200	05	00	0.00	2,025.29	11/30/11	1,675.32	19.45	233.31	1,908.63	s
001801	05/31/07	43,000.00	P	MF200	05	00	0.00	43,000.00	11/30/11	35,569.60	412.80	4,953.60	40,523.20	s
001802	05/31/07	41,000.00	P	MF200	05	00	0.00	41,000.00	11/30/11	33,915.20	393.60	4,723.20	38,638.40	s
001803	05/31/07	42,000.00	P	MF200	05	00	0.00	42,000.00	11/30/11	34,742.40	403.20	4,838.40	39,580.80	s
001804	05/19/07	61,588.25	P	MF200	05	00	0.00	61,588.25	03/31/11	50,944.62	0.00	3,547.88	54,492.50	ds
001805	07/09/07	40,642.23	P	MF200	05	00	0.00	40,642.23	11/30/11	33,619.25	390.17	4,681.99	38,301.24	s
001806	07/09/07	40,642.23	P	MF200	05	00	0.00	40,642.23	11/30/11	33,619.25	390.17	4,681.99	38,301.24	s
001807	07/09/07	10,025.09	P	MF200	05	00	0.00	10,025.09	11/30/11	8,292.76	96.25	1,154.89	9,447.65	s
001808	07/09/07	40,642.23	P	MF200	05	00	0.00	40,642.23	11/30/11	33,619.25	390.17	4,681.99	38,301.24	s
001810	07/12/07	6,265.69	P	MF200	05	00	0.00	6,265.69	11/30/11	5,182.98	60.16	721.81	5,904.79	s
001811	07/20/07	3,328.13	P	MF200	05	00	0.00	3,328.13	11/30/11	2,753.03	31.95	383.40	3,136.43	s
001812	05/28/07	2,985.14	P	MF200	05	00	0.00	2,985.14	11/30/11	2,469.31	28.66	343.89	2,813.20	s
001817	08/29/07	33,081.85	P	MF200	05	00	0.00	33,081.85	11/30/11	27,365.31	317.59	3,811.03	31,176.34	s
001818	08/29/07	35,059.87	P	MF200	05	00	0.00	35,059.87	11/30/11	29,001.53	336.58	4,038.89	33,040.42	s
001819	08/29/07	35,269.67	P	MF200	05	00	0.00	35,269.67	11/30/11	29,175.07	338.59	4,063.07	33,238.14	s
001820	08/30/07	34,728.65	P	MF200	05	00	0.00	34,728.65	11/30/11	28,727.54	333.40	4,000.74	32,728.28	s
001821	08/29/07	23,000.00	P	MF200	05	00	0.00	23,000.00	11/30/11	19,025.60	220.80	2,649.60	21,675.20	s
001822	08/30/07	13,500.00	P	MF200	05	00	0.00	13,500.00	11/30/11	11,167.20	129.60	1,555.20	12,722.40	s
001827	09/04/07	44,658.69	P	MF200	05	00	0.00	44,658.69	11/30/11	36,941.67	428.73	5,144.68	42,086.35	s
001828	09/04/07	44,392.44	P	MF200	05	00	0.00	44,392.44	11/30/11	36,721.43	426.17	5,114.01	41,835.44	s
001829	09/04/07	26,235.53	P	MF200	05	00	0.00	26,235.53	11/30/11	21,702.03	251.87	3,022.33	24,724.36	s
001830	09/04/07	26,959.73	P	MF200	05	00	0.00	26,959.73	11/30/11	22,301.09	258.82	3,105.76	25,406.85	s
001831	09/04/07	26,539.08	P	MF200	05	00	0.00	26,539.08	11/30/11	21,953.12	254.78	3,057.31	25,010.43	s
001832	08/30/07	26,240.85	P	MF200	05	00	0.00	26,240.85	11/30/11	21,706.39	251.92	3,022.97	24,729.36	s
001833	09/04/07	27,151.43	P	MF200	05	00	0.00	27,151.43	11/30/11	22,459.66	260.66	3,127.85	25,587.51	s
001834	09/04/07	26,507.10	P	MF200	05	00	0.00	26,507.10	11/30/11	21,926.67	254.47	3,053.62	24,980.29	s
001838	08/23/07	2,133.00	P	MF200										

Confidential - Submitted as an offer of settlement and subject to MRE 408

001866	09/10/07	13,046.25	P	MF200	05	00	0.00	13,046.25	11/30/11	10,791.86	125.25	1,502.93	12,294.79	s
001867	09/26/07	11,183.00	P	MF200	05	00	0.00	11,183.00	11/30/11	9,250.58	107.36	1,288.28	10,538.86	s
001868	09/04/07	3,171.77	P	MF200	05	00	0.00	3,171.77	11/30/11	2,623.69	30.45	365.39	2,989.08	s
001869	09/04/07	3,171.77	P	MF200	05	00	0.00	3,171.77	11/30/11	2,623.69	30.45	365.39	2,989.08	s
001870	09/04/07	3,171.77	P	MF200	05	00	0.00	3,171.77	11/30/11	2,623.69	30.45	365.39	2,989.08	s
001871	08/06/07	140,219.98	P	MF200	05	00	0.00	140,219.98	11/30/11	115,989.97	1,346.12	16,153.34	132,143.31	s
001872	08/06/07	140,219.98	P	MF200	05	00	0.00	140,219.98	11/30/11	115,989.97	1,346.12	16,153.34	132,143.31	s
001873	10/18/07	45,769.25	P	MF200	05	00	0.00	45,769.25	11/30/11	37,860.33	439.39	5,272.61	43,132.94	s
001874	09/28/07	26,949.53	P	MF200	05	00	0.00	26,949.53	11/30/11	22,292.65	258.72	3,104.59	25,397.24	s
001875	10/25/07	45,585.18	P	MF200	05	00	0.00	45,585.18	11/30/11	37,708.06	437.62	5,251.41	42,959.47	s
001876	10/19/07	33,098.89	P	MF200	05	00	0.00	33,098.89	11/30/11	27,379.40	317.75	3,812.99	31,192.39	s
001878	10/11/07	7,475.59	P	MF200	05	00	0.00	7,475.59	11/30/11	6,183.81	71.77	861.19	7,045.00	s
001879	10/11/07	7,475.58	P	MF200	05	00	0.00	7,475.58	11/30/11	6,183.80	71.77	861.19	7,044.99	s
001880	10/05/07	12,274.50	P	MF200	05	00	0.00	12,274.50	11/30/11	10,153.46	117.84	1,414.03	11,567.49	s
001881	08/03/07	10,225.88	P	MF200	05	00	0.00	10,225.88	11/30/11	8,458.85	98.17	1,178.02	9,636.87	s
001882	09/30/07	3,850.00	P	MF200	05	00	0.00	3,850.00	11/30/11	3,184.72	36.96	443.52	3,628.24	s
001883	10/01/07	18,733.08	P	MF200	05	00	0.00	18,733.08	11/30/11	15,496.00	179.84	2,158.05	17,654.05	s
001884	09/26/07	3,342.76	P	MF200	05	00	0.00	3,342.76	11/30/11	2,765.13	32.10	385.09	3,150.22	s
001885	09/26/07	3,342.76	P	MF200	05	00	0.00	3,342.76	11/30/11	2,765.13	32.10	385.09	3,150.22	s
001886	09/26/07	3,342.76	P	MF200	05	00	0.00	3,342.76	11/30/11	2,765.13	32.10	385.09	3,150.22	s
001887	09/26/07	3,342.76	P	MF200	05	00	0.00	3,342.76	11/30/11	2,765.13	32.10	385.09	3,150.22	s
001888	10/12/07	31,355.10	P	MF200	05	00	0.00	31,355.10	11/30/11	25,936.94	301.01	3,612.11	29,549.05	s
001889	10/12/07	49,432.28	P	MF200	05	00	0.00	49,432.28	11/30/11	40,890.39	474.55	5,694.59	46,584.98	s
001890	10/12/07	2,319.64	P	MF200	05	00	0.00	2,319.64	11/30/11	1,918.80	22.27	267.23	2,186.03	s
001891	10/12/07	4,692.60	P	MF200	05	00	0.00	4,692.60	11/30/11	3,881.72	45.05	540.59	4,422.31	s
001892	10/12/07	4,692.60	P	MF200	05	00	0.00	4,692.60	11/30/11	3,881.72	45.05	540.59	4,422.31	s
001893	09/06/07	3,329.19	P	MF200	05	00	0.00	3,329.19	11/30/11	2,753.90	31.97	383.53	3,137.43	s
001894	09/06/07	3,329.19	P	MF200	05	00	0.00	3,329.19	11/30/11	2,753.90	31.97	383.53	3,137.43	s
001895	10/08/07	10,863.00	P	MF200	05	00	0.00	10,863.00	11/30/11	8,985.88	104.29	1,251.41	10,237.29	s
001896	11/16/07	12,178.28	P	MF200	05	00	0.00	12,178.28	11/30/11	10,073.88	116.92	1,402.93	11,476.81	s
001897	11/26/07	48,457.52	P	MF200	05	00	0.00	48,457.52	11/30/11	40,084.17	465.19	5,582.23	45,666.40	s
001898	11/15/07	13,500.00	P	MF200	05	00	0.00	13,500.00	11/30/11	11,167.20	129.60	1,555.20	12,722.40	s
001899	11/26/07	9,099.13	P	MF200	05	00	0.00	9,099.13	11/30/11	7,526.80	87.36	1,048.22	8,575.02	s
001900	11/16/07	9,176.17	P	MF200	05	00	0.00	9,176.17	11/30/11	7,590.53	88.10	1,057.09	8,647.62	s
001901	10/31/07	2,184.05	P	MF200	05	00	0.00	2,184.05	11/30/11	1,806.65	20.97	251.60	2,058.25	s
001902	10/30/07	7,490.59	P	MF200	05	00	0.00	7,490.59	11/30/11	6,196.22	71.91	862.91	7,059.13	s
001903	11/13/07	6,110.00	P	MF200	05	00	0.00	6,110.00	11/30/11	5,054.19	58.66	703.87	5,758.06	s
001904	10/22/07	3,487.36	P	MF200	05	00	0.00	3,487.36	11/30/11	2,884.74	33.48	401.75	3,286.49	s
001905	10/22/07	3,487.35	P	MF200	05	00	0.00	3,487.35	11/30/11	2,884.73	33.48	401.75	3,286.48	s
001906	11/27/07	2,399.63	P	MF200	05	00	0.00	2,399.63	11/30/11	1,984.98	23.04	276.43	2,261.41	s
001907	12/20/07	35,104.50	P	MF200	05	00	0.00	35,104.50	11/30/11	29,038.44	337.01	4,044.04	33,082.48	s
001908	11/08/07	28,619.42	P	MF200	05	00	0.00	28,619.42	11/30/11	23,673.99	274.75	3,296.95	26,970.94	s
001909	11/08/07	28,619.42	P	MF200	05	00	0.00	28,619.42	11/30/11	23,673.99	274.75	3,296.95	26,970.94	s
001910	08/06/07	2,980.94	P	MF200	05	00	0.00	2,980.94	11/30/11	2,465.83	28.62	343.41	2,809.24	s
001911	09/07/07	2,985.18	P	MF200	05	00	0.00	2,985.18	11/30/11	2,469.34	28.66	343.89	2,813.23	s
001912	08/10/07	2,985.14	P	MF200	05	00	0.00	2,985.14	11/30/11	2,469.31	28.66	343.89	2,813.20	s
001913	09/17/07	4,799.25	P	MF200	05	00	0.00	4,799.25	11/30/11	3,969.94	46.08	552.87	4,522.81	s
001914	11/28/07	7,075.00	P	MF200	05	00	0.00	7,075.00	11/30/11	5,852.44	67.92	815.04	6,667.48	s
001915	11/28/07	7,075.00	P	MF200	05	00	0.00	7,075.00	11/30/11	5,852.44	67.92	815.04	6,667.48	s
001916	11/28/07	7,075.00	P	MF200	05	00	0.00	7,075.00	11/30/11	5,852.44	67.92	815.04	6,667.48	s
001919	11/27/07	4,170.00	P	MF200	05	00	0.00	4,170.00	11/30/11	3,449.42	40.04	480.39	3,929.81	s
001920	12/31/07	8,921.71	P	MF200	05	00	0.00	8,921.71	11/30/11	7,380.04	85.65	1,027.78	8,407.82	s
001921	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001922	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001923	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001924	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001925	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001926	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001927	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001928	12/31/07	0.00	P	MF200	05	00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	
001929	12/31/07	3,548.28	P	MF200	05	00	0.00	3,548.28	11/30/11	2,935.14	34.07	408.76	3,343.90	s
001931	12/31/07	29,773.40	P	MF200	05	00	0.00	29,773.40	11/30/11	24,628.56	285.83	3,429.89	28,058.45	s
001932	12/31/07	32,597.86	P	MF200	05	00	0.00	32,597.86	11/30/11	26,964.95	312.94	3,755.27	30,720.22	s
001933	12/01/07	44,330.50	P	MF200	05	00	0.00	44,330.50	11/30/11	36,670.19	425.58	5,106.87	41,777.06	s
001934	12/01/07	7,240.00	P	MF200	05	00	0.00	7,240.00	11/30/11	5,988.93	69.51	834.05	6,822.98	s
001935	12/01/07	6,185.70	Z	SLMM	03	00	0.00	6,185.70	11/30/11	6,185.70	0.00	0.00	6,185.70	s
001936	10/25/07	8,520.00	P	MF200	05	00	0.00	8,520.00	11/30/11	7,047.74	81.80	981.51	8,029.25	s
001937	12/07/07	27,690.00	P	MF200	05	00	0.00	27,690.00	11/30/11	22,905.17	265.83	3,189.89	26,095.06	s
001938	01/24/08	2,867.96	P	MA200	05	00	1,433.98	1,433.98	11/30/11	1,020.99	13.77	165.20	1,186.19	sr
001939	01/28/08	2,918.10	P	MA200	05	00	1,459.05	1,459.05	11/30/11	1,038.85	14.01	168.08	1,206.93	r
001940	01/28/08	2,279.10	P	MA200	05	00	1,139.55	1,139.55	11/30/11	811.36	10.94	131.28	942.64	r
001941	01/09/08	4,796.70	P	MA200	05	00	2,398.35	2,398.35	11/30/11	1,707.62	23.02	276.29	1,983.91	r
001942	01/25/08	4,692.60	P	MA200	05	00	2,346.30	2,346.30	11/30/11	1,670.57	22.52	270.29	1,940.86	r
001943	01/25/08	4,692.60	P	MA200	05	00	2,346.30	2,346.30	11/30/11	1,670.57	22.52	270.29	1,940.86	r
001944	01/18/08	7,700.00	P	MA200	05	00	3,850.00	3,850.00	11/30/11	2,741.20	36.96	443.52	3,184.72	sr
001945	01/18/08	7,700.00	P	MA200	05	00	3,850.00	3,850.00	11/30/11	2,741.20	36.96	443.52	3,184.72	sr
001947	03/01/08	7,619.90	P	MA200	05	00	3,809.95	3,809.95	11/30/11	2,712.68	36.58	438.91	3,151.59	r
001948	03/01/08	12,902.52	P	MA200	05	00	6,							

Confidential - Submitted as an offer of settlement and subject to MRE 408

001967	05/15/08	7,781.07	P	MA200	05	00	3,890.54	3,890.53	11/30/11	2,770.06	37.35	448.19	3,218.25	sr
001968	05/15/08	8,343.83	P	MA200	05	00	4,171.92	4,171.91	11/30/11	2,970.40	40.05	480.60	3,451.00	r
001969	05/15/08	6,699.86	P	MA200	05	00	3,349.93	3,349.93	11/30/11	2,385.15	32.16	385.91	2,771.06	r
001970	05/15/08	8,207.96	P	MA200	05	00	4,103.98	4,103.98	11/30/11	2,922.03	39.40	472.78	3,394.81	sr
001971	04/25/08	2,195.42	P	MA200	05	00	1,097.71	1,097.71	11/30/11	781.57	10.54	128.46	908.03	sr
001972	05/21/08	33,866.45	P	MA200	05	00	16,933.23	16,933.22	11/30/11	12,056.45	162.56	1,950.71	14,007.16	r
001973	05/14/08	48,577.45	P	MA200	05	00	24,288.73	24,288.72	11/30/11	17,293.57	233.17	2,798.06	20,091.63	sr
001974	05/14/08	48,575.45	P	MA200	05	00	24,287.73	24,287.72	11/30/11	17,292.85	233.16	2,797.95	20,090.80	sr
001975	05/14/08	47,428.44	P	MA200	05	00	23,714.22	23,714.22	11/30/11	16,884.52	227.66	2,731.88	19,616.40	r
001976	05/09/08	19,729.19	P	MA200	05	00	9,864.60	9,864.59	11/30/11	7,023.59	94.70	1,138.40	8,159.99	r
001977	05/02/08	16,112.68	P	MA200	05	00	8,056.34	8,056.34	11/30/11	5,736.12	77.34	928.09	6,664.21	r
001978	04/30/08	10,964.18	P	MA200	05	00	5,482.09	5,482.09	11/30/11	3,903.25	52.63	631.54	4,534.79	sr
001979	04/30/08	11,546.73	P	MA200	05	00	5,773.37	5,773.36	11/30/11	4,110.63	55.42	665.09	4,775.72	r
001980	04/30/08	11,812.98	P	MA200	05	00	5,906.49	5,906.49	11/30/11	4,205.42	56.70	680.43	4,885.85	sr
001981	04/30/08	11,812.98	P	MA200	05	00	5,906.49	5,906.49	11/30/11	4,205.42	56.70	680.43	4,885.85	sr
001982	04/30/08	11,812.98	P	MA200	05	00	5,906.49	5,906.49	11/30/11	4,205.42	56.70	680.43	4,885.85	sr
001983	05/13/08	3,042.38	P	MA200	05	00	1,521.19	1,521.19	11/30/11	1,083.09	14.60	175.24	1,258.33	r
001984	05/13/08	3,042.37	P	MA200	05	00	1,521.19	1,521.18	11/30/11	1,083.08	14.60	175.24	1,258.32	r
001985	04/24/08	4,181.12	P	MA200	05	00	2,090.56	2,090.56	11/30/11	1,488.48	20.07	240.83	1,729.31	r
001986	04/21/08	6,878.80	P	MA200	05	00	3,439.40	3,439.40	11/30/11	2,448.85	33.02	396.22	2,845.07	r
001987	01/22/08	16,755.14	P	MA200	05	00	8,377.57	8,377.57	11/30/11	5,964.83	80.42	965.10	6,929.93	r
001988	05/16/08	3,407.40	P	MA200	05	00	1,703.70	1,703.70	11/30/11	1,213.03	16.36	196.27	1,409.30	r
001989	05/30/08	14,683.57	P	MA200	05	00	7,341.79	7,341.78	11/30/11	5,227.35	70.48	845.77	6,073.12	sr
001990	05/30/08	14,683.57	P	MA200	05	00	7,341.79	7,341.78	11/30/11	5,227.35	70.48	845.77	6,073.12	sr
001991	06/03/08	35,784.90	P	MA200	05	00	17,892.45	17,892.45	11/30/11	12,739.42	171.77	2,061.21	14,800.63	r
001992	06/18/08	37,275.00	P	MA200	05	00	18,637.50	18,637.50	11/30/11	13,269.90	178.92	2,147.04	15,416.94	sr
001993	06/26/08	3,817.80	P	MA200	05	00	1,908.90	1,908.90	11/30/11	1,359.14	18.32	219.90	1,579.04	r
001994	06/26/08	3,604.28	P	MA200	05	00	1,802.14	1,802.14	11/30/11	1,283.12	17.30	207.61	1,490.73	r
001995	06/26/08	3,604.68	P	MA200	05	00	1,802.34	1,802.34	11/30/11	1,283.27	17.30	207.62	1,490.89	sr
001996	06/26/08	3,604.68	P	MA200	05	00	1,802.34	1,802.34	11/30/11	1,283.27	17.30	207.62	1,490.89	sr
001997	06/26/08	3,604.28	P	MA200	05	00	1,802.14	1,802.14	11/30/11	1,283.12	17.30	207.61	1,490.73	r
001998	06/17/08	3,671.20	P	MA200	05	00	1,835.60	1,835.60	11/30/11	1,306.95	17.62	211.46	1,518.41	r
001999	06/17/08	3,671.20	P	MA200	05	00	1,835.60	1,835.60	11/30/11	1,306.95	17.62	211.46	1,518.41	r
002000	06/17/08	3,864.40	P	MA200	05	00	1,932.20	1,932.20	11/30/11	1,375.72	18.55	222.59	1,598.31	r
002001	06/07/08	3,936.91	P	MA200	05	00	1,968.46	1,968.45	11/30/11	1,401.53	18.90	226.77	1,628.30	r
002002	06/13/08	39,038.00	P	MA200	05	00	19,519.00	19,519.00	11/30/11	13,897.53	187.38	2,248.59	16,146.12	r
002003	06/10/08	7,775.72	P	MA200	05	00	3,887.86	3,887.86	11/30/11	2,768.16	37.32	447.88	3,216.04	sr
002004	07/16/08	2,935.62	P	MA200	05	00	1,467.81	1,467.81	11/30/11	1,045.08	14.09	169.09	1,214.17	r
002005	07/16/08	2,935.63	P	MA200	05	00	1,467.82	1,467.81	11/30/11	1,045.08	14.09	169.09	1,214.17	r
002006	08/12/08	15,000.00	P	MA200	05	00	7,500.00	7,500.00	11/30/11	5,340.00	72.00	864.00	6,204.00	r
002007	08/20/08	26,084.52	P	MA200	05	00	13,042.26	13,042.26	11/30/11	9,286.09	125.21	1,502.47	10,788.56	r
002008	08/20/08	26,338.49	P	MA200	05	00	13,169.25	13,169.24	11/30/11	9,376.50	126.42	1,517.10	10,893.60	sr
002009	07/30/08	4,645.80	P	MA200	05	00	2,322.90	2,322.90	11/30/11	1,653.91	22.30	267.60	1,921.51	r
002010	09/16/08	7,500.00	P	MA200	05	00	3,750.00	3,750.00	11/30/11	2,670.00	36.00	432.00	3,102.00	r
002011	09/09/08	15,259.25	P	MA200	05	00	7,629.63	7,629.62	11/30/11	5,432.29	73.24	878.93	6,311.22	sr
002012	09/09/08	15,259.25	P	MA200	05	00	7,629.63	7,629.62	11/30/11	5,432.29	73.24	878.93	6,311.22	sr
002013	09/10/08	15,259.25	P	MA200	05	00	7,629.63	7,629.62	11/30/11	5,432.29	73.24	878.93	6,311.22	sr
002014	09/10/08	15,259.25	P	MA200	05	00	7,629.63	7,629.62	11/30/11	5,432.29	73.24	878.93	6,311.22	sr
002015	09/16/08	20,371.25	P	MA200	05	00	10,185.63	10,185.62	11/30/11	7,252.16	97.78	1,173.37	8,425.53	r
002016	10/07/08	25,000.00	P	MA200	05	00	12,500.00	12,500.00	11/30/11	8,900.00	120.00	1,440.00	10,340.00	r
002017	10/09/08	66,174.44	P	MA200	05	00	33,087.22	33,087.22	11/30/11	23,558.10	317.64	3,811.65	27,369.75	r
002018	10/10/08	7,724.75	P	MA200	05	00	3,862.38	3,862.37	11/30/11	2,750.01	37.08	444.94	3,194.95	sr
002019	09/18/08	5,254.17	P	MA200	05	00	2,627.09	2,627.08	11/30/11	1,870.48	25.22	302.64	2,173.12	sr
002020	09/18/08	5,254.18	P	MA200	05	00	2,627.09	2,627.09	11/30/11	1,870.49	25.22	302.64	2,173.13	sr
002021	09/18/08	5,254.18	P	MA200	05	00	2,627.09	2,627.09	11/30/11	1,870.49	25.22	302.64	2,173.13	sr
002022	09/18/08	5,254.18	P	MA200	05	00	2,627.09	2,627.09	11/30/11	1,870.49	25.22	302.64	2,173.13	sr
002023	09/23/08	3,095.75	P	MA200	05	00	1,547.88	1,547.87	11/30/11	1,102.08	14.86	178.32	1,280.40	sr
002024	08/28/08	2,393.94	P	MA200	05	00	1,196.97	1,196.97	11/30/11	852.24	11.49	137.89	990.13	sr
002025	08/28/08	2,393.94	P	MA200	05	00	1,196.97	1,196.97	11/30/11	852.24	11.49	137.89	990.13	sr
002026	07/21/08	3,562.43	P	MA200	05	00	1,781.22	1,781.21	11/30/11	1,268.22	17.10	205.20	1,473.42	sr
002027	10/10/08	2,668.75	P	MA200	05	00	1,334.38	1,334.37	11/30/11	950.07	12.81	153.72	1,103.79	sr
002028	10/10/08	2,668.75	P	MA200	05	00	1,334.38	1,334.37	11/30/11	950.07	12.81	153.72	1,103.79	sr
002029	09/29/08	3,605.27	P	MA200	05	00	1,802.64	1,802.63	11/30/11	1,283.47	17.30	207.66	1,491.13	sr
002030	09/29/08	3,605.43	P	MA200	05	00	1,802.72	1,802.71	11/30/11	1,283.53	17.31	207.67	1,491.20	sr
002031	09/30/08	2,687.10	P	MA200	05	00	1,343.55	1,343.55	11/30/11	956.61	12.90	154.78	1,111.39	r
002032	09/29/08	3,605.43	P	MA200	05	00	1,802.72	1,802.71	11/30/11	1,283.53	17.31	207.67	1,491.20	sr
002033	09/29/08	3,605.27	P	MA200	05	00	1,802.64	1,802.63	11/30/11	1,283.47	17.30	207.66	1,491.13	sr
002034	09/30/08	3,853.26	P	MA200	05	00	1,926.63	1,926.63	11/30/11	1,371.76	18.50	221.95	1,593.71	sr
002035	09/30/08	3,853.26	P	MA200	05	00	1,926.63	1,926.63	11/30/11	1,371.76	18.50	221.95	1,593.71	sr
002036	09/15/08	2,687.14	P	MA200	05	00	1,343.57	1,343.57	11/30/11	956.62	12.90	154.78	1,111.40	r
002037	09/12/08	2,401.76	P	MA200	05	00	1,200.88	1,200.88	11/30/11	855.03	11.53	138.34	993.37	r
002038	10/15/08	3,931.21	P	MA200	05	00	1,965.61	1,965.60	11/30/11	1,399.51	18.87	226.44	1,625.95	sr
002039	10/15/08	3,931.21	P	MA200	05	00	1,965.61	1,965.60	11/30/11	1,399.51	18.87	226.44	1,625.95	sr
002040	09/04/08	37,000.00	P	MA200	05	00	18,500.00	18,500.00	11/30/11	13,172.00	177.60	2,131.20	15,303.20	sr
002041	09/04/08	43,500.00	P	MA200	05	00	21,750.00	21,750.00	11/30/11	15,486.00	208.80	2,505.60	17,991.60	sr

Confidential - Submitted as an offer of settlement and subject to MRE 408

002063	03/21/08	34,444.68	P	MA200	07 00	17,172.44	17,172.44	03/31/11	9,662.63	0.00	1,072.83	10,735.46	dr
002064	04/08/08	5,759.36	P	MA200	07 00	3,379.68	3,379.68	03/31/11	1,901.69	0.00	211.14	2,112.83	dr
002065	11/03/08	12,968.30	P	MA200	05 00	6,484.15	6,484.15	11/30/11	4,616.72	62.25	748.97	5,365.69	r
002066	12/31/08	3,619.93	P	MA200	05 00	1,809.97	1,809.97	11/30/11	1,288.69	17.38	208.51	1,497.20	sr
002067	11/20/08	5,551.94	P	MA200	05 00	2,775.97	2,775.97	11/30/11	1,976.49	26.65	319.79	2,296.28	r
002068	11/24/08	4,157.92	P	MA200	05 00	2,078.96	2,078.96	11/30/11	1,480.22	19.96	235.50	1,719.72	r
002069	11/12/08	7,977.08	P	MA200	05 00	3,988.54	3,988.54	11/30/11	2,839.84	38.29	459.48	3,299.32	r
002070	11/12/06	7,977.09	P	MA200	05 00	3,988.55	3,988.54	11/30/11	2,839.84	38.29	459.48	3,299.32	r
002071	12/24/08	11,629.00	P	MA200	05 00	5,814.50	5,814.50	11/30/11	4,139.92	55.82	669.83	4,809.75	r
002072	11/24/08	3,461.25	P	MA200	05 00	1,730.63	1,730.62	11/30/11	1,232.20	16.61	199.36	1,431.56	r
002073	10/16/08	4,095.79	P	MA200	05 00	2,047.90	2,047.89	11/30/11	1,458.10	19.66	235.92	1,694.02	sr
002074	09/26/08	63,580.50	P	MA200	05 00	31,790.25	31,790.25	11/30/11	22,634.66	305.19	3,662.24	26,296.90	sr
002075	11/25/08	2,500.00	P	MA200	05 00	1,250.00	1,250.00	11/30/11	890.00	12.00	144.00	1,034.00	r
002076	12/03/08	48,990.00	P	MA200	05 00	24,495.00	24,495.00	11/30/11	17,440.44	235.15	2,821.82	20,262.26	r
002077	12/19/08	6,635.25	P	MA200	05 00	3,317.63	3,317.62	11/30/11	2,362.14	31.85	382.19	2,744.33	sr
002078	12/22/08	137,487.50	P	MA200	05 00	68,743.75	68,743.75	11/30/11	46,945.55	659.94	7,919.28	56,864.83	sr
002079	12/12/08	76,043.77	P	MA200	05 00	38,021.89	38,021.88	11/30/11	27,071.58	365.01	4,380.12	31,451.70	sr
002080	09/15/08	36,636.00	P	MA200	05 00	18,318.00	18,318.00	11/30/11	13,042.42	175.85	2,110.23	15,152.65	r
002081	10/10/08	7,789.10	P	MA200	07 00	3,880.05	3,880.05	03/31/11	2,183.24	0.00	242.40	2,425.64	dr
002082	02/05/08	5,250.00	P	MA200	05 00	2,625.00	2,625.00	11/30/11	1,869.00	25.20	302.40	2,171.40	sr
002083	05/29/08	6,878.80	P	MA200	05 00	3,439.40	3,439.40	11/30/11	2,448.85	33.02	396.22	2,845.07	r
002084	06/03/08	2,892.75	P	MA200	05 00	1,446.38	1,446.37	11/30/11	1,029.81	13.88	166.62	1,196.43	r
002085	12/16/08	1,152.00	P	MA200	05 00	576.00	576.00	11/30/11	410.11	5.53	66.36	476.47	sr
002086	12/16/08	0.00	P	MF200	07 00	0.00	0.00	11/30/11	0.00	0.00	0.00	0.00	r
002087	07/15/09	2,565.00	P	MA200	05 00	1,282.50	1,282.50	11/30/11	666.90	20.52	246.24	913.14	r
002088	07/15/09	10,775.00	P	MA200	05 00	5,387.50	5,387.50	11/30/11	2,801.50	86.20	1,034.40	3,835.90	r
002089	07/08/09	2,356.75	P	MA200	05 00	1,178.38	1,178.37	11/30/11	612.75	18.85	228.25	839.00	r
002090	06/09/09	12,410.45	P	MA200	05 00	6,205.23	6,205.22	11/30/11	3,226.71	99.28	1,191.40	4,418.11	r
002091	05/15/09	4,260.00	P	MA200	05 00	2,130.00	2,130.00	11/30/11	1,107.60	34.08	408.96	1,516.56	r
002092	06/18/09	3,584.18	P	MA200	05 00	1,792.09	1,792.09	11/30/11	931.89	28.67	344.08	1,275.97	r
002093	02/04/09	69,950.00	P	MA200	05 00	34,975.00	34,975.00	11/30/11	18,187.00	559.60	6,715.20	24,902.20	r
002094	05/07/09	32,427.42	P	MA200	05 00	16,213.71	16,213.71	11/30/11	8,431.13	259.42	3,113.03	11,544.16	r
002095	05/07/09	30,839.50	P	MA200	05 00	15,419.75	15,419.75	11/30/11	8,018.27	246.72	2,960.59	10,978.86	r
002096	05/07/09	32,490.25	P	MA200	05 00	16,245.13	16,245.12	11/30/11	8,447.46	259.92	3,119.06	11,566.52	r
002097	05/07/09	30,558.67	P	MA200	05 00	15,279.34	15,279.33	11/30/11	7,945.25	244.47	2,993.63	10,878.88	r
002098	05/07/09	31,478.50	P	MA200	05 00	15,739.25	15,739.25	11/30/11	8,184.41	251.83	3,021.94	11,206.35	r
002099	04/13/09	7,671.50	P	MA200	05 00	3,835.75	3,835.75	11/30/11	1,994.59	61.37	736.46	2,731.05	r
002100	03/19/09	11,237.00	P	MA200	05 00	5,618.50	5,618.50	11/30/11	2,921.62	89.90	1,078.75	4,000.37	r
002101	03/19/09	11,237.00	P	MA200	05 00	5,618.50	5,618.50	11/30/11	2,921.62	89.90	1,078.75	4,000.37	r
002102	03/23/09	3,761.71	P	MA200	05 00	1,880.86	1,880.85	11/30/11	978.04	30.09	361.12	1,339.16	r
002103	03/26/09	329,500.00	P	MA200	05 00	164,750.00	164,750.00	11/30/11	85,670.00	2,636.00	31,632.00	117,302.00	r
002104	03/26/09	329,500.00	P	MA200	05 00	164,750.00	164,750.00	11/30/11	85,670.00	2,636.00	31,632.00	117,302.00	r
002105	01/30/09	6,283.50	Z	SLMM	03 00	0.00	6,283.50	11/30/11	4,014.46	174.55	2,094.50	6,108.96	r
002106	03/06/09	3,855.40	P	MA200	05 00	1,927.70	1,927.70	11/30/11	1,002.40	30.84	370.12	1,372.52	r
002107	02/16/09	12,835.95	P	MA200	05 00	6,417.98	6,417.97	11/30/11	3,337.34	102.69	1,232.25	4,569.59	r
002108	02/16/09	12,835.95	P	MA200	05 00	6,417.98	6,417.97	11/30/11	3,337.34	102.69	1,232.25	4,569.59	r
002109	01/29/09	2,356.74	P	MA200	07 00	1,178.38	1,178.35	03/31/11	456.92	0.00	103.06	559.98	dr
002110	01/29/09	3,137.77	P	MA200	05 00	1,568.89	1,568.88	11/30/11	815.82	25.10	301.22	1,117.04	r
002112	08/10/09	2,460.26	P	MA200	05 00	1,230.13	1,230.13	11/30/11	639.67	19.68	236.18	875.85	r
002113	01/07/09	9,500.00	P	MA200	05 00	4,750.00	4,750.00	11/30/11	2,470.00	76.00	912.00	3,382.00	r
002114	05/28/09	3,610.35	P	MA200	05 00	1,805.17	1,805.17	11/30/11	938.69	28.88	346.59	1,285.28	r
002115	01/19/09	5,085.38	P	MA200	05 00	2,542.69	2,542.69	11/30/11	1,322.20	40.68	488.20	1,810.40	r
002116	06/18/09	125,690.00	P	MA200	05 00	62,845.00	62,845.00	11/30/11	32,679.40	1,005.52	12,066.24	44,745.64	r
002117	06/18/09	125,690.00	P	MA200	05 00	62,845.00	62,845.00	11/30/11	32,679.40	1,005.52	12,066.24	44,745.64	r
002118	05/22/09	2,499.99	P	MA200	05 00	1,250.00	1,249.99	11/30/11	650.00	20.00	240.00	890.00	r
002119	04/07/09	31,327.52	P	MA200	05 00	15,663.76	15,663.76	11/30/11	8,145.15	250.62	3,007.44	11,152.59	r
002120	05/08/09	9,539.21	P	MA200	05 00	4,769.61	4,769.60	11/30/11	2,480.19	76.31	915.76	3,395.95	r
002121	05/08/09	9,539.21	P	MA200	05 00	4,769.61	4,769.60	11/30/11	2,480.19	76.31	915.76	3,395.95	r
002122	04/20/09	3,027.43	P	MA200	05 00	1,513.72	1,513.71	11/30/11	787.13	24.22	290.63	1,077.76	r
002123	04/20/09	3,027.43	P	MA200	05 00	1,513.72	1,513.71	11/30/11	787.13	24.22	290.63	1,077.76	r
002124	04/20/09	3,027.43	P	MA200	05 00	1,513.72	1,513.71	11/30/11	787.13	24.22	290.63	1,077.76	r
002125	03/09/09	12,100.00	P	MA200	05 00	6,050.00	6,050.00	11/30/11	3,146.00	96.80	1,161.60	4,307.60	r
002126	03/09/09	12,100.00	P	MA200	05 00	6,050.00	6,050.00	11/30/11	3,146.00	96.80	1,161.60	4,307.60	r
002128	06/03/09	5,586.38	P	MA200	05 00	2,793.19	2,793.19	11/30/11	1,427.78	45.51	546.16	1,973.94	r
002129	09/21/09	7,651.25	P	MA200	05 00	3,825.63	3,825.62	11/30/11	1,989.32	61.21	734.52	2,723.84	r
002130	09/22/09	5,343.75	P	MA200	05 00	2,671.88	2,671.87	11/30/11	1,389.37	42.75	513.00	1,902.37	r
002131	09/21/09	4,198.90	P	MA200	05 00	2,099.45	2,099.45	11/30/11	1,091.71	33.59	403.09	1,494.80	r
002132	09/09/09	2,267.63	P	MA200	05 00	1,133.82	1,133.81	11/30/11	589.58	18.14	217.69	807.27	r
002133	09/30/09	4,785.83	P	MA200	05 00	2,392.92	2,392.91	11/30/11	1,244.31	38.29	459.44	1,703.75	r
002134	10/27/09	7,372.65	P	MA200	05 00	3,686.33	3,686.32	11/30/11	1,916.88	58.98	707.78	2,624.66	r
002135	10/27/09	4,704.23	P	MA200	05 00	2,352.12	2,352.11	11/30/11	1,223.10	37.63	451.60	1,674.70	r
002136	10/05/09	3,831.54	P	MA200	05 00	1,915.77	1,915.77	11/30/11	996.20	30.65	367.83	1,364.03	r
002137	11/27/09	5,363.75	P	MA200	05 00	2,681.88	2,681.87	11/30/11	1,394.57	42.91	514.92	1,909.49	r
002138	12/22/09	10,527.19	P	MA200	05 00	5,263.60	5,263.59	11/30/11	2,737.07	84.22	1,010.61	3,747.68	r
002139	12/10/09	5,000.00	P	MA200	05 00	2,500.00	2,500.00	11/30/11	1,300.00	40.00	480.00	1,780.00	r
002140	12/31/09	3,432.80	P	MA200	05 00	1,716.40	1,716.40	11/30/11	892.53	27.46	329.55	1,222.08	r
002141	12/09/09	5,180.10	P	MA200	07 00	2,590.05	2,590.05	03/31/11	1,004.31	0.00	226.54	1,230.85	dr
002142													

Confidential - Submitted as an offer of settlement and subject to MRE 408

002164	06/28/10	12,390.84	P	MF200	07 00	12,390.84	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002165	05/21/10	7,651.25	P	MF200	07 00	7,651.25	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002166	04/27/10	34,091.50	P	MF200	07 00	34,091.50	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002167	06/04/10	6,001.38	P	MF200	07 00	6,001.38	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002168	04/28/10	17,634.38	P	MF200	07 00	17,634.38	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002169	02/26/10	4,813.89	P	MF200	05 00	4,813.89	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002170	05/03/10	3,254.38	P	MF200	07 00	3,254.38	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002171	08/24/10	6,979.00	P	MF200	07 00	6,979.00	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002172	10/04/10	3,678.30	P	MF200	07 00	3,678.30	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002173	08/30/10	2,989.85	P	MF200	07 00	2,989.85	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002174	08/12/10	11,031.72	P	MF200	07 00	11,031.72	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002175	08/25/10	2,866.57	P	MF200	07 00	2,866.57	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002176	08/25/10	2,866.57	P	MF200	07 00	2,866.57	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002177	06/23/10	40,543.65	P	MF200	07 00	40,543.65	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002178	11/22/10	5,130.00	Z	SLMM	03 00	0.00	5,130.00	11/30/11	142.50	142.50	1,710.00	1,852.50	0.00	r
002179	11/03/10	2,965.78	P	MF200	07 00	2,965.78	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002180	11/03/10	3,289.61	P	MF200	07 00	3,289.61	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002181	11/03/10	3,391.14	P	MF200	07 00	3,391.14	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002182	09/30/10	2,217.50	P	MF200	07 00	2,217.50	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002183	09/30/10	2,217.50	P	MF200	07 00	2,217.50	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002184	10/29/10	15,660.00	P	MF200	07 00	15,660.00	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002185	10/04/10	3,703.22	Z	SLMM	03 00	0.00	3,703.22	11/30/11	308.60	102.87	1,234.41	1,543.01	0.00	r
002186	10/22/10	3,195.54	P	MF200	07 00	3,195.54	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002187	10/21/10	3,188.08	P	MF200	07 00	3,188.08	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002188	10/21/10	2,972.72	P	MF200	07 00	2,972.72	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002189	10/15/10	3,289.61	P	MF200	07 00	3,289.61	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002190	10/15/10	3,289.61	P	MF200	07 00	3,289.61	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002191	10/15/10	3,391.14	P	MF200	07 00	3,391.14	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002192	10/11/10	3,184.61	P	MF200	07 00	3,184.61	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002193	11/05/10	4,759.93	P	MF200	07 00	4,759.93	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002194	11/05/10	4,759.93	P	MF200	07 00	4,759.93	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002195	11/05/10	4,759.93	P	MF200	07 00	4,759.93	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002196	04/13/10	7,499.25	P	MF200	07 00	7,499.25	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002197	12/01/10	3,297.31	P	MF200	05 00	3,297.31	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002198	12/15/10	2,021.74	P	MF200	05 00	2,021.74	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002199	08/19/10	2,866.57	P	MF200	05 00	2,866.57	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002200	10/29/10	2,880.00	P	MF200	05 00	2,880.00	0.00	11/30/11	0.00	0.00	0.00	0.00	0.00	r
002201	01/17/11	4,054.22	P	MF200	05 00	0.00	4,054.22	11/30/11	0.00	67.57	810.84	810.84	0.00	r
002202	01/17/11	3,824.74	P	MF200	05 00	0.00	3,824.74	11/30/11	0.00	63.75	764.96	764.96	0.00	r
		29,249,350.53	0.00	0.00	0.00	6,079,102.99	23,170,247.54	56,485,182.00	21,348,640.87	66,152.45	950,244.15	22,298,885.02		
DISP		(770,147.27)				TIES TO PY								
COST AT 3/31		28,479,203.26												

A/D = 27,826,531.51
 LESS DISP (648,311.32)
 A/D @ 3/31 27,178,220.19

CY DISP (NOT PART OF SALE)				
ACQ COST	BONUS	179 CY DEPR	ACCUM	
770,147.27	311,114.66	7,643.40	23,277.51	329,553.26
SP	450937.74			
COST	(770,147.27)			
A/D	329,553.26			
179/BONUS	318,758.06			
GAIN/LOSS	329101.79	TIES TO DISPOSAL REPORT		

CY DEPR	950,244.15
LESS DEP ON CY ADDS	(1,575.80) NOT ALLOWED SINCE SOLD IN CY
	948,668.35
CY ON ASSETS SOLD PRIOR	(23,277.51) NOT PART OF SALE OF CO
3 YR MID MONTH	(174,370.56)
	751,020.28
1/2 YEAR - DUE 2 SALE OF CO	0.5
	375510.14
CY ON ASSETS SOLD PRIOR	23,277.51
3 YR MID MONTH (2.5 MOS)	36,327.20
TOTAL CY DEPR	398,787.65

4562	
ACERS/OTHER	36,327.20
MACRS	362,460.45 PLUG

ILLINOIS 4562 30%	276,237.86
DEPR ON CY DISP	(19,441.49)
	256,796.37
	0.5
	128,398.19
DEPR ON CY DISP	19,441.49
	147,839.68

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF MICHIGAN
COURT OF CLAIMS

Court of Claims No. 17-000107-MT
Honorable Michael J. Talbot

VECTREN INFRASTRUCTURE)
SERVICES CORP.,)
SUCCESSOR-IN-INTEREST TO)
MINNESOTA LIMITED, INC.,)
Plaintiff,)
-vs-)
MICHIGAN DEPARTMENT OF)
TREASURY,)
Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF:

DOUGLAS S. BANNING, JR.,

the deponent produced and sworn before me,
Joyce E. Shinault, a Notary Public at large,
in and for the State of Indiana, taken on
behalf of the Defendant, at the offices of
MVerge Headquarters, 8850 Crawfordsville
Road, Indianapolis, Indiana, on the 16th day
of March, 2018, pursuant to notice thereof.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

A P P E A R A N C E S

FOR THE PLAINTIFF:

Lynn A. Gandhi, Esq.
HONIGMAN MILLER SCHWARTZ & COHN, LLP
2290 First National Bldg.
660 Woodward Ave.
Detroit, MI 48226
lgandhi@honigman.com

FOR THE DEFENDANT:

(Via remote video)

David W. Thompson, Esq.
Assistant Attorney General
Revenue & Tax Division
P.O. Box 30754
Lansing, MI 48909
ThompsonD18@michigan.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X O F E X A M I N A T I O N

PAGE

DIRECT EXAMINATION.....4
 QUESTIONS BY MR. THOMPSON

CROSS-EXAMINATION.....75
 QUESTIONS BY MS. GANDHI

REDIRECT EXAMINATION.....80
 QUESTIONS BY MR. THOMPSON

RECROSS-EXAMINATION.....83
 QUESTIONS BY MS. GANDHI

FURTHER REDIRECT EXAMINATION.....83
 QUESTIONS BY MR. THOMPSON

I N D E X O F E X H I B I T S

PAGE

DEPOSITION EXHIBIT NO.

1 SEC Form 8-K, 3/31/2011
 (Exhibit 99.1).....23

2 Project Cadillac Confidential
 Memorandum.....32

3 Vectren News Release, 3/31/2011
 (Exhibit 99.2).....68

1 (The witness is sworn by the court
2 reporter at 9:35 a.m., at which time the
3 following proceedings are had:)

4 DOUGLAS S. BANNING, JR.,
5 having been first duly sworn to tell the
6 truth, the whole truth, and nothing but the
7 truth relating to said matter, is examined
8 and testifies as follows:

9 MR. THOMPSON: Let the record
10 reflect this is the deposition of Douglas
11 Banning, taken pursuant to notice and
12 agreement of counsel, and to be utilized for
13 all purposes permitted under the Michigan
14 court rules. This deposition is being
15 conducted remotely, so I am located at the
16 Attorney General's office here in Lansing,
17 Michigan, while the witness and opposing
18 counsel are located in Indianapolis, Indiana;
19 is that correct?

20 THE WITNESS: Correct.

21 DIRECT EXAMINATION,

22 QUESTIONS BY MR. THOMPSON:

23 Q. Mr. Banning, have you ever had your
24 deposition taken before?

1 sentence or that region.

2 Q. Now, let me ask you this. What about the
3 Antrim shale basin, what if I just
4 disqualified it from your consideration of
5 developing that region?

6 A. Yeah, it didn't disqualify -- we didn't
7 consider the Antrim shale basin. I mean, we
8 just considered the customer base and the
9 geographic territories in which they worked.
10 We did not specifically acquire it to look at
11 any shale plays other than Marcellus, Utica,
12 and the Bakken.

13 Q. Okay. So as I understand your testimony so
14 far, you were generally looking to expand
15 your own territory and prospects, right?

16 A. Yeah. As I said, we had a small group that
17 we felt like we could take advantage of
18 market opportunities with a more seasoned,
19 larger management team.

20 Q. So when you talk about the Marcellus and
21 Bakken shales, what was, I guess, better
22 about those shales than the Antrim shale?

23 A. I don't believe there was anything better or
24 worse. It's what we were familiar with and

1 You can answer.

2 A. Yes, that would be correct. That's --
3 Enbridge and Koch and Minnesota Pipe Line,
4 all the customers we talked about, are new
5 customers to us.

6 Q. So while you might be familiar with customers
7 in other regions like you're saying in the
8 Marcellus and Bakken regions, you're really
9 looking to develop a larger customer base,
10 right?

11 MS. GANDHI: Objection to form.
12 You can answer.

13 A. Yeah, I thought I've already answered this.
14 Yes, we got new customers within the
15 acquisition.

16 Q. So, I guess, wouldn't your lack of
17 familiarity with the Antrim region kind of be
18 a plus insofar as you're trying to expand
19 your territory and customer base?

20 MS. GANDHI: Objection to form.

21 A. Sure, it would be a plus, but it didn't
22 really enter into our acquisition criteria as
23 far as whether we wanted to acquire it or
24 not.

1 Q. So the Antrim shale formation is right in the
2 company's geographic sweet spot?

3 A. That's what the sentence says, yes.

4 Q. Okay. And the fact that, for example, the
5 Antrim shale formation is in the company's
6 geographic sweet spot, that's not something
7 that you guys would have considered?

8 MS. GANDHI: Asked and answered.
9 You can respond.

10 A. Yeah, I'd have to admit, prior to today, I
11 don't even know that I've even understood
12 that there was an Antrim shale play in
13 Michigan.

14 Q. Okay. But you did review this offering
15 memorandum back when you were doing the
16 acquisition?

17 A. Yeah, the offering memorandums are put
18 together by investments bankers, and they
19 just take public information and regurgitate
20 it into, you know, market data. We have much
21 more sophisticated market data.

22 Q. But this is a document that you would have
23 reviewed back at the time that you were
24 considering the acquisition?



DATE DOWNLOADED: Tue May 24 22:02:06 2022

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 21st ed.

Kelli P. Murphy, Michigan Business Tax Apportionment and Sales Sourcing Provisions, 53 WAYNE L. REV. 1395 (2007).

ALWD 7th ed.

Kelli P. Murphy, Michigan Business Tax Apportionment and Sales Sourcing Provisions, 53 Wayne L. Rev. 1395 (2007).

APA 7th ed.

Murphy, K. P. (2007). Michigan business tax apportionment and sales sourcing provisions. Wayne Law Review, 53(4), 1395-1430.

Chicago 17th ed.

Kelli P. Murphy, "Michigan Business Tax Apportionment and Sales Sourcing Provisions," Wayne Law Review 53, no. 4 (Winter 2007): 1395-1430

McGill Guide 9th ed.

Kelli P. Murphy, "Michigan Business Tax Apportionment and Sales Sourcing Provisions" (2007) 53:4 Wayne L Rev 1395.

AGLC 4th ed.

Kelli P. Murphy, 'Michigan Business Tax Apportionment and Sales Sourcing Provisions' (2007) 53(4) Wayne Law Review 1395

MLA 9th ed.

Murphy, Kelli P. "Michigan Business Tax Apportionment and Sales Sourcing Provisions." Wayne Law Review, vol. 53, no. 4, Winter 2007, pp. 1395-1430. HeinOnline.

OSCOLA 4th ed.

Kelli P. Murphy, 'Michigan Business Tax Apportionment and Sales Sourcing Provisions' (2007) 53 Wayne L Rev 1395

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

**MICHIGAN BUSINESS TAX
APPORTIONMENT AND SALES SOURCING PROVISIONS**

KELLI P. MURPHY[†]

Table of Contents

I. INTRODUCTION	1395
II. GENEALOGY OF MBT'S APPORTIONMENT PROVISIONS.....	1396
III. SALES STATUTORY DEFINITION—SECTION 115(1)	1400
IV. APPORTIONMENT—CHAPTER 3	1403
V. SOURCING RULES—MBT ACT SECTIONS 305 AND 311	1404
VI. THE RULES THEMSELVES	1406
VII. OTHER APPORTIONMENT PROVISIONS	1421
<i>A. Alternative Apportionment</i>	1421
<i>B. Unitary Group Apportionment</i>	1425
VIII. NON-BUSINESS OR INVESTMENT INCOME.....	1427
IX. SUMMARY COMPARISON TO OTHER GUIDANCE AND TABLE OF REFERENCES.....	1428

I. INTRODUCTION

The new Michigan Business Tax (MBT)¹ apportionment provisions mark a significant departure from their predecessor, the Single Business Tax (SBT),² both in terms of the sales factor definition and sourcing methodology. The sales factor rules reflect a consistent MBT theme—taxation of business should reflect activity in the market.

The MBT apportions the tax base exclusively based on sales and utilizes sourcing rules to determine sales based on where customers are located.³ Unlike the SBT, payroll and property factors are not used and the so-called “cost-of-performance” sales factor numerator sourcing rules are replaced with market-based sourcing.⁴ In addition, the MBT has no

[†] Attorney, Ford Motor Company, Office of Tax Counsel. B.A., 1994, Hillsdale College; J.D., 1999 Wake Forest University School of Law. I would like to thank Monika Jelic, Managing Counsel, Ford Motor Company, Office of Tax Counsel and Tom Cornett for their comments on drafts of this article.

1. MICH. COMP. LAWS ANN. § 208.1101(2) (West Supp. 2007).

2. MICH. COMP. LAWS ANN. § 208.1 (West 2003).

3. MICH. COMP. LAWS ANN. § 208.1301(2) (West Supp. 2007).

4. See MICH. COMP. LAWS ANN. § 208.1305 (West Supp. 2007), amended by 2007 Mich. Pub. Acts 205.

form of throw-back or throw-out rule.⁵ MBT policymakers viewed these SBT apportionment provisions as inconsistent with rewarding investments made within Michigan⁶ and less reflective of the modern commercial marketplace which spans state and national borders. Michigan policymakers are not alone in reforms toward market-driven rules for determining tax base sourcing. Some notable examples include recent amendments to corporate income tax laws in Illinois⁷ and Maine.⁸ The Ohio Commercial Activities Tax,⁹ enacted in 2005, taxes Ohio receipts as determined by where the customer is or benefit is received. Several other state tax reform efforts have looked at market sourcing, and the Multistate Tax Commission is working on policy revisions to deal with arising problems with cost of performance-based sourcing.¹⁰

II. GENEALOGY OF MBT'S APPORTIONMENT PROVISIONS

Like that of many states, Michigan business tax law for the last half of the 20th century followed multistate income tax apportionment approaches similar to or based on the Uniform Division of Income for Tax Purposes Act (UDITPA).¹¹ Both the SBT Act¹² and the Michigan

5. See MICH. COMP. LAWS § 208.52(c) (1998), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007). See also 1998 Mich. Pub. Acts 225 (repealing the SBT throwback rule).

6. According to the MBT Act, the legislature undertook MBT tax reform as an opportunity for economic development:

It is the intent of the legislature that the tax levied under this act and the various credits available under this act will serve to improve the economic condition of this state, foster continued and diverse economic growth in this state, and enable this state to compete fairly and effectively in the world marketplace for economic development opportunities that will provide for and protect the health, safety, and welfare of the citizens of this state, now and in the future.

MICH. COMP. LAWS ANN. § 208.1101(2) (West Supp. 2007).

7. See 2007 Ill. Legis. Serv. Pub. Acts 95-233 (West), *amended by* 35 ILL. COMP. STAT. ANN. 5/304 (2007).

8. See 2007 Me. Legis. Serv. 240 (West).

9. OHIO REV. CODE ANN. § 5751.01 (West Supp. 2007).

10. See Megan R. Mahony & Kenneth S. Lee, *Should Third-Party Costs Be Considered for State Income Tax Sourcing Purposes?*, 44 STATE TAX NOTES 721, 724 (2007) (discussing a number of issues dealing with applying the cost of performance rules to services and the resulting efforts of MTC and others to reform these rules).

11. See Unif. Div. of Income for Tax Purposes Act of 1957. UDITPA was adopted in 1957 by the National Conference of Commissioners on Uniform State Laws after decades of attempts by state tax administrators and others to develop more uniform methods of state income taxation. UDITPA gained state adoption slowly until the creation of the Multistate Tax Compact ("Compact") in 1961. *Id.*; see also Multistate Tax Compact art. IV (describing UDITPA statutory language recommendations). The Multistate Tax Commission "MTC" was created by member states adopting the Compact with the mission of developing policies to enable uniformity in state taxation. The MTC developed regulations to serve as templates for state-level administrative regulations in 1971 and revised it in 1973. See James H. Peters & Benjamin F. Miller, *Apportionability*

Income Tax Act (ITA)¹³ follow the UDITPA pattern. Prior to the ITA, the Michigan legislature amended the Business Activities Tax to adopt a UDITPA-like equally-weighted three-factor apportionment formula (property, payroll, and sales) in 1955.¹⁴ The UDITPA was intended to provide a uniform method of measuring business activity in order to enable the division of taxable income among the states. The apportionment provisions are intended to provide a mechanism to assign income to the various states in which a taxpayer has business activity. According to the UDITPA drafters, use of the average of property, payroll and sales factors provided an approximate of measured business activity, and was not intended to be a precise representation of income earned in a jurisdiction.¹⁵ The U.S. Supreme Court has acknowledged time and again that the purposes of utilization of an apportionment formula include a reasonable measurement of income attributable to the taxing state, but precision is not required.¹⁶ Many Court decisions have upheld the UDITPA approach as applied in various states, but the Court has expressly not dictated that any particular formula is required.¹⁷

Changes in the economy have altered how business is done and the UDITPA's factors for measuring business activity may no longer be representative for many business enterprises. Even UDITPA's supporters acknowledge the need to modernize the 1950s-era provisions to reflect today's business environment.¹⁸

Over time, UDITPA's equally-weighted apportionment formula based on property, payroll and sales factors¹⁹ has been amended by the majority of adopting states to more heavily or exclusively weight the sales factor. As of late 2007, only nine states continue to require equal weighting of the sales factor for business taxes.²⁰ In contrast, fifteen

in State Income Taxation: The Uniform Division of Income for Tax Purposes Act and Allied – Signal, 60 TAX LAW 57, 102-03 (2006) [hereinafter Peters & Miller].

12. MICH. COMP. LAWS §§ 208.1-.145 (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007).

13. *See generally* MICH. COMP. LAWS ANN. § 206.1 (West 2003).

14. *See* MICH. COMP. LAWS § 205.553 (repealed 1959).

15. *See* Peters & Miller, *supra* note 11.

16. *See generally* *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 273 (1978). *See also* *Container Corp. of Am. v. Franchise Tax Bd.* 463 U.S. 159, 169 (1980); *Trinova Corp. v. Mich. Dep't of Treasury*, 498 U.S. 358, 382-83 (1991).

17. *Moorman Mfg.*, 437 U.S. at 274.

18. *See* Benjamin F. Miller, *Current Problems with UDITPA and Possible Solutions*, 28 STATE TAX NOTES 125, 125 (2005). *See also* William Hays Weissman, *A Look at the MTC's Rationale for "Revising" UDITPA*, 44 STATE TAX NOTES 903 (2007).

19. Unif. Div. of Income for Tax Purposes Act of 1957 § 9.

20. *See* JOHN C. HEALY & MICHAEL S. SCHADEWALD, MULTISTATE CORPORATE TAX GUIDE 2007, ¶ 600-200 (2007). States requiring equally-weighted apportionment based on property, payroll and sales are: Alabama, Alaska, Delaware, Hawaii, Montana, New Mexico, North Dakota, Rhode Island and Washington D.C. *Id.* In two others, Kansas and Oklahoma, the general rule requires equally-weighted three-factor apportionment;

states have enacted single sales-factor apportionment formulas for all taxpayers.²¹ As Michigan policymakers observed, sales-factor-only apportionment is viewed as a workable incentive tool for in-state economic development and is one particular incentive tool the U.S. Supreme Court has specifically ruled permissible.²²

In addition to changes in factor weighting, the sourcing rules for determining the sales factor numerator under the UDITPA are being increasingly abandoned. Especially, as the sales factor is more heavily represented in the formula, there is additional scrutiny on what receipts are included in the sales factor and how these items will be determined by taxing jurisdictions. The UDITPA sales factor rules for both sales of tangible personal property and for "other than" sales of tangible personal property rely on the reflection of production inputs in the factor. As states move away from using inputs to measure apportionment in general, by eliminating the property and payroll factors, at the same time there are efforts to measure sales without regard to those same or similar factors in the form of costs of performance rules.

In the case of sales "other than sales of tangible personal property," The UDITPA's sourcing rules measure the sales numerator according to where the majority of the income producing activities are incurred, based on the costs of performance of such activity.²³ UDITPA section 17 reads:

Sales other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.²⁴

The all-or-nothing sourcing of services based on the location of the greater proportion of activities in subsection (b) has been particularly

however, each allows that taxpayers meeting certain in-state investment thresholds may elect to use only the sales factor. *Id.*

21. *Id.* The fifteen states that have enacted sales-factor-only sourcing (some are phasing this rule in over a period of tax years) are Connecticut, Georgia, Illinois, Iowa, Maine, Michigan, Mississippi, Nebraska, New York, Oregon, South Carolina, Texas, Wisconsin, Indiana, and Minnesota. *Id.* In addition, four other states allow single sales factor apportionment for certain industries (typically manufacturing): Louisiana, Maryland, Massachusetts and New Mexico. *Id.*

22. See Jordan M. Goodman *et al.*, *Single-Factor Sales Apportionment: A Tax Incentive for the Future*, 7 J. MULTISTATE TAX'N 196, 197 (1997) (discussing the effect of economic development and providing a constitutional analysis of single factor sales apportionment).

23. Unif. Div. of Income for Tax Purposes Act of 1957 § 17.

24. *Id.*

troublesome for states utilizing the UDITPA language. States have varied in their administrative and judicial interpretation of what activities will be considered in determining costs and what constitutes an “activity.” In Michigan in particular, the cost of performance rule has been applied to deprive a taxpayer of the ability to apportion sales among jurisdictions. In *Ammex, Inc. v. Department of Treasury*,²⁵ the Michigan Court of Appeals applied the cost of performance rule to source all services to Michigan for SBT purposes since the greater proportion, though not all, of income producing activities were in Michigan.²⁶

The Multistate Tax Commission and the National Conference of Commissioners on Uniform State Laws (NCCUSL) have ongoing efforts to review the UDITPA and the MTC regulations in light of issues like this.²⁷ According to Miller:

[W]hen UDITPA was promulgated, sales of other than tangible property were not significant. Those sales represented a minority of the sales of business generally. In addition, many of the receipts generated by those activities had traditionally been treated as income that was specifically allocated to a single jurisdiction. Our economy has changed in 50 years, and sales of other than tangible property represent the majority of sales of the United States and world businesses. The UDITPA rules in this area need to be revised to reflect the location of the customer who is purchasing the service or intangible.²⁸

In addition, although the general rule for sourcing tangible property sales is based on the destination of the goods, UDITPA contains a “throw-back” rule, which requires that sales of tangible property originating in the state are to be included in the numerator of the sales factor of the originating state if the taxpayer is not taxable in the destination state.²⁹

Michigan legislators eliminated the SBT throw-back rule in 1998³⁰ and began phasing-in apportionment, based more heavily on the sales factor.³¹ The ITA³² continues to equally-weight³³ property, payroll and

25. 273 Mich. App. 623 (2007), *appeal denied*, 480 Mich. 883 (2007).

26. *Ammex*, 273 Mich. App. at 626.

27. See Multistate Tax Commission, *available at* <http://www.mtc.gov> (last visited June 19, 2008); see also Weissman, *supra* note 18.

28. Miller, *supra* note 18, at 125.

29. Unif. Div. of Income for Tax Purposes Act of 1957 § 16(b)(2).

30. See MICH. COMP. LAWS § 208.52(c) (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007). See 1998 Mich. Pub. Acts 225 (repealing the SBT throwback rule).

31. See MICH. COMP. LAWS §§ 208.45-.45(a) (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007).

32. As enacted, the Michigan Income Tax Act (1967 Mich. Pub. Acts. 281) taxed the income of both business entities and individuals. See MICH. COMP. LAWS ANN. § 206

sales for purposes of apportioning the business income of Michigan personal income taxpayers as well as employing a throw-back rule.³⁴ The MBT apportionment provisions continue on the SBT path of reducing the reliance on measuring multistate taxes based on inputs.

A table referencing comparable apportionment provisions of the MBT, SBT (as in effect for tax years in calendar year 2007) and UDITPA and MTC is included in the final section of this article.

III. SALES STATUTORY DEFINITION—SECTION 115(1)

In addition to differences in what factors are used to apportion the tax bases to Michigan, fundamental differences exist between the MBT and its predecessors in the definition of sales itself. The MBT generally broadly defines sales to include the amounts received from all types of a taxpayer's business activities.³⁵ MCL section 208.1115(1) reads:

(1) "Sale" or "sales" means, except as provided in subdivision (e), the amounts received by the taxpayer as consideration from the following:

(a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.

(b) The performance of services that constitute business activities.

(c) The rental, lease, licensing, or use of tangible or intangible property, including interest, that constitutes business activity.

(d) Any combination of business activities described in subdivisions (a), (b), and (c).

(West 2003). With the enactment of the SBT Act in 1975, the income tax act provisions relating to taxation of business entities were repealed, but the ITA continues to be applied to personal income taxation of individuals. See Jack E. Mitchell, *Taxes Repealed and Amended*, 22 WAYNE L. REV. 1029 (1976).

33. See MICH. COMP. LAWS ANN. § 206.115 (West 2003).

34. See MICH. COMP. LAWS ANN. § 206.122(b) (West 2003).

35. MICH. COMP. LAWS ANN. § 208.1115 (West Supp. 2007).

(e) For taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities.³⁶

Sales of property in a taxpayer's ordinary course of business are generally measured as gross "amounts received as consideration" for such sales.³⁷ The exception is the sale of intangible property, for which sales only include the net gain received from disposition of the property.³⁸

According to the statute, amounts received for services and rent, licensing fees, and interest are included in "sales" if such items "constitute[s] business activity" of the taxpayer.³⁹

For taxpayers with no other business activities, "sales" includes income from investment activities and assets and trading assets and activities.⁴⁰ The statute states that interest, dividends and other income from such activities are included in sales for apportionment purposes.⁴¹ Presumably, income from investment activities for those engaged in any other form of business activity are not included in sales and therefore not used for measuring tax bases attributable to Michigan.

Although the definition of sales for the MBT is similar to the SBT definition, the terms are not identical. For example, the SBT definition⁴² did not explicitly include interest income for an entity other than a "financial organization,"⁴³ which would have deducted such income from its SBT tax base.

Another important reference is the MBT Act definition of "business activity."⁴⁴ "Business activity" is defined as:

[The] transfer or legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered

36. MICH. COMP. LAWS ANN. § 208.1115(1) (West Supp. 2007).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. MICH. COMP. LAWS § 208.7(1)(b) (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007). *But see* Prulease, Inc. v. Mich. Dep't of Treasury, MTT, No. 91414, ¶ 400-199 (July 8, 1992).

43. MICH. COMP. LAWS § 208.10(4) (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007).

44. MICH. COMP. LAWS ANN. § 208.1105(1) (West 2003).

by an employee to his or her employer or services as a director of a corporation. Although an activity may be incidental to another or to other or his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act.⁴⁵

The sales definition in MCL section 208.115 limits inclusion of “amounts received by the taxpayer as consideration” for the activities discussed in subdivisions (b) through (e) to those that constitute business activity for the taxpayer.⁴⁶

The definition of “business activity” for MBT is largely the same as the term in the SBT Act.⁴⁷ The SBT Act contained an exclusion for a “casual transaction” that is not included in the MBT Act statutory language.⁴⁸ However, the Michigan Department of Treasury (“Department”) has posted guidance for taxpayers in the form of Michigan Business Tax Frequently Asked Questions (FAQ) on a number of issues, including apportionment.⁴⁹ Question “Ap1” asks whether the “occasional sale” of assets by a taxpayer [is] a sale for apportionment purposes.⁵⁰ According to the Department:

No, so long as the assets sold are neither stock in trade nor inventory and are not held by the taxpayer for the sale to customers in the ordinary course of the taxpayer’s business For example, the occasional and isolated sale of a desk by a law firm is not a “sale” under MCL 208.1115; the desk does not constitute stock in trade or inventory to the law firm and is not held by the taxpayer in primarily for sale to customers in the ordinary course of the law firm’s business. In contrast, if the law firm operates a program under which office furniture is routinely and systematically sold at auction, then such sales would be “sales” under MCL 208.1115.⁵¹

The FAQ provides a form of exclusion for a “casual” or isolated transaction through the Department’s interpretation of “sales” of tangible property,⁵² at least for apportionment purposes. The Department’s

45. *Id.*

46. MICH. COMP. LAWS § 208.1115(1) (2003).

47. MICH. COMP. LAWS § 208.3(2) (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007).

48. *Id.*

49. *See* Ap1, Frequently Asked Questions, Michigan Business Tax, Mich. Taxes, Dep’t of Treasury, *available at* <http://www.michigan.gov/taxes> (accessed from homepage by entering “Ap1” into Search box) (last visited June 18, 2008).

50. *Id.*

51. *Id.*

52. *Id.*

response in FAQ Ap1 continues to explain that “[i]f a transaction is not a sale under MCL 208.1115, it will be excluded from both the numerator and denominator of the sales factor. ‘Sales’ under MCL 208.1115 may still be included in the business income and modified gross receipts tax bases.”⁵³

This FAQ seems to indicate that items that are not “sales” may nonetheless be items of income or gross receipts that would be included in the respective tax bases without any kind of factor representation. The SBT provisions included a rule that excluded items from the sales definition if not included in the tax base⁵⁴ for dividends, interest and royalties deducted from the tax base under MCL section 208.9(7). The MBT Act provides no such rule for either the business income or modified gross receipts tax base. However, the limitation of “sales” to items derived from business activity and references to that term in the business income definition may create a different result for that base than the seemingly expansive definition of gross receipts used for the modified gross receipts base.

The definition of “sales” for UDITPA purposes is generally “all gross receipts of the taxpayer not allocated [under non-business income rules].”⁵⁵ The MTC regulations added a definition of the term “gross receipts” in 2001.⁵⁶ Since UDITPA attempts to distinguish between “business income” and investment income of a taxpayer, the MBT provisions may produce a similar result, but there is limited ability to rely on these concepts and other state tax laws based on UDITPA for interpretive guidance of the MBT.

IV. APPORTIONMENT—CHAPTER 3

The MBT Act apportionment provisions are contained in Chapter 3.⁵⁷ These apportionment provisions apply to both the business income tax and modified gross receipts tax bases in Chapter 2.⁵⁸ Similar rules apply for banks under Chapter 2B.⁵⁹

As noted above, the MBT apportionment is based exclusively on sales as defined in MCL section 208.1115. As a general rule, no property, payroll or other factors are used to determine MBT

53. *Id.*

54. MICH. COMP. LAWS § 208.7(1)(b) (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007).

55. Unif. Div. of Income for Tax Purposes Act of 1957 § 1(g).

56. MICH. COMP. LAWS ANN. § 208.1111 (West Supp. 2007).

57. MICH. COMP. LAWS ANN. § 208.1301 (West Supp. 2007).

58. MICH. COMP. LAWS ANN. § 208.1201 (West Supp. 2007).

59. *See* MICH. COMP. LAWS ANN. § 208.1263 (West Supp. 2007). This article addresses only general provisions applicable to the Chapter 2 business income tax and modified gross receipts tax bases. *See* MICH. COMP. LAWS ANN. § 208.1235 (West Supp. 2007). It does not attempt to address the apportionment provisions relating to the tax bases provided for Insurance Companies in Chapter 2A or Banks in Chapter 2B. *See id.*

apportionment.⁶⁰ MCL section 208.1303(1) states: “Except as otherwise provided in subsection (2) and section 311, the sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year.”⁶¹

The Act provides that a taxpayer must apportion its tax bases if its business activities are “subject to tax both within and outside of this state.”⁶² MCL section 208.1301(3) defines “subject to tax in another state” to mean that the state has jurisdiction to impose “a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or a tax of the type imposed under this act in that state”⁶³ without regard to whether or not the state in fact imposes such a tax.⁶⁴ This “right to apportion” provision is the same rule as applied for SBT purposes and is similar to the rule in the UDITPA and the Michigan ITA. The jurisdictional standards set forth for MBT purposes in section 200 are likely to be interpreted to apply to the right to apportion provisions and could therefore have a significant impact on taxpayers with only a small portion of their activities outside of Michigan. These taxpayers may find their activities are not “confined solely” to Michigan under this rule and therefore would not be required to allocate all of their sales to Michigan under MCL section 208.1301(2).

V. SOURCING RULES—MBT ACT SECTIONS 305 AND 311

The sales factor numerator is determined according to sourcing rules set out in sections 208.1305 and 208.1311 of the MBT Act. Unlike many state statutes which provide only the general rule and rely on interpretive guidance in the form of regulations and otherwise from the tax authorities, the MBT apportionment sourcing provisions are specific statutory directives. In section 305 of the MBT there are extensive rules regarding sourcing of sales for numerous specific types of receipts and a default rule in MCL section 208.1311 for receipts not otherwise specified. MCL section 208.1311’s default rule reinforces the overarching theme that policymakers intended the MBT to utilize market-based rules to determine the Michigan sales numerator by providing that “[a]ll other receipts not otherwise sourced under this act shall be sourced based on where the benefit to the customer is received or, if where the benefit to the customer is received cannot be determined, to the customer’s location.”⁶⁵

60. MICH. COMP. LAWS ANN. § 208.1303 (West Supp. 2007).

61. *Id.*

62. MICH. COMP. LAWS ANN. § 208.1301(2) (West Supp. 2007).

63. MICH. COMP. LAWS ANN. § 208.1301(3)(a) (West Supp. 2007).

64. MICH. COMP. LAWS ANN. § 208.1301(3)(b) (West Supp. 2007).

65. MICH. COMP. LAWS ANN. § 208.1311 (West Supp. 2007).

As a general rule, the MBT sourcing rules look to the type of activity generating the sale rather than to a classification of the type of business receiving the income.⁶⁶ This is a significant difference from the SBT's use of special apportionment provisions for "financial organizations," "transportation companies," and oil and gas pipelines.⁶⁷ The MBT acknowledges that many business enterprises are multifaceted and may have income from a variety of sources, particularly within a unitary business group of entities. There are two primary reasons behind this. First, it attempts to ensure that two businesses with identical business activities should source sales the same way under the MBT provisions; whereas with SBT classification requirements that was not always the case. For example, receipts from transportation services are sourced the same way for all businesses with such activity for MBT purposes.⁶⁸ There is no need to determine whether the entity is predominantly engaged in transportation services, financial services, telecommunications services, or any other type of business before determining how its sales are sourced to Michigan. The taxpayer and the Department will look at the receipts themselves to determine how they are to be sourced.⁶⁹ It is also apparent that policymakers believe that the ability to manipulate special classifications to achieve better tax planning results will also be reduced by eliminating these distinctions.

66. *But see* MICH. COMP. LAWS ANN. § 208.1307 (West Supp. 2007). One of the few areas where the MBT Act provides special rules based on the type of business rather than type of receipt is "spun-off corporations." This is a remnant of the SBT provisions included as economic development tools in the 1990s when automakers divested themselves of their parts operations. *See* MICH. COMP. LAWS § 208.54 (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007). Generally, the provisions allow the spun-off corporation, upon meeting its own Michigan investment requirements, to exclude sales to its former parent company from its sales factor for a specified period of years. Since these provisions are not used widely by taxpayers due to the nature of the investment requirements, they will not be discussed in this article.

67. MICH. COMP. LAWS §§ 208.56-57, 208.65 (2003), *repealed by* MICH. COMP. LAWS ANN. § 208.151 (West Supp. 2007).

68. *See* U5, Frequently Asked Questions, Mich. Business Tax, Mich. Taxes, Dep't of Treasury, *available at* <http://www.michigan.gov/taxes> (accessed from homepage by entering "U5" into Search box) (last visited June 18, 2008).

How are the business income and modified gross receipts tax bases apportioned for a unitary business group that includes both transportation companies and companies other than transportation companies?

Sales are sourced to Michigan and elsewhere under MCL 208.1305. Receipts from transportation services provided by a transportation company or any other company are sourced according to MCL 208.1305(11), (12). Receipts from transportation services are then combined with other receipts or sales of that member and those of other members of the unitary business group in the numerator and denominator to compute the sales factor. Although transportation services are subject to a specific sourcing rule, transportation companies do not – and receipts from transportation services are not – apportioned separately.

Id.

69. MICH. COMP. LAWS ANN. § 208.1305 (West Supp. 2007).

In general, the statutory rules are based on the SBT Act in organization and to some degree, content in the case of transportation services rules. Where the SBT rule was inconsistent with MBT objectives, inadequate, or missing, the MBT borrows from language from states with market sourcing statutes like Minnesota, Georgia and Wisconsin.⁷⁰

VI. THE RULES THEMSELVES

Rules for the sourcing of receipts from property—including selling, leasing, renting or licensing—are in subsection (1) of MCL section 305.⁷¹

The *sale of tangible property* is sourced based on the ultimate destination of the product. While similar to the SBT rule, the MBT specifies that the ultimate destination is where a product ultimately comes to rest.⁷² MCL 208.1305(1)(a) reads:

Sales of tangible personal property are in this state if the property is shipped or delivered, or, in the case of electricity and gas, the contract requires the property to be shipped or delivered, to any purchaser within this state based on the ultimate destination at the point that the property comes to rest regardless of the free on board point or other conditions of the sales.⁷³

The ultimate destination provisions are not unfamiliar to multistate taxpayers in general and SBT and other state guidance on drop shipments and customer picked-up dock sales could be followed in Michigan.⁷⁴ However, since the definition of sales does differ from UDITPA, there are likely to be distinctions there. An SBT Letter Ruling concludes that “dock sales” or “pick-up sales” are Michigan sales “[e]ven though the purchaser took legal title and delivery of the goods in Indiana, the *immediate* ‘pick-up’ and transportation of the merchandise to Michigan will cause the sale to be included in the Michigan sales factor.”⁷⁵ The qualification in the MBT Act that the ultimate destination is measured “at the point that the property comes to rest” may negate the requirement implied in Letter Ruling 1988-107 that there must be immediate transportation of the dock sale property outside (or inside) the state.⁷⁶ In

70. See, e.g., GA. COMP. R. & REGS. § 560-7-7-.03(5)(c)(1) (West 2005), MINN. STAT. ANN. § 290.191(5)(b) (West 2007), WIS. STAT. ANN. §§ 71.25(9)(d)-(h) (West 2008).

71. MICH. COMP. LAWS ANN. §§ 208.1305(1)(a)-(e) (West Supp. 2007).

72. *Id.*

73. *Id.*

74. Unif. Div. of Income for Tax Purposes Act of 1957 § 16(d).

75. LR 1988-107, see CCH MICH. TAX REP. at ¶ 355-088 (1988) (emphasis added).

76. Another source of guidance for Michigan SBT purposes exists with regard to sales of property under the “foreign person” apportionment provisions, MICH. COMP. LAWS ANN. § 208.51(2) (West 2003) and MICH. COMP. LAWS ANN. § 208.19(5)(a) (West 2003) in Single Business Tax Base for a Foreign Person, Revenue Administrative Bulletin (RAB) 2001-2, (June 19, 2001). That RAB outlined a location of title transfer

an SBT case involving Ammex, Inc., the Michigan Court of Appeals rejected the taxpayer's arguments that sales to customers of a "duty-free" shop at the Canadian border were "dock sales" even though the goods were immediately transported outside of Michigan since "the customer is not simply 'picking-up' a good that, if shipped by the seller, would be considered a Canadian sale."⁷⁷ Other states have also found dock sales rules problematic, thus resulting in recent legislative activity.⁷⁸ For example, in Indiana, the legislature reacted to an Indiana Tax Court decision, *Miller Brewing Co. v. Indiana Department of State Revenue*,⁷⁹ which held that the title transfer and subsequent transport of products by third-party contract carriers were not Indiana sales under the dock sales rules once the products were picked-up at the seller's Wisconsin loading dock.⁸⁰

The additional MBT language may help resolve controversies over defining dock sales and interpretations for transactions involving storage temporarily at a warehouse in Michigan. However, since taxpayer facts always differ, this provision may not resolve all questions regarding when and how the destination determination is measured.

The MBT also clarifies that sales relating to contracts for electricity and gas use the sourcing rule for tangible personal property, specifically looking to where the contract requires the electricity or gas to be delivered.⁸¹ The classification of electricity and gas as tangible property is consistent with provisions in the sales and use tax laws and appears to extend to contracts for the provision of gas and electricity, which contracts could have been classified as intangible rights rather than as tangible property.⁸²

The specific rule for receipts derived from transactions involving real property located in Michigan is: "Receipts from the sale, lease, rental, or licensing of real property are in this state if that property is located in this state."⁸³ This sourcing provision should not imply that

rules for products produced outside the U.S. but sold within the U.S. See Revenue Administrative Bulletin, June 19, 2001, available at www.michigan.gov/taxes (accessed from homepage by entering "2001-2" into Search box) (last visited June 18, 2008). There is no comparable provision in the MBT Act for calculation of foreign person's tax base; but the same treaty and federal law provisions that resulted in the SBT rule are likely to be applied for MBT purposes. Guidance is likely to be required to address how the business income tax and modified gross receipts tax bases may differ with regard to application of this rule.

77. *Ammex, Inc. v. Dep't. of Treasury*, 732 N.W.2d 116 (Mich. Ct. App. 2007), appeal denied, 738 N.W.2d 225 (Mich. 2007).

78. See, e.g., *Miller Brewing Co. v. Ind. Dep't of State Revenue*, 831 N.E.2d 859 (Ind. T.C. 2005).

79. *Id.*

80. *Id.*

81. MICH. COMP. LAWS ANN. § 208.1305(1)(a) (West Supp. 2007).

82. *Id.*

83. MICH. COMP. LAWS ANN. § 208.1305(1)(b) (West Supp. 2007).

these items necessarily constitute “sales” under MCL section 208.1115(1). As discussed above, the definition of sales relies on the definition of “business activity” and the Department has already begun to issue guidance in the form of FAQs regarding the interrelationship between sales and the tax bases.⁸⁴ The statutory provisions for these transactions involving real property follow the MTC regulations dealing with special rules for certain income producing activities.⁸⁵

For rental income associated with tangible property (other than the specific rule for real property and mobile tangible property), the sales numerator includes transactions for property used by a taxpayer’s customer (lessee or renter) within Michigan.⁸⁶ A proration of the use within Michigan compared to other locations is allowed.⁸⁷ Acknowledging that the taxpayer may not have perfect information regarding the physical location of the customer’s use of the property, the statute specifically provides that in the event that the physical location of the property is “unknown or cannot be determined,” the place where the customer obtained possession is used.⁸⁸ The statute reads:

Receipts from the lease or rental of tangible personal property are sales in this state to the extent that the property is utilized in this state. The extent of utilization of tangible personal property in this state is determined by multiplying the receipts by a fraction, the numerator of which is the number of days of physical location of the property in this state during the lease or rental period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all lease or rental periods in the tax year. If the physical location of the property during the lease or rental period is unknown or cannot be determined, the tangible personal property is utilized in the state in which the property was located at the time the lease or rental payer obtained possession.⁸⁹

Although no definition of “mobile transportation property” is included in the MBT itself, other tax law definitions are likely to be used to determine that items such as aircraft, railroad rail cars, and commercial heavy trucks are included in “mobile transportation property.”⁹⁰ Automobiles are generally not considered “mobile

84. See Ap1, Frequently Asked Questions, Michigan Business Tax, Mich. Taxes, Dep’t of Treasury, *supra* note 49.

85. See MTC 17.4(B)(a) (2007).

86. MICH. COMP. LAWS ANN. § 208.1305(1)(c) (West Supp. 2007).

87. *Id.*

88. *Id.*

89. *Id.*

90. See MICH. COMP. LAWS ANN. § 208.1305(1)(d) (West 2007).

transportation property.”⁹¹ Furthermore, MCL section 208.1305(1)(d) indicates that the lease or rental of such mobile transportation property is sourced to Michigan if used, or, if use cannot be determined, has a “principal base of operations” within the state.⁹²

Like the rules relating to real property, these sourcing rules in sections 305(c) and (d) are similar to guidance in the MTC Regulations with regard to these activities.⁹³

Similar to the rule for such receipts in Minnesota, the use of *intangible property*, generally royalty or licensing income, is sourced to Michigan if the purchaser uses the property within the state.⁹⁴ Furthermore, “intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser’s customers.”⁹⁵

If the intangible property is used in more than one state, the royalties are apportioned pro rata according to the portion of use in each of the states.⁹⁶ If information is not available to determine the location of use of the intangible property, the statute allows for exclusion of the royalties from both the numerator and the denominator.⁹⁷

91. *Id.*

92. MICH. COMP. LAWS ANN. § 208.1305(1)(d) (West Supp. 2007) reads:

Receipts from the lease or rental of mobile transportation property owned by the taxpayer are in this state to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of receipts that is to be included in the numerator of this state’s sales factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of the fraction is the number of landings of the aircraft in this state and the denominator of the fraction is the total number of landings of the aircraft. If the extent of the use of any transportation property within this state cannot be determined, then the receipts are in this state if the property has its principal base of operations in this state.

Id.

93. See MTC Reg. IV 4(B)(b) (2007).

94. According to MICH. COMP. LAWS ANN. § 208.1305(1)(e) (West Supp. 2007): Royalties and other income received for the use of or for the privilege of using intangible property, including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, computer software, or similar items, are attributed to the state in which the property is used by the purchaser. If the property is used in more than 1 state, the royalties or other income shall be apportioned to this state pro rata according to the portion of use in this state. If the portion of use in this state cannot be determined, the royalties or other income shall be excluded from both the numerator and the denominator. Intangible property is used in this state if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business operations in this state, regardless of the location of the purchaser’s customers.

Id.

95. *Id.*

96. *Id.*

97. *Id.*

The statute lists the types of intangible property as sources of royalty income for apportionment purposes, including: “patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, computer software, or similar items”⁹⁸

Rules for *services* are in subsection (2) of MCL section 208.1305.⁹⁹ The basic rule for sourcing services is the most significant area of departure from the SBT and the UDITPA rules.¹⁰⁰ For MBT purposes, services are sourced based on where the benefit of the service is enjoyed by the customer.¹⁰¹ The SBT cost of performance rule sources sales based on where the direct or indirect costs of performing each sale are located.¹⁰² Even without the MBT statutory distinctions, the Michigan Department of Treasury has distinguished its interpretation of sourcing for tangible property from MTC regulations and other guidance.¹⁰³ Specifically, although the SBT proposed rules (which notoriously never took effect) mirrored MTC regulations under UDITPA section 16,¹⁰⁴ subsequent guidance in the form of an Internal Policy Directive (IPD 2006-8) narrowly defines costs of performance.¹⁰⁵ The IPD indicates: “[a] costs¹⁰⁶ of performance analysis is not applied to the total business activity of a taxpayer, but to each sale separately.”¹⁰⁷ Michigan’s interpretation of the cost of performance rule, which is to look at each “sale” or contract for service as a separate “transaction,” is a classic

98. *Id.* This is the only definition of royalties in the MBT Act. Although the business income tax base includes modifications for foreign royalties (MICH. COMP. LAWS ANN. § 208.1201(2)(d) (West Supp. 2007)) and royalty expenses paid to related businesses that are not included in the taxpayer’s unitary business group (MICH. COMP. LAWS ANN. § 208.1201(2)(f) (West Supp. 2007)), the term “royalty” is not explicitly defined. It is possible that taxpayers, the Department of Treasury or the courts may look to the section 305 definition, if appropriate, for guidance defining the term for other than apportionment purposes.

99. MICH. COMP. LAWS ANN. § 208.1305(2) (West Supp. 2007).

100. Compare MICH. COMP. LAWS ANN. § 208.1305(2) (West Supp. 2007) with MICH. COMP. LAWS ANN. § 208.53 (West Supp. 2007) and Unif. Div. of Income for Tax Purposes Act of 1957 § 17.

101. MICH. COMP. LAWS ANN. § 208.1305(2)(a) (West Supp. 2007).

102. Single Business Tax: Sales Apportionment – Costs of Performance, Internal Policy Directive: 2006-8, Mich. Dep’t of Treasury, (Sept. 29, 2006), available at <http://www.michigan.gov> (accessed from homepage by entering “2006-8” into Search box) (last visited June 18, 2008) [hereinafter Cost of Performance, Internal Policy Directive].

103. *Id.*

104. Unif. Div. of Income for Tax Purposes Act of 1957 § 16.

105. Cost of Performance, Internal Policy Directive, *supra* note 102.

106. The IPD further defines “costs” to include direct costs such as employee labor, materials, equipment and supplies as well as independent contractor expenses related to performance of contractual obligations. See *id.* The inclusion of independent contractor costs in the analysis in Michigan differs from the application of the rule in many other UDITPA states. See *id.*

107. *Id.*

example of the tendency of the UDITPA to parse sales in such a way as to have the cost of performance begin to replicate a market sourcing rule.¹⁰⁸ Rather than continue to debate what constitutes costs and at what level of detail the income producing activity is determined, the MBT adopts a pure market-driven rule based on where benefits of the service are received.¹⁰⁹ MCL section 208.1305(2)(a) reads:

Except as otherwise provided in this section, all receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the services receives all of the benefit of the services in this state. If the recipient of the services receives some of the benefit of the services in this state, the receipts are included in the numerator of the apportionment factor in proportion to the extent that the recipient receives benefit of the services in this state.¹¹⁰

The market-sourcing language may still require interpretation of the location of where the benefit is received, but eliminates the “all-or-nothing” consequence of the greater proportion of costs of performance analysis.¹¹¹ Ohio has issued extensive regulations dealing with the interpretation of the “benefits-received-rule” used for the Commercial Activities Tax,¹¹² which illustrate just how intricate the market sourcing analysis can be.¹¹³

Specific rules for certain services are included in MCL section 208.1305 (2)(b) through section (21).¹¹⁴ These services include financial services (for taxpayers other than banks using Chapter 2A),¹¹⁵ transportation including oil and gas pipelines,¹¹⁶ and telecommunications services.¹¹⁷

The MBT Act provisions for *financial services* include rules for services such as brokerage services (commissions, transaction spread, margin interest, fees and receipts from underwriting activities),¹¹⁸ sales of loans,¹¹⁹ interest on loans,¹²⁰ interest and fees from credit card

108. Unif. Div. of Income for Tax Purposes Act of 1957 § 9.

109. MICH. COMP. LAWS ANN. § 208.1305(2)(a) (West Supp. 2007).

110. *Id.*

111. *See id.*

112. OHIO REV. CODE ANN. § 5751.033 (West Supp. 2007).

113. Information Release – Commercial Activity Tax, Ohio Dep’t of Taxation (Oct. 2006), available at <http://tax.ohio.gov> (accessed from homepage by entering “CAT 2005-06” into Search box) (last visited June 18, 2008).

114. MICH. COMP. LAWS ANN. §§ 208.1305(2)(b)-(21) (West Supp. 2007).

115. MICH. COMP. LAWS ANN. § 208.1305(2)(b) (West Supp. 2007).

116. MICH. COMP. LAWS ANN. §§ 208.1305(11)(d)-(e) (West Supp. 2007).

117. MICH. COMP. LAWS ANN. § 208.1305(2)(a) (West Supp. 2007).

118. MICH. COMP. LAWS ANN. §§ 208.1305(2)(b)-(c) (West Supp. 2007).

119. MICH. COMP. LAWS ANN. §§ 208.1305(3), (6) (West Supp. 2007).

120. MICH. COMP. LAWS ANN. §§ 208.1305(4), (5) (West Supp. 2007).

receivables and sale of those receivables.¹²¹ These statutory provisions are largely based on the rules provided for these types of financial services for SBT purposes in the Department's Revenue Administrative Bulletin (RAB) 2002-14 on financial organization apportionment provisions.¹²² RAB 2002-14 is based on the MTC's recommended apportionment regulations for financial services.¹²³

Securities brokerage services are sourced to the location of the brokerage service's customers.¹²⁴ MCL section 208.1305(2)(b) identifies certain types of receipts for which the rule should apply:

Receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by the broker's customers, and fees and receipts of all kinds from the underwriting of securities. If receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates the transactions for the customer.¹²⁵

For regulated investment companies (mutual funds), the mailing address of the shareholder is used to determine where receipts are sourced:¹²⁶

(c) Sales of services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerage services to, or on behalf of, a regulated investment company or its beneficial owners, including receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company, shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subdivision, "domicile" means the shareholder's mailing address

121. MICH. COMP. LAWS ANN. §§ 208.1305(7), (8) (West Supp. 2007).

122. Compare MICH. COMP. LAWS ANN. §§ 208.1305(2)(b)-(21) with Revenue Admin. Bull. 2002-14, Single Business Tax—Apportionment Sourcing for Financial Organizations, Mich. Dep't of Treasury (June 5, 2002), available at <http://www.michigan.gov> (accessed from homepage by entering "2002-14" into Search box) (last visited June 18, 2008).

123. MTC Reg. § IV.9 (2007).

124. MICH. COMP. LAWS ANN. § 208.1305(2)(b) (West Supp. 2007).

125. *Id.*

126. MICH. COMP. LAWS ANN. § 208.1305(2)(c) (West Supp. 2007).

on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the receipts derived from each regulated investment company. The total amount of sales attributable to this state shall be equal to the total receipts received by each regulated investment company multiplied by a fraction determined as follows:

- (i) The numerator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who have their domicile in this state.
- (ii) The denominator of the fraction is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.
- (iii) For purposes of the fraction, the year shall be the tax year of the regulated investment company that ends with or within the tax year of the taxpayer.¹²⁷

Loans secured by real property in Michigan generate Michigan-sourced receipts.¹²⁸ The rule applies to loan origination fees, interest, and gains from the sale of the loan.¹²⁹ If a transaction involves multiple pieces of real property and fifty-percent of the fair market value of the property is not located in any one state, the sales are sourced where the borrower is located.¹³⁰ The statute reads:

- (3) Receipts from the origination of a loan or gains from the sale of a loan secured by residential real property is deemed a sale in this state only if 1 or more of the following apply:
 - (a) The real property is located in this state.

127. *Id.*

128. MICH. COMP. LAWS ANN. § 208.1305(3) (West Supp. 2007).

129. MICH. COMP. LAWS ANN. §§ 208.1305(3)-(4) (West Supp. 2007).

130. MICH. COMP. LAWS ANN. § 208.1305(4) (West Supp. 2007).

(b) The real property is located both within this state and 1 or more other states and more than 50% of the fair market value of the real property is located within this state.

(c) More than 50% of the real property is not located in any 1 state and the borrower is located in this state.

(4) Interest from loans secured by real property is in this state if the property is located within this state or if the property is located both within this state and 1 or more other states, if more than 50% of the fair market value of the real property is located within this state, or if more than 50% of the fair market value of the real property is not located within any 1 state, if the borrower is located in this state. The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.¹³¹

The default rule for lending-related receipts where real property does not secure the property is largely based on the location of the borrower.¹³² The same rule is used for real property where there is not a clearer method to source the receipts to one state.¹³³ A definition of the location of the borrower is provided by MCL section 208.1305(22), which indicates that the borrower's location is to be determined by the borrower's billing address.¹³⁴ The default rule applies to receipts from all loans not secured by real property in subsections (5) (interest),¹³⁵ (6) (gains),¹³⁶ and subsection (9) (loan servicing fees).¹³⁷ The statute reads:

(5) Interest from a loan not secured by real property is in this state if the borrower is located in this state.

(6) Gains from the sale of a loan not secured by real property, including income recorded under the coupon stripping rules of section 1286 of the internal revenue code, are in this state if the borrower is in this state. . . .

(9) Loan servicing fees derived from loans of another secured by real property are in this state if the real property is located in this state, or the real property is located both within and outside of

131. MICH. COMP. LAWS ANN. §§ 208.1305(3)-(4) (West Supp. 2007).

132. MICH. COMP. LAWS ANN. § 208.1305(5) (West Supp. 2007).

133. MICH. COMP. LAWS ANN. § 208.1305(9) (West Supp. 2007).

134. MICH. COMP. LAWS ANN. § 208.1305(22) (West Supp. 2007).

135. MICH. COMP. LAWS ANN. § 208.1305(5) (West Supp. 2007).

136. MICH. COMP. LAWS ANN. § 208.1305(6) (West Supp. 2007).

137. MICH. COMP. LAWS ANN. § 208.1305(9) (West Supp. 2007).

this state and 1 or more states if more than 50% of the fair market value of the real property is located in this state, or more than 50% of the fair market value of the real property is not located in any 1 state, and the borrower is located in this state. Loan servicing fees derived from loans of another not secured by real property are in this state if the borrower is located in this state. If the location of the security cannot be determined, then loan servicing fees for servicing either the secured or the unsecured loans of another are in this state if the lender to whom the loan servicing service is provided is located in this state.¹³⁸

Rules for the receipts from *credit card lending* also follows the billing address of the customer.¹³⁹ MCL sections 208.1305(7)-(8) read:

(7) Receipts from credit card receivables, including interest, fees, and penalties from credit card receivables and receipts from fees charged to cardholders, such as annual fees, are in this state if the billing address of the card holder is in this state.

(8) Receipts from the sale of credit card or other receivables is in this state if the billing address of the customer is in this state. Credit card issuer's reimbursements fees are in this state if the billing address of the cardholder is in this state. Receipts from merchant discounts, computed net of any cardholder chargebacks, but not reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders, are in this state if the commercial domicile of the merchant is in this state.¹⁴⁰

138. MICH. COMP. LAWS ANN. §§ 208.1305(5)-(6), (9) (West Supp. 2007).

139. MICH. COMP. LAWS ANN. §§ 208.1305(7)-(8) (West Supp. 2007).

140. *Id.*

Telecommunications services in subsections (13) through (21)¹⁴¹ are

141. MICH. COMP. LAWS ANN. §§ 208.1305(13)-(19) (West Supp. 2007). Telecommunications services sourcing provisions are found in MCL sections 208.1305(13)-(21):

(13) Except as provided in subsections (14) through (19), receipts from the sale of telecommunications service or mobile telecommunications service are in this state if the customer's place of primary use of the service is in this state. As used in this subsection, "place of primary use" means the customer's residential street address or primary business street address where the customer's use of the telecommunications service primarily occurs. For mobile telecommunications service, the customer's residential street address or primary business street address is the place of primary use only if it is within the licensed service area of the customer's home service provider.

(14) Receipts from the sale of telecommunications service sold on an individual call-by-call basis are in this state if either of the following applies:

(a) The call both originates and terminates in this state.

(b) The call either originates or terminates in this state and the service address is located in this state.

(15) Receipts from the sale of postpaid telecommunications service are in this state if the origination point of the telecommunication signal, as first identified by the service provider's telecommunication system or as identified by information received by the seller from its service provider if the system used to transport telecommunication signals is not the seller's, is located in this state.

(16) Receipts from the sale of prepaid telecommunications service or prepaid mobile telecommunications service are in this state if the purchaser obtains the prepaid card or similar means of conveyance at a location in this state. Receipts from recharging a prepaid telecommunications service or mobile telecommunications service is in this state if the purchaser's billing information indicates a location in this state.

(17) Receipts from the sale of private communication services are in this state as follows:

(a) 100% of the receipts from the sale of each channel termination point within this state.

(b) 100% of the receipts from the sale of the total channel mileage between each termination point within this state.

(c) 50% of the receipts from the sale of service segments for a channel between 2 customer channel termination points, 1 of which is located in this state and the other is located outside of this state, which segments are separately charged.

(d) The receipts from the sale of service for segments with a channel termination point located in this state and in 2 or more other states or equivalent jurisdictions, and which segments are not separately billed, are in this state based on a percentage determined by dividing the number of customer channel termination points in this state by the total number of customer channel termination points.

(18) Receipts from the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser's customers. If the location of the purchaser's customers is not known or cannot be determined, the sale of billing services and ancillary services for telecommunications service are in this state based on the location of the purchaser.

(19) Receipts to access a carrier's network or from the sale of telecommunication services for resale are in this state as follows:

(a) 100% of the receipts from access fees attributable to intrastate telecommunications service that both originates and terminates in this state.

described in detail and defined as the same terms as in sales and use taxes: "Terms used in subsections (13) through (19) have the same meaning as those terms defined in the streamlined sales and use tax agreement administered under the streamlined sales and use tax administration act, 2004 PA 174, M.C.L. 205.801 to 205.833."¹⁴² Telecommunications services are also the subject of an MTC project intended to address the lack of uniformity among states in sourcing these receipts under existing cost of performance and other special rules developed over time as technologies and the regulatory environment for telecommunications services has evolved.¹⁴³ Proposed MTC income tax model rules for telecommunications services were actively under development at the time the MBT Act was drafted.¹⁴⁴ The MTC rules are not identical to the definitions of telecommunications services articulated in the Streamlined Sales and Use Tax Project;¹⁴⁵ the MBT adopts the sales tax definitions in substantial part.¹⁴⁶

(b) 50% of the receipts from access fees attributable to interstate telecommunications service if the interstate call either originates or terminates in this state.

(c) 100% of the receipts from interstate end user access line charges, if the customer's service address is in this state. As used in this subdivision, "interstate end user access line charges" includes, but is not limited to, the surcharge approved by the federal communications commission and levied pursuant to 47 CFR 69.

(d) Gross receipts from sales of telecommunication services to other telecommunication service providers for resale shall be sourced to this state using the apportionment concepts used for non-resale receipts of telecommunications services if the information is readily available to make that determination. If the information is not readily available, then the taxpayer may use any other reasonable and consistent method...

(21) Terms used in subsections (13) through (19) have the same meaning as those terms defined in the streamlined sales and use tax agreement administered under the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.801 to 205.833.

MICH. COMP. LAWS ANN. §§ 208.1305(13)-(21) (West Supp. 2007).

142. MICH. COMP. LAWS ANN. § 208.1305(21) (West Supp. 2007).

143. See Proposed Model Regulation for Apportionment of Income from the Sale of Telecommunication and Ancillary Services, Multistate Tax Commission Executive Committee, (August 2007), available at <http://www.mtc.gov> (accessed from homepage by entering "Multistate Tax Commission" into search box and selecting "Uniformity Projects A to Z") (last visited Feb. 4, 2008) [hereinafter Proposed Model Regulation for Apportionment of Income from the Sale of Telecommunication and Ancillary Services].

144. See MICH. COMP. LAWS ANN. §§ 208.1305(13)-(19) (West Supp. 2007); Proposed Model Regulation for Apportionment of Income from the Sale of Telecommunication and Ancillary Services, *supra* note 143.

145. See Telecommunications and Related Definitions Issue Paper, Streamlined Sales Tax Governing Board, Inc. (April 18, 2005), available at <http://www.streamlinedsalestax.org> (accessed from homepage by selecting "Issue Papers" and "Telecommunications and Related Definitions") (last visited June 21, 2008).

146. Compare MICH. COMP. LAWS ANN. § 208.1305(21) (West Supp. 2007) with MICH. COMP. LAWS ANN. §§ 205.801-.833 (West Supp. 2007).

As a general matter, telecommunications services are sourced based on where the “customer’s primary place of use” is.¹⁴⁷ This term is defined as the customer’s street address.¹⁴⁸ However, a special rule for “mobile telecommunications services” requires that the primary place of use be an address within the licensed service of the customer’s home service provider.¹⁴⁹ Additional rules for sourcing services billed on an individual call-by-call basis,¹⁵⁰ post-paid services,¹⁵¹ private communications services¹⁵² and access fees,¹⁵³ including resale,¹⁵⁴ are primarily sourced based on the location of the origination and/or termination of the service.¹⁵⁵ Sales of prepaid telecommunications services are sourced based on where the purchaser obtains the conveyance (e.g., prepaid calling card) or the billing address from which the customer re-charges the prepaid service.¹⁵⁶ Sales of telecommunications billing services and ancillary services are sourced based on the location of the purchaser’s customers, or, if that is not known, the location of the purchaser.¹⁵⁷

Transportation services, including oil and gas pipelines, are addressed in subsections (11)¹⁵⁸ and (12)¹⁵⁹ of MCL section 208.1305. The rules in the MBT Act are based on the SBT revenue miles provisions but have been changed to reflect that a single taxpayer (either a single business entity or a unitary business group) may have receipts other than transportation service receipts.¹⁶⁰ The general rule sources receipts based on proportionate Michigan revenue miles to revenue miles everywhere.¹⁶¹ Specific rules are provided for maritime transportation services¹⁶² and mixed passenger-and ton-miles services.¹⁶³ Oil and gas

147. MICH. COMP. LAWS ANN. § 208.1305 (13) (West Supp. 2007).

148. *Id.*

149. *Id.*

150. MICH. COMP. LAWS ANN. § 208.1305 (14) (West Supp. 2007).

151. MICH. COMP. LAWS ANN. § 208.1305 (15) (West Supp. 2007).

152. MICH. COMP. LAWS ANN. § 208.1305 (17) (West Supp. 2007).

153. MICH. COMP. LAWS ANN. §§ 208.1305 (19)(a)-(b) (West Supp. 2007).

154. MICH. COMP. LAWS ANN. § 208.1305 (19)(d) (West Supp. 2007).

155. MICH. COMP. LAWS ANN. §§ 208.1305 (15), (17) (West Supp. 2007).

156. MICH. COMP. LAWS ANN. § 208.1305(16) (West Supp. 2007).

157. MICH. COMP. LAWS ANN. § 208.1305(18) (West Supp. 2007).

158. MICH. COMP. LAWS ANN. § 208.1305 (11) (West Supp. 2007).

159. MICH. COMP. LAWS ANN. § 208.1305 (12) (West Supp. 2007).

160. *See* MICH. COMP. LAWS ANN. §§ 208.58(1)-(2) (West Supp. 2007).

161. MICH. COMP. LAWS ANN. § 208.1305 (11)(a) (West Supp. 2007).

162. MICH. COMP. LAWS ANN. § 208.1305 (11)(b) (West Supp. 2007).

163. MICH. COMP. LAWS ANN. § 208.1305(11)(c) (West Supp. 2007). MCL section 208.1305(11) states:

(a) Except as otherwise provided in subdivisions (b) through (e), receipts shall be proportioned based on the ratio that revenue miles of the person in this state bear to the revenue miles of the person everywhere.

(b) Receipts from maritime transportation services shall be attributable to this state as follows:

(i) 50% of those receipts that either originate or terminate in this state.

pipeline transportation services are drawn from the SBT provisions¹⁶⁴ and are subdivisions (11)(d)¹⁶⁵ and (11)(e).¹⁶⁶ Subsection (12) provides relief for taxpayers who cannot, without unreasonable expense, determine revenue miles by allowing a taxpayer to use proportionate revenues from transportation services performed within Michigan to total revenues from transportation services everywhere.¹⁶⁷ This subsection also allows the Department to use other available information it deems will result in “an equitable allocation of the taxpayer’s receipts to this state.”¹⁶⁸ At least in MCL section 208.1305, this equitable allocation provision works only one way—that is, the Department, not the taxpayer, may use an alternative to revenue miles.¹⁶⁹ However, the taxpayer should be allowed under MCL section 208.1309,¹⁷⁰ discussed below, to petition for alternative apportionment, albeit under potentially different standards and burdens of proof.¹⁷¹

Investments and other proceeds from treasury functions are only included in the sales factor pursuant to MCL section 208.1115 if they are the only business activity of the taxpayer.¹⁷² Sourcing rules for those sales are in subsection (10).¹⁷³ The sourcing rules do not specify that these receipts are a factor in limited circumstances and in some ways they seem duplicative of rules for interest and gains in other areas of

(ii) 100% of those receipts that both originate and terminate in this state.

(c) Receipts attributable to this state of a person whose business activity consists of the transportation both of property and of individuals shall be proportioned based on the total gross receipts for passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.

(d) Receipts attributable to this state of a person whose business activity consists of the transportation of oil by pipeline shall be proportioned based on the ratio that the gross receipts for the barrel miles transported in this state bear to the gross receipts for the barrel miles transported by the person everywhere.

(e) Receipts attributable to this state of a person whose business activities consist of the transportation of gas by pipeline shall be proportioned based on the ratio that the gross receipts for the 1,000 cubic feet miles transported in this state bear to the gross receipts for the 1,000 cubic feet miles transported by the person everywhere.

MICH. COMP. LAWS ANN. §§ 208.1305(11)(a)-(e) (West Supp. 2007).

164. MICH. COMP. LAWS ANN. §§ 208.58(1)-(2) (West Supp. 2007).

165. MICH. COMP. LAWS ANN. § 208.1305 (11)(d) (West Supp. 2007).

166. MICH. COMP. LAWS ANN. § 208.1305 (11)(e) (West Supp. 2007).

167. MICH. COMP. LAWS ANN. § 208.1305 (12) (West Supp. 2007).

168. *Id.*

169. *Id.*

170. MICH. COMP. LAWS ANN. § 208.1309 (West Supp. 2007).

171. MICH. COMP. LAWS ANN. § 208.1309(1) (West Supp. 2007).

172. MICH. COMP. LAWS ANN. § 208.1115 (West Supp. 2007).

173. MICH. COMP. LAWS ANN. § 208.1115(10) (West Supp. 2007).

MCL section 208.1305.¹⁷⁴ The general rule here is consistent with the rule sourcing these receipts based on where customers are located but recognizes that customers will be difficult to identify with this type of receipt. As a result, an alternative rule applies to source the sales based on where the assets are assigned to a regular place of business for such assets of the taxpayer:

(10) Receipts from the sale of securities and other assets from investment and trading activities, including, but not limited to, interest, dividends, and gains are in this state in either of the following circumstances:

(a) The person's customer is in this state.

(b) If the location of the person's customer cannot be determined, both of the following:

(i) Interest, dividends, and other income from investment assets and activities and from trading assets and activities, including, but not limited to, investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. Interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements are in this state if the average value of the assets is assigned to a regular place of business of the taxpayer within this state. The amount of receipts and other income from investment assets and activities is in this state if assets are assigned to a regular place of business of the taxpayer within this state.

(ii) The amount of receipts from trading assets and activities, including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts otherwise sourced in this section, are in this state if the assets are assigned to a regular place of business of the taxpayer within this state.¹⁷⁵

174. Compare MICH. COMP. LAWS ANN. § 208.1115(10) (West Supp. 2007) with MICH. COMP. LAWS ANN. § 208.1305(10) (West Supp. 2007).

175. MICH. COMP. LAWS ANN. § 208.1305(10) (West Supp. 2007).

While the MBT statutory apportionment sourcing rules in Chapter 3 are extensive, some areas may require additional interpretation and guidance from the Department. However, taxpayers and the Department should keep in mind that sales sourcing should follow the location of a taxpayer's customers in spirit as well as statute for almost all imaginable types of receipts.

VII. OTHER APPORTIONMENT PROVISIONS

After determining what constitutes sales under MCL section 208.1115 and how such sales are sourced under MCL sections 208.1305¹⁷⁶ or 208.1311,¹⁷⁷ taxpayers may need to consider issues such as how to apportion for a taxpayer who is a unitary business group¹⁷⁸ and whether the statutory apportionment provisions as applied result in a fair attribution of income and gross receipts to Michigan.

A. Alternative Apportionment

A provision allowing the taxpayer to petition for the Department to require alternative apportionment provisions, similar to section 69 of the SBT Act¹⁷⁹ and section 18 of the UDITPA,¹⁸⁰ is section 208.1309 of the MBT Act.¹⁸¹ This provision allows, in the event that the statutory apportionment provisions do not “fairly represent the extent of the taxpayer’s business activity”¹⁸² in Michigan, that the taxpayer can petition for or the Department can require some form of alternative apportionment.¹⁸³ Similar to UDITPA section 18, separate accounting and the inclusion of one or more additional factors can be used.¹⁸⁴ In addition, “the use of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s tax base”¹⁸⁵ is allowed.¹⁸⁶ Subsection (2)¹⁸⁷ specifies that the Department must approve the use of the alternate method and subsection (4)¹⁸⁸ specifies that filing an amended return does not constitute a petition under the alternative apportionment provisions. Given the rebuttable presumption in

176. MICH. COMP. LAWS ANN. § 208.1305 (West Supp. 2007).

177. MICH. COMP. LAWS ANN. § 208.1311 (West Supp. 2007).

178. MICH. COMP. LAWS ANN. § 208.1117(6) (West Supp. 2007) (defining “unitary business group”); MICH. COMP. LAWS ANN. § 208.1117(6) (West Supp. 2007).

179. MICH. COMP. LAWS ANN. § 208.69 (West Supp. 2007).

180. Unif. Division of Income for Tax Purposes Act of 1957 § 18.

181. MICH. COMP. LAWS ANN. § 208.1309 (West Supp. 2007).

182. MICH. COMP. LAWS ANN. § 208.1309(1) (West Supp. 2007).

183. *Id.*

184. MICH. COMP. LAWS ANN. §§ 208.1309(1)(a)-(b) (West Supp. 2007).

185. MICH. COMP. LAWS ANN. § 208.1309(1)(c) (West Supp. 2007).

186. *Id.*

187. MICH. COMP. LAWS ANN. § 208.1309(2) (West Supp. 2007).

188. MICH. COMP. LAWS ANN. § 208.1309(4) (West Supp. 2007).

subsection (3)¹⁸⁹ that the statutory apportionment formula fairly represents the business activity attributable to Michigan, it is likely that MCL section 208.1309 is more likely to be used by the Department to curb abuse than by taxpayers to seek and get relief.

Section 208.1309 of the MBT is not identical to section 69 of the SBT Act, but the language of this provision in the MBT Act is a direct result of Michigan's history with that SBT section in the *Trinova* cases.¹⁹⁰ In particular, the Michigan Supreme Court reviewed the rationale for inclusion of section 69 in the SBT Act and concluded: "[A] fair representation of business activity is one which ensures that each state taxes only its share of interstate transactions. With that central function in mind, it becomes obvious that [section] 69 functions essentially as a constitutional 'circuit breaker.'"¹⁹¹ In that case, the taxpayer sought apportionment relief under section 69 based on the disproportionate representation of its actual geographic Michigan compensation and depreciation when using the apportioned SBT tax base.¹⁹² The Michigan Supreme Court ruled: "When viewed as a whole, we believe the averaged ratios of Trinova's payroll, property and sales 'actually reflect a reasonable sense of how [its Michigan business activity was] generated,' clearly satisfying the constitutional requirements of internal and external consistency."¹⁹³ As a result, MBT section 208.1309(3) specifically references the indivisibility of the components of the MBT tax bases and creates a rebuttable presumption that the statutory apportionment formula fairly represents a taxpayer's business activity within Michigan:

The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.¹⁹⁴

UDITPA section 18 alternate apportionment provisions are becoming increasingly utilized by states seeking to "prevent distortion" resulting from expansive definitions of "sales" or "gross receipts" used

189. MICH. COMP. LAWS ANN. § 208.1309(3) (West Supp. 2007).

190. See *Trinova Corp. v. Mich. Dept of Treasury*, 445 N.W.2d 428 (Mich. 1989).

191. *Id.* at 156.

192. *Id.* at 145-46.

193. *Id.* at 163 (citation omitted in original) (quoting *Goldberg v. Sweet*, 488 U.S. 252 (1989)).

194. MICH. COMP. LAWS ANN. § 208.1309(3) (West Supp. 2007).

for apportionment purposes.¹⁹⁵ Most notable are the cases involving gross proceeds from treasury investment functions in the sales factor.¹⁹⁶ In *Microsoft Corp. v. Franchise Tax Board*,¹⁹⁷ the California Supreme Court concluded that gross proceeds are included in the California (UDITPA) apportionment factor as defined but that the state tax authority could correct the resulting distortion by applying an alternative apportionment formula under its version of the UDITPA section 18.¹⁹⁸ In a footnote in that case, the California Supreme Court noted the distinction between the constitutional requirements under *Container Corp. of America v. Franchise Tax Board*¹⁹⁹ to demonstrate that the income attributed to the state is:

[O]ut of all appropriate proportions to the business transacted . . . in that State, [citation], or has led to a grossly distorted result. This is the *constitutional* standard for striking down a tax under the due process and commerce clauses. However, section 26137's application is not confined to correcting unconstitutional distortions. The Board need only satisfy the lesser statutory standard quoted in the text.²⁰⁰

Unlike California and the UDITPA, the MBT language blurs the constitutional and statutory tests, perhaps into the same standard, thus potentially depriving the state of an option to meet a lower "distortion" standard utilized in states like California.

Notwithstanding the MCL section 208.1309 "constitutional circuit-breaker,"²⁰¹ the apportionment provisions in the MBT Act may be subjected to challenges under fairness and anti-discrimination constitutional theories.²⁰² The use of a sales-factor only apportionment, market-sourcing provisions, and utilization of the *Finnigan* rule²⁰³ for unitary groups are potential sources of challenge.

The constitutional constraints on the apportionment formula as applied come from the Due Process Cause²⁰⁴ and the Commerce

195. See, e.g., *Microsoft Corp. v. Franchise Tax Bd.*, 139 P.3d 1169 (Cal. 2006).

196. See *id.*

197. See *id.*

198. See *id.*; see also CAL. REV. & TAX. CODE § 25137 (West Supp. 2007).

199. *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159 (1983).

200. *Microsoft Corp.*, 39 Cal. 4th at 765 n.16 (citing *Container Corp.*, 463 U.S. at 170) (citations omitted) (emphasis in original).

201. MICH. COMP. LAWS ANN. § 208.1309 (West Supp. 2007).

202. See *Moorman Mfg. Co.*, 437 U.S. 267; *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977); *infra* notes 205-16.

203. See Appeal of *Finnigan Corp.*, No. 88-SBE-022 (Cal. St. Bd. Eq. Aug. 25, 1988), *overruled by* In the Matter of the Appeal of *Huffy Corp.*, No. 99-SBE-005, WL 386938 (Cal. St. Bd. Eq. Apr. 22, 1999).

204. See U.S. CONST. amend. V.

Clause²⁰⁵ of the United States Constitution. Due process requires some minimal connection between activities in the taxing state as well as that “income attributed to the taxing state be rationally related to values connected with the taxing state.”²⁰⁶ In practice, whether the Due Process is “rationally related” to the state has been relatively easy for state tax authorities to demonstrate.²⁰⁷

The basic criterion under the Commerce Clause is that apportionment be “fair.”²⁰⁸ In *Container Corp.*, the U.S. Supreme Court articulated the Commerce Clause standards for determining whether an apportionment formula is fair by identifying two tests derived from the Court’s jurisprudence: internal and external consistency.²⁰⁹

The first, and again, obvious component of fairness is an apportionment formula is what might be called internal consistency—that is, the formula must be such that, if applied by every jurisdiction, it would result in no more than all of the unitary business’ income being taxed. The second and more difficult requirement is what might be called external consistency—the factor or factors used in the apportionment formula must actually reflect a reasonable sense of how income is generated.²¹⁰

The external consistency requirement is the most difficult requirement of the Due Process/Commerce Clause analysis since it requires that the apportionment provision “actually reflect” a reasonable sense of how income is generated.²¹¹ Even under that higher standard, many state apportionment statutes with similar elements have withstood scrutiny.²¹² For example, in *Moorman Manufacturing Co.*, the Court reviewed the constitutionality of Iowa’s single-factor sales apportionment provision in light of Due Process Clause and Commerce Clause challenges.²¹³ In that case an Illinois-based manufacturer contended that the Iowa apportionment provision resulted in taxation of profits generated from operations outside of Iowa and that such a formula reaching income not earned within the state violated due process.²¹⁴ The Court rejected this argument, stating: “[t]his method, unlike separate accounting, does not purport to identify the precise geographical source of a corporation’s profits; rather, it is employed as a rough approximation of a corporation’s income that is reasonably related

205. See U.S. CONST. art. I, § 8, cl. 3.

206. *Moorman Mfg. Co.*, 437 U.S. at 273 (citations omitted).

207. See *id.*

208. See *Brady*, 430 U.S. at 274.

209. *Container Corp.*, 463 U.S. at 169.

210. *Id.*

211. *Id.*

212. See, e.g., *Moorman Mfg. Co.*, 463 U.S. at 281.

213. *Id.* at 271-72, 276.

214. *Id.* at 271-72.

to the activities conducted within the taxing State.”²¹⁵ Rejecting the taxpayer’s Commerce Clause argument, the Court held:

The only conceivable constitutional basis for invalidating the Iowa statute would be that the Commerce Clause prohibits any overlap in the computation of taxable income by the States. If the Constitution were read to mandate such precision in interstate taxation, the consequences would extend far beyond this particular case. For some risk of duplicative taxation exists whenever the States in which a corporation does business do not follow identical rules for the division of income. Accepting appellant’s view of the Constitution, therefore, would require extensive judicial lawmaking. Its logic is not limited to a prohibition on use of a single-factor apportionment formula. The asserted constitutional flaw in that formula is that it is different from that presently employed by a majority of States and that difference creates a risk of duplicative taxation. But a host of other division-of-income problems create precisely the same risk and would similarly rise to constitutional proportions.²¹⁶

The U.S. Supreme Court, in *Trinova Corp.*, considered a constitutional challenge to the SBT equally weighted, three-factor apportionment provision and allowed the use of apportionment to measure the value-added tax base of the SBT rather than requiring the specific geographic measurement of items of the tax base, as had been promoted by the taxpayer in that case.²¹⁷ Citing, *Container Corp.* and *Moorman Manufacturing*, the Supreme Court upheld the apportionment provisions as a reasonable method for measuring the tax base in *Trinova*.²¹⁸

Although this article is far from a comprehensive analysis of the potential arguments and issues, these cases will present some guidance on the application of these theories to the MBT.

B. Unitary Group Apportionment

Calculation of sales factor for unitary business groups is addressed in MCL sections 208.1303(2)²¹⁹ and 208.1511.²²⁰ As with typical combined

215. *Id.* at 273.

216. *Id.* at 278.

217. *Trinova Corp.*, 498 U.S. at 360.

218. *Id.*

219. MICH. COMP. LAWS ANN. § 208.1303(2) (West Supp. 2007).

220. MICH. COMP. LAWS ANN. § 208.1511 (West Supp. 2007). MCL section 208.1511 states:

A unitary business group shall file a combined return that includes each United States person, other than a foreign operating entity, that is included in the unitary business group. Each United States person included in a unitary business group or included in a combined return shall be treated as a single person and all transactions between those persons included in the unitary business group shall be eliminated from the business income tax base, modified

filing statutes, sales among members of the filing group are eliminated.²²¹ This provision prevents double counting of transactions between different legal entities within a unitary group of businesses. Furthermore, subsection 303(2) determines how the unitary group sales numerator is calculated and reads:

Except as otherwise provided under this subsection, for a taxpayer that is a unitary business group, sales include sales in this state of every person included in the unitary business group without regard to whether the person has nexus in this state. Sales between persons included in a unitary business group must be eliminated in calculating the sales factor.²²²

Less typical is the utilization of the so-called “*Finnigan*”²²³ rule, which requires inclusion of sales of all members of the unitary group in the sales factor numerator without regard to whether the legal entity itself has nexus.²²⁴ The Department has issued a FAQ describing how this rule works:

U1. How does a unitary business group apportion its tax bases when some members of the group do not have nexus with Michigan?

For a unitary group with business activities within and without Michigan, as defined in MCL 208.1301(3), the tax bases are apportioned to this state by multiplying them by the sales factor. The tax bases of a unitary group are calculated according to M.C.L. 208.1201 and 208.1203. The sales factor is Michigan sales divided by everywhere sales. The sales of all members of

gross receipts tax base, and the apportionment formula under this act. If a United States person included in a unitary business group or included in a combined return is subject to the tax under chapter 2A or 2B, any business income attributable to that person shall be eliminated from the business income tax base, any modified gross receipts attributable to that person shall be eliminated from the modified gross receipts tax base, and any sales attributable to that person shall be eliminated from the apportionment formula under this act.

Id.

221. See, e.g., MINN. STAT. ANN. § 290.17(4)(j) (West 2008); Cal. Code Regs. tit. 18, § 25106.5-1 (2001); 26 C.F.R. § 1.1502-13 (2008).

222. MICH. COMP. LAWS ANN. § 208.1303(2) (West Supp. 2007).

223. See Appeal of Finnigan Corp., 88-SBE-022, *overruled by* Appeal of Huffey Corp., No. 99-SBE-005, WL 386938; see also Appeal of Joyce, Inc., No. 66-SBE-070 (Cal. St. Bd. Eq. 1966) for the original SBE Joyce decision and its resurgence in Appeal of Huffey Corp., No. 99-SBE-005, WL 386938.

224. See *id.*; see also In the Matter of the Appeal of Joyce, Inc., WL 1411 (Cal. St. Bd. Eq., Nov. 23, 1966); Appeal of Huffey Corp., WL 386938 (1999).

the unitary group are included in both the numerator and the denominator.²²⁵

The *Finnigan* rule has been upheld in Arizona²²⁶ and Kansas²²⁷ and recently in the state of New York.²²⁸ Michigan policymakers weighed the use of *Finnigan* versus *Joyce*, which would limit the sales numerator to only sales of those legal entities with nexus within Michigan, and determined that *Finnigan* represented a more appropriate standard for the MBT.²²⁹ The statutory language specifically requires applying the *Finnigan* rule—unlike other statutes, e.g., California and New York, which leave that decision up to state tax authorities to interpret.²³⁰ Sensitive to the impressions that the SBT was easy for taxpayers to minimize by planning, policymakers sought a rule that would discourage this behavior by requiring all Michigan-destination sales in the numerator of the group.²³¹ The expansion of the tax to require unitary combination at fifty percent ownership and control,²³² as well as the expansion of the nexus threshold to economic presence,²³³ potentially mitigates a material difference between *Joyce* and *Finnigan* for many taxpayer groups. Furthermore, without a throw-back rule (and therefore unlike California whose courts have wrestled with application of the *Finnigan* rule for this reason)²³⁴ the likelihood that state revenues would be whipsawed by utilization of a *Finnigan* rule is reduced.

VIII. NON-BUSINESS OR INVESTMENT INCOME

The MBT's treatment of investment income in general will require some thoughtful analysis for taxpayers. In general, the apportionment provisions can be read to apply to all income and gross receipts within the constraints of the U.S. Constitution. The Act has no definition of "non-business income" as does the UDITPA,²³⁵ the Michigan ITA²³⁶ and

225. U1, Frequently Asked Questions, Michigan Business Tax, Mich. Taxes, Dep't. of Treasury, available at <http://www.michigan.gov/taxes> (accessed from homepage by entering "U1" into Search box) (last visited June 18, 2008).

226. See *Airborne Navigation Corp. v. Arizona Dep't of Rev.*, No. 395-85-I (Ariz. Bd. Tax App. Feb. 5, 1987).

227. See KAN. ADMIN. REGS. § 92-12-112(a) (1992).

228. See *Disney Enterprises, Inc. v. Tax Appeals Tribunal of the State*, No. 02677, WL 762279 (N.E. 2d Mar. 28, 2008), affirming 830 N.Y.S.2d 614 (2007).

229. MICH. COMP. LAWS ANN. § 208.1303 (West Supp. 2007).

230. See, e.g., TAX LAW § 2016 (West Supp. 2007).

231. MICH. COMP. LAWS ANN. § 208.1305 (West Supp. 2007).

232. MICH. COMP. LAWS ANN. § 208.1117(6) (West Supp. 2007).

233. MICH. COMP. LAWS ANN. § 208.1200 (West Supp. 2007).

234. See Ap3, Frequently Asked Questions, Michigan Business Tax, Mich. Taxes, Dep't of Treasury, available at <http://www.michigan.gov/taxes> (accessed from homepage by entering "Ap3" into Search box) (last visited June 18, 2008).

235. See Unif. Div. Of Income for Tax Purposes Act of 1957 § 1(g).

236. MICH. COMP. LAWS ANN. § 206.14 (West Supp. 2007).

many other states' income taxes.²³⁷ Though not the majority rule, there are certainly other states that do not provide for allocation of non-business income by statute.²³⁸ Even if such a rule is not required, it may be that one is implied by the interaction between the definitions of business income and business activity for MBT purposes.

The business income tax base essentially includes federal taxable income, as adjusted.²³⁹ Business income is defined as that "part of federal taxable income from business activity."²⁴⁰ Although the business activity definition is broad, it does seem to allow for exclusion of purely passive investment-type activity, at least for taxpayers engaged in other business activities under the MBT Act.²⁴¹ There is no definition of "non-business income" as in the UDITPA but there are also no provisions that would allocate non-business income to the domicile of a taxpayer rather than subjecting all income to apportionment. Gross receipts, on the other hand, is an extremely expansive definition, including the "entire amount received"²⁴² from "any activity whether in intrastate, interstate, or foreign commerce"²⁴³ and whether "carried on for direct or indirect gain, benefit, or advantage to the taxpayer or others."²⁴⁴ The modified gross receipts tax base has no specific constitutional or federal law restrictions and is likely to be the source of interpretations that will tend to expand the MBT.²⁴⁵ Inclusion of an extensive list of items in the tax base may put pressure on expanding the definition of sales for apportionment purposes so that factor representation is allowed for such tax base items.

IX. SUMMARY COMPARISON TO OTHER GUIDANCE AND TABLE OF REFERENCES

As noted throughout, the MBT apportionment provisions are derived from a number of sources that are themselves relatively familiar to taxpayers. The following table summarizes the MBT apportionment provision statute references and provides references to provisions within the SBT Act, the UDITPA and MTC. This common ancestry may provide both taxpayers and administrators with helpful guidance interpreting the MBT Act's new Michigan provisions.

237. *See, e.g.*, CAL. REV. & TAX. CODE § 17053 (West Supp. 2007).

238. *See id.*

239. MICH. COMP. LAWS ANN. § 208.1201 (West Supp. 2007).

240. MICH. COMP. LAWS ANN. § 208.1105(2) (West Supp. 2007).

241. MICH. COMP. LAWS ANN. § 208.1105(1) (West Supp. 2007).

242. MICH. COMP. LAWS ANN. § 208.1111(1) (West Supp. 2007).

243. *Id.*

244. *Id.*

245. *See* MICH. COMP. LAWS ANN. § 208.1507 (West Supp. 2007).

2007] APPORTIONMENT & SALES SOURCING PROVISIONS 1429

MBT Apportionment Roadmap and Michigan & UDITPA apportionment references					
MBT Act Section	Description	SBT reference	Mich. ITA reference	UDITPA Section	MTC cite
105(1)	"Business activity" definition	MCL 208.3(2)			MTC Reg. IV.2.(a)(4), see also MTC reg. IV.1.(1) business income.
115(1)	"Sales" definition	MCL 208.7(1)	MCL 206.20(1)	UDITPA sec. 1(g)	See also "gross receipts" definition at MTC Reg. IV.2.(a)(5), added 7/27/2001.
301(1)	Apportionment formula	MCL 208.45, MCL 208.45a	MCL 206.115	UDITPA sec. 9	MTC Reg. IV.9
302(2)-(3)	Right to apportion	MCL 208.40, MCL 208.41, MCL 208.42	MCL 206.102, MCL 206.103, MCL 206.105	UDITPA secs. 2 and 3	MTC Reg. IV.2.(b)(1)
303(1)	Sales factor definition	MCL 208.51(1)	MCL 206.121	UDITPA sec. 15	MTC Reg. IV.15.(a)
303(2), 511	Unitary group sales factor calculation	N/A	N/A	N/A	MTC Combined Reporting Model Statute (8/17/2006) Sec. 3
305	Sourcing in general				MTC Reg. IV.15(c)
305(1)(a)	sales of tangible personal property, including electricity and gas contracts	MCL 208.52	MCL 208.122	UDITPA sec. 16	MTC Reg. IV.16.(a)
305(1)(b)	real property sale, rental, leasing or licensing				MTC Reg. IV.17
305(1)(c)	tangible personal property lease or rental				MTC Reg. IV.17
305(1)(d)	mobile transportation property lease or rental, including aircraft				MTC Reg. IV.17
305(1)(e)	royalties and other income from licensing intangible property				MTC Reg. IV.17
305(2)	services	MCL 208.53	MCL 206.123	UDITPA sec. 17	MTC Reg. IV.17
305(2)(a)	services in general	N/A but see MCL 208.53 rule for "other than sales of tangible property."			N/A but see MTC Reg. 17.(4)(g) "personal services."
305(2)(b)	securities brokerage services	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions (adopted 11/17/1994). "MTC Financial Formula"
305(2)(c)	regulated investment company services	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(3)	loans secured by residential real property - loan origination or gains from sales	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(4)	loans secured by real property - interest	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(5)	loans not secured by real property - interest	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(6)	loans not secured by real property - gains from sale of loan	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula

MBT Act Section	Description	SBT reference	Mich. ITA reference	UDITPA Section	MTC cite
305(7)	credit card receivable receipts - interest, fees, penalties	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(8)	credit card or other receivables - sale of receivables	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(9)	loan servicing fees on loans of another secured by real property or not secured by real property or unsecured loans	RAB 2002-14 for "financial organizations" and MCL 208.53 for others.			MTC Financial Formula
305(10)	Investment and trading activities receipts - sales of securities, interest, dividends and gains	N/A			
305(11)	Transportation services	MCL 208.56	MCL 206.131		MTC Regs. IV.15(e), (f), (g)
305(11)(a)	Revenue miles general rule		MCL 206.132		MTC Regs. IV.15(e), (f), (g)
305(11)(b)	maritime transportation services				
305(11)(c)	Mixed passenger and ton miles		MCL 206.132		MTC Regs. IV.15(e), (f), (g)
305(11)(d)	oil pipeline transportation	MCL 208.58(1)	MCL 206.133		
305(11)(e)	gas pipeline transportation	MCL 208.58(2)	MCL 206.134		
305(12)	transportation services proportionate receipts if revenue miles not appropriate or practical	MCL 208.57	MCL 206.132		
305(13)	telecommunications services including mobile telecommunications services	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Proposed Model Regulation for Apportionment of Income from the Sale of Telecommunication and Ancillary Services (July 15, 2007) "MTC Telecom Sourcing Proposal"
305(14)	telecommunications services sold on individual call-by-call basis	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Telecom Sourcing Proposal
305(15)	telecommunications services - postpaid	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Telecom Sourcing Proposal
305(16)	telecommunications services - prepaid	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Telecom Sourcing Proposal
305(17)	telecommunications services - private communication services	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Telecom Sourcing Proposal
305(18)	telecommunications services - sale of billing and ancillary services	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Telecom Sourcing Proposal
305(19)	telecommunications services - access fees and resale	N/A but see MCL 208.53 rule for "other than sales of tangible property."			MTC Telecom Sourcing Proposal
305(20)	telecommunications services - SSUTA reference	N/A but see MCL 208.53 rule for "other than sales of tangible property."			
305(21)	general rule - location of "borrower"	RAB 2002-14			
307	spin-off corporation alternative sales factor	MCL 208.54			

MBT Act Section	Description	SBT reference	Mich. ITA reference	UDITPA Section	MTC cite
309	Alternative apportionment	MCL 208.69		UDITPA sec. 18	MTC Regs. IV.18(a) & (c)
311	general sourcing rule	MCL 208.53			
Chapter 2A	insurance companies	MCL 208.62			
Chapter 2B	Banks (SBT rule for broader "financial organizations")	MCL 208.65			



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

REVENUE ADMINISTRATIVE BULLETIN 2018-28

Approved: December 19, 2018

**ALTERNATIVE APPORTIONMENT FOR THE
MICHIGAN BUSINESS AND INCOME TAXES**

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2018-28. This Revenue Administrative Bulletin (RAB) describes the procedures and standards governing the alternative apportionment relief provisions in parts 1 and 2 of Michigan's Income Tax Act and in the Michigan Business Tax Act.

ISSUES

- I. What is alternative apportionment?
- II. When must a taxpayer submit a request to use an alternative apportionment formula?
- III. What must a taxpayer submit to request alternative apportionment?
- IV. Who has the burden of proving that the statutory apportionment formula does not fairly represent the taxpayer's business activity in Michigan?
- V. What standard of proof must be met before an alternative apportionment method will be applied?
- VI. Is the Department required to respond to a request for alternative apportionment within a certain timeframe?
- VII. If approved, to what tax periods may the alternative apportionment method be applied?
- VIII. Are there any special filing instructions for filing a return for a tax period in which an approved alternative apportionment method is used?

- IX. Under what circumstances may the Department impose an alternative apportionment method?

CONCLUSIONS

- I. Alternative apportionment is a remedy available to both the Department and taxpayers, including individuals and trusts as well as business taxpayers, that allows deviation from Michigan's statutorily-mandated apportionment formula when the statutory formula fails to fairly represent a taxpayer's business activity in this state.
- II. A taxpayer must submit a request for alternative apportionment at least 90 days prior to the due date of the return (including extensions) for which permission to use the alternative method is sought or, in the case of an amended return, at least 90 days prior to filing the amended return. Requests for alternative apportionment will not be approved if made after a return is filed taking an apportionment position contrary to that in statute.
- III. A taxpayer's request for alternative apportionment must be in writing and clearly labeled "Request for Alternative Apportionment." The request must identify the tax type and period for which alternative apportionment is requested and must clearly demonstrate why the statutory formula does not fairly represent the taxpayer's business activity in Michigan. It must also include a reasonable alternative and disclosure of certain information about the taxpayer's apportionment method in other states.
- IV. The burden of proof rests on the party advancing an alternative apportionment method.
- V. The party seeking to apply an alternative apportionment method must prove by clear and convincing evidence that the statutory method grossly distorts the taxpayer's business activity in Michigan or operates to unconstitutionally tax extraterritorial activity and that the proposed alternative is a reasonable method of apportioning the taxpayer's income.
- VI. The Department is not required to respond to a request for alternative apportionment within a certain timeframe; however, the request will be deemed denied if the Department does not respond within 60 days.
- VII. Once approved, an alternative apportionment method may only be applied to the tax period(s) for which the request was approved.
- VIII. When filing a return using an approved alternative apportionment method, a taxpayer must attach the Department's approval letter and a schedule supporting how the apportionment percentage was derived and applied.
- IX. The Department may impose an alternative apportionment method whenever the statutory formula does not fairly reflect the taxpayer's business activity in Michigan, resulting in either gross distortion or unconstitutional extraterritorial taxation.

INTRODUCTION

The Due Process and Commerce Clauses of the U.S. Constitution require a state's income tax on interstate commerce to be apportioned in a manner that reasonably approximates the relationship between a taxpayer's income attributed to that state and the taxpayer's business activities in that state. The U.S. Supreme Court has determined that a state's standard apportionment formula adequately reflects this relationship if the apportionment formula is internally and externally consistent both facially and when applied to a particular taxpayer. Where the standard apportionment formula fails to fairly reflect the relationship between the taxpayer's business activities in this state and the taxpayer's income attributable to this state, Michigan law provides relief in the form of an alternative apportionment provision. Michigan law permits deviation from the standard apportionment formula for businesses and individuals, estates and trusts.¹ This RAB addresses the procedures and standards applicable to the use of the alternative apportionment provision for business taxpayers under the Michigan Business Tax (MBT) for both the business income and the modified gross receipts tax bases, for business taxpayers under the Corporate Income Tax (CIT), and for those taxpayers covered by Part 1 of the Michigan Income Tax Act (MITA).

BACKGROUND

A state's power to tax is an inherent feature of its sovereignty, and a state has wide latitude to establish a taxation scheme.² Its powers, if exercised for public purposes, are generally unlimited, extending to all persons, property, and business within its jurisdiction. Where a taxpayer earns income from a multistate business and more than one state has jurisdiction to impose income tax, the states' power to tax is limited by two federal constitutional provisions: the Commerce Clause and the Due Process Clause. The Commerce Clause restrains states from burdening the free flow of commerce among the states.³ Specifically, it prevents states from subjecting taxpayers to multiple tax burdens simply because they do business across state lines. It is satisfied when a state's formula, if applied by every jurisdiction, would result in no more than all of the taxpayer's income being taxed.⁴ The Due Process Clause precludes a state from taxing value earned outside its borders, sometimes referred to as extraterritorial taxation.⁵

These limitations shape the statutory framework governing division of business income among the states, requiring a state's taxation scheme to be both internally and externally consistent. The internal consistency test looks at the structure of the tax and measures whether the apportionment formula if adopted by all states would disadvantage interstate commerce as compared to intrastate commerce—a test designed to identify and prevent multiple taxation. The external consistency test focuses on whether a state's tax reaches beyond that portion of value that is fairly attributable to

¹ See MCL 206.195 for individuals, estates and trusts, MCL 206.667 for corporations under the Corporate Income Tax, and MCL 208.1309 for Michigan Business Tax taxpayers. This RAB's references to individual income taxpayers are intended to include estates and trusts under part 1 of the Michigan Income Tax Act (MITA).

² *C F Smith Co v Fitzgerald*, 270 Mich 659, 668-669 (1935).

³ *Massachusetts v US*, 435 US 444 (1978).

⁴ *Container Corp of America v Franchise Tax Bd*, 463 US 159, 169 (1983).

⁵ *ASARCO, Inc v Idaho State Tax Comm'n*, 458 US 307, 315 (1982).

economic activity within the taxing state—a test designed to identify and prevent extraterritorial taxation.⁶

Most states, including Michigan, divide or “apportion” income among states using a formula based upon one or more factors representative of the taxpayer’s activities in the taxing state.⁷ This method of attributing income earned by a taxpayer in the operation of a unitary business is referred to as formula apportionment. Formula apportionment⁸ does not purport to identify the precise geographical source of a taxpayer’s income, but is instead intended to be only a rough approximation of a taxpayer’s income that is related to the activities conducted within the taxing state.⁹

Michigan apportions business income using single sales factor apportionment for both business and individual income taxes.¹⁰ The U.S. Supreme Court has determined the sales factor apportionment method to be presumptively valid.¹¹ Most states, including Michigan, permit a taxpayer to deviate from the statutorily-mandated apportionment method under certain circumstances. This statutorily-authorized relief is commonly referred to as the alterative apportionment provision. The presumptive validity of the single sales factor apportionment method is expressly stated in the alternative apportionment provisions of Michigan’s business tax statutes.¹² The CIT alternative apportionment provision, which is identical in all pertinent respects to the MBT provision, is as follows:

- (1) If the apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:
 - (a) Separate accounting.
 - (b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.
 - (c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.

⁶ *Container Corp of America v Franchise Tax Bd*, 463 US 159, 169–170 (1983); *Oklahoma Tax Comm'n v Jefferson Lines, Inc*, 514 US 175 (1995).

⁷ The underlying rationale for formula apportionment grew out of the difficulty of identifying the geographic source of income earned by a multistate enterprise. See *Trinova Corp v Michigan Dep't of Treasury*, 498 US 358, 373 (1991).

⁸ Formula apportionment is more commonly known simply as apportionment; further references in this RAB will refer to the more commonly used “apportionment.”

⁹ *Moorman Mfg Co v Bair*, 437 US 267, 273 (1978).

¹⁰ See MCL 206.115(2) in Part 1 of the MITA pertaining to individual income taxpayers for years beginning in 2012 and after. See MCL 208.1301(2) for taxpayers under the Michigan Business Tax and MCL 206.661(2) for taxpayers under part 2 of the MITA known as the Corporate Income Tax. Michigan’s business tax acts do not distinguish between business and non-business income as does Part 1 of the MITA with respect to individual income taxation.

¹¹ *Moorman Mfg Co*, at 273.

¹² See MCL 206.667 for the CIT and MCL 208.1309 for the MBT.

- (2) An alternate method may be used only if it is approved by the department.
- (3) The apportionment provisions of this part shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of the tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.
- (4) The filing of a return or an amended return is not considered a petition for the purposes of subsection (1).¹³

The alternative apportionment provision under part 1 of the MITA, pertaining to individual income taxpayers, is nearly equivalent to the MBT and CIT provisions but does not contain subsection (3) or (4). The Department considers the single sales factor prescribed in part 1 of the MITA to have the same rebuttable presumption as expressly stated in section 667(3) of part 2 of the MITA based upon the U.S. Supreme Court's determination of this formula's presumptive validity. As a matter of uniformity, the Department considers subsection (4) of part 2 of the MITA to be equally applicable to individual income taxpayers under part 1 of the MITA, as will be discussed below.

PROCEDURES AND STANDARDS

Michigan law permits either the taxpayer to petition for, or the Department to require, the use of an alternative apportionment method, if reasonable, when the statutory apportionment method does not fairly represent the extent of the taxpayer's business activity in this state. This RAB addresses the procedures applicable to each.

Taxpayer Request for Alternative Apportionment Relief

Time for Filing. A request for alternative apportionment will not be considered unless it has been timely filed. A taxpayer seeking to apply an alternative apportionment method must seek the Department's approval at least 90 days prior to the due date of the return (including extensions) for which permission to use the alternative method is sought or, in the case of an amended return, at least 90 days prior to filing the amended return.

Where to File. A taxpayer's request for alternative apportionment must be sent to the Bureau of Tax Policy at 430 West Allegan Street, Lansing, MI 48922.

Required Components. A taxpayer's request for alternative apportionment must be a written request clearly labeled "Request for Alternative Apportionment" and must include:

1. Tax Type and Period. A request must identify the tax type and period covered by the taxpayer's request.

¹³ MCL 206.667.

2. **Statement of Reasons.** A request must contain a statement of the reasons, supported by detailed facts and data, explaining why the taxpayer believes the statutory method does not fairly represent the activities of the taxpayer in Michigan.
3. **Proposed Alternative Method.** A request must detail the proposed alternative apportionment method(s) and explain how it reflects the taxpayer's income attributable to Michigan and why it is a reasonable alternative.
4. **Data and Analysis.** The proposal must attach documentation identifying and describing the nature of the taxpayer's business activity and justifying the figures presented in the proposal for alternative apportionment, as well as their origin, nature and relation to the overall result proposed.
5. **Disclosure.** The request must disclose whether the proposed method is being used or requested in other states and whether the alternative method has been approved or rejected in those other states. The request must also identify those other states.

Criteria for Evaluating Requests for Alternative Apportionment.

Presumptions. The statutory method of apportionment is presumed to fairly represent the business activity attributable to the taxpayer in this state for all tax types covered by this RAB.¹⁴ Therefore, a taxpayer requesting alternative apportionment must rebut the presumption.

Burden and Standard of Proof. The burden of proof rests on the party seeking to apply an alternative apportionment formula.¹⁵ That party must prove by clear and convincing evidence that the presumptively fair statutory formula is unfair under the particular circumstances and that the proposed alternative is reasonable.¹⁶ This standard of proof imposes two burdens on the requesting party, one relative to the statutory formula and one relative to the proposed alternative.¹⁷

Burden of Proving that the Statutory Method does not Fairly Represent Business Activity. As to the first burden, the business tax statutes adopt what is known as the constitutional gross distortion standard, which requires a party attempting to overcome the presumption that the statutory formula is fair to demonstrate:

¹⁴ See MCL 206.667(3) for CIT, MCL 208.1309(3) for the MBT, and *Moorman Mfg Co v Bair*, 437 US 267, 273 (1978).

¹⁵ Carolyn Joy Lee, Charolette Noel, *PER SE versus "AS APPLIED" CHALLENGES AND THE USE OF ALTERNATIVE APPORTIONMENT PROVISIONS*, 2010 St & Loc Tax Law 241, 261-262 (2010).

¹⁶ *Donovan Const Co v MI Dep't of Treasury*, 126 Mich App 11, 21 (1983). Note that the "clear and cogent" standard of proof referenced in *Moorman Mfg Co*, at 274, is equivalent to the "clear and convincing" standard of proof. See <https://en.oxforddictionaries.com/definition/cogent>, defining cogent as clear, logical, and convincing. Evidence is clear and convincing when it "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Martin*, 450 Mich 204, 227 (1995).

¹⁷ ¶ 9.20 *EQUITABLE APPORTIONMENT PROVISIONS*, Hellerstein and Swain, 1999 WL 1398944, 16. See also BNA's Tax Management Weekly State Tax Report, Vol 17, No 49, p 5, December 10, 2010.

That the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state¹⁸ AND leads to a grossly distorted result,¹⁹ OR

That the statutory formula would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.²⁰

The U.S. Supreme Court treats a showing of gross distortion as evidence of a state's taxation of extraterritorial activity, thus equating the two proofs.²¹ The Department follows this treatment. Additionally, the Department treats the alternative apportionment relief provision under section 195 of Part 1 of the MITA, pertaining to individuals, as requiring the same gross distortion level of proof as that required under the business tax statutes based upon the Michigan Supreme Court's determination in *Trinova Corp v Dep't of Treasury*.²² There, the Michigan Supreme Court considered section 69 of the Single Business Tax Act, which is nearly identical to section 195 of the MITA,²³ and determined that it served as a constitutional circuit breaker, requiring the gross distortion standard of proof.

For all taxes covered by this RAB, a determination as to whether the standard apportionment formula attributes income to this state out of all appropriate proportion to the taxpayer's business activities within this state and produces a grossly distorted result or whether it operates to unconstitutionally tax extraterritorial activity will depend on the facts and circumstances. A taxpayer may not rely solely on a large difference between the statutory and alternative methods as to either the income attributed to this state or the resulting tax liabilities as proof of distortion. Rather, additional analysis establishing why the statutory method attributes income to Michigan out of all appropriate proportion to the taxpayer's business activities within this state is necessary to sustain any distortion claim.²⁴

Embodied in this burden are two evidentiary hurdles, one quantitative and one qualitative.²⁵ The quantitative hurdle requires a party to employ the metric that most appropriately quantifies the level of distortion between the taxpayer's business activities conducted in this state and the income attributed to this state using the statutory formula. The level of distortion required is one of

¹⁸ The "out of all appropriate proportion" language derives originally from the U.S. Supreme Court's opinion in *Hans Rees' Sons, Inc v N Carolina ex rel Maxwell*, 283 US 123, 135 (1931).

¹⁹ The "gross distortion" language derives originally from the U.S. Supreme Court's opinion in *Norfolk & W Ry Co v Missouri State Tax Comm*, 390 US 317, 326 (1968).

²⁰ MCL 206.667(3) and 208.1309(3).

²¹ *Norfolk & W Ry Co*, *supra* at 327.

²² 433 Mich 141 (1989).

²³ Section 69 lists four alternatives to the statutory apportionment formula instead of the three listed by § 195. They are otherwise identical.

²⁴ See *Citizens Utilities Co of Illinois v Dept of Revenue*, 488 NE2d 984, 993 (1986), noting that the 15,000% increase in tax liability between the statutory formula and the separate accounting method in *Butler Bros v McColgan*, 315 US 501 (1942) was upheld because bare percentages without explanation were insufficient.

²⁵ The quantitative and qualitative analysis originated in the California Supreme Court case *Microsoft Corp v Franchise Tax Bd*, 39 Cal 4th 750, 766 (2006). Even though California does not require a taxpayer to carry the heavier constitutional burden of establishing gross distortion, the analysis still serves as a useful starting point.

constitutional magnitude. “Gross” distortion is flagrant distortion, distortion beyond all reasonable measure.²⁶

A showing of quantitative distortion of constitutional magnitude is insufficient by itself. A taxpayer must also show qualitative distortion. The qualitative prong of the metric focuses not on the magnitude of the distortion but on the nature of the distortion and requires a taxpayer to show that its sales into Michigan do not fairly represent the nature of the taxpayer’s business activity in Michigan.²⁷ U.S. Supreme Court precedents have held separate accounting to be of little value in accurately depicting the business activity of a unitary business in a particular jurisdiction.²⁸ Therefore, if the taxpayer’s business is unitary, the Department will rarely consider separate accounting to be an appropriate method for establishing gross distortion. By the same principle, attempts by a unitary taxpayer to establish gross distortion or extraterritorial taxation with evidence that the taxpayer is more profitable in one jurisdiction than another will rarely be pertinent.²⁹

Likewise, attempts to carve out certain receipts from the tax base will be unsuccessful without a showing that the income is somehow unrelated to the taxpayer’s unitary business activity. The form of a business’ investments or its organization will not control. For example, dividends received from subsidiaries and affiliates that reflect profits derived from a functionally integrated enterprise are income to the parent earned in a unitary business and their inclusion in the tax base does not result in gross distortion of the taxpayer’s business activity in this state. Additionally, unusually large receipts from an extraordinary event or an isolated transaction are not grossly distortive per se.³⁰ Distortion is not proved solely by comparing results. To determine whether there is gross distortion, the Department will look at the relationship between the apportionment factor and the taxpayer’s business activity producing the taxable income.

Single sales factor apportionment is intended to attribute sales to the consumer state and in so doing gives recognition to the consumer state’s contribution in the taxpayer’s production of the income.³¹ The metric used should therefore demonstrate how it reflects Michigan’s contribution in the production of the taxpayer’s income.

Burden of Proving that the Proposed Alternative is Reasonable. Once the burden of establishing gross distortion is met, the second burden is to show that the proposed alternative is a reasonable method of apportioning the taxpayer’s income. To be reasonable, the party asserting it must establish a close connection between the proposed alternative apportionment method and the basis for deviating from the statutory formula.³² The Department considers the following factors to be

²⁶ Black’s Law Dictionary, (10th ed 2014) by Bryan A. Garner, editor in chief.

²⁷ *Microsoft Corp, supra* at 769. In *Microsoft*, the Court noted that the taxpayer’s treasury functions were qualitatively different from its principal business in contrast to the facts of another case involving Merrill Lynch, where the taxpayer’s treasury functions were not qualitatively different from its principal business of buying and selling securities. *Id.* at 766.

²⁸ See *Mobil Oil Corp v Comm’r of Taxes of Vermont*, 445 US 425, 438 (1980), citing *Butler Bros v McColgan*, 315 US 331, 336 (1939).

²⁹ ¶ 8.16 DISTORTION OR MISATTRIBUTION OF INCOME, Hellerstein and Swain, 1999 WL 1398922, 10.

³⁰ State Taxation § 8.16 *Distortion or Misattribution of Income*, 1999 WL 1398922, 16.

³¹ See Pierce, *The Uniform Division of Income Tax for State Tax Purposes*, 35 Tax 747 (October 1957).

³² See *A New Approach to Defining a “Reasonable” Alternative Apportionment Method*, State and Local Tax Advisory, September 10, 2013.

relevant to a determination of the reasonableness of the taxpayer's alternative apportionment method:

- what filing position the taxpayer has taken in other jurisdictions and/or what requests for alternative apportionment the taxpayer has made in other jurisdictions;
- whether the proposed method entirely removes the income from taxation by any jurisdiction; and,
- whether the proposed method reflects the economic reality of the taxpayer's business activity in Michigan.

A request for an assignment of income that results in all or a significant portion of a taxpayer's income escaping tax in all jurisdictions is unreasonable.

Invalid Requests for Alternative Apportionment

A request for alternative apportionment must comply with the procedures set forth in this RAB. Because a valid request must be submitted in advance of a return, a return or amended return applying an alternative method of apportionment without prior approval does not constitute a valid request for alternative apportionment. This is true for taxpayers under part 1 of the MITA as well as taxpayers under part 2 of the MITA, the CIT, and for taxpayers under the MBT.³³ Nor may a request be attached to an original or amended return. Should the Department process an original or amended return which uses an unapproved alternative method, such action does not reflect the Department's acceptance or approval of the taxpayer's proposed alternative method.

A claim for refund which does not comply with the procedures set forth in this RAB does not constitute a valid request for alternative apportionment.

Department Response to Request for Alternative Apportionment

As soon as practicable after receiving a proper and timely filed request for alternative apportionment, the Department will review and respond to the request, indicating whether it has been denied, approved, or approved in part and denied in part, and stating the reasons for the determination. This determination is appealable pursuant to the provisions of the Revenue Act

If the Department does not act upon a taxpayer's request before the expiration of 60 days from the date of the Department's receipt of the request, the request is deemed denied. The Department and the applicant may consent in writing to extend the time for a decision on the request.

Filing Instructions for Approved Requests

Approval of an alternative apportionment method or partial approval is effective only for the tax period for which the approval was requested or another period designated by the Department. When filing a return or amended return using the alternative apportionment method, attach the

³³ MCL 206.667(4) and MCL 208.1309(4).

Department's approval letter and a schedule indicating how the apportionment percentage was derived and applied.

In the event that approval is given for more than one tax period, the taxpayer must furnish information with the filing of its return in each subsequent tax period which establishes that the circumstances remain substantially unchanged. Approval for subsequent periods, if given, may be revoked if the circumstances justifying the variation in apportionment method have substantially changed.

Denied Requests

If a taxpayer's request for alternative apportionment relief is denied, the taxpayer must report using the apportionment method mandated by the applicable statute. An aggrieved taxpayer may appeal the Department's decision pursuant to Section 22(1) of the Revenue Act.³⁴

Department's Imposition of Alternative Apportionment Formula

The Department will generally only impose an alternative apportionment method as the result of an audit or in conjunction with a partial rejection of a taxpayer's request for alternative apportionment. The Department is subject to the same presumptions and burdens of proof as those applicable to a taxpayer as outlined in this RAB. Specifically, the statutorily-mandated apportionment method is presumed to fairly represent the business activity attributed to the taxpayer in this state. The Department may impose an alternative apportionment method if it determines that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result and if the Department's proposed apportionment method is reasonable.

Because the Department must rely on taxpayers to self-report their income and tax liability, it is not bound to notify the taxpayer in advance of the due date of the return of its intent to apply an alternative apportionment method for that tax period. The Department may apply the alternative apportionment method for more than one tax period.

When the Department imposes an alternative apportionment method, it must advise the taxpayer in writing of 1) the reason the statutory formula does not fairly represent the taxpayer's business activity in this state, 2) an explanation of the alternative apportionment method being applied to determine the taxpayer's business activity in this state and why it is a reasonable alternative, and 3) the tax type and periods to which the alternative apportionment method applies.

³⁴ MCL 205.22(1).

Judicial

law

la justica
la justice
gerechtigkei

Administrative

la ley
c'est interdit
gesetzesübertreter

justice

Review

By Donald E. Erickson

“Administrative law relates to the powers, functions, and procedures of the various administrative agencies and the methods provided for judicial review of their decisions.”¹ As Professor Don LeDuc noted in his treatise, “Administrative Law is not a unified or limited field like torts or contracts, nor is it simply procedural in nature.”² In addition, certain aspects of the way Michigan courts treat administrative law subjects reveal differences and apparent contradictions, which can create confusion for practitioners in the area of administrative law. In this context, it can become difficult to determine the likely outcome of many issues in administrative law. In Const 1963, art 6, § 28, even the people have demonstrated ambivalence toward administrative agency adjudications—accepting the need for decision-making by administrative agencies but not fully entrusting final decisions to administrative agencies.

Law and Michigan Courts

An administrative agency has no inherent power. Any authority agencies may have is vested in them by statute or by the constitution. Administrative determinations are enforceable only in the manner provided by statute.³ The power and authority to be exercised by administrative agencies must be granted by clear and unmistakable statutory language since a doubtful power does not exist, and an express grant of power is subject to a strict interpretation.⁴ But these limitations upon agency power are not self-executing and are meaningless without the availability of appropriate judicial review.

In judicial opinions reviewing decisions by administrative agencies, much duality or ambivalence can be found. Perhaps the relationship between administrative agencies and Michigan courts is somewhat symbiotic. Courts are satisfied to have this form of alternative dispute resolution available but are wary of ceding too much legal independence. Agencies enjoy improvement in public perception of fairness when their actions are affirmed but prefer to avoid reversals. This article will survey some of the differences and apparent contradictions in the context of three subjects: availability of judicial review, standards for reviewing administrative decisions, and judicial reluctance to review administrative appeals. The objectives of this article are to provide updated

information to practitioners regarding these subjects and to present some rationales to reconcile some of the apparent contradictions found in case law.

Availability of Judicial Review

Litigants seeking judicial review of decisions by administrative agencies have three potential avenues of relief: review prescribed in the statutes applicable to the particular agency; appeal pursuant to MCL 600.631, which allows appeals from such decisions to the circuit court; or the method of review provided by the Administrative Procedures Act (APA), MCL 24.201.⁵ A lawyer should review each avenue in turn to determine where appellate jurisdiction lies.⁶

The legislature can restrict the right to judicial review of decisions by administrative agencies so long as the restriction does not conflict with Const 1963, art 6, § 28.⁷ That provision states in relevant part:

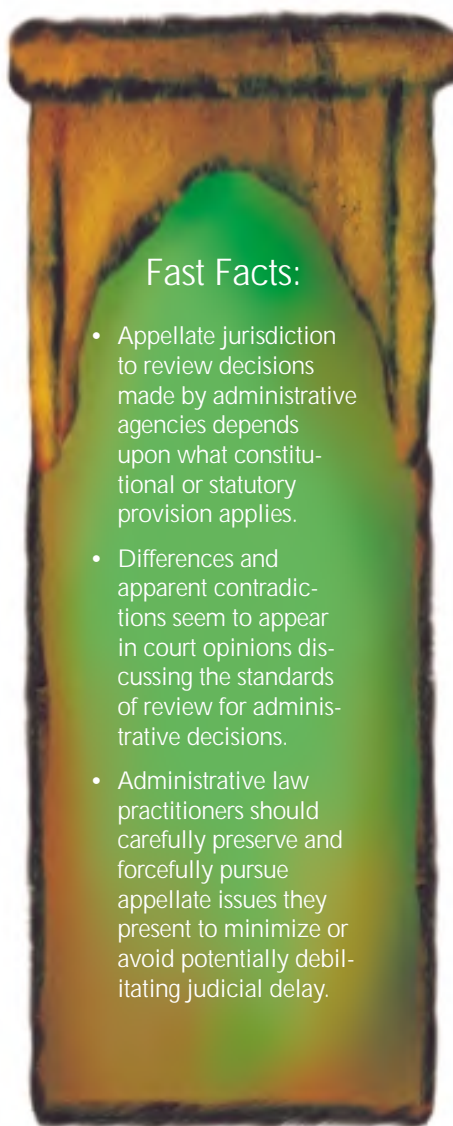
All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law.

In the case of a conflict between this constitutional provision and an applicable statute, the constitutional provision would control.⁸

In summary, appellate jurisdiction to review decisions made by administrative agencies depends upon what constitutional or statutory provision applies. In addition, if no other constitutional or statutory provision for judicial review applies, a practitioner might explore seeking judicial review via superintending control under Const 1963, art 6, § 13.⁹

Standards for Reviewing Administrative Decisions

It goes beyond the purpose of this article to develop an exhaustive discussion of all judicial statements on the scope of judicial review of administrative decisions. But differences and apparent contradictions seem to appear in court opinions discussing the standards of review.



Fast Facts:

- Appellate jurisdiction to review decisions made by administrative agencies depends upon what constitutional or statutory provision applies.
- Differences and apparent contradictions seem to appear in court opinions discussing the standards of review for administrative decisions.
- Administrative law practitioners should carefully preserve and forcefully pursue appellate issues they present to minimize or avoid potentially debilitating judicial delay.

Courts frequently adopt broad statements regarding the limitations on judicial review. In one form or another, Michigan courts most frequently describe limitations upon the standards of judicial review with statements such as courts do not substitute their judgment for that of an administrative agency, and a reviewing court gives deference to the expertise of administrative agencies.

From the viewpoint of any party seeking review of an agency's decision, the problem with these statements stems from hyperbole in the first statement and a non-contextual understanding of the second statement. Extended logically, the rule that courts do not substitute their decision for that of an agency creates an oxymoron nullifying or frustrating the mandate for judicial review, which can

be found in either Const 1963, art 6, § 28 or any applicable statute. If courts truly did not substitute their judgment for that of an administrative agency, then judicial review would become an expensive and meaningless process. What other justification can judicial review have beside the possibility that an agency erred and should be reversed—substitution of a judicial decision for an agency decision? On the other hand, the so-called deference rule implies that judicial deference to an agency's expertise should be automatic with little regard for the nature of the issue involved or its context. Thus, the substitution rule and the deference rule warrant further evaluation.

Const 1963, art 6, § 28 addresses not merely the availability of judicial review, it also states the following standards for judicial review:

This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

In determining the meaning of constitutional provisions like this, courts consider the constitutional convention debates.¹⁰

Const 1963, art 6, § 28 is a new constitutional provision which arose out of Constitutional Committee Proposal 95.¹¹ The purpose of adopting this new constitutional provision was to protect the public from abuse of administrative power and to provide a safeguard against bureaucratic action by administrative agencies. Although the delegates concluded that the legislature would have the power to adopt even higher standards for judicial scrutiny of decisions by administrative agencies, the goal was to set a uniform minimum standard for judicial review of decisions made by administrative agencies. The level of the appropriate minimum standards was vigorously debated.¹²

With regard to fact questions, Const 1963, art 6, § 28 is designed to avoid making findings of fact conclusive¹³ and is intended to avoid judicial affirmance of administrative



decisions based upon the “scintilla” rule under which only a tiny bit of evidence would be sufficient to affirm the decision of an administrative agency. On the other hand, constitutional delegates expressed a fear that adopting a new constitutional provision would lead to de novo judicial review of fact questions; thus, Const 1963, art 6 § 28 is intended only to require a review of the record made before the administrative agency and not to provide for a new hearing. Final convention action determined that the standards for review would be whether or not administrative decisions “are authorized by law” and whether or not decisions “are supported by competent, material and substantial evidence on the whole record” when a hearing is required.¹⁴ In other words, Const 1963, art 6, § 28 creates two separate standards for judicial review.

Since 1963, the Michigan Supreme Court has interpreted Const 1963, art 6, § 28 and has said with regard to fact questions that Const 1963, art 6, § 28 requires Michigan courts to consider both sides of the record, and therefore, has said that judicial review must necessarily entail a degree of qualitative and quantitative evaluation of the evidence considered by an agency.¹⁵ On the other hand, with regard to legal questions, the Michigan Supreme Court has ruled that the standard for judicial review is de novo review.¹⁶

Despite these Supreme Court opinions regarding standards for judicial review, confusion or contradictions have arisen in reviewing agency fact-finding decisions as well as in the context of reviewing agency decisions regarding questions of law. Based on the constitution and Michigan Supreme Court precedent cited above, one needs to question or, at least, reconsider, the “substitution” and “deference” standards for judicial review that have been routinely relied upon in many Michigan Court of Appeals opinions.

Opinions frequently state the substitution and deference rules in an abstract, virtually absolute form such as:

*A reviewing court must give due deference to the administrative expertise of [an agency] and may not substitute its judgment for that of the agency.*¹⁷

Such a virtually absolute form of the standards limiting judicial review evidences an

approach to judicial review that, at best, backs away from the courts’ constitutional and statutory duty to conduct appellate review. For legal questions, this formulation eschews the de novo standard of review. For facts questions, a more valid and reasonable statement of the substitution rule would be to say that a court will substitute its opinion or judgment for that of an administrative agency only when there is competent, conflicting evidence.¹⁸ Such a statement of the rule is more akin to the constitutionally adopted standard, which requires support by competent, material, and substantial evidence on the whole record. In any event, neither the constitution nor the statutes governing appeals preclude substitution of judicial judgment for that of an administrative agency. Instead, constitutional and statutory standards for judicial review concern when and how much a court will undertake to substitute its judgment for that of an agency decision.¹⁹

In summary, by adopting broad limits upon the standards for judicial review, Michigan court opinions sometimes seem over-eager to abstain from the appellate duties imposed upon them by Const 1963, art 6, § 28 and applicable statutes. For fact questions, it might be appropriate to defer to an agency’s

...Michigan courts can always review an agency's legal findings, and agency interpretations are not binding even though courts afford an agency's interpretation some deference.

choice between conflicting evidence, but even then there should be some qualitative and quantitative evaluation of the evidence considered by an agency.²⁰

The more significant confusion arises when Michigan court opinions address questions of law. On the one hand, the Supreme Court has ruled that legal questions decided by administrative agencies are subject to de novo review.²¹ On the other hand, the Supreme Court has ruled that a construction

given to a statute by an agency is always entitled to the most respectful consideration and ought not be overruled without cogent reasons.²² But judicial deference does not preclude a court from rejecting an agency’s interpretation.²³ Even if a reviewing court gives deference to the expertise of administrative agencies, courts must not abandon or delegate their responsibility to interpret legislative intent.²⁴

In other words, Michigan courts can always review an agency’s legal findings, and agency interpretations are not binding even though courts afford an agency’s interpretation some deference.²⁵ In 1999, the Michigan Supreme Court affirmed previous rulings that an agency’s determination regarding the scope of its authority is a question of law, which is reviewed de novo,²⁶ and that questions of statutory interpretation are questions of law, which are reviewed de novo.²⁷

Const 1963, art 3, § 2 and its predecessors require the separation of the powers of the executive, judicial, and legislative branches of government. A historical review of the constitutional doctrine concerning separation of powers supports de novo review of legal questions. Justice Marshall said in *Marbury v Madison*, 5 US 137, 177–178; 2 L Ed 60, 73

(1803), “It is emphatically the province and duty of the judicial department to say what the law is.”²⁸

As the Michigan Supreme Court once explained:

We hardly supposed that anyone doubted that the construction of a statute or ordinance is a matter of law and not of fact. This is a well-recognized judicial function. It is the duty of courts to construe the language of the statute and while “the construction given to a statute

by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons," such construction is not binding upon the courts.²⁹

In 1940, the Supreme Court was urged to adopt an interpretation of the veteran's preference act adopted by several governors, but the court said:

We have great respect for the opinion of all of our governors and will take notice of a construction given in the administration of doubtful or obscure laws by officers with a duty to perform thereunder, but in the final analysis

the construction of a statute still remains in the judicial branch of our government.³⁰

Likewise, the court has ruled that administrative interpretations must be rejected if not in accord with the intent of the legislature.³¹ Finally, the Michigan Supreme Court has said that it is the responsibility of the judiciary to interpret legislative intent and that this responsibility cannot be delegated.³²

Although federal precedent differs in many significant ways (beyond the scope of this article) from Michigan precedent, it is interesting to note that the United States Supreme Court has recently recognized that even when judicial deference may be appropriate during judicial review of legal questions decided by an administrative agency, deference is limited:

The fair measure of deference to an agency administering its own statute has been understood to vary with circumstances, and courts have looked to the degree of the agency's care, its consistency, formality, and relative expertise, and to the persuasiveness of the agency's position. . . . This approach has produced a spectrum of judicial responses, from great respect at one end, . . . to near indifference at the other.³³

In summary, courts have frequently stated that they must defer to statutory interpretations adopted by administrative agencies, but such deference should be more limited than many court opinions seem to imply. Under the separation of powers doctrine, statutory construction belongs within the province of the courts, and courts should perform a de novo review of legal questions.

Judicial Reluctance to Review Administrative Law Appeals

Even though there is little question that rulings by administrative agencies are subject to judicial review, as a pragmatic matter administrative law practitioners should take into account one other factor. Courts truly prefer to avoid reviewing administrative agency decisions, and this factor can subtly affect the outcome of appellate review.

The potential results of judicial aversion to reviewing the merits of appeals from administrative agency decisions can be illustrated by events that occurred during one appeal the author participated in. In late 1996 and early 1997, the Michigan Public Service Commission issued some procedural orders in a power supply cost recovery plan case involving the Detroit Edison Company. On February 25, 1997, three parties to the administrative proceeding filed a joint petition for interlocutory review by the Ingham County Circuit Court of those commission orders. The appeal was filed in the circuit court because, in numerous previously unpublished orders, the Ingham Circuit Court and the Court of Appeals had disagreed over whether appellate jurisdiction rested in the Court of Appeals under MCL 462.26 or in the Ingham County Circuit Court under MCL 24.301. Certainly this jurisdictional question has been a significant one, but the conflicting orders of the two courts reveal that each court has a desire to have the other court handle these appeals.

On motion by the Public Service Commission, the Ingham Circuit Court transferred the appeal to the Court of Appeals under MCL 462.26(3). The Court of Appeals, without request from a party, remanded the case to the circuit court. The Public Service Commission appealed the remand order, and the Supreme Court summarily vacated the Court of Appeals remand order and sent the case back for a plenary decision concerning the appellate jurisdiction question.³⁴ After remand for plenary consideration, the appellants and the appellees filed briefs with the Court of Appeals. Although there were differences in their briefs, all parties agreed that jurisdiction belonged with

*...the Michigan Supreme Court
has said that it is the responsibility
of the judiciary to interpret legislative
intent and that this responsibility
cannot be delegated.*

the Court of Appeals. Two years later, the Court of Appeals issued an opinion remanding the case and finding that jurisdiction lies in the Ingham County Circuit Court.³⁵ The joint appellants and the Public Service Commission separately sought leave to appeal, but with two justices dissenting, the Supreme Court denied leave to appeal in 2000.³⁶

In this case, the appellate process founded on the issue of appellate jurisdiction. The underlying merits of the commission's procedural orders remained unreviewed for years until time rendered those serious legal questions moot for purposes of the case. Administrative law practitioners should carefully preserve and forcefully pursue appellate issues they present to minimize or avoid potentially debilitating judicial delay, which can arise from a reluctance of Michigan courts to be the court to conduct substantive judicial review of administrative agency decisions.

Conclusion

An attorney can play a pivotal role in determining the outcome of an administrative law case by being aware of how Michigan courts address and resolve questions concerning the avenues for appellate review and the standards for judicial review. When planning litigation strategy, an attorney should also remember the potential, self-centered reasons an agency or a reviewing court might have to rely upon a process or standards for judicial review that can frustrate attempts to obtain a judicial decision on the merits of factual or legal questions raised in administrative proceedings. ♦

Donald E. Erickson is an assistant attorney general in the Michigan Department of Attorney General. The positions presented in this article represent his

personal views and do not represent positions of the attorney general's office. Erickson received his BA and JD degrees from the University of Michigan. He served as a law clerk to Hon. Timothy C. Quinn in the Michigan Court of Appeals and was a police legal advisor and assistant city attorney for the city of Kalamazoo before joining the attorney general's office.

Footnotes

1. Stein et al., *Administrative Law*, § 1.01(1), p 1–3.
2. LeDuc, *Michigan Administrative Law*, Preface, p iv.
3. *Belanger & Sons, Inc v Department of State*, 176 Mich App 59, 62–63; 438 NW2d 885 (1989).
4. *Mason County Civil Research Council v Mason County*, 343 Mich 313, 326–327; 72 NW2d 292 (1955).
5. *Nestell v Bridgeport-Spaulling Community Schools Bd of Ed*, 138 Mich App 401, 404; 360 NW2d 200 (1984), and *Living Alternatives for Developmentally Disabled Inc v Department of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).
6. *Martin v Stine*, 214 Mich App 403, 408–411; 542 NW2d 884 (1995). See also, *Sullivan v PSC*, 93 Mich App 391, 395; 287 NW2d 188 (1978), and *Greenfield Constr Co v Dept of State Highways*, 58 Mich App 49, 57; 227 NW2d 223 (1975) aff'd 402 Mich 172 (1978).
7. *Martin*, supra, at 414, and *Taylor v Secretary of State*, 216 Mich App 333, 338; 548 NW2d 710 (1996).
8. *CF Smith Co v Fitzgerald*, 270 Mich 659, 667; 259 NW 352 (1935), and *The Detroit Edison Co v PSC*, 82 Mich App 59, 72–73; 266 NW2d 665 (1978).
9. *Rental Property Owners Ass'n of Kent County v Grand Rapids*, 455 Mich 246, 269; 566 NW2d 514, 524 (1997).
10. *Burdick v Secretary of State*, 373 Mich 578, 584; 130 NW2d 380 (1964).
11. 1 Official Record, Constitutional Convention 1961.
12. 1 Official Record, Constitutional Convention 1961, pp 1440–1452, 1463–1478 and 1483–1487 and 2 Official Record, Constitutional Convention 1961, pp 2191 and 2712–2720.
13. 1 Official Record, Constitutional Convention 1961.
14. 2 Official Record, Constitutional Convention 1961, p 2714.
15. *Michigan Employment Relations Comm'n v Detroit Symphony Orchestra Inc*, 393 Mich 116, 124; 223 NW2d 283 (1974). *Accord*, *Midland Twp v State Boundary Comm'n*, 401 Mich 641, 672–673; 259 NW2d 326 (1977), *Ferrario v Exanaba Bd of Educ*, 426 Mich 353, 367; 395 NW2d 195 (1986), and *Goff v Bil-Mar Foods Inc (After Remand)*, 454 Mich 507, 514–517; 563 NW2d 214 (1997).
16. *Cardinal Mooney High School v MHSAA*, 437 Mich 75, 80; 467 NW2d 21 (1991), and *Oakland County v Michigan*, 456 Mich 144, 149; 566 NW2d 616 (1997).
17. *Attorney General v PSC*, 231 Mich App 76,78; 585 NW2d 310 (1998). *Accord*, *Attorney General v PSC*, 235 Mich App 308, 313; 597 NW2d 264 (1999), and *Residential Ratepayer Consortium v PSC*, 239 Mich App 1, 3; 607 NW2d 391 (1999).
18. *Giaras v MPSC*, 301 Mich 262, 269; 3 NW2d 268 (1942), and *In re 1987–88 Medical Doctor Provider Class Plan*, 203 Mich App 707, 729; 514 NW2d 471 (1994).
19. *Department of Civil Rights ex rel Johnson v Silver Dollar Cafe*, 441 Mich 110, 120; 490 NW2d 337 (1992).
20. *Michigan Employment Relations Comm'n*, supra, at 124.
21. See cases cited in footnote 16 above.
22. *Magreta v Ambassador Steel Co (On Rehearing)*, 380 Mich 513, 519; 158 NW2d 473 (1968), and *Breuhan v Plymouth-Canton Community Schools*, 425 Mich 278, 282–283; 389 NW2d 85 (1986).
23. *Manufacturers Bank v Department of Natural Resources*, 420 Mich 128, 148; 362 NW2d 572 (1984), and *Davis v River Rouge Bd of Educ*, 406 Mich 486, 490; 280 NW2d 453 (1979).
24. *Miller Bros v PSC*, 180 Mich App 227, 232; 446 NW2d 640 (1989), and *In re Complaint of MCTA*, 241 Mich App 344, 360; 615 NW2d 255 (2000).
25. *Ludington Svc Corp v Acting Comm'r of Ins*, 444 Mich 481, 503–505; 511 NW2d 661 (1994).
26. *Consumers Power Co v PSC*, 460 Mich 148, 157; 596 NW2d 126 (1999).
27. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).
28. *Accord*, *In re Del Rio*, 400 Mich 665, 726; 256 NW2d 727 (1977).
29. *Paye v Grasse Pointe*, 279 Mich 254, 259–260; 271 NW 826 (1937) (citation omitted).
30. *Kelly v Secretary of State*, 293 Mich 530, 533; 292 NW 479 (1940).
31. *Howard Pore Inc v State Comm'r of Revenue*, 322 Mich 49, 66; 33 NW2d 657 (1948).
32. *General Motors Corp v Erves*, 395 Mich 604, 621; 236 NW2d 432 (1975).
33. *United States v Mead Corp*, ___ US ___, 121 S Ct 2164, ___; ___ L Ed 3d ___ (2001) (footnotes and citations omitted).
34. *Attorney General v PSC*, 456 Mich 882 (1997).
35. *Attorney General v PSC*, 237 Mich App 24; 602 NW2d 207 (1999).
36. *Attorney General v PSC No. 1*, 462 Mich 878 (2000).

STATE OF MICHIGAN
COURT OF CLAIMS

1			
2			
3	VECTREN INFRASTRUCTURE)	
4	SERVICES CORP.,)	
5	SUCCESSOR-IN-INTEREST TO)	
6	MINNESOTA LIMITED, INC.,)	
7)	
8	Plaintiff,)	Court of Claims
9)	No. 17-000107-MT
10	vs.)	
11)	
12	MICHIGAN DEPARTMENT OF)	
13	TREASURY,)	
14)	
15	Defendant.)	

The videoconference deposition of
 BRAD HIRSCH, taken under oath on February 14, 2018,
 at the hour of 1:09 p.m., at 155 North Wacker
 Drive, Suite 3100, Chicago, Illinois, before
 Valerie M. Calabria, CSR, RPR, pursuant to notice.

1 APPEARANCES:

2 HONIGMAN MILLER SCHWARTZ AND COHN LLP
3 BY: MS. PAULA E. LITT
4 155 North Wacker Drive, Suite 3100
5 Chicago, Illinois 60606
6 312.701.9317
7 plitt@honigman.com

8 -and-

9 HONIGMAN MILLER SCHWARTZ AND COHN LLP
10 BY: MS. LYNN A. GANDHI (via videoconference)
11 222 North Washington Square, Suite 400
12 Lansing, Michigan 48933
13 313.377.0734
14 lgandhi@honigman.com

15 appeared on behalf of the Plaintiff;

16 MICHIGAN DEPARTMENT OF TREASURY
17 BY: MR. JUSTIN R. CALL (via videoconference)
18 Assistant Attorney General
19 P.O. Box 30754
20 Lansing, Michigan 48909
21 517.373.3203
22 calljl@michigan.gov

23 appeared on behalf of the Defendant.

24 * * * * *

25 Reported by: Valerie M. Calabria, CSR, RPR
26 License No.: 084-003928

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

INDEX

WITNESS

EXAMINATION

BRAD HIRSCH

BY MR. CALL

4

BY MS. GANDHI

68

DEPOSITION EXHIBITS

NUMBER/DESCRIPTION

IDENTIFIED

Hirsch Deposition Exhibit

Exhibit 1

5

1 MR. CALL: This is the time and place for the
2 deposition of Brad Hirsch, being taken in the
3 matter of Vectren Infrastructure Services
4 Corporation, Successor-in-Interest to Minnesota
5 Limited, Incorporated, vs. Michigan Department of
6 Treasury, Court of Claims Docket No. 17-107-MT.
7 This deposition is being taken for discovery
8 purposes in accordance with the Michigan Court
9 Rules. This is a remote deposition done through
10 videoconferencing.

11 (Witness duly sworn.)

12 BRAD HIRSCH,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 EXAMINATION

16 BY MR. CALL:

17 Q. Mr. Hirsch, can you state your full name
18 for the record.

19 A. Bradley Aaron Hirsch.

20 Q. Mr. Hirsch, I'm going to ask you some
21 questions today, largely related to the report you
22 prepared. Do you have a copy of that report with
23 you?

24 A. Yes. Valerie gave one to me.

1 A. Not that I'm aware.

2 Q. Is this valuation report a true and
3 correct copy that's been marked as **Exhibit 1**?

4 A. Can you define true and correct?

5 Q. Sure. I'm going to restate that.

6 There's a -- if you look at this
7 report that you've been provided, it has "Draft" on
8 the front of it, correct?

9 A. That's correct.

10 Q. And if you turn to -- I don't know,
11 let's turn to the schedules in the back. If you
12 look on the bottom or the left side, you'll see a
13 Bates stamp. And if you turn to 172, at the top of
14 it, it says "Draft - for discussion purposes only."

15 Do you see that?

16 A. Yes, I do.

17 Q. Can you tell me what that means?

18 A. Sure. This report was never issued as
19 final, and until the client requests to issue
20 final, it stays in draft format.

21 Q. Has it ever been finalized?

22 A. No, it has not.

23 Q. Do you know why it has not been
24 finalized?

1 A. No, I don't.

2 Q. Is this report the most current report
3 prepared regarding this engagement?

4 A. Yes, it is.

5 Q. And is this a true and correct copy of
6 the latest report? Are there any variations in
7 what is in front of you as **Exhibit 1**, compared to
8 the latest copy of this report?

9 MS. GANDHI: I'm going to object. The witness
10 was provided the exhibit which was provided in
11 discovery. That is what he is responding to.

12 BY MR. CALL:

13 Q. And you can answer the question.

14 A. I received this copy at the beginning of
15 this meeting, so I haven't paged through every page
16 to guarantee it's the latest we sent Vectren.

17 Q. All right. Now we can go to the report.

18 What is the purpose of this report?
19 In other words, for what purpose was the valuation
20 prepared?

21 A. The valuation was prepared to comply
22 with financial accounting standards board,
23 Accounting Standards Codification 805, business
24 combinations.

1 Q. And what does that tell us -- tell you?

2 A. As part -- when a company acquires
3 another company, for financial reporting purposes,
4 they are required to fair value the assets that
5 they purchased. And so I performed valuation work
6 of the assets so that the client can comply with
7 the standards of ASC 805.

8 Q. And when you say ASC, what does that
9 stand for?

10 A. Accounting Standards Codification.

11 Q. And who is the board that prepared the
12 Accounting Standards Codification?

13 A. Financial Accounting Standards Board.

14 Q. And what is the purpose of the ASC 805
15 requirement in this valuation? What is the purpose
16 of requiring this valuation?

17 A. If you want to issue US GAAP Financials,
18 you'd have to comply with ASC 805 when you have a
19 business combination, meaning you acquired a
20 company.

21 Q. And why does the standards require this
22 valuation? What is the purpose?

23 A. To make sure that the acquired assets
24 are on the acquirer's books at fair value and not

1 and ASC 805 relies on the definition of fair value.

2 Q. What key assumptions were used in
3 preparing this report?

4 A. So is there a specific asset you are
5 referring to or the entire report?

6 Q. Well, let's start with intangible assets
7 since that's what the valuation was prepared to do.

8 A. Sure. We have conversations with the
9 acquirer, Vectren Corporation, regarding the
10 intangible assets that they believe they acquired.
11 We submit questions or we question what assets
12 exist, basically walking through the assets
13 identified in ASC 805, to determine what assets are
14 possibly there. Key assumptions used are
15 management's intentions with the assets.

16 Do you want me to expand into each
17 specific asset and the assumptions associated with
18 each?

19 Q. Sure. There's only, what, five or six
20 assets?

21 A. Sure.

22 Q. Yes, please.

23 A. Okay. So looking at **Exhibit 1** and
24 Schedule 1, the assets we valued are customer

1 relationship, backlog, trade name, and assembled
2 workforce.

3 Customer relationship looks at where
4 is the future growth of the business going to come
5 from, specifically existing versus new customers,
6 as well as what an attrition rate looks like for
7 existing customers and the charges for all the
8 other assets in the business that help generate
9 those cash flows. And those are the main
10 assumptions of that asset.

11 Backlog --

12 Q. Okay.

13 A. Okay. Backlog is a form of a customer
14 relationship with the key distinction being that
15 it's contractual and it's essentially backlog but
16 is the same type of asset but generally has a
17 different life than a customer relationship. So
18 it's the same assumptions used.

19 Q. Can you explain backlog to me a little
20 more?

21 A. Sure. So backlog, there's an intangible
22 benefit to acquiring a company that has contracts
23 in place versus the buyer having the need to go to
24 the customers they've historically done work with

1 and sell new projects. And so you separate
2 backlog, that that's contractual, aside from the
3 noncontractual relationships that the entity has.

4 Q. So there's a difference between customer
5 relationships and backlog?

6 A. Correct.

7 Q. Customer relationships mostly deals with
8 noncontractual engagements whereas backlog is
9 contractual?

10 A. That is correct.

11 Q. Okay.

12 A. Trade name assumption is -- go ahead.

13 Q. No, I just said, yes, please.

14 A. Trade name, the key assumptions are
15 intended use of the trade name by the acquirer, as
16 well as the strength and perception of that trade
17 name in the marketplace. And it uses a royalty
18 rate as a key assumption.

19 Q. Okay. And I'm going to go into a little
20 more detail into these in the future, but is there
21 any other assets that you would like to -- that you
22 provided assumptions for?

23 A. Provided substance, no.

24 Q. I'm sorry, provided assumptions or used

1 assumptions.

2 A. No, these are the only assets that we
3 valued. These are the only assets we've valued.

4 Q. You did not value the assembled
5 workforce?

6 A. So assembled workforce is -- it's valued
7 but not recorded separately for financial reporting
8 purposes. It's assumed into goodwill but used as
9 an input into the customer relationship and backlog
10 calculations.

11 Q. Can you explain, used as an input into
12 customer relationships and backlog?

13 A. Sure. The methodology used to value a
14 customer-related asset is one called the
15 multi-period excess earnings model. That method,
16 the theory behind that method is that to generate
17 cash flow specific to that asset, there are other
18 assets in the business that are helping generate
19 those profits.

20 And so after you take charges for all
21 those other assets, one of those assets being
22 workforce, what's left over, or that excess profit,
23 then can be ascribed to the asset you're valuing.
24 So in that instance, the workforce is being used as

1 a charge in that methodology.

2 Q. And just to be clear, did you value the
3 trade name, customer relationships, and backlog on
4 a state-by-state basis or a state taxation
5 entity -- or excuse me -- a state taxing
6 jurisdiction?

7 A. No.

8 Q. Is it possible to value a business on
9 a -- by a state-by-state taxing jurisdiction?

10 A. It's possible.

11 Q. Are there standards that provide for
12 this?

13 A. I'm unaware.

14 Q. Are there methods that can be employed
15 to do this?

16 A. Yes.

17 Q. What are those methods?

18 A. Let me make sure I understand the
19 question. What are the methods one could use to
20 value intangibles on a state-by-state basis?

21 Q. Correct.

22 A. I have not done it. It would be very
23 fact- and circumstance-based. But I think it would
24 require a breakdown of financials at that level.

STATE OF MICHIGAN
COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES
CORP., SUCCESSOR-IN-INTEREST
TO MINNESOTA LIMITED, INC.,

Plaintiff,

vs.

File No. 17-000107-MT

MICHIGAN DEPARTMENT OF
TREASURY,

Defendant.

The Telephonic Deposition of JEFFREY
STARBIRD, taken pursuant to Notice of Taking
Deposition, taken before Valerie A. Benning, RPR, a
Notary Public in and for the County of Hennepin,
State of Minnesota, taken on the 22nd day of March,
2018, at 2501 Wayzata Boulevard, Minneapolis,
Minnesota, commencing at approximately 3:21 p.m.

Page 2

1 A P P E A R A N C E S

2 APPEARING FOR AND ON BEHALF OF THE PLAINTIFF:

3 LYNN A. GANDHI, ESQUIRE

4 HONIGMAN, MILLER, SCHWARTZ & COHN, LLP

5 2290 First National Building

6 660 Woodward Avenue

7 Detroit, Michigan 48226-3506

8 Email: lgandhi@honigman.com

9 APPEARING TELEPHONICALLY FOR AND ON BEHALF OF THE

10 PLAINTIFF:

11 JUNE SUMMERS HAAS, ESQUIRE

12 HONIGMAN, MILLER, SCHWARTZ & COHN, LLP

13 222 North Washington Square

14 Suite 400

15 Lansing, Michigan 48933-1800

16 Email: jhaas@honigman.com

17 APPEARING TELEPHONICALLY FOR AND ON BEHALF OF THE

18 DEFENDANT:

19 DAVID W. THOMPSON

20 ASSISTANT ATTORNEY GENERAL

21 P.O. BOX 30754

22 Lansing, Michigan 48909

23 Email: ThompsonD18@michigan.gov

24 APPEARING TELEPHONICALLY FOR AND ON BEHALF OF THE

25 DEFENDANT:

 JUSTIN R. CALL

 ASSISTANT ATTORNEY GENERAL

 P.O. BOX 30754

 Lansing, Michigan 48909

 Email: CallJ1@michigan.gov

Page 3

1 A P P E A R A N C E S

2 APPEARING FOR AND ON BEHALF OF JEFFREY STARBIRD:

3 TAYLOR D. SZTAINER, ESQUIRE

4 MOSS & BARNETT

5 150 South Fifth Street

6 Suite 1200

7 Minneapolis, Minnesota 55402

8 Email: taylor.sztainer@lawmoss.com

9 INDEX:

10 Examination by Mr. Call Page 4

11 Examination by Ms. Gandhi Page 58

12 Further Examination by Mr. Call Page 63

13 EXHIBIT DESCRIPTION PAGE MARKED

14 4 Plaintiff's 1/26/18 Response to

15 the 1/10/18 Order Requiring

16 Response to State of Michigan

17 Department of Treasury's First

18 Discovery Requests Numbered 9(C),

19 14 and 17 16

20 5 2010 Michigan Business Tax

21 Annual Return 16

Page 4

1 JEFFREY STARBIRD,

2 the Witness in the above-entitled matter after having

3 been first duly sworn deposes and says as follows:

4

5 EXAMINATION

6 BY MR. CALL:

7 Q. Good afternoon, Mr. Starbird. How are

8 you today?

9 A. I am doing well. Thank you.

10 Q. I will just start by saying let the

11 record reflect that this is the deposition of

12 Jeffrey Starbird taken pursuant to notice and

13 agreement of counsel and to be utilized for all

14 purposes permitted under Michigan Court Rules.

15 This deposition is being conducted

16 remotely. I am located in a Michigan Attorney

17 General's office in Lansing, Michigan. The witness

18 and opposing counsel are located in Minneapolis,

19 Minnesota; correct?

20 A. Correct.

21 Q. Have you ever had your deposition taken

22 before?

23 A. Yes.

24 Q. So you are familiar with the fact that

25 we have a court reporter reporting or writing or

Page 5

1 subscribing what is being testified today; correct?

2 A. Yes.

3 Q. And it is best to wait for each person

4 to finish their question or answer before

5 responding. That way we can have a clean record.

6 Does that seem fair?

7 A. Yes.

8 Q. It is not an endurance test. If you

9 need a break, please let us know.

10 A. I will.

11 Q. Do you have any conditions? Are you on

12 any medication that may affect your testimony

13 today?

14 A. No.

15 Q. When I ask questions, if you don't

16 understand, please ask for clarification. That way

17 we know that we are communicating appropriately,

18 and the record will reflect that. If you have a

19 question, please have me clarify or restate my

20 question. Is that fair?

21 A. Yes, that is fair.

22 Q. Did you review any materials in

23 preparation of this deposition today?

24 A. No.

25 Q. Are you familiar with this case? The

Page 6

1 litigation between Vectren Infrastructure Services
 2 Corporation Successor of Minnesota Limited,
 3 Incorporated, versus Michigan Department of
 4 Treasury?
 5 A. Yes.
 6 Q. I am going to state for the record this
 7 case is Vectren Infrastructure Services Corp.
 8 Successor-In-Interest to Minnesota Limited,
 9 Incorporated, versus Michigan Department of
 10 Treasury, Court Number 17-000107-MT. Mr. Starbird,
 11 can you tell me about your background, your
 12 education, your work history?
 13 A. Well, that is pretty easy. I went to
 14 St. John's University. I graduated in '75. I went
 15 to William Mitchell Law School. I got my CPA. I
 16 started working at Lurie, which is where we are. I
 17 have been here for thirty-nine years.
 18 Q. Wonderful. What was your position when
 19 you started with Lurie?
 20 A. Staff, tax staff.
 21 Q. What was your responsibilities?
 22 A. Oh, you learn about everything, do a
 23 little of everything, accounting tax.
 24 Q. Is that when you obtained your CPA
 25 license while working at Lurie?

Page 7

1 A. I passed the exam before, but the
 2 experience requirement was met while I was at
 3 Lurie.
 4 Q. I am sorry. Where did you go to law
 5 school?
 6 A. William Mitchell College of Law.
 7 Justice Blackmun went there.
 8 Q. Really?
 9 A. Yes, that is what they tell me. I think
 10 Warren Berger was from here too.
 11 Q. I know you said you worked for Lurie.
 12 Can you give me the full name of the company you
 13 work for?
 14 A. Lurie, L-U-R-I-E, LLP.
 15 Q. It is just Lurie, L-U-R-I-E? Nothing
 16 else?
 17 A. No, it is Lurie, LLP, Limited Liability
 18 Partnership.
 19 Q. What is your position now for Lurie?
 20 A. I'm a partner.
 21 Q. What are your responsibilities at this
 22 time?
 23 A. To service our clients.
 24 Q. Can you be a little more specific?
 25 A. Well, we have a substantial list of

Page 8

1 clients in our firm that require accounting and tax
 2 services. I help with that with those more in the
 3 tax area.
 4 Q. What is your involvement in the tax
 5 preparation for your clients?
 6 A. Well, I don't really prepare anymore,
 7 but I would sign returns.
 8 Q. Who prepares the returns?
 9 A. Various staff.
 10 Q. You had signed a return. What is the
 11 purpose of you signing a return? Is it just for
 12 your signature, or are you actually looking to make
 13 sure the preparation is accurate?
 14 A. Well, I sign a return because I believe
 15 it to be accurate.
 16 Q. Were you involved in preparing or
 17 reviewing Minnesota Limited, Incorporated, tax
 18 returns for the 2010 to 2011 tax years?
 19 A. Not preparing or reviewing.
 20 Q. That would be your tax staff, I guess,
 21 tax associates working for Lurie that would have
 22 prepared that?
 23 A. Yes, associates, staff, managers.
 24 Q. Can you walk me through the process of
 25 preparing the tax return? I am sure there is some

Page 9

1 level of involvement with the client in doing so.
 2 I just want to know what the steps are.
 3 A. Well, our typical client would supply us
 4 information from their books and records. And if
 5 it were a business, it would typically be a trial
 6 balance, a financial statement, their information
 7 for a tax period. And from those numbers a staff
 8 would begin to put those on whatever corporate or
 9 partnership return we are filing. And there would
 10 be questions.
 11 If any questions came up, the staff
 12 would contact the client and ask those questions.
 13 And once they were done completing, the return
 14 would go to a reviewer who would review their work.
 15 Q. Not by name, of course. Can you kind of
 16 describe who that reviewer would be? Would it be a
 17 tax associate? Tax manager? A partner?
 18 A. It would typically be a tax manager.
 19 Different people can review. Seniors, we have
 20 staff. We have junior, seniors. It typically
 21 would be a senior manager depending on the return.
 22 Q. Are you aware that there was an audit
 23 conducted by Michigan Department of Treasury for
 24 the 2010 and 2011 tax years for Minnesota Limited,
 25 Incorporated?

Page 10

1 A. Yes.

2 Q. What was your involvement during that

3 audit?

4 A. I initiated -- I allowed the information

5 to be sent to the examiner after discussing with

6 the client.

7 Q. Do you know what type of information or

8 documents you provided to the examiner?

9 A. I don't remember at this time. He

10 really had very little communication to us. Didn't

11 really know what was going on until we got our

12 report. I don't remember what he asked for even.

13 It was a long time ago.

14 Q. I am going to tax your memory again. Do

15 you know if you provided tax returns to the auditor

16 for the 2010, 2011 tax years?

17 A. I don't know which ones he had already.

18 But I don't know any reason I wouldn't have

19 provided, if he asked. I don't remember what

20 specifically they asked for. They have returns

21 when they audit too.

22 Q. Do you know when you started retaining

23 Minnesota Limited, Incorporated, as a client?

24 A. When they became a client?

25 Q. Yes. I apologize for that question. Do

Page 11

1 you know when they became a client at Lurie?

2 A. A long time ago. I don't know the exact

3 year. Well, I don't. I have a lot of clients.

4 Q. That is a lot of clients, a lot of

5 years. You have been there for thirty-nine years.

6 I understand.

7 A. It was not the first year I started.

8 Q. I am really testing your memory. I

9 apologize. Are you familiar with the owner and

10 president of Minnesota Limited, Incorporated?

11 MS. GANDHI: Objection. Foundation.

12 Can you indicate a time period?

13 BY MR. CALL:

14 Q. Yes, exactly. For the 2010, 2011 tax

15 years.

16 A. Yes, I knew the owners.

17 Q. Did you ever have personal conversations

18 with the owners?

19 A. In the context of business I think you

20 would have to.

21 Q. What was your level of involvement in

22 preparing the 2010 and 2011 tax returns for

23 Minnesota Limited, Incorporated?

24 A. I signed the returns, or I believe I

25 signed the returns.

Page 12

1 Q. Did you have any discussions with

2 anybody from Minnesota Limited, Incorporated?

3 A. I can't remember any.

4 Q. If you signed them, did you review them

5 for accuracy?

6 A. I took a look at the returns if I signed

7 them, yes.

8 Q. Did you look at their financial

9 statements?

10 A. For which time period?

11 Q. 2010 and 2011.

12 A. 2011 there were no financial statements.

13 Q. Did you review the financial statements

14 for the 2010 tax year?

15 A. What does "review" mean? We have

16 different words for "review" in accounting. Did I

17 see the financials? I am sure I did see the

18 financials.

19 Q. What other documents would you look at

20 before you signed the tax return?

21 A. Well, you would look at the financial

22 statements and look to see what book income was.

23 And then you would look to the tax return to see

24 what tax income was. That would be one of the

25 steps. You would note the differences.

Page 13

1 Q. So the book income and the tax income,

2 that is prepared by the client?

3 A. Well, the book income is their books,

4 yes.

5 Q. And then the tax income is what you are

6 looking -- what you see on the return?

7 A. Well, the tax returns themselves turn a

8 client's book income into tax income because they

9 are things that aren't deducted for book that there

10 may be for tax. There is differences.

11 Q. When you signed these tax returns, are

12 you aware that you do it under penalty of perjury?

13 A. Yes, I am.

14 Q. That the information in the tax returns

15 are true and complete to the best of your

16 knowledge?

17 A. Yes.

18 Q. When you sign these returns, if I

19 understand this correctly, I apologize. You are

20 looking at the trial balance. You are looking at

21 financial statements. You are looking to make sure

22 all of the information provided for the client is

23 reflected in the tax return; is that correct?

24 A. Well, that is a little over -- we have

25 staff that have gone through all of the steps. And

Page 14

1 they have indicated they have gone through all of
 2 the steps. When I get it to sign, I am confident
 3 that they have done all those steps. I sign the
 4 return. I look for reasonableness. It ties to the
 5 financials. It looks like the financials. There
 6 is tax adjustments. It is properly shown on the
 7 tax return to the best of my knowledge.
 8 Q. And when you are looking at the
 9 financial statements, you are not looking to see if
 10 they are accurate, or are you?
 11 A. No, no. Financial statements are the
 12 client's records.
 13 Q. And Lurie did not do any audit of those
 14 records to make sure they are accurate; correct?
 15 MS. GANDHI: Objection. Foundation.
 16 You can answer the question.
 17 A. I didn't say that. We audited meaning
 18 Lurie and meaning the accounting and audit staff
 19 who are capable of doing that, not myself prepared
 20 an audit, did an audit on the 2010. They did not
 21 on the short period.
 22 BY MR. CALL:
 23 Q. What has been your involvement in
 24 providing documents to counsel for purposes of this
 25 litigation such as tax returns or any other

Page 15

1 documents?
 2 A. Well, to the extent that someone needed
 3 our assistance to provide your group all of the
 4 requests we provided what we had so that it would
 5 be simplified.
 6 Q. And do you know what documents you
 7 provided?
 8 A. Many were asked for. And I don't
 9 remember exactly. But they would include prior tax
 10 returns were asked for.
 11 Q. And these prior tax returns that you
 12 provided, were they prepared by Lurie?
 13 A. Yes.
 14 Q. Do you know what states Lurie prepared
 15 tax returns for?
 16 A. Not without looking at them. There were
 17 many states that were filed. And I believe we
 18 provided those to your office.
 19 MR. CALL: If we can go off the record
 20 for just one moment.
 21 (At this time a discussion was held
 22 off the record.)
 23 MR. CALL: I provided a document that is
 24 entitled Plaintiff's January 26, 2018, Response to
 25 the January 10, 2018, Order Requiring Response to

Page 16

1 State of Michigan Department of Treasury under
 2 tab 15.
 3 (At this time STARBIRD Deposition
 4 Exhibit Number 4 was marked for
 5 identification by the Court Reporter.)
 6 MR. CALL: I am going to ask for tab 16.
 7 (At this time STARBIRD Deposition
 8 Exhibit Number 5 was marked for
 9 identification by the Court Reporter.)
 10 MR. CALL: We have those marked as
 11 Exhibits 4 and 5. I did not include all of the tax
 12 returns as part of Exhibit 4. I only did a portion
 13 of what you provided. Lynn, do you object to any
 14 of these being admitted into evidence?
 15 MS. GANDHI: Yes, the tax returns are
 16 notated confidential and subject to Michigan
 17 evidence rule 408. So we retain our right to
 18 request that the tax returns and confidential
 19 financial information be submitted under seal or
 20 pursuant to a protective order.
 21 BY MR. CALL:
 22 Q. Mr. Starbird, is it your practice to
 23 correctly prepare and file returns consistent with
 24 Michigan law?
 25 A. My practice? My practices is our firm

Page 17

1 prepares federal and state tax returns in many
 2 states. So that is part of my practice.
 3 Q. When you signed this 2010 and 2011 tax
 4 return, you are doing so with the understanding
 5 that the tax return was prepared according to
 6 Michigan law?
 7 A. Yes.
 8 Q. Did the Minnesota Limited, Incorporated,
 9 2010 and 2011 tax return comply with Michigan law?
 10 MS. GANDHI: Objection. Foundation.
 11 You can answer the question.
 12 A. Well, I believe so. I don't know which
 13 you are referring to. Our firm prepares tax
 14 returns in all states, and we believe that we do
 15 them correctly.
 16 BY MR. CALL:
 17 Q. Do you know when or if Minnesota
 18 Limited, Incorporated, requested alternative
 19 apportionment for 2011 tax year?
 20 A. I am not sure I understand that request.
 21 Q. Did Minnesota Limited, Incorporated, in
 22 its 2011 tax year request alternative apportionment
 23 rather than apportionment under what is typically
 24 used under Michigan law?
 25 A. And that was requested when? That is

Page 18

1 what I don't understand. On the return?
 2 Q. Yes. I am asking for the 2011 tax
 3 return. Did Minnesota Limited ever request
 4 alternative apportionment?
 5 A. I don't remember. I would have to look
 6 back.
 7 Q. When you filed 2011 tax return for
 8 Minnesota Limited, Incorporated, did you do it
 9 under the alternative apportionment, or did you do
 10 it through Michigan's typical apportionment
 11 formula?
 12 A. I do not know.
 13 MS. GANDHI: I just want to note for the
 14 record the exhibit that is marked Exhibit 5 is the
 15 2010 Michigan business tax return. And you are
 16 asking questions about the 2011 Michigan business
 17 tax return.
 18 MR. CALL: I haven't even got to the
 19 exhibits yet. I understand.
 20 BY MR. CALL:
 21 Q. If we can look to Exhibit 5,
 22 Mr. Starbird, are you familiar with these? Have
 23 you seen these returns previously in Exhibit 5, for
 24 example, the 2010 and 2011 tax returns?
 25 A. I have at some point. Not anytime

Page 19

1 recent.
 2 MS. GANDHI: It is actually both.
 3 MR. CALL: Just for the record Exhibit 5
 4 does contain the 2010 and 2011 tax return. I just
 5 want to clarify that.
 6 MS. GANDHI: Yes, that was not clear.
 7 BY MR. CALL:
 8 Q. When we look at the 2010 tax return, do
 9 you see that in front of you?
 10 A. I do.
 11 Q. Are you familiar with Michigan tax law?
 12 A. I have not looked at a Michigan return
 13 in quite some time. The whole law? What?
 14 Q. So you are generally familiar with
 15 Michigan tax law during 2010, 2011?
 16 A. I can be familiar with anything when our
 17 firm is preparing a return, and we have people that
 18 do have familiarity with Michigan and other states.
 19 Q. So can you attest to the accuracy under
 20 a penalty of perjury when you don't know what the
 21 tax law is?
 22 MS. GANDHI: I am going to object as to
 23 the form of the question. You can answer the
 24 question.
 25 A. Would you rephrase that, please?

Page 20

1 BY MR. CALL:
 2 Q. Sure. I will rephrase. How can you
 3 sign these tax returns if you don't understand
 4 Michigan law?
 5 A. I said that I haven't looked at them
 6 recently. When I am signing something, I become
 7 familiar with, and our staff and firm supply the
 8 returns and have the knowledge. So I am relying on
 9 people who prepare Michigan returns and relay to me
 10 that they are accurate.
 11 Q. But at the time of the preparation of
 12 these tax returns you understood Michigan tax law?
 13 A. I was relying on the people that
 14 prepared it. And I believed that the returns were
 15 accurate according to Michigan law.
 16 Q. If we can turn to the first page of
 17 Exhibit 5, do you see line 11?
 18 A. Yes.
 19 Q. Line 11 talks about apportionment
 20 calculation. Do you see that?
 21 A. Yes.
 22 Q. Can you describe to me what this
 23 demonstrates with regard to this return?
 24 MS. GANDHI: Objection. Form. The
 25 return speaks for itself.

Page 21

1 MR. CALL: Go ahead, Mr. Starbird.
 2 MS. GANDHI: You can answer the
 3 question.
 4 A. The form speaks for itself.
 5 BY MR. CALL:
 6 Q. I know, but can you explain
 7 apportionment calculation? What is this
 8 calculation on this return?
 9 A. That calculation is an allocation of
 10 Michigan sales that were in Michigan to total
 11 sales.
 12 Q. And what do you mean by "total sales"?
 13 A. Sales everywhere.
 14 Q. Is that to say total sales from all of
 15 the states Minnesota Limited, Incorporated, is
 16 dissolved in?
 17 A. Every line in a return -- and there is
 18 probably definition of sales and what is included
 19 in sales and what is excluded in sales in every
 20 state. You are asking me generally do I know what
 21 that means. There is a reflection of what were
 22 determined to be Michigan sales that came from the
 23 client. And there is an amount there that says
 24 total sales that generally in state laws apportions
 25 other states.

Page 22

1 Q. So if I understand this, let's say
 2 Minnesota Limited is involved in several states.
 3 And they file tax returns in those states. They
 4 have certain sales that are attributable to those
 5 states. And when you add all these up, it comes to
 6 total sales; is that correct?
 7 MS. GANDHI: Objection. Form. You can
 8 answer.
 9 A. Not necessarily. Some are doubled.
 10 Some are included in two states. There is a whole
 11 myriad of state tax law that you have to look to.
 12 You have to look to the state. Some things are
 13 taxable in your home state and the other state.
 14 And some are credit states. It is very
 15 complicated. It isn't as simple as looking at that
 16 line.
 17 BY MR. CALL:
 18 Q. Do you see the Michigan sales as
 19 \$43,352,830.00?
 20 A. I see that, yes.
 21 Q. Do you see the total sales of
 22 \$110,365,790.00?
 23 A. Yes.
 24 Q. Now, if I can direct your attention to
 25 Exhibit 4, I am looking at Bate stamp 392.

Page 23

1 A. Okay.
 2 Q. Can you actually go to beta stamp 390?
 3 A. Okay.
 4 Q. Do you see that this is a Colorado tax
 5 return?
 6 A. Yes.
 7 Q. Now if you can go to Bate stamp 392, can
 8 you verify that this is all Colorado tax return?
 9 MS. GANDHI: Objection. Foundation.
 10 You can answer.
 11 A. Yes.
 12 BY MR. CALL:
 13 Q. Now, if you look at 392, do you see line
 14 2?
 15 A. I do.
 16 Q. Do you see two different columns? One
 17 is for Colorado. At the top there is one column
 18 called Colorado and another one called total. Do
 19 you see that?
 20 A. Yes.
 21 Q. What does that represent?
 22 A. Well, that represents that there weren't
 23 any sales in Colorado that year, I believe. It
 24 seems to represent there were no sales in Colorado
 25 that year.

Page 24

1 Q. How about the total column?
 2 A. That is the total that none of which are
 3 in Colorado.
 4 Q. What does that represent?
 5 A. It represents the same thing that is on
 6 the Michigan return. Total sales.
 7 Q. I apologize again for cutting you off.
 8 So is the total sales for Minnesota Limited,
 9 Incorporated, is that what you are saying?
 10 A. That is what it usually is. Total sales
 11 everywhere.
 12 Q. Do you see the amount \$110,365,790?
 13 A. Yes, I said that, yes.
 14 Q. Is that consistent with Michigan?
 15 A. Well, that matches that page, yes.
 16 Q. Now I am going to direct your attention
 17 to Bate stamp 408. What I am looking at hopefully
 18 you are looking at the same thing 2010 IA 1120S.
 19 A. Yes, I am.
 20 Q. Can you look to Part IV?
 21 A. Yes.
 22 Q. Of that return?
 23 A. Yes.
 24 Q. Do you see two columns there?
 25 A. I do.

Page 25

1 Q. Similar to the Colorado return can you
 2 explain to me what those two columns represent?
 3 A. The first column means there was work
 4 performed in Iowa. That is the amount of gross
 5 receipts from work performed in Iowa. And the
 6 second is the same gross receipts total of all
 7 jurisdictions.
 8 Q. This is a 2010 tax return. Can you tell
 9 me what would go on gross receipts for Iowa?
 10 MS. GANDHI: Objection. Foundation.
 11 MR. CALL: Go ahead, Mr. Starbird.
 12 A. It says what is in gross receipts for
 13 Iowa.
 14 BY MR. CALL:
 15 Q. It does?
 16 A. Yes, 1 column A. You asked me to read
 17 that. That is what that means.
 18 Q. What does gross receipts entail is my
 19 question. I apologize.
 20 A. Well, it can be a number of different
 21 definitions. I would have to look to the form.
 22 Typically it means services -- if you are a service
 23 business, it is services performed in that state,
 24 billings, for example.
 25 Q. Are you familiar with the type of

Page 26

1 activity that Minnesota Limited, Incorporated, was
 2 involved in for the 2011 tax year generally?
 3 A. Generally, yes.
 4 Q. Can you describe to the best of your
 5 ability what those activities were?
 6 A. Well, I am not in the business. They
 7 are a pipeline company. It involved things with
 8 pipe. It might be laying pipe. It might be
 9 repairing pipe. They are working underground.
 10 Q. Was it your understanding they provided
 11 services?
 12 A. Of laying pipe and repairing pipe and
 13 analyzing pipe, yes. Yes, that is their business.
 14 Q. I am going to direct your attention to
 15 Bate stamp 410. Do you see Part I of that document
 16 general information?
 17 A. Yes.
 18 Q. And again, do you see on the right-hand
 19 side where it says Iowa receipts of \$4,551,659?
 20 A. Yes.
 21 Q. And then total receipts \$110,365,790?
 22 A. Yes.
 23 Q. And that is consistent with the previous
 24 page we discussed?
 25 A. Yes.

Page 27

1 Q. Now I am going to direct your attention
 2 to Bate stamp 407.
 3 A. Okay.
 4 Q. Do you see this is an Illinois tax
 5 return?
 6 A. Yes.
 7 Q. For Minnesota Limited, Incorporated?
 8 A. Yes.
 9 Q. Can you now turn to Bate stamp 418?
 10 A. Okay.
 11 Q. Can you verify whether Bate stamp 418 is
 12 part of the Illinois tax return?
 13 A. It is part of a tax return. It says
 14 Illinois at the bottom. I assume it is Illinois.
 15 Q. "IL," is that what you are looking at?
 16 A. No, I was looking at line 46. It says,
 17 "Base income or net loss allocable to Illinois."
 18 That is just the first one I saw.
 19 Q. When you look at line 40, do you see
 20 \$110,365,790?
 21 A. Yes.
 22 Q. Total sales everywhere is what it states
 23 return?
 24 A. Yes.
 25 Q. And then total sales inside Illinois is

Page 28

1 \$3,931,966?
 2 A. Yes.
 3 Q. The amount on line 40, is that
 4 consistent with total sales in the Michigan tax
 5 return for 2010?
 6 MS. GANDHI: I object to the line of
 7 questioning. The tax returns speak for themselves
 8 as filed documents. Is there a relevancy as to why
 9 we are paging through and he is verifying the
 10 numbers contained on the returns?
 11 MR. CALL: It is relevant. We are going
 12 to continue. Please answer the question.
 13 A. Yes.
 14 BY MR. CALL:
 15 Q. Now, if I can direct your attention to
 16 Bate stamp 480.
 17 A. Okay.
 18 Q. Would you agree that this is a Minnesota
 19 tax return for 2010?
 20 A. Yes.
 21 Q. Will you turn to the next page Bate
 22 stamp 481?
 23 A. Okay.
 24 Q. I will direct your attention to line 14.
 25 Would agree that that amount \$110,365,790 is

Page 29

1 consistent with the total sales as provided on the
 2 Michigan tax return?
 3 A. Yes.
 4 Q. Now I am going to direct your attention
 5 to Bate stamp 524.
 6 A. Okay.
 7 Q. Would you agree that this is a tax
 8 return for North Dakota for the 2010 tax period?
 9 A. Yes.
 10 Q. Please turn to the next page Bate stamp
 11 525.
 12 A. Yes.
 13 Q. Can you see line 9?
 14 A. I can.
 15 Q. And line 12?
 16 A. Yes.
 17 Q. Would you agree that those amounts on
 18 those two lines is consistent with total sales on
 19 the Michigan 2010 tax return?
 20 A. Yes.
 21 Q. Now if you could turn back to Bate stamp
 22 481 of the Minnesota tax return?
 23 A. Okay.
 24 Q. Can you explain to me the line 21 the
 25 minimum fee of \$5,000?

Page 30

1 A. Yes. Minnesota does not tax S
 2 corporations twice. S corporations are taxable on
 3 an individual level. Minnesota came up with a way
 4 to tax companies, not calling it a tax. They call
 5 it a fee. It is a fee for doing business. And it
 6 is based on the size of the business with three
 7 factors. And I believe at that time that was the
 8 largest that you could have. The chart is right
 9 there. The largest you could pay is \$5,000, which
 10 is a fee for the privilege of doing business in
 11 Minnesota.
 12 Q. And if you could turn to Bate stamp 480
 13 the previous page, you will also see line 9.
 14 A. Yes, that is the \$5,000 fee.
 15 Q. And then there is going to be an
 16 estimate tax that Minnesota Limited paid through
 17 the year of \$6,250?
 18 A. Yes, and it was made so that there would
 19 be \$1,250 in a refund to be applied to the first
 20 quarter of next year because it would be 5,000
 21 again.
 22 Q. And previously -- you talked about that
 23 Minnesota doesn't tax the individual and the S
 24 corp. They just tax the individual. What do you
 25 mean by "the individual"? Who are you talking

Page 31

1 about?
 2 A. An S corp has their shareholders pay tax
 3 personally on the company's income. So the
 4 corporation, the S corporation pays no tax. It is
 5 reflected on the individual shareholder's 1040.
 6 That is what an S corporation does. It is called a
 7 pass through entity.
 8 Q. Now if we can turn to Exhibit 5, I am
 9 looking at the 2011 tax return. Do you have that
 10 in front of you?
 11 A. Yes.
 12 Q. Do you see that this is page 1 of 14 if
 13 you look up at the top on the left-hand corner?
 14 A. Yes.
 15 Q. What was the total sales reported on the
 16 2011 tax return for Minnesota Limited?
 17 A. \$98,465,632.
 18 Q. Line 11 sub A it says Michigan sales.
 19 Do you see that?
 20 A. Yes.
 21 Q. That amount is \$14,756,147; correct?
 22 A. Right.
 23 Q. Line A is the sales in Michigan compared
 24 to total sales for the company; correct?
 25 A. That's what it indicates, yes.

Page 32

1 Q. That total sales, would that be
 2 reflected on the federal form or any federal form
 3 for the 2011 tax period?
 4 MS. GANDHI: Objection. Foundation, but
 5 you can answer.
 6 A. Somewhere. I don't know if it matches.
 7 I would need to look at the federal reporting.
 8 BY MR. CALL:
 9 Q. AND again, Mr. Starbird, I am going to
 10 ask you to just maybe keep a finger on that page so
 11 as we go through these other returns, we can
 12 compare and contrast. Now if I can direct your
 13 attention to Exhibit 4 Bate stamp 642?
 14 A. Okay.
 15 Q. And this is a 2011 Iowa tax return;
 16 correct?
 17 A. Yes.
 18 Q. You see January 1st, 2011, to
 19 March 31st, 2011?
 20 A. Yes.
 21 Q. Would this be a short 2011 tax return?
 22 A. You cut out. Did you mean a short
 23 period return? Is that what you were saying?
 24 Q. Yes. I apologize. Yes.
 25 A. Yes.

Page 33

1 Q. Do you know why the return only goes to
 2 March 31st, 2011?
 3 A. Yes, the company was sold.
 4 Q. Now, if I can direct your attention to
 5 line 12 of Part IV, do you see that?
 6 A. Yes.
 7 Q. Do you see that the total \$75,180,594,
 8 do you see that?
 9 A. Yes.
 10 Q. Can you explain the difference? On line
 11 1 there is \$21,093,137. What would that entail?
 12 The gross receipts?
 13 A. Well, without looking the gross receipts
 14 would be the actual operations of the business, the
 15 billing, the laying of pipeline, the repairs. That
 16 is what portion was related to operations.
 17 Q. And then you can look at lines 8 and 9
 18 capital gain and ordinary gain. What would those
 19 be attributable to?
 20 A. They were attributable to the sale.
 21 Q. To the sale of Minnesota Limited?
 22 A. Yes.
 23 Q. Do you see the total is \$75,180,594?
 24 A. Yes.
 25 Q. Why is that different than the total

Page 34

1 sales on the 2011 tax return for Minnesota Limited?
 2 A. I would have to look. Certain income
 3 comes through as a net like a capital gain. So the
 4 selling figure would be different. That is how
 5 those forms work. But I can't do that off the top
 6 of my head here. Those are reflecting gains, which
 7 is gross less basis, I guess guessing.
 8 Q. If we can turn to the Illinois 2011 tax
 9 return Bate stamp 651?
 10 MS. GANDHI: 651?
 11 MR. CALL: Yes.
 12 A. Okay.
 13 BY MR. CALL:
 14 Q. Do you see this is the Illinois 20110
 15 tax return for Minnesota Limited, Incorporated?
 16 A. Illinois, yes.
 17 Q. Similarly it is a short period tax
 18 return for January 1st, 2011, to March 31st, 2011?
 19 A. Yes.
 20 Q. If we can turn to the next page Bate
 21 stamp 652?
 22 A. Okay.
 23 Q. Do you see the figure \$98,465,632 on
 24 line 40?
 25 A. Yes.

Page 35

1 Q. Is that consistent with the 2011
 2 Michigan tax return?
 3 MS. GANDHI: Objection as to form.
 4 A. Yes, that is the number on Michigan.
 5 BY MR. CALL:
 6 Q. Now if we can turn to the Minnesota tax
 7 return on Bate stamp 712?
 8 A. Okay.
 9 Q. Can you verify this is a Minnesota tax
 10 return for the 2011 tax year?
 11 A. Yes, it is.
 12 Q. Can you turn to the next page?
 13 A. Yes.
 14 Q. Do you see on line 14 of the Minnesota
 15 tax return?
 16 A. Yes.
 17 Q. It says it has two columns column A and
 18 column B?
 19 A. Yes.
 20 Q. What does column A represent, and what
 21 does column B represent?
 22 A. Well, it represents sales in total
 23 outside -- total in and outside Minnesota and that
 24 portion of which is in Minnesota.
 25 Q. And again, if you can look at the

Page 36

1 Michigan 2011 tax return, you will see total sales
 2 of \$98,465,632; is that correct?
 3 A. Yes.
 4 Q. Can you explain the difference?
 5 A. No, I can't explain the difference. I
 6 would have to look it up. This is to determine
 7 they have the maximum fee. So it is well over the
 8 \$20 million. That is where the 5,000 comes from.
 9 I don't know what the definition of sales was for
 10 that particular box for this form. Again, there is
 11 different type of income.
 12 Q. Okay. But you would agree with me that
 13 this is not the same as what is being reported in
 14 Michigan; correct?
 15 MS. GANDHI: Objection as to form.
 16 A. I agree they are not the same numbers.
 17 I don't think they are for the same purpose.
 18 MR. CALL: Can we go off the record for
 19 just a moment?
 20 (At this time a discussion was held
 21 off the record.)
 22 BY MR. CALL:
 23 Q. Mr. Starbird, I was inquiring as to the
 24 2011 tax return for Minnesota Limited. We are
 25 looking at Bate stamp 713. Are you there?

Page 37

1 A. Yes, I am here.
 2 Q. Can you explain to me -- my question is:
 3 Can you explain to me why 2011 tax return is
 4 \$98,465,632, and Minnesota tax return is only
 5 \$43,071,615?
 6 A. And I said, no, I would have to look at
 7 the work papers to do that.
 8 Q. Can you show me where in Minnesota tax
 9 law establishes what sales is for total sales for
 10 the 2011 tax return?
 11 MS. GANDHI: Objection as to form. Are
 12 you asking him to cite the Minnesota statutory
 13 section? I believe if it is not indicated in the
 14 instructions, we will just stipulate as to whatever
 15 the correct statutory provision is. He doesn't
 16 have that in front of him.
 17 BY MR. CALL:
 18 Q. Do you know what the provision is,
 19 though?
 20 A. No, I would have to look. There is
 21 different definitions. You are looking at the
 22 minimum fee form. I would need to look at what the
 23 definition for line 14 is.
 24 Q. If we look at the next column over B the
 25 \$24,227,085, that is for Minnesota; correct?

Page 38

1 A. Yes.
 2 Q. And column A is total in and out by
 3 Minnesota. The \$24,227,085, what does that entail?
 4 A. Well, that would typically entail
 5 whatever the one in column A is, which I would have
 6 to check would be that portion of it, which is in
 7 Minnesota.
 8 Q. Previously we discussed the 2010 tax
 9 returns; correct?
 10 A. Yes.
 11 Q. And in the 2010 tax returns the total
 12 sales from each return was the same across several
 13 states that we discussed; correct?
 14 A. Right.
 15 Q. And there was no sale in that year;
 16 correct?
 17 A. Sales what?
 18 Q. Of the company. We have some different
 19 income. When we look at the \$24,227,085 of sales
 20 in Minnesota, what does that entail?
 21 MS. GANDHI: Objection as to form. You
 22 can answer.
 23 A. First of all, this is not a tax return.
 24 This is a minimum fee calculation this particular
 25 format. So I thought I just said that once we have

Page 39

1 a definition of what the total column is that I
 2 believe that of whatever the 43 is \$24,227,085 was
 3 attributable to Minnesota.
 4 Q. Would that include the sale -- would
 5 that include the revenue they received from the
 6 services they perform during the 2011 tax year?
 7 A. I would have to look. That is typically
 8 what the services are always included.
 9 Q. Would it include the sale of the
 10 business?
 11 A. I don't know. I would have to look.
 12 There might be part -- there is different types of
 13 income that comes out of the sale. I would have to
 14 look. I don't remember. And I don't know what
 15 those two numbers at this time are. I can easily
 16 find out. This form is only to get you to the
 17 maximum Minnesota fee. So the idea to look at
 18 every single number here we are already at the
 19 5,000. So the income that is taxable is taxable to
 20 the individuals and flows through on K-1s.
 21 Q. Can I direct your attention to beta
 22 stamp 714?
 23 A. Okay.
 24 Q. Can you explain to me what this document
 25 is?

Page 40

1 A. Yes, it is a Minnesota K-1.
 2 Q. Can you explain to me how the individual
 3 Mr. Christopher Leines -- excuse me. This is a
 4 schedule K-1 for Mr. Christopher Leines; correct?
 5 A. Christopher Leines, that's correct.
 6 Q. Christopher Leines. For the 2011 tax
 7 year how much did Christopher Leines pay in state
 8 taxes?
 9 MS. GANDHI: Objection as to form.
 10 A. I have no way of knowing that without
 11 looking at his 1040. Are you asking what this form
 12 is?
 13 BY MR. CALL:
 14 Q. Yes.
 15 A. You don't know what this form is?
 16 Q. My question is: Can you explain to me
 17 what this form is?
 18 A. Yes, I can. There is a federal K-1 from
 19 the federal form 1120 S, which goes to each
 20 shareholder of an S Corporation. That amount is
 21 then reported on their individual federal tax
 22 return. Sometimes states have deductions that the
 23 federal may have taken that Minnesota doesn't
 24 allow. That is what this is.
 25 This is state income tax deducted in

Page 41

1 arriving at ordinary income. They are adding that
 2 amount to his already large income from the sale.
 3 So they are taxing more than the federal tax. So
 4 it is an add-on. That is why it is called a
 5 modification of federal taxable income. It is an
 6 addition to his income that he reports on his
 7 personal return.
 8 Q. So this \$249,361 in line 2 is to his
 9 personal return?
 10 A. Yes, it would be additional income to
 11 him because it was deducted somewhere else for
 12 federal purposes.
 13 Q. If I can direct your attention now to
 14 the North Dakota tax return begins on Bate stamp
 15 758?
 16 A. Okay.
 17 Q. If we go to the next page Bate stamp
 18 759, do you see line 9?
 19 A. I do.
 20 Q. It is under the sales factor?
 21 A. Yes.
 22 Q. First of all, what type of form is this
 23 on the second page? What is the schedule? What is
 24 the purpose of the schedule?
 25 A. The purpose of the schedule is to arrive

Page 42

1 at an apportionment factor for North Dakota that
 2 apportions the operating income to North Dakota --
 3 to a North Dakota individual shareholder.
 4 Q. Do you see line 9 \$21,093,137?
 5 A. Yes.
 6 Q. What does that represent?
 7 A. I think it represents the same we talked
 8 about in Michigan or the others that it was the
 9 income from operations unrelated to capital gain or
 10 other sales aspects.
 11 Q. How do we arrive at line 12 at
 12 \$100,830,164?
 13 A. I would have to look at the work papers.
 14 Q. Can you turn to Bate stamp 760?
 15 A. Okay.
 16 Q. Do you see the right top corner it says
 17 Statement 1?
 18 A. I do.
 19 Q. Do you see on the previous page Bate
 20 stamp 759, line 12 references Statement 1?
 21 A. Yes.
 22 Q. At the top of Bate stamp page 760 do you
 23 see it says Other Sales?
 24 A. On page 760?
 25 Q. Yes.

Page 43

1 A. Okay, yes.
 2 Q. Do you see other sales?
 3 A. Other receipts? Other sales the
 4 category, yes, I see that.
 5 Q. Below that you see the description?
 6 A. Yes.
 7 Q. I just want to go over the three items.
 8 Sales of real and tangible personal property, what
 9 does that entail?
 10 MS. GANDHI: Objection. Form.
 11 A. The company was sold. And it was sold
 12 consisting of different types of assets. Real and
 13 tangible personal property in their business was
 14 large equipment, caterpillars, bulldozers, trucks,
 15 personal property. And tangibles are what would
 16 normally be referred to as goodwill. Other
 17 receipts. I don't know. I would have to check.
 18 BY MR. CALL:
 19 Q. If we look at the first item sales of
 20 real and tangible property, would that also include
 21 real property?
 22 A. It could. I would have to check. I
 23 don't think it did. But that would be from asset
 24 and depreciation schedules, which I know have been
 25 provided.

Page 44

1 Q. If you can look at the \$79,737,027, and
 2 if you add on page Bate stamp 759 \$21,093,137,
 3 would you agree it would be \$100,830,164?
 4 A. Yes. That is what it says. Add lines 9
 5 through 11. I might have to add to get that last.
 6 Q. I apologize. I am not following. When
 7 I look at line 10 and 11, we are talking about
 8 sales delivered or shipped to North Dakota and then
 9 also sales shipped from North Dakota?
 10 A. Yes, but they are 0. What is your
 11 question?
 12 Q. My question is: How is this related
 13 \$79,737,027 on Bate stamp 760?
 14 A. Wait. You are asking why 11 A and B how
 15 they relate?
 16 Q. Yes.
 17 A. They are 0. There is nothing there.
 18 Q. Previously you said at lines 9 add lines
 19 9 through 11 to get \$100,830,164.
 20 A. Okay. I was just reading. You asked
 21 12. The instructions on 12 say, "Add lines 9
 22 through 11b." Nine is 21 million something. 10 is
 23 0. Eleven is 0. And then you add the other
 24 statement. I am just saying it says at those
 25 lines. It doesn't mean there is anything on them.

Page 45

1 They don't ship things to North Dakota. They
 2 don't. They install pipeline.
 3 Q. You said they sell pipeline.
 4 A. No, I said they don't ship anything.
 5 That is why those lines are 0. Sales shipped.
 6 They don't do that. That is why there is 0 on
 7 those lines.
 8 Q. Again, when we add 21 million plus the
 9 79 million, that is how we get to the 100 million?
 10 A. Yes.
 11 Q. So if I can direct your attention back
 12 to the 2011 Michigan tax return Exhibit 5?
 13 A. Okay.
 14 Q. So total sales include \$98,465,632. Do
 15 you see that?
 16 A. I do.
 17 Q. Holding your thumb there can you turn to
 18 Bates 642 the Iowa 2011 tax return?
 19 A. Okay.
 20 Q. Do you see the amount on line 1 of
 21 Part IV?
 22 A. I do.
 23 Q. Column B?
 24 A. Yes.
 25 Q. \$21,093,137?

Page 46

1 A. Yes.
 2 Q. Previously you had stated that the gross
 3 receipts of \$21,093,137 was from their operations.
 4 A. That is what I believe.
 5 Q. When we look at line 11 return, why is
 6 that \$98,465,632 -- what are we missing here?
 7 MS. GANDHI: Objection as to form.
 8 Answer the question.
 9 A. Back to the Iowa form there is also a
 10 total below that included the 21 just as the 98
 11 includes the 21.
 12 Q. What else is included in the total sales
 13 of Michigan besides the 21 million from operations?
 14 A. Well, I would have to look to see what
 15 the components are. We just looked at another
 16 state that had 79 of other things above that in my
 17 head. It is related to the sale. It is related to
 18 the sale.
 19 Q. Does this total sales amount include the
 20 sale of the business of Minnesota Limited to
 21 Vectren Infrastructure?
 22 MS. GANDHI: Objection as to form. What
 23 sales? We have multiple tax returns sitting here.
 24 Can you point us to a line item that you are
 25 discussing?

Page 47

1 BY MR. CALL:
 2 Q. So, Mr. Starbird, if you look at 2011
 3 tax return of Michigan and you see the \$98,465,632,
 4 do you see that?
 5 A. Yes.
 6 Q. Does that amount include a sale of
 7 Minnesota Limited to Vectren Infrastructure?
 8 A. I would imagine it includes a number of
 9 aspects of the sale; sale of personal property, et
 10 cetera.
 11 Q. Why is it being included in total sales?
 12 MS. GANDHI: Objection as to form. I
 13 think he has testified he follows the return
 14 instructions and instructions as written per each
 15 state. He can't tell you the why behind that. We
 16 just have to object as to form.
 17 BY MR. CALL:
 18 Q. Mr. Starbird, can you please answer the
 19 question?
 20 A. Because that is what we believe to be in
 21 total sales. There is sales of other things.
 22 There is sales of personal property, but not
 23 operations. Operations, sales of personal property
 24 that is what is in it. I would have to look to see
 25 to reconcile exactly what is in there.

Page 48

1 Q. Why is it even included in total sales?
 2 What are you relying on to say that total sales
 3 include the sale of the business?
 4 MS. GANDHI: Objection as to form.
 5 MR. CALL: Please answer the question.
 6 THE WITNESS: Can we take a break?
 7 MS. GANDHI: Sure. We are going to take
 8 a break.
 9 MR. CALL: No, no, no, not while the
 10 question is pending. All I want to know is why is
 11 a sale of a business included in total sales on
 12 line 11?
 13 MS. GANDHI: If you can answer the
 14 question, you can answer to the best of your
 15 ability.
 16 A. Well, I would have to look back years
 17 ago and see why that was included in that line. I
 18 think that is a reasonable request to do that. I
 19 would talk to my staff. I would talk to the people
 20 that reviewed it.
 21 BY MR. CALL:
 22 Q. But you would agree it includes more
 23 than just the \$21,093,137 for the operations of the
 24 business?
 25 A. Yes, it sure looks like that.

Page 49

1 Q. Are you familiar with the --
 2 MS. GANDHI: Can we take a break?
 3 MR. CALL: Yes, that's fine. Let's go
 4 off the record.
 5 (At this time a recess was held.)
 6 BY MR. CALL:
 7 Q. Let's go back on the record.
 8 Mr. Starbird, I am not trying to be difficult. I
 9 am just trying to understand. Maybe you can find a
 10 better way to explain to me. What I see when I
 11 look at the 2010 returns is the total sales across
 12 all these different tax returns is going to be the
 13 same.
 14 When I look at the 2011 tax returns, the
 15 total sales can be 42 million, 75 million, 98
 16 million. Why are there all these differences
 17 between the states now? What am I missing here?
 18 A. Well, I would have to look to each of
 19 the states. States are different. We are going
 20 through that in Minnesota right now because we
 21 don't conform to federal law. And many states do
 22 the same thing. It is a mess.
 23 When you say it goes from this to
 24 44 million, I don't know. I would have to look to
 25 the Minnesota form and say why was that

Page 50

1 44 million -- maybe it is something different as
 2 far as sales. It is just particular to them taking
 3 \$5,000 from somebody. That is what that form is.
 4 On the K-1, which we haven't looked at, we took the
 5 K-1 from the federal and passed it all through to
 6 the shareholders because it is a pass through
 7 entity.
 8 So I don't know that off the top of my
 9 head. I do know there are many differences in
 10 different states. It is in our legislature right
 11 now, and it is probably in yours.
 12 Q. So when I look at total sales, why
 13 aren't total sales the same consistent? When I
 14 think about total sales from the operation, aren't
 15 they supposed to be consistent across the states,
 16 or is there a definition between the definition of
 17 sales across the different states?
 18 A. You are talking about operations?
 19 Q. Right.
 20 A. Right. Operations, sales, billings are
 21 generally the same across the states. I don't know
 22 if there are exclusions for different types of
 23 sales in different states. I don't know. Just
 24 like Minnesota had an add back there. It had an
 25 add back because there is a thing that they don't

Page 51

1 like to appreciate. Minnesota if the federal
 2 government allows you to write off a half million
 3 dollars, that is to stimulate the economy. Not in
 4 Minnesota. You still have to write it off over
 5 five years. So we have all these differences. I
 6 can't answer without going through in detail. I
 7 can certainly find where the 44 million came from.
 8 I can't do it right now.
 9 Q. Was there a change in law between 2010
 10 and 2011 for Minnesota?
 11 A. I don't remember that. We have a change
 12 in law every year. What law specifically are you
 13 asking? Any law?
 14 Q. Tax law.
 15 A. Yes, every year we have a change in tax
 16 law.
 17 Q. Would there be a change in law between
 18 2010 and 2011 in Minnesota that affects how you
 19 calculate total sales?
 20 A. I don't know that. I don't know that.
 21 But what I am saying is that a return that our
 22 office prepared it would have been in 2011, I can
 23 go to that and find out where that number came
 24 from, but I don't know right now. We have huge
 25 national software that it is not unknown. For that

Page 52

1 form it might have done something. I can't tell
 2 you right now.
 3 Q. I just want to clarify. When we look at
 4 the 2010 tax returns, we're looking at total sales
 5 from the operations that are consistent straight
 6 across, correct, from what we reviewed already?
 7 A. Yes, I think that was clear. I would
 8 have to go back and look at the Minnesota one
 9 again. Again, it is a minimum fee form. It uses
 10 allocation factors. It was a law that was passed
 11 because very smart people over in the legislature
 12 said, "You know, we are not getting any money from
 13 companies that lose money because they don't have
 14 to pay tax because they lost money. How do we get
 15 money from them? Let's charge them a fee."
 16 So their fee is based on how much
 17 property, how much sales and how much payroll you
 18 do. And then we charge you a fee. I don't know
 19 how that particular form, which has the fee
 20 schedule on the bottom and which sole purpose is to
 21 determine that fee, flows through to the K-1s that
 22 are reported on the individual returns which relate
 23 to actual taxable income.
 24 Q. If you can turn to 2010 Michigan tax
 25 return, that would be Exhibit 5. Your question is

Page 53

1 you would have to look at the Minnesota return and
 2 compare it with regards to the total sales
 3 forwarded to Michigan?
 4 MS. GANDHI: Objection. That is not
 5 what he said.
 6 MR. CALL: Let me rephrase.
 7 BY MR. CALL:
 8 Q. If you look at the 2010 tax return, do
 9 you see total sales of \$110,000,000?
 10 A. Yes.
 11 Q. Approximately?
 12 A. Yes.
 13 Q. Looking through the Minnesota tax return
 14 that would be beta stamp 481?
 15 A. Yes.
 16 Q. Those are consistent; correct?
 17 A. Those are consistent, right.
 18 Q. When we turn to the 2011 --
 19 A. I understand. I am telling you I don't
 20 know. I don't know. I would have to look. We
 21 could do this all day, but I can't tell you why. I
 22 would have to go and check it.
 23 Q. Now turn to Bate stamp 713, the
 24 Minnesota 2011 tax return. You see the number is
 25 \$43 million approximately for Minnesota sales;

Page 54

1 correct?
 2 A. Yes.
 3 Q. Sales proceeds. And that number is
 4 different than the 2011 Michigan tax return;
 5 correct?
 6 A. I agree.
 7 Q. Mr. Starbird, can you turn to page 4 of
 8 Exhibit 4?
 9 A. Okay.
 10 Q. Let's go to page 3. Apologize.
 11 Paragraph 14.
 12 A. Okay.
 13 Q. The statement is, "Please produce copies
 14 of Plaintiff's complete state tax returns for all
 15 states outside of Michigan, including all schedules
 16 and supporting documents, for the 2010 and 2011 tax
 17 years." Do you see that?
 18 A. Uh-huh.
 19 Q. Now go to page 4.
 20 A. Okay.
 21 Q. It says that the tax returns that were
 22 provided -- essentially what the response is the
 23 tax returns provided other than Michigan or
 24 Colorado, Georgia, Iowa, Illinois, do you see that?
 25 A. Yes.

Page 55

1 Q. Are all those states -- are the only
 2 states the Minnesota Limited, Incorporated, files
 3 in 2010 and 2011?
 4 A. I would have to check that. I have no
 5 idea without looking. We provided Lynn with any
 6 state returns that we prepared during that time
 7 period to the best of my knowledge. It is all in
 8 one system. Many times as you noted on one -- I
 9 forgot which state. There was 0. We continue to
 10 prepare those returns even if it may not be
 11 required because we don't know when they are coming
 12 back to the state. And we don't want notices of,
 13 "Where is your tax return?" So typically we
 14 prepare all of the same states. And if there is a
 15 new one they are in, then we add that to the list.
 16 Q. Did Lurie prepare all tax returns for
 17 Minnesota Limited for the 2010 and 2011 tax
 18 periods, or are there other firms or entities that
 19 provide the tax returns for Minnesota Limited,
 20 Incorporated?
 21 A. We prepare all income tax returns. We
 22 don't do sales tax returns. There are all kinds of
 23 returns they may file. We do income tax returns.
 24 Q. Does Lurie also prepare the federal
 25 income tax returns?

Page 56

1 A. Yes, federal income tax returns.
 2 Q. Now we can move on to one more point,
 3 and hopefully we will be done soon. What is your
 4 understanding of internal revenue code 338 H 10?
 5 A. Well, it is a code section. And it
 6 allows a business that sells its stock to by
 7 agreement of both parties to elect that sale to be
 8 treated as an asset sale.
 9 Q. And why would entities structure it this
 10 way?
 11 A. It is very, very common. It is very
 12 common. Typically -- and I can go through a whole
 13 list -- the primary reason is that if somebody is
 14 buying a company and there is a long history and
 15 you buy the stock of a corporation, you are
 16 stepping into the corporation shoes.
 17 And based on the number of attorneys
 18 we're involved with today that generates a lot of
 19 attorney stuff. A person typically buying a
 20 company does not want to be responsible for any
 21 unknown liabilities, period. So typically it is
 22 very hard to sell. On the tax side of it you may
 23 have a company that they will buy the tax.
 24 And they are not worried about the
 25 indemnities or insurance. They are not worried

Page 57

1 about old -- they want to buy the company. They
 2 want to keep the name. They want to keep running
 3 as is with the stock. But it is not -- it is not
 4 efficient taxwise for the buyer. So when a buyer
 5 buys the assets, they get a whole new set of
 6 deductions.
 7 So if they buy equipment, they can
 8 depreciate it over whatever piece. That equipment
 9 they can depreciate it just as if they bought the
 10 equipment direct. They also -- and there have been
 11 many cases on this that went on forever the stock
 12 if you buy stock, the buyer can't deduct anything
 13 on the purchase of stock. If they buy assets, they
 14 buy goodwill.
 15 And based on years and years of court
 16 cases saying goodwill was not deductible they came
 17 with a code section 197 that allowed a buyer to
 18 write off goodwill over fifteen years. So those
 19 are the main purposes why people would want to make
 20 a 338 H 10 election, which Minnesota Limited's
 21 buyer did.
 22 Q. Are you familiar why Minnesota Limited
 23 and Vectren chose to structure this way?
 24 MS. GANDHI: Objection as to form and to
 25 the extent it relates to statements made prior to

Page 58

1 the preparation of the return. We would assert
 2 accountant/client privilege. You can answer as to
 3 general as to the form of general.
 4 A. Most businesses that buy stock elect
 5 338 H 10 to be treated as an asset sale. It is the
 6 rarity not to.
 7 BY MR. CALL:
 8 Q. Why?
 9 MS. GANDHI: I think that has been asked
 10 and answered. He has explained to you the
 11 benefits.
 12 A. Yes, because of the benefits. It can
 13 also be a detriment to the seller. They might have
 14 some recapture at ordinary rates. So it is a trade
 15 off. It is negotiated between the parties. But
 16 generally the 338 H 10 is elected. And it is
 17 treated as an asset sale.
 18 MR. CALL: Thank you, Mr. Starbird. I
 19 don't have any further questions.
 20 THE WITNESS: Well, thank you.
 21 MS. GANDHI: We are not done. Now it is
 22 my turn. You are not free yet.
 23
 24 EXAMINATION
 25 BY MS. GANDHI:

Page 59

1 Q. Mr. Starbird, roughly how many years
 2 have you been engaged in preparing federal and
 3 state income tax returns?
 4 A. Thirty-nine, forty.
 5 Q. And you've spent quite a bit of time
 6 here today. Looking at a variety of state tax
 7 returns and being asked to perhaps explain
 8 differences between certain line items on different
 9 state tax returns, are you aware -- do states have
 10 consistent or inconsistent definitions for the
 11 terms "sales," "gross receipts," "revenue"?
 12 A. They are inconsistent.
 13 MR. CALL: Objection to form and
 14 foundation.
 15 BY MS. GANDHI:
 16 Q. Would a definition of "sales" from
 17 Michigan tax return purposes be relevant to your
 18 preparation of sales as defined under a Minnesota
 19 tax return?
 20 A. Can you rephrase that?
 21 Q. Sure. Do the states define the term
 22 "sales" for purposes of apportionment or reporting
 23 of income? Do they define the term "sales"
 24 differently?
 25 MR. CALL: Objection to form and

Page 60

1 foundation.
 2 BY MS. GANDHI:
 3 Q. Go ahead and answer the question.
 4 A. They can. I don't have a list of all of
 5 them in my head right now. Sales tax, sales --
 6 Minnesota doesn't tax clothing. It happens all
 7 over the code.
 8 Q. What about the term "gross receipts"?
 9 Are states permitted to independently define the
 10 term "gross receipts" for purposes of tax return?
 11 MR. CALL: Objection to form and
 12 foundation.
 13 A. Yes.
 14 BY MS. GANDHI:
 15 Q. Are states permitted to adopt their own
 16 definition of what they determine to be taxable
 17 revenue?
 18 A. Definitely.
 19 MR. CALL: Form and foundation.
 20 BY MS. GANDHI:
 21 Q. How about you mentioned -- you pointed
 22 out today sometimes states make you add back to the
 23 taxable base certain deductions taken for federal
 24 purposes. Is that a very common occurrence across
 25 the states?

Page 61

1 A. Very common.
 2 MR. CALL: Form and foundation.
 3 A. Very common.
 4 BY MS. GANDHI:
 5 Q. Is the same items consistently added
 6 back across the states?
 7 A. A lot of difference. I was just at the
 8 ABA tax conference --
 9 MR. CALL: Form and foundation.
 10 A. -- talking about the new federal
 11 changes. And there were three hours of discussion
 12 on what state was going to do what. And it was
 13 extremely complicated. It is going to generate a
 14 lot of issues for us in this year and next.
 15 BY MS. GANDHI:
 16 Q. So in your opinion with your thirty-nine
 17 years of experience as well as your professional
 18 degrees and certification would you use the term to
 19 point to a definition in one state and compare it
 20 to a definition in another state similar to
 21 comparing apples to oranges?
 22 MR. CALL: Form and foundation.
 23 A. I think that is reasonable.
 24 BY MS. GANDHI:
 25 Q. Are taxes and fees the same type of

Page 62

1 imposition?
 2 A. No.
 3 Q. Is there a difference between how a fee
 4 is defined?
 5 A. Well, a fee is unrelated to earning
 6 money. It is not a tax. It is a fee of doing
 7 business. It is not related to how much taxable
 8 income you have, if any.
 9 Q. Do states differ in their treatment of
 10 taxing S corporations?
 11 A. Yes.
 12 Q. In your review of state tax returns --
 13 and I use the word "review" as you would use it in
 14 the normal course of an accounting review for
 15 purposes of executing as a paid preparer, do you
 16 look to the laws --
 17 MR. CALL: Form.
 18 BY MS. GANDHI:
 19 Q. -- of different states?
 20 A. Yes.
 21 MR. CALL: Form.
 22 BY MS. GANDHI:
 23 Q. Were you engaged in the audit of the
 24 2011 Minnesota Limited tax return?
 25 A. The firm was engaged to audit. Which

Page 63

1 year? The 2010?
 2 Q. I should clarify. I don't mean any type
 3 of financial reform audit. Did you participate in
 4 responding to requests from the Michigan auditor
 5 for the audit of the 2011 tax year?
 6 A. Yes.
 7 Q. Did you provide the information as
 8 requested by the auditor?
 9 A. We did.
 10 Q. Do you happen to know if the auditor
 11 requested other state returns?
 12 A. I don't remember. I don't remember. He
 13 or she was really silent. There were no questions,
 14 nothing. It was a very unusual audit. It was
 15 almost like a correspondence audit. And then we
 16 were not told why they were doing anything. So I
 17 sent what was requested and then basically heard
 18 nothing.
 19 MS. GANDHI: I have no further
 20 questions.
 21
 22 FURTHER EXAMINATION
 23 BY MR. CALL:
 24 Q. As you previously testified, there is
 25 different definitions of sales across the states.

Page 64

1 Why were total sales in 2010 similar across the
 2 states and different in 2011 across these states?
 3 MS. GANDHI: Objection as to form, but
 4 you can answer.
 5 A. I think I have answered. Some of them
 6 one of them had to do with a netting process
 7 because states forms are different. And part of
 8 the sale of the return might have been a net number
 9 from a form rather than a gross number. And that
 10 would have reduced the total their total sales
 11 because they define it differently.
 12 They go to form lines on the federal to
 13 say, "Here it is." The Minnesota one, which is the
 14 one that we keep going back to, I have to look at
 15 that. Again, that was not a tax form. It was for
 16 the purpose of generating a fee to Minnesota based
 17 on activity. And I do not know where that came
 18 from, but I can certainly find out.
 19 Q. Okay. Would you agree that the 2010 tax
 20 returns across the states included the operations,
 21 the sales, the operations of the business -- strike
 22 that.
 23 MS. GANDHI: Objection to form.
 24 BY MR. CALL:
 25 Q. Let me restate that. Would you agree

Page 65

1 that the amounts reported in all of the states' tax
 2 returns of Minnesota Limited were consistent at an
 3 operation level?
 4 MS. GANDHI: Objection as to form.
 5 MR. CALL: Please answer.
 6 A. I would say as a general principal of
 7 law that operations, the day-to-day business were
 8 reported based on apportioning over the states.
 9 BY MR. CALL:
 10 Q. So the 2010 amount for total sales was
 11 consistent across all the states; correct?
 12 A. Right, right, because that was
 13 operations, yes.
 14 Q. Okay. So in 2010 the states are looking
 15 to the operations of the business as their total
 16 sales; correct?
 17 A. Right.
 18 Q. And in 2011, as we previously discussed,
 19 these total sales were different across the states;
 20 correct?
 21 A. The total sales -- well, depending what
 22 the definition of sales is, yes, they are
 23 different. One, we are not sure why. That is the
 24 one you keep going back to on the Minnesota minimum
 25 fee form. The one that is a couple thousand off, I

1 need to check why that -- you found that one is
2 off. And I need to check it. So as a general
3 statement, I need to check that.

4 Q. So the difference between 2010 and 2011
5 is the sale of the business of Minnesota Limited;
6 correct?

7 A. That is the difference.

8 MS. GANDHI: Asked and answered. You
9 can answer it again.

10 BY MR. CALL:

11 Q. And the difference between the states in
12 2011 is due to the fact that there was this sale of
13 Minnesota Limited, which has now been included in
14 the state sales total sales; correct?

15 MS. GANDHI: Objection to form.

16 A. We agree there is a couple differences,
17 but it is relative to total sales. And I have to
18 check to see as to any differences. Yes, total
19 sales is greater than operations.

20 Q. You would agree that total sales in 2011
21 included more than just operations. It includes
22 sales of other items?

23 MS. GANDHI: Asked and answered.

24 A. Yes.

25 BY MR. CALL:

1 Q. And would you agree that the differences
2 in the total sales among the states in 2011 was due
3 to the fact that different states define total
4 sales differently?

5 A. I would have to look at that. That
6 certainly could be one component.

7 MR. CALL: I don't have any further
8 questions.

9 MS. GANDHI: Neither do we.

10 MADAM COURT REPORTER: Mr. Call, when I
11 send this out, do you want condensed e-mail
12 version?

13 MR. CALL: eTranscript.

14 MS. SZTAINER: We would like to read and
15 sign.

16 MS. GANDHI: E-mail is fine, electronic
17 eTran. E-mail the exhibits.

18 (Whereupon, at 5:30 p.m. on Thursday,
19 March 22, 2018, the taking of the
20 deposition of JEFFREY STARBIRD was
21 adjourned.)
22
23
24
25

1 STATE OF MINNESOTA)
) SS.
 2 COUNTY OF HENNEPIN)

3
 4 Be it known that I took the deposition of
 JEFFREY STARBIRD, on the 22nd day of March, 2018,
 at Minneapolis, Minnesota;
 5

6 That I was then and there a Notary Public in and
 for the County of Hennepin, State of Minnesota, and
 7 that by virtue thereby I was duly authorized to
 administer an oath;
 8

9 That the witness before testifying was by me
 first duly sworn to testify to the whole truth and
 10 nothing but the truth relative to said cause;

11 That the testimony of said Witness was recorded
 12 in Stenotype by myself and transcribed into
 typewriting under my direction; and that the
 13 deposition is a true record of the testimony given
 by the Witness to the best of my ability;
 14

15 That I am not related to nor interested in the
 outcome of the action;
 16

17 That the right to read and sign the deposition
 by the Witness was not waived;
 18

19 WITNESS MY HAND AND SEAL this 1st day of April,
 20 2018.

21
 22 _____
 Valerie A. Benning, RPR
 23 Court Reporter
 24
 25

These responses are informal only and are not to be construed as promulgated rules, bulletins, or rulings of the Department.

Only taxpayers with certain certificated credits could elect to continue filing and paying the MBT after December 31, 2011. See 2011 Public Acts 38 and 39 for more information. Consequently, the population of MBT taxpayers has decreased significantly and will continue to decrease until the MBT is fully repealed. These FAQs have generally been updated through 2011 PA 305 and will not be updated beyond that point, including to rescind or correct for the effect of subsequent legislation, court decisions, or official statements of the Department. However, they will remain on Treasury's website as a historical reference guide.

Michigan Business Tax Frequently Asked Questions

NOTICE: The MBT was amended by 145 PA 2007 on December 1, 2007. Act 145 imposes an annual surcharge to taxpayers' MBT liability, as well as makes other changes. Some of the FAQs below have revised answers and those questions have been noted.

TIP: Type "Ctrl + F" to search the entire document.

Administrative

A1. (Answer rescinded, replacement located at A22) Will taxpayers need to calculate the business income and modified gross receipts separately and pay 85% of each to meet the estimated tax payment safe harbor provision to avoid penalty and interest?

A2. When does the MBT take effect?

The Michigan Business Tax is effective as of January 1, 2008. The MBT replaces the Single Business Tax which expires on December 31, 2007.

A3. Who must file MBT quarterly estimates?

Taxpayers expecting an annual tax liability exceeding \$800 must file quarterly estimates.

A4. When are MBT quarterly estimates due?

Quarterly returns and payments for calendar year filers are due April 15, July 15, October 15, and January 15. Quarterly returns and payments for fiscal year filers are due the 15th day of the first month after each quarter.

A5. (Answer rescinded, replacement located at A23) How are quarterly estimates calculated?

A6. When are MBT Annual Returns due?

Annual Returns are due the last day of the 4th month after tax year end with payment of final liability. Taxpayers (other than Insurance Companies or Financial Organizations) are not required to file or pay if apportioned gross receipts are less than \$350,000. Filing threshold is annualized for tax year less than 12 months.

A7. How can I get an extension of time to file an MBT Annual Return?

Taxpayers must file a Michigan Application for Extension of Time to File Michigan Tax Returns by the due date of the annual return with payment of estimated tax. Extensions will be granted by the Department for good cause.

If a federal extension is filed and granted, the Department will grant an automatic extension to the last day of the 8th month. Even if the IRS has approved a federal extension, a Michigan Application must also be filed.

An extension of time to file is not an extension of time to pay. Payment must be included with the Application. Extension requests received without payment will not be honored and penalty and interest will accrue on the unpaid tax from the original due date of the return. If no tax will be due on the MBT annual return, there is no need to request an extension to avoid penalty and interest.

A8. How is the tax computed if my first taxable year is less than 12 months?

Tax is computed using one of the following methods:

- Annual Method: Report full year multiplied by a ratio of the number of months in the tax year included under the MBT divided by 12.
- Actual Method: Report only those months included under the MBT.

A9. If I'm registered for the SBT what do I need to do to register for the MBT?

You are automatically registered for the MBT if you are currently registered for the SBT.

A10. When will forms be available for the Michigan Business Tax?

We are on schedule to have the 2008 Michigan Business Tax forms and instructions available on the same schedule as the quarterly and annual returns for the other Michigan taxes.

Quarterly estimated Michigan Business Tax forms will be mailed to taxpayers starting in early January 2008 for payment of their Michigan Business Tax estimates.

When the legislature adjourns for the year in December 2008 the returns will be finalized, posted on our web site and sent to the printers. We anticipate the paper forms and instructions will be available for distribution to the public in January 2009.

Fiscal year taxpayers will be granted an automatic extension for their 2008 fiscal year annual return. Returns for fiscal years ending in 2008 will be due the same date as 2008 calendar year returns, which is April 30, 2009. An extension request form need not be filed unless required to transmit payment of any tax that would be due with the annual return. The annual return tax due must be paid by the original due date, which is the last day of the fourth month after the end of the fiscal year.

In addition Taxpayers will once again starting in February 2008 be able to pay their Michigan Business Tax estimate on their Combined Return for Michigan Taxes, (Form 160).

A11. How does a Fiscal Year taxpayer file returns for their tax year ending in 2008? A

taxpayer with a fiscal year beginning in 2007 and ending in 2008 must file two short period returns, one to report their final SBT liability, and the other to report their initial MBT liability.

Per Michigan Compiled Law (MCL) 208.151, the SBT is repealed on business activity in this state after December 31, 2007. A fiscal year SBT taxpayer must file a short year return for the period from the beginning of its 2007-2008 fiscal year through December 31, 2007.

A fiscal year MBT taxpayer must file a short year return for the period from January 1, 2008 to the ending of its 2007-08 fiscal year.

MCL 208.1503 provides for a computation of tax for the first tax year of less than 12 months. The SBTA does not address the computation of tax for the final tax year, however, the repeal language in MCL 208.152 requires the Department of Treasury to "prorate the liability for the tax

imposed under the single business tax act as necessary to impose the equivalent of a tax at the rate of zero on business activity after December 31, 2007."

Consequently, a fiscal year taxpayer may elect to compute the tax for the final short period SBT year and the initial short period MBT year in accordance with 1 of the following methods:

1. Annual - The tax may be computed as if the Act(s) were effective throughout the taxpayer's 2007-08 federal tax period and the amount computed multiplied by a fraction, the numerator of which is the number of months of the federal period that fall in 2007 or 2008, and the denominator of which is the number of months in the full federal period (typically 12).
2. Actual - The tax may be computed based on actual business activity occurring in the final/initial short period in accordance with an accounting method satisfactory to the department that reflects the actual business activity attributable to the period. The method of accounting used in prior fiscal years will be assumed to reflect the actual tax base attributable to the period.

The method the taxpayer employs for its final SBT return must also be used for the initial MBT return. Thus, if a taxpayer elects to use the annual method for its final SBT return it must also use the annual method for its initial MBT return.

A12. Will there be E services with MBT?

The Department is working on the implementation of electronic filing for MBT returns and plans to have this service available when the initial 2008 calendar years returns become due in April of 2009.

A13. (Answer rescinded, replacement located at A24) Will a safe harbor be allowed for 2008 estimates based on the 2007 SBT return?

A14. Will the business income tax and modified gross receipts tax be filed on a single return or on separate returns?

For taxpayers other than insurance companies and financial institutions, there will be a single MBT return that includes both the business income and modified gross receipts taxes. There may be multiple schedules.

A15. May a taxpayer make estimated MBT payments on Form 160, the Combined Return for Michigan Taxes, and if so, how will the different due dates be reconciled?

For a calendar year taxpayer, MBT quarterly returns are due the 15th day of April, July, October and January. For fiscal year filers, quarterly returns are due the 15th day of the first month after each quarter. MBT payments may be made with either of the following returns:

- Form 4548, *Michigan Business Tax Quarterly Return*, or
- Form 160, *Combined Return for Michigan Taxes*.

If filing monthly using Form 160, *Combined Return for Michigan Taxes*, and not making remittances by electronic funds transfer, monthly payments may be filed on the 20th day of the month. For example, a calendar year taxpayer may file monthly MBT estimates using Form 160 on February 20th, March 20th and on April 20th rather than April 15 for the first quarter. However, for taxpayers required to make remittances by electronic funds transfer or otherwise not using Form 160, MBT estimates remain due on the 15th day of the month following the final month of the quarter. Regardless of the method chosen, the estimated MBT for the quarter must also reasonably approximate the liability for the quarter.

A16. Will SBT overpayments be applied to MBT?

Yes. At the option of the taxpayer, any SBT overpayments from the final return may be either refunded or carried forward and applied to the initial MBT return. For fiscal years filers, the final SBT return must be made on a short year return filed for the period ending on December 31, 2007. The due date of the final SBT short year return will be April 30, 2008. If payment of the estimated tax due is made on or before this due date with an extension request, an extension of time to file the short year return will automatically be granted until the standard fiscal year due date.

A17. Will an estimated return be due for a taxpayer with a short taxable year of less than four months under the MBT?

No. An estimated return is not required for a fiscal year filer with a short taxable year of less than four calendar months under the MBT. This is similar to the treatment under IRS regulation 1.6655-5.

Payment of the annual tax liability remains due on the last day of the fourth month after the end of the fiscal year. Returns for fiscal years ending in 2008 will automatically be extended to be due the same date as 2008 calendar year returns, April 30, 2009.

For example, for a fiscal year taxpayer with a January 31, 2008 year end, an estimate would normally be due on February 15, 2008. However, this taxpayer has a short taxable year of less than four months and is not required to make an estimated return or payment. The taxpayer must pay its annual liability on May 31, 2008 but its annual return will be extended until April 30, 2009.

A18. What is the filing threshold under the Michigan Business Tax Act (MBTA)?

Section 505(1) (MCL 208.1505(1)) of the MBTA directs that a taxpayer, *other than* an insurance company or financial institution, whose apportioned or allocated gross receipts are less than \$350,000.00, does not need to file a return or pay the tax imposed under the MBTA.

An insurance company, regulated by chapter 2A of the MBTA, does not have a filing threshold regarding its liability to pay the tax on gross direct premiums written on Michigan property or risk. Likewise, a financial institution, regulated by chapter 2B of the MBTA, does not have a filing threshold regarding its liability to pay the franchise tax on its net capital.

A19. When are the first and second estimated MBT payments due for a fiscal year filer with an April 30, 2008 year end?

Section 501(2) of the MBTA (MCL 208.1501(2)) instructs that, "Taxpayers not on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date which in the taxpayer's fiscal year corresponds to the calendar year."

The taxpayer in this question has a fiscal year that runs from May 1, 2007 through April 30, 2008. The Single Business Tax Act (SBTA) would apply to the taxpayer's business activity from May 1, 2007 through December 31, 2007. Under the SBTA, the taxpayer's quarterly estimated payments are due on August 31 and November 30. Based upon the prior fiscal year end, the taxpayer's first quarterly estimated payment of MBT is due on February 15, 2008, and the second on May 15, 2008.

A20. Can a fiscal year filer request an extension for the first MBT return?

Fiscal year taxpayers will be granted an automatic extension for their 2008 fiscal year annual return. Returns for fiscal years ending in 2008 will be due the same date as 2008 calendar year returns, which is April 30, 2009. However, an extension of time to file is not an extension of time to pay. An extension request form need not be filed unless required to transmit payment of any tax that would be due with the annual return. The annual return tax due must be paid by the original due date, which is the last day of the fourth month after the end of the fiscal year.

A fiscal year taxpayer may request an additional extension on Form 4, *Application for Extension of Time to File Michigan Tax Returns*, if the extension to April 30, 2009 is not sufficient, e.g., a taxpayer with a fiscal year ending November 2008, with a federal extension granted through September 2009.

A21. (Answer rescinded, replacement located at A25) How does a taxpayer with a fiscal year end calculate tax under the MBT for estimate purposes?

A22. Will taxpayers need to calculate the business income, modified gross receipts, and surcharge separately and pay 85% of each to meet the estimated tax payment safe harbor provision in order to avoid interest?

Tax liability is comprised of the two tax bases and the surcharge. The first tax base, federal taxable income derived from business activity is defined at MCL 208.1201. Modified gross receipts, the second tax base, is addressed at MCL 208.1203. The surcharge is calculated against the two tax bases and levied in defined percentages as described at MCL 208.1281.

These three components form the basis for tax liability. Estimated tax payments are governed by Section 501, which states that interest will not be assessed if the sum of the estimated payments equals at least 85% of the liability and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which each estimate is made. Therefore, while a calculation must be made for the business income tax base, the gross receipts tax base, and the surcharge calculated with reference to those tax bases in order to determine tax liability, only one estimated payment of 85% of that liability need be remitted. There is no requirement to remit an estimated payment for each separate tax liability component.

A23. How are quarterly estimates calculated?

The sum of estimated payments must equal at least 85% of estimated tax liability for the year, and the amount of each estimated payment must reasonably approximate the tax liability for that quarter. For Tax Year 2009 and after, if prior year's tax is \$20,000 or less, estimated tax may be based in the prior year's amount in four equal payments, the sum of which equals the previous year's tax liability. If the year's tax liability is \$800 or less, quarterly returns are not required.

Quarterly estimates must be calculated to take into account the surcharge, as explained at MCL 208.1281.

A24. Will a safe harbor be allowed for 2008 estimates based on the 2007 SBT return? No. For the 2008 tax year, estimated MBT payments must be computed on the actual business income tax base, modified gross receipts tax base and surcharge of the period combined. No interest will be charged if payments are made on time, the sum of the estimated payments equals at least 85% of annual liability, and the amount of each payment reasonably approximates the tax liability incurred during the period. Estimates cannot be based on the prior year's SBT liability and cannot be based on 1% of gross receipts.

For the 2009 and subsequent tax years, if prior year's tax is \$20,000 or less, estimated tax may be based on the prior year's amount in four equal payments, the sum of which equals the previous year's tax liability.

A25. How does a taxpayer with a fiscal year end calculate tax under the MBT for estimate purposes?

If estimated tax liability for the year is over \$800.00 a taxpayer must file estimated quarterly returns and payments. MCL 208.1501(1). Quarterly returns for fiscal year taxpayers are due the 15th day of the first month after each quarter. MCL 208.1501(2). Any quarter less than 3 months is due on

the 15th day of the month immediately following the final month of the quarter. In the case of a short taxable year, no estimated tax payment is required if the short taxable year is a period of less than four full calendar months; or the estimated tax liability for the year is \$800.00 or less. See IRS Reg. 1.6655-5(b); MCL 208.1501(1).

The estimated payment made with each quarterly return must be for the total estimated business income tax base, modified gross receipts tax base and surcharge for the quarter, or 25% of the estimated annual liability including surcharge. MCL 208.1281(5), 1501(3). To avoid interest charges, estimated payments must equal at least 85% of the liability for the tax year, and the amount of each estimated payment must reasonably approximate the tax liability for each quarter. MCL 208.1501(4)(a). If the year's tax liability is \$800.00 or less, quarterly returns are not required. MCL 208.1501(1). Estimates cannot be based on the prior year's SBT liability, and can no longer be based on 1% of gross receipts.

For taxpayers whose apportioned or allocated gross receipts equal \$350,000 or more, the MBTA imposes a 4.95% business income tax and a modified gross receipts tax at the rate of 0.8%. MCL 208.1201, 1203. A credit reduces the tax correspondingly if gross receipts are between \$350,000 and \$700,000. MCL 208.1411.

For most taxpayers, the business income tax base is essentially that part of federal taxable income derived from business activity, modified by the following to the extent included in, excluded from, or deducted in arriving at federal taxable income:

Additions:

- Interest income and dividends derived from obligations or securities of states other than Michigan,
- Taxes on or measured by net income and the tax imposed under the MBT,
- Any carryback or carryover of a net operating loss,
- Loss attributable to another taxable entity,
- Royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group.

Subtractions:

- Dividends and royalties received from persons other than United States persons and foreign operating entities,
- Income attributable to another taxable entity,
- Interest income derived from United States obligations,
- Earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital.

Business Income does not include personal transactions as defined by MCL 208.1105(2).

The modified gross receipts tax base consists of gross receipts less purchases from other firms. MCL 208.1111. Gross receipts is defined as the entire amount received by a taxpayer from any activity carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others, with certain specific exceptions. MCL 208.1111. "Purchases from other firms" is generally limited to inventory acquired during the tax year, depreciable assets acquired during the tax year, and materials and supplies directly connected to inventory on depreciable assets. MCL 208.1113(4). Gross Receipts does not include personal transactions as defined by MCL 208.1111(1)(v)(v).

The surcharge is calculated on a taxpayer's liability after allocation or apportionment and before the calculation of credits. MCL 208.1281(1). The surcharge is imposed in the amount of 21.99% of liability and capped at \$6 million for all taxpayers except financial institutions. MCL 208.1281(3) and 208.1281(1)(a).

A26. (Answer rescinded, replacement located at A30) Will a taxpayer be required to make a payment with an extension request or is the listing of estimated payments made going to be accepted as it is in the Single Business Tax?

A27. Does the \$350,000 filing threshold apply to just the gross receipts tax or to both the gross receipts and business income taxes?

If a taxpayer exceeds the filing threshold provided in Section 505, and has apportioned or allocated gross receipts of \$350,000.00 or more, the taxpayer is liable for both the business income tax, under Section 201, and modified gross receipts tax, under Section 203. The taxpayer must file an MBT return.

An insurance company, regulated by chapter 2A of the MBTA, does not have a filing threshold regarding its liability to pay the tax on gross direct premiums written on Michigan property or risk. Likewise, a financial institution, regulated by chapter 2B of the MBTA, does not have a filing threshold regarding its liability to pay the franchise tax on its net capital.

A28. The SBT has a Notice of No Return, Form C-8030 to be filed by taxpayers who were not required to file. Will there be a similar MBT form?

No. The C-8030 does not constitute a return and therefore does not start the statute of limitations process. The notices cause an unnecessary burden and expense to both taxpayers and the Department. Should the Department have a question regarding a taxpayer's filing obligation, the Department will request information from the taxpayer.

A29. How must a fiscal year taxpayer calculate quarterly estimated payments if one quarter straddles the period in which the SBT ends and the MBT begins? Must a fiscal year taxpayer pay its final SBT quarterly estimated payment or can the taxpayer pay all remaining liability on its final SBT return?

The first MBT estimate is based on the number of months in the fiscal year quarter that fall within 2008. The quarterly estimate should be based on the actual business income tax base, modified gross receipts tax base and surcharge of the single month and should not be computed using any period from the last SBT tax year. Estimates cannot be based on the prior year's SBT tax liability.

A taxpayer must file its estimated SBT quarterly returns by the due date. If the taxpayer fails to make the estimated payment to cover the estimated SBT tax liability, the taxpayer is subject to penalty. The fact that the taxpayer's payment on the final return covers the taxpayer's liability does not negate a penalty liability for failure to make the estimated SBT quarterly payment required. The existing requirements governing payment of SBT liability continue to apply and will be enforced.

A30. Will a taxpayer be required to make a payment with an extension request or is the listing of estimated payments made going to be accepted as it is in the Single Business Tax?

If the extension request shows that estimated payments have been made that result in no unpaid estimated tax liability for the tax period covered by the extension, then no payment must accompany the extension request.

A31. When is the final short period Single Business Tax (SBT) return due for a fiscal year taxpayer? If the taxpayer chooses the annual method for calculating the final SBT liability, how does it file timely for the fiscal year that is required to close on December 31, 2007 for SBT reporting purposes?

The deadline for the filing and payment of final SBT liability for all taxpayers, both calendar year and fiscal year, is April 30, 2008.

Upon request of the taxpayer, the Department of Treasury (Department) will grant an extension to a taxpayer whose fiscal year extends beyond April 30, 2008, provided that substantially all of the tax estimated to be due is paid with the request for extension, in compliance with section 73 of the Single Business Tax Act, MCL 208.73.

Thus, if payment of the estimated tax due is made on or before April 30, 2008 with an extension request, an extension of time to file the short year return will be granted based on the taxpayer's fiscal year as reported on their federal return. The extension of 180 or 240 days will be calculated from the end of the fourth month following the federal tax year end. See instructions for the 2007 Form 4, *Application for Extension of Time to File Michigan Tax Returns*.

For a fiscal year filer with a late in the year year end, e.g., September 30, if the standard SBT extension period is not sufficient to allow a fiscal year taxpayer to gather necessary information for its final SBT return, the Department will, upon request, grant a special extension appropriate to the circumstances.

A32. Will Voluntary Disclosure continue with the Michigan Business Tax?

Yes, the Department is required to administer the Michigan Business Tax under the Revenue Act, 1941 PA 122. See MCL 208.1513(1). Voluntary Disclosure agreements are provided for under the Revenue Act at MCL 205.30c. The State Treasurer, or a representative, is authorized to enter into a voluntary disclosure agreement with non-filers that have a nexus filing responsibility and who meet certain other statutory criteria. Under a voluntary disclosure agreement, eligible persons may file returns and pay taxes and interest for a limited lookback period of four years without imposition of penalties, in exchange for future tax compliance.

While Voluntary Disclosure will continue with the Michigan Business Tax a taxpayer must still meet the statutory qualifications to enter into an agreement.

A33. Can a taxpayer who claims an error was made in the calculation of an MBT quarterly estimated payment request a refund of that payment without filing an annual MBT return?

Generally, no. Estimated payments are required for taxpayers who expect to owe an annual liability of at least \$800.00. MCL 208.1501(1). The amount, manner of payment, and due dates of the quarterly estimated payments are all established in section 501, MCL 208.1501. Payments made under section 501 are a credit against the payment required with the annual return required under section 505. MCL 208.1501(7). Section 505 (MCL 208.1505) requires all taxpayers who meet the filing thresholds and nexus standards of the MBT act to file an annual or final return in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year.

A refund claim of overpaid MBT estimates may be made pursuant to section 30(2) of the Revenue Act (MCL 205.30(2)), which states:

(2) A taxpayer who paid a tax that the taxpayer claims is not due may petition the department for refund of the amount paid within the time period specified as the statute of limitations in section 27a [of the Revenue Act]. If a tax return reflects an overpayment or credits in excess of the tax, the declaration of that fact on the return constitutes a claim for refund. If the department agrees the claim is valid, the amount of overpayment, penalties, and interest shall be first applied to any known liability as provided in section 30a, and the excess, if any, shall be refunded to the taxpayer or credited, at the taxpayer's request, against any current or subsequent tax liability. (Emphasis added)

A34. The first MBT annual returns could be due before MBT forms are released to the taxpayer public. Will penalties be waived for these first MBT returns if taxpayers make a good-faith guess as to liability?

Because fiscal year taxpayers will be granted an automatic extension for their 2008 fiscal year annual return with an extended due date of April 30, 2009, MBT annual returns will not be due before forms are released later this year (2008).

In accordance with MBT Section 501, "interest provided by this act shall not be assessed ... (a) If the sum of the estimated payments equals at least 85% of the liability and the amount of each estimated payment reasonably approximates the tax liability incurred during the quarter for which the estimated payment was made." MCL 208.1501(4)(a). While the Revenue Act also provides for imposition of penalties "if a taxpayer fails or refuses to file a return or pay a tax within the time specified" [MCL 205.24(2)], penalties would not be imposed if the criteria of Section 501 described above are timely met.

A35. Will there be other E services available with the MBT, in addition to electronic filing?

Yes. E-Service through the "Check My Tax Info" portion of Treasury's website will also be available in 2009, after initial returns have been received by the department. Information similar to that currently required for access to SBT tax information will be required for access to MBT account information which will include payment information, status of returns and correspondence.

A36. Will an overpayment made in connection with a taxpayer's final SBT return be applied as timely against that taxpayer's first quarter MBT estimate, even though the overpayment may have been made after the due date for the first quarter MBT estimated payment?

Yes, if a taxpayer pays the amount due with its final SBT return, and that return is timely filed (by the due date or, if an extension has been obtained, by the extended due date), any overpayment resulting from that return will be credited by the Department toward the amount owing under that taxpayer's first quarterly estimated payment under the MBT. As long as the final SBT return is timely filed, the overpayment will be credited as a timely payment against the taxpayer's first quarterly MBT estimate, even though the date of the SBT overpayment may have been later than the due date for the estimated payment.

A37. Is there a form to file to notify the Department that I will not be filing an MBT return (similar to form C-8030 for SBT)?

The Michigan Business Tax (MBT) does not have an equivalent to the form C-8030, Michigan Single Business Tax Notice of No SBT Return Required. A taxpayer with apportioned or allocated gross receipts less than \$350,000 is not required to file an MBT return, and it is not necessary to file a notice to the Department that an MBT return will not be filed.

A38. Can modified gross receipts (MGR) tax separately collected from customers by new motor vehicle dealers and new or used watercraft dealers be remitted with monthly sales, use and withholding returns?

Yes. New motor vehicle dealers and new or used watercraft dealers who elect to separately collect the MGR tax, in addition to sales price, under MCL 208.1203(5) may file and remit the tax as estimated payments with their quarterly or monthly Form 160, *Combined Return for Michigan Taxes*. Generally, for a calendar year taxpayer, MBT quarterly returns are due the 15th day of April, July, October and January. For fiscal year filers, quarterly returns are due the 15th day of the first month after each quarter. MBT payments may be made with either of the following returns:

- Form 4548, *Michigan Business Tax Quarterly Return*, or
- Form 160, *Combined Return for Michigan Taxes*.

If filing monthly using Form 160, *Combined Return for Michigan Taxes*, and not making remittances by electronic funds transfer, monthly payments may be filed on the 20th day of the month. For

example, a calendar year taxpayer may file monthly MBT estimates using Form 160 on February 20th, March 20th and on April 20th rather than April 15 for the first quarter. However, for taxpayers required to make remittances by electronic funds transfer or otherwise not using Form 160, MBT estimates remain due on the 15th day of the month following the final month of the quarter. Regardless of the method chosen, the estimated MBT for the quarter must also reasonably approximate the liability for the quarter.

A39. How is the book-tax deduction, provided at MCL 208.1201(2)(i), calculated? The deduction is determined by:

- 1) Calculate the difference between the value of all assets on the books of a taxpayer for the first fiscal period ending after July 12, 2007 and the federal tax basis for those same assets for the same period. (For a UBG, compute for each member entity individually. The group will file one combined Form 4593, entering the result for each member of the group separately).
- 2) Calculate the amount needed to offset the net deferred tax liability of the taxpayer which results from the imposition of the business income tax, at a rate of 4.95%, and the modified gross receipts tax, at a rate of .8%, calculated for the first fiscal period ending after July 12, 2007.
- 3) Take the lesser of the result of (1) or (2).
- 4) For the 2015 through 2019 tax years apply 4%, for the 2020 through 2024 tax years apply 6%, and for the 2025 through 2029 tax years apply 10% to the result of step (3).
- 5) Subtract the result of step (4) from business income in appropriate tax year.

Examples

Example 1: Company A reviews all assets on its books as of its first fiscal period which ends after July 12, 2007 and which includes the enactment date of the MBT. The book value of these assets is then compared to the federal tax basis of the same assets for the same period. The difference between the assets is calculated at \$5,000. Company A calculates its net deferred liability in accordance with GAAP for this same period at \$7,000. Company A reports a \$5,000 book-tax difference to the Department on Form 4593 with its first MBT return. Beginning in the 2015 tax year, Company A may take 4% of the \$5,000, (the lesser of the book-tax or net deferred tax liability) or \$200, as a deduction to business income. Beginning in the 2020 tax year Company A may take 6%, or \$300 as a deduction, and beginning in the 2025 tax year the deduction will equal 10% or \$500.

Example 2: Entities A, B and C, members of a unitary business group individually calculate their book-tax difference based on their own books and records for the appropriate fiscal period. The UBG files one Form 4593 with its initial MBT return. Entity A reports a book-tax difference of \$500, B reports \$1,000 and C reports \$2,000. The net deferred tax liability is calculated for the group in accordance with GAAP at \$3,000. Beginning in the 2015 tax year the UBG will begin to take a percentage of \$3,000, which is the lesser of the net deferred tax liability of the group and the combined book tax difference of the three group members.

A40. What method must a fiscal year taxpayer that will no longer be a taxpayer under the MBT or CIT after December 31, 2011, use to calculate its final MBT return?

The actual method. That is, the tax must be computed using an accounting method that reflects the actual tax basis attributable to the period.

A41. What method must a fiscal year taxpayer with an MBT election use to file returns for its tax year ending in 2012?

All MBT taxpayers must file a final MBT return for the tax year ending on December 31, 2011, including a fiscal year taxpayer with a certificated credit who elects to continue to be taxed under the Michigan Business Tax Act.

MCL 208.1117(4) directs that a taxpayer with a fiscal tax year ending after December 31, 2011 is considered to have 2 separate tax years. The first tax year is the fractional part of the fiscal tax year before January 1, 2012, and the second tax year is the fractional part of the fiscal tax year after December 31, 2011.

This means that it will be necessary for each fiscal year filer that makes the MBT election to file two short year returns.

A fiscal year taxpayer that has a certificated credit and elects to remain taxed under the MBTA must use the same method, annual or actual, to compute its MBT for each short period return for each respective portion of the same fiscal year. See MCL 208.1503(3).

Thus, if the taxpayer selects the annual method to compute its MBT for the short period from the beginning of the taxpayer's fiscal year through December 31, 2011, then the taxpayer must select the annual method to compute its MBT for the short period from January 1, 2012, to the end of the taxpayer's fiscal year.

Apportionment

Ap1. Under Chapter 3 of the MBT, if the business activities of a taxpayer are subject to tax within and without the state, each tax base must be apportioned based on the formula of sales in Michigan over sales everywhere. For purposes of apportionment, "sale" is defined in part as:

[t]he transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. [MCL 208.1115(1).]

Is the occasional sale of assets by a taxpayer a "sale" for apportionment purposes?

No, so long as the assets sold are neither stock in trade nor inventory and are not held by the taxpayer for sale to customers in the ordinary course of the taxpayer's business. This determination is made on a facts and circumstances basis. For example, the occasional and isolated sale of a desk by a law firm is not a "sale" under MCL 208.1115; the desk does not constitute stock in trade or inventory to the law firm and is not held by the taxpayer primarily for sale to customers in the ordinary course of the law firm's business. In contrast, if the law firm operates a program under which office furniture is routinely and systematically sold at auction, then such sales would be "sales" under MCL 208.1115.

If a transaction is not a "sale" under MCL 208.1115, it will be excluded from both the numerator and denominator of the sales factor.

"Sales" under MCL 208.1115 may still be included in the business income and modified gross receipts tax bases.

Ap2. How are gross receipts, rents etc. received from real property apportioned?

Receipts from real property are apportioned based on location of the real property.

Rental income received from real property is included in both the business income from business activity tax base and modified gross receipts tax base of the taxpayer. Business activity includes the rental of property. MCL 208.1105(1).

Under MCL 205.1301(1) each tax base is apportioned or allocated in accordance with the rules under Chapter 3 of the Act. Sales confined solely to Michigan are allocated to Michigan. Sales within and outside of Michigan are apportioned based on a sales factor calculated under section 303. MCL 208.1301(2).

The sales factor is a fraction, the numerator is Michigan sales and the denominator is sales everywhere. MCL 208.1303(1). Receipts from the sale, lease, rental or licensing of real property are Michigan sales if the property is located in Michigan. MCL 208.1305(1)(b).

Ap3. Does the Michigan Business Tax Act (MBTA) provide for “throw back sales”?

The MBTA does not provide for “throw back sales.” A “throw back sale” describes a situation in which the income or activity from a Michigan taxpayer’s sale of tangible personal property to an out-of-state purchaser is not taxable in the state of the purchaser. The sale would then be “thrown back” to Michigan by inclusion in the sales apportionment factor’s numerator, and increase the portion of the tax base subject to the Michigan Business Tax.

Sales to destinations outside Michigan need not be included in the MBT sales factor numerator regardless of whether nexus exists or tax is paid in the destination jurisdiction. However, if the taxpayer does not have nexus in at least one other state, they cannot apportion their tax base, and all business income, modified gross receipts and net capital tax bases are fully allocated to Michigan. The direct premiums tax base for insurance companies is not subject to apportionment.

Ap4. What is the location of investment partnerships? Is it based on the residence of the general partner, the location of the brokerage firm, the residences of the majority of partners, or where the partnership was formed?

An investment partnership is typically organized as a limited partnership in which the investors (or limited partners) pool funds that are professionally managed by a money manager who acts as a general partner. The money manager generally has a small ownership interest in the partnership and is compensated through a set management fee and a designated percentage of the overall partnership investment profits.

For purposes of the MBT, a taxpayer is subject to tax in Michigan if the taxpayer has (1) substantial nexus in Michigan as defined in section 200 (MCL 208.1200) and (2) meets the gross receipts threshold of \$350,000 under section 505 (MCL 208.1505). Substantial nexus is defined to mean either a physical presence in this state for a period of more than 1 day during the tax year or engagement in active solicitation of sales in this state with Michigan sourced gross receipts of \$350,000 or more.

In the typical investment partnership described above, the location of the office from which the fund manager or general partner conducts the business activity of the partnership would constitute physical presence for purposes of the MBT nexus standards under MCL 208.1200. If this office is located in Michigan, the partnership would have physical presence in Michigan and have nexus for purposes of the MBT. If the gross receipts of this partnership were \$350,000 or more, the partnership would be subject to MBT.

Ap5. (This FAQ has been amended due to 2011 PA 305.) Under MCL 208.1115, "sales" means "[f]or taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities." Does this definition include the investment income of individuals?

Yes, for those taxpayers who are not engaged in any other business activity other than investing and trading, the definition of "sales" would include investment income of individuals in the apportionment factor. However as a practical matter, while investment income may constitute "sales" for apportionment purposes, an individual not engaged in a trade or business may have no tax base to apportion. This is so because investment and trading income of an individual does not constitute business income or gross receipts so long as the income or gross receipts is not derived in the regular course of the individual's trade or business.

Business Income Tax

B1. Will shareholders of S corporations and partners in partnerships be liable for Michigan individual income tax on their share of flow-through income from entities subject to MBT? Does it matter whether the shareholders or partners are residents or nonresidents?

Both residents and nonresidents of Michigan are subject to Michigan income tax on their share of income from partnerships and S corporations to the extent the income is attributable to Michigan under the allocation and apportionment provisions of the Michigan Income Tax Act (MCL 206.111 - 115) and included in adjusted gross income on the partner or shareholder's federal income tax return. The imposition of the Michigan business income tax on a flow through entity under section 201 of the Michigan Business Tax Act does not affect the imposition of the Michigan income tax under section 51 of the Michigan income tax act (MCL 206.51) on the individual partners or shareholders of the flow through entity.

B2. Under MCL 208.1201, the business income tax base means the business income of the taxpayer subject to certain adjustments, including a deduction for net earnings from self-employment. Specifically, the section instructs "[t]o the extent included in federal taxable income, deduct any earnings that are net earnings from self-employment as defined under section 1402 of the [IRC] of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital." MCL 208.1201(2)(h). What impact does this deduction have on the business income tax base of professional service partnerships (for example, some consulting, law, and accounting firms)?

The impact of any deduction from business income to calculate the tax base varies by taxpayer. However, net earnings from self-employment under IRC 1402 generally means "the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in [IRC] 702(a)(8) from any trade or business carried on by a partnership of which he is a member," subject to certain exclusions, including rentals from real estate, dividends and interest, and certain net operating losses and personal exemptions. IRC 1402(a). Therefore, the deduction from business income for net earnings from self-employment for some professional service partnerships is likely to result in a significantly reduced business income tax base.

B3. Corporations, Limited Liability Companies (LLCs), and Partnerships will be able to fully deduct amounts paid out as compensation to employees, as well as a 100% deduction for distributions that are subject to self-employment income tax. Are S corporations treated in the same manner as partnerships and corporations in this regard? Can you clarify the treatment of S corporation distributions?

The starting point for the calculation of the income tax component of the MBT is business income, defined generally as "that part of federal taxable income derived from business activity." MCL 208.1105(2). Corporations, including S corporations, LLCs, partnerships, sole proprietorships, and any other business entity subject to MBT may deduct all compensation paid to employees to the full extent deducted in arriving at federal taxable income when computing the MBT income tax base under MCL 208.1201.

MCL 208.1201 provides for a series of specific adjustments that must be made to business income to arrive at the business income tax base. One of these adjustments is a deduction for self-employment income as defined in section 1402 of the Internal Revenue Code. MCL 208.1201(2)(h). Under section 1402, the business income of an individual or sole proprietor, and a partner's distributive share of partnership income, whether distributed or not, from any trade or business carried on by the partnership, may be considered self-employment income (with certain statutory exceptions), and subject to the federal self employment tax. Therefore, a sole proprietorship or partnership may deduct any income subject to the federal self employment tax when computing the MBT income tax base. Corporations, including S corporations, are not subject to self employment tax, and, as a result, no deduction is allowed for earnings from self employment income for corporate entities. There is no deduction allowed for S corporation distributions that is equivalent to the self employment deduction allowed for partnerships and sole proprietorships under the MBT.

B4. Are capital gains that are included in the Modified Gross Receipts tax base also included in the Business Income tax base?

Yes, the Business Income tax base is a separate and distinct tax base from the Modified Gross Receipts tax base. A taxpayer's Business Income tax base is its business income subject to certain statutory adjustments before allocation or apportionment. MCL 208.1201(2). Business income is generally defined as "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" is defined in part as "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, . . . , made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, . . ." MCL 208.1105(1).

MCL 208.1201 of the MBT makes no provision for the adjustment of capital gains that may be included in federal taxable income derived from business activity. As a result, to the extent the capital gain is derived from the business activity of the taxpayer it must also be included in the business income tax base.

B5. Is the deduction provided under MCL 208.1201(2)(i) altered by the MBT surcharge?

No. The deduction provided in section 201(2)(i) functions to offset the book-to-tax difference or deferred tax liability resulting from the change from the SBT to the MBT. The credit is taken in defined percentages beginning in tax year 2015. MCL 208.1201(2)(i).

MCL 208.1201(3) states that the deduction is only available in "the amount necessary to offset the net deferred tax liability" which would result under the business income tax under section 201 and the modified gross receipts tax under section 203. The amount of the deferred tax liability and the corresponding deduction will be calculated without reference to the surcharge, and the deduction will therefore remain the same as calculated prior to the enactment of 2007 PA 145.

The Department recognizes that this is a significant issue for the business community creating a need for guidance upon which it can rely. While the business community may rely on this form of guidance, the Department also intends to issue a Revenue Administrative Bulletin in the near future that further explains the position described above.

B6. Does the deduction provided under MCL 208.1201(2)(i) reduce the MBT surcharge imposed under MCL 208.1281(1)?

Yes. MCL 208.1201(3) directs that the deduction “is intended to flow through and reduce the surcharge imposed and levied under section 281.” (Emphasis added). This same section explains that the deduction is calculated as the “the amount necessary to offset the net deferred tax liability” which would result under the business income tax under section 201 and the modified gross receipts tax under section 203. MCL 208.1201(3). The surcharge is calculated against a “taxpayer’s liability under [the MBT] after allocation or apportionment to this state under this act but before calculation of the various credits.” The surcharge is, thus, calculated against a taxpayer’s business income and gross receipt liabilities. Therefore, the deduction, which reduces the business income tax base upon which the surcharge is calculated, will flow through and reduce the surcharge.

The Department recognizes that this is a significant issue for the business community creating a need for guidance upon which it can rely. While the business community may rely on this form of guidance, the Department also intends to issue a Revenue Administrative Bulletin in the near future that further explains the position described above.

B7. Are system software royalties, excluded from the determination of tax liability under the Single Business Tax Act (“SBTA”) (see MCL 208.9(4)(g)(viii) and (7)(c)(vii)), likewise excluded from the determination of tax liability under the Michigan Business Tax Act (“MBTA”)?

No. System software royalties are included in the determination of the Business Income tax base and the Modified Gross Receipts tax base under the MBTA. Unlike in the SBTA, there is no language in the MBTA which excludes such royalties from the calculation of either of these taxes.

Under the MBTA, a taxpayer (other than a financial institution or insurance company) is subject to two separate and distinct taxes, a Business Income tax and a Modified Gross Receipts tax. A taxpayer’s Business Income is subject to certain statutory adjustments before allocation or apportionment. MCL 208.1201(2). Business income is generally defined as “that part of federal taxable income derived from business activity.” MCL 208.1105(2). “Business activity” is defined in part as “a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, . . . , made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others,” MCL 208.1105(1). MCL 208.1201(2)(f) states that “Except as otherwise provided under this subsection, to the extent deducted in arriving at federal taxable income, [a taxpayer must add to the Business Income tax base] any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer’s unitary business group.” MCL 208.1201(2)(f). There is no language in the MBTA excluding system software royalties from Business Income.

Likewise, there is no language in the MBTA excluding system software royalties from the Modified Gross Receipts tax base. Generally, a taxpayer’s Modified Gross Receipts tax base is “a taxpayer’s gross receipts less purchases from other firms before apportionment....” MCL 208.1203(3). “Gross Receipts” is defined in part as “the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others....” MCL 208.1111(1). There is no language in the MBTA excluding system software royalties from Gross Receipts.

B8. (This FAQ has been amended due to 2011 PA 305.) Do the business income tax and modified gross receipts tax components of the MBT apply to individuals, estates, and trusts or family limited partnerships that are specifically established for estate planning purposes, on income from investments, such as capital gains, interest, dividends, or other sources of personal income?

No. The definitions of “business income” and “gross receipts” as used in the MBT Act specifically exclude this type of income received by these types of entities from the MBT tax bases and threshold amounts. Investment income, gains from the sale of personal assets or other assets not used in a trade or business, and any other income not specifically derived from a trade or business that is earned, received, or otherwise acquired by certain entities expressly enumerated by the statute are not included in gross receipts for purposes of determining the filing thresholds under sections 200, 411, or 505 (MCL 208.1200, 208.1411, or 208.1505), and are not included in the business income tax base or modified gross receipts tax base under sections 201 and 203, respectively, (MCL 208.1201 and 208.1203). This exclusion applies only to the following types of entities listed in the statute: (1) an individual; (2) an estate; (3) a person organized for estate or gift planning purposes; (4) a person organized exclusively to conduct investment activity solely for an individual or a person related to that individual; or (5) a common trust established under the Collective Investment Funds Act, 1941 PA 174. See MCL 208.1105(2) and 208.1111(4)(w) and (x). Investment income and any other types of income earned or received by all other types of persons or entities not specifically referenced in these revised definitions must be included in the gross receipts and business income of the taxpayer.

B9. (This FAQ has been amended due to 2011 PA 305.) An individual owns 100% of an S corporation law practice with gross receipts of \$500,000, net income of \$100,000 after wages of \$250,000, and also has the following income not related to the S corporation or any other trade or business: dividends of \$100,000, interest of \$250,000, capital gain of \$750,000, and pension of \$100,000. Is he liable for the MBT on a combined basis as an individual and owner of a S corporation?

The definitions of “business income” and “gross receipts” as used in the MBT Act expressly exclude investment income, gains from the sale of personal assets, and other income received by an individual not specifically derived from a trade or business from the definitions of business income and gross receipts, which form the basis of the MBT tax bases under MCL 208.1201 and MCL 208.1203 and the gross receipts filing thresholds under MCL 208.1505. Therefore, the taxpayer in this example would only consist of the S corporation. The MBT tax liability of the S corporation would be determined by reference to gross receipts of \$500,000 and business income of \$100,000. The wage, pension, interest, dividend, and capital gain income of the individual owner of the S corporation that are not related to any trade or business are not subject to MBT.

B10. If a business or unitary group taxpayer has a negative business income tax base, is the 4.95% tax rate applied to the negative business income base, with the result then netted against a positive modified gross receipts tax to determine Michigan Business Tax (“MBT”) liability?

No. Other than for an insurance company under Chapter 2A and a financial institution under Chapter 2B, the Michigan Business Tax Act (“MBTA”) imposes two taxes on a taxpayer: one on business income and one modified gross receipts. The Business Income tax base is a separate and distinct tax base from the Modified Gross Receipts tax base. In determining a taxpayer’s total tax liability under the MBTA, one tax base is not netted, partially or wholly, against the other tax base. If the arithmetic calculation of a taxpayer’s business income tax base for a tax year results in a negative value, then the business income tax base used for purposes of determining total MBT liability is zero. Thus, the 4.95% tax rate for business income applied against a zero tax base produces a business income tax liability of zero. The modified gross receipts tax, calculated by multiplying the modified gross receipts tax rate of 0.80% against the modified gross

receipts tax base after apportionment and allocation, would be added to the zero value business income tax to produce the taxpayer's total MBT liability for the tax year before credits.

Even though a taxpayer may not offset a negative business income tax against a positive marginal gross receipts tax in a given tax year, the taxpayer may, under MCL 208.1201(4), carry forward the negative business loss after allocation or apportionment into the tax year immediately succeeding the loss year as an offset to the allocated or apportioned business income tax base for that succeeding tax year. Such losses may be carried forward up to 10 years following the loss year or until the loss is used up, whichever comes first. Any loss remaining after the 10 year carryforward period specified in MCL 208.1201(4) will expire unused.

B11. If a Michigan LLC has a nonresident corporate partner, does that partner file an MBT return and report and pay tax on its share of LLC income at the same 4.95% [rate]?

No. Assuming the corporation and partnership (LLC) do not constitute a unitary group, each would be a taxpayer and subject to the tax imposed under the MBT only if each had nexus in Michigan per MCL 208.1200(1). In order to meet the nexus standard, the taxpayer would need to have a physical presence in this state of more than one day or actively solicit sales and have Michigan sourced gross receipts of \$350,000 or more. If the only activity the corporate partner has in Michigan is an ownership interest in a Michigan partnership, it would not have nexus in this state under either the physical presence or actively solicits standards stipulated in section 200(1) because it would have no property or employees in Michigan and does not actively solicit sales in Michigan.

B12. Under the MBT, will there be a depreciation deduction, or will Michigan conform to federal depreciation rules?

To the extent applicable, federal depreciation rules are utilized for the purpose of calculating MBT liability. Although there is no specific deduction or credit for depreciation expenses under the MBT, a taxpayer receives the benefit of any depreciation deduction taken on its federal income tax return due to the inherent structure of the business income tax base. An MBT taxpayer's business income tax base is composed of the taxpayer's "business income," with certain adjustments. MCL 208.1201(2). "Business income" is defined under the statute as "that part of *federal taxable income* derived from business activity." MCL 208.1105(2) (emphasis added). Thus, calculation of the business income tax base begins with the taxpayer's federal taxable income, a figure that already includes any deductions taken by the taxpayer on account of depreciation expenses.

Under the former SBT, any amount taken for a depreciation deduction on the taxpayer's federal tax return was required to be added back into the taxpayer's tax base for purposes of calculating SBT liability. MCL 208.9(4)(c). There is no such add-back under the MBT. See MCL 208.1201(2). Because the business income tax base is based upon federal taxable income, and depreciation expenses are not added back in to that tax base, the MBT taxpayer effectively receives the benefit of its federal depreciation deduction.

With respect to the modified gross receipts tax component of the MBT, the entire cost of a depreciable asset may be subtracted from the taxpayer's modified gross receipts tax base in the year that the asset is acquired, since such an asset meets the definition of "purchases from other firms." MCL 208.1203(3); 208.1113(6)(b).

B13. For purposes of applying section 201(2)(f)(ii) of the MBTA, does the phrase "subject to tax in another jurisdiction" refer only to taxation by another state, or does it also include taxation by a foreign country?

The phrase includes taxation by a foreign country. Pursuant to section 201(2)(f) of the MBTA, a taxpayer must add back to its business income tax base "any royalty, interest, or other expense

paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group." MCL 208.1201(2)(f). Such amounts need not be added back, however, if certain conditions are met:

The addition of any royalty, interest or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business purpose other than avoidance of this tax, is conducted with arm's-length pricing and rates and terms as applied in accordance with section 482 and 1274(d) of the internal revenue code, and ...

(ii) Results in double taxation. For purposes of this paragraph, double taxation exists if the transaction is subject to tax in another jurisdiction.

MCL 208.1201(2)(f)(ii). The meaning of the phrase "subject to tax in another jurisdiction" is not specifically set forth in the statute. For purposes of applying this subsection, the Department will interpret "another jurisdiction" to mean any state other than the state of Michigan, or a foreign taxing jurisdiction.

B14. (This FAQ has been amended due to 2011 PA 305.) Is interest and dividend income included in business income under the Michigan Business Tax (MBT)?

Generally yes. Interest and dividend income that results from business activity is included in business income, unless the income is expressly excluded. For an individual, estate or other person organized for estate or gift planning purposes, the MBT excludes from business income, among other items, "[i]ncome from investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the person's trade or business." MCL 208.1105(2)(f)(i). In addition, for person that is organized exclusively to conduct investment activity solely for an individual or persons related to that individual, or for a common trust fund established under the Collective Investment Funds Act, 1941 PA 174, business income for that person or common trust excludes income derived from investment activity unless the activity is in the regular course of the person's or common trust's trade or business. MCL 208.1105(2).

Also excluded are dividends and interest from particular sources. For example, to the extent included in federal taxable income, dividends received from persons other than United States persons and foreign operating entities and interest income derived from United States obligations are excluded. MCL 208.1201(2)(d) and MCL 208.1201(2)(g), respectively.

B15. (This FAQ has been amended due to 2011 PA 305.) Does the sale by an individual of a direct investment in a corporation, partnership or LLC that is not traded on a public exchange constitute "personal investment activity" such that the income and proceeds from such a sale are excluded from business income and gross receipts? Similarly, is the distributive share of a partnership to a partner that is an individual business income or gross receipts to that individual?

For an individual, the sale of an ownership interest in a corporation, partnership, or limited liability company will generally not constitute business income or gross receipts to that individual so long as such investment does not constitute an integral part of the trade or business of the individual. This is true even if the shareholder, partner, or member is an active rather than passive investor. The distributive share of a partnership to a partner that is an individual does not constitute business income or gross receipts to that individual.

B16. (This FAQ has been amended due to 2011 PA 305.) The MBT has been amended to exclude from business income and gross receipts certain personal investment activities. Which taxpayers may exclude personal investment activity from business income and gross

receipts? What about family limited partnerships that demonstrate a business purpose for federal purposes yet are intended to generate valuation discounts for gift and estate tax purposes? What about an investment club organized as a partnership?

MCL 208.1105(2) and 208.1111(1)(w) and (x) exclude from business income and gross receipts income and receipts other than those received from transactions, activities, and sources in the regular course of the taxpayer's trade or business. This exclusion only applies to the following persons:

1. an individual;
2. an estate;
3. a person organized exclusively for estate or gift planning purposes;
4. a person organized exclusively to conduct investment activity solely for an individual or persons related to that individual; and
5. a common trust established under the Collective Investment Funds Act, 1941 PA 174.

Partnerships that demonstrate a business purpose may or may not be "organized for estate or gift planning purposes." To the extent that the partnership, being an investment club or otherwise, was not organized for estate or gift planning purpose or where the income and receipts of such a partnership are derived from sources, transactions or activities of the partnership's regular course of business, such amounts are not excluded from business income and gross receipts under MCL 208.1105(2) or 208.1111(1)(w) and (x).

B17. (Answer rescinded, replacement located at B55) Limited liability companies are included in the definition of "person" under the MBT. Assuming that the federal "check the box" rules are followed, does the business income adjustment set forth at section 201(2)(e), which requires a taxpayer to add the loss or subtract the income attributable to "another entity," apply to the income or loss of a disregarded limited liability company?

B18. (Answer rescinded, replacement located at B44) May taxpayers, including corporations and partnerships, take the IRC 199 deduction for MBT purposes?

B19. (Answer rescinded, replacement located at A54) What is the definition of intangible asset as used in computing the business income tax base?

B20. Our company adds a handling charge to all customer invoices. Is this handling charge taxable under the MBT?

Yes. Under the MBTA, a taxpayer (other than a financial institution or an insurance company) is subject to both a business income tax and a modified gross receipts tax, which together comprise the taxpayer's MBT liability. Handling charges added to customer invoices must be included when determining the taxpayer's business income tax base as well as its modified gross receipts tax base. There is no language in the MBTA which would exclude such handling charges from the calculation of either of these taxes.

For purposes of calculating the business income tax, "business income" is defined generally as "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" means "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others" MCL 208.1105(1). Selling property of any kind to and/or performing services for customers is clearly "business activity"; thus, all income received from

such endeavors, to the extent that it is part of a taxpayer's federal taxable income, constitutes taxable "business income" under the MBTA. There is no language in the MBTA that would exclude handling charges added to customer invoices from business income.

Similarly, a taxpayer calculates its modified gross receipts tax base by determining its gross receipts less "purchases from other firms," as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). "Purchases from other firms" generally includes purchases of inventory, depreciable assets, and materials and supplies used in the taxpayer's business. MCL 208.1113(6). A handling charge is a fee charged to a customer that is typically intended to cover the company's cost of packaging and mailing an order. Handling charges, even if they reflect amounts paid to a third-party that are simply passed through to customers, do not fall within the statutory definition of "purchases from other firms." Therefore, handling charges added to customer invoices are not deducted from gross receipts when determining the modified gross receipts tax base under the MBTA.

B21. A real estate limited partnership owns an apartment project in Michigan. The partnership is in the process of selling the apartment project to avoid foreclosure. The apartment project is the partnership's only asset and the partnership will be dissolved shortly after the sale.

As a result of the sale, the partnership will have a capital gain of approximately \$6.3 million, and, in addition, will have debt forgiven of approximately \$2.6 million. The debt being forgiven is a seller note and accrued interest that was executed in favor of the previous owner of the project. The potential buyer has agreed to pay a portion of the seller note and interest, and the former owner has agreed to forgive the balance of the debt. For federal tax purposes, their cancellation of debt ("COD") income is a pass through item and the ultimate taxability is determined at the partner level instead of the partnership level.

The partnership will be liable for both the modified gross receipts (MGR) and business income tax portions of the MBT on the rental income of the partnership. Will the partnership COD income and capital gain that are passed through to the partners be subject to MBT?

Yes. The partnership in this example would be subject to both components of the MBT on the rental income, the capital gain, and the COD income.

A taxpayer who meets the nexus standards and gross receipts thresholds of the MBT act is subject to a business income tax imposed on the business income base of the taxpayer and a modified gross receipts tax imposed on the modified gross receipts tax base of the taxpayer. MCL 208.1201 and 1203. The business income tax base of a taxpayer means the business income of the taxpayer subject to a series of specific adjustments listed in section 201. MCL 208.1105(2) defines business income, in part, to mean "that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments *and items of income and expense that are attributable to the business activity of the partnership or S corporation and separately reported to the partners or shareholders. . .*". (Emphasis added).

Here, the partnership has both COD income that is attributed to the business activity of the partnership (*i.e.* forgiveness of a debt secured by a partnership asset used in the business) and capital gain attributed to the business activity of the partnership (*i.e.* sale of the same partnership asset) that are separately reported to the partners on the federal K-1 form. While both capital gain and COD income are excluded from the calculation of partnership taxable income on the federal 1065 form, they are both income of the partnership separately reported to the partners on

the K-1 forms, and fall within the plain meaning of business income of a partnership as defined in MCL 208.1105(2), regardless of the ultimate taxability of the COD at the partner's level.

For the calculation of the modified gross receipts tax base under section 203 (MCL 208.1203), gross receipts is defined under section 111 (MCL 208.1111) to mean "the entire amount received from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others," subject to specifically enumerated exceptions. COD income and capital gain of a partnership that are separately reported to the partners are not one of the specifically enumerated exceptions, and are therefore subject to the modified gross receipts tax imposed under section 203 of the MBT.

B22. How is a like-kind exchange treated under the MBT?

Generally, for federal income tax purposes, business or investment property exchanged solely for business or investment property of a like-kind, no gain or loss is recognized under Internal Revenue Code Section 1031. If, as part of the exchange other (not like-kind) property or money is received, gain is recognized to the extent of the other property and money received, but a loss is not recognized. Properties are of like-kind, if they are of the same nature or character, even if they differ in grade or quality.

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, or certain other assets.

To the extent the like-kind exchange is or is not recognized for federal income tax purposes, the MBT Business Income tax base will recognize a similar amount. MBT Business Income means that part of federal taxable income derived from business activity. MCL 208.1105(2).

Like the SBT, the value of property received in a like-kind exchange will be excluded from gross receipts. If, as part of the exchange other (not like-kind) property or money is received and gain is recognized for federal income tax purposes, the gain will be included in gross receipts. Losses that are not recognized for federal income tax purposes similarly are not recognized for MBT and do not reduce gross receipts for the MBT.

Transfers of property in a like-kind exchange are not dispositions and do not cause the recapture of ITC. The transferor is not required to recapture ITC on the transferred property and the transferee is not entitled to ITC on the property received. However, when property that was exchanged in a like-kind exchange is disposed of, the acquisition date of the disposed property will be considered the date the original property was acquired to determine if the disposition causes recapture of ITC.

B23. (This FAQ has been amended due to 2011 PA 305.) Is an individual person who earns more than \$350,000 in interest and dividends for the tax year subject to the MBT? Are the person's capital gains from sales of stock subject to the MBT?

Generally, no. Although the MBT filing threshold is \$350,000 in apportioned or allocated gross receipts, MCL 208.1505(1), the definitions of "business income" and "gross receipts" as used in the MBT Act exclude investment income, gains from the sale of personal assets, and other income received by an individual that are not derived from the person's trade or business. Consequently, such amounts are not included in the determination of such person's MBT business income and gross receipts tax bases or in calculating the MBT filing threshold or the gross receipts filing threshold credit. MCL 208.1505(1); 208.1411. The interest, dividend, and capital gain income of the individual in the example, even if such income totaled more than \$350,000 for a single tax year, would not be subject to the MBT, unless the trade or business of that individual includes making investments and engaging in investment activity.

B24. (Answer rescinded, replacement located at B45) Is the sale of stock by a stockholder in a closely held corporation back to the corporation or another stockholder subject to MBT?

B25. (This FAQ has been amended due to 2011 PA 305.) I am a 100% shareholder of a corporation that does business in Michigan. I am a nonresident of Michigan. The corporation is organized as a C corporation. I sell 100% of the stock of the corporation which results in a capital gain. Is the capital gain from the sale of the stock subject to the new MBT?

Generally, no. The MBT excludes from both its business income and gross receipts tax components of the MBT the income, gain and receipts derived from the sale of an interest in a business that constitutes investment activity that is not part of the regular course of the person's trade or business. See MCL 208.1105(2); and MCL 208.1111(1) (w), (x), respectively. For an individual, the sale of an ownership interest in a corporation, partnership, or limited liability company will generally not constitute business income or gross receipts to that individual unless he or she is in the business of buying and selling ownership interests in these types of business entities. This answer does not change if the individual shareholder, partner, or member is an active rather than passive investor or is a resident rather than a nonresident of Michigan.

In this case, the C corporation is the taxpayer and would be subject to MBT if the nexus standards and gross receipts thresholds are met. A 100% individual shareholder who sells all of some of the ownership interest in the C corporation will not be subject to MBT on any gain recognized from the sale of the stock except as otherwise provided above.

B26. Does the deduction for net earnings from self employment exempt self-employed individuals from taxation under the MBT?

No. The MBT is comprised of the business income tax and the modified gross receipts tax. MCL 208.1201; MCL 208.1203. The business income tax taxes "that part of federal taxable income derived from business activity." MCL 208.1105(2). The modified gross receipts tax is levied on a taxpayer's gross receipts less purchases from other firms, a defined term. MCL 208.1203(3). The deduction for net earnings from self employment is taken from the business income tax base and does not affect the modified gross receipts tax base. Further, the deduction is not an exemption from the business income tax base. MCL 208.1201(2)(h) permits a deduction, to the extent included in federal taxable income, for net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital. [Emphasis added].

IRC 1402 defines net earnings from self employment to generally mean the net income and distributive share of an individual or a member of a partnership. This definition excludes several items of gross income. IRC 1402(a). For example, dividends on stock, interest on bonds, and gain on the sale of a capital asset or sale of property are all excluded from the definition of net earnings from self employment. IRC 1402(a). Each of these items, excluded by definition, will not be part of the net earnings from self employment deduction and will, thus, remain taxable in the business income tax base to the extent included in federal taxable income from business activity.

Finally, the net earnings from self employment deduction does not allow an individual, partner or limited liability company member to deduct amounts that represent a return of capital. These amounts remain taxable in the business income tax base.

B27. Under the Michigan Business Tax Act (MBTA) will a taxpayer receive a deduction for the modified gross receipts tax paid when calculating the business income tax base?

No. While any modified gross receipts tax paid pursuant to the MBTA would generally be a deduction used to arrive at federal taxable income, the starting point for the calculation of the business income tax base, section 201(2)(b) expressly provides an add back for these types of taxes to the extent deducted to arrive at federal taxable income. Specifically, MCL 208.1201(2)(b) states:

“Add taxes on or measured by net income and **the tax imposed under this act** to the extent the taxes were deducted in arriving at federal taxable income”.

Therefore, any modified gross receipts tax paid pursuant to section 203 of the MBTA may not be deducted when computing the business income tax base under section 201.

B28. Is the gain recognized on the one time sale of business assets and goodwill by an entity to another entity taxed under the Michigan Business Tax (MBT)?

Yes, the gain is taxed under the MBT. [The MBT does not provide an exception for non-corporate taxpayers for a casual transaction that was provided for under the SBTA.] To the extent the capital gain is derived from the business activity of the taxpayer and included in federal taxable income it must also be included in the business income tax base. The gain included in federal taxable income is also included in the modified gross receipts tax base. There are no statutory exceptions or exclusions that are applicable to capital gains recognized by a business from the sale of capital assets. As a result, these gains are included in gross receipts and the modified gross receipts tax base. Also see FAQs B4 and M10.

B29. We manufacture customized tooling systems, which we then sell to our customer. After the sale, although the customer owns the tooling, it physically remains at our plant, and we use the tooling to manufacture the customer’s product. Are these sales of tooling taxable under the Michigan Business Tax Act (MBTA)?

Yes. Under the MBTA, a taxpayer (other than a financial institution or an insurance company) is subject to both a business income tax and a modified gross receipts tax, which together comprise the taxpayer’s MBT liability. Proceeds from the sale of custom tooling must be included when determining a taxpayer’s business income tax base as well as its modified gross receipts tax base. There is no language in the MBTA which would exclude such sales from the calculation of either of these taxes.

For purposes of calculating the business income tax component of the MBT, “business income” means “that part of federal taxable income derived from business activity.” MCL 208.1105(2). “Business activity” is broadly defined as “a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others . . .” MCL 208.1105(1). Selling property of any kind (such as the tooling) to customers and performing services (such as the design and manufacture of the tooling) for customers both clearly constitute “business activity”; thus, all income received from such endeavors, to the extent that it is part of a taxpayer’s federal taxable income, constitutes taxable “business income” under the MBTA. There is no language in the MBTA that would exclude sales of custom-made tooling from business income, and the fact that the tooling remains at the manufacturer’s plant does not alter that conclusion.

Similarly, a taxpayer calculates its modified gross receipts tax base by determining its gross receipts less “purchases from other firms,” as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). “Purchases from other firms” generally includes purchases of inventory, depreciable assets, and materials and supplies used in the taxpayer’s business. MCL

208.1113(6). While the customized tooling might otherwise satisfy the definition of a depreciable asset or a material or supply used in the taxpayer's business, the tooling is made and sold, rather than purchased, by the taxpayer. Accordingly, the receipts from the customized tooling cannot be excluded as "purchases from other firms," and sales of such tooling are not deducted from gross receipts when determining the modified gross receipts tax base under the MBTA.

B30. How are accounts receivable factoring companies treated for purposes of the Michigan Business Tax Act (MBTA)?

Factoring is a financial transaction whereby a business sells some or all of its accounts receivable (i.e., its collectible invoices) to a factoring company at a discount. Factoring is to be distinguished from a lending transaction in that the emphasis is on the value of the receivables being sold, not the business's credit worthiness, and the receivables are actually sold to the factoring company, not simply used as collateral. The factoring company assumes all risk on the receivables, and the amount of value assigned to each account typically depends on its age. Factoring can be a one-time transaction, or there can be an on-going relationship between the invoice seller and the factoring company.

Under the MBTA, a taxpayer (other than a financial institution or an insurance company) is subject to both a business income tax and a modified gross receipts tax, which together comprise the taxpayer's MBT liability. Proceeds collected by a factoring company from accounts receivable purchased from other businesses must be included when determining the factoring company's business income tax base and its modified gross receipts tax base. There is no language in the MBTA which would exclude such proceeds from the calculation of either of these taxes.

For purposes of calculating the business income tax component of the MBT, "business income" means "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" is broadly defined as "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others" MCL 208.1105(1). The services provided by a factoring company, including purchasing receivables in exchange for cash and then collecting from the underlying account debtors, clearly constitute "business activity"; thus, all income received from such endeavors, to the extent that it is part of the factoring company's federal taxable income, constitutes taxable "business income" under the MBTA. There is no language in the MBTA that would exclude from the calculation of the business income tax base the proceeds collected by a factoring company from accounts receivable purchased from other businesses.

Similarly, a taxpayer calculates its modified gross receipts tax base by determining its gross receipts less "purchases from other firms," as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). Section 111(1) specifies certain items that are excluded from the definition of "gross receipts." One such exclusion is "[p]roceeds from the taxpayer's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes." The exclusion does not apply to a taxpayer that both buys and sells receivables during the tax year. MCL 208.1111(1)(f). While this exclusion will generally apply to the invoice seller (the factoring company's customer), it does not apply to the factoring company itself, since the factoring company had nothing to do with the sale that generated the transferred account receivable and it therefore will not have included that sale in gross receipts for federal income tax purposes.

"Purchases from other firms" generally includes purchases of inventory, depreciable assets, and materials and supplies used in the taxpayer's business. MCL 208.1113(6). Such "purchases

from other firms" are subtracted from the taxpayer's gross receipts when determining its modified gross receipts tax base. A factoring company's purchase from another business of intangibles such as accounts receivable does not fall within the statutory definition of "purchases from other firms." Accordingly, amounts paid by a factoring company to invoice sellers for accounts receivable are not deducted from the factoring company's gross receipts when determining its modified gross receipts tax base under the MBTA.

B31. (Answer rescinded, replacement located at B46) If a C corporation owns 56% of a flow-through entity, and the two meet the MBT definition of a unitary group, how does the corporation report all of the income of the flow-through entity when all it receives from the entity is a K-1? Also, do the other owners of the flow-through entity need to reduce their federal taxable income by their share of the flow-through entity income when computing their MBT liability?

B32. Are royalties received from a foreign entity included in the tax base of the MBT?

Yes, but generally only as part of the modified gross receipts tax component of the MBT.

Royalties – including those received from foreign persons – are included in gross receipts and the gross receipts tax base for purposes of the modified gross receipts tax. MCL 208.1111(1), 208.1203.

However, for business income tax purposes, royalties received "from persons other than United States persons and foreign operating entities, including, but not limited to, amounts determined under section 78 of the [IRC] or sections 951 to 964 of the [IRC]" are subtracted from business income "to the extent included in federal taxable income." MCL 208.1201.

Foreign entities – and foreign operating entities as defined by MCL 208.1109 – cannot be included in a unitary business group. Therefore, intercompany eliminations that would otherwise remove intra-unitary business group transactions from the tax bases under are not available to royalties paid to or received by a foreign entity.

B33. (This FAQ has been amended due to 2011 PA 305.) Does business income include casual transactions or isolated sales?

Generally, yes. Business income means "that part of federal taxable income derived from business activity." MCL 208.1105. "Business activity" is broadly defined to mean:

a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. Although an activity of a taxpayer may be incidental to another or to other of his or her business activities, each activity shall be considered to be business engaged in within the meaning of this act. [MCL 208.1105(1).]

Thus, unless expressly excluded, business income will generally include income derived from any transaction included in the taxpayer's federal taxable income, including "casual transactions" or "isolated sales" that may have been excluded under the SBT.

However, the MBT does exclude certain transactions from business income.

For an individual, estate, or person organized for estate or gift planning purposes, business income is that part of federal taxable income derived from transactions, activities, and sources in the regular course of the person's trade or business. . . ." [MCL 208.1105(2).]

In other words, for individuals, estates, and persons organized for gift and estate planning purposes, business income excludes income derived outside the regular course of the person's trade or business.

B34. How should inter-company transactions between members of a unitary business group be eliminated when the members have different year ends?

MCL 208.1511 requires the elimination of all transactions between members of the unitary business group that affect the business income tax base, modified gross receipts tax base and the apportionment formula. When members of a unitary business group have different year ends, the combined return of the unitary business group must include each tax year of each member whose tax year ends with or within the tax year of the designated member. Each member should eliminate the inter-company items of income and expense recorded on its books for the tax period of the member that is included in the combined return of the unitary business group. In other words, inter-company eliminations are made on an entity basis in computing the members' tax bases that are summed together for the combined return.

For example, a unitary business group consists of company A, the designated member that reports on a calendar year, company B that reports on a calendar year and company C that has a fiscal year ending March 31. In 2008, companies A and B will eliminate all inter-company transactions between each other since they both report on a calendar year end. In computing their 2008 tax bases, companies A and B will also eliminate all inter-company transactions they had recorded on their books during the calendar year with company C.

Company C will report the months April 1, 2007 through December 31, 2007 on a final SBT return. Only January 1, 2008 through March 31, 2008 will be reported on the unitary group's 2008 MBT return. When computing its 2008 Business Income and Modified Gross Receipts tax bases, Company C will eliminate all inter-company transactions it has recorded on its books for the period January 1, 2008 through March 31, 2008. On the unitary group's 2009 MBT return, Company C will eliminate all inter-company transactions it has recorded on its books for the periods April 1, 2008 through March 31, 2009. Companies A and B will eliminate all intercompany transactions recorded in 2009 between each other and with company C since both A & B report on a calendar year end. While timing differences will occur due to differences in each members year end, eliminating each member's inter-company transactions that were recorded on that member's books during the periods included in the combined return will eliminate intercompany transactions from the unitary business group's tax base.

B35. A real estate limited partnership owns an apartment project in Michigan subject to mortgage debt. The partnership negotiates a reduction in the mortgage but retains ownership of the apartment project. As the result of the reduction in the mortgage, the partnership receives a 1099-C from the mortgage holder and recognizes cancellation of debt ("COD") income in the amount of the negotiated debt reduction. The COD income is reported by the partnership on schedule 1065 K and to the partners on the partnership 1065 K-1 forms in the same year the COD is reported by the mortgage holder on the 1099-C.

If any or all of the partners elect to exclude the COD from gross income on their individual federal income tax returns, must the partnership include the excluded COD in the income tax base on the MBT return filed by the partnership for that year?

Under section 108(c) of the Internal Revenue Code, a taxpayer may make an election to exclude COD from gross income if the COD qualifies as qualified real property business indebtedness. Qualified real property business indebtedness is defined in §108(c) and generally means indebtedness that is secured by real property and incurred or assumed by a taxpayer in connection with a trade or business. A taxpayer who makes this election is required to reduce the basis of the depreciable real property at the beginning of the taxable year following the taxable year in which the discharge occurs. IRC §1017(2)(2). A taxpayer who disposes of the qualified real property in the year in which the COD occurs cannot elect to exclude COD income under IRC § 108(c).

Section 703(b) of the Internal Revenue Code requires a partnership to make all elections affecting the taxable income of the partnership except in three specifically enumerated cases. One of these cases is the election to exclude COD income that qualifies as qualified real property business indebtedness. Under §703(b), the election to exclude this income must be made at the partner's level rather than by the partnership at the partnership level. A partner choosing to make this election must first obtain the consent of the partnership and then make the election in the manner and time frames permitted in the Federal Income Tax Regulations, Reg § 1.1017-1(g). Once the election has been properly made, the partnership is required to reduce the electing partners basis of depreciable partnership property commencing in the tax year following the year the COD income is excluded. The partnership must then adjust the partner's distributive share of partnership income, deductions, gains, and losses to reflect these basis adjustments in subsequent years in the manner prescribed under section 743(b) of the Internal Revenue Code and in the Federal Income Tax Regulations, Reg §1.743-1.

In the case of partners in a real estate limited partnership who elect to exclude COD income arising from qualified real property business indebtedness, adjustments must be made by the partnership in subsequent tax years to report the additional income the partners must recognize as the result of the required basis adjustments, either through the reduced depreciation deductions or because of increased gains on the sale of the depreciable property. The additional income from these basis adjustments is reported by the partnership in subsequent tax years on the federal 1065 schedule K filed by the partnership and as a separately stated item on the K-1 forms provided to the partners. Since reporting the separately stated items from the COD in the year the COD occurs and in the year(s) the §743 income adjustments are required would result in double taxation on the MBT return, the partnership should report the COD in the year the §743 income adjustments are reported to the partners and not in the year the COD occurs. To the extent a §108(c) election has *not* been made by a partner(s), the COD attributable to that partner(s) is then reported on the MBT return in the same year the COD occurs.

Copies of all timely elections made by partners to exclude COD income should be attached to the partnership's MBT return in the year the COD occurs to allow the Department to determine the amount, if any, of COD that should be included in the partnership's MBT income tax base in that year.

B36. MCL 208.1201(2)(h) provides a deduction from the business income tax base for self employment net earnings except to the extent that the net earnings represent a reasonable return on capital. What is a "reasonable return on capital"?

The Department deems the presumptive reasonable return on capital to be the percentage of self-employment earnings reported for federal self-employment taxes as a return on capital reduction to self-employment earnings. This is a rebuttable presumption based on all the facts and circumstances.

B37. Section 201(2)(i) of the MBTA allows a series of deductions beginning in 2015, based on an amount called the “book-tax difference.” A taxpayer’s book-tax difference must be calculated for the first fiscal period ending after July 12, 2007. Section 201(3) states:

In order to claim this deduction, the department may require the taxpayer to report the amount of this deduction on a form as prescribed by the department that is to be filed on or after the date that the first quarterly return and estimated payment are due under this act.

Has the Department prescribed a form that taxpayers must use to report the amount of this deduction? If so, when and how will the form be filed? If the form is to be filed together with a return, will a valid extension for filing the return also extend the deadline for filing the form?

Yes, the Department will require that taxpayers file Form 4593 in order to document the future section 201(2)(i) deduction regarding the book-tax difference. Form 4593 must be filed together with the taxpayer’s first annual MBT return. For a taxpayer that obtains a valid extension for filing its annual return, the Department will treat that extension as applicable to the filing of Form 4593, as well. With respect to possible amendments of Form 4593, amendments to a taxpayer’s first annual MBT return could necessitate corresponding changes to Form 4593. Accordingly, Form 4593 will be open to amendment during the same limitations period that is applicable to the first annual return, except that an amendment to Form 4593 will be permitted during the relevant period only if the taxpayer has also amended its annual return, and the changes made to the annual return have necessitated the amendment to Form 4593. A taxpayer may not amend Form 4593 on a stand-alone basis.

B38. May a taxpayer that has no MBT filing obligation for 2008 file Form 4593 (documenting the future section 201(2)(i) deduction regarding the book-tax difference) as a free-standing form, in order to preserve the possibility of taking the deduction if they later become MBT taxpayers?

No, Form 4593 may not be filed as a free-standing form. Form 4593 was designed to establish an offset for future use to a deferred liability required by GAAP for the transition from SBT to MBT. The transition period is generally in 2007 after enactment of the MBT legislation, and there is only one opportunity for MBT taxpayers to file Form 4593, documenting their book-tax difference and preserving their entitlement to claim certain future deductions based upon that calculation. Persons who are not subject to the MBT in 2008 or who were not subject to the SBT would not have established a deferred liability for the transition from SBT to MBT, and therefore will not be eligible to take the section 201(2)(i) deduction. Such persons therefore have no need to file Form 4593.

For MBT taxpayers, the Department will require that Form 4593 be filed together with the taxpayer’s 2008 annual MBT return (with a valid extension extending the deadline for filing Form 4593, as well). The Department will only accept Form 4593 from MBT taxpayers in conjunction with their 2008 annual MBT return.

However, SBT taxpayers who have no 2008 MBT liability because they fail to meet the filing threshold, but who record a one-time book-tax difference under GAAP in the accounting period that includes the enactment of the MBT, may file a zero liability MBT return for 2008, along with Form 4593.

B39. MCL 208.1201(2) provides a deduction for the book-to-tax difference or deferred liability resulting from the change from the SBT to the MBT. Is the deduction available to a privately held, cash-basis partnership that is not required to (and does not) maintain its books in accordance with generally accepted accounting principles?

No. The deduction provided under MCL 208.1201(2), commonly known as the FAS 109 deduction, does not apply to a taxpayer that does not keep its books in accordance with GAAP.

The plain language of the statute makes clear that only taxpayers that use GAAP qualify for the credit. Section 201(3) states

The deduction ... shall not exceed the amount necessary to offset the net deferred tax liability of the taxpayer as computed in accordance with generally accepted accounting principles.

A cash method or cash basis taxpayer may take the deduction to offset the book-to-tax difference or deferred tax liability if that taxpayer keeps its books in accordance with GAAP.

B40. At what date should the book-tax difference be calculated for the deduction provided in MCL 208.1201(2)(i)? The term “first fiscal period ending after July 12, 2007” is unclear.

The phrase “first fiscal period ending after July 12, 2007” as used in MCL 208.1201(2)(i) is the first fiscal period of the taxpayer which ends after July 12, 2007 and which includes the July 12, 2007 enactment date of MBT.

Under FAS 109, paragraph 27, a taxpayer who maintains books and records under Generally Accepted Accounting Principles (“GAAP”) must make a one-time book adjustment to reflect the change in deferred taxes that occurs as the result of a tax law change, and record that adjustment in the accounting period that includes the enactment date of the tax law change. The future deductions provided for in MCL 208.1201(2)(i) (“FAS 109 deduction”) are based solely on the book-tax difference of qualifying assets for this same period, and are intended to create a one-time deferred tax asset for GAAP taxpayers to use as an offset against the one time change in the deferred tax liability that resulted from the enactment of the MBT. For SBT taxpayers, the change in deferred tax liability that results from the enactment of MBT will primarily be attributable to the difference between the net book value and tax basis of depreciable assets recorded on the books for the first fiscal period ending after July 12, 2007. Assets acquired or placed in service after the SBT was repealed on December 31, 2007 would not be included in the calculation of the one time book adjustment required under FAS 109 for the enactment of MBT.

The deferred tax asset will be recorded in the same period the taxpayer is required to record the one-time change in deferred tax liability under GAAP. As a result, the date a taxpayer must use to compute the book-tax difference for the FAS 109 deduction allowed under MCL 208.1201(2)(i) will be the same date used to compute the book-tax difference for the calculation of the one-time change in the deferred tax liability that must be reported by GAAP taxpayers under FAS 109.

Caution: If the deferred asset calculated by use of the formula specified in MCL 208.1201(2)(i) is *more* than the net deferred MBT tax liability reported under FAS 109, the deduction will be limited as provided in MCL 208.1201(3).

A taxpayer must report the amount of the FAS 109 deduction on the Michigan form 4593 with the first MBT return in order to claim the deductions allowed in the years specified in MCL 208.1201(2)(i), *i.e.* 2015 – 2029. Taxpayers must retain all records and workpapers, that are necessary to support the taxpayer’s calculation of the deduction and the deferred liability recorded, for the entire period the deduction is available and for the period that the return is subject to audit by the Michigan Department of Treasury.

A taxpayer who does not maintain deferred tax liability accounts under GAAP does not need to create an offsetting deferred tax asset, and therefore is ineligible for the FAS 109 deduction allowed in MCL 208.1201(2)(i).

B41. I am a broker/dealer in securities without any W-2 payroll. My major expense is 1099 commissions paid to sales representatives. Are these commission expenses deductible on my MBT return?

Business income is generally defined as “that part of federal taxable income derived from business activity.” MCL 208.1105(2). To the extent that federal taxable income derived from business activity is reduced by these expenses, a taxpayer’s Business Income tax base will be reduced.

The Modified Gross Receipts tax base is a taxpayer’s gross receipts less purchases from other firms before apportionment. MCL 208.1203(3). “Gross receipts” are defined as the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others with certain exceptions. MCL 208.1111(1). Section 111 provides no exception for or deduction of 1099 commission expense from gross receipts of broker/dealers. Therefore, the 1099 commission expense will not reduce the gross receipts or Modified Gross Receipts tax base.

Further, commissions paid to non-employees are not compensation as defined in MCL 208.1107(2). Only commissions, wages, salaries, fees, bonuses, and other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayer would meet the statutory definition of compensation and qualify for the compensation credit provided under MCL 208.1403. The non-employee 1099 commissions in this example do not qualify for the compensation credit.

B42. What impact would a merger in 2008 have on the ability of the surviving entity to utilize SBT business loss carryforwards? How will losses incurred after December 31, 2007 be impacted by the merger?

The MBT provides for a limited deduction of SBT business loss carry forward in the 2008 MBT tax year in calculating the Modified Gross Receipts tax base only. MCL 208.1203(4) provides that 65% of any SBT business loss carry forward that was actually incurred in the 2006 or 2007 SBT tax years and that was not previously deducted in tax years beginning before January 1, 2008 may be deducted against the Modified Gross Receipts tax base. Any business loss carry forward incurred before January 1, 2006 is not eligible for the deduction.

In a merger two or more entities combine into one, through a purchase acquisition or a pooling of interests. A merger differs from a consolidation in that no new entity is created. The surviving entity may utilize what would have been the business loss of each of the separate entities had each entity filed a separate return. Any SBT business loss carryforward that is not deducted against the 2008 Modified Gross Receipts tax base of the surviving entity is lost.

A taxpayer’s Business Income tax base is its business income subject to certain statutory adjustments before allocation or apportionment. MCL 208.1201(2). Business income is generally defined as “that part of federal taxable income derived from business activity.” MCL 208.1105(2). To this extent, the calculation of the MBT business income tax base of the surviving entity will follow federal regulations.

The MBT provides for the deduction of a business loss incurred after December 31, 2007. This deduction may only be taken against the Business Income tax base of an entity. Losses incurred after December 31, 2007 may not be deducted against the Modified Gross Receipts tax base. “Business loss” is defined as a negative business income taxable amount after allocation or apportionment. Any unused business loss may be carried forward to the year following the loss year and the next 9 successive tax years or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year. MCL 208.1201(5). The surviving entity of

a merger that files a 2008 MBT return will be able to begin deducting any resulting 2008 business loss against its 2009 Business Income tax base as permitted by statute.

B43. (Answer rescinded, replacement located at B47) Can a taxpayer net the cost of purchased securities with the proceeds from those securities? For purposes of taxing the gain, is the cost the actual cost of the securities or the fair market value on January 1, 2008?

B44. May taxpayers take the IRC 199 deduction for MBT purposes?

No. For federal tax purposes, the domestic production activities deduction under IRC 199 provides a tax benefit for certain domestic production activities. In particular, IRC 199 allows a deduction equal to a specified percentage of the taxpayer's qualified production activities income for the tax year.

This federal deduction, however, does not flow through to the MBT. The MBT defines "federal taxable income" to mean "taxable income as defined in section 63 of the internal revenue code, *except that federal taxable income shall be calculated as if . . . section 199 of the [IRC was] not in effect.*" MCL 208.1109 (emphasis added). Thus, to the extent that the IRC 199 deduction is included in federal taxable income for federal tax purposes, that deduction must be added back in calculating federal taxable income for MBT purposes.

B45. (This FAQ has been amended due to 2011 PA 305.) Is the sale of stock by a stockholder in a closely held corporation back to the corporation or to another stockholder subject to MBT?

For an individual, the sale of stock in a corporation will generally not constitute business income or gross receipts to that individual so long as the investment does not constitute nor is part of the individual's trade or business. The sale of stock would generally be included in a taxpayer's business income and modified gross receipts tax bases; however, there are specific exceptions. MCL 208.1105(2)(f)(i) provides that for an individual, an estate, or a person organized for estate or gift planning purposes, income from investment activity is not included in business income if the investment activity is not part of the person's trade or business. Therefore, to the extent that the stockholder is an individual and the sale of the stock is investment activity that does not constitute part of the individual's trade or business, the sale of the stock is not included as business income subject to MBT. Similar treatment is accorded with regard to modified gross receipts.

B46. If a C corporation owns 56% of a flow-through entity, and the two meet the MBT definition of a unitary group, how does the corporation report all of the income of the flow-through entity when all it receives from the entity is a K-1? Also, do the other owners of the flow-through entity need to reduce their federal taxable income by their share of the flow-through entity income when computing their MBT liability?

Assuming the C corporation and the flow-through entity constitute a unitary group as defined under MCL 208.1117(6), they are required to file one combined return pursuant to MCL 208.1511. The business income tax base of the unitary group is determined by adding the business income tax bases of the C corporation and the flow through entity as computed under MCL 208.1201 and then eliminating any inter-group transactions. The modified gross receipts ("MGR") tax base is determined in a similar manner by computing the MGR tax base of each member under MCL 208.1203 and then eliminating inter-group transactions. If either or both members of the unitary group have nexus in states other than Michigan, the apportionment percentage is determined on a combined basis and then applied to the total business income tax and MGR tax bases of the unitary group. How or in what manner the members of a unitary group share information necessary to prepare a combined return is not determined by the Department.

Owners of the flow-through entity that are not included in the unitary group must adjust their MBT income tax and modified gross receipts bases to remove their share of income or losses from the flow through entity pursuant to MCL 208.1202(2)(e) and 208.1111(1)(bb), respectively.

B47. (This FAQ has been amended due to 2011 PA 305.) Can a taxpayer net the cost of purchased securities with the proceeds from those securities? For purposes of taxing the gain, is the cost the actual cost of the securities or the fair market value?

Generally, securities, such as stocks, bonds and similar intangibles, will be capital assets under section 1221 of the IRC unless the securities are inventory to the taxpayer. Receipts from the sale of capital assets could be taxable in both the business income and modified gross receipts tax bases of the MBT.

Business income is generally defined as "that part of federal taxable income derived from business activity." MCL 208.1105(2). To the extent the capital gain from the sale of the securities is derived from the business activity of the taxpayer, the gain must be included in the business income tax base of the MBT. For this purpose, the capital gain will be computed the same as it is federally, which is amount realized minus basis. The result will flow to the MBT return if the gain is derived from the business activity of the taxpayer. The "cost" or basis is the acquisition cost of the asset just as it is for federal purposes and is not the fair market value as of January 1, 2008, the date that the MBT went into effect.

For purposes of the modified gross receipts tax base, if the securities are sold at a gain then the proceeds of the sale of the securities minus any gain from the sale, to the extent that the gain was included in federal taxable income, will be excluded from the tax base. MCL 208.1111(1)(p).

If the securities were held for investment purposes by an individual, estate or person organized for gift or estate planning purposes and the investment activity is not part of the individual's, estate's or person's trade or business, the gain is not included in the business income tax base. MCL 208.1105(2)(f). There is a similar exclusion under the gross receipts tax base. MCL 208.1111(1)(w). Additionally, the receipts may also be excluded from both the business income tax base and the modified gross receipts tax base if the securities were held for investment purposes and sold by a person organized exclusively to conduct such investment activity who does not conduct investment activity for any person other than an individual and/or persons related to that individual. MCL 208.1105(2) and 208.1111(1)(x).

B48. An individual shareholder of an S corporation receives income from the S corporation that is reported on a federal 1099-MISC form. Would the income reported on the 1099-MISC constitute business income subject to MBT, or personal compensation exempt from MBT?

Generally, the Michigan tax treatment of income reported on the 1099-MISC form will depend on the nature of the income. The 1099-MISC form is a federal reporting vehicle used for various types of income, including prizes and awards, rents, royalties, and nonemployee compensation.

The MBT is imposed on the business income and modified gross receipts tax bases of taxpayers with business activity in Michigan, subject to statutory threshold amounts. Income reported to an individual on a 1099-MISC form will be considered business income and/or gross receipts under the definitions of those terms in MCL 208.1105 and 208.1111 and subject to MBT if the income is properly reported by the taxpayer (a) as business income on federal schedule C (Profit or Loss from Business – Sole Proprietorship) or on any similar federal schedule or form, or (b) as rental or royalty income reported on federal schedule E (Supplemental Income or Loss from rental real estate, royalties, etc.) or elsewhere on the federal return. Payments for services rendered as an employee/shareholder of the S corporation or for director fees would not be considered gross receipts or business income and would not be subject to MBT.

If the shareholder owns more than 50% of the S corporation either directly or indirectly and receives 1099-MISC income from the S corporation that is considered either business income or rental or royalty income for federal income tax purposes, the shareholder and the S corporation would generally be deemed part of a unitary business group (UBG) for MBT purposes. The UBG would be required to file an MBT return if the combined gross receipts of all members exceed the statutory thresholds.

B49. How is the book-tax deduction to the business income tax base affected if the various members of a unitary business group each have and report a book-tax difference on Form 4593 with the initial required MBT return and the unitary business group's (UBG) membership later changes?

MCL 208.1201(2)(i) provides a future deduction to a taxpayer's business income tax base, calculated as the lesser of the taxpayer's book-tax difference for the first fiscal period ending after July 12, 2007 or the taxpayer's net deferred tax liability as computed in accordance with generally accepted accounting principles. MCL 208.1201(2)(i)-(3). The deduction will be claimed by deducting a percentage of this figure beginning in the 2015 tax year. MCL 208.1201(2)(i).

The deduction (phased in over 15 years) equals the lesser of either the taxpayer's book-tax difference for the stated fiscal period *or* the taxpayer's net deferred tax liability, as computed in accordance with GAAP. Therefore, both the book-tax calculation and the net deferred tax liability are necessary to compute the deduction to business income. Thus, when UBG members depart or arrive they must consider both the book-tax difference and the net deferred tax liability.

In the instance of a member leaving the group, the departing member will leave the group with its individually calculated book-tax number as reported on Form 4593 with the UBG's initial MBT return. Likewise, the departing member leaves the group with its share of the net deferred tax liability. If the group members calculated this amount individually then the departing member would simply leave the group with its individual amount. If the group calculated the net deferred tax liability only at the group level then the departing member must figure its pro rata share of the amount, computed as if the member had been a single entity filing a stand alone return when the liability was booked.

A new member which calculated and timely reported its own book-tax difference as well as calculated its own net deferred tax liability is later added to a UBG that has calculated its own book-tax difference and net deferred liability for the group. The added member contributes its book-tax difference and its net deferred liability to those of the group. The group may use, in addition to the group's existing numbers, the book-tax difference and net deferred liability of the added member which would have resulted had the member remained a single entity

B50. (This FAQ has been amended due to 2011 PA 305.) An investment partnership has sales of capital asset securities consisting of both gains and losses that result in an overall gain. In determining the business income and modified gross receipts tax bases, is only the net gain included in the tax bases?

Generally, for federal reporting, gains and losses are classified as either ordinary or capital. Capital gains or losses are either short term or long term and netted on federal Schedule D. Investment property such as stocks and bonds are capital assets and the gain or loss generated is a capital gain or loss. Federally, for a partnership or an S corporation, these gains and losses are separately reported to the partners or shareholders.

The MBT imposes tax on the business income tax base of every taxpayer with business activity within this state. The business income tax base means a taxpayer's business income subject to certain adjustments. "Business income" means that part of federal taxable income derived from

business activity. For a partnership or an S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders. MCL 208.1105. There are no statutory adjustments to the business income tax base for the disposition of capital assets. MCL 208.1201. Therefore, any net capital gain attributable to business activity of the investment partnership that is separately reported to the partners is also included in the MBT business income tax base of the partnership.

The MBT also imposes tax on the modified gross receipts tax base of each taxpayer with nexus. MCL 208.1203. "Gross receipts" means the entire amount received by the taxpayer as determined by using the taxpayer's method of accounting used for federal income tax purposes, from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others with certain exceptions.

Subsection (p) provides an exception for each capital asset sold. MCL 208.1111(1)(p). When a capital asset is sold or disposed of at a gain, only the gain is effectively included in gross receipts. This exception does not make a similar provision for capital assets sold at a loss. In such cases, the exception only excludes the proceeds from gross receipts. There is no adjustment or deduction of losses from the gross receipts. Therefore, a taxpayer may not net capital gains and losses when calculating the modified gross receipts tax base.

Finally, there is an exception to the inclusion of gains into the business income tax base or the modified gross receipts tax base of an investment partnership if the investment partnership was organized for gift or estate planning purposes or was organized exclusively to conduct investment activity and does not conduct investment activity for any person other than an individual or persons related to that individual, and the gains were derived from activities that were not in regular course of the investment partnership's trade or business. MCL 208.1105(2). Unless the facts and circumstances surrounding the investment partnership meet this exemption, gains from the sale of capital assets must be included in business income and gross receipts as described above.

B51. In January 2008, the State of Michigan decoupled from federal bonus depreciation. Consequently, we have to add-back to business income bonus depreciation that was taken on the federal return.

Since bonus depreciation is not allowed for Michigan Business Tax returns, when increasing the business income for the amount of bonus depreciation taken, is it allowable to compute and subtract from business income regular MACRS depreciation or section 179 expense on those assets for which bonus depreciation was claimed for federal purposes?

The amount of IRC §179 expense deduction taken on a taxpayer's federal tax return will be allowed in computing MBT business income. This amount will not vary in computing business income for federal and Michigan tax purposes. A taxpayer that did not elect and take a federal §179 expense deduction on its federal tax return may not claim the federal deduction in its computation of business income under the MBT.

Any IRC §168(k) bonus depreciation claimed on a taxpayer's federal return will not be allowed for MBT purposes. Taxpayers should re-compute MBT depreciation using a federally accepted depreciation method that computes a depreciation amount as if IRC §168(k) was not in effect. This depreciation method must be used consistently over the life of the asset until retired or disposed of when computing MBT business income. The federal depreciation expense that is calculated as if §168(k) was not in effect is the deduction used in calculating MBT business

income. A taxpayer must keep sufficient records to track the basis of the asset and depreciation deduction claimed for purposes of the MBT.

B52. How is the book-tax deduction, provided at MCL 208.1201(2)(i), calculated?

The deduction is determined by:

- 1) Calculate the difference between the value of all assets on the books of a taxpayer for the first fiscal period ending after July 12, 2007 and the federal tax basis for those same assets for the same period. (For a UBG, compute for each member entity individually. The group will file one combined Form 4593, entering the result for each member of the group separately).
- 2) Calculate the amount needed to offset the net deferred tax liability of the taxpayer which results from the imposition of the business income tax, at a rate of 4.95%, and the modified gross receipts tax, at a rate of .8%, calculated for the first fiscal period ending after July 12, 2007.
- 3) Take the lesser of the result of (1) or (2).
- 4) For the 2015 through 2019 tax years apply 4%, for the 2020 through 2024 tax years apply 6%, and for the 2025 through 2029 tax years apply 10% to the result of step (3).
- 5) Subtract the result of step (4) from business income in appropriate tax year.

Examples

Example 1: Company A reviews all assets on its books as of its first fiscal period which ends after July 12, 2007 and which includes the enactment date of the MBT. The book value of these assets is then compared to the federal tax basis of the same assets for the same period. The difference between the assets is calculated at \$5,000. Company A calculates its net deferred liability in accordance with GAAP for this same period at \$7,000. Company A reports a \$5,000 book-tax difference to the Department on Form 4593 with its first MBT return. Beginning in the 2015 tax year, Company A may take 4% of the \$5,000, (the lesser of the book-tax or net deferred tax liability) or \$200, as a deduction to business income. Beginning in the 2020 tax year Company A may take 6%, or \$300 as a deduction, and beginning in the 2025 tax year the deduction will equal 10% or \$500.

Example 2: Entities A, B and C, members of a unitary business group individually calculate their book-tax difference based on their own books and records for the appropriate fiscal period. The UBG files one Form 4593 with its initial MBT return. Entity A reports a book-tax difference of \$500, B reports \$1,000 and C reports \$2,000. The net deferred tax liability is calculated for the group in accordance with GAAP at \$3,000. Beginning in the 2015 tax year the UBG will begin to take a percentage of \$3,000, which is the lesser of the net deferred tax liability of the group and the combined book tax difference of the three group members.

B53. Are the qualified affordable housing deductions from business income and gross receipts under MCL 208.1201(7) and 208.1203(6) limited to qualified affordable housing projects ("QuAHPs") that purchase residential rental units after the effective date of 168 PA 2008?

No. Under the MBT, QuAHPs are permitted a deduction from business income and gross receipts for income and receipts generally attributable to rent-restricted residential rental units in this state owned by the QuAHP. More specifically, the deduction from business income states:

[F]or a person that is a qualified affordable housing project, deduct an amount equal to the product of that person's taxable income that is attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by that qualified affordable housing project and the denominator of which is the number of all residential rental units in this state owned by the qualified affordable housing project. [MCL 208.1201(7).]

Similarly, the deduction from gross receipts states:

[F]or a person that is a qualified affordable housing project, deduct an amount equal to that person's total gross receipts attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by the qualified affordable housing project and the denominator of which is the number of all rental units in this state owned by the qualified affordable housing project. [MCL 208.1203(6).]

There is no requirement under MCL 208.1201(7) and 208.1203(6) that the deductions are limited to QuAHPs that purchase rental units after the effective date of 168 PA 2008 or rental units purchased after that date. That is, the deductions under MCL 208.1201(7) and 208.1203(6) are available to QuAHPs for all rental units that meet the requirements set forth under MCL 208.1201 and 208.1203, subject only to extinguishment under the following provision:

If a qualified affordable housing project no longer meets the requirements of subsection (9)(b) or fails to operate those residential rental units as rent restricted units in accordance with the operation agreement and the requirements of subsection (9)(c), the taxpayer is entitled to the deductions under subsections (6) and (7) as long as the qualified affordable housing project continues to offer some of the residential rental units purchased as rent restricted units in accordance with the operation agreement. [MCL 208.1201(8). The disqualification provision for gross receipts purposes is substantially the same and found at MCL 208.1203(7).]

B54. What is the definition of intangible asset as used in computing the business income tax base?

Intangible assets are defined as those assets that cannot be seen, touched or physically measured and which are created through time and/or effort. Intangible assets may include but are not limited to patents, franchises, trademarks and goodwill. Intellectual property is an intangible asset and includes copyrights, trademarks, patents, and trade secrets. Intangible assets may be wasting and have a finite life such as a patent or they may have an infinite life such as goodwill.

Under the MBT, a person must add back, in computing its business income tax base, certain payments made for the use of intangible assets that were deducted in arriving at federal taxable income. The payments must have been to a person related through ownership or control that is not a member of a unitary group with the taxpayer. Add back of the deducted payments is required unless the taxpayer can prove to the satisfaction of the Department that the payments were at arms-length, have a business purpose other than the avoidance of tax and meet one of three other requirements. MCL 208.1201(2) (f) sets forth these requirements:

Except as otherwise provided under this subdivision, to the extent deducted in arriving at federal taxable income, add any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group. The addition of any royalty, interest, or other expense described under this subdivision is not required to be added if the taxpayer can demonstrate that the transaction has a nontax business

purpose other than avoidance of this tax, is conducted with arm's-length pricing and rates and terms as applied in accordance with sections 482 and 1274(d) of the internal revenue code, and satisfies 1 of the following:

- (i) Is a pass through of another transaction between a third party and the related person with comparable rates and terms.
- (ii) Results in double taxation. For purposes of this subparagraph, double taxation exists if the transaction is subject to tax in another jurisdiction.
- (iii) Is unreasonable as determined by the treasurer, and the taxpayer agrees that the addition would be unreasonable based on the taxpayer's facts and circumstances.

B55. Limited liability companies are included in the definition of "person" under the MBT. Assuming that the federal "check the box" rules are followed, does the business income adjustment set forth at section 201(2)(e), which requires a taxpayer to add the loss or subtract the income attributable to "another entity," apply to the income or loss of a disregarded limited liability company?

Generally, no. Although a limited liability company (LLC) is defined as a "person" under the MBTA, MCL 208.1113(3), if it is a single member LLC disregarded for federal tax purposes, it is similarly classified as a disregarded entity under the MBTA. MCL 208.1512(1). The owner of the LLC is the MBT taxpayer, and the disregarded entity is treated as a sole proprietorship, branch or division of its owner. Section 201(2)(e) requires the taxpayer to add back a loss or subtract income attributable to "another entity whose business activities are taxable under this section." MCL 208.1201(2)(e). A disregarded LLC's business activities would not be separately taxable under section 201; therefore, the section 201(2)(e) adjustment does not apply to an LLC that is a disregarded entity for federal tax purposes.

There are certain exceptions to the general default rule under MCL 208.1512(1) that a federally disregarded entity is similarly classified as a disregarded entity under the MBT. See *Notice to Taxpayers Regarding Federally Disregarded Entities and the Michigan Business Tax*, issued January 26, 2012, for details.

Credits

C1. Does the Michigan Business Tax Act contain a Renaissance Zone Credit?

The Michigan Business Tax Act (MBTA), at section 208.1433, provides a Renaissance Zone Credit that is equivalent to the Renaissance Zone Credit found in the Single Business Tax Act (SBTA) at section 208.39b. A taxpayer that is a business located and conducting business activity within a Renaissance Zone may claim the credit against the Michigan Business Tax (MBT) for the tax year. The credit allowed continues through the tax year in which the Renaissance Zone designation expires and is not refundable.

To obtain the credit an otherwise qualified taxpayer must file an MBT annual return. The credit is equal to the lesser of the following:

- a. The tax liability attributable to business activity conducted within a Renaissance Zone in the tax year.
- b. Ten percent (10%) of adjusted services performed in a designated Renaissance Zone.
- c. For a taxpayer located and conducting business activity in a Renaissance Zone before December 31, 2002, the product of the following:

- i. The Single Business Tax (SBT) Renaissance Zone Credit claimed for the tax year ending in 2007.
- ii. The ratio of the taxpayer's payroll in this state in the tax year divided by the taxpayer's payroll in this state in its SBT tax year ending in 2007.
- iii. The ratio of the taxpayer's Renaissance Zone Business Activity Factor for the tax year divided by the taxpayer's Renaissance Zone Business Activity Factor for its SBT tax year ending in 2007.

The MBTA definitions of terms such as "adjusted services performed in a designated Renaissance Zone" and "Renaissance Zone Business Activity Factor" are repeated from the SBTA.

C2. How does a Professional Employer Organization, as defined by MCL 208.1113(4), determine compensation for the small business credit disqualifier in accordance with MCL 208.1417(8)?

Under MCL 208.1417 an entity is disqualified from taking the small business credit if more than \$180,000 is paid to an officer, director, shareholder or other defined person. A PEO is disqualified based on amounts paid to its own officers and employees. Individuals leased to a PEO's client are not considered for calculating the PEO's disqualifiers.

C3. How are the adjusted business income and compensation disqualifiers of the small business credit, found in MCL 208.1417, computed for PEOs and their clients?

MCL 208.1417(8) requires a client of a PEO to include compensation paid to the client's officers and employees leased to the client.

For the adjusted business income disqualifier, this means that the client adds compensation and director's fees paid for active shareholders and officers to business income as outlined in MCL 208.1417(9). If the client's adjusted business income exceeds \$1.3 million, the client is disqualified from taking the small business credit under MCL 208.1417(1).

Likewise, for the compensation disqualifier, the client will consider all compensation, director's fees and distributive shares paid to its officers, owners and shareholders, even though leased from a PEO. Under MCL 208.1417(1)(a) and (b), the client will be disqualified from taking the small business credit if more than \$180,000 in compensation is allocated or paid to these individuals.

While MCL 208.1417(8) directs clients of PEOs to consider all compensation of officers and employees; officers/shareholders/owners compensation and distributive shares are included for purposes of the disqualifiers.

Active Shareholder is defined in MCL 208.1417(9)(a) as receiving at least \$10,000 in compensation, director's fees or dividends and owning at least 5% of outstanding stock or other ownership interest.

C4. Is a Professional Employer Organization, as defined by MCL 208.1113(4), entitled to the Compensation Credit of MCL 208.1403?

Yes, a PEO can take the credit for compensation that was paid to its own officers and employees, that is those individuals that actually operate the PEO entity.

However, MCL 208.1403(2) states that a PEO "shall not include payments by the professional employer organization to the officers and employees of a client ..." This means that a PEO cannot take the credit for compensation paid to officers of the operating entity nor for compensation paid to the employees leased by the PEO to the operating entity/client.

Thus, both a PEO and the operating entity it manages will take the credit to the extent permitted.

C5. (Answer rescinded, replacement located at C41) How is the alternate credit under MCL 208.1417 used by a unitary business group? How do the disqualifiers and percentage reducers work?

C6. (Answer rescinded, replacement located at C21) What is the compensation credit?

C7. Do Historic Rehabilitation and Brownfield credits, approved under the Single Business Tax Act, carryover and can they be used against Michigan Business Tax liability?

Yes. MCL 208.1435(8) and MCL 208.1437(18) provide that Historic Rehabilitation and Brownfield credits, respectively, issued under the SBTA and unused at the end of the last tax year under the SBTA "may be claimed against the tax imposed under [the MBTA] for the years the carryforward would have been available under [the SBTA]."

The SBTA provided a carryforward period of 10 years for each of these credits. Thus, a taxpayer or assignee with unused Historic Rehabilitation or Brownfield credit carryforwards at the close of the SBT may use and carryforward any unused portion of these credits for an uninterrupted period of 10 years.

The MBT also provides a 10 year carryforward period for Historic Rehabilitation and Brownfield credits approved in MBT years.

C8. Will Single Business Tax (SBT) credit carry forwards carry over to the Michigan Business Tax (MBT)?

Yes, with the exception of the Historical Preservation Credit and the Brownfield Credit, any unused SBT credit carry forward can be applied to MBT tax years 2008 and 2009. Any unused SBT carry forward remaining after 2009 is lost. MCL 208.1401. This carry forward provision applies to any unused SBT credit even if the SBT credit was not retained under the MBT and is subject to credit ordering.

The Historic Preservation Credit and Brownfield Credit carry forwards from the SBT may be claimed against the MBT for the remaining years the carry forward would have been available under the SBTA. MCL 208.1435(8) and 208.1437(18).

C9. How are existing SBT credits, or those awarded but not yet certified, handled under the MBT?

An unused carryforward from an SBT credit may be applied against the MBT liability for the 2008 and 2009 tax years only, unless specified separately. For the Michigan Historic Preservation and Brownfield Credits, an unused carryforward can be claimed against the tax imposed under the MBT for the same years the carryforward would have been available under the SBT.

For Brownfield credit purposes, the MBT allows a taxpayer that received a preapproval letter prior to January 1, 2008 under the SBTA to receive a certificate of completion and claim a credit against the tax imposed by the MBTA, provided that all other requirements are met. See MCL 208.1437. A similar provision for the Historic Preservation Credit allows a qualified taxpayer that has a rehabilitation plan certified before January 1, 2008 under the SBTA for the rehabilitation of an historic resource for which a certification of completed rehabilitation has been issued after 2007 to claim a credit against the tax imposed by the MBT. See MCL 208.1435.

Because the MBT provides for historic and brownfield credits for projects initiated prior to January 1, 2008, Public Act 240 of 2006 does not apply. PA 240 provided that a brownfield or historic

rehabilitation project approved before 2007 and completed after that year could be claimed as a credit on an amended 2007 SBT return unless the credits may be claimed "for a tax year that begins after December 31, 2007 under any other tax act."

C10. Who is considered an officer for purposes of the Small Business Alternative Credit under MCL 208.1417?

The Small Business Alternative Credit (similar to the SBT credit commonly known as the small business credit) is generally available to taxpayers with gross receipts that do not exceed \$20,000,000.00 and an adjusted business income minus loss adjustment that does not exceed \$1,300,000.00 – adjusted annually for inflation – subject to certain additional disqualifiers. MCL 208.1417(1).

One such disqualifier states that "a corporation other than a subchapter S corporation is disqualified if . . . compensation and directors' fees of a shareholder or officer exceed \$180,000.00." MCL 208.1417(1)(b). If the compensation and directors' fees of an officer of a corporation exceed \$160,000 but are less than or equal to \$180,000, then the taxpayer is not disqualified but must reduce the credit by a specified percentage.

Under the MBT, "officer" means "an officer of a corporation other than a subchapter S corporation, including all of the following: (a) [t]he chairperson of the board[:]; (b) [t]he president, vice president, secretary, or treasurer of the corporation or board[:]; or (c) [p]ersons performing similar duties to persons described in subdivisions (a) and (b)." MCL 208.1111(5). "Corporation" means "a taxpayer that is required or has elected to file as a corporation under the internal revenue code." MCL 208.1107(3).

In other words, corporations and entities – such as limited liability companies – that elect to be taxed as corporations for federal tax purposes have officers under the MBT. "Officers" include the chairperson of the board; the president, vice president, secretary, and treasurer of the corporation or board; and any employee, member, manager, partner, or other person performing duties similar to those of chairpersons, presidents, vice presidents, secretaries, and treasurers.

C11. (Answer rescinded, replacement located at C22) Is the farmland preservation credit available under the Michigan Business Tax?

C12. (Answer rescinded, replacement located at C27) Will the recapture limiting language of MCL 208.1403(3)(d)-(f) apply to both the Michigan Business Tax Investment Tax Credit (ITC) and ITC taken under the former Single Business Tax?

C13. MCL 208.38g(34) and 208.39c(16) of the SBT permit taxpayers with pre-approval letters issued – or rehabilitation plans certified – prior to 2007 for projects completed after the taxpayer's last tax year under the SBT but prior to 2010 to claim a certain portion of the credit amount that would have been available in 2008 and 2009 had the SBT not been repealed on the taxpayer's amended 2007 SBT return. Are these provisions superseded by the MBT?

Yes. MCL 208.38g(34) and 208.39c(16) of the SBT also state that the provisions allowing 2008 and 2009 credits to be claimed on the taxpayer's amended 2007 SBT return *do not apply* if credits for tax years beginning after December 31, 2007, for the same project are provided for under a new tax act. MCL 208.38g(34)(f) and 208.39c(16)(e). Under the MBT, a taxpayer with a certified rehabilitation plan or pre-approval letter is expressly authorized to claim a credit for the corresponding brownfield project or rehabilitation plan for tax years beginning after December 31, 2007. MCL 208.1435 and 208.1437. Thus, the MBT supersedes MCL 208.38g(34) and 208.39c(16).

C14. Under the MBTA, is the section 281 surcharge imposed before or after available credits are applied? Does the surcharge apply to both the modified gross receipts tax and the business income tax? Can the alternative small business credit eliminate liability for the surcharge?

Section 281(1) of the MBTA provides as follows:

(1) In addition to the taxes imposed and levied under the act ..., to meet deficiencies in state funds an annual surcharge is imposed and levied on each taxpayer equal to the following percentage of the taxpayer's tax liability under this act after allocation or apportionment to this state under this act but before calculation of the various credits available under this act:

(a) For each taxpayer other than a person subject to the tax imposed and levied under chapter 2B, 21.99%.

MCL § 208.1281(1). Thus, the surcharge is imposed on each taxpayer subject to the MBT *after* allocation or apportionment under section 301, but *prior to* the calculation and application of any available credits, including SBT credits carried forward by the taxpayer. Section 281(5) provides that the surcharge "shall constitute a part of the tax imposed under this act and shall be administered, collected, and enforced as provided under this act." MCL § 208.1281(5).

Under the statutory language quoted above, the surcharge is imposed upon "the taxpayer's tax liability under this act." MCL § 208.1281(1). Subject to filing thresholds, nexus standards, and exemptions, both the modified gross receipts tax and the business income tax are components of a taxpayer's MBT liability. Accordingly, the surcharge applies to both the modified gross receipts tax and the business income tax.

The various credits available under the MBT can be utilized to mitigate a taxpayer's tax liability only to the extent specified in the statute. With respect to the small business alternative credit, section 417(1) provides that this credit is to be taken *after* the credits provided for in sections 403 and 405. MCL § 208.1417(1). The combined compensation and investment tax credits allowed under section 403 may not exceed 50% of the taxpayer's total MBT liability in tax year 2008 and 52% of the taxpayer's total MBT liability in tax years 2009 and beyond, while the research and development credit allowed under section 405, combined with the taxpayer's total section 403 credits, cannot exceed 65% of the taxpayer's total tax liability under the MBT. MCL §§ 208.1403(1); 208.1405.

If the taxpayer is then eligible for and calculates the section 417 small business alternative credit, the amount of the credit "shall not exceed 100% of the tax liability imposed under this act." MCL § 208.1417(5). Since the surcharge (which constitutes a part of the taxpayer's tax liability imposed under the act) is imposed *prior to* the calculation of any credits, including the section 417 small business alternative credit, it is possible that the application of that credit could totally eliminate the taxpayer's tax liability for that tax year, including the amount of that liability that is attributable to the surcharge.

C15. Is the Arts and Culture credit available for donations made to science museums?

MCL 208.1422 provides a credit for a taxpayer that makes charitable contributions of at least \$50,000 during the tax year to either

(a) A municipality or a nonprofit corporation affiliated with a municipality and an art, historical, or zoological institute for the purpose of benefiting the art, historical, or zoological institute

Or

(b) An institution devoted to the procurement, care, study, and display of objects of lasting interest or value.

The first of these two categories delineates art, historical or zoological institutes as acceptable donees. This narrow list does not include science museums. The language of the second category creates a facts and circumstances test for other types of Michigan museums.

Science museums generally focus on discovery and interactive activities. However, if under the facts and circumstances, it is demonstrated that a science museum is “devoted to the procurement, care, study, and display of objects of lasting interest or value” the museum will qualify for the credit.

C16. (This FAQ has been amended due to 2011 PA 305.) What types of expenses qualify for the MBT’s “research and development” credit?

MCL 208.1405 provides a credit against the MBT equal to 1.90% of a taxpayer’s “research and development expenses” for the 2009 tax year and each tax year after 2009. The credit is for 1.52% of research and development expenses for the 2008 tax year. The credit combined with credits under section 403 (Compensation Credit and Investment Tax Credit) cannot exceed 65% of a taxpayer’s tax liability before the surcharge under section 281. Research and development expenses are “qualified research expenses” as that term is defined in Internal Revenue Code Section 41(b). “Qualified research expenses” is defined in IRC 41(b) as “the sum of ... in-house research expenses and contract research expenses.” In house research expenses are defined, in pertinent part, as: i) any wages paid or incurred to an employee for qualified services performed by such employee; ii) any amount paid or incurred for supplies used in the conduct of qualified research; and iii) under regulations prescribed by the Secretary, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research. IRC 41(b)(2)(A).

Contract research expenses are “65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.” IRC 41(b)(3)(A).

The MBT credit is available for a percentage of the sum of these expenses.

C17. Is there a filing threshold phase-in for the Michigan Business Tax?

Yes. MCL 208.1411 provides that a taxpayer with allocated or apportioned gross receipts to Michigan of more than \$350,000 but less than \$700,000 may claim a credit against the taxpayer’s liability after application of the alternate credit found at MCL 208.1417. The phase-in credit is a fraction “the numerator of which is the difference between the person’s allocated or apportioned gross receipts and \$700,000.00 and the denominator of which is \$350,000.00.”

For example, if a taxpayer has allocated gross receipts of \$500,000 and a liability (after application of Sec 417) of \$10,000, the taxpayer would multiply \$10,000 by the fraction $\$200,000/\$350,000$ (or 57%) and receive a credit of \$5,700, reducing the taxpayer’s liability to \$4,300.

The phase-in credit declines linearly as gross receipts increase, thereby avoiding an all-or nothing “cliff effect.”

C18. Does Schedule C (sole proprietor) income of over \$180,000.00 preclude the taxpayer from using the Small Business Alternative Credit?

Yes. Section 417 of the Michigan Business Tax Act (MBTA) provides the alternate credit. MCL 208.1417. Section 417 instructs that the Small Business Alternate Credit is available to any

taxpayer with gross receipts that do not exceed \$20 million and with adjusted business income minus the loss adjustment that does not exceed \$1.3 million (adjusted annually for inflation).

Regarding disqualifiers, section 417 expressly directs that, "An individual . . . is disqualified [credit] if the individual . . . receives more than \$180,000.00 as a distributive share of the adjusted business income minus the loss adjustment of the individual . . ."

Note: the distributive share disqualifier has been raised from \$115,000.00 in the SBT's comparable Small Business Credit to \$180,000.00 in the MBT's Small Business Alternative Credit.

C19. How will unused carryforward credits under the Single Business Tax Act (SBTA), the application of which is limited to tax years 2008 and 2009 under the Michigan Business Tax Act (MBTA), be treated for fiscal year taxpayers?

Section 401 of the MBTA provides that except as specifically provided for in the MBTA, any unused carryforward of any credit under the SBTA may be applied against MBT tax liability only for the tax years 2008 and 2009, and any unused carryforward after 2009 is extinguished. MCL 208.1401. The MBTA defines "tax year", in pertinent part, as the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year is for the same period as is covered by its federal income tax return. MCL 208.1117(4).

Thus, for a fiscal year taxpayer, the MBT 2008 tax year runs from January 1, 2008 to the end of the month in calendar year 2008 that constitutes the end of the taxpayer's fiscal year. The taxpayer's 2009 tax year is the taxpayer's 12-month fiscal year ending during calendar year 2009.

Therefore, for a taxpayer who files pursuant to a fiscal year, the unused carryforward of any SBT credit applies against the taxpayer's MBT tax liability for the tax year running from January 1, 2008 to the end of the month in calendar year 2008 that ends the taxpayer's fiscal year. Any remaining unused SBT carryforward credit would be applied to the taxpayer's MBT tax liability for the taxpayer's 12-month fiscal year ending during calendar year 2009. Any still remaining unused SBT carryforward credit beyond the end of the taxpayer's 12-month fiscal year ending during calendar year 2009 would be extinguished.

Example: A taxpayer has a 12-month fiscal year that begins October 1st and ends September 30th. The taxpayer files a short period SBT final return for the period from October 1, 2007 through December 31, 2007, with the taxpayer retaining an unused SBT carryforward credit in the amount of \$1,000.00, after determining the final SBT tax liability. The taxpayer's 2008 tax year, its first under the MBTA, runs from January 1, 2008 through September 30, 2008. The taxpayer has an MBT tax liability of \$500.00 before application of the unused SBT carryforward credit. Applying the \$1,000.00 unused SBT carryforward credit against the \$500.00 MBT tax liability results in a remaining unused SBT carryforward credit of \$500.00.

For the 2009 tax year, which runs from October 1, 2008 through September 30, 2009, the taxpayer has an MBT tax liability of \$400.00, before application of the unused SBT credit carried forward from the 2008 MBT year. Applying the \$500.00 remaining unused SBT carryforward credit against the taxpayer's \$400.00 MBT tax liability results in a residual unused SBT carryforward credit of \$100.00. Under MCL 208.1401, the remaining \$100.00 of unused SBT carryforward credit would be extinguished.

C20. How is stock ownership determined with respect to Small Business Alternate Credit disqualifiers? Will the attribution rules used for the SBT and found in IRC section 318 apply when computing the active shareholder rules under the MBT?

The Small Business Alternate Credit operates similarly to the Small Business Credit that was provided for under the Single Business Tax Act. The Small Business Alternate Credit is available to entities that meet certain statutory criteria.

One of these criteria is that the entity must include in adjusted business income the compensation, dividends and director fees of “active shareholders.” An “active shareholder” is a shareholder who receives, in any combination, at least \$10,000 in compensation, directors’ fees, or dividends from the business, and who owns at least 5% of the outstanding stock or other ownership interest. MCL 208.1417(9)(a). A “shareholder” is a person who owns outstanding stock in a business or is a member of a business entity that files as a corporation for federal income tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the Internal Revenue Code. MCL 208.1115(2).

The MBT definitions of “active shareholder” and “shareholder” are essentially similar to the definitions under the SBTA. Therefore, the attribution rules for stock ownership and for determining “active shareholders” will be applied to the Small Business Alternative Credit in a similar manner as they were under the SBTA.

C21. What is the compensation credit?

MCL 208.1403 provides a credit at the rate of .296% of a taxpayer’s compensation in Michigan for the 2008 tax year. For the 2009 tax year and beyond, the rate is increased to .370% of Michigan compensation. The compensation credit cannot exceed 50% of the taxpayer’s liability imposed under the MBT for the 2008 tax year. For the 2009 tax year and beyond, the credit cannot exceed 52% of liability.

C22. Is the farmland preservation credit available under the Michigan Business Tax?

Yes. 2007 PA 174 amends MCL 324.36109(2) to allow the Farmland Preservation credit against the MBT. Under Section 36109, qualifying taxpayers may claim a credit for the amount by which the property taxes on qualifying farmland exceed 3.5% of the business income tax base of the MBT, plus compensation to shareholders not included in the business income tax base, excluding certain listed deductions.

C23. How were the rates of the Compensation Credit, the Investment Tax Credit, and the Research and Development Credit impacted by the passage of PA 145, which added the surcharge to the MBT?

Although the primary purpose of PA 145, which became effective on December 1, 2007, was to institute a surcharge to replace the revenue from the repealed service tax, PA 145 made a number of additional changes to the MBT, including changes to the Compensation Credit, the Investment Tax Credit, and the Research and Development Credit.

The rate of the Compensation Credit was reduced from 0.370% to 0.296% for the 2008 tax year. The rate will return to 0.370% for the 2009 tax year and beyond. MCL 208.1403(2). The rate of the Investment Tax Credit was reduced from 2.90% to 2.32% for the 2008 tax year. The rate will return to 2.90% for the 2009 tax year and beyond. MCL 208.1403(3). Finally, PA 145 reduced the rate of the Research and Development Credit from 1.90% to 1.52% for the 2008 tax year. The rate will return to 1.90% for the 2009 tax year and beyond. MCL 208.1405.

PA 145 also reduced the cap on the combined Compensation Credit and Investment Tax Credit for taxpayers other than insurance companies from 65% of the taxpayer’s MBT liability to 50% of

the taxpayer's MBT liability before the imposition of the surcharge for the 2008 tax year, and to 52% for the 2009 tax year and beyond. MCL 208.1403(1). For insurance companies, the Compensation Credit remains capped at 65% of the taxpayer's liability for all tax years. MCL 208.1239(2).

Finally, the cap on the combined Compensation Credit, Investment Tax Credit, and Research and Development Credit was reduced from 75% of the taxpayer's MBT liability to 65% of the taxpayer's MBT liability before the imposition of the surcharge. MCL 208.1405.

C24. Can a pre-2008 Brownfield credit or Historic Preservation credit of a unitary business group member be used in 2008 and thereafter against the tax liability of the entire unitary business group?

Yes. To the extent that a qualified taxpayer under the Brownfield credit or Historic Preservation credit provisions is included within a unitary business group taxpayer for relevant tax years, the qualified taxpayer's unused pre-2008 Brownfield credit and/or Historic Preservation credit (i.e. such credits earned under the SBT) may be applied against the tax liability imposed on the entire unitary business group taxpayer (of which the qualified taxpayer is a member) for the tax years the carryforward would have been available under the SBT. See MCL 208.1435(8) and 208.1437(18).

C25. Regarding the industrial personal property tax credit under the MBT, will the Department continue to look to the parcel classification assigned by the local property tax assessor for qualification for the credit, as it has done under the SBT?

Yes. The Department in administering the industrial personal property tax credit will continue to recognize that the General Property Tax Act places sole authority to ascertain and classify taxable property in an assessing district in the hands of the local assessor. MCL 211.19 and 211.34c(1).

C26. The MBT Act provides the following credits will be taken sequentially before any other credits: compensation and investment credits (MCL §208.1403), research and development credit (MCL §208.1405), alternate/small business credit (MCL §208.1417), tax phase-in credit (MCL §208.1411). In what order are the other MBT credits claimed? For taxpayers other than Insurance Companies, the MBT credits must be claimed in the following order:

Nonrefundable Credits

- Sec. 401 – *Unused Carry forwards from SBT*
- Sec. 403(2) - *Compensation Credit*
- Sec. 403(3) - *Investment Tax Credit*
- Sec. 405 - *Research and Development Credit*
- Sec. 417 – *Small Business Alternate Tax Credit*
- Sec. 411 – *Gross Receipts Filing Threshold Credit*
- Sec. 425 - *Community or Education Foundation Credit*
- Sec. 427 - *Homeless Shelter/Food Bank Credit*
- Sec. 409(1) - *NASCAR Speedway Credit*
- Sec. 410 - *Stadium Credit*
- Sec. 415 - *Start-Up Business Credit*
- Sec. 421 - *Public Contribution Credit*
- Sec. 422 - *Arts and Culture Credit*
- Sec. 429 - *Next Energy Business Activity Credits*
- Sec. 433 – *Renaissance Zone Credit*
- Sec. 435 – *Historic Preservation Credit*

Sec. 439 – *Low Grade Hematite Credit*
 Sec. 441 – *Entrepreneurial Credit*
 Sec. 445 - *New Dealer Motor Vehicle Inventory Credit*
 Sec. 447 - *Large Food Retailer Credit*
 Sec. 449 – *Mid Size Food Retailer Credit*
 Sec. 451 – *Bottle Deposit Administration Credit*
 Sec. 437 – *Brownfield Rehabilitation Credit*
 Sec. 453 – *Private Equity Fund Credit*

Refundable Credits

Sec. 407 - *MEGA Research and Development Credit* Sec.
 413 - *Personal Property Tax Credits*
 Sec. 423 - *Worker's Disability Supplemental Benefit Credit*
 Sec. 429 - *Next Energy Payroll Credit*
 Sec. 431 – *MEGA Employment Tax Credit*
 Sec. 409(2) – *NASCAR Safety Credit*
 Sec. 450 – *Hybrid Technology Research and Development Credit*

The placement of any future credits enacted will be based on the ordering prescribed by statute. Absent specific language, or in the case of conflicting language, the date of enactment will determine when a credit is taken, nonrefundable credits first and refundable credits next, and the language contained within the most recently enacted section will control.

Credits available for Insurance Companies and the order they are claimed:

Nonrefundable Credits

Sec. 237 – *Insurance Company Premiums Tax Credits*
 (a) Amounts paid to the Michigan worker's compensation placement facility
 (b) Amounts paid to the Michigan basic property insurance association
 (c) Amounts paid to the Michigan automobile insurance placement facility
 (d) Amounts paid to the property and casualty guaranty association
 (e) Amounts paid to the Michigan life and health guaranty association
 Sec. 239 – *Insurance Company Premiums Tax Credits 50% examination fees*
 Sec. 401 – *Unused Carry forwards from SBT*
 Sec. 239/403(2) – *Insurance Company Compensation Credit*
 Sec. 433 – *Renaissance Zone Credit* Sec.
 435 – *Historic Preservation Credit*
 Sec. 437 – *Brownfield Rehabilitation Credit*

Refundable Credits

Sec. 241 – *Worker's Disability Supplemental Benefit Credit*
 Sec. 431 – *MEGA Employment Tax Credit*

Credits available for Financial Organizations and the order they are claimed:

Nonrefundable Credits

Sec. 401 – *Unused Carry forwards from SBT*
 Sec. 403(2) – *Compensation Credit*
 Sec. 433 – *Renaissance Zone Credit* Sec.
 435 – *Historic Preservation Credit*
 Sec. 437 – *Brownfield Rehabilitation Credit*

Refundable Credits

Sec. 431 – *MEGA Employment Tax Credit*

C27. MCL §208.1403(3)(d)-(f) provides for investment credit recapture. The recapture language includes the limiters “to the extent used and at the rate used.” Does this limiting language only apply to assets acquired during SBT tax years? Also, does the Department deem the investment credit for assets acquired in the same year to be claimed on a FIFO, pro-rata, or other method?

The Department interprets the limiting phrase “to the extent the credit is used and at the rate at which the credit was used” to apply only to disposal of assets that were acquired under the SBTA, former 1975 PA 228. Available SBT ITC is “used” and is used “at the rate” that was in effect under the SBTA on a FIFO basis. For recapture purposes, SBT ITC carry-forwards are deemed to have been “used” first, before MBT ITC, when computing the “amount used.” The Department anticipates developing guidance to assist in the computation of ITC recapture of assets that were acquired under the SBTA.

ITC recapture of MBT assets acquired after December 31, 2007 is not limited by the language “to the extent the credit is used and at the rate at which the credit was used.” Therefore, the recapture of ITC upon disposal of assets acquired under the MBT is not dependant on whether the compensation or investment credit is capped. This MBT interpretation for assets acquired under the MBT reverses an interpretation previously given in FAQ #C12.

C28. (Answer rescinded, replaced by C57) Under MCL 208.1403(2), a taxpayer may claim a credit against the MBT equal to a specified percentage of the taxpayer's "compensation in this state." What is the definition of "compensation in this state"?

C29. How is the Small Business Alternative Credit under MCL 208.1417 calculated by a taxpayer that is a unitary business group? How do the disqualifiers and percentage reducers work?

The Small Business Alternative Credit "is available to any *taxpayer* with gross receipts that do not exceed \$20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index" and subject to certain additional disqualifiers. MCL 208.1417(1) (emphasis added). Specifically, if gross receipts exceed \$19,000,000, the credit is reduced

"Taxpayer" is defined as "a person or a unitary business group." MCL 208.1117(5). The gross receipts and adjusted business income thresholds under MCL 207.1417(1) apply to taxpayers. Thus, for a taxpayer that is a unitary business group, the gross receipts and adjusted business income thresholds are those of the unitary business group.

The disqualifiers under MCL 208.1417(1)(a) and (b) apply to a taxpayer that is a unitary business group if such disqualifiers apply to any member of that unitary business group. For example, a taxpayer that is a unitary business group is disqualified from taking the Credit under MCL 208.1417 if that unitary business group includes a member that is a partnership and any one partner of that partnership receives more than \$180,000.00 as a distributive share of the adjusted business income minus loss adjustment of the partnership.

Similarly, the reduction percentages under MCL 208.1417(1)(c) apply to a taxpayer that is a unitary business group if such reduction percentages apply to any member of that unitary business group. For example, the Small Business Alternative Credit of a taxpayer is reduced by 20% if the taxpayer is a unitary business group that includes a member that is a corporation and the compensation and directors' fees of an officer of that member corporation exceed \$160,000.00 but are less than \$165,000.00.

C30. How do foreign persons with no U.S. federal taxable income calculate adjusted business income for purposes of the Small Business Alternative Credit under MCL 208.1417?

When calculating adjusted business income for purposes of the Small Business Alternative Credit, a foreign person with no U.S. federal taxable income includes only compensation and directors' fees under MCL 208.1417(9)(b).

C31. My company intends to purchase a significant piece of business equipment in the near future. This equipment is the type of property that is or will become eligible for depreciation for federal tax purposes. Under the MBT, can my company deduct the cost of this equipment in the year of purchase when calculating its modified gross receipts tax base, and also qualify for the investment tax credit, which is applied against final MBT liability?

Yes. In calculating its modified gross receipts tax base, a taxpayer determines the amount of its gross receipts for the tax year and then subtracts any "purchases from other firms" before apportioning the result. MCL 208.1203(3). Pursuant to MCL 208.1113(6), "purchases from other firms" includes "[a]ssets, including the cost of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes." A purchase of depreciable business equipment as described above meets this definition and the total cost of the equipment, including the cost of fabrication and installation, would therefore be subtracted from the taxpayer's gross receipts as a "purchase from other firms."

The investment tax credit (ITC) set forth in MCL 208.1403(3) is a separately calculated credit that incentivizes capital investment in property. Subject to the combined credit limitation in MCL 208.1403(1), for the 2008 tax year, the ITC is equal to 2.32% of the net calculation of the cost, including fabrication and installation, paid or accrued in the taxable year of depreciable tangible assets that are physically located in Michigan, less any recapture of ITC on assets that have been disposed of. The credit rate increases to 2.9% of the net calculation for tax years 2009 and after. MCL 208.1403(3). The ITC is applied against a taxpayer's total MBT liability (which includes the modified gross receipts tax, the business income tax, and the surcharge), subject to the combined credit limitation in MCL 208.1403(1). Nothing in the MBTA prohibits a taxpayer from deducting the cost, in the year of purchase, of an asset that qualifies as a "purchase from other firms" when calculating its modified gross receipts tax base, and then subsequently utilizing the same asset purchase to qualify for the ITC, a credit that is applied against total MBT liability. However, taxpayers should be aware that the MBT requires recapture of ITC when a sale, exchange, or other disposition of a qualifying asset, including the removal of the asset from the state, occurs.

C32. What expense items are included in compensation for purposes of the compensation credit provided for at MCL 208.1403(2)? What accounting method is used to determine compensation?

For the 2008 tax year, MCL 208.1403 provides a compensation credit equal to .296% of a taxpayer's Michigan compensation. For the 2009 tax year and beyond, the rate is increased to .370% of Michigan compensation. The compensation credit cannot exceed 50% of the taxpayer's

liability imposed under the MBT before the imposition and levy of the surcharge under section 281 for the 2008 tax year. For the 2009 tax year and beyond, the credit cannot exceed 52% of liability before the imposition and levy of the surcharge.

Compensation payments made in the tax year on behalf of or for the benefit of employees, officers or directors is defined at MCL 208.1107(2). Generally, under this definition, compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the Internal Revenue Code including any earnings that are net earnings from self-employment as defined under section 1402 of the Internal Revenue Code. Similar to the SBT, wages, salaries, fees, bonuses, commissions, and other payments made in the tax year on behalf of or for the benefit of employees, officers or directors as well as self-employment earnings must be reported on a cash basis.

Compensation includes expenses such as payroll taxes (exclusive of payments for state and federal unemployment compensation and federal insurance contributions) and all other fringe benefits made for the benefit of employees. Payments made to a pension plan, retirement or profit sharing plan, employee insurance plans and payments under health and welfare benefit plans as well as the administration fees paid for the administration of the health and welfare benefit plan are compensation. Compensation also includes certain payments made by licensed taxpayers that are statutorily identified. These compensation payments are calculated on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income taxes. The statute provides for certain exclusions from compensation including employee discounts on merchandise and services purchased as well as payments made to independent contractors.

Expense incurred for the benefit of the taxpayer rather than for the benefit of employees of the taxpayer is not compensation. Non compensation expenses might include payments reported on a 1099 to an employee for the rental of a building or for interest income. Compensation computed using the methods described above will be used in computing the compensation credit.

C33. How are gross receipts computed on an installment sale of a capital asset? Is the realized installment sale gain included in the two tax bases? How is the investment tax credit (ITC) affected?

When calculating gross receipts and the tax bases under the MBT, taxpayers should consistently use the accounting method used in computing federal income taxes. Annual federal installment sale gain is realized by computing a gross profit rate on the sale and then applying that rate to the payments received in the year. The annual installment payments received on the sale of the capital asset and the gain realized for federal income taxes should be used in calculating the MBT gross receipts for that year.

Under the MBT, "gross receipts" are defined as the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others. MCL 208.1111(1) Excepted from the definition of gross receipts are the proceeds less any gain related to the disposition of a trade or business capital asset. Subsection (o) provides:

Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income. MCL 208.1111(1)(o).

The installment sale method prorates gain and recognizes it over the years in which payments are received. For federal income tax purposes, the installment method may only be used for

nondealer sales of property other than inventory. Generally, dealers in real or personal property may not use the installment method to report gain. A “dealer disposition” includes, with some exceptions, any disposition of personal property by a person who regularly sells or otherwise disposes of such property on an installment plan and any disposition of real property which is held for sale to customers in the ordinary course of the taxpayer’s business.

There are no other gross receipts exceptions under the MBT for gains received on sales of property other than capital assets. Nor are there any other exceptions that are computed using gains realized from transactions that are not from the sale of capital assets. Therefore, any amount received that is attributed to installment sales and the gains that are realized in subsequent years are included in MBT gross receipts.

To the extent the installment sale gain is derived from the business activity of the taxpayer and included in federal taxable income it must also be included in the business income tax base. The gain realized in any tax year from the installment sale is included in both the business income and modified gross receipts tax base.

The MBT requires recapture of ITC when a sale, exchange, or other disposition of a qualifying asset, including the removal of the asset from the state, occurs. Similar to the SBT, a sale of qualifying property reported on the installment method for federal income tax purposes causes the recapture of the entire gross proceeds in the year of the sale, less any gain reported in federal taxable income in that year. Gain attributed to the installment sale that is realized in the seller’s federal taxable income in subsequent years is subtracted in computing any ITC claimed against the MBT in those subsequent years.

The purchaser of a qualifying asset on an installment sale may claim ITC against total MBT liability using the entire amount paid or accrued in the taxable year pursuant to MCL 208.1403(3). Nothing in the MBTA prohibits a taxpayer from deducting the cost, in the year of purchase, of an asset that qualifies as a “purchase from other firms” when calculating its modified gross receipts tax base, and then subsequently utilizing the same asset purchase to qualify for the ITC.

C34. What kinds of expenses qualify for the MBT credit under MCL 208.1451 that applies to beverage distributors who originate deposits on beverage containers?

The Bottle Deposit Administration Credit was added to the MBT as part of 2007 PA 145. Section 451 provides that a distributor or manufacturer who originates a deposit on a beverage container in accordance with Michigan’s Bottle Bill, MCL 445.571 to 445.576, may claim a credit against its MBT liability equal to (a) 30.5% of the taxpayer’s expenses incurred during the tax year to comply with the Bottle Bill, if the section 281 surcharge is imposed in the same year, or (b) 25% of such expenses if the surcharge is not imposed in the same year. MCL 208.1451(1)(a) and (1)(b). If the amount of the allowed credit exceeds the taxpayer’s tax liability for the tax year, the excess is not refunded and may not be carried forward as an offset against the taxpayer’s tax liability in future years. MCL 208.1451(2).

Section 451 does not define “expenses” or specify the types of expenses that qualify for the credit. In order to comply with the Bottle Bill, distributors who originate deposits on beverage containers (meaning that they charge the deposit to their retailer customers) typically pick up empty beverage containers from retailers (usually at the same time that they distribute new product), process the returned containers as required, and sell the materials into the recycling market. Distributors also have reporting and payment obligations with respect to unclaimed bottle deposits. MCL 445.573a; 445.573b. Thus, distributors may incur expenses related to receiving and sorting empty containers, storing containers, cleaning or crushing containers, and recordkeeping. A distributor’s compliance-related expenses will vary depending on whether the retailers it collects from use reverse vending machines. Reverse vending machines crush or

shred the returned containers, eliminating or reducing the need (and cost) for distributors to collect and process the material recovered.

In order to qualify for the Bottle Deposit Administration Credit, expenses must be ordinary, necessary, and directly related to the taxpayer's compliance with the Bottle Bill. "Ordinary" means that another manufacturer or distributor who originates deposits would likely incur a similar expense in complying with the Bottle Bill. "Necessary" means that the expense is one the taxpayer would not have incurred absent the necessity of complying with the Bottle Bill. "Directly related" means that the main purpose of the qualifying expenditure was compliance with the requirements of the Bottle Bill. For example, a can-crushing machine purchased in order to process the empty deposit beverage containers picked up from retailers would probably qualify for the credit in the year of purchase. A printer purchased for general office use, and which is also used to occasionally print reports related to bottle deposits, would not qualify.

Taxpayers claiming the Bottle Deposit Administration Credit must maintain adequate documentation, through business books and records, supporting all expenses for which the credit is claimed.

C35. If two shareholders of a C corporation ("X Corp") are themselves C corporations (Y Corp and Z Corp) and one of Y Corp's shareholders is paid a management fee for managing the business of X Corp, does the management fee factor into the disqualifiers for the Small Business Alternative Credit under MCL 208.1417?

No, a management fee paid by X Corp to a Y Corp shareholder would not be considered compensation or directors' fee of an X Corp shareholder in determining disqualification under MCL 208.1417(1)(b). A Y Corp shareholder providing management services to X Corp for a fee is an inter-corporate transaction whereby the fees paid are revenues for the performance of services as opposed to "compensation" under MCL 208.1417(1)(b). Compensation is defined generally to mean all wages, salaries, fees, bonuses, commissions, and other payments made in the tax year for the benefit of the taxpayer's employees, officers, and directors. MCL 208.1107(2). Thus, compensation implies an employment relationship. A C corporation providing management services to another C corporation is not an employment relationship, but is rather the provision of services by one corporation to another. Therefore, the management fee Y Corp shareholder receives from X Corp is not included in the determination of the compensation ceiling disqualifier for the Small Business Alternative Credit for X Corp.

The Small Business Alternative Credit "is available to any taxpayer with gross receipts that do not exceed \$20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index" and subject to certain disqualifiers. MCL 208.1417(1). One such disqualifier is that a corporation other than a subchapter S corporation is disqualified from receiving the credit if either of the following occur for the respective tax year: (1) compensation and directors' fees of a shareholder or officer of the corporation exceed \$180,000 or (2) the sum of (a) compensation and directors' fees of a shareholder and (b) the product of the shareholder's ownership percentage multiplied by the difference between the sum of business income and, to the extent deducted in determining federal taxable income, a carryback or carryforward of a net operating loss or capital loss, minus the loss adjustment, exceeds \$180,000. MCL 208.1417(1)(b). Since a management fee paid by X Corp to the Y Corp shareholder is not compensation, it would not be includable in the credit disqualifier compensation ceiling of \$180,000 for X Corp.

It should be noted, however, that the management fee paid to the Y Corp shareholder could disqualify Y Corp for the credit if the amount of the management fee caused the corporation's gross receipts to exceed \$20,000,000.00 or its adjusted business income minus the loss adjustment to exceed \$1,300,000.00.

It also should be noted that the disqualifiers under MCL 208.1417(1)(a) and (b) apply to a taxpayer that is a unitary business group if such disqualifiers apply to any member of that unitary business group. In the example posed, it is not clear whether X Corp and Y Corp and Z Corp meet the control test and relationship test under MCL 208.1117(6) so as to constitute a unitary business group. However, if the X Corp and the two corporations do satisfy the control test and relationship test and thus constitute a unitary business group under MCL 208.1117(6), then compensation or directors' fees of an officer of any of the member corporations exceeding \$180,000 for the tax year would disqualify the unitary business group from receiving the credit.

C36. Can a taxpayer use data from its SBT tax periods in calculating the loss adjustment for purposes of determining eligibility for the Alternative Small Business Credit under MCL 208.1417?

Yes, the Department will allow the use of a "loss adjustment" from a period prior to the start of the MBT for purposes of determining qualification for the Alternative Small Business Credit under MCL 208.1417. In computing eligibility for the Alternative Small Business Credit, the MBTA defines "loss adjustment" to mean, in pertinent part, "the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit under this section is being determined." MCL 208.1417(9)(d) [Emphasis added]. Therefore, a taxpayer may utilize data for the respective tax years under the SBT to calculate eligibility for the Alternative Small Business Credit for MBT tax year 2008 through 2012.

C37. What is the proper treatment for an SBT carryforward credit which has only one year of carryforward remaining under the SBT dictated lifespan? Does MCL 208.1401 extend the life of the credit, or is it limited by the original SBT term?

An SBT carryforward with one year of carryforward remaining on the expiration of the SBT may be carryforward for one year under the MBT. MCL 208.1401 does not extend the life of the credit past its original SBT term.

C38. Do dividends that represent distribution of previously taxed S corporation earnings qualify as dividends for purposes of determining an "active shareholder"?

Yes, the MBT definitions of "active shareholder" and "shareholder" are essentially similar to the definitions under the SBTA. An "active shareholder" is a shareholder who receives, in any combination, at least \$10,000 in compensation, director's fees, or dividends from the business, and who owns at least 5% of the outstanding stock or other ownership interest. MCL 208.1417(9)(a). A "shareholder" is a person who owns outstanding stock in a business or is a member of a business entity that files as a corporation for federal income tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the Internal Revenue Code. MCL 208.1115(2).

Whether a dividend received by a shareholder represents previously taxed S corporation earnings is irrelevant to the determination of whether a shareholder meets the definition of "active shareholder." The statutory definition merely requires that the shareholder receive compensation, director's fees, or dividends from the business.

C39. For purposes of the private equity fund credit under MCL 208.1453, if a private equity fund manager is an entity that is a member of a unitary business group, does the calculated credit percentage apply to the tax liability of the entire unitary business group, or the separate tax liability of the fund?

The credit is based on the tax liability of the private equity fund. If the unitary business group is comprised of members other than private equity funds, a pro forma may be used to calculate the tax liability of the private equity fund for purposes of determining the amount of the credit. The resulting credit is applied to the tax liability of the unitary business group.

C40. Is compensation under the MBT reported on a cash or accrual basis?

It depends on the compensation. "[W]ages, salaries, fees, bonuses, commissions, other payments made . . . on behalf of or for the benefit of employees, officers, or directors of the taxpayers, . . . any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer[, including, but not limited to,] payments that are subject to or specifically exempt or excepted from withholding under [IRC 3401 to 3406,]" must be reported on a cash basis. MCL 208.1107(2).

In contrast, "payments to a pension, retirement, or profit sharing plan other than those payments attributable to unfunded accrued actuarial liabilities, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payment of fees for the administration of health and welfare and noninsured benefit plans," must be reported on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes. MCL 208.1107(2).

C41. How is the Small Business Alternative Credit under MCL 208.1417 calculated by a taxpayer that is a unitary business group? How do the disqualifiers and percentage reducers work?

The Small Business Alternative Credit "is available to any *taxpayer* with gross receipts that do not exceed \$20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index" and subject to certain additional disqualifiers. MCL 208.1417(1) (emphasis added). Specifically, if gross receipts exceed \$19,000,000, the credit is reduced

"Taxpayer" is defined as "a person or a unitary business group." MCL 208.1117(5). The gross receipts and adjusted business income thresholds under MCL 208.1417(1) apply to taxpayers. Thus, for a taxpayer that is a unitary business group, the gross receipts and adjusted business income thresholds are those of the unitary business group.

The disqualifiers under MCL 208.1417(1)(a) and (b) apply to a taxpayer that is a unitary business group if such disqualifiers apply to any member of that unitary business group. For example, a taxpayer that is a unitary business group is disqualified from taking the Credit under MCL 208.1417 if that unitary business group includes a member that is a partnership and any one partner of that partnership receives more than \$180,000.00 as a distributive share of the adjusted business income minus loss adjustment of the partnership.

Similarly, the reduction percentages under MCL 208.1417(1)(c) apply to a taxpayer that is a unitary business group if such reduction percentages apply to any member of that unitary business group. For example, the Small Business Alternative Credit of a taxpayer is reduced by 20% if the taxpayer is a unitary business group that includes a member that is a corporation and the compensation and directors' fees of an officer of that member corporation exceed \$160,000.00 but are less than \$165,000.00.

Finally, the amounts described in MCL 208.1417(1)(a) and (b) received by an individual, partner, member, shareholder, or officer of a member of a unitary business group are not combined with similar amounts received from other members of the unitary business group for purposes of the disqualifiers and reduction percentages.

C42. For purposes of the Small Business Alternative Credit under MCL 208.1417, do the rules of attribution attribute the allocated business income of one shareholder to a related shareholder to determine whether the taxpayer is disqualified from the credit?

So long as the related shareholders are not active shareholders, the shares of one shareholder and any corresponding allocated business income (the amount determined under MCL 208.1417(1)(b)(ii)(B)) will be attributed to the other.

The Small Business Alternate Credit is available to entities that meet certain statutory criteria. One such criterion is that the allocated business income of a shareholder of a corporation must not exceed \$180,000. A "shareholder" is a person who owns outstanding stock in a business or is a member of a business entity that files as a corporation for federal income tax purposes. An individual is considered as the owner of the stock owned, directly or indirectly, by or for family members as defined by section 318(a)(1) of the IRC. MCL 208.1115(2). For example, Husband and Wife each own 20% of the stock in Corporation A. The allocated business income for Husband and Wife from Corporation A is \$100,000 each. Due to attribution, both the Husband and Wife will be deemed to own the stock of the other. Thus, Wife will be deemed to own 40% of the stock of Corporation A with a corresponding allocated business income of \$200,000, and vice versa. Since the allocated business income of each of these shareholders – under the rules of attribution – exceeds \$180,000, Corporation A is disqualified from the Small Business Alternative Credit.

However, the rules of attribution do not attribute the compensation and directors' fees of one shareholder to another. Furthermore, "an active shareholder's share of business income shall not be attributed to another active shareholder." MCL 208.1417(2). An "active shareholder" is a shareholder who receives, in any combination, at least \$10,000 in compensation, directors' fees, or dividends from the business, and who owns at least 5% of the outstanding stock or other ownership interest. MCL 208.1417(9)(a). In the example above, if Husband and Wife were both active shareholders, then there would be no attribution between them. However, attribution would still apply if one spouse was an active shareholder and the other was not.

The Small Business Alternative Credit under the MBT operates similarly to the Small Business Credit that was provided for under the SBT. The analysis above is substantially similar to that used under the SBT.

C43. Is a staffing company as defined in section 113(6)(d)(ii) eligible for the section 403 compensation credit on wages etc. paid to the personnel it supplies to its customers?

Yes. A staffing company is an entity primarily engaged in supplying temporary or continuing help on a contract or fee basis. The help supplied is always on the payroll of the supplying establishment, but is under the direct or general supervision of the business to whom the help is furnished.

Regarding a staffing company and the compensation credit, section 403 of the Michigan Business Tax Act (MBTA) does not expressly address this type of entity. The compensation a staffing company pays to the personnel it supplies to its customers is recognized by the MBTA as falling under "purchases from other firms" and thus may be deducted in calculating the staffing company's modified gross receipts tax base.

Section 403 provides in pertinent part that, subject to a capping amount:

[f]or the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 0.296% of the taxpayer's compensation in this state. For the 2009 tax year and each tax year after 2009, . . . a taxpayer may claim a credit against the tax imposed by this act equal to 0.370% of the taxpayer's compensation in this state

The MBTA's recognition of the compensation that a staffing company pays to the personnel it supplies to its customers as a "purchases from other firms" does not disqualify the staffing

company from claiming that amount as a credit pursuant to the conditions provided in section 403.

C44. Are the MEGA credits under the MBT (MCL 208.1431) the same as the MEGA credits under the SBT?

No. Although many of the MEGA credits available under the SBT – such as those under MCL 208.37c(1), 208.38g(20)(a)(i), and 208.38g(20)(b)(i) – are also available under the MBT, the MBT also expands the available MEGA credits. For example, the SBT MEGA credit offered under MCL 208.37c(1) was limited to the payroll of the authorized business attributable to employees who perform qualified new jobs multiplied by the IIT tax rate. Under the MBT, the credit limit is expanded to both payroll *and* health care benefits. MCL 208.1431(1)(a) (effective April 28, 2008). In addition, the MBT offers new MEGA credits to certain qualified high-technology businesses and businesses that would not have qualified for any MEGA credits under the SBT but meet alternative criteria set forth under section 8(9) and 8(11) of the MEGA Act (MCL 207.808). However, the MEGA Business Activity Credit available under the SBT is no longer available under the MBT.

Whether a taxpayer is eligible or authorized to claim a MEGA credit under the MBT is determined by the MEGA Act. This was also true under the SBT.

For further details on the MEGA credits available to taxpayers, please see MCL 208.1431.

C45. Under the MBT, does land qualify for the Investment Tax Credit ("ITC")?

No. Under MCL 208.1403(3), the only assets that qualify for an ITC are tangible assets, or mobile tangible assets, "of a type that are, or under the [IRC] will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes." The type of assets subject to depreciation are those assets defined as tangible property in Treas. Reg. 1.167(a)-2, which includes property such as buildings, machinery, trucks, and office furniture. However, it does not include intangible property, property subject to the federal income tax depletion allowance, or land apart from the improvements or physical development added to it.

C46. When computing the loss adjustment for the small business alternative credit provided under MCL 208.1417, are losses established under the SBT considered when looking at the adjusted business income from the 5 tax years immediately preceding the current tax year.

Yes, MCL 208.1417(9)(d) provides in part:

"Loss adjustment" means the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit under this section is being determined. . . .

The Department will allow the use of a "loss adjustment" from a period prior to the start of the MBT for purposes of computing the loss adjustment in calculating the small business alternative credit. Therefore, in 2008, a calendar year taxpayer could look at years 2003 through 2007.

C47. Under the MBT, may unused Investment Tax Credits ("ITC") be carried forward to future tax years?

No. If the full amount of the ITC calculated under MCL 208.1403(3) cannot be used, the excess credit is extinguished; it may not be carried forward to subsequent years. The amount of the ITC in a tax year, coupled with the Compensation Credit, may not exceed 50% of the MBT liability (52% for the 2009 and subsequent tax years) before imposition of the surcharge under MCL 208.1281.

In contrast, unused carryforwards for any SBT credit may be applied to the MBT for the 2008 and 2009 tax years only.

C48. How is the private equity fund credit calculated?

In general. The private equity fund credit is based on the MBT liability of the private equity fund attributable to the fund's activities as an eligible taxpayer for the tax year – after claiming any other credit allowed under the MBT – apportioned to Michigan based on the activity and location of the private equity fund manager.

Who is the taxpayer? The private equity fund, defined as a pooled investment vehicle that is or holds itself out as being engaged primarily in the business of investing in private equity. Private equity funds are generally organized as limited partnerships. Private equity funds are exempt from registration as an investment company under the Investment Company Act of 1940. See 15 USC 80a-1, *et seq.*

What is an eligible taxpayer? "Eligible taxpayer" means "a taxpayer that is a private equity fund which serves as a conduit for the investment of private securities not listed on a public exchange by accredited investors or qualified purchasers at any time during which the investment is acquired or subsequently used to claim the credit under this section." MCL 208.1453. In other words, an eligible taxpayer is a private equity fund that serves as a conduit for the investment of private securities by accredited investors or qualified purchasers. The private securities must not be listed on a public exchange. To qualify as an eligible taxpayer, all of the above criteria must be met at the time the investment is acquired and sold. To the extent that a private equity fund conducts activity that does not satisfy the eligible taxpayer criteria, the tax liability attributable to such activity shall not qualify for the credit. Whether or not an investor or purchaser qualifies as an accredited investor or qualified purchasers is a matter of federal law. For example, whether a person that acquires an investment from a qualified purchaser by gift or bequest is resolved under 15 USC 80a-3(c)(7)(A).

How is the credit apportioned? The credit is apportioned to Michigan "by a fraction, the numerator of which is the total activity of the private equity fund manager conducted in this state during the tax year and the denominator of which is the total activity of the private equity fund manager conducted everywhere during the tax year." MCL 208.1453. The "total activity of the private equity fund manager" is measured by the receipts of the private equity fund acting as an "eligible taxpayer," and includes the sale of investment assets and investment related receipts. "[T]he location of the activity of the private equity fund manager is based on the location of the office from which the fund manager conducts management activity for the eligible taxpayer." MCL 208.1453. Thus, the apportionment formula is the receipts of the private equity fund derived from investments managed by the fund manager from offices in Michigan over receipts derived from investments managed by the fund manager everywhere. For example, a private equity fund purchased a 40% share in a private research company in 2008. The fund manager manages that investment from an office in Michigan. The private equity fund sells its stake in the research company in 2009 resulting in receipts of \$200,000. For the 2009 tax year, the numerator will include that \$200,000.

Note that the credit and apportionment is limited to the eligible taxpayer; the credit of an eligible taxpayer is not apportioned based on the activities a manager renders to all of its eligible taxpayers.

What does the term "securities" mean? The term "securities" is not generally defined under the MBT. For purposes of the private equity fund credit, the IRC does not define "securities" in any comparable context. However, the private equity fund credit relies on other definitions found

in the Securities Act of 1933 and the Investment Company Act of 1940. Furthermore, private equity funds are generally governed under the provisions of federal security laws. Thus, the Department concludes that the definition of securities as found in the Securities Act of 1933 shall control for purposes of MCL 208.1453. In other words, for purposes of the private equity fund credit, "security" means:

any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. [15 USC 77b.]

C49. How are the small business alternative credit disqualifiers under the MBT calculated for a part-year shareholder?

A taxpayer that is a corporation other than an S-corporation will be disqualified from taking the small business alternative credit if a shareholder receives more than \$180,000 in compensation or if the sum of the shareholder's share of business income and compensation exceed this amount. MCL 208.1417(1)(b). These disqualifiers are computed for the tax year. *Id.* Thus, a part-year shareholder will need to prorate its stock ownership to calculate the disqualifiers when reporting for a full tax year.

Note that a part-year shareholder of an S-corporation will also need to perform the following steps but the resulting disqualifier is computed only on the sum of the shareholder's compensation and share of business income.

For the compensation disqualifier, the part-year shareholder must annualize compensation for the length of time as a shareholder to reach what compensation would have been for the entire year. The annualized amount is then measured against the compensation disqualifier. To annualize, the part-year shareholder will take compensation for the period that it was a shareholder, multiply by 12, and then divide that result by the number of months as a shareholder.

The business income disqualifier is calculated by multiplying percentage of ownership by the business income (net of a carryback or carryover of a net operating loss or capital loss to the extent deducted in arriving at federal taxable income and the loss adjustment.) For a part-year shareholder this means that the shareholder must prorate its percentage of ownership for the year in order to determine its proper annual percentage of ownership and share of business income for the tax year. To prorate, the part-year shareholder will divide the number of shares it held for the year by the total shares, then multiply the result by a fraction, the numerator of which is the number of months that the part-year shareholder was a shareholder and the denominator of which is 12. The result will be the part-year shareholder's percentage of ownership for the tax year. This percentage of ownership is then applied to the adjusted business income of the taxpayer to determine the part-year shareholder's share of business income. Finally, the resulting share of business income is added to the part-year shareholder's annualized compensation.

The following examples illustrate the calculations:

1) Corporation A has 50,000 shares of outstanding stock for the 2009 calendar year and business income of \$100,000 for the year. Individual C obtains 15,000 shares on July 1 of 2009. C also received \$45,000 in compensation for July through December. Corporation A must compute the disqualifiers for the 2009 tax year.

1. Compensation: $(45,000 \times 12) / 6 = \$90,000$
2. Percentage of Ownership: $15,000/50,000 = 30\% \times 6/12 = 15\%$
3. Share of Business Income: $15\% \times 100,000 = \$15,000$
4. Compensation combined with share of business income: $\$90,000 + \$15,000 = \$105,000$

Corporation A is not disqualified on C's compensation alone, which is \$90,000 for the tax year. Nor is it disqualified by compensation plus C's share of business income which equals \$105,000 for the tax year. This part-year shareholder does not cause the taxpayer to be disqualified from the small business alternative credit.

2) Next, consider an S-corporation taxpayer. The taxpayer has 100,000 shares of outstanding stock and \$300,000 in business income for the 2009 calendar year. Its employee, X, becomes a shareholder on November 1, 2009, obtaining 20,000 shares. X is paid \$25,000 in compensation for November through December and is considered an active shareholder.

1. Compensation: $(25,000 \times 12) / 2 = \$150,000$
2. Percentage of Ownership: $20,000/100,000 = 20\% \times 2/12 = 3.3\%$
3. Share of Business Income: $3.3\% \times 300,000 = \$9,900$
4. Compensation combined with share of business income: $\$150,000 + \$9,900 = \$159,900$.

This part-year shareholder's combined compensation and share of business income do not cause the taxpayer to be disqualified.

C50. A “qualified taxpayer” for purposes of the Historic Preservation Credit is the person that either owns the historic resource or has a long-term lease agreement with the owner, and has paid or incurred the qualified expenditures for the rehabilitation. Pursuant to subsection 435(8), a qualified taxpayer who chooses to assign all or a portion of the Historic Preservation Credit must do so in the tax year in which the Certificate of Completed Rehabilitation is issued. What is the deadline by which the assignee must first claim the credit on its return?

An assigned Historic Preservation Credit amount may be claimed by the assignee against tax assessed under the MBTA or under the Income Tax Act of 1967, MCL 206.1 et seq. Section 435(8) directs that the assignee must first claim the credit on the annual return required to be filed for the tax year in which the assignment is made.

For example, a Certificate of Completed Rehabilitation is issued in February 2009 to a qualified taxpayer with a calendar year end of December 31, 2009. The qualified taxpayer, in March 2009, assigns the Historic Preservation Tax Credit to an assignee with a fiscal year end of June 30, 2009. After the assignee makes the election to apply the credit against either its Michigan

Business Tax or its Income Tax, the assignee must claim the Historic Preservation Credit on the annual return required to be filed by the applicable tax for its tax year ending June 30, 2009.

C51. The Department has determined that a separately calculated Michigan depreciation amount is allowable for assets claiming IRC § 168(k) bonus depreciation from which Michigan has decoupled. When the asset is sold, will the Michigan book-value be used in determining what (if any) investment tax credit will be recaptured?

The adjusted MBT tax basis will be used in computing gain and any ITC recapture as provided by statute. The Department has determined that because the definition of "federal taxable income" decouples bonus depreciation, provided for under IRC §168(k), from the amount of taxable income computed for federal income taxes that a separate MBT depreciation amount would need to be computed. The amount of depreciation that would have been allowed under federally accepted depreciation methods if §168(k) were not in effect will be allowed for determining MBT business income. The depreciation method used by the taxpayer to adjust MBT business income must be consistently used over the life of the asset until it is retired or otherwise disposed of. The depreciation allowed for MBT will be different than federal depreciation in instances where "bonus depreciation" was taken in reporting federal taxable income. Therefore, when bonus depreciation was taken on a federal return, a taxpayer under the MBT will have assets that will have different adjusted tax bases.

The MBT adjusted tax base should be used when computing any MBT gain on disposition of the asset. This adjusted MBT gain will consistently be used in the calculation of any ITC recapture under the MBT.

C52. For MBT Brownfield Redevelopment credits authorized by MCL 208.1437, if the Qualified Taxpayer has a limited MBT liability and has taken the credit against his MBT liability to the fullest extent, how is he paid for the balance of the unused credit if he elects to have the state pay him the \$0.85 on the dollar? (An example of this is he has a \$1.1M credit, used \$200K toward his MBT liability and has \$900K in an unused credit). Also, in what form does this payment come to the Qualified Taxpayer if he elects to have the state pay him the \$0.85 on the dollar, a check in the full amount? Paid in one lump sum? Paid in installments?

A Brownfield Redevelopment credit is authorized by MCL 208.1437. For tax years ending on or after April 8, 2008, if the credit allowed for the tax year exceeds the qualified taxpayer's tax liability for the tax year, the qualified taxpayer may elect to have the excess refunded at a rate equal to 85% of that portion of the credit that exceeds the tax liability of the qualified taxpayer for the tax year and forgo the remaining 15% of the credit and any carryforward.

For a qualified taxpayer that chooses the refundable option, the excess portion of this credit, less the 15% discount, is treated on the annual return as a payment. The credit calculation is reported on 2008 MBT Form 4584, the amount carries to Form 4574, and then to Form 4567, Line 42.

The refundable amount will be subject to offsets (*e.g.*, other unpaid taxes) under the same rules as apply to any MBT tax refund. On the return the qualified taxpayer will identify how much of its total overpayment should be applied as a credit forward to the next tax year, and how much should be refunded. Of the total overpayment, after offsets, the portion for which the qualified taxpayer requests a refund will be refunded fully and promptly. If the refund is not made within 45 days, the standard rules under which the State must pay interest will apply. For the numerical example in the question, assuming no offsets, 85% of the \$900,000 excess credit, or \$765,000, would be available as a refund and/or credit forward.

Two additional items should be noted. First, the reference to “qualified taxpayer” indicates that an assignee does not have this election. Second, there is a type of Brownfield credit (see MCL 208.1437(4)) ranging from \$10 to \$30 million, in which 10% of the total credit is allowed each year for ten years. The statute granting the 85% refund option includes the phrase “if the credit allowed under this section for the tax year exceeds the qualified taxpayer’s tax liability” (*emphasis added*). If a \$20 million credit is approved under §1437(4), the credit allowed “for the tax year” will be \$2 million each year. This refund option will not allow 85% of the entire \$20 million to be refunded in a single year.

C53. The Michigan Business Tax Act (MBTA) expands the credit for donations to certified community foundations endowment funds provided by the prior Single Business Tax Act to include donations to certified education foundations endowment funds. MCL 208.1425. The amount of the nonrefundable credit remains the same, which is 50% of the taxpayer’s contribution limited to 5% of the taxpayer’s tax liability before claiming any credits allowed under the MBTA or \$5,000.00, whichever is less.

Is the certification process for an education foundation similar to that of a community foundation?

Yes. As the criteria for certification for a community foundation and education foundation are substantially similar, the Department of Treasury’s Technical Services Division will administer the certification process for both types of foundations. An application for certification as a qualified education foundation (Form #4629) is made available on Treasury’s web site each year no later than January 1st, remaining until the filing deadline of April 1st.

The Technical Services Division’s review will include the criteria shared by each foundation that they must:

- Qualify for exemption from federal income taxation under sec. 501(c)(3) of the Internal Revenue Code (IRC);
- Maintain an ongoing program to attract new endowment funds from a wide range of potential donors in the community or area served;
- Meet federal treasury regulations for being publicly supported and treated as a single entity;
- Be incorporated or established as a trust at least 6 months before the beginning of the tax year for which the credit is claimed;
- Have an independent governing body representing the general public’s interest and that is not appointed by a single outside entity;
- Be subject to a program review each year and an independent financial audit every 3 years, and provide copies of the same to the Department not more than 3 months after the review or audit is completed.

Criteria unique to a community foundation are that it must:

- Reach a minimum endowment value of \$100,000.00 before the expiration of the 18month period after the community foundation was incorporated or established;
- Support a broad range of charitable activities within the specific geographic area that it serves;
- Submit to the Department annually documentation that it is publicly supported pursuant to federal treasury regulations;
- Not be a supporting organization as an organization is described in sec. 509(a)(3) of the IRC and in 26 Code of Federal Regulations 1.509(a)-4 and 1.509(a)-5;

- Have, before the expiration of 6 months after it is incorporated or established; at least 1 part-time or full-time employee and continually maintain the same;
- Submit to the Department annually an independent financial audit if it has an endowment value of 1 million dollars or more;
- Operate in a county of Michigan that was not served by a community foundation when the community foundation was incorporated or established after January 9, 2001, or operate as a geographic component of an existing certified community foundation.

The criterion unique to an educational foundation is that all funds are exclusively dedicated to a school district or public school academy.

A community foundation must apply to the Technical Services Division for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit. The application deadline for certification for an education foundation is on or before April 1 of the tax year for which the taxpayer is claiming the credit. The application Form #4629 will be found under the "forms" tab on Treasury's web site at www.michigan.gov/treasury.

A taxpayer that is also subject to the Michigan Income Tax Act of 1967, MCL 206.1 et seq., who has made a contribution to a certified community foundation endowment fund, may choose to claim a credit on the individual income tax return or the Michigan Business Tax (MBT) return, but not both.

However, a credit for a contribution to a certified education foundation endowment fund is available only under the MBT.

C54. Do state tax liens attach to assigned MBT tax credits?

Yes. Section 29(1) of the Revenue Act, MCL 205.29(1), states in pertinent part:

Taxes administered under this act [including the Michigan Business Tax], together with interest and penalties on those taxes, shall be a lien in favor of the state against all property and rights of property, both real and personal, tangible and intangible, owned at the time the lien attaches, or afterwards acquired by any person liable for the tax, to secure payment of the tax. The lien shall attach to the property from and after the date that any report or return on which the tax is levied is required to be filed with the department and shall continue for 7 years after the date of the attachment.

Thus, in order for a state tax lien to attach to an assignable tax credit, the credit must be "property" or "rights to property." Assignable tax credits conferred upon the taxpayer pursuant to statute may reasonably constitute "property and rights to property." Thus, under the Revenue Act, the Department of Treasury may cause a lien to attach against an assignable tax credit granted to the taxpayer in order to secure payment of any taxes owed by the taxpayer. The lien exercised by the Department attaches from and after the date on which a report or return on which the respective tax is levied is required to be filed and continues for at least 7 years after the attachment. Once perfected, the Department's lien generally has precedence and superior priority over all other liens and encumbrances, except where bona fide liens against the assignable credit are recorded before the date of the Department's lien is recorded and thus perfected. MCL 205.29(2); Revenue Administrative Bulletin 1989-50. Notices of state tax liens are made pursuant to the State Tax Lien Registration Act, 1968 PA 203, MCL 211.681 *et seq.*

An assignee to a tax credit takes the tax credit subject to the state's recorded tax lien. The assignee effectively stands in the shoes of the taxpayer assignor, taking only the property interest

the assignor possesses. Consequently, the Department of Treasury may enforce a tax lien against the assignee on the amount of the tax credit for any tax debt or obligation of the assignor for which a tax lien is recorded prior to assignment of the tax credit. MCL 205.29(3).

C55. Does the step up in basis under Internal Revenue Code (IRC) section 754 election and 743 application qualify as "purchases from other firms" when calculating the modified gross receipts tax base? Does the step up in basis qualify for investment tax credit (ITC)?

No, a taxpayer may not subtract a step up in basis under IRC section 754 election and 743 application as "purchases from other firms" when calculating the modified gross receipts tax base. The step up in basis does not qualify for ITC.

"Purchases from other firms" are deducted from a taxpayer's gross receipts to calculate the modified gross receipts tax base. Purchases from other firms includes in relevant part:

(b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. MCL 208.1113(6)(b).

The statute emphasizes that to qualify for this deduction, a taxpayer's purchase must be acquired during the tax year and be an asset of the type that is or will become eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

An election by a partnership under IRC section 754 to apply section 743 (b) allows for the step up in the basis of partnership property for transfers of partnership interests. Section 743(b) requires the incoming partner increase his or her share of the partnership's basis in its assets by the excess of the investing partner's outside basis (i.e. what was paid for the partnership interest) over their proportionate share of the adjusted basis of the partnership property. This optional basis adjustment directly affects only the incoming investor partner. An election under IRC Section 754 permits an investor to claim depreciation deductions to the extent that any basis adjustment is allocated to depreciable property.

Under this election, the taxpayer/partnership has not acquired any assets in the year of the election nor has it acquired any assets from another firm. Rather, the assets of the partnership were continually maintained except that they have been revalued for the investing partner due to the change in ownership. Thus, the taxpayer/partnership does not qualify for and may not take a "purchases from other firms" deduction when computing the modified gross receipts tax base.

A taxpayer may claim an ITC against the MBT tax liability for a percentage of the net capital investment paid or accrued for qualifying assets physically located in Michigan for use in a business activity. MCL 208.1403(3). Because the taxpayer/partnership has not made any additional investment in qualifying assets, no ITC may be claimed on the incoming partner's increase to his or her share of the partnership's asset basis.

C56. When must a brownfield or historic preservation credit assignment be in place in order for the assignee to make the election to remain under the MBT?

Beginning January 1, 2012, an MBT taxpayer is either of the following:

(a) A person or [UBG] that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under part 2 of the income tax act ... and that elects under section 500 to file a return and pay the tax imposed under this act, if any.

(b) A person or [UBG] that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, ... to file a return and pay the tax imposed under this act, if any. [MCL 208.1117(5)]

Thus, an assignee may be a taxpayer under the MBT so long as assignment is completed in accordance with the appropriate credit section of the MBT for the brownfield (section 437) or historic preservation (section 435) credits, and the taxpayer elects to file and pay the MBT.

For a brownfield credit, other than a multi-phase credit, assignment must be made in the same tax year in which a certificate of completion is issued. For a multiphase credit, the credit may be assigned by component, once a component completion certificate is issued. For the historic preservation credit, assignment is made in the year in which the certificate of completed rehabilitation is issued. If a proper assignment is in place, the assignee may elect to remain under the MBT in accordance with the requirements of the certificated credit assigned, and the process of doing so varies by credit.

The statute provides for both non-accelerated (traditional) and accelerated brownfield and historic preservation certificated credits. An assignee with a non-accelerated brownfield or historic preservation certificated credit may make the election in the year in which a credit is available and is permitted to remain taxable under the MBT until the qualifying credit and any carryforward of that credit are extinguished. An assignee with a multiphase brownfield credit under MCL 208.1437(10) that makes the election is required to continue to file and pay the MBT until the certificated credit is complete and the credit is used up.

For an accelerated brownfield or historic preservation certificated credit, the certificate of completion, assignment certificate, or component completion certificate (for a brownfield credit), or the certificate of completed rehabilitation, assignment certificate, or reassignment certificate (for an historic preservation credit) must be issued for a tax year beginning after December 31, 2011. An accelerated credit may be claimed at any point in the tax year, or with the assignee's annual return.

C57. Under MCL 208.1403(2), a taxpayer may claim a credit against the MBT equal to a specified percentage of the taxpayer's "compensation in this state." What is the definition of "compensation in this state"?

For purposes of the compensation credit, "compensation in this state" means actual compensation for that portion of the services that each of the taxpayer's employees provided at one or more locations in Michigan during the applicable tax year. Compensation for any services provided by an employee at a non-Michigan location may not be used to calculate the credit. In order to be entitled to the credit, the taxpayer must maintain adequate records to permit determination of the portion of services that each employee provided in Michigan and at other, non-Michigan, locations.

C58. In order to claim the farmland preservation credit under the Michigan Business Tax (MBT) for a tax year ending after December 31, 2011, must an eligible owner of land subject to a Farmland Development Rights Agreement (FDRA) or agricultural conservation easement make the election to remain under the MBT?

Yes. MCL 324.36109(2) allows the farmland preservation credit against the MBT to qualifying farmland owners. The farmland preservation credit is a certificated credit as that term is defined under section 107 of the Michigan Business Tax Act. MCL 208.1107(g). Taxpayers holding certain certificated credits, such as farmland preservation credits, that have not been fully claimed or paid prior to January 1, 2012 may elect to file a return and pay the tax imposed by the MBT until the certificated credits and their carryforwards are used up. Except for taxpayers holding qualifying historic preservation or brownfield certificated credits, a taxpayer is required to make the election

to continue under the MBT “for the taxpayer’s first tax year ending after December 31, 2011.” MCL 208.1500(1) and 206.680(1). The election is irrevocable.

Therefore, a taxpayer that wishes to claim an MBT farmland preservation credit must make an election for its first tax year ending after December 31, 2011, and file and pay under the MBT. A taxpayer that filed a Corporate Income Tax (CIT) return for its first tax year ending after December 31, 2011, did not make the MBT election and may not revoke its 2012 tax year CIT filing.

A purchaser of land with an existing FDRA, an owner of land that will be subject to a new FDRA, or the purchaser of an agricultural conservation easement, where the agreement begins after December 31, 2011, may be eligible for a farmland preservation tax credit for that agreement only if the taxpayer has a certificated credit—whether another certificated farmland preservation agreement or another certificated credit—for which it previously made a valid MBT election. The certificated credit(s) that enabled the initial election and any carryforwards from such credit(s) must not yet be used up and the MBT election must still be in effect.

e-File

E1. Will I be able to send attachments with the MBT e-file return?

Yes. Treasury will accept certain Portable Document Format (PDF) attachments with MBT e-filed returns. A list of defined attachments is available on the e-file Web site at www.MIfastfile.org (select Business Taxpayer). You will need to follow your software instructions for submitting attachments with an e-filed return.

E2. Do I need a Customer Service Number (CSN) to e-file my MBT return?

No. Treasury is not issuing Customer Service Numbers (CSN) for MBT e-file. The CSN issued for Single Business Tax e-file cannot be used for MBT e-file return submissions.

For tax years 2009 and after, the signature process for MBT e-file returns is as follows:

Fed/State (Linked) Returns:

Michigan will accept the federal signature. No additional signature documentation is required.

State Stand Alone (Unlinked) Returns:

Tax Professionals:

Returns are signed by entering a PIN in the software after reading the perjury statement displayed in the software. The PIN will be selected by the taxpayer, or the taxpayer may authorize their tax preparer to select the PIN.

Form MI-8879-MBT (new for tax year 2009) will be printed and contain the PIN. The tax preparer will retain the MI-8879-MBT in their records as part of the taxpayer’s printed return.

Taxpayers (Online):

Returns are signed by entering a PIN in the software after reading the perjury statement displayed in the software. The PIN will be selected by the taxpayer.

Form MI-8879-MBT will be printed and contain the PIN. Taxpayers will retain the MI-8879-MBT in their records.

MBT State Stand Alone (SSA) e-filings submitted without a PIN will be rejected by the Treasury. The PIN must be entered in the software and included in the electronic file for all SSA filings. Do not mail Form MI-8879-MBT to the Treasury and do not include Form MI-8879-MBT as an attachment with the e-file return. Form MI-8453-MBT was discontinued starting with tax year 2009.

For tax year 2008, The signature process for MBT e-file returns is as follows:

Fed/State (Linked) Returns:

Michigan will accept the federal signature (scanned Form 8453 or the Practitioner PIN option). As long as there is an IRS submission ID that links the two returns together, it is considered a Fed/State filing. Michigan does not require any additional signature documentation.

State Stand Alone (Unlinked) Returns:

State Stand Alone returns must be signed using the Michigan Business Tax e-file Authorization, Form 4665 (MI-8453-MBT). The completed MI-8453-MBT must be included as a scanned attachment when transmitting the MBT return electronically.

E3. What MBT forms are eligible for e-file?

Treasury will support the following forms, schedules for MBT Fed/State e-file for tax year 2010.

- 3581 Historic Preservation Tax Credit
- 4567 Annual Return
- 4568 Nonrefundable Credits Summary
- 4569 Single Business Tax (SBT) Credit Carryforwards
- 4570 Credits for Compensation, Investment, and Research and Development
- 4571 Common Credits for Small Businesses
- 4572 Charitable Contribution Credits
- 4573 Miscellaneous Nonrefundable Credits
- 4574 Refundable Credits
- 4575 Loss Adjustment Worksheet for the Small Business Alternative Credit
- 4577 Schedule of Shareholders and Officers
- 4578 Schedule of Partners
- 4580 Unitary Business Group Combined Filing Schedule for Standard Members
- 4582 Penalty/Interest Computation for Underpaid Estimated Tax
- 4583 Simplified Return
- 4584 Election of Refund or Carryforward of Credits
- 4585 Investment Tax Credit Recapture From Sale of Assets Acquired Under Single Business Tax
- 4586 Schedule of Business Activity Protected Under Public Law 86-272
- 4587 Schedule of Recapture of Certain Business Tax Credits and Deductions
- 4588 Insurance Company Annual Return for Michigan Business and Retaliatory Taxes
- 4590 Annual Return for Financial Institutions
- 4594 Farmland Preservation Tax Credit
- 4595 Renaissance Zone Credit Schedule
- 4596 Miscellaneous Credits for Insurance Companies
- 4752 Unitary Business Group Combined Filing Schedule for Financial Institutions

E4. I don't use software to prepare my MBT return. Am I required to e-file?

If you are preparing your MBT return yourself and do not use computer software, then you are not required to e-file. E-file provides the best possible level of service. MBT paper returns will take longer to process. Also, account resolution for MBT e-file returns is given priority over paper returns.

Beginning with the 2010 tax year, Michigan will have an enforced Michigan Business Tax (MBT) e-file mandate.

Developers producing MBT tax preparation software and computer-generated forms must support e-file for all eligible Michigan forms that are included in their software package. All eligible MBT returns prepared using tax preparation software or computer-generated forms must be e-filed.

Treasury will not process computer-generated paper returns that are eligible to be e-filed. A notice will be mailed to the taxpayer indicating that their return was not filed in the proper form and content and must be e-filed. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed.

E5. Do I have to mail anything to Treasury?

If you are expecting a refund, there are no paper forms to mail to Treasury. If your return requires payment, you will need to include Form MBT-V, MBT e-file Annual Return Payment Voucher (Form 4576), with your payment.

You may also make your payment using the Electronic Funds Transfer (EFT) online payments process for ACH Debit filers. The existing touch tone telephone payment process will continue to be available. For more information about the online payments process, visit our Web site at www.michigan.gov/biztaxpayments.

E6. I have a Michigan-issued TR Number. Am I eligible for e-file?

No. MBT Fed/State e-file is only available to those taxpayers using a Federal Employer Identification Number (FEIN). Information and forms to apply for a FEIN may be obtained at www.irs.ustreas.gov/business or call the IRS at 1-800-929-4933 and register over the phone.

E7. My software does not support the State Stand Alone method for e-file and I am not e-filing my federal return. What should I do?

We encourage you to e-file both your federal and Michigan returns. However, if you are not e-filing your federal return and your software does not support State Stand Alone e-file, you will need to mail your return to the address provided in the instruction book.

E8. How do I know if my Michigan return was Accepted or Rejected?

Treasury will generate an acknowledgement for all returns received. The acknowledgement for the Michigan return will be made available to the transmitter within three business days after successful transmission to the IRS. Transmitters who transmit for EROs and preparers must notify taxpayers of the Michigan acknowledgment at the time of receipt.

E9. In previous years I have utilized the Direct portal for my SBT returns. Can I transmit my MBT return using the Direct portal?

No. All MBT returns will be transmitted through the IRS Modernized e-File (MeF) program. The Direct portal can only be utilized for prior year SBT filings as supported by your software.

E10. What should I do when I owe tax and want to e-file my Michigan Business Tax return?

The payment options available for MBT e-file returns are:

Electronic Funds Transfer (EFT). Online payments are now available for ACH Debit filers. Information on the EFT process as well as the EFT Debit Application (form 2248) and EFT Credit Application (form 2328) are available on Treasury's Web site at www.michigan.gov/biztaxpayments. Fax your completed application to (517) 636-4378. Please allow 4 weeks for processing.

Paper Payment Voucher. Taxpayers who choose to mail their payment must include form MBT-V, MBT E-file Annual Return Payment Voucher with the payment. **Copies of federal and Michigan returns or schedules should not be mailed with form MBT-V.**

E11. Is there a penalty for failing to comply with the MBT e-file mandate?

Treasury will not accept the paper filing of a computer-generated MBT return that is eligible for e-file. If a preparer or taxpayer submits a computer-generated paper MBT return that is eligible for e-file, Treasury will not process the return and notification will be mailed to the taxpayer. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed.

E12. Where can the policy and language of the MBT e-file mandate be found?

Mandate information will be available on Treasury's Web site and in the appropriate forms and publications for tax year 2010.

E13. What should the taxpayer or preparer do when their e-filed MBT return is rejected?

Taxpayers and preparers should review the e-file acknowledgement rejection reason and if possible correct and retransmit the return electronically. If the return cannot be corrected and retransmitted, Form 4833, Michigan Business Tax E-file Exceptions, must be attached to the front of the paper filing or it will not be processed. Form 4833 will be generated by your software.

E14. What does Treasury expect software developers to do to help enforce the MBT e-file mandate?

Treasury is communicating the MBT e-file mandate to software developers with the expectation that they will support e-file for all eligible forms and inform their customers of the mandate requirements.

E15. Are there any waivers or exceptions to the mandate?

Treasury recognizes that there are conditions which make a return ineligible for e-file. When the computer-generated MBT return meets one or more of the Treasury-recognized e-file exceptions, the taxpayer may have to complete and attach Form 4833, Michigan Business Tax E-File Exceptions, to the front of their return or the paper filing will not be processed. Form 4833 will be generated by your software.

Attach Form 4833 to a computer-generated paper return that **meets** one or more of the Treasury-recognized e-file mandate exceptions. **Treasury-recognized exceptions at the time of this printing include, but are not limited to:**

- Taxpayer is filing one or more of the following forms:
 - o Qualified Affordable Housing Seller's Deduction (Form 4579)
 - o Tribal Agreement Ownership Schedule (Form 4597)
 - o Tribal Agreement Apportionment (Form 4598)
- Return was prepared by a preparer who has been suspended or denied acceptance to participate in the IRS or does not have an Electronic Filing Identification Number (EFIN).
- Return was rejected by Michigan or IRS and there is no way to correct and resubmit the return electronically and software does not support State Stand Alone.
- Taxpayer's federal return contains a form that is not eligible for e-file and the software does not support State Stand Alone e-file.

The following are also Treasury-recognized exceptions. However, do not attach Form 4833 to an MBT paper return that meets one or more of the following conditions:

- The taxpayer is filing a Unitary Business Group (UBG) return. However, whenever possible, the preferred method is e-file.
- The taxpayer has an organization type of Individual or Fiduciary.
- The taxpayer does not have a Federal Employer Identification Number (FEIN).
- The return is completed by hand (with pen or pencil).
- The return is completed using forms from Treasury's Web site or Michigan tax instruction books.

Additional information will be published on Treasury's Web sites www.michigan.gov/taxes and www.Mlfastfile.org as it becomes available.

E16. What types of companies/businesses are covered by the MBT e-file mandate?

All computer-generated MBT returns that are eligible for e-file must be e-filed. Treasury-recognized exceptions are noted on Form 4833, Michigan Business Tax E-file Exceptions. Form 4833 will be generated by your software.

E17. What legal authority is there for enforcing the mandate?

The Tax Act authorizes the State Treasurer to prescribe e-file as the only acceptable way of filing MBT returns that are eligible for e-file. The MBT Act 36 of 2007 states:

Sec. 505

(1) An annual or final return shall be filed with the department in the form and content prescribed by the department by the last day of the fourth month after the end of the taxpayer's tax year. Any final liability shall be remitted with this return. A taxpayer, other than a taxpayer subject to the tax imposed under chapter 2A or 2B, whose apportioned or allocated gross receipts are less than \$350,000.00 does not need to file a return or pay the tax imposed under this act.

Sec. 509

(1) At the request of the department, a taxpayer required by the internal revenue code to file or submit an information return of income paid to others shall, to the extent the information is applicable to residents of this state, at the same time file or submit the information in the form and content prescribed to the department.

E18. Will Michigan offer a free solution for MBT e-file?

No, not at this time. Michigan will continue to exclusively support fed/state e-file for MBT

E19. Will there be a monetary penalty for failure to comply with the MBT e-file mandate?

No. However, if a preparer or taxpayer submits a computer-generated paper MBT return that is eligible for e-file, Treasury will not process the return and a notification will be mailed to the taxpayer. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed.

E20. Will there be a penalty for software developers if they allow a taxpayer or preparer to file a paper MBT return prepared using their software?

No. However, a notice will be mailed to the taxpayer indicating the MBT return was not filed in the proper form and content and must be e-filed. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed. To avoid a negative reaction from their customers, software developers will want to comply with the mandate and clearly market the mandate to their customers.

E21. Will all software companies be required to support MBT e-file?

Yes. If they do not support MBT e-file for the eligible forms that are included in their software package, we will not accept their paper returns unless they meet the criteria of one or more of the Treasury-recognized exceptions on Form 4833, Michigan Business Tax E-file Exceptions. Form 4833 will be generated by your software.

E22. If software is capable of computing a bottom line tax without supporting a necessary schedule, will the taxpayer be able to paper file the computer-generated MBT return and include a handwritten copy of the unsupported schedule, or will the entire MBT return have to be handwritten?

With the exception of MBT returns filed by fiduciary filers and sole proprietorships, e-filed returns that have been rejected and cannot be corrected and retransmitted, and Treasury-recognized exceptions from e-file, computer-generated paper returns or schedules will not be accepted for any e-file eligible MBT returns.

E23. Can rejected returns that cannot be corrected and retransmitted and returns that fall under one of the Treasury-recognized exceptions be paper filed on computer-generated forms?

Yes. Form 4833, Michigan Business Tax E-file Exceptions, must be attached to the front of the paper filing or it will not be processed. Form 4833 will be generated by your software.

E24. If Treasury sends a notice to the taxpayer for paper filing an MBT return, will the return be considered late if that taxpayer does not then submit the e-filed return before the filing due date?

As long as all tax due is paid by the due date, there will be no late penalty assessed.

E25. Will a rejection at the federal level allow an MBT return to be paper-filed?

Yes. If the MBT return was part of a Fed/State e-file submission, and

- the federal return was rejected by the IRS and there is no way to correct and resubmit the federal return, and/or
- the software does not support State Stand Alone.

E26. What if the federal return cannot be e-filed? Will an MBT State Stand Alone return be required?

If the federal return cannot be e-filed, Treasury will accept a paper MBT return for the 2010 tax year. A completed Form 4833, Michigan Business Tax E-file Exceptions, must be attached to the front of the return. Form 4833 will be generated by your software.

Beginning with the 2011 tax year, the MBT return must be e-filed as a State Stand Alone submission if the federal return cannot be e-filed.

E27. If an MBT return and attachments exceed the file size limitations, would Michigan prefer to receive the return electronically, without attachments, or would it be better to send a paper MBT return with attachments?

A paper return should be filed with a completed Form 4833, Michigan Business Tax E-file Exceptions, attached to the front. Form 4833 will be generated by your software.

E28. How will Treasury ensure that all developers are complying with the MBT e-file requirements?

With the cooperation and assistance from both preparer groups and software developers, we anticipate the volume of taxpayers not complying with the mandate to be very small. Further, with the assistance of software developers in advising their customers about the mandate we do not

foresee compliance with the mandate being an issue. However, Treasury will monitor paper-filed MBT returns for compliance.

E29. Is the MBT e-file mandate on the taxpayer, the preparer or the software developer?

Beginning with the 2010 tax year, Michigan will have an enforced Michigan Business Tax (MBT) e-file mandate.

Developers producing MBT tax preparation software and computer-generated forms must support e-file for all eligible Michigan forms that are included in their software package. All eligible MBT returns prepared using tax preparation software or computer-generated forms must be e-filed.

Treasury will not process computer-generated paper returns that are eligible to be e-filed. A notice will be mailed to the taxpayer indicating that their return was not filed in the proper form and content and must be e-filed. Payment received with a paper return will be processed and credited to the taxpayer's account even when the return is not processed.

For this process to be successful and have the least possible impact will require participation by taxpayers, preparers and the software developers.

E30. Will Treasury still provide fillable MBT forms on the Web?

No. Fillable MBT forms will not be provided on the Web.

E31. Will Treasury mail MBT instruction booklets to taxpayers for the 2010 tax year?

No. However, MBT forms and instruction booklets are available on Treasury's Web site at www.michigan.gov/mbt.

E32. Will Treasury provide a form allowing the taxpayer to opt out?

No. The taxpayer's method for opting out is to file a handwritten paper MBT return.

E33. Does the MBT e-file mandate include sole proprietorship returns filed by individuals?

No. Sole proprietorship returns filed by individual and fiduciary MBT filers who are not part of a Unitary Business Group (UBG) will not be subject to the e-file mandate.

E34. No. Sole proprietorship returns filed by individual and fiduciary MBT filers who are not part of a Unitary Business Group (UBG) will not be subject to the e-file mandate.

Yes. However, whenever possible, the preferred method is e-file. Software developers will not be required to support e-file for the following forms: Unitary Business Group Combined Filing Schedule for Standard Members (Form 4580) and Unitary Business Group Combined Filing Schedule for Financial Institutions (Form 4752).

E35. Is developer testing required if I am a large taxpayer that develops proprietary software to prepare and e-file my MBT return?

Yes. Please see publications 4672, Michigan Business Tax Fed/State e-file Specifications, and Software Developer Guide and 4673, Michigan Business Tax (MBT) MeF Test Package for Software Developers, located on the software developer secure Web site for more information.

For access to the secure Web site, review Policy [ET-03066 Substitute Printed, Computer-Generated, Electronic Filing, and 2-D Barcode Forms/Software](#) and follow the instructions for requesting a username and password. New usernames and passwords are assigned each year for access to the secure Web site.

Film Credits

Fi1. The MBT's film production credit (MCL 208.1455) provides, in part, a credit calculated as a specified percentage of "direct production expenditures". How will the criteria expressed in the definition of "direct production expenditures" (MCL 208.1455(12)(c)) be applied?

A qualifying "direct production expenditure" must satisfy four criteria. It must be i) made in this state, ii) not a qualified personnel expenditure, iii) directly attributable to the production or distribution of a "qualified production," and iv) subject to taxation in this state. MCL 208.1455(12)(c).

All four criteria must be met for the expenditure to qualify for the film production credit. This FAQ will focus on the first criteria: that the expenditure be "made in this state".

The phrase "made in this state" is not defined in the statute. The term "made in this state" requires that the expenditure have a substantive relationship to the State of Michigan to achieve the overarching purpose of the film industry tax credits: stimulation and growth of Michigan's economy. This means generally that Michigan's economy must directly benefit in some way from the expenditure, and particularly, that Michigan-based businesses are benefited rather than out-of-state businesses.

The phrase "made in this state" is generally interpreted to require that eligible expenditures meet the following standards:

- 1) Tangible personal property and services must be acquired by the production company from a source within Michigan.
- 2) Services must be wholly performed within Michigan.
- 3) A "source within Michigan" requires an established level of physical presence that includes both a non-temporary "bricks and mortar storefront", and at least one full time permanent employee. "Non-temporary" and "permanent" will generally be indicated by a presence of at least one year. The one year standard would be met with a prior presence as well as a planned future presence evidenced by a documented commitment such as entering into a one year lease for office space.
- 4) The requisite physical presence of a qualified vendor business, and the transaction at issue must have a nexus. Michigan physical presence unrelated to the transaction would not satisfy the criteria of "made in this state".
- 5) Simple pass through transactions will not qualify as "direct production expenditures" "made in this state". Generally, the existence of an added markup by the Michigan business that is consistent with industry norms will give evidence the transaction has economic substance in Michigan and is not merely a pass through transaction.

Fi2.

- a) **Is a fee paid to a business located outside Michigan for processing a film production company's payroll at a location outside Michigan a qualified expense?**
 - b) **If not, does the answer change if an employee or agent is present in Michigan to handle the data transfer?**
 - c) **Does the answer change if the payroll processing business is the "employer of record" for the employees whose payroll is being processed?**
- a) No, a fee paid to a business located outside Michigan for processing a film production company's payroll at a location outside Michigan is not a qualified expense. To qualify as

- a “direct production expenditure” the expenditure for a service must be made in this state. To be “made in this state” a service must be wholly performed within Michigan. The payroll processing business does not have the required physical presence in Michigan.
- b) The answer would not change if the payroll processing business caused an employee or agent to be present in Michigan to handle the data transfer. The payroll processing business would still not have the required level of physical presence in Michigan and would not have any substantive relationship to Michigan. If the payroll processing business did establish the required level or physical presence in Michigan, the expenditure would qualify only if the payroll services were entirely performed in Michigan.
- c) The answer would not change if the payroll processing business is the “employer of record” for the employees. The nature of the transaction remains substantially that of payroll processing because the true employer of the employees whose payroll is being processed is the film production company.

Fi3. Is the expense for production insurance paid to an out-of-state insurance company through a Michigan based broker/agent a qualified direct production expenditure?

Yes, this expenditure would qualify under the specific language in the statute. “Payments to vendors doing business in this state” is defined in the statute to include expenditures for insurance coverage or bonding, “if purchased from an insurance agent based in this state.” MCL 208.1455(12)(c)(i)(G). “Based in this state” will be interpreted to mean that the insurance agent must have a bricks and mortar storefront in Michigan with at least one full time employee. The general one year standard will also apply to the insurance agent’s physical presence.

Fi4. Does the purchase of tangible personal property through an 800 number answered outside of Michigan and delivered from a warehouse outside of Michigan qualify as a direct production expenditure if the seller collects and remits Michigan sales/use tax?

While a qualifying direct production expenditure must be subject to taxation in this state, the company from whom the tangible personal property is purchased must have the required physical presence in Michigan to meet the standard of being an expenditure “made in this state”. Purchases of tangible personal property generally are “made in this state” if acquired from a source established for at least one year within Michigan that has a bricks and mortar storefront and at least one full time employee. It is not sufficient that the transaction is subject to Michigan sales/use or other tax if the other requirements are not also satisfied. However, if the seller does have the required physical presence in Michigan, and as long as the tangible personal property is shipped to the seller’s Michigan storefront or the transaction has some other nexus with the seller’s physical presence, it is irrelevant that the 800 number phone call may have been answered outside of Michigan, or that the tangible personal property is shipped from a warehouse that is located outside Michigan.

Fi5. Is the rental of specialized motion picture equipment from a vendor located outside Michigan (and whose inventory is also located outside Michigan) a qualified direct production expenditure if the rental is handled by a Michigan based rental vendor?

Rentals of equipment are not treated differently from sales/purchases of equipment. As such, if the transaction occurs between the qualified film production company and a Michigan based rental business that has the required level of physical presence in Michigan, the expenditure would qualify for credit. Among the standards that must be met is the existence of a Michigan bricks and mortar storefront and at least one employee for at least one year. It would also require demonstration that the transaction had some economic substance and was not merely a pass through transaction. This standard is generally met by existence of an industry norm markup by the Michigan vendor, and would be further demonstrated if the Michigan vendor and vendor outside Michigan were unrelated.

Fi6. Tax Return Filing: a) Is a taxpayer required to file an MBT tax return in order to obtain a film credit or refund?; b) If so, may the return be filed early (before the end of the return year)?

- a) Yes, a taxpayer is required to file an MBT return in order to obtain a film credit or refund.
 b) No, the MBT return may not be filed early before the end of the return year. A taxpayer may only claim the credit, and any refund may be obtained, only upon the filing of the annual return at the end of the return year.

In order to qualify for and to claim the film production credit and to determine whether a refund amount is due, the eligible production company must determine its tax liability for the tax year, and must claim the credit only after all other credits under the MBT are claimed. The determination of the company's tax liability for the tax year and the exercise of other MBT credits can only be accomplished through the filing of an MBT tax return with the Department. Therefore, an eligible production company seeking to claim a film production credit or to obtain a refund from the credit must file a return with the Department.

Further, a taxpayer may not file an early MBT return in order to claim the credit or obtain a refund. As discussed above, the tax liability for the tax year must be determined and all other credits available to the taxpayer must be taken before any of the film credits can be taken. MCL 208.1455(7), MCL 208.1457(7) and (8), and MCL 208.1459(7) and (8). This effectively can be accomplished only in a final annual return. An early return would not enable the qualifying taxpayer to determine its tax liability for the tax year nor permit the application of all other credits. Early filing of a return is also not feasible for unitary business groups due to additional complexity calculating tax bases and obligations for these unitary groups on the required combined return. Accordingly, a taxpayer seeking to claim a credit or obtain a refund may not file an early return.

Fi7. Does a production company that fails to withhold or insure that the personal services company ("PSC") or professional employment organization ("PEO") withholds lose an otherwise available film credit?

Yes, an eligible production company that fails to withhold individual income taxes as required under MCL 206.351, or fails to insure that the PSC or PEO the production company uses withholds, may be denied the otherwise available film credit. Failure by the eligible production company to properly withhold would be deemed a delinquency on the part of the eligible production company as to a debt or obligation to the state of Michigan, and is cause to disqualify the company for the tax credit. However, the eligible production company could still qualify for the tax credit if the company cures the delinquency prior to and as a pre-requisite condition of the Film Office entering into an agreement for the provision of the credit and the issuance of the certificated credit.

One of the requirements to qualify for film credits is that the production company (or taxpayer, in the case of the infrastructure credit) "not be delinquent in a tax or other obligation owed to this state or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state." MCL 208,1455(1)(e); MCL 208.1457(1)(e); and MCL 208.1459(1)(e). For each of these credits, the "no delinquency" requirement must be met in order for the Film Office both to enter into an agreement with the eligible production company (or taxpayer, in the case of the infrastructure credit) and to give the certificated credit to an eligible production company. Therefore, if an eligible production company (or taxpayer, in the case of the film infrastructure credit) fails to withhold taxes, an agreement may not be entered into for the credit nor may a credit certificate be issued.

However, where an eligible production company (or taxpayer, in the case of the film infrastructure credit) fails to withhold, and thus is delinquent on a tax or other obligation to the state, the occurrence of the delinquency is not forever fatal to the company (or taxpayer) qualifying for the

tax credit. The eligible production company (or taxpayer) can cure the delinquency by paying the withholding taxes (and any interest and penalties) as a pre-requisite condition for entering into an agreement for a credit or having the credit certificate issued. Once the delinquency no longer exists, the eligible production company (or taxpayer, in the case of the infrastructure credit) satisfies the “no delinquency” requirement for qualifying for the credit.

To the extent a PSC or PEO does not withhold payments to it for services of a performing artist or crew member that qualify for the credit, such payments are subject to withholding by the eligible production company. Accordingly, an eligible production company must ensure that any PSC or PEO with which it contracts to provide personnel to a production must withhold for such personnel provided in order to obtain the credit. The state’s grant of a credit or refund is premised upon the agreement and relationship with the eligible production company (or taxpayer) for the credit, and it is the eligible production company’s (or taxpayer’s) obligation to ensure compliance with the withholding requirement in order to qualify for the credit.

Fi8. Do non-permanent fixtures such as honeywagons (a type of multi-room trailer used by film and television productions) and star trailers (larger trailers typically used by celebrities) qualify for the infrastructure credit?

No, the infrastructure credit is designed to promote the building of a film and digital media industry infrastructure in Michigan. The credit is not available for mobile tangible assets, such as honeywagons and trailers that are designed to be moved from location to location.

The film infrastructure credit is available for 25% of a taxpayer’s “base investment” in a “qualified film and digital media infrastructure project” in Michigan. MCL 208.1457(2). Base investment is defined as the cost of depreciable tangible assets and includes the cost of fabrication and installation,

provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets expended by a person in the development of a qualified film and digital media infrastructure project. MCL 208.1457(11)(a) [emphasis added].

The term “qualified film and digital media infrastructure project” means

a film, video, television, or digital media production and postproduction facility located in this state, movable and immovable property and equipment related to the facility, and any other facility that is a necessary component of the primary facility. A qualified film and digital media infrastructure project does not include a movie theater or other commercial exhibition facility.... MCL 208.1457(11)(d) [emphasis added].

Thus, the infrastructure credit is intended for immovable or movable but not mobile property or equipment located in this state. The terms “immovable”, “movable” and “mobile” are not defined in the credit or elsewhere in the MBT but have distinct meanings. The Department will use the common meanings of these words as follows:

“Immovable” property is “property that cannot be moved; an object so firmly affixed to the land that is it regarded as part of the land.” Blacks Law Dictionary, 8 ed. This is property that *will not* or *cannot* be removed from the real estate to which it is fixed without significant damage to the property. Generally, this will mean buildings, such as soundstages or backlots that will remain affixed to the land after a film project is completed.

“Movable” property is “property that can be moved or displaced.” *Id.* This is property that can be moved but may not move easily or on its own. This category will typically include personal

property that can be built for use in a particular film project but then could be removed if necessary, with some disassembly, once the project is complete. Examples of this category might include dolly tracks and collapsible stages.

“Mobile” property is property “normally used in more than one jurisdiction . . .” Blacks Law Dictionary, 8th ed. There is also a key difference between “movable” and “mobile.” Movable denotes capacity for being moved without implying great facility for movement. Mobile stresses such facility. Mobile is designed expressly for ready movement.

Mobile, thus, means personal property that either can move under its own power, such as a motor-home type trailer with wheels and an engine, or personal property that can be easily moved or is designed for easy movement, such as a non-affixed trailer which is designed to be hauled away. A further distinction between mobile and movable, which is recognized by the statute, is that fabrication and/or installation costs will be associated with movable property but not mobile property.

Honeywagons, which are large motor-homes, or trailers that can be readily transported to other jurisdictions and larger trailers that are equally mobile do not qualify for the credit. Furthermore, the movable/mobile distinction applies to all assets that are a part of the “base investment.” Therefore the credit is not available for any asset, including equipment that is a mobile asset.

Fi9. Are fringe benefits paid to crew members such as the employer’s share of FICA, health insurance, and so forth eligible for the Film Production Credit? If so, are these expenditures considered “direct production expenditures” eligible for a 40% - 42% credit, or are they “qualified personnel expenditures” eligible for a 30% credit?

Fringe benefits such as those described are eligible for the Film Production Credit, but whether they qualify as “direct production expenditures” or “qualified personnel expenditures” depends upon whether the crew members are above or below the line, and whether they are residents of Michigan.

Section 455 of the MBT, the Film Production Credit, contemplates two types of expenditures by production companies that are eligible for the credit: “direct production expenditures” and “qualified personnel expenditures.” Direct production expenditures are eligible for a 40% - 42% credit while qualified personnel expenditures are eligible for a 30% credit. MCL 208.1455(2). Both types of expenditures include a compensation component.

A “qualified personnel expenditure” is defined under the statute as:

an expenditure made in this state directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this state and is a payment or compensation payable to below the line crew for below the line crew members who were not residents of this state for at least 60 days before approval of the agreement . . . not to exceed \$2,000,000 for any 1 employee or contractual or salaried employee who performs services in this state for the production of a qualified production, including . . . :

(i) Payment of wages, benefits, or fees.

MCL 208.1455(12)(j).

A “direct production expenditure” is defined under the statute as:

[an] expenditure made in this state that is not a qualified personnel expenditure directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this state, including . . . :

(ii) Payments and compensation, not to exceed \$2,000,000 for any 1 employee or contractual or salaried employee who performs services in this state for the production or distribution of a qualified production, including ... :

(A) Payment of wages, benefits, or fees for talent, management, or labor.

MCL 208.1455(12)(c).

"Below the line crew" is defined in section 459 of the MBT, and generally refers to technical crew members such as camera operators, best boys, lighting technicians, set dressers, sound editors, and similar personnel. Below the line crew does not include producers, directors, writers, or actors. MCL 208.1455(10)(a).

Accordingly, reading the various definitions together, fringe benefits paid by a production company to below the line crew members who were not residents of Michigan for at least 60 days before approval of the agreement between the production company and the Michigan Film Office (described in subsection 3 of the Film Production Credit) will be qualified personnel expenditures eligible for a 30% credit. Fringe benefits paid to above the line crew members, such as producers, directors, writers, and actors, as well as fringe benefits paid to below the line crew members who were residents of Michigan for 60 days or more before approval of the agreement between the production company and the Film Office will be direct production expenditures eligible for a 40% - 42% credit. In both cases, total payments to any one employee are capped for purposes of the credit at \$2,000,000. MCL 208.1455(12)(c)(ii); 208.1455(12)(j). The differences between the compensation components of the two types of expenditures were designed, in part, to encourage production companies to employ Michigan residents when hiring below the line crew members.

Fi10. MCL 208.1455 provides for an MBT Film Production Credit "equal to 42% of direct production expenditures for a state certified qualified production in a core community." What exactly does "in a core community" mean? Where the production is filmed? Where the production office is located? Where the production expenditures are made?

The phrase "in a core community" shall generally be interpreted to require that qualifying expenditures meet the following standards:

1. Tangible personal property and services must be acquired by the production company from a source within a core community (although the tangible personal property may then be used elsewhere.)
2. Qualifying services must be both procured from a source within a core community and wholly performed in a core community.
3. Being "in a core community" requires an established level of physical presence of a vendor that includes both a non-temporary "bricks and mortar storefront" and at least one full time permanent employee. "Non-temporary" and "permanent" will generally be indicated by a presence of at least one year. The one year standard would be met with a prior presence as well as a planned future presence evidenced by a documented commitment such as entering into a one year lease for office space.
4. The requisite physical presence of a qualified vendor business and the transaction at issue must have an actual connection with the core community. A physical presence in the core community unrelated to the transaction would not satisfy the criteria of "in a core community." For example, transactions with a vendor that had retail outlets in a core

community devoted to providing film development and digital media film prints to a consumer market would not qualify for the higher core community credit percentage for transactions where movie quality film is sold to a film production company from a vendor location outside the core community.

5. Simple pass through transactions will not qualify as "direct production expenditures" "in a core community." Generally, the existence of an added markup by the business in the core community that is consistent with industry norms will give evidence the transaction has economic substance in the core community and is not merely a pass through transaction.

Fi11. For purposes of the Film Production Credit, a production company or its designated payroll company has an obligation to withhold Michigan payroll taxes on wages paid to employees working on a Michigan production. Similarly, a production company must also withhold from payments made to a PEO or PSC if the PEO or PSC does not withhold for their employees. If an employee on the production is a resident of a state with a reciprocal tax agreement with Michigan (i.e. Illinois, Indiana, Ohio, Kentucky, Wisconsin, and Minnesota), and no Michigan tax is withheld, are wages paid to the employee eligible for the film credits even though there is no withholding as a result of the reciprocal agreement?

Yes. The Film Production Credit provides that compensation-related payments to performing artists and crew members will qualify as "direct production expenditures" or as "qualified personnel expenditures" eligible for the tax credit if individual income taxes (payroll taxes) are withheld from all payments received by the performing artists or crew members "that are subject to taxation under the income tax," and that the taxes withheld are properly paid to the state of Michigan. MCL 208.1455(12)(c)(ii)(B); 208.1455(12)(j)(ii). Similarly, a production company is required to withhold on payments made to a PEO or PSC if the PEO or PSC does not withhold for their employees.

If an employee of an eligible production company, PEO or PSC is a resident of a reciprocal state, payments made to that employee would be "subject to taxation under the income tax", however pursuant to reciprocal agreements Michigan has entered into with other states there would be no obligation for the production company, PEO, PSC, or a designated payroll company to withhold Michigan income taxes on compensation payments made to that employee. Accordingly, even though Michigan payroll taxes would not have been withheld on payments made to that employee, those payments would still be eligible for the Film Production Credit.

Fi12. Does a production company's interest expense associated with production financing qualify as a direct production expenditure that is eligible for the Film Production Credit? If so, does capitalized interest qualify? Does interest that continues to accrue post-Michigan activity qualify?

Yes, a production company's interest expense associated with production financing will qualify as an expenditure eligible for the Film Production Credit, if the expense otherwise satisfies the established requirements for a "direct production expenditure" as expressed in FAQ #Fi1. However, capitalized interest would not qualify, unless it has actually been paid. Continuing interest on the loan would continue to qualify, as long as the expense continued to satisfy the requirements stated in FAQ #Fi1 for a "direct production expenditure."

With respect to a production loan, these standards require (i) that the financing be obtained from a bank or other lender with a bricks and mortar storefront and at least one full time employee and one year of physical presence in Michigan, (ii) that all loan services are performed in Michigan, and (iii) that an appropriate rate of interest is charged to the production company. However, because only expenditures qualify for the credit, only production loan interest that has actually

accrued and been paid by the production company will be eligible for the credit. Also, if a production company obtains a qualified Michigan production loan, shoots a limited part of the production in Michigan, and then applies for its postproduction certificate shortly after the Michigan portion of the production is finished, but before the loan is fully repaid, only interest paid up to that point will be an eligible expenditure. Similarly, capitalized interest will not be eligible for the credit, since payment of such interest is deferred to a future date.

Fi13. Film production companies with existing credit agreements that were approved have found that they have underestimated their Michigan budgets. What is the process to address this situation, and what procedure should be followed?

Production companies should submit a simple addendum in a letter format to the Michigan Film Office that references the original agreement (i.e., by date and unique project number) and contains a) a statement that the addendum is a modification to the expenditures listed in the existing agreement and the reasons why the original budget will be exceeded, b) a revised budget (utilizing the same categories as those that appear in the agreement), c) revised projections for Michigan production expenditures and total production expenditures, d) a revised estimated credit amount identifying the increase in credit amount, and e) new signatures by authorized representatives of the production company. Approval of the request is not automatic, and the State will respond with a letter authorizing additional film production credit amounts if approved. The approval request must be made in advance of the additional expenditures being made (i.e. before the initial approved budget has been fully expended) to qualify for additional credit. Expenditures made prior to written approval of additional credit by the state will not qualify for credit.

Fi14. Are per diem expenses, living allowances, and car and meal allowances eligible for the Film Production Credit?

Although a qualifying expenditure does not necessarily have to be taxable to the production company itself, the expenditure must nevertheless be “subject to taxation in this state” in order to comply with the statutory requirement. MCL 208.1455(12)(c). In general, per diems are not taxable as compensation at the federal level, therefore they do not get taxed at the state level in Michigan. Additionally, per diems and allowances themselves are not subject to sales, use or other Michigan taxes. As such, while per diem expenses and living, car and meal allowances all constitute payments from a production company directly to employees, in most cases such payments are not “subject to taxation in this state.” Therefore, they will not qualify as “direct production expenditures” eligible for the film production credit.

It is important to note, however, that the federal exclusion from income tax of per diems is a preferential tax treatment with certain dollar thresholds on their non-taxability. When those thresholds are exceeded, the excess payment amount becomes taxable compensation at the federal level which will flow through to Michigan’s income tax, also as taxable compensation. Because this excess per diem payment amount is “subject to taxation in this state” the excess payment amount would qualify for film production credit if it meets all other qualifying criteria.

Fi15. A “box rental” occurs when an employee of a production company charges the company a weekly fee for the use of his or her own tools. For instance, a makeup person may charge the production company a weekly fee for the use of the brushes, mirrors, and other supplies that she owns and uses on the job. Or, an electrician might provide his own tools and equipment. Do such costs qualify as “direct production expenditures” that are eligible for the Film Production Credit? Must the employee charge the company sales tax in order for the box rental to qualify? Is the answer different if the employee provides his or her services through a loan-out company? What if the box rental includes supplies that are fully expended during the production?

Because a qualifying expenditure must be “subject to taxation in this state”, box or kit rentals will be eligible for the film production credit, provided that the employee in question receives compensation for his or her provision of tools or other equipment to the production company that is reported on the employee’s W-2 form, or on a separate Form 1099, and is subject to Michigan income tax. This requirement holds whether the employee is employed directly by the production company, or indirectly through a loan-out company. Provided that the taxability requirement stated above is met, it is not necessary for the employee to charge the production company sales tax on the rental fee. Also, it makes no difference for credit eligibility purposes whether some or all of the supplies provided pursuant to the box rental may be fully expended during the course of the production.

Fi16. Are workers’ compensation insurance expenditures eligible for film production credit?

Compensation expenditures, including expenditures for fringe benefits, are eligible for the film production credit as either “direct production expenditures” or “qualified personnel expenditures”. This is described in more detail in Treasury’s Michigan Business Tax (MBT) FAQ #Fi 9. Worker’s compensation insurance is considered a fringe benefit, whose eligibility for the film production credit generally follows the eligibility of the wages or compensation that the insurance is related to.

Fi17. Must a Michigan Business Tax annual return be filed to obtain a refund of a film production credit?

Yes, a Michigan Business Tax (MBT) annual return must be filed after the tax year of the film production company to whom the film production credit agreement was issued has ended. Annual returns are due “by the last day of the fourth month after the end of the taxpayer’s tax year.”

The film production credit is a business tax credit; thus, a tax refund, and not a rebate check, will be issued. Once the production company has completed all production related work in Michigan, it must request a post-production certificate from the Michigan Film Office. After all submitted expenditures have been certified to qualify for the credit, the Film Office will issue the certificate, which sets forth the dollar amount of the credit. The production company must file an MBT return to claim its credit, attaching a copy of the post-production certificate to its tax return. MCL 208.1455(7). Error-free returns claiming refundable film production credits are expected to be processed in 3 – 4 weeks.

Fi18. When will expenditures made prior to approval of a film production credit agreement by the State qualify for credit?

Statute states that, except for a qualified production for which production was initiated after February 29, 2008, and before the effective date of the film production credit (which was April 7, 2008), direct production expenditures and qualified personnel expenditures incurred prior to approval of an agreement are not eligible for the credit. MCL 208.1455(3).

If certain productions had been in contact with the Michigan Film Office regarding this issue prior to the effective date of the film production credit, clearly initiated production during the time period specified in the statute, filed an application and agreement promptly after those forms became available, and later received approval of that application and agreement, then qualifying expenditures incurred before that approval will be eligible for the credit, as provided in the statute. However, in no case will pre-approval expenditures be eligible for any production initiated after April 6, 2008, the day before the effective date of the film production credit.

Fi19. Under the Michigan Income Tax Act, MCL 206.367, a film production company that seeks a film production credit must either withhold Michigan income tax on the payments

it makes to a PEO/PSC or, alternatively, it must insure that the PEO/PSC has paid the withholding taxes due to Michigan. How will the film production company that withholds Michigan income tax from payments to a PEO/PSC report and pay the amount withheld to the State of Michigan?

It is expected that a film production company seeking a film production credit in Michigan will have a physical presence and employees in this state. An accompanying registration with the Michigan Department of Treasury should exist to enable the film production company to submit the Michigan income tax withheld from employee wages. The film production company should report and pay Michigan income tax withheld from payments made to PEO/PSCs using the same returns and payment processes used for reporting and paying their employee withholding.

A PEO/PSC should issue W-2s to their employees with an allocated portion of the amount withheld by the film production company reported on the W-2 for each employee. A PEO/PSC should also submit copies of those W-2s to the Michigan Department of Treasury accompanied by a letter explaining the situation and identifying the film production companies that withheld and submitted payment to the Department.

Fi20. A production company owns the rights necessary to produce a video game, but plans to license use rights to a well-known cartoon character so that the character can appear in the game. Would the fees or costs associated with licensing this character from its creator qualify as direct production expenditures that are eligible for the Film Production Credit?

No. Pursuant to the MBT Film Production Credit, a qualifying “direct production expenditure” must be i) made in this state, ii) not a qualified personnel expenditure, iii) directly attributable to the production or distribution of a “qualified production,” and iv) subject to taxation in this state. MCL 208.1455(12)(c). With respect to intellectual property such as a cartoon character, the Film Production Credit provides that the following expenditures, if made to a vendor doing business in this state, are “direct production expenditures”:

Expenditures for optioning or purchasing intellectual property including, but not limited to, books, scripts, music or trademarks relating to the development or purchase of a script, story, scenario, screenplay, or format, including all expenditures generally associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney fees relating to the transaction, but not including deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans negotiated by the eligible production company to obtain the rights to the intellectual property.

MCL 208.1455(12)(c)(i)(A). While the term “intellectual property” is sufficiently broad to include cartoon characters, the language of the statute is clear that only expenditures related to “optioning or purchasing” the intellectual property at issue will qualify as “direct production expenditures.” “Purchasing” means acquiring full rights to the intellectual property outright, while “optioning” means purchasing the right to acquire full rights to the intellectual property at a later date, usually after financing for a production has been obtained. Licensing the use of a cartoon character to appear in a video game is not equivalent to “purchasing or optioning” the underlying intellectual property.

Moreover, the section expressly provides that “royalties” do not qualify as “direct production expenditures.” “Royalties” are commonly defined as usage-based payments made by a licensee to a licensor for ongoing use of an intellectual property right or other intangible asset. The payments made by the production company to the licensor for the use of the licensed cartoon character in the video game would be characterized as royalties. Accordingly, these payments would not qualify as “direct production expenditures” eligible for the Film Production Credit.

If the production company determined to purchase or option the acquisition of full rights to the cartoon character, however, such expenditures might qualify as “direct production expenditures.” In that case, however, the expenditures for such rights would also have to be “made in this state,” meaning, procured from a source within this state.

Fi21. A company that is the lessee of a building in Michigan intends to make capital improvements to the leased property to convert it into studio space to be used by the film and/or video game production industries. Would the expenditures associated with these improvements qualify as the lessee’s “base investment,” making the lessee eligible for the Infrastructure Credit?

No. The Infrastructure Credit is not available to lessees of real property, even though planned improvements to the real property may be capital in nature and would be depreciable by the lessee for federal income tax purposes. Only the owner of the real property is eligible to apply for the Infrastructure Credit with respect to improvements made to the real property.

Fi22. When may an eligible production company claim a film production tax credit pursuant to section 455 of the Michigan Business Tax Act (“MBTA”). MCL 208.1455.

In order to claim a film production tax credit, an eligible production company must submit a postproduction certificate of completion signed by the Film Commissioner to the Department of Treasury, together with its Michigan Business Tax (“MBT”) return for the applicable tax year. MCL 208.1455(7). The Michigan Film Office will issue a postproduction certificate signed by the Film Commissioner – the document that actually entitles the production company to a film production tax credit in a specified dollar amount – to an eligible production company after a thorough review of that company’s written request. Eligible production companies must submit form “MFO 004-2008” titled “Post-Production Certificate of Completion Request” to the Michigan Film Office to obtain a signed postproduction certificate. Both the form and information on audit requirements are available at the Film Office web site at <http://www.michiganfilmoffice.org/For-Producers/Incentives/Default.aspx>.

The Department of Treasury has determined that an eligible production company must claim or assign a film production tax credit received pursuant to section 455 of the MBTA in the tax year in which the postproduction certificate, signed by the Film Commissioner, is issued by the Michigan Film Office. An eligible production company may not claim the credit on its MBT tax return for a prior tax year (whether or not an MBT return for that year has already been filed), and similarly, the company may not choose to hold onto the credit and claim or assign it in a later tax year.

In recognition of the confusion that appears to exist in the business community at the time this FAQ is being published, the Department of Treasury will consider written requests from eligible production companies seeking exceptions to the policy expressed above in instances where the eligible production company can demonstrate significant hardship as the result of following the policy; however, exceptions will be granted only for tax years that begin prior to December 1, 2009. The expressed policy will be adhered to for all tax years beginning on or after December 1, 2009, with exceptions granted only in instances where delay in issuance of the postproduction certificate is caused by an error of the Michigan Film Office or Department of Treasury.

Once eligible production companies have submitted their applications for a postproduction certificate, they should allow approximately 60 days for review of the application as provided in statute (MCL 208.1455(5)), assuming the application and required supporting documentation is complete and additional information is not required. Statute also provides that should additional information be required, the review may take longer than 60 days (MCL 208.1455(5)).

Fi23. Does a typical sound recording (for instance, the production of a music CD) qualify as a “qualified production” that is eligible for the Film Production Credit?

Yes. As long as it is produced in a digital media format, a typical sound recording will meet the statutory definition of a “qualified production” and be eligible for the Film Production Credit. Pursuant to the MBT Film Production Credit, a “qualified production” is defined as:

single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website.

MCL 208.1455(12)(k) (emphasis added). The statutory definition further includes a detailed listing of production types that are specifically excluded from the meaning of “qualified production,” such as television news programs, live sporting event broadcasts, talk shows and game shows. MCL 208.1455(12)(k)(i) – (xiv). None of these exclusions relates to the production of a “sound recording,” which is separately defined as “a recording of music, poetry, or spoken-word performance, but does not include the audio portions spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, or athletic event.” MCL 208.1455(12)(l).

Accordingly, as long as the project is not one of the specifically prohibited types of sound recordings and it otherwise meets applicable statutory requirements (for example, the requirement that the production company spend at least \$50,000 in this state on production costs, MCL 208.1455(1)(a)), the production of a typical sound recording, such as a music CD, will be eligible for the Film Production Credit. However, the definition of “qualified production” specifies that the content be created “by any means and media in any digital media format, film, or video tape” Because productions of sound recordings do not utilize film or video tape, an eligible sound recording would have to be produced using a digital media format.

Fi24. When may an eligible production company claim a film infrastructure tax credit pursuant to section 457 of the Michigan Business Tax Act (“MBTA”). MCL 208.1457?

In order to claim a film infrastructure tax credit, an eligible production company must submit an investment expenditure certificate signed by the Film Commissioner to the Department of Treasury, together with its Michigan Business Tax (“MBT”) return for the applicable tax year. MCL 208.1457(7). The Michigan Film Office will issue an investment expenditure certificate signed by the Film Commissioner - the document that actually entitles the production company to a film infrastructure tax credit in a specified dollar amount - to an eligible taxpayer after a thorough review of that taxpayer's written request. Eligible taxpayers must submit form “MFO 005-2008” titled “Film Infrastructure Investment Expenditure Certificate” to the Michigan Film Office to obtain a signed investment expenditure certificate. Both the form and information on audit requirements are available at the Film Office web site at <http://www.michiganfilmoffice.org/For-Producers/Incentives/Default.aspx>.

The Department of Treasury has determined that an eligible taxpayer must claim or assign a film infrastructure tax credit received pursuant to section 457 of the MBTA in the tax year in which the investment expenditure certificate, signed by the Film Commissioner, is issued by the Michigan Film Office. An eligible taxpayer may not claim the credit on its MBT tax return for a prior tax year (whether or not an MBT return for that year has already been filed), and similarly, the company may not choose to hold onto the credit and claim or assign it in a later tax year.

Once eligible taxpayers have submitted their applications for an investment expenditure certificate, they should allow approximately 60 days for review of the application as provided in

statute (MCL 208.1457(5)), assuming the application and required supporting documentation is complete and additional information is not required. Statute also provides that should additional information be required, the review may take longer than 60 days (MCL 208.1457(5)).

Fi25. If all or part of a film infrastructure credit is assigned, and the production facility that was the subject of the credit is later sold, triggering a recapture under the statute, which entity will be responsible for the recapture? The entity that was originally awarded the credit, or the assignee?

The recipient of a film infrastructure credit may assign all or part of that credit to one or more assignees. MCL 208.1457(8). Certain subsequent events, including a sale of the production facility, may trigger a provision in the statute that effectively operates as a recapture of the credit. MCL 208.1457(3)(i). The Department has determined that any recapture of an assigned film infrastructure credit will be the responsibility of the assignor (the taxpayer that originally received the credit), and not the assignee(s).

Fi26. MCL 208.1457(2)(b) requires that the facility be “complete” before an infrastructure credit may be claimed. But, MCL 208.1457(3)(g) contemplates that only 25% of base investment be expended before credit may be claimed. Given this, can interim tax credit certificates be issued and the tax credits claimed prior to final completion of the project? If so, what happens to interim tax credits if the project is not completed?

Other than the exception specified at MCL 208.1457(2), an investment expenditure certificate for a film and digital media infrastructure credit may be requested and interim credit amounts approved prior to final completion of the project. MCL 208.1457(3)(g) provides that a taxpayer may not claim an infrastructure credit until it expends at least 25% of the base investment approved in the agreement. The Department interprets MCL 208.1457(3)(g) to mean that an investment expenditure certificate need not be issued until after the project has been completed, but may be issued and the credit claimed in increments of at least 25% or more of the total base investment of the project that is expended. While only one investment expenditure certificate is authorized, it may be issued when requested by the taxpayer in the form of a maximum of four increments of the investment expenditure certificate. A first investment expenditure certificate increment cannot be requested until at least 25% of the total base investment authorized under the agreement has been expended. Similarly, second and succeeding investment expenditure increments cannot be requested until at least an additional 25% of the original total base investment has been expended since the preceding investment expenditure certificate increment was authorized. Only the final investment expenditure certificate increment may be issued when less than 25% of the original total base investment is expended. The Film Infrastructure Investment Expenditure Certificate (MFO Form 005-2008), which can be found on the Film Office’s website (www.michiganfilmoffice.org), provides for 4 increment certificate amounts.

The requirement for facility completion under MCL 208.1457(2) relates to a specific circumstance where all or a portion of a qualified project is a facility that may be used for purposes unrelated to production or postproduction activities. Such a project is eligible for the infrastructure credit only if the Department determines that “the facility will support and be necessary to secure production or postproduction activity for the production and postproduction facility” and that, in the agreement for the infrastructure credit, the taxpayer agrees both that “the facility will be used as a state of the art production or postproduction facility or as support and component of the facility for the useful life of the facility” and “ a credit will not be claimed...until the facility is complete.” MCL 208.1457(2). Therefore, the requirement that a project facility be completed before an infrastructure credit may be claimed is limited to that particular situation.

Where a taxpayer requests and receives approval for incremental amounts of an investment expenditure certificate under MCL 208.1457(3)(g) or the amount for the completion of the project under MCL 208.1457(2), and claims a credit against tax liability for such amounts, and there is a

subsequent later sale or other disposition of the tangible assets comprising the project, the original taxpayer obtaining the investment expenditure certificate is penalized. The penalty requires the original taxpayer that generated the credit to repay an amount equal to 25% of the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3, and plus the loss, multiplied by the apportionment factor for the taxable year as prescribed in chapter 3 from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base in section 201. MCL 208.1457(3)(i).

If the infrastructure credit is assigned to another party, the penalty will be the responsibility of the assignor (the taxpayer that originally received the credit) and not the assignee(s). See MBT FAQ Fi25.

Where the project is otherwise not completed in accordance with the agreement for the infrastructure project pursuant to MCL 208.1457, then the taxpayer would be required to repay the state the entire amount of the net tax credit provided. Any agreement for an infrastructure project under MCL 208.1457 necessarily implies that the taxpayer will complete the construction of a functioning and operating film and digital media infrastructure facility. MCL 208.1457(3)(f) and 208.1457(5). If the taxpayer fails to complete the project, it is in breach of the agreement entered into under MCL 208.1457, and the taxpayer would be required to repay the amount of the credit previously claimed and issued.

Fi27. Please confirm that an assignment of a film infrastructure credit can be made any time prior to the return filing deadline for the year in which the Investment Expenditure Certificate is issued. Please also confirm that an assignee wishing to further assign a credit must do so prior to the return filing deadline for the year in which the Investment Expenditure Certificate is issued.

For the taxpayer that generated the Investment Expenditure Certificate, the deadline to claim or assign all or a portion of the infrastructure credit is the end of the taxpayer's tax year in which the original Investment Expenditure Certificate is issued by the Film Office. With regard to the reassignment of the infrastructure credit, the assignee must claim or re-assign the infrastructure credit before the end of the tax year in which that assignee (now assignor) was assigned the infrastructure credit from the immediately prior assignor.

Example: Company X, a calendar year taxpayer, receives an assignment of an infrastructure credit in November 2010. Company X must claim the infrastructure credit on its 2010 MBT return, or re-assign the infrastructure credit no later than December 31, 2010.

Exception: Department of Treasury instructions for the 2009 MBT form 4589 "2009 Michigan Business Tax Film Credit Assignment" state: "The deadline to assign the credit is the return filing deadline of the assignor's tax year in which the certificate is issued. The deadline to reassign the credit is the return filing date for the tax year in which the assignee received the credit." While this policy is being revised as expressed in this FAQ and for future form 4589 instructions, the Department will honor those infrastructure credit assignments that take place in accordance with 2009 instructions.

Fi28. MCL 208.1457(8) contemplates that a film and digital media infrastructure credit may be assigned to an assignee, and also contemplates that such assignee can re-assign to one or more assignees. Can the secondary assignees from the original assignee further re-assign if necessary?

Yes, there is no restriction on the number of re-assignments that may be made. MCL 208.1457(8) provides that a taxpayer eligible to claim the film and digital media infrastructure credit may assign

all or a portion of an infrastructure credit to any assignee. It further specifies that an assignee may subsequently re-assign a credit or any portion of the credit assigned to one or more assignees. MCL 208.1457(8). The statute does not limit the number of re-assignments that may be made. All assignments of the credit are irrevocable. The deadline for re-assignment is the end of the tax year in which the assignee (now assignor) received its credit through assignment. Each assignor must complete Form 4589 after the date the Film Office issues Investment Expenditure Certificate and must file the Form 4589 with the Department before the deadline established to assign or re-assign, as applicable. Once the assignment is approved by the Department, the Department's signed Form 4589 will be returned to the assignor. The assignor must furnish each assignee with a copy of the approved form to attach to the assignee's MBT tax return. A separate Form 4589 must be completed for each project and each assignee.

Fi29. MCL 208.1457(9) calls for a credit application and redemption fee of 0.5% of a film and digital media infrastructure credit claimed. How is this fee charged? Is the fee paid in cash or via a reduction of the credit percentage of 25% to 24.5%?

MCL 208.1457(9) provides in pertinent part that "[t]he amount of the [film and digital media infrastructure] credit...shall be reduced by a credit application and redemption fee equal to 0.5% of the credit claim, which shall be deducted from the credit otherwise payable to the taxpayer claiming the credit[.]" The Department interprets this to mean that the credit amount approved for an infrastructure project is reduced via an adjustment of 0.5% to arrive at a net credit amount of 24.5%. Therefore, the amount of the credit to be issued by the Film Office on a taxpayer's investment expenditure certificate and thus the net amount of the credit that a taxpayer may use to offset MBT tax liability will reflect a 0.5% reduction for the credit application and redemption fee. Moreover, if the infrastructure credit issued to a taxpayer is issued incrementally pursuant to MCL 208.1457(3)(g), as provided for in Film Infrastructure Investment Expenditure Certificate (MFO Form 005-2008), then each credit increment will reflect a reduction of the incremental amount approved by the 0.5% application and redemption fee.

Fi30. Is the vintage year of an infrastructure credit the year in which the investment expenditure certificate is approved?

Because the infrastructure credit may be carried forward to offset MBT tax liability for a specified period of years or until used up, whichever is less, the Department presumes that the use of the term "vintage year" in the question is intended to mean the year in which the tax credit may first be used to offset tax liability and when the period of time the carryforward of the credit amount begins. To that end, the infrastructure credit must be claimed in the tax year in which the investment expenditure certificate is issued (i.e. approved) by the Michigan Film Office. The tax year in which the certificate is issued would be the "vintage year." The portion of the credit that exceeds the tax liability of the taxpayer for the tax year may be carried forward to offset MBT tax liability in subsequent tax years subsequent to the "vintage year" for a period not to exceed 10 years or until used up, which occurs first. MCL 208.1455(7).

Fi31. My production company is in a hurry to start pre-production in Michigan, even though our application for the film incentive has not yet been approved. If we have services performed or construction materials delivered, but then wait to make payment for those services or purchases until after the application is approved and an agreement has been entered into, can we later claim those services and purchases as eligible "direct production expenditures"?

No. The MBT Film Production Credit states that "direct production expenditures and qualified personnel expenditures incurred prior to approval of an agreement under this section are not eligible for the credit under this section." MCL 208.1455(3); see also, Michigan Film Office, *Audit Instructions and Expenditure Certification Guidelines*. While the film incentive is calculated based upon expenditures made by a production company that are directly related to the qualified production, the quoted language makes clear that, in order to be eligible for the incentive, qualifying expenditures must be incurred, as well as paid, after the date of the agreement providing for the

film incentive. A production-related expenditure is “incurred” on the date that the production company undertakes the obligation to pay. Accordingly, if a production company has services performed or construction materials delivered prior to the date that a film incentive agreement is entered into, the company has undertaken the obligation to pay for such services and materials, and the expenditures have therefore been “incurred” prior to the agreement date, regardless of the fact that they may physically be paid for at a later date.

Similarly, a production company may not “prepay” an anticipated expenditure – for postproduction special effects services, for example – that will actually be incurred after the date that the company requests its Post-Production Certificate of Completion. Because the obligation to pay does not arise until the services are performed, the expenditure has been paid but not incurred within the relevant time frame. In order to be eligible for the film incentive, qualifying expenditures must be both incurred and paid after the date that the film incentive agreement has been entered into, and prior to the date that the Post-Production Certificate has been requested.

Fi32. How do the Film Office and Treasury determine whether a company is a proper applicant for the film production credit?

The film production credit statute requires that the applicant be an “eligible production company.” MCL 208.1455(12)(d). The statute defines an “eligible production company” as the “entity in the business of producing qualified productions ...” In other words, with respect to a particular production project it is the entity in charge of making or producing the overall film, video game or other digital media project. As a practical matter, this concept of overall control means that the applicant must have ownership of, and/or legal control over, all of the intellectual property and other rights necessary to complete the production in its entirety, and convert the intellectual property into a finished, concrete media product ready for distribution or exhibition. An applicant with less than overall control over the project is not an “eligible production company” eligible for the credit.

For motion pictures, television series, documentary television, and similar productions, a production company that has been engaged to produce a project pursuant to a “work for hire” type contract is a vendor of the company engaging the “work for hire,” and therefore would not be an eligible production company. Production services companies are generally considered vendors for the same reason. In these situations, the company contracting for the “work for hire” likely owns or controls all of the necessary rights to make the overall production, and would be the “eligible production company.” For video games, the “eligible production company” with respect to a particular video game project is generally the video game publisher, and not the external development company that has been hired by the publisher to develop the game.

Fi33. What guidelines should an eligible production company follow when requesting a post-production certificate and an independent auditor follow when verifying and performing an audit of the expenditures for a film or digital media production tax credit?

All expenditures incurred and paid by an eligible production company in connection with a state-certified qualified production must satisfy the statutory requirements set forth in MCL 208.1455, particularly the definitions of “direct production expenditure” and “qualified personnel expenditure” set forth in MCL 208.1455(12)(c) and (j), respectively. The Michigan Film Office (“Film Office”) and the Michigan Department of Treasury (“Department”) require an audit, not simply a review, in connection with every request for a post-production certificate, performed by an independent Michigan Certified Public Accountant (“independent auditor”). The eligible production company and the independent auditor should verify that the expenditures adhere to these requirements and to guidance issued by the Film Office and the Department with regard to MCL 208.1455 and the definitions and scope of direct production expenditures and qualified personnel expenditures under the statute. Guidance currently available – including Frequently Asked Questions, the *Notice to Taxpayers Regarding Film Production Credit Qualified Vendors*, the *Auditing Standards Relating to MBT Film Credit Reports*, and the *Michigan Film Office Audit Instructions and Expenditure*

Certificate Guidelines (“*Audit Instructions and Guidelines*”) – may be found on the Department’s website at www.michigan.gov/taxes concerning the Michigan Business Tax. The *Audit Instructions and Guidelines* may also be found on the Film Office’s website at www.michiganfilmoffice.org.

The *Audit Instructions and Guidelines* prescribes standards and procedures that the eligible production company and the independent auditor must follow when verifying expenditures for the film and digital media production tax credit. Generally, these *Audit Instructions and Guidelines* state how expenditures may qualify as direct production expenditures or qualified personnel expenditures eligible for certification. The *Audit Instructions and Guidelines* also address whether and how various types or categories of expenditures may qualify or how they should be treated for purposes of determining certification of qualified production costs. Such categories include:

- Loan or financing interest expense attributed to financing of the qualified production
- Refunds, insurance claim recoveries and purchase discounts and rebates arising out of the qualified production
- Proceeds from sale of equipment, props, production assets and other tangible personal property purchased for use in the qualified production
- Costs allocable to the qualified production of props, equipment, production assets and other tangible personal used in the qualified production and inventoried for use in future productions or activities

The *Audit Instructions and Guidelines* also discuss how the audited cost report submitted to the Film Office in connection the eligible production company’s request for a post-production certificate must be formatted and what information the independent auditor must present in the report. The *Audit Instructions and Guidelines* further prescribe that the audit must be performed in accordance with U.S. generally accepted auditing standards and that the auditor must have sufficient knowledge of accounting principles and practices generally recognized in the film, television and digital media industry. It should be noted that the costs attributed to the audit for the request for the post-production certificate do not qualify for the tax credit.

The *Audit Instructions and Guidelines* set forth an acceptable methodology that may be used by the independent auditor to certify that expenditures satisfy the criteria to qualify as direct production expenditures or qualified personnel expenditures, as applicable, for the tax credit. However, the prescribed methodology may not be appropriate for all circumstances. In all cases, the independent auditor must determine and adhere to procedures required to comply with the tax statute and must exercise the auditor’s professional judgment when certifying expenditures for the tax credit.

Fi 34. (Answer rescinded, replacement located at Fi 37) What amount of finance fees and interest qualifies for film production credit, and how is it calculated?

Fi35. Are expenditures paid by an eligible production company for shipping and delivery eligible for the film production tax credit?

Shipping and delivery expenditures incurred and paid by an eligible production company that are directly attributable to a qualified production may be eligible for the film production credit. As noted in FAQ Fi1, expenditures paid for services directly attributable to a qualified production may be considered a “direct production expenditure” under MCL 208.1455(13) eligible for the film production credit if, among other criteria also satisfied, the services are wholly performed within the state of Michigan. Like other services, expenditures for shipping and delivery services may qualify for the film production credit if such services are purchased from a Michigan vendor and are wholly performed within the state of Michigan. Accordingly, payments made to a Michigan vendor for shipments or deliveries that took place entirely within Michigan would qualify for the credit. However, shipments that either originate or terminate outside the state of Michigan, or

where any portion of such shipment or delivery occurs outside the state of Michigan, would not be a “direct production expenditure” and would not qualify for the credit.

Fi36. Would a new TV network dedicated to a single topic be eligible for the film production credit?

No. However, programming content created for such a new TV network might be eligible.

The television network in the question above is dedicated to a single topic and is of a type that follows more recent trends as a nationwide cable television programming service. Examples of this type of TV network might include The Food Channel and The Golf Channel.

A “qualified production” eligible for the MBT Film Production Credit is defined in pertinent part in the statute as:

[S]ingle media or multimedia entertainment content, created in whole or in part in this state for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website.

MCL 208.1455(13)(k). The statute also contains a number of specific exceptions to the definition of “qualified production,” including live sporting events, weather shows, talk shows, game shows, and awards shows. MCL 208.1455(13)(k)(i) - (xiv).

Expenditures associated with the creation and start-up of a single topic TV network would not be eligible for the Film Production Credit, because the network (channel) itself is not entertainment content, and does not meet the statutory definition of a “qualified production.” However, it is possible that at least some of the actual programming content that may be created to air on the single topic TV network would be eligible for the Film Production Credit.

Fi 37. What amount of finance fees and interest qualifies for film production credit, and how is it calculated?

To qualify for film production credit, finance fees and interest must be “direct production expenditures” as that term is defined in statute, FAQs and other issued guidance. FAQs #Fi1 and #Fi12 provide some general guidance concerning “direct production expenditures” and interest.

Finance fees and interest must satisfy four “direct production expenditure” criteria to qualify for film production credit. They must be i) made in this state, ii) not a qualified personnel expenditure, iii) directly attributable to the production or distribution of a “qualified production, and iv) subject to taxation in this state.

Finance fee and interest expenditures are made in this state if they meet the criteria identified in FAQs and other issued guidance. Finance fees and interest by their nature are not qualified personnel expenditures. Finance fees and interest received for loan services performed in Michigan are subject to taxation in this state.

In addition to the fact that finance fees and interest expenditures that qualify for film production credit must be related to “development, preproduction, production, or postproduction” activity, two general calculation principles are applicable. Because finance fees and interest are generally expenses predicated upon the time value of money, and because the expenditures must also be

made in this state, the qualifying activity to which the finance fees and interest relate must take place in Michigan. Finance fees and interest not related to the time during which an otherwise qualifying activity that is being financed takes place in Michigan will not qualify for film production credit.

- Calculation principle #1: Finance fees are prepaid interest and are treated as interest for purposes of this FAQ. Finance fee and interest expenses recorded in the production company's accounting records in accordance with generally accepted accounting principles qualify for credit. The eligible portion of the accrued and paid interest and fees begins the later of the date of the loan disbursement or when the production activity starts in Michigan and ends when the request for a post production certificate is submitted to the Film Office or the date the loan is paid, whichever is sooner.

If a production is only partially financed through loans with third party financiers, loan finance fees and interest relate to Michigan activity only in a proportional manner. In other words, funds from loans are not used first to finance Michigan activity any more than self financed funds are.

- Calculation principle #2: Properly recorded finance fee and interest expense can be allocated to Michigan on a prorated basis to the extent Michigan expenditures relate to total expenditures for the production. Estimates of future expenditures to arrive at total expenditures will be acceptable provided they are reasonable and based upon sound estimating principles.

Like other direct production expenditures, only finance fees and interest that have been accrued and paid will qualify for film production credit. Calculation of qualifying finance fees and interest will generally start with finance fees and interest that have been expensed in the accounting records of the production company in accordance with generally accepted accounting principles ("GAAP").

Qualifying "direct production expenditure" finance fees and interest should be calculated using the following formula prescribed by the State:

FORMULA:

Booked Finance Fee and Interest Expense x Spend Ratio

- "*Booked Finance Fee and Interest Expense*" are finance fees and interest expensed in the accounting records of the production company in conformance with generally accepted accounting principles through the date the request for post production certificate was made
- "*Spend Ratio*" is the ratio of Michigan spend to total projected production spend (both net of finance fee and interest expenditures)

SCENARIO #1:

1. Loan documents signed and loan disbursed on May 15th
 - \$1,000,000 principal
 - 6% APR
 - 2 year term
2. Agreement approved on May 15th
3. Michigan production activity began on June 1st

4. Request for post production certificate made on September 15 with a total spend of \$2,000,000 and Michigan spend of \$1,000,000
5. Booked Finance Fee and Interest Expense June 1st through September 15th included in request for post production certificate in the amount of \$ \$17,589 (\$1,000,000 x 6% x 107/365) (note: 30 days in June + 31 days in July + 31 days in August + 15 days in September = 107 days)

Qualifying Finance Fee and Interest Calculation:

$\$17,589 \times (\$1,000,000/\$2,000,000) = \$8,794$

SCENARIO #2 (PREPAID INTEREST):

1. Loan documents signed and loan disbursed on May 15th
 - \$1,000,000 principal
 - 6% APR
 - 2 year term
2. Agreement approved on May 15th
3. Michigan activity began on June 1st
4. Request for post production certificate made on September 15 with a total spend of \$2,000,000 and Michigan spend of \$1,000,000
5. \$120,000 interest for the full 2 year loan term prepaid on May 15th (\$1,000,000 x 6% x 730/365) booked as a prepaid interest expense asset
6. Booked Finance Fee and Interest Expense (by accounting entries reducing the prepaid interest account) June 1st through September 15th included in request for post production certificate in the amount of \$17,589 (\$1,000,000 x 6% x 107/365)
(note: 30 days in June + 31 days in July + 31 days in August + 15 days in September = 107 days)

Qualifying Finance Fee and Interest Calculation:

$\$17,589 \times \$1,000,000/\$2,000,000 = \$8,794$

SCENARIO #3 (FINANCE FEES)

1. Loan documents signed and loan disbursed on May 15th
 - \$1,000,000 principal
 - 6% APR
 - 2 year term
 - \$6,000 finance fees paid at closing and amortized over the term of the loan
2. Agreement approved on May 15th
3. Michigan activity began on June 1st
4. Request for post production certificate made on September 15 with a total spend of \$2,000,000 and Michigan spend of \$1,000,000
5. Interest expense through September 15th included in request for post production certificate in the amount of \$17,589 (\$1,000,000 x 6% x 107/365)
(note: 30 days in June + 31 days in July + 31 days in August + 15 days in September = 107 days)
6. Finance fee expense through September 15th included in request for post production certificate in the amount of \$ 879 (\$6,000 x [107/730])

Qualifying Finance Fee and Interest Calculation:

$(\$17,859 + \$879) \times \$1,000,000/\$2,000,000 = \$9,369$

For more Film Credit information, visit www.michigan.gov/filmoffice.

Financial Institutions Tax

F1. Do nonresident financial institutions located outside Michigan whose only activity in Michigan consists of an ownership interest in loans secured in whole or in part by real property located in Michigan have nexus under the MBT?

A nonresident financial institution located outside Michigan whose only activity in Michigan consists of an ownership interest in loans secured in whole or in part by mortgages on real property located in Michigan will not have physical presence nexus under the MBT. However, nexus is determined by evaluating all facts and circumstances. To the extent that the nonresident financial institution, or its employee, agent, or independent contractor acting in a representative capacity, has physical presence in Michigan for more than one day, nexus is established. In addition, nexus also exists if the nonresident financial institution actively solicits sales in Michigan as described under RAB 2007-6 and has Michigan gross receipts of \$350,000 or more.

F2. The surcharge of the Michigan Business Tax Act, found at MCL 208.1281, exempts “a person subject to the tax imposed and levied under chapter 2B that is authorized to exercise only trust powers.” What type of taxpayer fits this description?

Of the types of institutions that qualify as financial institutions in the MBT at section 261(f), those that are organized either as a bank under the Michigan Banking Code of 1999 (MBC) or a savings bank under the Michigan Savings Bank Act of 1996 (SBA) and which are authorized to exercise exclusively trust powers are exempt from the surcharge. A bank or savings bank exercising additional powers or performing additional duties beyond those trust powers authorized in the MBC by MCL 487.14401 through 487.14405 and in the SBA by MCL 487.3421 through 487.3426 does not qualify for the MBT surcharge exemption.

F3. How does a unitary business group (“UBG”) composed of financial institutions that includes a bank authorized to exercise only trust powers, which is exempt from the MBT surcharge under MCL 208.1281(4)(b), calculate the surcharge?

Financial institution entities authorized to exercise only trust powers do not lose their identity when they are a part of a unitary business group. When a financial institution authorized to exercise only trust powers is unitary with other financial institutions it maintains its identity as an entity exempt from the surcharge, even though it will file a combined return with other financial institutions. Financial institutions authorized to exercise only trust powers will file a combined return with the UBG but will be removed from the surcharge calculation and not from overall liability. This computation will be performed in calculating Form 4590, 2008 Michigan Business Tax Annual Return for Financial Institutions.

F4. The MBT franchise tax provides financial institutions with a tax base deduction for “the average daily book value of United States obligations and Michigan obligations.” MCL 208.1265(1). Does “average daily book value” include the premiums and discounts for U.S. obligations?

Yes, where the premiums and discounts are reflected in the book value of the U.S. obligations.

The MBT defines United States obligations as

all obligations of the United States exempt from taxation under 31 USC 3124(a) or exempt under the United States constitution or any federal statute, including the obligations of any instrumentality or agency of the United States that are exempt from

state or local taxation under the United States constitution or any statute of the United States. MCL 208.1261(s).

Michigan obligation is defined as a bond, note, or other obligation issued by a governmental unit described in section 3 of the shared credit rating act, 1985 PA 227, MCL 141.1053. MCL 208.1261(k).

“Average daily book value” is not a defined term in the MBT or the Federal IRC. “Book value” is commonly understood to be the value at which an asset is carried on the taxpayer’s balance sheet. Black’s Law Dictionary, 8 ed. Thus, in order to reach the average daily book value of U.S. obligations a financial institution will calculate the daily value of the obligation as it appears on the institution’s balance sheet and average this value over the days in the financial institution’s tax year. If the book value of the U.S. obligation is affected by premiums and discounts on the institution’s balance sheet then these amounts will also be included in the computation of average daily book value for purpose of the tax base calculation.

F5. Financial Institutions must calculate the net capital tax base five year look-back period to find the average of net equity and certain deductions. The MBT provides guidance in the case of a merger or acquisition of a financial institution for future tax years only. How does a financial institution that has combined with another financial institution by acquisition calculate the five year averaging period for the year prior to an acquisition?

The net capital of each of the combined entities should be included separately in the tax base look back period for years prior to the acquisition. The sum of these separate calculations should then be combined to reach net capital of the surviving financial institution entity. Net capital from the look back period for both the surviving and acquired entities should be included in the calculation of the tax base.

F6. Financial Institutions pay tax under the MBT on net capital. Computation of this tax base requires a financial institution to average the past five years of net equity with certain deductions. How does a unitary business group of financial institutions perform this calculation for entity members that have not been a part of the UBG for five years but became members of the group sometime within the five year look-back period? The term “financial institution” includes a unitary business group of financial institutions. MCL 208.1261(f). A financial institution must compute the current tax year tax base by taking a five year average of net capital. MCL 208.1265(2). For a UBG of financial institutions each member entity of the group must compute net capital, using the five year average, individually. Instructions for Form 4580, MBT Unitary Business Group Combined Filing Schedule. The group then sums the results of the entities’ calculations to reach net capital for the group. *Id.* This requirement applies equally to the first year of the MBT, when no members of a UBG of financial institutions will have been members for five years, as it does to tax years ten years out from the first year. Once a member entity is considered a part of a UBG of financial institutions it must compute its individual net equity in accordance with this requirement. This means that an entity that was newly added to the UBG will compute its net capital by using the average of five years of net capital and then adding this result to the results of the other member entities of the group. A shorter look-back period may apply if the new UBG member has not itself been in existence for five years. MCL 208.1265(2).

Insurance Companies Tax

I1. How must a foreign insurer file for purposes of the retaliatory tax when the insurer’s state of incorporation requires unitary filing?

A foreign insurer must calculate its burden for purposes of the Michigan retaliatory tax according to the laws of its state of incorporation. If the insurer's state of incorporation requires filing on a unitary basis, the insurer should compute its retaliatory tax burden using this method.

The retaliatory tax is calculated by first computing the burden to the foreign insurer doing business in Michigan and then computing the burden that would be imposed upon a hypothetical Michigan insurer as if it was performing the identical business activity in the foreign state. When making this calculation it should be assumed that the hypothetical Michigan insurer would calculate its liability in the same manner required of the foreign insurer.

I2. Does a unitary group of insurance companies have to file a combined MBT return?

No. Insurance companies are not specifically excluded from the definition of a unitary business group, found at MCL 208.1117(6), and thus may constitute a unitary business group. In practice, however, there is no practical effect of this possibility. The tax on authorized insurance companies is equal to 1.25% of gross direct premiums written on property or risk located or residing in Michigan. MCL 208.1235. Because the tax is only on property or risk located in Michigan there will be no traditional apportionment for insurance companies. Thus, even if an authorized insurance company is unitary with another authorized insurance company under MCL 208.1117(6), this will have no effect in calculating the tax. A combined return will not be necessary.

Misc.

Mi1. (Answer rescinded, replacement located at Mi40) Revenue Administrative Bulletin 2001-2 describes provisions of the SBT related to the tax base of a foreign person for tax years beginning in or after 2000. Does RAB 2001-2 apply to the MBT?

Mi2. How are Professional Employer Organizations and Staffing Companies defined for the MBT and how do the two differ?

Under MCL 208.1113(4) a PEO is defined as an entity that manages and provides human resource assistance for another entity under contract. The PEO must retain "substantial employer rights and responsibilities," as well as several common law rights, as listed in MCL 208.1113(4)(a)-(d), that demonstrate the control of the PEO over the managed entity.

A staffing company is defined under MCL 208.1113(6)(d)(ii) as an entity whose "business activities are included in industry group 736" of the Federal Department of Labor Industrial Classification Code. This industry group represents "establishments primarily engaged in providing employment services."

MCL 208.1113(5) states specifically that a PEO is not a staffing company.

The main business purpose of a PEO, generally, is to provide a client with human resource and human resource management services. PEOs are also typically responsible for payroll, withholding and remitting employment taxes and benefits management for clients. These PEO/client relationships often involve shared control or co-employer agreements. However, as the MBT recognizes, the PEO must maintain the ultimate control in the relationship to be treated as a PEO under the tax.

In contrast, staffing companies generally supply temporary employees to supplement a customer's workforce. Staffing companies have nearly complete control of these employees. In the staffing company situation, the recipient of employees generally has no more control over the employee than direction of daily tasks or rejection of the proffered individual.

Mi3. Is sales tax collected by a retail business considered part of its modified gross receipts under the Michigan Business Tax?

Yes. The seller of tangible personal property is the person legally liable for payment of sales tax. A seller that is reimbursed sales tax by the purchaser of tangible personal property must include in its gross receipts the "entire amount received" from "any activity" unless the amount received is statutorily exempted under MCL 208.1111. Therefore, a taxpayer that receives sales tax from a purchaser as part of a transaction not otherwise exempt under the Michigan Business Tax must include in gross receipts the amount received from the sale of tangible personal property as well as the sales tax received.

Mi4. How is the modified gross receipts tax base calculated for professional employment organizations and staffing companies? What is the significance of these different treatments?

MCL 208.1203(3) provides the general rule that the modified gross receipts tax base equals a taxpayer's gross receipts minus purchases from other firms.

For a PEO, gross receipts is defined under MCL 208.1111(t) as "the entire amount received by the taxpayer from any activity" except for amounts charged by a PEO to a client under a PEO arrangement that represent "wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee." Thus, a PEO excludes wages and the cost of wages from gross receipts.

In contrast, a staffing company treats "compensation of personnel" supplied to its customers as "purchases from other firms" when calculating its modified gross receipts tax base. Compensation is defined in MCL 208.1107(2).

Mi5. (Answer rescinded, replacement located at Mi28) Are limited liability companies subject to the MBT?**Mi6. (Answer rescinded, replacement located at Mi34) What is the meaning of the acronym FIRE which appears in the presentation entitled MBT Overview – August 1, 2007 on the Michigan Business Tax Website?**

Mi7. For developers in the trade or business of selling real property, does the definition of inventory as used in "purchases from other firms" include real property? No. "Purchases from other firms" means:

(a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

(b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

(c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel. [MCL 208.1113(6).]

"Inventory" means:

(a) The stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale.

(b) Finished goods, goods in process, and raw materials of a manufacturing business purchased from another person. [MCL 208.1111(4).]

Neither "stock of goods" nor "finished goods, goods in process, and raw materials" include real property. Furthermore, developers do not generally constitute a "retail or wholesale business" or a "manufacturing business."

Mi8. Will shareholders of S corporations and partners in partnerships be liable for Michigan individual income tax on their share of flow-through income from entities subject to MBT? Does it matter whether the shareholders or partners are residents or nonresidents?

Both residents and nonresidents of Michigan are subject to Michigan income tax on their share of income from partnerships and S corporations to the extent the income is attributable to Michigan under the allocation and apportionment provisions of the Michigan Income Tax Act (MCL 206.111 - 115) and included in adjusted gross income on the partner or shareholder's federal income tax return. The imposition of the Michigan business income tax on a flow through entity under section 201 of the Michigan Business Tax Act does not affect the imposition of the Michigan income tax under section 51 of the Michigan income tax act (MCL 206.51) on the individual partners or shareholders of the flow through entity.

Mi9. Is the deduction provided under MCL 208.1201(2)(i) altered by the MBT surcharge?

No. The deduction provided in section 201(2)(i) functions to offset the book-to-tax difference or deferred tax liability resulting from the change from the SBT to the MBT. The credit is taken in defined percentages beginning in tax year 2015. MCL 208.1201(2)(i).

MCL 208.1201(3) states that the deduction is only available in "the amount necessary to offset the net deferred tax liability" which would result under the business income tax under section 201 and the modified gross receipts tax under section 203. The amount of the deferred tax liability and the corresponding deduction will be calculated without reference to the surcharge, and the deduction will therefore remain the same as calculated prior to the enactment of 2007 PA 145.

The Department recognizes that this is a significant issue for the business community creating a need for guidance upon which it can rely. While the business community may rely on this form of guidance, the Department also intends to issue a Revenue Administrative Bulletin in the near future that further explains the position described above.

Mi10. Does the deduction provided under MCL 208.1201(2)(i) reduce the MBT surcharge imposed under MCL 208.1281(1)?

Yes. MCL 208.1201(3) directs that the deduction "is intended to flow through and reduce the surcharge imposed and levied under section 281." (Emphasis added). This same section explains that the deduction is calculated as the "the amount necessary to offset the net deferred tax liability" which would result under the business income tax under section 201 and the modified gross receipts tax under section 203. MCL 208.1201(3). The surcharge is calculated against a "taxpayer's liability under [the MBT] after allocation or apportionment to this state under this act but before calculation of the various credits." The surcharge is, thus, calculated against a taxpayer's business income and gross receipt liabilities. Therefore, the deduction, which reduces the business income tax base upon which the surcharge is calculated, will flow through and reduce the surcharge.

The Department recognizes that this is a significant issue for the business community creating a need for guidance upon which it can rely. While the business community may rely on this form of guidance, the Department also intends to issue a Revenue Administrative Bulletin in the near future that further explains the position described above.

Mi11. Will an Employee Stock Ownership Plan (“ESOP”), a tax exempt trust under federal laws, be liable for Michigan income tax under the Michigan Income Tax Act (“ITA”), 1967 P.A. 281, for it’s share of flow-through income from a S corporation that is subject to MBT?

No. An ESOP that is a qualified retirement plan under section 401(a) of the Internal Revenue Code (26 U.S.C.A. 1 et seq) is exempt from federal income tax under section 501(a) of the code. If an S corporation establishes an ESOP for it’s employees, the ESOP retirement trust fund will consist primarily or exclusively of stock from the S corporation. As long as the retirement plan maintains it’s tax exempt status under §501, the trust’s pro-rata or flow-through share of earnings from the S corporation are exempt from federal income tax.

The Michigan income tax is imposed on the taxable income of a person who is an individual, an estate, or a trust pursuant to section 51 of the ITA (MCL 206.51). Under section 201 of the ITA (MCL 206.201), a person who is exempt from federal income tax pursuant to the provisions of Internal Revenue Code shall be exempt [from the tax imposed by the ITA] except for the unrelated business income of the exempt person as determined under the Internal Revenue Code. Therefore, an ESOP that is exempt from federal income tax under §501 of the Internal Revenue Code and has no unrelated business income is exempt from Michigan income tax pursuant to MCL 206.201. Any unrelated business income of the ESOP that is subject to federal income tax would also be subject to the Michigan income tax imposed on trusts under MCL 206.51.

Mi12. Can new motor vehicle and watercraft dealers who separately itemize and collect the modified gross receipts (MGR) tax from customers, in addition to the sales price, collect amounts in excess of the amount of taxes remitted to the Department?

No. Section 203(5) of the MBT Act permits new motor vehicle dealers licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, and dealers of new or used personal watercraft to collect the modified gross receipts tax in addition to the sales price. MCL 208.1203(5). The Act states that the “amount remitted to the Department for the [modified gross receipts tax]...shall not be less than the stated and collected amount.” MCL 208.1203(5). Therefore, the entire amount of MGR taxes stated and collected by new motor vehicle dealers and new and used watercraft dealers in addition to sales price must be remitted to the Department. There should be no instance where a dealer would be collecting amounts of MGR taxes from customers in excess of the amount of taxes remitted to the Department.

Mi13. Are cooperatives organized under IRC 1381(a)(2) exempt from the MBT?

Cooperatives organized under IRC 1381(a)(2) include any corporation operating on a cooperative basis other than tax-exempt organizations; mutual savings banks, cooperative banks, and domestic savings associations; insurance companies; and organizations engaged in furnishing electric or telephone service to rural communities. IRC 1381(a)(2).

Under the MBT, relevant exemptions from tax include:

(b) A person who is exempt from federal income tax under the internal revenue code . . .
* * *

(c) A nonprofit cooperative housing corporation. As used in this subdivision, "nonprofit cooperative housing corporation" means a cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest on stock or membership investment but that does distribute all earnings to its stockholders or members. The exemption under this subdivision does not apply to a business activity of a nonprofit cooperative housing corporation other than providing housing services to its stockholders and members.
* * *

(e) Except as provided in subsection (2), a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, that was at any time exempt under subdivision (b) because the corporation was exempt from federal income taxes under section 521 of the internal revenue code and that would continue to be exempt under section 521 of the internal revenue code except for either of the following activities:

(i) The corporation's repurchase from nonproducer customers of portions or components of commodities the corporation markets to those nonproducer customers and the corporation's subsequent manufacturing or marketing of the repurchased portions or components of the commodities.

(ii) The corporation's incidental or emergency purchases of commodities from nonproducers to facilitate the manufacturing or marketing of commodities purchased from producers.

(f) That portion of the tax base attributable to the direct and indirect marketing activities of a farmers' cooperative corporation organized within the limitations of section 98 of 1931 PA 327, MCL 450.98, if those marketing activities are provided on behalf of the members of that corporation and are related to the members' direct sales of their products to third parties or, for livestock, are related to the members' direct or indirect sales of that product to third parties.

* * *

(2) Subsection (1)(e) does not exempt a farmers' cooperative corporation if the total dollar value of the farmers' cooperative corporation's incidental and emergency purchases described in subsection (1)(e)(ii) are equal to or greater than 5% of the corporation's total purchases.

(3) Except as otherwise provided in this section, a farmers' cooperative corporation that is structured to allocate net earnings in the form of patronage dividends as defined in section 1388 of the internal revenue code to its farmer or farmer cooperative corporation patrons shall exclude from its adjusted tax base the revenue and expenses attributable to business transacted with its farmer or farmer cooperative corporation patrons. [MCL 208.1207.]

In other words, certain cooperatives exempt from federal income tax, nonprofit cooperative housing corporations, and qualifying farmers' cooperative corporations are exempt from the MBT. No further exemptions under the MBT are permitted for cooperative corporations. Since cooperatives under IRC 1381(a)(2) do not include tax-exempt organizations, a cooperative organized under IRC 1381(a)(2) is only exempt under the MBT to the extent that it is a nonprofit cooperative housing corporation under MCL 208.1207(1)(c) or a farmers' cooperative corporation under MCL 208.1207(1)(e), (f).

Finally, the exemption provisions applicable to cooperative corporations under the MBT are generally the same as those found under the SBT. Thus, a cooperative exempt from the SBT under MCL 208.35 is likely to be exempt from the MBT under MCL 208.1207.

Mi14. Will charitable trusts be subject to the MBT?

Generally, no. A charitable trust that is exempt from federal income tax under section 501(a) of the Internal Revenue Code would be exempt from MBT under section 207(1)(b) of the MBT act (MCL 208.1207(1)(b)). However, any unrelated business income of the trust that is subject to federal income tax under the Internal Revenue Code would also be subject to MBT if the applicable filing thresholds and nexus standards are met.

Mi15. If an entity is subject to the Business Income Tax, will the entity's members/shareholders be subject to Michigan personal income tax?

Yes. Michigan income tax is imposed under section 51 of the Michigan Income Tax Act (MCL 206.51) on the taxable income of an individual as defined under section 30 of the Michigan Income Tax Act, MCL 206.30. "Taxable income" under section 30 means adjusted gross income as defined under the Internal Revenue Code, 26 U.S.C.A. 1 et seq., subject to a specific series of

statutory additions and subtractions, including adjustments for allocation and apportionment. Since there is no specific adjustment allowed for income subject to the MBT under MCL 206.30, and there is no applicable pre-emption language in the MBT, an individual shareholder, partner, or other member of an entity subject to MBT will also be subject to Michigan income tax on a distributive or pro-rata share of such income that is included in the members adjusted gross income, attributable to Michigan under the allocation and apportionment provisions of the Michigan Income Tax Act, and not otherwise subject to removal (e.g. income from U.S. obligations) under MCL 206.30.

Mi16. Are small businesses exempt from the imposition of the surcharge?

There is no specific exemption from the MBT surcharge for small businesses. However, as was the case before the MBTA was amended to include the imposition of the surcharge, a taxpayer (except a financial institution or insurance company) whose apportioned or allocated gross receipts are less than \$350,000 “does not need to file a return or pay the tax imposed under this act.” MCL § 208.1505(1). A gross receipts filing threshold credit is available to taxpayers whose apportioned or allocated gross receipts are between \$350,000 and \$700,000. MCL § 208.1411. In addition, a small business alternative credit is available to eligible taxpayers under section 417 of the MBTA. MCL § 208.1417. Depending upon facts and circumstances, the small business alternative credit can be utilized to mitigate up to 100% of an eligible taxpayer’s MBT liability. MCL § 208.1417(5).

Mi17. Under the MBTA, is the section 281 surcharge imposed before or after available credits are applied? Does the surcharge apply to both the modified gross receipts tax and the business income tax? Can the alternative small business credit eliminate liability for the surcharge?

Section 281(1) of the MBTA provides as follows:

(1) In addition to the taxes imposed and levied under the act . . . , to meet deficiencies in state funds an annual surcharge is imposed and levied on each taxpayer equal to the following percentage of the taxpayer’s tax liability under this act after allocation or apportionment to this state under this act but before calculation of the various credits available under this act:

(a) For each taxpayer other than a person subject to the tax imposed and levied under chapter 2B, 21.99%.

MCL § 208.1281(1). Thus, the surcharge is imposed on each taxpayer subject to the MBT *after* allocation or apportionment under section 301, but *prior to* the calculation and application of any available credits, including SBT credits carried forward by the taxpayer. Section 281(5) provides that the surcharge “shall constitute a part of the tax imposed under this act and shall be administered, collected, and enforced as provided under this act.” MCL § 208.1281(5).

Under the statutory language quoted above, the surcharge is imposed upon “the taxpayer’s tax liability under this act.” MCL § 208.1281(1). Subject to filing thresholds, nexus standards, and exemptions, both the modified gross receipts tax and the business income tax are components of a taxpayer’s MBT liability. Accordingly, the surcharge applies to both the modified gross receipts tax and the business income tax.

The various credits available under the MBT can be utilized to mitigate a taxpayer’s tax liability only to the extent specified in the statute. With respect to the small business alternative credit, section 417(1) provides that this credit is to be taken *after* the credits provided for in sections 403 and 405. MCL § 208.1417(1). The combined compensation and investment tax credits allowed under section 403 may not exceed 50% of the taxpayer’s total MBT liability in tax year

2008 and 52% of the taxpayer's total MBT liability in tax years 2009 and beyond, while the research and development credit allowed under section 405, combined with the taxpayer's total section 403 credits, cannot exceed 65% of the taxpayer's total tax liability under the MBT. MCL §§ 208.1403(1); 208.1405.

If the taxpayer is then eligible for and calculates the section 417 small business alternative credit, the amount of the credit "shall not exceed 100% of the tax liability imposed under this act." MCL § 208.1417(5). Since the surcharge (which constitutes a part of the taxpayer's tax liability imposed under the act) is imposed *prior to* the calculation of any credits, including the section 417 small business alternative credit, it is possible that the application of that credit could totally eliminate the taxpayer's tax liability for that tax year, including the amount of that liability that is attributable to the surcharge.

Mi18. (Answer rescinded, replacement located at Mi28) Are limited liability companies subject to the MBT?

Mi19. Under the Michigan Business Tax Act (MBTA) will corporations still be able to deduct the statutory exemption from the adjusted tax base before calculating tax as was available under the Single Business Tax Act (SBTA)?

No. The statutory exemption provided by section 35 of the SBTA, MCL 208.35(1)(a), is not available under the MBTA. Section 207 of the MBTA, MCL 208.1207, which lists the exemptions from the Michigan Business Tax, does not contain a statutory exemption for any type of business entity.

Mi20. Is the MBT going to accept the federal treaty benefit on the 1120F?

For the calculation of the business income tax base under section 201 (MCL 208.1201), the starting point is federal taxable income derived from business activity (MCL 208.1105(2)). To the extent a foreign corporation is able to exclude income from the calculation of federal taxable income under the provisions or terms of an executed tax treaty between the U.S. and a foreign country, that same income will be excluded from the business income tax base on the MBT return, and not subject to the income tax imposed under section 201 of the MBT.

For the calculation of the modified gross receipts tax base under section 203 (MCL 208.1203), gross receipts is defined under section 111 (MCL 208.1111) to mean "the entire amount received from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others," subject to specifically enumerated exceptions. Gross receipts sourced to Michigan but exempt from the calculation of federal taxable income under the terms of a tax treaty with a foreign country are *not* one of the specifically enumerated exceptions, and are therefore subject to the modified gross receipts tax imposed under section 203 of the MBT.

Mi21. Will a taxpayer whose final SBT return is for a period of less than four months need to remit SBT estimates? For example, will a taxpayer with a fiscal year end of September 30, 2008, whose final SBT return is for the period October 1, 2007 through December 31, 2007, be required to file an SBT estimate?

No. An SBT estimate is not required when a taxpayer's final SBT return is for a period of less than four full calendar months. Payment for all taxpayers' final SBT return will be due on April 30, 2008.

Mi22. For purposes of calculating the \$350,000 filing threshold in section 505(1); will "gross receipts" as defined in section 111 be used, or will the filing threshold be determined by "sales" as defined in section 115? What meaning is given to the term "apportioned or allocated gross receipts"?

The definition of “gross receipts” will be used to calculate the \$350,000.00 filing threshold not the definition of “sales.” This is based upon the express language of section 505(1) that the filing threshold is determined by “apportioned or allocated gross receipts.” The term “apportioned or allocated” has the same meaning as in the Michigan Business Tax Act. When a taxpayer’s business activity is subject to tax within and outside of Michigan its tax base is apportioned, and business activity confined solely to this state results in the tax base being allocated to Michigan.

Mi23. Can a unitary group, as defined in the MBT, enter into a voluntary disclosure agreement with the Department of Treasury under MCL 205.30c if one member of the group would be disqualified on its own?

No, apart from nexus, a disqualification present for one member of a unitary business is imputed to the entire group. As a threshold matter, a person must make an application, be a non-filer, have nexus with Michigan and/or have a reasonable basis to contest liability. MCL 208.30c(2). “Person” is defined at MCL 205.30c(15)(c) as

an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, receiver, estate, trust, or any other group or combination acting as a unit. [Emphasis added].

A unitary group is a “group or combination acting as a unit.” Thus, if one member of the group cannot meet the qualifications for an agreement neither can the unitary group.

Mi24. If a taxpayer is disqualified from voluntary disclosure, available at MCL 205.30c, under the Single Business Tax, is the taxpayer disqualified under the Michigan Business Tax? Specifically, if a taxpayer filed SBT returns, is it considered a filer for voluntary disclosure purposes under the MBT?

No, a taxpayer is not disqualified for voluntary disclosure purposes under the Michigan Business Tax because of disqualification under the Single Business Tax. The MBT is a distinct and separate tax from the SBT. The provisions of the revenue act apply to the two taxes independently.

Mi25. (Answer rescinded, replacement located at Mi44) Does the MBT follow the federal check-the-box regulations?

Mi26. When is the final SBT return due for a fiscal year taxpayer? Can a fiscal year filer request an extension for the final SBT return?

A fiscal year SBT taxpayer must file a short year return for the period from the beginning of its 2007-08 fiscal year through December 31, 2007. The filing deadline for that final SBT return is April 30, 2008.

An extension of time to file the return may be requested. For the final SBT return only, if a properly prepared application along with appropriate estimated tax payments are received by April 30, 2008, the Department will adjust the deadline for filing the final return to the last day of the fourth month after the end of the fiscal year reported on the federal return (2007-08), and will grant an extension of 180 days from that date to file the tax return. If the taxpayer indicates they have been granted an extension to file their federal income tax return, the Department of Treasury will grant the same length of time as the federal extension plus an additional 60 days. MCL 208.73(4)

For example, a taxpayer reporting a fiscal year on their federal return beginning June 1, 2007 and ending May 31, 2008 must file a short period SBT return for the period beginning June 1, 2007 and ending December 31, 2007. This return will be due April 30, 2008. Upon request, an

extension will be granted to March 31, 2009, which is 180 days after September 30, 2008, the date that the federal return ending May 31, 2008 would be due for SBT purposes. A taxpayer with a federal extension would be extended to May 31, 2009.

If the standard SBT extension period is not sufficient to allow a fiscal year taxpayer to gather necessary information for its final SBT return, the Department will, upon request, grant a special extension appropriate to the circumstances.

However, an extension of time to file is not an extension of time to pay. Any tax due on the annual return must be paid by the original due date, which is the last day of the fourth month after the end of the fiscal year, in this case April 30, 2008.

Mi27. (Answer rescinded, replacement located at Mi45) Are controlled foreign corporations ("CFC's") under IRC 957 taxpayers under the MBT? Can controlled foreign corporations be members of a unitary business group? What if the controlled foreign corporation is a disregarded entity of a U.S. parent?

Mi28. (Answer rescinded, replacement located at Mi46) Are single member limited liability companies and qualified subchapter S subsidiaries ("QSubs") disregarded for federal tax purposes also disregarded under the MBT?

Mi29. Are condominium, homeowners, and timeshare associations taxed under IRC 528 or IRC 277 exempt from the MBT?

Under the MBT, relevant exemptions include:

A person who is exempt from federal income tax under the internal revenue code . . . except the following:

* * *

(iii) The tax base attributable to the activities giving rise to the unrelated taxable business income of an exempt person. [MCL 208.1207(b).]

Under IRC 528, qualified condominium management, residential real estate management, and timeshare associations are exempt from federal income tax on their exempt function income for each year in which the taxpayer makes the proper election under IRC 528(c)(1)(E). Thus, condominium management, residential real estate management, and timeshare associations taxable under IRC 528 are generally exempt from the MBT under MCL 208.1207(b). However, condominium management, residential real estate management, or timeshare associations are subject to the MBT on any taxable income under IRC 528 – or if such associations decline to make the IRC 528(c)(1)(E) election.

In contrast, by definition, organizations subject to tax under IRC 277 are not exempt from federal income tax under the IRC. IRC 277(a). Thus, organizations subject to tax under IRC 277 are not exempt from the MBT.

The exemption language governing condominium, homeowners, and timeshare associations under the MBT is essentially identical to that used in the SBT. In other words, to the extent an association taxed under IRC 528 was exempt from the SBT, that taxpayer is likely exempt under the MBT as well.

Mi30. Will Voluntary Disclosure continue with the Michigan Business Tax?

Yes, the Department is required to administer the Michigan Business Tax under the Revenue Act, 1941 PA 122. See MCL 208.1513(1). Voluntary Disclosure agreements are provided for under

the Revenue Act at MCL 205.30c. The State Treasurer, or a representative, is authorized to enter into a voluntary disclosure agreement with non-filers that have a nexus filing responsibility and who meet certain other statutory criteria. Under a voluntary disclosure agreement, eligible persons may file returns and pay taxes and interest for a limited lookback period of four years without imposition of penalties, in exchange for future tax compliance.

While Voluntary Disclosure will continue with the Michigan Business Tax a taxpayer must still meet the statutory qualifications to enter into an agreement.

Mi31. Does the MBT provision which states that the MBT is imposed, “[i]n addition to all other taxes for which the taxpayer may be liable,” MCL 208.1513(4), mean the MBT is imposed upon oil and gas activity also subject to the Severance Tax?

No.

Mi32. Can a taxpayer use data from its SBT tax periods in calculating the loss adjustment for purposes of determining eligibility for the Alternative Small Business Credit under MCL 208.1417?

Yes, the Department will allow the use of a “loss adjustment” from a period prior to the start of the MBT for purposes of determining qualification for the Alternative Small Business Credit under MCL 208.1417. In computing eligibility for the Alternative Small Business Credit, the MBTA defines “loss adjustment” to mean, in pertinent part, “the amount by which adjusted business income was less than zero in any of the 5 tax years immediately preceding the tax year for which eligibility for the credit under this section is being determined.” MCL 208.1417(9)(d) [Emphasis added]. Therefore, a taxpayer may utilize data for the respective tax years under the SBT to calculate eligibility for the Alternative Small Business Credit for MBT tax year 2008 through 2012.

Mi33. What kinds of expenses qualify for the MBT credit under MCL 208.1451 that applies to beverage distributors who originate deposits on beverage containers?

The Bottle Deposit Administration Credit was added to the MBT as part of 2007 PA 145. Section 451 provides that a distributor or manufacturer who originates a deposit on a beverage container in accordance with Michigan’s Bottle Bill, MCL 445.571 to 445.576, may claim a credit against its MBT liability equal to (a) 30.5% of the taxpayer’s expenses incurred during the tax year to comply with the Bottle Bill, if the section 281 surcharge is imposed in the same year, or (b) 25% of such expenses if the surcharge is not imposed in the same year. MCL 208.1451(1)(a) and (1)(b). If the amount of the allowed credit exceeds the taxpayer’s tax liability for the tax year, the excess is not refunded and may not be carried forward as an offset against the taxpayer’s tax liability in future years. MCL 208.1451(2).

Section 451 does not define “expenses” or specify the types of expenses that qualify for the credit. In order to comply with the Bottle Bill, distributors who originate deposits on beverage containers (meaning that they charge the deposit to their retailer customers) typically pick up empty beverage containers from retailers (usually at the same time that they distribute new product), process the returned containers as required, and sell the materials into the recycling market. Distributors also have reporting and payment obligations with respect to unclaimed bottle deposits. MCL 445.573a; 445.573b. Thus, distributors may incur expenses related to receiving and sorting empty containers, storing containers, cleaning or crushing containers, and recordkeeping. A distributor’s compliance-related expenses will vary depending on whether the retailers it collects from use reverse vending machines. Reverse vending machines crush or shred the returned containers, eliminating or reducing the need (and cost) for distributors to collect and process the material recovered.

In order to qualify for the Bottle Deposit Administration Credit, expenses must be ordinary, necessary, and directly related to the taxpayer’s compliance with the Bottle Bill. “Ordinary”

means that another manufacturer or distributor who originates deposits would likely incur a similar expense in complying with the Bottle Bill. "Necessary" means that the expense is one the taxpayer would not have incurred absent the necessity of complying with the Bottle Bill. "Directly related" means that the main purpose of the qualifying expenditure was compliance with the requirements of the Bottle Bill. For example, a can-crushing machine purchased in order to process the empty deposit beverage containers picked up from retailers would probably qualify for the credit in the year of purchase. A printer purchased for general office use, and which is also used to occasionally print reports related to bottle deposits, would not qualify.

Taxpayers claiming the Bottle Deposit Administration Credit must maintain adequate documentation, through business books and records, supporting all expenses for which the credit is claimed.

Mi34. What is the meaning of the acronym FIRE which appears in the presentation entitled MBT Overview–August 1, 2007 on the MBT Website?

The acronym FIRE, at slide 12 of the presentation, stands for Financial Sector, Insurance Sector and Real Estate Sector. The presentation, which was one of the Department's earliest overviews of the newly enacted Michigan Business Tax Act (MBTA), indicated that these industries may pay more under the MBT than under the SBT.

Insurance companies will pay a gross direct premiums tax of 1.25% under the MBT, as addressed in Chapter 2A of the MBTA. Financial institutions will pay a tax on net capital at a rate of 0.235%, as explained in Chapter 2B. Real estate entities, like all taxpayers not taxed under Chapters 2A or 2B, are subject to the Business Income and Modified Gross Receipts taxes found in MCL 208.1201 and MCL 208.1203, respectively.

On December 1, 2007, the MBTA was amended to impose, in addition to the taxes described above, an annual surcharge on each taxpayer, except insurance companies. The surcharge is equal to a specified percentage of the taxpayer's MBT liability, after allocation or apportionment to Michigan, but before calculation of the various credits in the MBTA.

For a financial institution, the MBT surcharge is 27.7% for tax years ending in 2008, and 23.4% for tax years ending in 2009 and later. Financial institutions authorized to exercise only trust powers are not subject to the surcharge.

For real estate entities, like all taxpayers other than insurance companies and financial institutions, the MBT surcharge is equal to 21.99% of MBT liability.

The amount of the surcharge imposed on any taxpayer, other than financial institutions, cannot exceed \$6,000,000.00 for any single tax year.

Mi35. Will public libraries receive any moneys from the Michigan Business Tax? There was a provision in the Single Business Tax Act that directly funded public libraries, will this continue under the MBT?

There is no provision in the Michigan Business Tax Act that directly funds public libraries, nor did such a provision exist in the Single Business Tax Act. At the time of its repeal, the revenue generated from the SBT was distributed to the General Fund, with no amounts earmarked for particular programs. The revenue generated from the MBT will be distributed to the School Aid Fund and General Fund per MCL 208.1515, again with no amounts earmarked for particular programs.

The State Revenue Sharing program distributes sales tax collected by the State of Michigan to local governments as unrestricted revenues. The distribution of funds is authorized by the State Revenue Sharing Act, Public Act 140 of 1971, as amended (MCL 141.901).

As part of the legislation associated with the adoption of the Single Business Tax in 1975, Michigan exempted business inventories from the property tax. To hold local units harmless for this change, a portion of SBT revenue at that time was earmarked for distribution to local units through the revenue sharing process. In 1996 Public Act 342 changed both the basis on which the funds are distributed and the source of revenue-sharing funds, removing income tax and SBT revenue and replacing it with additional sales tax revenue.

Generally, revenue distributed under the Act is unrestricted: Local units have complete control over how the funds are used. However, local units that collect property taxes for eligible authorities were required under Section 912a of the Revenue Sharing Act to remit a portion of any payments received under the Act to the eligible authorities for which they collected taxes, generally the amount received by the eligible authority for the 1997-1998 state fiscal year. This section of the State Revenue Sharing Act expired September 30, 2007.

Mi36. If a taxpayer that is a unitary business group has a business loss carry forward under MCL 208.1201(5), what happens to the business loss carry forward if membership in the unitary business group changes?

When the membership of a taxpayer that is a unitary business group changes, the business loss carryforward of the unitary business group is divided among the unitary business group and the departing members in proportion to the losses the members would have generated had each member filed separately. Specifically, the portion of the business loss carryforward of a taxpayer that is a unitary business group attributable to a departing member is an amount equal to the business loss carryforward of the unitary business group multiplied by a fraction, the numerator of which is what would have been the business loss of that member had that member filed a separate return, and the denominator of which is the sum of what would have been the separate business losses of all members of the group in that year having business losses if those members filed separate returns.

Example. Taxpayer LMNOP is a unitary business group comprised of Corporations L, M, N, O, and P. The 2008 tax year generated an apportioned business loss of \$100 to be carried forward to the 2009 tax year. However, due to a change in ownership, Corporation P is not part of the unitary business group for the 2009 tax year. If each member calculated their business income tax base on a separate basis for 2008, only Corporations N, O, and P showed losses of 50, 70, and 30 respectively. P gets a business loss carryforward of \$20 $[(30/(50+70+30))*100]$ for the 2009 tax year. Taxpayer LMNO retains a business loss carryforward of \$80.

Mi37. Are mortgage companies financial institutions under the Michigan Business Tax?
MCL 208.1261(f) defines a financial institution as

- (i) A bank holding company, a national bank, a state chartered bank, an office of thrift supervision chartered bank or thrift institution, or a savings and loan holding company other than a diversified savings and loan holding company as defined in 12 USC 1467a(a)(F).
- (ii) Any person, other than a person subject to the tax imposed under chapter 2A, who is directly or indirectly owned by an entity described in subparagraph (i) and is a member of the unitary business group.
- (iii) A unitary business group of entities described in subparagraph (i) or (ii), or both.

Thus, even though a mortgage company is not expressly defined as a financial institution, it will be considered a financial institution if it is owned directly or indirectly by a financial institution and is a member of the unitary business group that the parent financial institution is also a member. If a mortgage company meets these criteria, it is a financial institution under the MBT.

Mi38. Are regulated investment companies subject to the Michigan Business Tax? If so, does the MBT provide a deduction for dividends paid similar to Federal Form 1120-RIC, U.S. Tax Return for Regulated Investment Companies?

Yes. Regulated Investment Companies (RIC) are subject to the MBT. An RIC is any domestic corporation that registers or files an election to be an RIC and meets specific criteria in Section 851 of the IRC. These corporations are taxable in both the business income and modified gross receipts tax bases of the MBT.

"Business income" is defined generally as "that part of federal taxable income derived from business activity." MCL 208.1105(2). This means, for the business income tax base, that the federal return flows through to the MBT return to the extent the federal return represents income from business activity. Because Form 1120-RIC allows a deduction for dividends paid (defined at IRC 561) that deduction will flow through to the MBT return. There is no additional deduction for this expense in the MBT.

The modified gross receipts tax base is gross receipts less "purchases from other firms," as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). "Purchases from other firms" does not include the dividends paid expense. There is not a deduction for dividends paid in this tax base.

Mi39. MCL 208.1201(2) provides a deduction for the book-to-tax difference or deferred liability resulting from the change from the SBT to the MBT. Is the deduction available to a privately held, cash-basis partnership that is not required to (and does not) maintain its books in accordance with generally accepted accounting principles?

No. The deduction provided under MCL 208.1201(2), commonly know as the FAS 109 deduction, does not apply to a taxpayer that does not keep its books in accordance with GAAP.

The plain language of the statute makes clear that only taxpayers that use GAAP qualify for the credit. Section 201(3) states

The deduction ... shall not exceed the amount necessary to offset the net deferred tax liability of the taxpayer as computed in accordance with generally accepted accounting principles.

A cash method or cash basis taxpayer may take the deduction to offset the book-to-tax difference or deferred tax liability if that taxpayer keeps its books in accordance with GAAP.

Mi40. RAB 2001-2 describes provisions of the SBT related to the tax base of a foreign person for tax years beginning in or after 2000. Does RAB 2001-2 apply to the MBT? No, RAB 2001-2 does not apply to the MBT as the MBT's statutory provisions are distinctly different from those in the SBT.

Additionally, RABs issued to provide guidance under the SBT are not directly applicable to the MBT.

Mi41. (This FAQ has been amended due to 2011 PA 305.) Is interest, dividend and capital gains investment income generated by an LLC, the members of which are trusts and which was set up solely for the purpose of pooling and investing money gifted to children's and grandchildren's trusts, subject to MBT?

Probably not. Interest, dividend, and capital gains investment income are generally included in business income and gross receipts unless an enumerated exception applies. One such exception is for receipts from investment activity of a taxpayer that is an individual, estate or other person organized for estate or gift planning purposes that are derived from transactions, activities or sources other than those in the regular course of the person's trade or business. MCL 208.1105(2) and 208.1111(1)(w). Interest income, dividends and capital gains investment income receipts generated by an LLC set up for the purpose of pooling and investing money gifted to children and grandchildren trusts are likely not subject to the business income tax and the modified gross receipts tax under sections 201 and 203 of the MBT, MCL 208.1201 and 208.1203, respectively, to the extent such income and receipts are not derived from investment activity that is part of the LLC's trade or business.

However, if the LLC is treated as a corporation for federal income tax purposes, then its interest, dividends and capital gains investment income would be subject to tax.

Mi42. Are farms exempt under the MBT? Are agricultural activities taxed under the MBT? What about a taxpayer that has both retail and farm activities?

Farms are not expressly exempt under the MBT. However, the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods is exempt. MCL 208.1207(1)(d). The production of agricultural goods means "commercial farming, including, but not limited to, cultivation of the soil; growing and harvesting of an agricultural, horticultural, or floricultural commodity; dairying; raising of livestock, bees, fish, fur-bearing animals, or poultry; or turf or tree farming, but does not include the marketing at retail of agricultural goods except for sales of nursery stock grown by the seller and sold to a nursery dealer licensed under section 9 of the insect pest and plant disease act" MCL 208.1207(1)(d). Thus, so long as the primary activity of the taxpayer is the production of agricultural goods, those agricultural activities will be exempt from the MBT. However, any retail activities that do not constitute the production of agricultural goods will be subject to the MBT.

Other farming-related persons and activities are also exempt from the MBT, such as:

- Certain farmers' cooperatives formerly exempt from federal income tax under IRC 521, unless "the total dollar value of the farmers' cooperative corporation's incidental and emergency purchases described in subsection (1)(e)(ii) are equal to or greater than 5% of the corporation's total purchases." MCL 208.1207(1)(e), (2).
- The tax base attributable to the direct and indirect marketing activities of a farmers' cooperative corporation organized within the limits of MCL 450.98 if those marketing activities are provided on behalf of the members of that cooperative and are related to the members' direct sale of their products to third parties or, for livestock, are related to the members' direct or indirect sales of that product to third parties. MCL 208.1207(1)(f).

In addition, farmers' cooperatives that are structured to allocate net earnings in the form of patronage dividends to its farmer or farmers' cooperative patrons exclude the revenue and expenses attributable to business transactions with its farmer or farmer cooperative patrons from its adjusted tax base.

Mi43. Will case law concerning the retaliatory tax, such as *TIG Ins Co v Dep't of Treasury*, and *Prudential Property & Cas Ins Co v Dep't of Treasury*, which were decided in SBT years, be applied equally to the MBT?

The Michigan Insurance Code imposes the retaliatory tax on a foreign insurer when that insurer's state of incorporation would impose a total tax burden on a Michigan insurer that is "greater in the

aggregate" than the total tax burden that Michigan would impose on the foreign insurer. MCL 500.476a. Though the total tax burden is calculated by reference to one of Michigan's business taxes, the retaliatory tax is a stand-alone tax. It is administered in connection with the SBT or the MBT but is not a part of either tax. Both *TIG* and *Prudential* were decided under the retaliatory tax imposed by the Insurance Code. 464 Mich 548 (2001); 272 Mich App 269 (2006); *cert denied* at 480 Mich 863 (2007).

Therefore, existing case law will control to the extent it discusses and interprets the retaliatory tax. The relationship between the retaliatory tax and the MBT is similar to that of the retaliatory tax and SBT making existing case law relevant to the MBT.

Mi44. Does the MBT follow the federal check-the-box regulations?

Yes. Effective January 1, 1997, a separate business entity that is not required to be classified as a corporation for tax purposes is permitted to elect its entity classification under the federal "check-the-box" provisions of the Federal Income Tax Regulations, Treas Reg § 301.7701-3. These check-the-box regulations allow an unincorporated entity, such as a limited liability company ("LLC"), to elect to be taxed as a corporation. An unincorporated entity with at least two members that fails to elect corporate tax treatment will, by default, be taxed as a partnership. An unincorporated entity with one member that fails to elect corporate tax treatment will, by default, be disregarded as an entity separate from its owner for federal tax purposes. A single member entity, such as a single member LLC ("SMLLC"), that is disregarded for federal tax purposes will be treated as a sole proprietorship, branch, or division of its owner.

For MBT purposes, a person is defined in MCL 208.1113(3) to include various types of entities, including partnerships, corporations, and LLCs. An entity that has elected or is required to file as a corporation or partnership under the Internal Revenue Code is by definition a corporation or partnership under the MBT act. MCL 208.1107(3) and 208.1113(2). These statutory definitions effectively adopt the federal check-the-box regulations for MBT purposes.

If a SMLLC or other entity is a disregarded entity for federal tax purposes, the SMLLC or other entity will be similarly classified as a disregarded entity for MBT purposes. Consequently, the owner of the SMLLC or other entity is the MBT taxpayer, with the SMLLC or other entity treated as either a sole proprietorship or as a branch or division of its owner. MCL 208.1512(1). See *Notice to Taxpayers Regarding Federally Disregarded Entities and the Michigan Business Tax*, issued January 26, 2012, for further details and exceptions.

Mi45. Are controlled foreign corporations ("CFC's") under IRC 957 taxpayers under the MBT? Can controlled foreign corporations be members of a unitary business group? What if the controlled foreign corporation is a disregarded entity of a U.S. parent? CFC's as Taxpayers. Under the MBT, taxpayer means "a person or a unitary business group liable for a tax, interest, or penalty." MCL 208.1117(5). "Person" means "an individual, firm, bank, financial institution, insurance company, limited partnership, limited liability partnership, copartnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, receiver, estate, trust, or any other group or combination of groups acting as a unit." MCL 208.1113(3). Other than the definition of unitary business group under MCL 208.1117, which is limited to U.S. persons, the MBT does not distinguish between foreign and U.S. persons. Thus, controlled foreign corporations are taxpayers under the MBT.

CFC's as Members of a Unitary Business Group. A unitary business group is defined, in part, as:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting

rights of the other United States persons [MCL 208.1117(6) (emphasis added).]

"United States person" means "that term as defined in [IRC] 7701(a)(30)." MCL 208.117(7). Under IRC 7701(a)(30), "United States person" means:

- (A) a citizen or resident of the United States,
- (B) a domestic partnership,
- (C) a domestic corporation,
- (D) any estate (other than a foreign estate, within the meaning, of paragraph (31)), and
- (E) any trust if -
 - (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and
 - (ii) one or more United States persons have the authority to control all substantial decisions of the trust. [IRC 7701(a)(30).]

A controlled foreign corporation means:

- any foreign corporation if more than 50 percent of –
- (1) the total combined voting power of all classes of stock of such corporation entitled to vote, or
 - (2) the total value of the stock of such corporation, is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b) , by United States shareholders on any day during the taxable year of such foreign corporation.[IRC 957(a).]

As a foreign corporation, a controlled foreign corporation is not a U.S. person and is thus excluded from the definition of unitary business group under the MBT.

CFC's as Disregarded Subsidiary of U.S. Parent. A controlled foreign corporation that is a disregarded entity for federal income tax purposes is classified as a disregarded entity for MBT purposes. MCL 208.1512. That is, the disregarded entity is treated as a branch or division of its owner and will be included in a unitary business group as part of its owner if the owner is a member of a unitary business group. However, a controlled foreign corporation that is a disregarded entity for federal income tax purposes that filed separate from its owner under MCL 208.1512(2) or (3) is treated as a person separate from its owner for MBT purposes. Therefore, the controlled foreign corporation that files separate from its owner is a foreign person and would not be includable in any unitary business group.

Mi46. Are single member limited liability companies and qualified subchapter S subsidiaries ("QSubs") disregarded for federal tax purposes also disregarded under the MBT?

Yes, except for the circumstances prescribed under MCL 208.1512(2) and (3), a single member limited liability company ("SMLLC") and a QSub disregarded for federal income tax purposes are classified as disregarded for MBT purposes. See *Notice to Taxpayers Regarding Federally Disregarded Entities and the Michigan Business Tax*, issued January 26, 2012, for a more complete explanation regarding the treatment under the MBT for federally disregarded entities.

Modified Gross Receipts

M1. (Answer rescinded, replacement located at M26) Does the Modified Gross Receipts Tax component of the Michigan Business Tax Act tax capital gains of investors, including trusts, Family Limited Partnerships and individuals?

M2. How are gross receipts, rents etc. received from real property apportioned? Receipts from real property are apportioned based on location of the real property.

Rental income received from real property is included in both the business income from business activity tax base and modified gross receipts tax base of the taxpayer. Business activity includes the rental of property. MCL 208.1105(1).

Under MCL 205.1301(1) each tax base is apportioned or allocated in accordance with the rules under Chapter 3 of the Act. Sales confined solely to Michigan are allocated to Michigan. Sales within and outside of Michigan are apportioned based on a sales factor calculated under section 303. MCL 208.1301(2).

The sales factor is a fraction, the numerator is Michigan sales and the denominator is sales everywhere. MCL 208.1303(1). Receipts from the sale, lease, rental or licensing of real property are Michigan sales if the property is located in Michigan. MCL 208.1305(1)(b).

M3. Is rental income included in gross receipts?

Yes. The Michigan Business Tax Act (MBTA) defines "gross receipts" as, "[t]he entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others." [MCL 208.1111(1)] Section 111(1) of the MBTA contains specified exceptions to the definition of "gross receipts" but rental income is not listed among the exceptions.

M4. The modified gross receipts tax base means the gross receipts of the taxpayer less "purchases from other firms." The definition of "purchases from other firms" includes "materials and supplies" to the extent not included in inventory and assets as defined. What, specifically, is the definition of "materials and supplies"? Under MCL 208.1113(6), "purchases from other firms" means:

- (a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.
- (b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.
- (c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

As used in MCL 208.1113(6)(c), "materials and supplies" means tangible personal property acquired during the tax year to be used or consumed in – and directly connected to – the production or management of inventory under MCL 208.1113(6)(a) or the operation or maintenance of assets under MCL 208.1113(6)(b). "Materials and supplies" includes repair parts and fuel.

M5. Will a Single Business Tax (SBT) business loss carry forward carry over to the Michigan Business Tax (MBT)? Is the deduction before or after apportionment?

The MBT provides for a limited deduction of SBT business loss carry forward in the 2008 MBT tax year in calculating the Modified Gross Receipts tax base only. MCL 208.1203(4) provides that 65% of any SBT business loss carry forward that was actually incurred in the 2006 or 2007 SBT tax years and that was not previously deducted in tax years beginning before January 1, 2008 may be deducted against the Modified Gross Receipts tax base. Any business loss carry forward incurred before January 1, 2006 is not eligible for the deduction.

If the taxpayer is a unitary business group, the business loss carry forward may only be deducted against the Modified Gross Receipts tax base of the person included in the unitary business group that generated the loss.

The deduction for the business loss carry forward is taken against the Modified Gross Receipts tax base after apportionment.

M6. Is sales tax collected by a retail business considered part of its modified gross receipts under the Michigan Business Tax?

Yes. The seller of tangible personal property is the person legally liable for payment of sales tax. A seller that is reimbursed sales tax by the purchaser of tangible personal property must include in its gross receipts the "entire amount received" from "any activity" unless the amount received is statutorily exempted under MCL 208.1111. Therefore, a taxpayer that receives sales tax from a purchaser as part of a transaction not otherwise exempt under the Michigan Business Tax must include in gross receipts the amount received from the sale of tangible personal property as well as the sales tax received.

M7. Is labor deductible from gross receipts as a "purchase from other firms?" Generally, no. Under MCL 208.1113(6), "purchases from other firms" means:

(a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

(b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

(c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

(d) For a staffing company, compensation of personnel supplied to customers of staffing companies.

* * *

(e) For a person included in major groups 15, 16, and 17 under the standard industrial classification code as compiled by the United States department of labor that does not qualify for a credit under section 417, payments to subcontractors for a construction project under a contract specific to that project.

That is, for taxpayers other than staffing companies and contractors (persons included in SIC codes 15, 16, and 17), labor is not included in "purchases from other firms." For staffing companies, labor may be deductible to the extent that it constitutes compensation of personnel supplied to its customers. For contractors, labor may be deductible to the extent that it is included in payments made to subcontractors under a contract specific to a project.

M8. Do shipping and delivery charges not included in the contract price for inventory constitute "purchases from other firms?" For example, are shipping charges paid to a third party to deliver inventory purchased from a vendor deductible from gross receipts?

No. Under MCL 208.1113(6), "purchases from other firms" means:

(a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

* * *

(c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

In other words, "purchases from other firms" includes shipping and delivery charges related to inventory only when such charges are "included in the original contract price for that inventory." MCL 208.1113(6). Furthermore, shipping and delivery charges are not included in "materials and supplies."

M9. Are amounts paid by a taxpayer to a staffing company deductible from gross receipts as "purchases from other firms?"

No. Under MCL 208.1113(6), "purchases from other firms" includes:

(d) For a staffing company, compensation of personnel supplied to customers of staffing companies. As used in this subdivision:

(i) "Compensation" means that term as defined under section 107 plus all payroll tax and worker's compensation costs.

(ii) "Staffing company" means a taxpayer whose business activities are included in industry group 736 under the standard industrial classification code as compiled by the United States department of labor.

Thus, a staffing company may deduct compensation paid to personnel supplied to its clients. But payments to a staffing company by a client do not constitute "purchases from other firms."

M10. Are capital gains that are included in the Modified Gross Receipts tax base also included in the Business Income tax base?

Yes, the Business Income tax base is a separate and distinct tax base from the Modified Gross Receipts tax base. A taxpayer's Business Income tax base is its business income subject to certain statutory adjustments before allocation or apportionment. MCL 208.1201(2). Business income is generally defined as "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" is defined in part as "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, . . . , made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, . . ." MCL 208.1105(1).

MCL 208.1201 of the MBT makes no provision for the adjustment of capital gains that may be included in federal taxable income derived from business activity. As a result, to the extent the capital gain is derived from the business activity of the taxpayer it must also be included in the business income tax base.

M11. Are system software royalties, excluded from the determination of tax liability under the Single Business Tax Act ("SBTA") (see MCL 208.9(4)(g)(viii) and (7)(c)(vii)), likewise excluded from the determination of tax liability under the Michigan Business Tax Act ("MBTA")?

No. System software royalties are included in the determination of the Business Income tax base and the Modified Gross Receipts tax base under the MBTA. Unlike in the SBTA, there is no language in the MBTA which excludes such royalties from the calculation of either of these taxes.

Under the MBTA, a taxpayer (other than a financial institution or insurance company) is subject to two separate and distinct taxes, a Business Income tax and a Modified Gross Receipts tax. A taxpayer's Business Income is subject to certain statutory adjustments before allocation or

apportionment. MCL 208.1201(2). Business income is generally defined as "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" is defined in part as "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, . . . , made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others," MCL 208.1105(1). MCL 208.1201(2)(f) states that "Except as otherwise provided under this subsection, to the extent deducted in arriving at federal taxable income, [a taxpayer must add to the Business Income tax base] any royalty, interest, or other expense paid to a person related to the taxpayer by ownership or control for the use of an intangible asset if the person is not included in the taxpayer's unitary business group." MCL 208.1201(2)(f). There is no language in the MBTA excluding system software royalties from Business Income.

Likewise, there is no language in the MBTA excluding system software royalties from the Modified Gross Receipts tax base. Generally, a taxpayer's Modified Gross Receipts tax base is "a taxpayer's gross receipts less purchases from other firms before apportionment...." MCL 208.1203(3). "Gross Receipts" is defined in part as "the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others...." MCL 208.1111(1). There is no language in the MBTA excluding system software royalties from Gross Receipts.

M12. (This FAQ has been amended due to 2011 PA 305.) Do the business income tax and modified gross receipts tax components of the MBT apply to individuals, estates, and trusts or family limited partnerships that are specifically established for estate planning purposes, on income from investments, such as capital gains, interest, dividends, or other sources of personal income?

No. The definitions of "business income" and "gross receipts" as used in the MBT specifically exclude this type of income received by these types of entities from the MBT tax bases and threshold amounts. Investment income, gains from the sale of personal assets or other assets not used in a trade or business, and any other income not specifically derived from a trade or business that is earned, received, or otherwise acquired by certain entities expressly enumerated by the statute are not included in gross receipts for purposes of determining the filing thresholds under sections 200, 411, or 505 (MCL 208.1200, 208.1411, or 208.1505), and are not included in the business income tax base or modified gross receipts tax base under sections 201 and 203, respectively, (MCL 208.1201 and 208.1203). This exclusion only applies to the following types of entities listed under MCL 208.1105(2) and 208.1111(4)(w) and (x) in the statute: (1) an individual; (2) an estate; (3) a person organized for estate or gift planning purposes; (4) a person organized exclusively to conduct investment activity and that does not conduct activity for any person other than an individual or a person related to that individual; or (5) a common trust established under the Collective Investment Funds Act, 1941 PA 174. Investment income and any other types of income earned or received by all other types of persons or entities not specifically referenced in these revised definitions must be included in the gross receipts and business income of the taxpayer.

M13. If an individual owns 100% of an S corporation law practice with gross receipts of \$500,000, net income of \$100,000 after wages of \$250,000, and also has the following income not related to the S corporation or any other trade or business: dividends - \$100,000, interest \$250,000, capital gain \$750,000, and pension of \$100,000. Is he liable for the MBT taxes on a combined basis as an individual and owner of a S corporation?

The definitions of "business income" and "gross receipts" as used in the MBT act were amended on December 1, 2007 by PA 145. Under the new definitions, personal investment income, gains from the sale of personal assets, and other income received by an individual not specifically derived from a trade or business are not included in the MBT tax bases as defined in sections

201 and 203 (MCL 208.1201 and 208.1203), and are not included gross receipts for purposes of determining the MBT filing thresholds under section 505 (MCL 208.1505).

Therefore, the taxpayer in this example would only consist of the S corporation. The MBT tax liability of the S corporation would be determined by reference to gross receipts of \$500,000 and business income of \$100,000. The wage, pension, interest, dividend, and capital gain income of the individual owner of the S corporation are not subject to MBT.

M14. (Answer rescinded, replacement located at M67) What are purchases from other firms?

M15. If a business or unitary group taxpayer has a negative business income tax base, is the 4.95% tax rate applied to the negative business income base, with the result then netted against a positive modified gross receipts tax to determine Michigan Business Tax (“MBT”) liability?

No. Other than for an insurance company under Chapter 2A and a financial institution under Chapter 2B, the Michigan Business Tax Act (“MBTA”) imposes two taxes on a taxpayer: one on business income and one modified gross receipts. The Business Income tax base is a separate and distinct tax base from the Modified Gross Receipts tax base. In determining a taxpayer’s total tax liability under the MBTA, one tax base is not netted, partially or wholly, against the other tax base. If the arithmetic calculation of a taxpayer’s business income tax base for a tax year results in a negative value, then the business income tax base used for purposes of determining total MBT liability is zero. Thus, the 4.95% tax rate for business income applied against a zero tax base produces a business income tax liability of zero. The modified gross receipts tax, calculated by multiplying the modified gross receipts tax rate of 0.80% against the modified gross receipts tax base after apportionment and allocation, would be added to the zero value business income tax to produce the taxpayer’s total MBT liability for the tax year before credits.

Even though a taxpayer may not offset a negative business income tax against a positive marginal gross receipts tax in a given tax year, the taxpayer may, under MCL 208.1201(4), carry forward the negative business loss after allocation or apportionment into the tax year immediately succeeding the loss year as an offset to the allocated or apportioned business income tax base for that succeeding tax year. Such losses may be carried forward up to 10 years following the loss year or until the loss is used up, whichever comes first. Any loss remaining after the 10 year carryforward period specified in MCL 208.1201(4) will expire unused.

M16. Should a taxpayer use the cash or accrual method when determining gross receipts under the MBT?

Similar to the SBT, a taxpayer should compute its gross receipts using the accounting method that it used in the computation of its net income for federal tax purposes.

Under the accrual method, income is “received” and recorded on the books when all the events that establish the “right to receive” the income has occurred. Under the cash method, income is not recorded until payment is actually received, and expenses are not counted until they are actually paid.

A taxpayer that computes its federal taxable income using the accrual method should consistently compute both its Business Income tax base and Modified Gross Receipts tax base using the accrual method. A federal cash basis taxpayer would compute both the MBT Business Income and Modified Gross Receipts tax bases using the cash basis method.

M17. Does the “materials and supplies” provision in the definition of “purchases from other firms” at MCL 208.1113(6)(c) apply to service providers?

Yes. A taxpayer's modified gross receipts (MGR) tax base under the Michigan Business Tax Act (MBTA) is the taxpayer's "gross receipts" less "purchases from other firms" before apportionment. MCL 208.1203. "Gross receipts" is defined in the MBTA, in pertinent part, as the "entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others [with certain prescribed exceptions]." MCL 208.1111. "Purchases from other firms" includes all of the following items pertinent to this question:

- (a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.
- (b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.
- (c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel. MCL 208.1113(6)(a) – (c).

Therefore, a taxpayer whose business activity is the provision of services may calculate its MGR by deducting from its gross receipts the amount attributed to "materials and supplies" under MCL 208.1113(6)(c), to the extent used or consumed in and directly connected to the production or management of inventory or the operation or maintenance of the depreciable assets described above.

To the extent that a taxpayer who is a service provider maintains an inventory of goods for sale or has depreciable assets, any tangible personal property acquired by the taxpayer during the tax year that is used or consumed in, and directly connected to, the management of taxpayer's inventory or the operation or maintenance of depreciable assets is a "purchase from other firms" for purposes of calculating MGR. For example, a physician's or dentist's purchase of sterilizing solution during the tax year that is used to sterilize examination equipment, such as an X-ray machine, may be considered materials and supplies under MCL 208.1113(6)(c).

M18. (This FAQ has been amended due to 2011 PA 305.) Must a company that receives dividend and interest income from a partnership include those amounts in gross receipts?

Generally, yes. The Michigan Business Tax Act (MBTA) defines "gross receipts" as, "[t]he entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others." MCL 208.1111(1). This is similar to the SBT. Section 111(1) of the MBTA contains specified exceptions to the definition of "gross receipts." There is no general exception for the receipt of dividends and interest. Unless a corporate taxpayer meets one of the statutory exceptions, dividend and interest income must be included in the corporation's gross receipts. This interpretation would apply to the gross receipts of other entity types as well.

A statutory exception is made for an individual, estate or person organized for estate or gift planning purposes that earns or receives dividend and interest income from investment activity that is derived from transactions, activities and sources that are not in the regular course of the person's trade or business. MCL 208.1111(w).

M19. Is use tax collected by a retail business considered part of its modified gross receipts under the Michigan Business Tax?

Yes, to the extent received. The Use Tax Act places the ultimate use tax liability on consumers of tangible personal property and certain services; however, out-of-state sellers and registered lessors that have sufficient nexus with Michigan have a legal obligation to collect and remit use tax to the Department. A seller that collects use tax from the consumer of tangible personal property or services must include in its gross receipts the "entire amount received" from "any

activity” unless the amount received is statutorily exempted under MCL 208.1111. The statute provides no exemption for the collection of use tax. Therefore, a taxpayer that receives use tax from a consumer as part of a transaction not otherwise exempt under the Michigan Business Tax must include in gross receipts the amount received from the sale of tangible personal property and certain services as well as the use tax received.

M20. Do construction subcontractors have to be licensed in order for payments made to such subcontractors to be considered “purchases from other firms” under section 113(6)(e) of the Michigan Business Tax Act (“MBTA”)?

No. Included within the meaning of “purchases from other firms” under MCL 208.1113(6), are:

(e) For a person included in major groups 15, 16, and 17 under the standard industrial classification [SIC] code as compiled by the United States department of labor that does not qualify for a credit under section 417 [Small Business Alternative Credit], payments to subcontractors for a construction project under a contract specific to that project. MCL 208.1113(6)(e).

Thus, the statute limits the treatment of payments to subcontractors as “purchases from other firms” only to taxpayers that fall under SIC major groups 15 (Building Construction General Contractors and Operative Builders), 16 (Heavy Construction Other Than Building Construction Contractors) and 17 (Construction Special Trade Contractors) who do not qualify for the Small Business Alternative Credit under MCL 208.1417, and only for those payments made for a construction project under a contract specific to that project. There is no limitation or condition that the subcontractors to whom such payments are made be licensed.

M21. Can credit card processing fees be deducted from gross receipts when determining the modified gross receipts tax base under the Michigan Business Tax Act (“MBTA”)?

No, credit card processing fees may not be deducted from gross receipts when determining the modified gross receipts tax base under the MBTA. A modified gross receipts tax is imposed on every taxpayer with nexus in Michigan (except for insurance companies under chapter 2A and financial institutions under chapter 2B of the MBTA) as determined under MCL 208.1200. The modified gross receipts tax base is calculated as gross receipts less “purchases from other firms,” as defined in MCL 208.1113(6), before apportionment. “Purchases from other firms” are deducted from gross receipts to derive a taxpayer’s modified gross receipts tax base under the MBTA. MCL 208.1203(3). “Purchases from other firms” is specifically defined in MCL 208.1113(6) to generally include:

- (a) inventory, as defined in MCL 208.1111(4), acquired during the tax year, including freight, shipping, delivery, or engineering charges;
- (b) assets, including fabrication and installation costs, acquired during the tax year of a type that are or will become eligible for depreciation, amortization, or accelerated capital cost recovery under the internal revenue code for federal income tax purposes; and
- (c) to the extent not included in inventory or depreciable assets, materials and supplies, including repair parts and fuel.

A credit card processing fee is essentially a fee paid to a third-party processor who provides a retail merchant with access to networks of credit card companies. The third party processor processes the credit card transactions so that ultimately the retail merchant receives payment from the consumer’s credit card company. As such, credit card processing fees do not fall within any of the prescribed categories of “purchases from other firms” under MCL 208.1113(6), and

therefore are not deducted from gross receipts when determining the modified gross receipts tax base under the MBTA.

M22. To calculate the modified gross receipts tax base, may contractors deduct from gross receipts all amounts paid to subcontractors as purchases from other firms? Under the MBT, persons included in SIC codes 15, 16, and 17 that do not qualify for the alternate credit under MCL 208.1417 (known as the small business credit under the SBT) may deduct "payments to subcontractors for a construction project under a contract specific to that project."

MCL 208.1113(6)(e). Persons included in SIC codes 15, 16, and 17 include general contractors (of residential buildings including single-family homes; industrial, commercial, and institutional buildings; bridges, roads, and infrastructure; etc.), operative builders, trade contractors (such as electricians, plumbers, painters, masons, etc.). See http://www.osha.gov/pls/imis/sic_manual.html for a more complete list.

In other words, purchases from other firms includes all payments to subcontractors for construction projects so long as such payments are made pursuant to a contract specific to that project. For example, payments made to an independent contractor to provide general labor services to the contractor not specific to a particular contract do not constitute purchases from other firms. However, payments made to a subcontractor for services and materials provided under a contract specific to a particular construction project (such as the construction of commercial property at 111 Main Street) do constitute purchases from other firms.

M23. For purposes of MCL 208.1113(6)(e), how is subcontractor defined?

Under the MBT, persons included in SIC codes 15, 16, and 17, that do not qualify for the credit under MCL 208.1417 may deduct "payments to subcontractors for a construction project under a contract specific to that project" as purchases from other firms. MCL 208.1113(6)(e).

The term "subcontractor" is not defined by the statute. Accordingly, the Department will apply the common, ordinary meaning of "subcontractor" to the statute. A "subcontractor" is an individual or entity that enters into a contract and assumes some or all of the obligations of a person included in SIC codes 15, 16, and 17 as set forth in the primary contract specific to a project.

M24. Must a contractor enter into a written contract with subcontractors in order to reduce gross receipts by the amount of payments made to subcontractors for a construction project?

Under the MBT, the modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms before apportionment. MCL 208.1203(3). Contractors, defined as persons included in SIC codes 15, 16, and 17, that do not qualify for the credit under MCL 208.1417 may deduct "payments to subcontractors for a construction project under a contract specific to that project" as purchases from other firms. MCL 208.1113(6)(e).

While the statute is silent as to whether a contractor must enter into a written contract with a subcontractor for labor costs specific to a project, a taxpayer bears the burden to prove it is entitled to a deduction in computing its tax liability. It is contemplated that good business practice would include documentation such as a written contract that would support a deduction from gross receipts for payments to subcontractors as "purchases from other firms."

The supporting information for payments to a subcontractor could be incorporated into the contract for the specific project or memorialized in a separate contract with a subcontractor specifying the project the costs pertain to.

M25. Can modified gross receipts (MGR) tax separately collected from customers by new motor vehicle dealers and new or used watercraft dealers be remitted with monthly sales, use and withholding returns?

Yes. New motor vehicle dealers and new or used watercraft dealers who elect to separately collect the MGR tax, in addition to sales price, under MCL 208.1203(5) may file and remit the tax as estimated payments with their quarterly or monthly Form 160, *Combined Return for Michigan Taxes*. Generally, for a calendar year taxpayer, MBT quarterly estimated returns are due the 15th day of April, July, October and January. For fiscal year filers, quarterly estimated returns are due the 15th day of the first month after each quarter. MBT estimated payments may be made with either of the following returns:

- Form 4548, *Michigan Business Tax Quarterly Return*, or
- Form 160, *Combined Return for Michigan Taxes*.

If filing monthly using Form 160, *Combined Return for Michigan Taxes*, and not making remittances by electronic funds transfer, monthly estimated payments may be filed on the 20th day of the month. For example, a calendar year taxpayer may file monthly MBT estimates using Form 160 on February 20th, March 20th and on April 20th rather than April 15 for the first quarter. However, for taxpayers required to make remittances by electronic funds transfer or otherwise not using Form 160, MBT estimates remain due on the 15th day of the month following the final month of the quarter. Regardless of the method chosen, the estimated MBT for the quarter must also reasonably approximate the liability for the quarter.

M26. (This FAQ has been amended due to 2011 PA 305.) Does the Modified Gross Receipts Tax component of the Michigan Business Tax Act tax capital gains of investors, including trusts, Family Limited Partnerships and individuals?

Generally, no. The modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms. "Gross receipts" is defined as the entire amount received by the taxpayer from any activity whether intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others. MCL 208.1111. Certain personal transactions and investment activity, however, are excluded from gross receipts. For an individual, estate, or person organized for estate or gift planning purposes, gross receipts does include only amounts received from transactions, activities, and sources in the regular course of the person's trade or business." MCL 208.1111(1)(w). Receipts derived from certain personal transactions specifically excluded from gross receipts include, but are not limited to: (A) those from investment activity, including interest, dividends, royalties and gains from an investment portfolio or retirement account, if the investment activity is not part of the person's trade or business; and (B) receipts derived from the disposition of tangible, intangible, or real property held for personal use and enjoyment, such as a personal residence or personal assets. MCL 208.1111(1)(w)(ii). Also excluded from gross receipts are receipts derived from investment activity other than those from transactions, activities and sources in the regular course of the person's trade or business by a person that is organized exclusively to conduct investment activity who does not conduct investment activity for any person other than an individual or persons related to that individual, or by a common trust fund established under the Collective Investment Funds Act, 1941, PA 174. MCL 208.1111(x).

M27. Under the MBT, will there be a depreciation deduction, or will Michigan conform to federal depreciation rules?

To the extent applicable, federal depreciation rules are utilized for the purpose of calculating MBT liability. Although there is no specific deduction or credit for depreciation expenses under the MBT, a taxpayer receives the benefit of any depreciation deduction taken on its federal income tax return due to the inherent structure of the business income tax base. An MBT taxpayer's business income tax base is composed of the taxpayer's "business income," with certain

adjustments. MCL 208.1201(2). “Business income” is defined under the statute as “that part of *federal taxable income* derived from business activity.” MCL 208.1105(2) (emphasis added). Thus, calculation of the business income tax base begins with the taxpayer’s federal taxable income, a figure that already includes any deductions taken by the taxpayer on account of depreciation expenses.

Under the former SBT, any amount taken for a depreciation deduction on the taxpayer’s federal tax return was required to be added back into the taxpayer’s tax base for purposes of calculating SBT liability. MCL 208.9(4)(c). There is no such add-back under the MBT. See MCL 208.1201(2). Because the business income tax base is based upon federal taxable income, and depreciation expenses are not added back in to that tax base, the MBT taxpayer effectively receives the benefit of its federal depreciation deduction.

With respect to the modified gross receipts tax component of the MBT, the entire cost of a depreciable asset may be subtracted from the taxpayer’s modified gross receipts tax base in the year that the asset is acquired, since such an asset meets the definition of “purchases from other firms.” MCL 208.1203(3); 208.1113(6)(b).

M28. Do wholesale gasoline purchases and applicable excise taxes paid by a gasoline retailer qualify as “purchases from other firms” under Section 113(6) of the Michigan Business Tax Act (“MBTA”)?

Yes. To the extent that the gasoline purchased by a gasoline retailer is held for resale such wholesale purchases of gasoline constitute inventory (“stock of goods held for resale in the regular course of trade of a retail ... business”) and qualifies as “purchases from other firms.”

Further, to the extent that the gasoline retailer’s purchase of wholesale gasoline constitutes inventory under MCL 208.1111(4) and thus “purchases from other firms” under MCL 208.1113(6), then the amount of excise taxes paid by the retailer for such inventory would also be included in the “purchases from other firm” amount deductible from gross receipts.

M29. (This FAQ has been amended due to 2011 PA 305.) Does partnership income constitute gross receipts of the partner for purposes of the modified gross receipts tax portion of the MBT?

It depends on the partner. The distributive income of a partnership is not considered gross receipts of a partner who is an individual. In that case, the gross receipts are not derived from the trade or business of the partner; rather, the trade or business is that of the partnership, a taxpayer (and not a mere flow-through) under the MBT. MCL 208.1111.

The distributive income of a partnership is considered gross receipts of a partner that is other than an individual, estate, or person organized for estate or gift planning purposes where the income is derived from transactions, activities, and sources other than in the regular course of the person’s trade or business.

M30. Does the sale by an individual of a direct investment in a corporation, partnership or LLC that is not traded on a public exchange constitute "personal investment activity" such that the income and proceeds from such a sale are excluded from business income and gross receipts? Similarly, is the distributive share of a partnership to a partner that is an individual business income or gross receipts to that individual?

For an individual, the sale of an ownership interest in a corporation, partnership, or limited liability company will generally not constitute business income or gross receipts to that individual so long as such investment does not constitute the trade or business of the individual. This is true even if the shareholder, partner, or member is an active rather than passive investor. The distributive

share of a partnership to a partner that is an individual does not constitute business income or gross receipts to that individual.

M31. (This FAQ has been amended due to 2011 PA 305.) The MBT has been amended to exclude from business income and gross receipts certain personal investment activities. Which taxpayers may exclude personal investment activity from business income and gross receipts? What about family limited partnerships that demonstrate a business purpose for federal purposes yet are intended to generate valuation discounts for gift and estate tax purposes? What about an investment club organized as a partnership?

MCL 208.1105(2) and 208.1111(1)(w) and (x) exclude from business income and gross receipts income and receipts other than those received from transactions, activities, and sources in the regular course of the taxpayer's trade or business. This exclusion only applies to the following persons:

1. an individual;
2. an estate;
3. a person organized exclusively for estate or gift planning purposes;
4. a person organized exclusively to conduct investment activity solely for an individual or persons related to that individual; and
5. a common trust established under the Collective Investment Funds Act, 1941 PA 174.

Partnerships that demonstrate a business purpose may or may not be "organized for estate or gift planning purposes." To the extent that the partnership, being an investment club or otherwise, was not organized for estate or gift planning purpose or where the income and receipts of such a partnership are derived from sources, transactions or activities of the partnership's regular course of business, such amounts are not excluded from business income and gross receipts under MCL 208.1105(2) or 208.1111(1)(w) and (x).

M32. A unitary business group under the MBTA is required to file a combined return. For purposes of calculating the unitary business group's modified gross receipts tax base, does the group eliminate all inter-company transactions between members of the group, including "purchases from other firms"?

Yes. Section 203 of the MBTA provides in part that:

The modified gross receipts of a unitary business group is the sum of modified gross receipts of each person, other than a foreign operating entity or [an insurance company or financial institution], included in the unitary business group less any modified gross receipts arising from transactions between persons included in the unitary business group.

MCL 208.1203(3). A taxpayer calculates its modified gross receipts tax base by determining its gross receipts and then subtracting "purchases from other firms," a term that is defined at MCL 208.1113(6). Therefore, each member of a unitary business group must subtract any "purchases from other firms" in order to arrive at its individual modified gross receipts, whether those qualifying purchases were made from fellow group members or from outside companies. In addition, section 511 of the MBTA specifically provides that, in filing the required combined return, all transactions between members of a unitary business group are to be eliminated from the business income tax base, the modified gross receipts tax base, and the apportionment formula. MCL 208.1511. "All transactions" includes those transactions meeting the definition of "purchases from other firms," as well as other kinds of transactions between group members.

M33. How is the “purchases from other firms” subtraction determined? The statute uses the term “purchased” and “acquired”; neither of which are defined in the law. What method of accounting will be used for “purchases from other firms”?

A taxpayer should compute its modified gross receipts tax base using the accounting method that it used in calculating its federal taxable income. Whether a taxpayer uses the “cash basis” or “accrual basis”, each method has recognized principles as to when a “purchase” is recognized and recorded. The property is “acquired” in the year the purchase is recorded under the taxpayer’s accounting method. Therefore, gross receipts and “purchases from other firms” should be computed using the method that the taxpayer used in computing its federal taxable income. Further, using the accounting method used to calculate federal taxable income will maintain consistency between the business income tax base that starts with federal taxable income and the modified gross receipts tax base.

M34. Is an SBT business loss related to a final short period SBT return that will be applied to the MBT based on a full twelve-month year or on the short period year? If the taxpayer uses the proration method to calculate its final SBT tax liability and first year MBT tax liability, is the SBT business loss also prorated?

As an initial matter, under the MBT Act, a SBT business loss carryforward is applied only to a taxpayer’s modified gross receipts tax base, not to the taxpayer’s total MBT tax liability. MCL 208.1203(4). The amount of the SBT business loss that may be deducted against the modified gross receipts tax base is based on the SBT business loss that was actually incurred in the 2006 or 2007 tax year, regardless of the method the taxpayer chooses to calculate its final SBT tax year liability and first MBT tax year liability. The method used for calculating final year SBT tax liability must be the same as that used for calculating first year MBT tax liability.

The answer is governed by MCL 208.1203(4), which provides that the SBT business loss relates to whatever is the taxpayer’s final SBT tax year. The amount of the SBT business loss that may be carried forward to the MBT is limited to “65% of any remaining business loss carryforward calculated under section 23b (h) of the former 1975 PA 228 [SBT Act] that was actually incurred in the 2006 or 2007 tax year to the extent not deducted in tax years beginning before January 1, 2008.” MCL 208.1203(4). Therefore, the amount of the SBT business loss that may be deducted against the modified gross receipts tax base is based on the SBT business loss that was actually incurred in [attributed to] the 2006 or 2007 tax year, regardless of the method the taxpayer chooses to calculate its final SBT tax year liability and first MBT tax year liability.

M35. Is a fiscal year taxpayer required to apply its final year SBT business loss against its first short period MBT return?

Yes, the deduction of any SBT business loss carryforward is limited to the taxpayer’s “2008 tax year.” MCL 208.1203(4). The taxpayer must apply its SBT business loss carryforward to that 2008 tax year, whether that tax year is a full calendar year or a short period for a fiscal year filer. Furthermore, the deduction is to be applied only to the taxpayer’s 2008 tax year modified gross receipts tax base after apportionment, not to the taxpayer’s total MBT tax liability. MCL 208.1203(4). If the modified gross receipts tax base after apportionment for the 2008 tax year is less than 65% of the amount of the SBT business loss carryforward, then the remaining SBT business loss amount is extinguished. In addition, with regard to a unitary business group taxpayer, the business loss carryforward may be deducted only against the modified gross receipts tax base of the unitary group member that generated the loss. MCL 208.1203(4).

M36. The definition of “modified gross receipts tax base” makes no provision for a negative modified gross receipts tax base. Will Treasury administratively allow a carryforward of a negative modified gross receipts tax base?

No. A modified gross receipts tax calculated as a negative is zeroed out for purposes of determining MBT tax liability for a tax year. The MBTA does not permit a carryforward of a

negative modified gross receipts tax into subsequent tax years, nor does it permit a calculated negative modified gross receipts tax to offset a positive business income tax base for a tax year (see FAQ M15).

While the MBTA imposes tax computed on a modified gross receipts tax base (MCL 208.1203) and on a separate business income tax base (MCL 208.1201), the tax calculated from the two tax bases is combined to determine a single MBT tax liability for a given tax year. An arithmetically derived negative modified gross receipts tax amount for a taxpayer in a given tax year would be deemed a modified gross receipts tax of zero for the tax year. The modified gross receipts tax of zero would be added to the taxpayer's calculated business income tax for the tax year to determine the taxpayer's MBT tax liability for the tax year, after allocation and apportionment and before surcharge and calculation of credits. Therefore, the MBTA neither contemplates nor permits a carryforward of a negative modified gross receipts tax. Likewise, the MBTA does not permit an arithmetically derived negative modified gross receipts tax to offset a positive business income tax when calculating MBT tax liability for a given tax year.

Although a negative modified gross receipts tax base may not be carried forward to later tax years, the MBTA does permit business income losses to be carried forward. MCL 208.1201(4) expressly permits a taxpayer to carry forward a negative business loss after allocation or apportionment into the tax year immediately following the loss year as an offset to the allocated or apportioned business income tax base for the immediately succeeding tax year. Such losses may be carried forward up to 10 years following the loss year or until the loss is used up, whichever comes first. Any loss remaining after the 10 year carryforward period will expire unused.

M37. To qualify as "materials and supplies" or "purchases from other firms" deductible from gross receipts under MCL 208.1113(6), must assets be directly related to inventory or vice versa?

No. "Materials and supplies" under MCL 208.1113(6)(c) means tangible personal property acquired during the tax year to be used or consumed in – and directly connected to – the production or management of inventory under MCL 208.1113(6)(a) **or** the operation or maintenance of assets under MCL 208.1113(6)(b).

"Assets" as defined under MCL 208.1113(6)(b) mean those "acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes."

There is no requirement that assets need to be related to inventory to qualify as a purchase from another firm. Moreover, there is no requirement that materials and supplies used or consumed in the operation or maintenance of assets are only deductible to the extent that such materials and supplies are used or consumed in the operation or maintenance of assets used to produce or manage inventory.

M38. (Answer rescinded, replacement located at M68) May taxpayers, including corporations and partnerships, take the IRC 199 deduction for MBT purposes?

M39. May any taxpayer separately itemize and collect the tax imposed under the Michigan Business Tax Act ("MBTA") from its customers in addition to sales price?

No, only new motor vehicle dealers and dealers of new or used personal watercraft are permitted to separately itemize and collect a tax imposed under the MBTA from customers in addition to sales price, and that authority is limited to only the modified gross receipts (MGR) tax imposed and levied under section 203. Section 203(5) of the MBTA states:

Nothing in this act shall prohibit a *taxpayer who qualifies for the credit under section 445* [a new motor vehicle dealer licensed under the Michigan vehicle code (1949 PA 300, MCL 257.1 to 257.923)] or a *taxpayer who is a dealer of new or used personal watercraft* from collecting the tax imposed under this section in addition to the sales price. The amount remitted to the department for the tax under this section shall not be less than the stated and collected amount. MCL 208.1203(5); emphasis added.

The statute's explicit mention of these two types of taxpayers having authority to state and collect the MGR tax in addition to sales price demonstrates intent to exclude all other taxpayers. Thus, the MBTA expressly limits the authority to separately itemize and collect the modified gross receipts tax in addition to sales price to only two types of taxpayers: new motor vehicle dealers and dealers of new or used personal watercraft.

M40. Our company adds a handling charge to all customer invoices. Is this handling charge taxable under the MBT?

Yes. Under the MBTA, a taxpayer (other than a financial institution or an insurance company) is subject to both a business income tax and a modified gross receipts tax, which together comprise the taxpayer's MBT liability. Handling charges added to customer invoices must be included when determining the taxpayer's business income tax base as well as its modified gross receipts tax base. There is no language in the MBTA which would exclude such handling charges from the calculation of either of these taxes.

For purposes of calculating the business income tax, "business income" is defined generally as "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" means "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others" MCL 208.1105(1). Selling property of any kind to and/or performing services for customers is clearly "business activity"; thus, all income received from such endeavors, to the extent that it is part of a taxpayer's federal taxable income, constitutes taxable "business income" under the MBTA. There is no language in the MBTA that would exclude handling charges added to customer invoices from business income.

Similarly, a taxpayer calculates its modified gross receipts tax base by determining its gross receipts less "purchases from other firms," as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). "Purchases from other firms" generally includes purchases of inventory, depreciable assets, and materials and supplies used in the taxpayer's business. MCL 208.1113(6). A handling charge is a fee charged to a customer that is typically intended to cover the company's cost of packaging and mailing an order. Handling charges, even if they reflect amounts paid to a third-party that are simply passed through to customers, do not fall within the statutory definition of "purchases from other firms." Therefore, handling charges added to customer invoices are not deducted from gross receipts when determining the modified gross receipts tax base under the MBTA.

M41. My company intends to purchase a significant piece of business equipment in the near future. This equipment is the type of property that is or will become eligible for depreciation for federal tax purposes. Under the MBT, can my company deduct the cost of this equipment in the year of purchase when calculating its modified gross receipts tax base, and also qualify for the investment tax credit, which is applied against final MBT liability?

Yes. In calculating its modified gross receipts tax base, a taxpayer determines the amount of its gross receipts for the tax year and then subtracts any "purchases from other firms" before

apportioning the result. MCL 208.1203(3). Pursuant to MCL 208.1113(6), “purchases from other firms” includes “[a]ssets, including the cost of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.” A purchase of depreciable business equipment as described above meets this definition and the total cost of the equipment, including the cost of fabrication and installation, would therefore be subtracted from the taxpayer’s gross receipts as a “purchase from other firms.”

The investment tax credit (ITC) set forth in MCL 208.1403(3) is a separately calculated credit that incentivizes capital investment in property. Subject to the combined credit limitation in MCL 208.1403(1), for the 2008 tax year, the ITC is equal to 2.32% of the net calculation of the cost, including fabrication and installation, paid or accrued in the taxable year of depreciable tangible assets that are physically located in Michigan, less any recapture of ITC on assets that have been disposed of. The credit rate increases to 2.9% of the net calculation for tax years 2009 and after. MCL 208.1403(3). The ITC is applied against a taxpayer’s total MBT liability (which includes the modified gross receipts tax, the business income tax, and the surcharge), subject to the combined credit limitation in MCL 208.1403(1). Nothing in the MBTA prohibits a taxpayer from deducting the cost, in the year of purchase, of an asset that qualifies as a “purchase from other firms” when calculating its modified gross receipts tax base, and then subsequently utilizing the same asset purchase to qualify for the ITC, a credit that is applied against total MBT liability. However, taxpayers should be aware that the MBT requires recapture of ITC when a sale, exchange, or other disposition of a qualifying asset, including the removal of the asset from the state, occurs.

M42. A real estate limited partnership owns an apartment project in Michigan. The partnership is in the process of selling the apartment project to avoid foreclosure. The apartment project is the partnership’s only asset and the partnership will be dissolved shortly after the sale.

As a result of the sale, the partnership will have a capital gain of approximately \$6.3 million, and, in addition, will have debt forgiven of approximately \$2.6 million. The debt being forgiven is a seller note and accrued interest that was executed in favor of the previous owner of the project. The potential buyer has agreed to pay a portion of the seller note and interest, and the former owner has agreed to forgive the balance of the debt. For federal tax purposes, their cancellation of debt (“COD”) income is a pass through item and the ultimate taxability is determined at the partner level instead of the partnership level.

The partnership will be liable for both the modified gross receipts (MGR) and business income tax portions of the MBT on the rental income of the partnership. Will the partnership COD income and capital gain that are passed through to the partners be subject to MBT?

Yes. The partnership in this example would be subject to both components of the MBT on the rental income, the capital gain, and the COD income.

A taxpayer who meets the nexus standards and gross receipts thresholds of the MBT act is subject to a business income tax imposed on the business income base of the taxpayer and a modified gross receipts tax imposed on the modified gross receipts tax base of the taxpayer. MCL 208.1201 and 1203. The business income tax base of a taxpayer means the business income of the taxpayer subject to a series of specific adjustments listed in section 201. MCL 208.1105(2) defines business income, in part, to mean “that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments *and items of income and expense that are attributable to the business activity of the*

partnership or S corporation and separately reported to the partners or shareholders. . ..
(Emphasis added).

Here, the partnership has both COD income that is attributed to the business activity of the partnership (*i.e.* forgiveness of a debt secured by a partnership asset used in the business) and capital gain attributed to the business activity of the partnership (*i.e.* sale of the same partnership asset) that are separately reported to the partners on the federal K-1 form. While both capital gain and COD income are excluded from the calculation of partnership taxable income on the federal 1065 form, they are both income of the partnership separately reported to the partners on the K-1 forms, and fall within the plain meaning of business income of a partnership as defined in MCL 208.1105(2), regardless of the ultimate taxability of the COD at the partner's level.

For the calculation of the modified gross receipts tax base under section 203 (MCL 208.1203), gross receipts is defined under section 111 (MCL 208.1111) to mean "the entire amount received from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others," subject to specifically enumerated exceptions. COD income and capital gain of a partnership that are separately reported to the partners are not one of the specifically enumerated exceptions, and are therefore subject to the modified gross receipts tax imposed under section 203 of the MBT.

M43. How is a like-kind exchange treated under the MBT?

Generally, for federal income tax purposes, business or investment property exchanged solely for business or investment property of a like-kind, no gain or loss is recognized under Internal Revenue Code Section 1031. If, as part of the exchange other (not like-kind) property or money is received, gain is recognized to the extent of the other property and money received, but a loss is not recognized. Properties are of like-kind, if they are of the same nature or character, even if they differ in grade or quality.

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, or certain other assets.

To the extent the like-kind exchange is or is not recognized for federal income tax purposes, the MBT Business Income tax base will recognize a similar amount. MBT Business Income means that part of federal taxable income derived from business activity. MCL 208.1105(2).

Like the SBT, the value of property received in a like-kind exchange will be excluded from gross receipts. If, as part of the exchange other (not like-kind) property or money is received and gain is recognized for federal income tax purposes, the gain will be included in gross receipts. Losses that are not recognized for federal income tax purposes similarly are not recognized for MBT and do not reduce gross receipts for the MBT.

Transfers of property in a like-kind exchange are not dispositions and do not cause the recapture of ITC. The transferor is not required to recapture ITC on the transferred property and the transferee is not entitled to ITC on the property received. However, when property that was exchanged in a like-kind exchange is disposed of, the acquisition date of the disposed property will be considered the date the original property was acquired to determine if the disposition causes recapture of ITC.

M44. (This FAQ has been amended due to 2011 PA 305.) Is an individual person who earns more than \$350,000 in interest and dividends for the tax year subject to the MBT? Are the person's capital gains from sales of stock subject to the MBT?

Generally, no. Although the MBT filing threshold is \$350,000 in apportioned or allocated gross receipts, MCL 208.1505(1), the definitions of "business income" and "gross receipts" as used in

the MBT Act exclude investment income, gains from the sale of personal assets, and other income received by an individual that are not derived from the person's trade or business. Consequently, such amounts are not included in the determination of such person's MBT business income and gross receipts tax bases or in calculating the MBT filing threshold or the gross receipts filing threshold credit. MCL 208.1505(1); 208.1411. The interest, dividend, and capital gain income of the individual in the example, even if such income totaled more than \$350,000 for a single tax year, would not be subject to the MBT, unless the trade or business of that individual includes making investments and engaging in investment activity.

M45. (Answer rescinded, replacement located at M80) How is "fuel" defined for purposes of the "purchases from other firms" deduction under MCL 208.1113(6)? Does it include the cost of gas for all of a business' automobiles currently in use, including owned and leased vehicles? Does it include propane to run equipment? Does it include natural gas to run furnaces?

M46. (Answer rescinded, replacement located at M70) Is the sale of stock by a stockholder in a closely held corporation back to the corporation or another stockholder subject to MBT?

M47. (Answer rescinded, replacement located at M71) Are dividends from subsidiaries and interest income from unrelated parties included in the modified gross receipts tax base in the MBT?

M48. I am a 100% shareholder of a corporation that does business in Michigan. I am a nonresident of Michigan. The corporation is organized as a C corporation. I sell 100% of the stock of the corporation which results in a capital gain. Is the capital gain from the sale of the stock subject to the new MBT?

Generally, no. The MBT act was amended on December 1, 2007 by Public Act 145 of 2007 to exclude personal investment activity from both the business income and gross receipts tax components of the MBT. MCL 208.1105(2) and MCL 208.111(1) respectively. For an individual, the sale of an ownership interest in a corporation, partnership, or limited liability company will generally not constitute business income or gross receipts to that individual unless he or she is in the business of buying and selling ownership interests in these types of business entities. This answer does not change if the individual shareholder, partner, or member is an active rather than passive investor or is a resident rather than a nonresident of Michigan.

In this case, the C corporation is the taxpayer and would be subject to MBT if the nexus standards and gross receipts thresholds are met. A 100% individual shareholder who sells all of some of the ownership interest in the C corporation will not be subject to MBT on any gain recognized from the sale of the stock except as otherwise provided above.

M49. Is the gain recognized on the one time sale of business assets and goodwill by an entity to another entity taxed under the Michigan Business Tax (MBT)?

Yes, the gain is taxed under the MBT. [The MBT does not provide an exception for noncorporate taxpayers for a casual transaction that was provided for under the SBTA.] To the extent the capital gain is derived from the business activity of the taxpayer and included in federal taxable income it must also be included in the business income tax base. The gain included in federal taxable income is also included in the modified gross receipts tax base. There are no statutory exceptions or exclusions that are applicable to capital gains recognized by a business from the sale of capital assets. As a result, these gains are included in gross receipts and the modified gross receipts tax base. Also see FAQs B4 and M10.

M50. Does the deduction for net earnings from self employment exempt self-employed individuals from taxation under the MBT?

No. The MBT is comprised of the business income tax and the modified gross receipts tax. MCL 208.1201; MCL 208.1203. The business income tax taxes “that part of federal taxable income derived from business activity.” MCL 208.1105(2). The modified gross receipts tax is levied on a taxpayer’s gross receipts less purchases from other firms, a defined term. MCL 208.1203(3). The deduction for net earnings from self employment is taken from the business income tax base and does not affect the modified gross receipts tax base. Further, the deduction is not an exemption from the business income tax base. MCL 208.1201(2)(h) permits a deduction, to the extent included in federal taxable income, for net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer except to the extent that those net earnings represent a reasonable return on capital. [Emphasis added].

IRC 1402 defines net earnings from self employment to generally mean the net income and distributive share of an individual or a member of a partnership. This definition excludes several items of gross income. IRC 1402(a). For example, dividends on stock, interest on bonds, and gain on the sale of a capital asset or sale of property are all excluded from the definition of net earnings from self employment. IRC 1402(a). Each of these items, excluded by definition, will not be part of the net earnings from self employment deduction and will, thus, remain taxable in the business income tax base to the extent included in federal taxable income from business activity.

Finally, the net earnings from self employment deduction does not allow an individual, partner or limited liability company member to deduct amounts that represent a return of capital. These amounts remain taxable in the business income tax base.

M51. Are vehicles taken as trade-ins and later sold by an auto dealer considered “purchases from other firms” under the MBT, and thus deductible from gross receipts in determining the modified gross receipts tax base?

Yes. Vehicles an auto dealer acquires as trade-ins and which are later resold by the auto dealer are considered “purchases from other firms”, and deductible for gross receipts to arrive at modified gross receipts. MCL 208.1113(6). “Purchases from other firms” includes inventory which is defined as “[t]he stock of goods held for resale in the regular course of trade of a retail ... business.” MCL 208.1111(4). An auto-dealer that accepts a trade-in as part of the purchase price of a replacement vehicle and holds the trade-in for resale in the regular course of its retail business is holding the trade-in as inventory. The auto dealer’s gross receipts is reduced by the amount that the auto dealer credited against the purchase price of the replacement vehicle it sold when acquiring the trade-in.

M52. We manufacture customized tooling systems, which we then sell to our customer. After the sale, although the customer owns the tooling, it physically remains at our plant, and we use the tooling to manufacture the customer’s product. Are these sales of tooling taxable under the Michigan Business Tax Act (MBTA)?

Yes. Under the MBTA, a taxpayer (other than a financial institution or an insurance company) is subject to both a business income tax and a modified gross receipts tax, which together comprise the taxpayer’s MBT liability. Proceeds from the sale of custom tooling must be included when determining a taxpayer’s business income tax base as well as its modified gross receipts tax base. There is no language in the MBTA which would exclude such sales from the calculation of either of these taxes.

For purposes of calculating the business income tax component of the MBT, “business income” means “that part of federal taxable income derived from business activity.” MCL 208.1105(2).

“Business activity” is broadly defined as “a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others” MCL 208.1105(1). Selling property of any kind (such as the tooling) to customers and performing services (such as the design and manufacture of the tooling) for customers both clearly constitute “business activity”; thus, all income received from such endeavors, to the extent that it is part of a taxpayer’s federal taxable income, constitutes taxable “business income” under the MBTA. There is no language in the MBTA that would exclude sales of custom-made tooling from business income, and the fact that the tooling remains at the manufacturer’s plant does not alter that conclusion.

Similarly, a taxpayer calculates its modified gross receipts tax base by determining its gross receipts less “purchases from other firms,” as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). “Purchases from other firms” generally includes purchases of inventory, depreciable assets, and materials and supplies used in the taxpayer’s business. MCL 208.1113(6). While the customized tooling might otherwise satisfy the definition of a depreciable asset or a material or supply used in the taxpayer’s business, the tooling is made and sold, rather than purchased, by the taxpayer. Accordingly, the receipts from the customized tooling cannot be excluded as “purchases from other firms,” and sales of such tooling are not deducted from gross receipts when determining the modified gross receipts tax base under the MBTA.

M53. Are Michigan lottery dealers required to include the proceeds from retail lottery ticket sales when calculating gross receipts, or are they only required to include the amount of the commission that they receive on such sales?

Under the MBT, proceeds from the licensed sale of lottery tickets are excluded from the definition of “gross receipts;” thus, only the commission paid on those sales would be included in a taxpayer’s gross receipts. The MBT Act defines “gross receipts” as “[t]he entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others.” MCL 208.1111(1). Section 111(1) also contains a list of items that are specifically excluded from the definition of “gross receipts.” One such exclusion is the “[p]roceeds from sales by a principal that the taxpayer collects in an agency capacity solely on behalf of the principal and delivers to the principal.” MCL 208.1111(1)(a).

Michigan’s Lottery Act mandates that the Commissioner of the Bureau of State Lottery “license as agents to sell lottery tickets such persons whom he deems will best serve the public convenience and promote the sale of tickets or shares.” MCL 432.17(b). Lottery licensees are similarly referred to in another section of the statute as both “lottery sales agents” and “licensed agents.” MCL 432.23. In addition, the administrative rules implementing the Lottery Act state that a lottery sales license “is evidence of an agency that is revocable at will by either the bureau or the retailer.” Mich. Admin. Code Rule 432.4. Pursuant to section 35 of the Lottery Act, lottery licensees are required to deposit all monies collected from the sale of lottery tickets in a financial institution designated by the Department of Treasury to the credit of the State of Michigan. MCL 432.35(1). Accordingly, because lottery dealers are statutorily defined as “agents” of the Bureau of State Lottery (and, therefore, the State of Michigan) for the purpose of selling lottery tickets, and the dealers are required to remit back to the State of Michigan all proceeds received from the sales of lottery tickets, such sales proceeds meet the requirements for the exclusion from gross receipts set forth in section 111(1)(a). When calculating gross receipts, MBT taxpayers that are licensed lottery sales agents should not include the proceeds from their sales of lottery tickets on behalf of the State of Michigan.

The contractual agreement entered into between a licensee and the Bureau of State Lottery may provide that the licensee be paid a commission or other remuneration for all valid sales and valid prize payments made by the licensee. Because no exclusion from gross receipts applies to the commissions or other remuneration paid to lottery agents by the Bureau of State Lottery, all such payments are includable in the taxpayer's gross receipts.

M54. How are accounts receivable factoring companies treated for purposes of the Michigan Business Tax Act (MBTA)?

Factoring is a financial transaction whereby a business sells some or all of its accounts receivable (i.e., its collectible invoices) to a factoring company at a discount. Factoring is to be distinguished from a lending transaction in that the emphasis is on the value of the receivables being sold, not the business's credit worthiness, and the receivables are actually sold to the factoring company, not simply used as collateral. The factoring company assumes all risk on the receivables, and the amount of value assigned to each account typically depends on its age. Factoring can be a one-time transaction, or there can be an on-going relationship between the invoice seller and the factoring company.

Under the MBTA, a taxpayer (other than a financial institution or an insurance company) is subject to both a business income tax and a modified gross receipts tax, which together comprise the taxpayer's MBT liability. Proceeds collected by a factoring company from accounts receivable purchased from other businesses must be included when determining the factoring company's business income tax base and its modified gross receipts tax base. There is no language in the MBTA which would exclude such proceeds from the calculation of either of these taxes.

For purposes of calculating the business income tax component of the MBT, "business income" means "that part of federal taxable income derived from business activity." MCL 208.1105(2). "Business activity" is broadly defined as "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others" MCL 208.1105(1). The services provided by a factoring company, including purchasing receivables in exchange for cash and then collecting from the underlying account debtors, clearly constitute "business activity"; thus, all income received from such endeavors, to the extent that it is part of the factoring company's federal taxable income, constitutes taxable "business income" under the MBTA. There is no language in the MBTA that would exclude from the calculation of the business income tax base the proceeds collected by a factoring company from accounts receivable purchased from other businesses.

Similarly, a taxpayer calculates its modified gross receipts tax base by determining its gross receipts less "purchases from other firms," as defined in MCL 208.1113(6), before apportionment. MCL 208.1203(3). Section 111(1) specifies certain items that are excluded from the definition of "gross receipts." One such exclusion is "[p]roceeds from the taxpayer's transfer of an account receivable if the sale that generated the account receivable was included in gross receipts for federal income tax purposes." The exclusion does not apply to a taxpayer that both buys and sells receivables during the tax year. MCL 208.1111(1)(f). While this exclusion will generally apply to the invoice seller (the factoring company's customer), it does not apply to the factoring company itself, since the factoring company had nothing to do with the sale that generated the transferred account receivable and it therefore will not have included that sale in gross receipts for federal income tax purposes.

"Purchases from other firms" generally includes purchases of inventory, depreciable assets, and materials and supplies used in the taxpayer's business. MCL 208.1113(6). Such "purchases

from other firms” are subtracted from the taxpayer’s gross receipts when determining its modified gross receipts tax base. A factoring company’s purchase from another business of intangibles such as accounts receivable does not fall within the statutory definition of “purchases from other firms.” Accordingly, amounts paid by a factoring company to invoice sellers for accounts receivable are not deducted from the factoring company’s gross receipts when determining its modified gross receipts tax base under the MBTA.

M55. How are gross receipts computed on an installment sale of a capital asset? Is the realized installment sale gain included in the two tax bases? How is the investment tax credit (ITC) affected?

When calculating gross receipts and the tax bases under the MBT, taxpayers should consistently use the accounting method used in computing federal income taxes. Annual federal installment sale gain is realized by computing a gross profit rate on the sale and then applying that rate to the payments received in the year. The annual installment payments received on the sale of the capital asset and the gain realized for federal income taxes should be used in calculating the MBT gross receipts for that year.

Under the MBT, “gross receipts” are defined as the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others. MCL 208.1111(1) Excepted from the definition of gross receipts are the proceeds less any gain related to the disposition of a trade or business capital asset. Subsection (o) provides:

Proceeds from a sale, transaction, exchange, involuntary conversion, or other disposition of tangible, intangible, or real property that is a capital asset as defined in section 1221(a) of the internal revenue code or land that qualifies as property used in the trade or business as defined in section 1231(b) of the internal revenue code, less any gain from the disposition to the extent that gain is included in federal taxable income. MCL 208.111(1)(o).

The installment sale method prorates gain and recognizes it over the years in which payments are received. For federal income tax purposes, the installment method may only be used for nondealer sales of property other than inventory. Generally, dealers in real or personal property may not use the installment method to report gain. A “dealer disposition” includes, with some exceptions, any disposition of personal property by a person who regularly sells or otherwise disposes of such property on an installment plan and any disposition of real property which is held for sale to customers in the ordinary course of the taxpayer’s business.

There are no other gross receipts exceptions under the MBT for gains received on sales of property other than capital assets. Nor are there any other exceptions that are computed using gains realized from transactions that are not from the sale of capital assets. Therefore, any amount received that is attributed to installment sales and the gains that are realized in subsequent years are included in MBT gross receipts.

To the extent the installment sale gain is derived from the business activity of the taxpayer and included in federal taxable income it must also be included in the business income tax base. The gain realized in any tax year from the installment sale is included in both the business income and modified gross receipts tax base.

The MBT requires recapture of ITC when a sale, exchange, or other disposition of a qualifying asset, including the removal of the asset from the state, occurs. Similar to the SBT, a sale of qualifying property reported on the installment method for federal income tax purposes causes the recapture of the entire gross proceeds in the year of the sale, less any gain reported in federal taxable income in that year. Gain attributed to the installment sale that is realized in the

seller's federal taxable income in subsequent years is subtracted in computing any ITC claimed against the MBT in those subsequent years.

The purchaser of a qualifying asset on an installment sale may claim ITC against total MBT liability using the entire amount paid or accrued in the taxable year pursuant to MCL 208.1403(3). Nothing in the MBTA prohibits a taxpayer from deducting the cost, in the year of purchase, of an asset that qualifies as a "purchase from other firms" when calculating its modified gross receipts tax base, and then subsequently utilizing the same asset purchase to qualify for the ITC.

M56. Are retailers who drop ship products from suppliers to customers within and outside of Michigan entitled to deduct the cost of these items from gross receipts as purchases from other firms?

A drop shipment (or third party sale) is a transaction where a seller (taxpayer) accepts an order from an end user purchaser. The seller places this order with a third party supplier and directs the third party to ship the property directly to the end user. In such an arrangement the seller generally does not hold an inventory of the goods for resale.

"Purchases from other firms are deducted from a taxpayer's gross receipts to calculate the modified gross receipts tax base. 208.1203(3) Purchases from other firms includes inventory purchased for resale. 208.1113(6) For retailers and wholesalers, inventory generally is defined by statute as, "the stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale." MCL 208.1111(4)(a) Inventory excludes personal property under lease or principally intended for lease rather than sale and property allowed a deduction or allowance for depreciation or depletion under the internal revenue code. 208.1111(4)(e)

If the facts and circumstances indicated that the property drop shipped constitutes the taxpayer's inventory as defined by statute, the cost of those items may be deducted as "purchases from other firms." Relevant facts for this inquiry include whether the drop shipped property appears on the taxpayer's books and records as inventory.

M57. Are royalties received from a foreign entity included in the tax base of the MBT?

Yes, but generally only as part of the modified gross receipts tax component of the MBT.

Royalties – including those received from foreign persons – are included in gross receipts and the gross receipts tax base for purposes of the modified gross receipts tax. MCL 208.1111(1), 208.1203.

However, for business income tax purposes, royalties received "from persons other than United States persons and foreign operating entities, including, but not limited to, amounts determined under section 78 of the [IRC] or sections 951 to 964 of the [IRC]" are subtracted from business income "to the extent included in federal taxable income." MCL 208.1201.

Foreign entities – and foreign operating entities as defined by MCL 208.1109 – cannot be included in a unitary business group. Therefore, intercompany eliminations that would otherwise remove intra-unitary business group transactions from the tax bases under are not available to royalties paid to or received by a foreign entity.

M58. How should inter-company transactions between members of a unitary business group be eliminated when the members have different year ends?

MCL 208.1511 requires the elimination of all transactions between members of the unitary business group that affect the business income tax base, modified gross receipts tax base and the apportionment formula. When members of a unitary business group have different year

ends, the combined return of the unitary business group must include each tax year of each member whose tax year ends with or within the tax year of the designated member. Each member should eliminate the inter-company items of income and expense recorded on its books for the tax period of the member that is included in the combined return of the unitary business group. In other words, inter-company eliminations are made on an entity basis in computing the members' tax bases that are summed together for the combined return.

For example, a unitary business group consists of company A, the designated member that reports on a calendar year, company B that reports on a calendar year and company C that has a fiscal year ending March 31. In 2008, companies A and B will eliminate all inter-company transactions between each other since they both report on a calendar year end. In computing their 2008 tax bases, companies A and B will also eliminate all inter-company transactions they had recorded on their books during the calendar year with company C.

Company C will report the months April 1, 2007 through December 31, 2007 on a final SBT return. Only January 1, 2008 through March 31, 2008 will be reported on the unitary group's 2008 MBT return. When computing its 2008 Business Income and Modified Gross Receipts tax bases, Company C will eliminate all inter-company transactions it has recorded on its books for the period January 1, 2008 through March 31, 2008. On the unitary group's 2009 MBT return, Company C will eliminate all inter-company transactions it has recorded on its books for the periods April 1, 2008 through March 31, 2009. Companies A and B will eliminate all intercompany transactions recorded in 2009 between each other and with company C since both A & B report on a calendar year end. While timing differences will occur due to differences in each members year end, eliminating each member's inter-company transactions that were recorded on that member's books during the periods included in the combined return will eliminate intercompany transactions from the unitary business group's tax base.

M59. What qualifies as purchases from other firms for mortgage companies?

Generally, "purchases from other firms" means:

- a. Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.
- b. Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.
- c. To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

MCL 208.1113(6).

Potential purchases from other firms include depreciable assets acquired by a mortgage company and the materials and supplies used to maintain or operate depreciable assets.

Additionally, mortgage companies may exclude from gross receipts proceeds representing the principal balance of loans transferred or sold in the tax year. MCL 208.1111(s). To qualify for this exclusion, a mortgage company must be licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, and [have] greater than 90% of its revenues, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.

M60. Are returns and allowances included or excluded when calculating the modified gross receipts figure?

Returns and allowances are subtracted from total sales revenue in computing the seller's initial

“gross receipts” figure. The MBT Act defines “gross receipts” as “[t]he entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others.” MCL 208.1111(1). Section 111(1) also contains a list of items that are specifically excluded from the definition of “gross receipts.” One such exclusion specified in the list is “[r]efunds from returned merchandise.” MCL 208.1111(1)(h). Sales returns and allowances are simply post-transaction adjustments in the purchase price of merchandise.

M61. Do food items purchased by a restaurant that are ingredients in menu items for sale to customers constitute "purchases from other firms?"

Yes. Under MCL 208.1113(6), "purchases from other firms" includes:

(a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

* * *

(c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

Under MCL 208.1111(4), "inventory" means:

(a) The stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale.

(b) Finished goods, goods in process, and raw materials of a manufacturing business purchased from another person.

While a restaurant is not a manufacturing business or a wholesaler, it is a retailer. That is, a restaurant sells tangible personal property to others for use or consumption in the ordinary course of business. Furthermore, the food items purchased by a restaurant that are menu items – or are ingredients in menu items – sold to customers constitute a stock of goods held for resale in the ordinary course of the restaurant's trade.

M62. Are parts used by an outside repair person to repair taxpayer's fixed assets a "purchase from another firm" under MCL 208.1113(6)?

The answer depends upon whether the taxpayer purchased or acquired the repair part itself or whether the repair part was provided by the repair person in conjunction with and incidental to the repair person's provision of service. "Purchases from other firms" is defined in part at MCL 208.1113(6) as:

(a) Inventory acquired during the tax year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

(b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

(c) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

If the taxpayer acquired (i.e. purchased) the repair part during the tax year for use in operating or maintaining the taxpayer's assets under MCL 208.1113(6)(b), and hired a repair person who then used the repair part to repair taxpayer's fixed assets under MCL 208.1113(6)(b), the repair part

would be considered “materials and supplies” under MCL 208.1113(6)(c) and thus a “purchase from other firms” under MCL 208.1113.

To the contrary, where the taxpayer retained the services of the repair person, pursuant to which the repair person used the repair part incidental to the provision of services to the taxpayer, then the repair part would not be “materials and supplies” under MCL 208.1113(6)(c) and, thus, would not be a “purchase from other firms” under MCL 208.1113(6). In this situation, the taxpayer did not “acquire” the repair part; rather, the repair part was merely tangible property provided in connection with and incidental to the provision of repair services to taxpayer, the cost of which is not a “purchase from other firms.” However, if the repair person were to separately itemize and charge the taxpayer for the repair part used in conjunction with the repair service, the repair part would then be considered as having been acquired by taxpayer as a repair part for use in operating or maintaining the taxpayer’s assets under MCL 208.1113(6)(b), and thus constitute a “purchase from other firm” under MCL 208.1113(6).

M63. When determining the modified gross receipts portion of MBT tax liability, do you include and report receipts from out-of-state companies or just Michigan-based receipts?

A taxpayer must report all gross receipts, whether from Michigan or out-of-state sources. For MBT purposes a “taxpayer” includes a unitary business group. For a taxpayer that is a unitary business group, all gross receipts must be reported, but gross receipts attributable to transactions between members of the unitary business are deducted from the determination of the modified gross receipts tax base. MCL 208.1203(3).

The modified gross receipts tax is imposed on the modified gross receipts tax base of the taxpayer, after allocation or apportionment to Michigan, at a rate of 0.80%. MCL 208.1203(1). The modified gross receipts tax base is calculated as gross receipts less “purchases from other firms,” as defined in MCL 208.1113(6), before apportionment. The modified gross receipts tax base is apportioned based upon a sales factor. The sales factor is a fraction, the numerator of which is the taxpayer’s total sales in Michigan during the tax year and the denominator of which is the taxpayer’s total sales everywhere during the tax year. MCL 208.1301(2) and 208.1303(1). Therefore, the determination of the taxpayer’s modified gross receipt tax liability will depend upon sales that are sourced to Michigan relative to sales everywhere. For a taxpayer that is a unitary business group, sales include Michigan sales of every person included in the unitary business group whether or not the unitary member has nexus in Michigan. Sales between unitary members are eliminated when calculating the sales factor for apportionment. MCL 208.1303(2).

M64. I am a broker/dealer in securities without any W-2 payroll. My major expense is 1099 commissions paid to sales representatives. Are these commission expenses deductible on my MBT return?

Business income is generally defined as “that part of federal taxable income derived from business activity.” MCL 208.1105(2). To the extent that federal taxable income derived from business activity is reduced by these expenses, a taxpayer’s Business Income tax base will be reduced.

The Modified Gross Receipts tax base is a taxpayer’s gross receipts less purchases from other firms before apportionment. MCL 208.1203(3). “Gross receipts” are defined as the entire amount received by the taxpayer from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others with certain exceptions. MCL 208.1111(1). Section 111 provides no exception for or deduction of 1099 commission expense from gross receipts of broker/dealers. Therefore, the 1099 commission expense will not reduce the gross receipts or Modified Gross Receipts tax base.

Further, commissions paid to non-employees are not compensation as defined in MCL 208.1107(2). Only commissions, wages, salaries, fees, bonuses, and other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayer would meet the statutory definition of compensation and qualify for the compensation credit provided under MCL 208.1403. The non-employee 1099 commissions in this example do not qualify for the compensation credit.

M65. What impact would a merger in 2008 have on the ability of the surviving entity to utilize SBT business loss carryforwards? How will losses incurred after December 31, 2007 be impacted by the merger?

The MBT provides for a limited deduction of SBT business loss carry forward in the 2008 MBT tax year in calculating the Modified Gross Receipts tax base only. MCL 208.1203(4) provides that 65% of any SBT business loss carry forward that was actually incurred in the 2006 or 2007 SBT tax years and that was not previously deducted in tax years beginning before January 1, 2008 may be deducted against the Modified Gross Receipts tax base. Any business loss carry forward incurred before January 1, 2006 is not eligible for the deduction.

In a merger two or more entities combine into one, through a purchase acquisition or a pooling of interests. A merger differs from a consolidation in that no new entity is created. The surviving entity may utilize what would have been the business loss of each of the separate entities had each entity filed a separate return. Any SBT business loss carryforward that is not deducted against the 2008 Modified Gross Receipts tax base of the surviving entity is lost.

A taxpayer's Business Income tax base is its business income subject to certain statutory adjustments before allocation or apportionment. MCL 208.1201(2). Business income is generally defined as "that part of federal taxable income derived from business activity." MCL 208.1105(2). To this extent, the calculation of the MBT business income tax base of the surviving entity will follow federal regulations.

The MBT provides for the deduction of a business loss incurred after December 31, 2007. This deduction may only be taken against the Business Income tax base of an entity. Losses incurred after December 31, 2007 may not be deducted against the Modified Gross Receipts tax base. "Business loss" is defined as a negative business income taxable amount after allocation or apportionment. Any unused business loss may be carried forward to the year following the loss year and the next 9 successive tax years or until the loss is used up, whichever occurs first, but for not more than 10 taxable years after the loss year. MCL 208.1201(5). The surviving entity of a merger that files a 2008 MBT return will be able to begin deducting any resulting 2008 business loss against its 2009 Business Income tax base as permitted by statute.

M66. (Answer rescinded, replacement located at M72) Can a taxpayer net the cost of purchased securities with the proceeds from those securities? For purposes of taxing the gain, is the cost the actual cost of the securities or the fair market value on January 1, 2008?

M67. What are purchases from other firms?

"Purchases from other firms" are deducted from a taxpayer's gross receipts to calculate the modified gross receipts tax base. In general, purchases from other firms means:

- **Inventory acquired during the tax year.** Inventory – defined at MCL 208.1111 – means the stock of goods, including electricity and natural gas, held for resale in the ordinary course of a retail or wholesale business, and finished goods and good in process of a manufacturer, including raw materials purchased from another person. Inventory also includes floor plan interest for licensed new car dealers and shipping and

engineering charges so long as such charges are included in the original contract price for the associated inventory. Finally, inventory includes the cost of certain securities and commodities for securities traders, brokers, and dealers as defined under the MBT.

- **Depreciable assets acquired during the tax year.** Deductible depreciable assets are those that are or will become eligible for depreciation, amortization, or accelerated capital cost recovery under the IRC. The cost of depreciable assets includes costs of fabrication and installation.
- **Materials and supplies.** Materials and supplies means tangible personal property acquired during the tax year to be used or consumed in – and directly connected to – the production or management of inventory or the operation or maintenance of depreciable assets as described above. "Materials and supplies" includes repair parts and fuel.
- **Staffing company compensation.** Wages, benefits, and certain payroll taxes paid to personnel provided to the clients of staffing companies as defined under the MBT.
- **Payments to subcontractors and purchases by contractors.** For persons included in SIC codes 15, 16, and 17 – such as general contractors, operative builders, and trade contractors – that fail to qualify for the Small Business Alternative Credit: (i) payments to subcontractors for construction projects so long as such payments are made pursuant to a contract specific to that project, and (ii) to the extent not deducted as inventory or materials and supplies, materials deducted as purchases in determining the cost of goods sold on the taxpayer's federal return. For a more complete list of those persons within SIC codes 15, 16, and 17, see http://www.osha.gov/pls/imis/sic_manual.html.
- **Select payments by theater owners.** Film rental or royalty payments paid by a theater owner to a film distributor, film producer, or a film distributor and producer.
- **Select payments by real estate brokers and appraisers.** For persons licensed under articles 25 or 26 of the Occupational Code (real estate brokers, salespersons, and appraisers), payments to independent contractors licensed under those same articles. For a more complete list of those persons licensed under articles 25 and 26 of the Occupational Code, see MCL 339.2501 - .2518, 339.2601 - .2637.

The more specific statutory definition of "purchases from other firms" is found at MCL 208.1113(6).

M68. May taxpayers take the IRC 199 deduction for MBT purposes?

No. For federal tax purposes, the domestic production activities deduction under IRC 199 provides a tax benefit for certain domestic production activities. In particular, IRC 199 allows a deduction equal to a specified percentage of the taxpayer's qualified production activities income for the tax year.

This federal deduction, however, does not flow through to the MBT. The MBT defines "federal taxable income" to mean "taxable income as defined in section 63 of the internal revenue code, *except that federal taxable income shall be calculated as if . . . section 199 of the [IRC was] not in effect.*" MCL 208.1109 (emphasis added). Thus, to the extent that the IRC 199 deduction is included in federal taxable income for federal tax purposes, that deduction must be added back in calculating federal taxable income for MBT purposes.

M69. (This FAQ has been amended due to 2011 PA 305.) Can a taxpayer net the cost of purchased securities with the proceeds from those securities? For purposes of taxing the gain, is the cost the actual cost of the securities or the fair market value?

Generally, securities, such as stocks, bonds and similar intangibles, will be capital assets under section 1221 of the IRC unless the securities are inventory to the taxpayer. Receipts from the sale of capital assets could be taxable in both the business income and modified gross receipts tax bases of the MBT.

Business income is generally defined as "that part of federal taxable income derived from business activity." MCL 208.1105(2). To the extent the capital gain from the sale of the securities is derived from the business activity of the taxpayer, the gain must be included in the business income tax base of the MBT. For this purpose, the capital gain will be computed the same as it is federally, which is amount realized minus basis. The result will flow to the MBT return if the gain is derived from the business activity of the taxpayer. The "cost" or basis is the acquisition cost of the asset just as it is for federal purposes and is not the fair market value as of January 1, 2008, the date that the MBT went into effect.

For purposes of the modified gross receipts tax base, if the securities are sold at a gain then the proceeds of the sale of the securities minus any gain from the sale, to the extent that the gain was included in federal taxable income, will be excluded from the tax base. MCL 208.1111(1)(p).

If the securities were held for investment purposes by an individual, estate or person organized for gift or estate planning purposes and the investment activity is not part of the individual's, estate's or person's trade or business, the gain is not included in the business income tax base. MCL 208.1105(2)(f). There is a similar exclusion under the gross receipts tax base. MCL 208.1111(1)(w). Additionally, the receipts may also be excluded from both the business income tax base and the modified gross receipts tax base if the securities were held for investment purposes and sold by a person organized exclusively to conduct such investment activity who does not conduct investment activity for any person other than an individual and/or persons related to that individual. MCL 208.1105(2) and 208.1111(1)(x).

M70. (This FAQ has been amended due to 2011 PA 305.) Is the sale of stock by a stockholder in a closely held corporation back to the corporation or to another stockholder subject to MBT?

For an individual, the sale of stock in a corporation will generally not constitute business income or gross receipts to that individual so long as the investment does not constitute nor is part of the individual's trade or business. The sale of stock would generally be included in a taxpayer's business income and modified gross receipts tax bases; however, there are specific exceptions. MCL 208.1105(2)(f)(i) provides that for an individual, an estate, or a person organized for estate or gift planning purposes, income from investment activity is not included in business income if the investment activity is not part of the person's trade or business. Therefore, to the extent that the stockholder is an individual and the sale of the stock is investment activity that does not constitute part of the individual's trade or business, the sale of the stock is not included as business income subject to MBT. Similar treatment is accorded with regard to modified gross receipts.

M71. Are dividends from subsidiaries and interest income from unrelated parties included in the modified gross receipts tax base in the MBT?

Generally, interest income from unrelated parties is included in a taxpayer's modified gross receipts (MGR) tax base, with the exception of the following: (1) interest income received by a taxpayer that is an individual, estate or other person organized for estate or gift planning purposes from the taxpayer's personal investment portfolio or retirement account, or from transactions, activities and sources other than in the regular course of the taxpayer's trade or

business, is excluded from gross receipts (MCL 208.1111(1)(w)); (2) interest income receipts derived from investment activity by a person that is organized exclusively to conduct investment activity solely for an individual or person related to that individual (e.g., spouse, sibling, ancestor or lineal descendent) or by a common trust fund established under the Collective Investment Funds Act, 1941 PA 174 (MCL 208.1111(1)(x)); and (3) interest income receipts derived from obligations or securities of the U.S. government, the State of Michigan, or any governmental unit of the State of Michigan are excluded from gross receipts (MCL 208.1111(1)(y)).

The inclusion of dividends a taxpayer receives from a subsidiary into the taxpayer's MGR tax base depends on whether the taxpayer is a unitary business group and whether the subsidiary is a member of the unitary business group. Dividends received from a subsidiary that is not a member of the taxpayer's unitary business group are included in a taxpayer's MGR tax base. Dividends from a subsidiary that is a member of a unitary business group taxpayer, however, are not included in the taxpayer's MGR tax base as the inter-company dividends are eliminated under MCL 208.1203(3) and MCL 208.1511.

Furthermore, dividends received or deemed received by the taxpayer from a foreign operating entity or a non-U.S. person, are excluded from gross receipts pursuant to a five year phase-in period. For tax year 2008, 50% of the amount of such dividends is excluded from gross receipts. For tax years 2009 and 2010 60% of the amount of such dividends is excluded from gross receipts. For tax year 2011, 75% of the amount of such dividends is excluded from gross receipts and for tax year 2012 and each year thereafter, 100% of such dividend receipts is excluded from gross receipts. MCL 208.1111(z).

M72. (This FAQ has been amended due to 2011 PA 305.) An investment partnership has sales of capital asset securities consisting of both gains and losses that result in an overall gain. In determining the business income and modified gross receipts tax bases, is only the net gain included in the tax bases?

Generally, for federal reporting, gains and losses are classified as either ordinary or capital. Capital gains or losses are either short term or long term and netted on federal Schedule D. Investment property such as stocks and bonds are capital assets and the gain or loss generated is a capital gain or loss. Federally, for a partnership or an S corporation, these gains and losses are separately reported to the partners or shareholders.

The MBT imposes tax on the business income tax base of every taxpayer with business activity within this state. The business income tax base means a taxpayer's business income subject to certain adjustments. "Business income" means that part of federal taxable income derived from business activity. For a partnership or an S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders. MCL 208.1105. There are no statutory adjustments to the business income tax base for the disposition of capital assets. MCL 208.1201. Therefore, any net capital gain attributable to business activity of the investment partnership that is separately reported to the partners is also included in the MBT business income tax base of the partnership.

The MBT also imposes tax on the modified gross receipts tax base of each taxpayer with nexus. MCL 208.1203. "Gross receipts" means the entire amount received by the taxpayer as determined by using the taxpayer's method of accounting used for federal income tax purposes, from any activity whether in intrastate, interstate, or foreign commerce carried on for direct or indirect gain, benefit, or advantage to the taxpayer or to others with certain exceptions.

Subsection (p) provides an exception for each capital asset sold. MCL 208.1111(1)(p). When a capital asset is sold or disposed of at a gain, only the gain is effectively included in gross

receipts. This exception does not make a similar provision for capital assets sold at a loss. In such cases, the exception only excludes the proceeds from gross receipts. There is no adjustment or deduction of losses from the gross receipts. Therefore, a taxpayer may not net capital gains and losses when calculating the modified gross receipts tax base.

Finally, there is an exception to the inclusion of gains into the business income tax base or the modified gross receipts tax base of an investment partnership if the investment partnership was organized for gift or estate planning purposes or was organized exclusively to conduct investment activity and does not conduct investment activity for any person other than an individual or persons related to that individual, and the gains were derived from activities that were not in regular course of the investment partnership's trade or business. MCL 208.1105(2). Unless the facts and circumstances surrounding the investment partnership meet this exemption, gains from the sale of capital assets must be included in business income and gross receipts as described above.

M73. Can modified gross receipts (MGR) tax separately collected from customers by new motor vehicle dealers and new or used watercraft dealers be remitted with monthly sales, use and withholding returns?

Yes. New motor vehicle dealers and new or used watercraft dealers who elect to separately collect the MGR tax, in addition to sales price, under MCL 208.1203(5) may file and remit the tax as estimated payments with their quarterly or monthly Form 160, *Combined Return for Michigan Taxes*. Generally, for a calendar year taxpayer, MBT quarterly returns are due the 15th day of April, July, October and January. For fiscal year filers, quarterly returns are due the 15th day of the first month after each quarter. MBT payments may be made with either of the following returns:

- Form 4548, *Michigan Business Tax Quarterly Return*, or
- Form 160, *Combined Return for Michigan Taxes*.

If filing monthly using Form 160, *Combined Return for Michigan Taxes*, and not making remittances by electronic funds transfer, monthly payments may be filed on the 20th day of the month. For example, a calendar year taxpayer may file monthly MBT estimates using Form 160 on February 20th, March 20th and on April 20th rather than April 15 for the first quarter. However, for taxpayers required to make remittances by electronic funds transfer or otherwise not using Form 160, MBT estimates remain due on the 15th day of the month following the final month of the quarter. Regardless of the method chosen, the estimated MBT for the quarter must also reasonably approximate the liability for the quarter.

M74. For purposes of MCL 208.1113(6)(e), how is subcontractor defined?

Under the MBT, persons included in SIC codes 15, 16, and 17, that do not qualify for the credit under MCL 208.1417 may deduct "payments to subcontractors for a construction project under a contract specific to that project" as purchases from other firms. MCL 208.1113(6)(e).

The term "subcontractor" is not defined by the statute. Accordingly, the Department will apply the common, ordinary meaning of "subcontractor" to the statute. A "subcontractor" is an individual or entity that enters into a contract and assumes some or all of the obligations of a person included in SIC codes 15, 16, and 17 as set forth in the primary contract specific to a project.

M75. Must a contractor enter into a written contract with subcontractors in order to reduce gross receipts by the amount of payments made to subcontractors for a construction project?

Under the MBT, the modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms before apportionment. MCL 208.1203(3). Contractors, defined as persons included in SIC codes 15, 16, and 17, that do not qualify for the credit under MCL

208.1417 may deduct "payments to subcontractors for a construction project under a contract specific to that project" as purchases from other firms. MCL 208.1113(6)(e).

While the statute does not require a contractor execute a written contract with a subcontractor for labor costs specific to a project, a taxpayer bears the burden to prove it is entitled to a deduction in computing its tax liability. It is contemplated that good business practice would include documentation, such as a written contract, to support a deduction from gross receipts for payments to subcontractors as "purchases from other firms."

The supporting information for payments to a subcontractor could be incorporated into the contract for the specific project or memorialized in a separate contract with a subcontractor specifying the project the costs pertain to.

M76. To calculate the modified gross receipts tax base, may contractors deduct from gross receipts all amounts paid to subcontractors as purchases from other firms? Under the MBT, persons included in SIC codes 15, 16, and 17 that do not qualify for the small business alternate credit under MCL 208.1417 may deduct "payments to subcontractors for a construction project under a contract specific to that project." MCL 208.1113(6)(e). Persons included in SIC codes 15, 16, and 17 include general contractors (of residential buildings including single-family homes; industrial, commercial, and institutional buildings; bridges, roads, and infrastructure; etc.), operative builders, trade contractors (such as electricians, plumbers, painters, masons, etc.). See http://www.osha.gov/pls/imis/sic_manual.html for a more complete list.

In other words, purchases from other firms includes all payments to subcontractors for construction projects so long as such payments are made pursuant to a contract specific to that project. For example, payments made to an independent contractor to provide general labor services to the contractor not specific to a particular contract do not constitute purchases from other firms. However, payments made to a subcontractor for services and materials provided under a contract specific to a particular construction project (such as the construction of commercial property at 111 Main Street) do constitute purchases from other firms.

M77. Taxpayer is a commercial printing and mailing company. Taxpayer provides printing and mailing services to clients throughout the U.S. Postage is billed to the client. Is the postage included in the gross receipts of the taxpayer?

Yes. Gross receipts are the "entire amount received" from "any activity" unless the amount received is expressly excluded under MCL 208.1111 or deductible as "purchases from other firms" under MCL 208.1113. Postage is neither an excluded receipt nor is it a purchase from another firm. Furthermore, the taxpayer in question – absent a contract demonstrating otherwise – is not a legal agent of its customers. Thus, the agency exemption under MCL 208.1111 does not apply.

M78. Are commissions that real estate brokers collect and pay to their real estate agents who actually sold the property include in gross receipts? If not, may they be deducted from gross receipts as a "Purchase From Another firm"?

Commissions are included in gross receipts. Gross receipts are the "entire amount received" from "any activity" unless the amount received is statutorily exempted under MCL 208.1111. The statute provides no exemption from the definition of gross receipts for real estate commissions collected. Therefore, a real estate broker that receives commissions must include those commissions in its gross receipts even if all, or a portion of the commissions will later be paid out to real estate agents or salespersons affiliated with the broker.

However, the modified gross receipts tax base is a taxpayer's gross receipts less purchases from other firms before apportionment. MCL 208.1203(3). Purchases from other firms include, in part, payments made by brokers licensed under article 25 or 26 of the Occupational Code, 1980 PA 299, to independent contractors also licensed under that Act. MCL 208.1113(6)(g). Therefore, while commissions received are not excluded from a broker's gross receipts, any commissions that are in turn paid out to real estate agents or salespersons that are independent contractors are deducted from gross receipts in calculating the modified gross receipts tax base.

Note however, if the relationship between the broker and the real estate agent or salesperson is one of an employer/employee, any payments made to the licensed employee are not deductible from gross receipts as the definition of purchases from other firms is limited to payments made to "independent contractors."

M79. Are the qualified affordable housing deductions from business income and gross receipts under MCL 208.1201(7) and 208.1203(6) limited to qualified affordable housing projects ("QuAHPs") that purchase residential rental units after the effective date of 168 PA 2008?

No. Under the MBT, QuAHPs are permitted a deduction from business income and gross receipts for income and receipts generally attributable to rent-restricted residential rental units in this state owned by the QuAHP. More specifically, the deduction from business income states:

[F]or a person that is a qualified affordable housing project, deduct an amount equal to the product of that person's taxable income that is attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by that qualified affordable housing project and the denominator of which is the number of all residential rental units in this state owned by the qualified affordable housing project. [MCL 208.1201(7).]

Similarly, the deduction from gross receipts states:

[F]or a person that is a qualified affordable housing project, deduct an amount equal to that person's total gross receipts attributable to residential rental units in this state owned by the qualified affordable housing project multiplied by a fraction, the numerator of which is the number of rent restricted units in this state owned by the qualified affordable housing project and the denominator of which is the number of all rental units in this state owned by the qualified affordable housing project. [MCL 208.1203(6).]

There is no requirement under MCL 208.1201(7) and 208.1203(6) that the deductions are limited to QuAHPs that purchase rental units after the effective date of 168 PA 2008 or rental units purchased after that date. That is, the deductions under MCL 208.1201(7) and 208.1203(6) are available to QuAHPs for all rental units that meet the requirements set forth under MCL 208.1201 and 208.1203, subject only to extinguishment under the following provision:

If a qualified affordable housing project no longer meets the requirements of subsection (9)(b) or fails to operate those residential rental units as rent restricted units in accordance with the operation agreement and the requirements of subsection (9)(c), the taxpayer is entitled to the deductions under subsections (6) and (7) as long as the qualified affordable housing project continues to offer some of the residential rental units purchased as rent restricted units in accordance with the operation agreement. [MCL 208.1201(8). The disqualification provision for gross receipts purposes is substantially the same and found at MCL 208.1203(7).]

M80. How is "fuel" defined for purposes of the "purchases from other firms" deduction under MCL 208.1113(6)? Does it include the cost of gas for all of a business' automobiles

currently in use, including owned and leased vehicles? Does it include propane to run equipment? Does it include natural gas to run furnaces?

Note: This FAQ revises M45 by removing the phrase "purchased in the tax year" from the last sentence of the second paragraph.

Whether fuel is a "purchase from other firm" under MCL 108.1113(6) depends upon whether the taxpayer's use of the fuel powers inventory or a depreciable asset acquired by the taxpayer during the tax year.

"Purchases from other firms" includes in pertinent part:

- (a) inventory, as defined in MCL 208.1111(4), acquired during the tax year;
- (b) assets acquired during the tax year of a type that are or will become eligible for depreciation, amortization, or accelerated capital cost recovery under the internal revenue code for federal income tax purposes; and
- (c) to the extent not included in inventory (subparagraph (a)) or depreciable assets (subparagraph (b)), materials and supplies, including repair parts and fuel.

Materials and supplies in subparagraph (c) are those items taxpayer acquired during the tax year to be used or consumed in, and directly connected to, producing or managing inventory acquired (subparagraph (a)) or operating or maintaining depreciable assets acquired (subparagraph (b)) during the tax year. Therefore, fuel acquired in the tax year to be used in, and directly connected to, producing or managing inventory purchased in the tax year or operating and maintaining depreciable assets purchased would be a "purchase from other firms" and deducted from gross receipts when determining the modified gross receipts tax base.

"Fuel" is not expressly defined in the MBT, but the term commonly refers to material used to produce heat or power by burning. In the example posed, gasoline purchased to power automobiles the taxpayer uses is not a "purchase from other firms" because automobiles used by taxpayer are not taxpayer's inventory. Gasoline purchased to power taxpayer's automobiles might be a "purchase from other firms" to the extent that such automobiles acquired during the tax year are depreciable assets for federal income tax purposes. Passenger automobiles, both owned and leased, are included as "listed property" under section 280F of the internal revenue code and may be eligible for depreciation deductions for federal income tax purposes, subject to specific rules and limitations. 26 USC § 280F; Treas. Reg § 1.280F-1T *et seq.*

Equipment and furnaces are generally depreciable assets for federal income tax purposes. Consequently, propane or natural gas purchased to run the equipment or furnace might be "purchases from other firms" if the equipment or furnace powered by the fuel was purchased during the tax year. Natural gas consumed for general space heating of a commercial office building would not be a "purchase from other firms;" however, natural gas purchased to run equipment or furnace designed to maintain temperature or dryness specifications necessary to preserve the quality and integrity of inventory purchased during the tax year might be a "purchase from other firm." Therefore, whether a certain fuel purchased constitutes a "purchase from other firms" will depend upon the facts and circumstances of its use.

M81. Does the step up in basis under Internal Revenue Code (IRC) section 754 election and 743 application qualify as "purchases from other firms" when calculating the modified gross receipts tax base? Does the step up in basis qualify for investment tax credit (ITC)?

No, a taxpayer may not subtract a step up in basis under IRC section 754 election and 743 application as "purchases from other firms" when calculating the modified gross receipts tax base. The step up in basis does not qualify for ITC.

"Purchases from other firms" are deducted from a taxpayer's gross receipts to calculate the modified gross receipts tax base. Purchases from other firms includes in relevant part:

(b) Assets, including the costs of fabrication and installation, acquired during the tax year of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. MCL 208.1113(6)(b).

The statute emphasizes that to qualify for this deduction, a taxpayer's purchase must be acquired during the tax year and be an asset of the type that is or will become eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

An election by a partnership under IRC section 754 to apply section 743 (b) allows for the step up in the basis of partnership property for transfers of partnership interests. Section 743(b) requires the incoming partner increase his or her share of the partnership's basis in its assets by the excess of the investing partner's outside basis (i.e. what was paid for the partnership interest) over their proportionate share of the adjusted basis of the partnership property. This optional basis adjustment directly affects only the incoming investor partner. An election under IRC Section 754 permits an investor to claim depreciation deductions to the extent that any basis adjustment is allocated to depreciable property.

Under this election, the taxpayer/partnership has not acquired any assets in the year of the election nor has it acquired any assets from another firm. Rather, the assets of the partnership were continually maintained except that they have been revalued for the investing partner due to the change in ownership. Thus, the taxpayer/partnership does not qualify for and may not take a "purchases from other firms" deduction when computing the modified gross receipts tax base.

A taxpayer may claim an ITC against the MBT tax liability for a percentage of the net capital investment paid or accrued for qualifying assets physically located in Michigan for use in a business activity. MCL 208.1403(3). Because the taxpayer/partnership has not made any additional investment in qualifying assets, no ITC may be claimed on the incoming partner's increase to his or her share of the partnership's asset basis.

Nexus

N1. How does a unitary business group apportion its tax bases when some members of the group do not have nexus with Michigan?

For a unitary group with business activities within and without Michigan, as defined in MCL 208.1301(3), the tax bases are apportioned to this state by multiplying them by the sales factor. The tax bases of a unitary group are calculated according to MCL 208.1201 and 208.1203. The sales factor is Michigan sales divided by everywhere sales. The sales of all members of the unitary group are included in both the numerator and the denominator.

N2. What are the nexus standards under the MBT?

A taxpayer, other than an insurance company, has nexus with Michigan and is subject to the tax imposed under the MBT if (a) the taxpayer has a physical presence in this state for more than one day in a tax year, or (b) the taxpayer actively solicits sales in this state and has unapportioned gross receipts of \$350,000 or more sourced to this state. MCL 208.1200(1).

However, the business income tax is limited by federal statutory provisions commonly referred to as PL 86-272, which prohibits Michigan from imposing the tax if the only in-state business activity of the out-of-state person is the solicitation of orders for sales of tangible personal property where the orders are sent outside the state for approval or rejection and are filled by shipment or delivery from a point outside the state. 15 USC 381 et seq. Once a taxpayer exceeds the safe harbor of PL 86-272, the taxpayer is then subject to the business income tax on its entire tax base, including that portion of income otherwise protected by PL 86 272.

Physical presence means "any activity conducted by the taxpayer or on behalf of the taxpayer by the taxpayer's employee, agent, or independent contractor acting in a representative capacity." MCL 208.1201(3). Physical presence does not include "the activities of professionals providing services in a professional capacity or other service providers if the activity is not significantly associated with the taxpayer's ability to establish and maintain a market in this state." MCL 208.1201(3). [Although RAB's issued under the SBT are limited to the SBT, future guidance regarding physical presence under the MBT will likely be similar to that found in RAB 1998-1.]

The "actively solicits" provision will be further defined by the Department prior to January 1, 2008.

Insurance companies are subject to the MBT on all property or risk located or residing in this state. MCL 208.1235.

N3. If a flow through entity establishes nexus for either or both the business income tax or modified gross receipts tax under the MBTA, do the individual partners or shareholders automatically acquire nexus for individual income tax purposes under the Michigan Income Tax Act (ITA).

If a flow through entity has business income tax nexus with Michigan for MBT, the individual partners or shareholders will be subject to apportionment under the ITA on their distributive or pro-rata share of the flow through entity's (partnership or S corporation) income.

If a flow through entity has nexus with Michigan under the MBT nexus standards, but the business activity of the flow through entity is afforded immunity under Public Law (P.L.) 86-272, 15 USC 381 – 384, the individual partners or shareholders will not be subject to apportionment on their share of profits from the flow through entity.

Conversely, if a Michigan flow through entity has nexus with another state or states as described above, and the activity of the flow through entity is not protected under PL 86-272, the individual partners or shareholders, whether residents or nonresidents of Michigan, would be able to apportion income from the flow through entity to other states under the apportionment provisions of the ITA.

Michigan's Income Tax Act does not apply to gross receipts.

N4. For purposes of apportionment under the MBT, what jurisdictional standard will be applied to determine whether a taxpayer is subject to tax in another state?

Section 301(3) of the MBT Act provides as follows:

(3) A taxpayer whose business activities are subject to tax both within and outside of this state is subject to tax in another state in either of the following circumstances:

(a) the taxpayer is subject to a business privilege tax, a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax or a tax of the type imposed under this act in that state.

(b) That state has jurisdiction to subject the taxpayer to 1 or more of the taxes listed in subdivision (a) regardless of whether that state does or does not subject the taxpayer to that tax.

Under the MBT Act, a taxpayer “has substantial nexus in this state and is subject to the tax imposed under this act if the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year or if the taxpayer actively solicits sales in this state and has gross receipts of \$350,000 or more sourced to this state.” MCL 208.1200(1).

The same standard used to determine nexus for out-of-state taxpayers, as described in Section 200(1) above, will be applied to determine whether a taxpayer is subject to tax in another state for purposes of apportionment under the MBT.

N5. For purposes of apportionment, in determining whether a Michigan-based taxpayer has nexus with a state other than Michigan pursuant to section 301(3), must gross receipts in any “one” state or in all states equal or exceed \$350,000 in order to satisfy the “actively solicits sales” nexus standard?

A taxpayer whose business activities are subject to tax both within and outside of Michigan is permitted to apportion its tax base to Michigan. MCL 208.1301(2). Section 301(3) describes the circumstances under which a taxpayer will be considered to be subject to tax in another state. MCL 208.1301(3). For purposes of apportionment, in determining whether a taxpayer is “subject to tax in another state” within the meaning of section 301(3), the Department will apply the same standard used to determine nexus for out-of-state taxpayers, which is set forth in section 200(1). That standard requires that the taxpayer have physical presence in this state, or that the taxpayer “actively solicits sales” in this state and have gross receipts of at least \$350,000 sourced to Michigan. MCL 208.1200(1). Because the nexus standard references \$350,000 in gross receipts sourced to a single state (Michigan), in applying that standard to determine whether a taxpayer is subject to tax in another state for purposes of apportionment, the Department will require that the taxpayer meet the \$350,000 gross receipts threshold in a single non-Michigan state. Also, section 301(3) by its terms refers to “another state” (singular) having jurisdiction to subject the taxpayer to tax. MCL 208.1301(3). Accordingly, a Michigan-based taxpayer having gross receipts of \$150,000 in one non-Michigan state and gross receipts of \$200,000 in another non-Michigan state would not meet the section 301(3) standard and would not be able to apportion its tax base.

N6. Regarding the MBT nexus standard found in section 200(1), which is based upon the taxpayer actively soliciting sales in Michigan and having “gross receipts of \$350,000.00 or more sourced to this state,” will the \$350,000.00 be calculated using “gross receipts” as defined in section 111, or will that sum be determined by using “sales” as defined in section 115?

As section 200(1) specifically directs that it is gross receipts of \$350,000.00 or more sourced to Michigan [and active solicitation of sales in this state] that determine substantial nexus, the definition of gross receipts found in section 111 will be applied, not the definition of sales.

N7. Please provide examples of when and how an internet web site can be determined to be “purposeful” or “active solicitation”.

"Active solicitation" is defined in RAB 2007-6. But in summary, "active solicitation" includes soliciting sales through an internet site available to everyone everywhere – even if the internet site in question is not limited to Michigan. When evaluating whether acts of solicitation are sufficient to establish active solicitation, the Department examines the activity on a facts and circumstances basis. To the extent that an internet site clearly excludes the Michigan market or refuses orders from persons within Michigan, then that person is not actively soliciting sales in Michigan through the internet site.

Example 1. A retailer located outside Michigan maintains an internet site over and through which customers may browse products and place orders. The internet site is generally available to all persons throughout the country. Through maintenance of the interactive site, the retailer intends to reach all persons and markets, including persons within Michigan and the Michigan market. The retailer is actively soliciting sales in Michigan.

Example 2. A retailer located outside Michigan maintains an internet site that advertises products and provides the terms under which such products may be purchased from the retailer. Although customers may not place orders directly through the internet site, the internet site provides a phone number and printable order form and invites customers to place orders through the phone or mail. Through this internet site, the retailer intends to reach all persons and markets, including persons within Michigan and the Michigan market. The retailer is actively soliciting sales in Michigan.

Example 3. A retailer located outside Michigan maintains an internet site over and through which customers may browse products and place orders. The retailer does not accept orders from and does not ship to persons within Michigan. The retailer does not direct its activities at persons within Michigan or the Michigan market. The retailer is not actively soliciting sales in Michigan.

Example 4. A manufacturer located outside Michigan maintains an internet site over and through which persons may view the manufacturer's products and specifications. The manufacturer does not accept orders through the internet site, provide order forms, or invite persons to call the manufacturer with orders. Although the internet site is generally available to all persons throughout the country, the manufacturer is not actively soliciting sales in Michigan.

N8. An out-of-state company has a remote employee located in Michigan. The out-of-state company has no sales or business activities in Michigan. Does the out-of-state company have nexus with Michigan under the MBT?

Yes. Under the MBT, a taxpayer, other than an insurance company, has nexus with Michigan if (a) the taxpayer has a physical presence in this state for more than one day in a tax year, or (b) the taxpayer actively solicits sales in this state and has unapportioned gross receipts of \$350,000 or more sourced to this state. MCL 208.1200(1). The presence of a permanent employee in Michigan constitutes physical presence in this state and creates nexus.

However, absent Michigan sales and business activities, that company is unlikely to meet or exceed the filing threshold of \$350,000 in allocated or apportioned gross receipts. MCL 208.1505. In that case, the out-of-state company need not pay the MBT or file a return.

N9. Non-U.S. corporations qualify as taxpayers under the MBT. For purposes of the business income tax component of the MBT, will the Department recognize the protection of PL 86-272 for non-U.S. corporations?

Yes, the Department will recognize the protection of PL 86-272 for non-U.S. business entities.

Although PL 86-272, by its plain terms, applies only to interstate commerce and makes no mention of foreign commerce, the Department has determined that the protections afforded by this federal statute should also be extended to non-U.S. corporations and business entities.

N10. Does the protection of Public Law 86-272 apply to financial institutions?

No. Financial institutions are subject to a franchise tax under Chapter 2B of the MBT. The franchise tax is levied at a rate of .235% on a financial institution's net capital. This tax on net capital is not a net income tax. Thus, the protection of PL 86-272 does not apply to financial institutions taxed under Chapter 2B of the MBT.

Any taxpayer, other than an insurance company, has nexus with Michigan and is therefore subject to the taxes imposed by the MBT, if the taxpayer either (a) has physical presence in this state for more than one day during a tax year, or (b) the taxpayer actively solicits sales in this state and has \$350,000 or more in gross receipts sourced to Michigan. MCL 208.1200. "Active Solicitation" is defined in Revenue Administrative Bulletin 2007-06.

Public Law 86-272 is a federal law that prohibits a state from imposing a net income tax on an out-of state taxpayer whose only business activity in Michigan is the solicitation of orders for sales of tangible personal property where the orders are sent outside the state for approval or rejection and are filled by shipment or delivery from a point outside the state. 15 USC 381 *et seq.* PL 86272 only applies to the business income tax of the MBT.

N11. Does a mail order company that does not have physical presence in Michigan and was not previously subject to the SBT, but mails catalogs to persons within Michigan and has \$350,000 or more in Michigan sales have nexus for purposes of the MBT? If so, must that company register with the Department?

Yes. Under the MBT, a taxpayer, other than an insurance company, has nexus with Michigan and is subject to the MBT if "the taxpayer has a physical presence in this state for a period of more than 1 day during the tax year or if the taxpayer actively solicits sales in this state and has gross receipts of \$350,000 or more sourced to this state." MCL 208.1200(1). In other words, there are two nexus standards under the MBT. A person may have nexus with the state if that person has physical presence in the state for more than one day during the tax year. Alternatively, a person may have nexus with the state if the person actively solicits sales in this state and has Michigan gross receipts of \$350,000 or more.

RAB 2007-6 defines "actively solicits" to mean purposeful solicitation of persons within this state. Solicitation means (1) speech or conduct that explicitly or implicitly invites an order; and (2) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order. Solicitation is purposeful when it is directed at or intended to reach persons within Michigan or the Michigan market.

Active solicitation includes, but is not limited to, solicitation through (1) the use of mail, telephone, and e-mail; (2) advertising, including print, radio, internet, television, and other media; and (3) maintenance of an internet site over or through which sales transactions occur with persons within Michigan. Sending mail orders catalogs to Michigan residents is a common example of active solicitation.

Active solicitation, coupled with \$350,000 in Michigan gross receipts, constitutes nexus under the MBT. Thus, a mail order company without physical presence in Michigan that actively solicits sales in Michigan and has over \$350,000 in Michigan gross receipts will have nexus under the MBT.

If the only in-state activity of the mail order company is the solicitation of orders for sales of tangible personal property through mail order catalogs where the orders are sent outside the state for approval or rejection and are filled by shipment or delivery from a point outside the state, then the mail order company falls within the protection of PL 86-272 and will not be subject to the business income tax component of the MBT. However, that taxpayer will still be subject to the modified gross receipts tax component of the MBT.

A taxpayer that was not subject to the SBT but is now subject to the MBT must register using Form 518. The taxpayer must also file an annual return and may be subject to quarterly estimated tax payments. See MBT FAQs A3, A4, and A6 for further information on annual returns and quarterly estimates.

N12. Under the MBT nexus standards for the modified gross receipts tax, is owning a partnership interest considered physical presence in Michigan? The partnership owns rental real property in Michigan.

No. If the person has no business activity or physical presence in Michigan outside of the partnership interest, the person would not have nexus with Michigan.

If the person is part of a unitary group that includes the partnership, the person's business activity would be included in the unitary group's combined MBT return.

Under section 200 of the MBT, MCL 208.1200, a taxpayer has nexus with Michigan if the taxpayer has a physical presence in Michigan for a period of more than 1 day during the tax year or actively solicits sales in Michigan and has Michigan sourced gross receipts of \$350,000 or more. Section 117(5) defines "taxpayer" to mean "a person or a unitary business group liable for tax, interest of penalty under this act [MBT]." Person is defined at MCL 208.1113(3) to include individuals and various types of business entities, and a unitary business group is defined as a group of United States persons that meet certain control and relationship tests specified in MCL 208.1117.

A partnership that owns real property in Michigan for more than 1 day clearly has established physical presence in Michigan under section 200 of the MBT act. However, a person with *no* business activity or property in Michigan other than an ownership interest in this partnership will have no physical presence in Michigan. And if the person and partnership do not constitute a unitary group under MCL 208.1117 the person will *not* be subject to MBT.

N13. Does an out-of-state trucking company that drives into Michigan for pick up or delivery of product, but has no other physical presence (e.g. employees or real or personal property) in Michigan, create nexus with Michigan subjecting the company to the Michigan Business Tax ("MBT")? If nexus is created, how is apportionment calculated? The out-of-state trucking company would have nexus with Michigan for purposes of the MBT if the company either picked up or delivered product in Michigan during 2 or more days within the tax year. Furthermore, the company would have nexus with Michigan if the company merely drives through Michigan, i.e. travels through Michigan on a trip that originates and terminates outside of Michigan, with no pick up or delivery in Michigan and with no other business activity in Michigan, during 2 or more days within the tax year.

If nexus is established, the taxpayer's business income and modified gross receipts tax bases must be apportioned by multiplying each tax base by the sales factor. MCL 208.1301(1). Generally, for an out-of-state transportation company, receipts from transportation services provided by the transportation company are sourced according to MCL 208.1305(11), (12) based on the ratio of revenue miles in Michigan (numerator) to revenue miles everywhere (denominator). Revenue mile means the transportation for consideration of one net ton in weight or one passenger the distance of one mile. MCL 208.1113(7). Receipts from transportation services are combined with other receipts or sales of the taxpayer to compute the sales factor. Note that once nexus exists in a tax year, then all revenue miles driven in Michigan, including revenue miles associated with "drive through" trips made in Michigan, are included in the apportionment formula numerator. For an out-of-state transportation company that is a "foreign person" as defined in MCL 208.1207(8)(d) and is subject to MBT taxes, the sales factor is a fraction, the numerator of which is the taxpayer's total sales in Michigan where title passes inside the United States during the tax year and the denominator of which is the taxpayer's total sales in the United States where title passes inside the United States during the tax year. MCL 208.1207(7).

Under MCL 208.1207(1)(i), however, a foreign trucking company domiciled in a subnational jurisdiction would not be subject to MBT taxes, notwithstanding the fact that it has nexus with Michigan for MBT, where that subnational jurisdiction does not impose an income tax on a similarly situated person domiciled in Michigan whose presence in the foreign country is the same as the foreign trucking company's presence in the United States. Furthermore, if a subnational jurisdiction does not impose an income tax on businesses, but instead imposes some other type of subnational business tax, then the foreign trucking domiciled in that subnational jurisdiction is not subject to MBT taxes if that subnational jurisdiction's business tax is not imposed on a similarly situated person domiciled in Michigan whose presence in the foreign country is the same as the foreign person's presence in the United States. MCL 208.1207(1)(i).

Unitary

U1. How does a unitary business group apportion its tax bases when some members of the group do not have nexus with Michigan?

For a unitary group with business activities within and without Michigan, as defined in MCL 208.1301(3), the tax bases are apportioned to this state by multiplying them by the sales factor. The tax bases of a unitary group are calculated according to MCL 208.1201 and 208.1203. The sales factor is Michigan sales divided by everywhere sales. The sales of all members of the unitary group are included in both the numerator and the denominator.

U2. An out-of-state Real Estate Investment Trust (REIT) has a Michigan subsidiary. The Michigan subsidiary was previously required to file SBT returns. The REIT did not file SBT returns. A single federal return is filed for the REIT and its subsidiary. Under the MBT, can the subsidiary continue to file separately or will the REIT and subsidiary be required to file a consolidated return?

To the extent these entities meet the definition of a "unitary business group" the group is deemed the taxpayer and a combined tax return must be filed. MCL 208.117(5).

Under MCL 208.117(6), a "unitary business group" includes a group of businesses, 1 of which owns or controls more than 50% of the ownership interest, and that has business activities or operations which result in a flow of value between or among persons in the group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other.

When at least one member of a unitary group has substantial nexus with Michigan, as defined by MCL 208.1200, all Michigan sales by members of the unitary group are included in the numerator of the apportionment factor.

U3. How does a unitary business group apportion its tax bases under the MBT? Is the apportioned tax base of a unitary group allocated back to the members of the unitary business group?

The business income tax base and modified gross receipts tax base of "a taxpayer whose business activities are subject to tax both within and outside of this state shall be apportioned to this state" by multiplying the business income tax base and modified gross receipts tax base by the sales factor. MCL 208.1301 (emphasis added). The sales factor is a fraction, "the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year." MCL 208.1303(1). Sales are sourced to Michigan or elsewhere under MCL 208.1305.

"Taxpayer" means "a person or a unitary business group liable for a tax, interest, or under this act." MCL 208.1117 (emphasis added). In other words, apportionment is not calculated separately for

each member of the unitary business group but on the combined tax bases as calculated under MCL 208.1201 and 208.1203. There is no need to allocate the apportioned tax base of the unitary business group back to the members of the unitary business group.

U4. Are special purpose entities taxpayers under the MBT?

Yes. Under the MBT, taxpayer means "a person or a unitary business group liable for a tax, interest, or penalty." MCL 208.1117(5). "Person" means "an individual, firm, bank, financial institution, insurance company, limited partnership, limited liability partnership, copartnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, receiver, estate, trust, or any other group or combination of groups acting as a unit." MCL 208.1113(3).

According to Black's Law Dictionary, "special purpose entity" is defined as "a business established to perform no function other than to develop, own, and operate a large complex project" Black's Law Dictionary (7th ed). More generally, a special purpose entity can be defined as a business formed solely in order to fulfill narrow, specific or temporary objectives. Special purpose entities are often used to facilitate securitization.

Thus, to the extent that it satisfies the filing threshold, a special purpose entity will be a taxpayer under the MBT. Alternatively, a special purpose entity may be a member of a unitary business group if the control test and one of the two relationship tests of MCL 208.1117(6) are satisfied. There are no exemptions under the MBT for special purpose entities.

U5. How are the business income and modified gross receipts tax bases apportioned for a unitary business group that includes both transportation companies and companies other than transportation companies?

The business income tax base and modified gross receipts tax base of a taxpayer whose business activities are subject to tax within and without Michigan must be apportioned by multiplying each tax base by the sales factor. MCL 208.1301(1). Taxpayer includes a unitary business group. MCL 208.1117(5).

The sales factor is a fraction of Michigan sales over sales everywhere. MCL 208.1303(1). For a unitary business group, the Michigan sales of each member – without regard to nexus – are combined in the numerator and all sales of each member are combined in the denominator. MCL 208.1303(2). Sales between members of a unitary group are eliminated when calculating the sales factor. MCL 208.1303(2), 208.1511.

Sales are sourced to Michigan and elsewhere under MCL 208.1305. Receipts from transportation services provided by a transportation company or any other company are sourced according to MCL 208.1305(11), (12). Receipts from transportation services are then combined with other receipts or sales of that member and those of other members of the unitary business group in the numerator and denominator to compute the sales factor. Although transportation services are subject to a specific sourcing rule, transportation companies do not – and receipts from transportation services are not – apportioned separately.

U6. (Answer rescinded, replacement located at U51) Would a group of companies who have a flow of value between them but are owned by two nonrelated persons, each owning 50%, be considered a unitary business group?

U7. Are unitary business groups under the MBT the same as controlled groups under the SBT?

No. Under the MBT, a unitary business group is:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations. [MCL 208.1117(6).]

The Department will follow IRC § 318 pertaining to constructive ownership of corporate stock, or analogous authority to determine indirect, or constructive ownership and control. However, the Department will apply IRC § 318 principles to ownership interests for all types of entities subject to the MBT.

To qualify as a unitary business group under the MBT, a group must satisfy the *control test* and one of two *relationship tests*: business activities that (1) result in a *flow of value* between members; or that (2) are *integrated with, dependent upon, or contribute to* each other.

In contrast, "controlled groups" under the SBT are generally defined as:

[a]n affiliated group as defined in this act, a controlled group of corporations as defined in section 1563 of the internal revenue code and further described in 26 C.F.R. 1.414(b)-1 and 1.414(c)-1 to 1.414(c)-5, or an entity under common control as defined by the internal revenue code [See MCL 208.36.]

An "affiliated group" means "2 or more United States corporations, 1 of which owns or controls, directly or indirectly, 80% or more of the capital stock with voting rights of the other United States corporation or United States corporations." MCL 208.3. Under IRC 1563, control of a brother-sister controlled group is established if five or fewer persons combine to possess more than 50% of the stock of each corporation. RAB 1989-48 concludes – in part – that entities under common control exist when five or fewer persons combine to own a controlling interest in each entity.

In other words, the ownership tests for controlled groups under the SBT differ from that under the MBT. The MBT requires members of a unitary business group to meet a relationship test not found in the SBT. Therefore, while there might be some overlap between affiliated groups under the SBT and unitary business groups under the MBT, an affiliated group under the SBT will not necessarily be a unitary business group under the MBT. All facts and circumstances related to business activities and operations should be reviewed when determining whether a unitary group exists and who the members of the group are.

U8. (Answer rescinded, replacement located at U33) What is a unitary business group?

U9. Can brother-sister corporations wholly owned by a single individual be members of a unitary business group? What if the corporations conduct no interrelated business activities?

Under the MBT, a unitary business group is:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each

other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations. [MCL 208.1117(6).]

The Department will follow IRC § 318 or analogous authority to determine indirect, or constructive, ownership and control, except that the Department will apply IRC § 318 to all ownership interests regardless of entity type.

Thus, to qualify as a unitary business group under the MBT, a group must satisfy the *control test* and one of two *relationship tests*: business activities or operations that (1) result in a *flow of value* between members or that (2) are *integrated with, dependent upon, or contribute to* each other.

In the case of a brother-sister set of corporations wholly owned by an individual – for example, Motorcycle Dealer Co. and Architecture Inc. – the corporations will satisfy the control test under MCL 208.1117. Under IRC § 318(a)(3)(C), Motorcycle Dealer Co. is the indirect owner of more than 50% of the ownership interests in Architecture Inc. However, the brother-sister corporations will not comprise a unitary business group unless the corporations also satisfy one of the two relationship tests.

To the extent that Motorcycle Dealer Co. and Architecture Inc. have business activities or operations that result in a flow of value between them or have business activities or operations that are integrated with, are dependent upon, or contribute to each other, the corporations will comprise a unitary business group. Whether such relationship tests are met must be determined on a facts and circumstances basis. The fact that there are no interrelated business activities between the corporations is not dispositive. For example, centralized management; shared systems, programs, or benefits; or using the proceeds from one corporation to finance the activities of the other will satisfy the relationship test regardless of the absence of business activities conducted between the brother and sister.

U10. If a husband and wife are 100% owners in different businesses; do they form a unitary group?

Under MCL 208.1117(6), a unitary business group is defined – in part – as a group of U.S. persons, excluding foreign operating entities, one of which owns or controls, directly or indirectly, more than 50% of the ownership interests with voting or similar rights of the other U.S. persons and the business activities or operations result in a flow of value between the unitary group or are integrated with, dependent upon or contribute to each other. The “more than 50%” ownership for purposes of defining a unitary business group includes direct and indirect ownership.

For purposes of MCL 208.1117(6), the Department will follow IRC § 318 or analogous authority to determine indirect, or constructive, ownership and control, except that the Department will apply IRC § 318 to all ownership interests. For example, while IRC § 318 specifically governs constructive ownership of “stock,” the Department will apply IRC § 318 to ownership interests in partnerships, limited liability companies, and other U.S. persons under the MBT. A spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance) is deemed to own the ownership interest of the other and vice versa.

Under these facts and circumstances the more than 50% ownership interest is met as each taxpayer business is deemed to own 100% of the other. If there is a flow of value between the business entities owned by the husband and wife or they are integrated with, dependent upon or contribute to each other, a unitary group will exist. A flow of value is determined by reviewing the totality of facts and circumstances of the business activities and operations.

U11. How does the MBT filing threshold apply to a unitary business group comprised of several members if one or more of the members has apportioned gross receipts of less than \$350,000?

A taxpayer whose apportioned or allocated gross receipts are less than \$350,000 is not required to file a return or pay the tax imposed under the MBT. MCL 208.1505(1). "Taxpayer" means "a person or a unitary business group liable for a tax, interest, or penalty under this act." MCL 208.1117 (emphasis added). Thus, so long as the apportioned or allocated gross receipts of the unitary business group equal or exceed \$350,000, the unitary business group must file a return and pay the tax imposed by the MBT regardless of the gross receipts of the members of the unitary business group.

For example, a unitary business group is comprised of A, B, C, D, and E, each with \$80,000 in gross receipts. Assuming allocation of the tax base and no intercompany transactions, the gross receipts of the unitary business group is \$400,000. Since \$400,000 exceeds the \$350,000 filing threshold, the taxpayer is required to file a return and pay the tax imposed by the MBT. The fact that no member of the unitary business would meet the filing threshold if considered individually is immaterial under the MBT.

A taxpayer that is a unitary business group with apportioned or allocated gross receipts greater than \$350,000 but less than \$700,000 will qualify for the filing threshold credit under MCL 208.1411.

U12. How does a unitary business group file under the MBT when one or more of the members of the unitary business group do not have nexus with Michigan?

A taxpayer under the MBT includes a unitary business group. MCL 208.1117(5). A unitary business group is comprised of two or more U.S. persons. MCL 208.1117(6). Nexus exists if the taxpayer has (1) physical presence in Michigan for more than one day during the tax year or (2) actively solicits sales in Michigan and has gross receipts sourced to Michigan of \$350,000.00 or more. MCL 208.1200. Thus, a taxpayer that is a unitary business group has nexus with Michigan so long as any one member of the unitary business group has nexus with Michigan. The taxpayer that is a unitary group is required to file a combined return under MCL 208.1511.

Example: Corporations X, Y, and Z form a unitary business group. Corporation X has nexus with Michigan. Therefore, the unitary business group of Corporations X, Y, and Z has nexus with Michigan and must file a combined return as a single taxpayer.

U13. How must a foreign insurer file for purposes of the retaliatory tax when the insurer's state of incorporation requires unitary filing?

A foreign insurer must calculate its burden for purposes of the Michigan retaliatory tax according to the laws of its state of incorporation. If the insurer's state of incorporation requires filing on a unitary basis, the insurer should compute its retaliatory tax burden using this method.

The retaliatory tax is calculated by first computing the burden to the foreign insurer doing business in Michigan and then computing the burden that would be imposed upon a hypothetical Michigan insurer as if it was performing the identical business activity in the foreign state. When making this calculation it should be assumed that the hypothetical Michigan insurer would calculate its liability in the same manner required of the foreign insurer.

U14. Section 511 of the Michigan Business Tax Act ("MBTA") states that "Each United States person included in a unitary business group or included in a combined return shall be treated as a single person..." Does this mean that all phase-ins, thresholds, credit limits and other aspects of the MBTA relating to the determination of tax liability apply to each person within a unitary business group rather than at the group level?

No. The phrase “shall be treated as a single person” in section 511 of the MBTA, MCL 208.1511, relates to the removal of transactions between unitary business group members from the determination of the business income tax base, the modified gross receipts tax base and the apportionment formula of a unitary business group as a distinct taxpayer. Phase-ins, thresholds, credit limits and other components to determining tax liability relate to the unitary business group as a distinct taxpayer, not to the individual persons that comprise the unitary business group. The unitary business group, to which individual “persons” might belong, is treated as the taxpayer -- a distinct entity -- for purposes of tax liability under the MBTA. Although a person can be a taxpayer under the MBTA, a person that is a member of a unitary business group is not the taxpayer, rather the unitary business group to which that person belongs is the taxpayer. Accordingly, the phrase in MCL 208.1511 does not cause the individual members of a unitary business group to be treated as separate, individual taxpayers for purposes of determining tax liability under the MBTA.

U15. Does a unitary group of insurance companies have to file a combined MBT return?

No. Insurance companies are not specifically excluded from the definition of a unitary business group, found at MCL 208.1117(6), and thus may constitute a unitary business group. In practice, however, there is no practical effect of this possibility. The tax on authorized insurance companies is equal to 1.25% of gross direct premiums written on property or risk located or residing in Michigan. MCL 208.1235. Because the tax is only on property or risk located in Michigan there will be no traditional apportionment for insurance companies. Thus, even if an authorized insurance company is unitary with another authorized insurance company under MCL 208.1117(6), this will have no effect in calculating the tax. A combined return will not be necessary.

U16. (Answer rescinded, replacement located at U59) If you are an entity within the unitary group that does not have nexus without application of the unitary principal, are your shareholders liable for Michigan personal income tax?

U17. How is the business income of a unitary business group determined when one member uses cash basis accounting and the other member uses the accrual method and their tax year ends are different?

The Michigan Business Tax Act does not require each member of a unitary business group to use the same method of accounting to determine its business income.

A taxpayer that is a unitary business group must file a combined return under MCL 208.1511 using the tax year of the designated member. On the combined return, the business income of each member should reflect the accounting method the member used to compute its federal taxable income, whether cash or accrual.

“Designated member” means a member of a unitary business group that has nexus with Michigan under MCL 208.1200 and that will file the combined return required under section 511. If the member that owns or controls the other members of the unitary business group has nexus with Michigan, then that controlling member must be the designated member.

The combined return of the unitary business group must include each tax year of each member whose tax year ends with or within the tax year of the designated member.

The business income of a unitary business group is the sum of the business income of each person included in the unitary business group, other than a foreign operating entity or a person subject to the tax on insurance companies or financial institutions, less any items of income and related deductions arising from transactions, including dividends, between persons included in the unitary business group. MCL 208.1201(4).

U18. How does the MBT filing threshold apply to a unitary business group comprised of several members if one or more of the members has apportioned gross receipts of less than \$350,000?

A taxpayer whose apportioned or allocated gross receipts are less than \$350,000 is not required to file a return or pay the tax imposed under the MBT. MCL 208.1505(1). "Taxpayer" means "a person or a unitary business group liable for a tax, interest, or penalty under this act." MCL 208.1117 (emphasis added). Thus, so long as the apportioned or allocated gross receipts of the unitary business group equal or exceed \$350,000, the unitary business group must file a return and pay the tax imposed by the MBT regardless of the gross receipts of the members of the unitary business group.

For example, a unitary business group is comprised of A, B, C, D, and E, each with \$80,000 in gross receipts. Assuming allocation of the tax base and no intercompany transactions, the gross receipts of the unitary business group is \$400,000. Since \$400,000 exceeds the \$350,000 filing threshold, the taxpayer is required to file a return and pay the tax imposed by the MBT. The fact that no member of the unitary business would meet the filing threshold if considered individually is immaterial under the MBT.

A taxpayer that is a unitary business group with apportioned or allocated gross receipts greater than \$350,000 but less than \$700,000 will qualify for the filing threshold credit under MCL 208.1411.

U19. (Answer rescinded, replacement located at U60) Is an individual a member of a unitary business group with the entities in which the individual has a controlling interest? It depends. Under the MBT, a unitary business group is:

U20. A unitary business group under the MBTA is required to file a combined return. For purposes of calculating the unitary business group's modified gross receipts tax base, does the group eliminate all inter-company transactions between members of the group, including "purchases from other firms"?

Yes. Section 203 of the MBTA provides in part that:

The modified gross receipts of a unitary business group is the sum of modified gross receipts of each person, other than a foreign operating entity or [an insurance company or financial institution], included in the unitary business group less any modified gross receipts arising from transactions between persons included in the unitary business group.

MCL 208.1203(3). A taxpayer calculates its modified gross receipts tax base by determining its gross receipts and then subtracting "purchases from other firms," a term that is defined at MCL 208.1113(6). Therefore, each member of a unitary business group must subtract any "purchases from other firms" in order to arrive at its individual modified gross receipts, whether those qualifying purchases were made from fellow group members or from outside companies. In addition, section 511 of the MBTA specifically provides that, in filing the required combined return, all transactions between members of a unitary business group are to be eliminated from the business income tax base, the modified gross receipts tax base, and the apportionment formula. MCL 208.1511. "All transactions" includes those transactions meeting the definition of "purchases from other firms," as well as other kinds of transactions between group members.

U21. When members of a unitary business group have different accounting methods (for example, cash and accrual) is uniformity required or do they report using each member's accounting method? How does this affect eliminations made for activity between entities?

A similar question concerning the business income tax base of a unitary business group is addressed in a previous FAQ. As noted in FAQ U17, the MBTA does not expressly require each member of a unitary business group to use the same method of accounting. A taxpayer that is a

unitary business group must file a combined return under section 511 using the tax year of the designated member. On the combined return, the business income and other reported information of each member should reflect the accounting method the member used to compute its federal taxable income, whether cash or accrual. Eliminations made for activity and transactions between group members would reflect and be determined based on the members' respective accounting methods.

U22. Can a pre-2008 Brownfield credit or Historic Preservation credit of a unitary business group member be used in 2008 and thereafter against the tax liability of the entire unitary business group?

Yes. To the extent that a qualified taxpayer under the Brownfield credit or Historic Preservation credit provisions is included within a unitary business group taxpayer for relevant tax years, the qualified taxpayer's unused pre-2008 Brownfield credit and/or Historic Preservation credit (i.e. such credits earned under the SBT) may be applied against the tax liability imposed on the entire unitary business group taxpayer (of which the qualified taxpayer is a member) for the tax years the carryforward would have been available under the SBT. See MCL 208.1435(8) and 208.1437(18).

U23. (Answer rescinded, replacement located at U48) How does a unitary business group register under the MBT?

U24. (Answer rescinded, replacement located at U51) If five or fewer persons who are unrelated individuals, estates or trusts own a controlling interest in a brother-sister group of entities, will that satisfy the control test for purposes of qualifying as a unitary business group?

U25. Can brother-sister corporations wholly owned by a single person be members of a unitary business group? If so, how are the tax bases calculated?

Yes. To qualify as a unitary business group under the MBT, a group must satisfy the control test and one of two relationship tests: business activities or operations that (1) result in a flow of value between members or that (2) are integrated with, dependent upon, or contribute to each other. MCL 208.1117.

In the case of a brother-sister set of corporations wholly owned by a person, the corporations will satisfy the control test under MCL 208.1117. That is, the brother corporation – under IRC 318 – is the indirect owner of more than 50% of the ownership interests the sister corporation; and vice versa. However, the brother-sister corporations will not comprise a unitary business group unless the corporations also satisfy one of the two relationship tests.

If the brother-sister corporations have business activities or operations that result in a flow of value between them or have business activities or operations that are integrated with, are dependent upon, or contribute to each other, the corporations will comprise a unitary business group.

A unitary business group must file a single combined return. MCL 208.1511. Furthermore, the tax bases must be calculated on a combined basis. For purposes of calculating the business income tax base of a taxpayer that is a unitary business group, the business income of each group member must be combined less any income and related deductions arising from intragroup transactions. MCL 208.1201(4). This total is then adjusted to arrive at the unitary business group's business income tax base. MCL 208.1201(2). The modified gross receipts tax base of a taxpayer that is a unitary business group is the sum of the modified gross receipts of each member of the group less any modified gross receipts derived from intra-group transactions. MCL 208.1203(3).

So long as one member of a unitary business group has nexus with Michigan, all members of the unitary business group must be included when calculating the taxpayer's business income and modified gross receipts tax bases and apportionment formula.

U26. Can a unitary group, as defined in the MBT, enter into a voluntary disclosure agreement with the Department of Treasury under MCL 205.30c if one member of the group would be disqualified on its own?

No, apart from nexus, a disqualification present for one member of a unitary business is imputed to the entire group. As a threshold matter, a person must make an application, be a non-filer, have nexus with Michigan and/or have a reasonable basis to contest liability. MCL 208.30c(2). “Person” is defined at MCL 205.30c(15)(c) as

an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, receiver, estate, trust, or any other group or combination acting as a unit. [Emphasis added].

A unitary group is a “group or combination acting as a unit.” Thus, if one member of the group cannot meet the qualifications for an agreement neither can the unitary group.

U27. How are the Business Income and Modified Gross Receipts tax bases calculated for a unitary business group?

Under MCL 208.1201(3), the tax base of a unitary business group for the Business Income factor of the MBT is the sum of the business income of each group member minus any income and related deductions arising from inter-group transactions. This total is then adjusted by the additions and subtractions outlined in MCL 208.1201(2) to arrive at the unitary group’s business income tax base. After the tax base is allocated or apportioned according to MCL 208.1301, the tax base is adjusted by available business loss as outlined in MCL 208.1201(4).

The modified gross receipts tax base is defined as gross receipts minus purchases from other firms under MCL 208.1203(3). Within a unitary business group, each member must calculate gross receipts minus purchases from other firms. These individual calculations are then summed. Finally, modified gross receipts from inter-group transactions are removed. This produces the unitary business group tax base.

U28. How will MCL 208.1503, which gives taxpayers the choice of two filing methods for the first MBT return, apply to a unitary group where members of the group have different tax years?

MCL 208.1503 provides the general rule that a fiscal year taxpayer may elect to file its first MBT return by either annualizing business income and modified gross receipts as if the MBT were in effect on the first day of the taxpayer’s annual accounting period, or by computing MBT liability based on actual business income and modified gross receipts for the portion of the accounting period in which the MBT was in effect.

“Taxpayer” means a person or a unitary business group in accordance with MCL 208.1117(5). A unitary business group must file a combined return under MCL 208.1511 using the tax year of the designated member.

If the designated member is a calendar year taxpayer, Section 503 is inapplicable to the group. However, if the designated member uses a fiscal year, that member must choose one of the two methods available in Section 503. Its final return under the SBT must be consistent with this choice. All other members of the group will conform to this method.

This election only applies to the first MBT return for taxpayers with tax years ending before December 31, 2008.

U29. How must a unitary business group file its combined return when members of the group have different tax years?

A taxpayer that is a unitary business group must file a combined return under MCL 208.1511 using the tax year of the designated member. The combined return of the unitary business group must include each tax year of each member whose tax year ends with or within the tax year of the designated member. For example, Taxpayer ABC is a unitary business group comprised of three corporations: Corporation A, the designated member with a calendar tax year, and Corporations B and C with fiscal years ending March 31 and September 30 respectively. Taxpayer ABC's tax year is that of its designated member. Thus, Taxpayer ABC's tax year ends December 31, its annual return is due April 30. That annual return must include the tax years of Corporations B and C ending March 31 and September 30.

A taxpayer that becomes a member of a unitary business group or ceases to be a member of a unitary business group during that member's tax year must file as part of the combined return for that portion of the member's tax year during which the member was part of the unitary business group. For example, if Corporation C from the above example ceased to be a member of Taxpayer ABC on July 31, Corporation C must include October 1- July 31 on Taxpayer ABC's annual return, but file as a separate taxpayer – or as part of a new unitary taxpayer – for the period August 1 – September 30.

U30. (Answer rescinded, replacement located at U36) Are foreign entities includable in unitary business group? What if the foreign entity is the single member of a domestic single member limited liability company disregarded for federal tax purposes?

U31. (Answer rescinded, replacement located at U36) Are controlled foreign corporations ("CFC's") under IRC 957 taxpayers under the MBT? Can controlled foreign corporations be members of a unitary business group? What if the controlled foreign corporation is a disregarded entity of a U.S. parent?

U32. For a unitary business group, MBT Section 201(3) requires the deduction of items of income and related deductions including dividends between members of the group when computing the business income tax base. Section 203(3) requires the deduction of any modified gross receipts arising from transactions between members of the group when computing the modified gross receipts tax base. Is there a difference in what is excluded under the two tax bases?

It is possible different items will be excluded from each tax base. A unitary business is required to file a combined return. MCL 208.1511. This section also requires the elimination of all transactions between members of the unitary business group that affect the business income tax base, modified gross receipts tax base and the apportionment formula. The elimination of all transactions between members will effectively accomplish the inter-member eliminations required under Sections 201(3) and 203(3). It is irrelevant whether the same items are excluded from both tax bases. What controls is that the transactions between members are eliminated. Because business income and gross receipts are statutorily unique, it is likely different components of the eliminated transactions will affect the computation of one tax base but not the other. For example, the elimination of income will impact the calculation of both tax bases because income received affects both business income and gross receipts. However, a transaction that includes the elimination of an expense that does not meet the definition of a "purchases from other firms" will affect only the business income tax base.

U33. What is a unitary business group?

Generally, a unitary business group is a group of related persons whose business activities or operations are interdependent. More specifically, a unitary business group is two or more persons that satisfy both a *control test* and one of two *relationship tests*. MCL 208.1117(6). A unitary business group is a single taxpayer under the MBT and must file a combined return. MCL 208.1117(5), 208.1511. Foreign persons and foreign operating entities cannot be part of a unitary business group.

Control Test. The control test is satisfied when one person owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of the other person or persons. Indirect ownership is generally determined using IRC 318 or analogous authority, except that the Department will apply IRC 318 to all forms of ownership interests, such as partnership and membership interests, and not just corporate stock.

A parent-subsidary controlled group of entities satisfies the control test. A parent-subsidary controlled group of entities means any group of one or more chains of entities connected through ownership with a common parent if (1) the common parent directly owns more than 50% of the ownership interest with voting or comparable rights of at least one other entity, and (2) an ownership interest meeting the more than 50% test in each entity other than the common parent must be owned directly by one or more of the other entities. For example, Corporation A owns 51% of Corporation B, which owns 51% of Corporation C, which owns 51% of Corporation D. The common parent owns more than 50% of the stock in at least one other entity (Corporation B), and more than 50% of the stock of each entity other than the common parent is owned by at least one other entity in the chain. Thus, Corporations A, B, C, and D are part of a parent-subsidary controlled group of entities and satisfy the control test for unitary business groups.

Similarly, a brother-sister group of entities may satisfy the control test through the indirect ownership rules of IRC 318. For example, one corporation of a pair of corporations wholly owned by an individual will indirectly own and control 100% of the other through IRC 318.

Relationship Tests. In addition to satisfying the control test, the group of persons must have business activities or operations that (1) result in a *flow of value* between or among persons in the group, or (2) are *integrated with, are dependent upon, or contribute to each other*.

Flow of value is established when members of the group demonstrate one or more of functional integration, centralized management, and economies of scale. Examples of functional integration include common programs or systems and shared information or property. Examples of centralized management include common management or directors, shared staff functions, and business decisions made for the group rather than separately by each member. Examples of economies of scale include centralized business functions and pooled benefits or insurance. Groups that commonly exhibit a flow of value include vertically or horizontally integrated businesses, conglomerates, parent companies with their wholly owned subsidiaries, and entities in the same general line of business. Flow of value must be more than the mere flow of funds arising out of passive investment.

Businesses are *integrated with, are dependent upon, or contribute to each other* under many of the same circumstances that establish flow of value. However, this alternate relationship test is also commonly satisfied when one entity finances the operations of another or when there exist intercompany transactions, including financing.

U34. For purposes of determining a unitary business group, how is the control test interpreted and applied?

Generally, a unitary business group is a group of related persons whose business activities or operations are interdependent. More specifically, a unitary business group is two or more

persons that satisfy both a *control test* and one of two *relationship tests*. MCL 208.1117(6). A unitary business group is a single taxpayer under the MBT and must file a combined return. MCL 208.1117(5), 208.1511. Foreign persons and foreign operating entities cannot be part of a unitary business group.

Control Test. The control test is satisfied when one person owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of the other person or persons. In particular:

"Unitary business group" means a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons [MCL 208.1117.]

A person owns or controls more than 50% of the ownership interest with voting rights or ownership interest that confer comparable rights to voting rights of another persons if that person owns (1) more than 50% of the total combined voting power of all ownership interests with voting (or comparable) rights or (2) more than 50% of the total value of all ownership interests with voting (or comparable) rights.

Indirect ownership is generally determined using IRC 318 or analogous authority, except that the Department will apply IRC 318 to all forms of ownership interests, such as partnership and membership interests, and not just corporate stock. For example, attribution to and from a partnership may be determined under IRC 318(a)(2)(A) and 318(a)(3)(A). However, the attribution will be of ownership interests, including – but not limited to – partnership interests, stock, and membership interests; attribution will not be limited to corporate stock.

Parent-Subsidiary Controlled Group of Entities. A parent-subsidiary controlled group of entities satisfies the control test. A parent-subsidiary controlled group of entities means any group of one or more chains of entities connected through ownership with a common parent if (1) the common parent directly owns more than 50% of the ownership interest with voting or comparable rights of at least one other entity, and (2) more than 50% of the ownership interest with voting or comparable rights of each entity other than the common parent is owned directly by one or more of the other entities. For example:

Corporation A owns 51% of Corporation B, which owns 51% of Corporation C, which owns 51% of Corporation D. The common parent owns more than 50% of the stock in at least one other entity (Corporation B), and more than 50% of the stock of each entity other than the common parent is owned by at least one other entity in the chain. Corporations A, B, C, and D are part of a parent-subsidiary controlled group of entities and satisfy the control test for unitary business groups.

Brother-Sister Controlled Group of Entities. A brother-sister group of entities may also satisfy the control test. An individual that is not a sole proprietor or owner of a disregarded entity or otherwise engaged in a trade or business resulting in business income or gross receipts under the MBT is not unitary with the entities in which that individual has a controlling interest. However, brother-sister group of entities may satisfy the control test through the indirect ownership rules of IRC 318 – this is referred to as a brother-sister controlled group of entities. For example:

An individual owns 51% each of a pair of limited liability companies taxed as partnerships – Tweedledee LLC and Tweedledum LLC. Under IRC 318(a)(3)(A) as applied to the MBT, Tweedledee LLC owns 51% of Tweedledum LLC. Tweedledee LLC and Tweedledum LLC

constitute a brother-sister controlled group of entities and meet the control test for unitary business groups.

Combined Controlled Group of Entities. Finally, a combined controlled group of entities satisfies the control test. A combined controlled group of entities means three or more entities each of which is a member of a parent-subsidary controlled group of entities or brother-sister controlled group of entities and one of which is a common parent entity of a parent-subsidary controlled group of entities and also is included in a brother-sister controlled group of entities. For example:

An individual owns 51% each of a pair of corporations – Corporations L and M. Corporation L owns 51% of Corporation N, which owns 51% of Corporation O. Corporation L is the common parent of the L, N, and O parent-subsidary controlled group of entities and is also a member of the L and M brother-sister controlled group of entities. Corporations L, M, N, and O are members of a combined controlled group of entities and meet the control test for unitary business groups.

Excluded Ownership Interests. For purposes of determining ownership or control under the control test, the Department will apply IRC 1563 to exclude certain ownership interests from determination of ownership and control, except that the Department will apply IRC 1563 to all forms of ownership interests and not just corporate stock. For example:

Corporation X owns 50% of Partnership Y. The remainder of Partnership Y is owned by an individual that is also a principal stockholder under IRC 1563 of Corporation X. The ownership interest of the individual are treated as excluded ownership interests under IRC 1563(c) as applied to the MBT. For purposes of the control test for unitary business groups, Corporation X owns 100% of Partnership Y.

U35. Do the \$350,000 threshold amount for taxpayer nexus under MCL 208.1200, the \$350,000 threshold amount for filing of returns and payment of MBT under MCL 208.1505, and the range of gross receipts between \$350,000 and \$700,000 concerning the Gross Receipts Filing Threshold Credit under MCL 208.1411 relate to Michigan gross receipts before or after inter-company transactions receipts are eliminated?

Elimination of inter-company transactions does not occur when directly determining the level of a unitary business group taxpayer's overall gross receipts; however, inter-company transactions will affect a unitary business group taxpayer's gross receipts threshold amount through application of the apportionment formula. When determining the gross receipts filing threshold and the eligibility for the Threshold Credit under MCL 208.1411, the taxpayer's overall gross receipts are first apportioned using the sales factor under MCL 208.1303(2). Because inter-company transactions between unitary business group members are eliminated when determining a unitary business group taxpayer's sales factor, the application of sales factor to a unitary business group taxpayer's overall gross receipts would indirectly eliminate inter-company transactions from the threshold amount.

The MBTA states that a unitary business group is required to file a combined return that includes each U.S. person included in the unitary business group, and that "all transactions between the persons included in the unitary business group shall be eliminated from the business income tax base, modified gross receipts tax base and the apportionment formula under this act." MCL 208.1511. A "unitary business group" is defined in the MBTA in pertinent part as "a group of United States persons... 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has

business activities or operations that are integrated with, are dependent upon, or contribute to each other.” MCL 208.1117(6).

The MBTA expressly provides that the calculation of a unitary business group’s business income tax base is determined as “the sum of the business income of each person included in the unitary business group...less items of income and related deductions arising from transactions including dividends between persons included in the unitary business group.” MCL 208.1201(3). Likewise, the MBTA expressly states that for a unitary business group taxpayer, the modified gross receipts tax base (a taxpayer’s gross receipts less purchases from other firms) is “the sum modified gross receipts of each person...included in the unitary business group less any modified gross receipts arising from transactions between persons included in the unitary business group.” MCL 208.1203(3). Further, the MBTA clearly states that in calculating the sales factor for apportioning the business income and modified gross receipts tax bases for a unitary business group, sales between the unitary business group members are eliminated. MCL 208.1303(2).

In contradistinction, the MBTA’s provisions governing taxpayer nexus (MCL 208.1200), the filing threshold (MCL 208.1505) and the Gross Receipts Filing Threshold Credit (MCL 208.1411) do not contain any language providing that for a unitary business group taxpayer the respective gross receipt threshold amounts are determined after eliminating inter-company transactions. The provision regarding taxpayer nexus (MCL 208.1200) states merely that the \$350,000 gross receipts amount is that sourced to Michigan, with no prescribed adjustment for inter-company transactions. Similarly, the provisions regarding the threshold amount of gross receipts for filing an MBT return (MCL 208.1505) and the range of gross receipts to qualify for the Gross Receipts Filing Threshold Credit (MCL 208.1411) provide only that the gross receipt amounts are those after allocation and apportionment, with no prescribed adjustment for inter-company transactions.

U36. (Answer rescinded, replacement located at U61) Are foreign entities includable in unitary business group? What if the foreign entity is the single member of a domestic single member limited liability company disregarded for federal tax purposes?

U37. Is it possible to have a unitary group of financial institutions under the MBT? How will such groups file a combined return?

Under MCL 208.1261 a “financial institution” is defined as a bank holding company, a national bank, a state chartered bank, an office of thrift supervision chartered bank or thrift institution, or a savings and loan holding company other than a diversified savings and loan holding company as defined in 12 USC 1467a(a)(F).

This definition also includes any subsidiary of a financial institution, owned directly or indirectly, other than an insurance company as defined in MCL 208.1111(2), if that subsidiary is a member of a unitary business group with the financial institution. MCL 208.1261(f)(ii). This broad language also encompasses any disregarded entity owned by the financial institution. A unitary business group of financial institutions is permitted by definition. MCL 208.1261(f)(iii).

Thus, if a financial institution or its subsidiary satisfies the control test and one of the two relationship tests outlined in MCL 208.1117(6) with another financial institution and its subsidiaries, the unitary business group will file a combined return. MCL 208.1511. A unitary business group of financial institutions will eliminate inter-group gross business when calculating the gross business factor. MCL 208.1261(f) and MCL 208.167(4).

In contrast, financial institutions and their subsidiaries cannot file on a unitary basis with nonfinancial institution entities even though they may be unitary with such entities. When a financial institution or its subsidiary is unitary with a non-financial institution, all intercompany

transactions must be eliminated along with any business income attributable to [the financial institution or subsidiary] from the business income tax base, any modified gross receipts attributable to [the financial institution or subsidiary] from the modified gross receipts tax base, and any sales attributable to [the financial institution or subsidiary] from the apportionment formula. MCL 208.1511.

This calculation will be represented on the combined return of the unitary group, but the financial institution member(s) will essentially be excluded from that return. The financial institutions member(s) must then file either a stand-alone return in accordance with MCL 208.1263 or a combined return with other financial institutions as explained above.

In summation, a financial institution will file either a stand-alone return if it is not unitary with another financial institution or has been excluded from unitary group containing non-financial institution entity types, or a combined return with other financial institution members of a unitary group.

U38. For purposes of the private equity fund credit under MCL 208.1453, if a private equity fund manager is an entity that is a member of a unitary business group, does the calculated credit percentage apply to the tax liability of the entire unitary business group, or the separate tax liability of the fund?

The credit is based on the tax liability of the private equity fund. If the unitary business group is comprised of members other than private equity funds, a pro forma may be used to calculate the tax liability of the private equity fund for purposes of determining the amount of the credit. The resulting credit is applied to the tax liability of the unitary business group.

U39. Are partners deemed to own each others' holdings by attribution under section 318 of the Internal Revenue Code?

No. Section 318 of the Internal Revenue Code ("IRC") establishes the attribution rules for constructive ownership of stock for federal income tax purposes. IRC sections 318(2) and 318(3) address the attribution rules for partners and partnerships. Under IRC §318(2), stock owned, directly or indirectly, by or for a partnership is considered as owned proportionately by its partners. Conversely, under IRC §318(3), stock owned, directly or indirectly, by or for a partner is considered as owned by the partnership.

However, under IRC §318(5)(c), a partnership that constructively owns a partner's stock by application of the attribution rules as stated in IRC §318(3) cannot use the attribution provisions of IRC §318(2) to make another partner the constructive owner of such stock. For example, if partner A owns 100% of the stock in corporation C, and partner B owns 100% of the stock in corporation D, the partners are not deemed to own each other's stock merely because partnership AB is considered a constructive owner of all stock in both corporations by attribution under IRC §318(3).

The Department makes use of the IRC §318 attribution rules to determine if a group of persons meets the ownership or control tests necessary to form a unitary business group under section 117 of the MBT act (MCL 208.1117). In the example given above, corporations C and D and partnership AB could be part of the same unitary group because more than 50% of the ownership interest in each corporation is deemed to be owned or controlled by the same person, partnership AB, through attribution under IRC §318. However, IRC §318(5)(d) would operate to prevent corporations C and D from being considered brother-sister corporations (because partners A and B are not deemed to own each others stock), and therefore corporations C and D alone could not constitute a unitary business group for MBT.

U40. (Answer rescinded, replacement located at U62.) A dental practice organized as a sole proprietorship became a professional limited liability company (“PLLC”) effective January 1, 2008. For federal income tax purposes, the PLLC is a disregarded entity and the member reports his income as a sole proprietor on federal schedule C. Can the owner of the dental practice continue to file as a sole proprietor for Michigan individual and MBT purposes?

U41. With respect to a unitary business group, what is the liability of the individual entities that make up the group for payment of the tax? If payment is not made, which member will be charged with penalties and interest?

The business income and modified gross receipts taxes, both components of the Michigan Business Tax (MBT), are levied upon each “taxpayer” that has nexus with (or business activity in) Michigan. MCL 208.1201; 208.1203. The MBT Act defines a “taxpayer” as “a person or a unitary business group liable for a tax, interest, or penalty under this act.” MCL 208.1117(5). A unitary business group is defined as two or more U.S. persons, including entities (but excluding foreign operating entities), one or which owns or controls, directly or indirectly, more than 50% of the ownership interests with voting or similar rights of the other U.S. persons, and whose business activities or operations either (i) result in a flow of value between the unitary business group members, or (ii) are integrated with, dependent upon, or contribute to each other. MCL 208.1117(6). A taxpayer that is a unitary business group is required to “file a combined return that includes each United States person, other than a foreign operating entity, that is included in the unitary business group.” MCL 208.1511.

The MBT Act does not specifically state which member of a unitary business group must actually file the return or remit any tax that is owed. The Department has determined that the members of a unitary business group must elect a designated member who has nexus with Michigan to serve as the group’s agent with respect to the Department. Thus, the Department will look to the designated member to file the group’s combined return and remit estimates and annual payments. (See FAQ U23.) Although the designated member is responsible for filing the return and remitting payments, any MBT liability belongs to the “taxpayer” – i.e., the unitary business group – and not merely to the designated member. Accordingly, if the group’s MBT liability is not paid, the Department may look to each member of the unitary business group that has nexus with Michigan to collect the entirety of the tax that is due, as well as any penalties and interest that may be assessed. In other words, assuming nexus, each member of a unitary business group is jointly and severally liable for any MBT assessment, and the Department may pursue any or all such members to satisfy the entirety of the assessment. Joint and several liability means that all members of the unitary business group with nexus with Michigan are collectively and individually liable for the full amount of the group’s tax liability.

U42. If a taxpayer that is a unitary business group has a business loss carry forward under MCL 208.1201(5), what happens to the business loss carry forward if membership in the unitary business group changes?

When the membership of a taxpayer that is a unitary business group changes, the business loss carryforward of the unitary business group is divided among the unitary business group and the departing members in proportion to the losses the members would have generated had each member filed separately. Specifically, the portion of the business loss carryforward of a taxpayer that is a unitary business group attributable to a departing member is an amount equal to the business loss carryforward of the unitary business group multiplied by a fraction, the numerator of which is what would have been the business loss of that member had that member filed a separate return, and the denominator of which is the sum of what would have been the separate business losses of all members of the group in that year having business losses if those members filed separate returns.

Example. Taxpayer LMNOP is a unitary business group comprised of Corporations L, M, N, O, and P. The 2008 tax year generated an apportioned business loss of \$100 to be carried forward to the 2009 tax year. However, due to a change in ownership, Corporation P is not part of the unitary business group for the 2009 tax year. If each member calculated their business income tax base on a separate basis for 2008, only Corporations N, O, and P showed losses of 50, 70, and 30 respectively. P gets a business loss carryforward of \$20 $[(30/(50+70+30))*100]$ for the 2009 tax year. Taxpayer LMNO retains a business loss carryforward of \$80.

U43. At what point in time must two entities meet the test for being members of a unitary business group?

A unitary business group is comprised of two or more U.S. persons that satisfy both a *control test* and one of two *relationship tests*. MCL 208.1117(6).

There is no annual date on which members must meet the requirements of a unitary business group to be a unitary business group. Rather, a person becomes a member of a unitary business group whenever both the control test and one of the two relationship tests are met and remains a member of that unitary business group so long as the control test and one of the two relationship tests continue to be met. Conversely, a member of a unitary business group that fails either the control test or the relationship tests may no longer be included in the unitary business group.

Control Test. The control test is satisfied when one person owns or controls, directly or indirectly, more than 50% of the ownership interest with voting or comparable rights of the other person or persons. Changes in ownership or control may result in one or more persons joining or dropping from a unitary business group. The date of changes to the unitary business group due to the control test is determined by identifying the transactions that result in relevant ownership or control changes.

Relationship Tests. The relationship test is satisfied when related persons have business activities or operations that (1) result in a flow of value between or among persons in the group, or (2) are integrated with, are dependent upon, or contribute to each other. Flow of value is established when members of the group demonstrate one or more of functional integration, centralized management, and economies of scale. Members are integrated with, are dependent upon, or contribute to each other under many of the same circumstances that establish flow of value. For example, related persons may meet one or both relationship tests if there is a flow of goods and services between them. However, the fact that transactions between the persons do not occur daily does not mean the persons drop in and out of unitary status. If the relationship tests are satisfied during the tax year, the group will generally only subsequently fail such tests if there are substantial changes to operations or management. Thus, the Department will presume that one or both relationship tests are established for the entire tax year – and each subsequent year – if one or both are satisfied at any point during the tax year. The unitary business group or member in question may rebut such presumption by proving that the relationship test was met – or failed – as of a specific date.

Finally, any person that becomes a member of a unitary business group or ceases to be a member of a unitary business group during that member's tax year must file as part of the combined return for that portion of the member's tax year during which the member was part of the unitary business group. For example, Taxpayer ABC is a unitary business group comprised of three corporations: Corporation A, the designated member with a calendar tax year, and Corporations B and C with fiscal years ending March 31 and September 30 respectively. Taxpayer ABC's tax year is that of its designated member. Thus, Taxpayer ABC's tax year ends December 31, its annual return is due April 30, and that annual return must include the tax years of Corporations B and C ending March 31 and September 30. If Corporation C ceased to be a

member of Taxpayer ABC on July 31, Corporation C must include October 1- July 31 on Taxpayer ABC's annual return, but file as a separate taxpayer – or as part of a new unitary taxpayer – for the period August 1 – September 30.

U44. An individual owns a controlling interest in multiple limited liability companies that hold rental property or manage real estate. There are no intercompany transactions between them, but each limited liability company shares an accountant and each has the same managing member responsible for managing the daily operations of the entities and for making operational decisions. Due to the controlling interests of the individual in each of the limited liability companies, the limited liability companies are brother-sister entities that satisfy the unitary business group control test under MCL 208.1117(6). Do the limited liability companies satisfy the relationship test and comprise a unitary business group?

Generally, a unitary business group is a group of related persons whose business activities or operations are interdependent. More specifically, a unitary business group is two or more persons that satisfy both a control test and one of two relationship tests.

The relationship test is met if a group of persons have business activities or operations that (1) result in a flow of value between or among persons in the group, or (2) are integrated with, are dependent upon, or contribute to each other.

Flow of value is established when members of the group demonstrate one or more of functional integration, centralized management, and economies of scale. Examples of functional integration include common programs or systems and shared information or property. Examples of centralized management include common management or directors, shared staff functions, and business decisions made for the group rather than separately by each member. Examples of economies of scale include centralized business functions and pooled benefits or insurance. Groups that commonly exhibit a flow of value include vertically or horizontally integrated businesses, conglomerates, parent companies with their wholly owned subsidiaries, and entities in the same general line of business. Flow of value must be more than the mere flow of funds arising out of passive investment.

Businesses are integrated with, are dependent upon, or contribute to each other under many of the same circumstances that establish flow of value. However, this alternate relationship test is also commonly satisfied when one entity finances the operations of another or when there exist intercompany transactions, including financing.

In the present case, each of the limited liability companies are engaged in the same general line of business. Furthermore, each of the entities shares a common accountant and is managed by a common manager. Given this centralized management, there appears to be a flow of value between the limited liability companies. Thus, the relationship test is satisfied and the limited liability companies comprise a unitary business group.

However, the relationship test is evaluated on a facts and circumstances basis. The conclusion reached in this Q&A may differ upon the disclosure of additional or different facts.

U45. How does a unitary business group (“UBG”) composed of financial institutions that includes a bank authorized to exercise only trust powers, which is exempt from the MBT surcharge under MCL 208.1281(4)(b), calculate the surcharge?

Financial institution entities authorized to exercise only trust powers do not lose their identity when they are a part of a unitary business group. When a financial institution authorized to exercise only trust powers is unitary with other financial institutions it maintains its identity as an entity exempt from the surcharge, even though it will file a combined return with other financial institutions. Financial institutions authorized to exercise only trust powers will file a combined

return with the UBG but will be removed from the surcharge calculation and not from overall liability. This computation will be performed in calculating Form 4590, 2008 Michigan Business Tax Annual Return for Financial Institutions.

U46. Does a unitary business group calculate its gross receipts for purposes of the gross receipts filing threshold and the filing threshold credit before or after the elimination of gross receipts arising from inter-company transactions?

The gross receipts filing threshold and the filing threshold credit are both calculated before a unitary business group eliminates inter-company transactions. Under the MBT Act, a unitary business group is required to file a combined return that includes all group members that are U.S. persons. MCL 208.1511. Section 511 further mandates that “all transactions between the persons included in the unitary business group shall be eliminated from the business income tax base, modified gross receipts tax base and the apportionment formula under this act.” MCL 208.1511. The language of the statutory sections specifically addressing the tax bases and the apportionment formula is consistent with this mandate.

Conversely, the sections of the MBT Act providing for the \$350,000 gross receipts filing threshold and the gross receipts filing threshold credit (the phase-in credit for taxpayers whose gross receipts are between \$350,000 and \$700,000) do not contain language requiring, or authorizing, unitary business groups to eliminate inter-company transactions when making the necessary calculations to determine the applicability of the thresholds. These sections state that the stipulated gross receipts amounts are those after allocation and apportionment, with no other prescribed adjustment for transactions between members of a unitary business group. MCL 208.1505(1); MCL 208.1411.

U47. Can a unitary business group with one or more fiscal year members use the annual method for calculating its first MBT return? If so, must all fiscal year members in the group make the same election between annual and actual methods? What if a fiscal year group, rather than fiscal group member has made the opposite choice with respect to its final SBT return? Also, if the unitary business group can use the annual method, and the group has members with different year ends, how is the percentage in MCL 208.1503(a) calculated?

Section 503 of the MBTA provides that a fiscal year taxpayer may elect to file its first MBT return (a short year return) by either reporting business income and modified gross receipts as if the MBT were in effect on the first day of the taxpayer’s annual accounting period and prorating those numbers (the annual method), or by computing MBT liability based on actual business income and modified gross receipts for the portion of the accounting period in which the MBT was actually in effect (the actual method). MCL 208.1503.

Under the MBTA, “taxpayer” is defined to mean either a person or a unitary business group. MCL 208.1117(6). Thus, in the case of a unitary business group filing a combined return under section 511, the filing method election permitted by section 503 is applicable to the group as a whole, and not to the group’s members individually. A unitary business group will file its combined return using the tax year of the group’s designated member. If the designated member is a calendar year taxpayer, section 503, which allows a choice of filing methods for *fiscal year* taxpayers, will be inapplicable to the group. Calendar year filers use the actual method; therefore, if the designated member is a calendar year filer, all members of the unitary business group will be required to use the actual method.

If the designated member is a fiscal year taxpayer, however, the designated member must choose one of the two filing methods available under section 503, consistent with the choice made for its final individual return under the SBT. All other members of the unitary business group must then conform to the method chosen by the designated member. In some cases, this

may mean that an individual member of a unitary business group that is a fiscal year filer will have to calculate its MBT tax bases using a method different than the one that it used in filing its final short period SBT return (if, for example, the member did not realize that it would be a member of a unitary business group under the MBT). Because the Department has required that filing methods be consistent between a fiscal filer's final short period SBT return and its initial short period MBT return, such group members will be required to amend their final SBT returns so that their filing methods are consistent. RAB 2007-5.

If the various fiscal year unitary business group members have different year ends, it will be necessary for each such group member to calculate its own section 503(a) ratio for purposes of annualization, based upon the number of months in its own short period.

U48. How does a unitary business group register under the MBT?

The designated member of a unitary business group must register with the Department for the MBT. "Designated member" means a member of a unitary business group that has nexus with Michigan under MCL 208.1200 and that will file the combined return required under MCL 208.1511 for the unitary business group. If the member that owns or controls the other members of the unitary business group has nexus with Michigan, then that controlling member must be the designated member. Otherwise, the designated member can be any member of the unitary business group with nexus. The designated member must remain the same every year unless the designated member ceases to be a member of the unitary business group or the controlling member engages in activity in Michigan that subjects that member to nexus.

If the designated member was registered under the SBT, then it will automatically be registered under the MBT. If the designated member was not registered under the SBT, the designated member must register with the Department using Form 518, *Complete Registration Booklet*, or online at www.michigan.gov/businessstaxes.

MBT returns must be filed under the designated member's FEIN. All members of the unitary group must be listed on the group's annual return.

Estimated payments for a unitary business group under the MBT must be made by the designated member on behalf of the unitary business group. Estimates filed and paid separately by members other than the designated member will be consolidated and applied to the unitary business group by the Department, so long as the combined annual return filed by the designated member includes a complete and accurate schedule of the unitary business group members. Carryforwards generated on separately filed SBT returns will also be consolidated and applied to the MBT unitary business group based on the schedule supplied with the MBT return.

U49. Three entities, an operating farm, a trucking company, and a rental company, meet the "more than 50% ownership" test for a unitary business group. The farm pays rent to the rental company for the use of the farm land, and pays the trucking company to ship its goods. Without the farm, which is subject to the agricultural exemption, the other two entities do not have a "flow of value" between them. Are the three entities a unitary business group? If so, and the farm does not file because of the agricultural exemption, are the receipts received by the other two entities from the farm eliminated as intercompany transactions?

Section 207(d) of the MBT, rather than providing a blanket exemption for an entity engaged in the production of agricultural goods, instead exempts from the MBT "[t]hat portion of the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods." MCL 208.1207(d). Thus, an entity whose primary activity is commercial farming is exempt from the MBT only to the extent that its tax base is attributable to the production of agricultural goods. In other words, the revenue from any other non-agricultural

goods producing activities conducted by the farming entity (for example, income from an on-site produce stand at which the farm's agricultural products are sold at retail) will remain in the farming entity's tax base and be subject to the MBT. The exemption provided by section 207(d) is not one that exempts the farming entity from all MBT liability or that automatically releases it from the obligation of filing an MBT return.

The agricultural exemption is, in essence, an adjustment to a taxpayer's MBT tax base. Because the term "taxpayer" under the MBT includes a unitary business group, MCL 208.1117(5), the determination whether a group of entities constitutes a unitary business group must be made at the outset, before the taxpayer's tax base is calculated. The MBT defines a unitary business group, in part, as a group of U.S. persons, one of which owns or controls, directly or indirectly, more than 50% of the ownership interests with voting or similar rights of the other U.S. persons, and whose business activities or operations (i) result in a flow of value between the members or (ii) are integrated with, dependent upon, or contribute to each other. MCL 208.1117(6). Thus, to constitute a unitary business group, the three entities in the example must meet *both* the ownership test *and* one of the two relationship tests. If the three entities satisfy both tests, they form a unitary business group, regardless of the applicability of the agricultural exemption.

A unitary business group files a single, combined MBT return which includes all members of the unitary business group. MCL 208.1511. Assuming that the three entities in the example do comprise a unitary business group, in preparing its return, each member of the group would first calculate its individual business income and modified gross receipts tax bases. The farm entity member would subtract from its tax bases the portion of each base that is related to its production of agricultural goods. MCL 208.1207(d). Each group member must then eliminate from its tax bases all intercompany transactions. MCL 208.1511. In the example given, this step would eliminate both the income received by the trucking company and the rental income received by the rental company, since all of the underlying transactions would have taken place between members of the unitary business group. The unitary business group (the taxpayer) would then calculate its business income and modified gross receipts tax bases by combining the tax bases of the group's individual members. The group's tax bases would then be allocated or apportioned, and the amount allocated or apportioned to Michigan will be subject to the MBT. If the unitary business group has apportioned or allocated gross receipts of less than \$350,000, the group will not be required to file a return or pay the tax imposed by the MBT. MCL 208.1505(1).

U50. Can nonstock nonprofit organizations be included in a unitary business group?

Yes. Under the MBT, a unitary business group is a taxpayer that consists of:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations. [MCL 208.1117(6).]

So long as the control and relationship tests are satisfied, a tax exempt organization, including a nonstock nonprofit organization, can be part of a unitary business group. In the case of the control test and nonstock nonprofit organizations, one person controls more than 50% of the ownership interests with voting or comparable rights of the nonstock nonprofit organization if more than 50% of the directors or trustees of that organization are either representatives of or controlled by the parent organization.

U51. Would a group of companies who have a flow of value between them but are owned by two unrelated persons, each owning 50%, be considered a unitary business group?

Yes. To meet the definition of a unitary business group in the Michigan Business Tax Act (MBTA) the U.S. persons, other than foreign operating entities, which cannot be included in the group, must pass a control test and 1 of 2 relationship tests. MCL 208.1117(6). The control test requires that one of the U.S. persons own or control, directly or indirectly, more than 50% of the ownership interests with voting rights or similar rights of the other U.S. persons. MCL 208.1117(6).

For purposes of MBTA section 117(6), the Department will use as guidance attribution rules expressed in IRC § 318 or analogous authority to determine indirect or constructive ownership and control. While IRC § 318 specifically pertains to corporate stock ownership, the Department will apply its principles to all forms of entities subject to the MBT.

In the case of a brother-sister set of corporations, for example, each owned by 2 unrelated individuals, the corporations will satisfy the control test under MCL 208.1117. Under IRC 318(a)(3)(C), one corporation is the indirect owner of 100% of the ownership interests in the other. However, the brother-sister corporations will not comprise a unitary business group unless the corporations also satisfy one of the relationship tests.

U52. If five or fewer persons who are unrelated individuals, estates or trusts own a controlling interest in a brother-sister group of entities, will that satisfy the control test for purposes of qualifying as a unitary business group?

It depends on the type of entities in the brother-sister group of entities.

Under the SBT, controlled groups and entities under common control were generally defined to include situations where the same five or fewer unrelated individuals, estates or trusts owned a controlling interest in two or more entities taking into account the ownership of each such person only to the extent such ownership is identical with respect to such entity. See, e.g., RAB 1989-48. However, under the MBT, a unitary business group is:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations. [MCL 208.1117(6).]

The Department will follow IRC 318 or analogous authority to determine indirect, or constructive, ownership and control, except that the Department will apply IRC 318 to all ownership interests. The attribution rules of IRC 318 vary depending on whether ownership and control is attributed to or from a corporation, partnership, trust, or estate.

For corporations, so long as none of the five or fewer unrelated individuals, estates or trusts own more than 50% of the brother-sister group of corporations, or no two individuals, estates or trusts own 50% each, then the unitary business group control test under the MBT will not be satisfied. Under IRC 318(a)(3)(C), a corporation will only be deemed to own the stock of any shareholder if the shareholder owns 50% or more of the stock in that corporation.

Example: Alice, Bernice, Carol, Donna, Eunice each own 20% of Corporations A and B. Neither

Corporation A nor Corporation B will have indirect control or ownership of the other through IRC 318 since none of the shareholders owns 50% or more of either corporation. The MBT unitary business group control test fails.

In contrast, for partnerships, so long as any group of individuals, estates or trusts own more than 50% combined of the brother-sister group of partnerships, then the unitary business group control test under the MBT will be satisfied. Under IRC 318(a)(3)(A) as applied to the MBT, a partnership is deemed to own the ownership interests owned by any of its partners.

Example: Al, Brett, Carl, Dave, and Ed each own 20% partnership interests in Partnerships Y and Z. Under IRC 318, Partnership Y indirectly owns and controls 100% of Partnership Z (and *vice versa*) since Partnership Y is deemed to own all the partnership interests owned by Al, Brett, Carl, Dave, and Ed (which totals 100% of Partnership Z). The MBT unitary business group control test is met.

U53. In applying the agricultural exemption contained in the Michigan Business Tax Act (MBTA) at MCL 208.1207(1)(d) to a unitary business group (UBG), is the primary activity test to qualify for the exemption performed at the member entity level or group-wide level?

The primary activity test, which is the determination whether an entity's farm activity exceeds its non-farm activity to qualify as a person whose primary activity is the production of agricultural goods, is performed at the member entity level in a UBG.

Section 207(1)(d) contains the same language as the section that supplied the agricultural exemption in the Single Business Tax Act (SBTA), MCL 208.35(1)(h). Section 207(1) directs that:

[t]he following are exempt from the tax imposed by this act:

(d) That portion of the tax base attributable to the production of agricultural goods by a person whose primary activity is the production of agricultural goods. . . .

As the language granting the agricultural exemption in the MBTA repeats the section granting the agricultural exemption in the SBTA, guidance can be obtained from Revenue Administrative Bulletin (RAB) 1989-47, which explained the exemption for the Single Business Tax. RAB 198947 directs that, "The agricultural production exemption is not an exemption for the person, but is an exemption for the activity of producing agricultural goods." In a UBG, the activity of producing agricultural goods is conducted at the member-entity level. Thus, the primary activity test is performed at the member-entity level.

U54. Financial Institutions pay tax under the MBT on net capital. Computation of this tax base requires a financial institution to average the past five years of net equity with certain deductions. How does a unitary business group of financial institutions perform this calculation for entity members that have not been a part of the UBG for five years but became members of the group sometime within the five year look-back period?

The term "financial institution" includes a unitary business group of financial institutions. MCL 208.1261(f). A financial institution must compute the current tax year tax base by taking a five year average of net capital. MCL 208.1265(2). For a UBG of financial institutions each member entity of the group must compute net capital, using the five year average, individually. Instructions for Form 4580, MBT Unitary Business Group Combined Filing Schedule. The group then sums the results of the entities' calculations to reach net capital for the group. *Id.* This requirement applies equally to the first year of the MBT, when no members of a UBG of financial institutions will have been members for five years, as it does to tax years ten years out from the first year. Once a member entity is considered a part of a UBG of financial institutions it must compute its

individual net equity in accordance with this requirement. This means that an entity that was newly added to the UBG will compute its net capital by using the average of five years of net capital and then adding this result to the results of the other member entities of the group. A shorter look-back period may apply if the new UBG member has not itself been in existence for five years. MCL 208.1265(2).

U55. How is the book-tax deduction to the business income tax base affected if the various members of a unitary business group each have and report a book-tax difference on Form 4593 with the initial required MBT return and the unitary business group's (UBG) membership later changes?

MCL 208.1201(2)(i) provides a future deduction to a taxpayer's business income tax base, calculated as the lesser of the taxpayer's book-tax difference for the first fiscal period ending after July 12, 2007 or the taxpayer's net deferred tax liability as computed in accordance with generally accepted accounting principles. MCL 208.1201(2)(i)-(3). The deduction will be claimed by deducting a percentage of this figure beginning in the 2015 tax year. MCL 208.1201(2)(i).

The deduction (phased in over 15 years) equals the lesser of either the taxpayer's book-tax difference for the stated fiscal period *or* the taxpayer's net deferred tax liability, as computed in accordance with GAAP. Therefore, both the book-tax calculation and the net deferred tax liability are necessary to compute the deduction to business income. Thus, when UBG members depart or arrive they must consider both the book-tax difference and the net deferred tax liability.

In the instance of a member leaving the group, the departing member will leave the group with its individually calculated book-tax number as reported on Form 4593 with the UBG's initial MBT return. Likewise, the departing member leaves the group with its share of the net deferred tax liability. If the group members calculated this amount individually then the departing member would simply leave the group with its individual amount. If the group calculated the net deferred tax liability only at the group level then the departing member must figure its pro rata share of the amount, computed as if the member had been a single entity filing a stand alone return when the liability was booked.

A new member which calculated and timely reported its own book-tax difference as well as calculated its own net deferred tax liability is later added to a UBG that has calculated its own book-tax difference and net deferred liability for the group. The added member contributes its book-tax difference and its net deferred liability to those of the group. The group may use, in addition to the group's existing numbers, the book-tax difference and net deferred liability of the added member which would have resulted had the member remained a single entity.

U56. If the parties in a corporate acquisition are members of the same unitary business group, is the gain and expense eliminated as an intercompany transaction?

Under MCL 208.1511, "[e]ach United States person included in a unitary business group or included in a combined return shall be treated as a single person and all transactions between those persons included in the unitary business group shall be eliminated from the business income tax base, modified gross receipts tax base, and the apportionment formula under this act." "All transactions" includes intercompany stock or asset acquisitions. Gain or loss on intercompany transactions must be deferred until the time immediately preceding disposition of the property in question outside the unitary business group or when either party to the transaction ceases to be a member of the unitary business group.

U57. How must a unitary business group file its final MBT annual return in order to properly report the final MBT year of all its members?

The combined return is filed on the basis of the designated member's (DM) tax year. A combined return thus includes all member tax years that end with or within the tax year of the DM. All

taxpayers must file a final MBT return for the period ending December 31, 2011.¹ This is true regardless of whether the group will continue as a group for the 2012 tax year. A fiscal year taxpayer with a tax year ending after that date is considered to have two separate tax years: the first short tax year is for the part of fiscal year ending before January 1, 2012, and the second short tax year is for the part of the fiscal year beginning after December 31, 2011.² In order for the entire group to file as unitary for the final MBT tax year, the final MBT unitary return must contain all member tax years ending before January 1, 2012, including any short periods which may be created by operation of the statutory cut-off. In the instance where a member must include more than twelve months of activity with the group's final return, that member will file two Form 4580s, MBT UBG Combined Filing Schedule for Standard Members, to report its data.

Example 1. UBG consists of three members, DM A, Member B, and Member C. DM A is a calendar year taxpayer. Member B is a fiscal year taxpayer with a tax year of April 1 through March 31. Member C's tax year is October 1 through September 31. The final MBT return will contain:

- DM A's 2011 calendar year; filing one supporting schedule.
- Member B's full fiscal year ending March 31, 2011, and its short year ending December 31, 2011; filing two supporting schedules with the group's return.
- Member C's full fiscal year ending September 30, 2011, and its short year ending December 31, 2011; filing two supporting schedules with the group's return.

Example 2. Same facts as Example 1, except DM A has a fiscal year ending July 31, 2011. The UBG's tax year will end July 31 and its annual return will be due November 30, 2011. That combined return for the UBG will include DM A's fiscal year ending July 31, 2011, Member B's fiscal year ending March 31, 2011, and Member C's fiscal year ending September 30, 2010.

In addition, because all three members are required to report a short state tax year ending December 31, 2011, this group must file an additional return for that end date, which will include:

- DM A's short year ending December 31, 2011.
- Member B's short year ending December 31, 2011.
- Member C's full fiscal year ending September 30, 2011, and a short year ending December 31, 2011; filing two supporting schedules.

U58. Are controlled foreign corporations ("CFC's") under IRC 957 taxpayers under the MBT? Can controlled foreign corporations be members of a unitary business group? What if the controlled foreign corporation is a disregarded entity of a U.S. parent?

CFC's as Taxpayers. Under the MBT, taxpayer means "a person or a unitary business group liable for a tax, interest, or penalty." MCL 208.1117(5). "Person" means "an individual, firm, bank, financial institution, insurance company, limited partnership, limited liability partnership, copartnership, partnership, joint venture, association, corporation, subchapter S corporation, limited liability company, receiver, estate, trust, or any other group or combination of groups acting as a unit." MCL 208.1113(3). Other than the definition of unitary business group under MCL 208.1117, which is limited to U.S. persons, the MBT does not distinguish between foreign and U.S. persons. Thus, controlled foreign corporations are taxpayers under the MBT.

¹ MCL 208.1117(4).

² Id.

CFC's as Members of a Unitary Business Group. A unitary business group is defined, in part, as:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons [MCL 208.1117(6) (emphasis added).]

"United States person" means "that term as defined in [IRC] 7701(a)(30)." MCL 208.117(7). Under IRC 7701(a)(30), "United States person" means:

- (A) a citizen or resident of the United States,
- (B) a domestic partnership,
- (C) a domestic corporation,
- (D) any estate (other than a foreign estate, within the meaning, of paragraph (31)), and
- (E) (E) any trust if -
 - (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and
 - (ii) one or more United States persons have the authority to control all substantial decisions of the trust. [IRC 7701(a)(30).]

A controlled foreign corporation means:

any foreign corporation if more than 50 percent of –

- (1) the total combined voting power of all classes of stock of such corporation entitled to vote, or
- (2) the total value of the stock of such corporation, is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b) , by United States shareholders on any day during the taxable year of such foreign corporation. [IRC 957(a).]

As a foreign corporation, a controlled foreign corporation is not a U.S. person and is thus excluded from the definition of unitary business group under the MBT.

CFC's as Disregarded Subsidiary of U.S. Parent. A controlled foreign corporation that is a disregarded entity for federal income tax purposes is classified as a disregarded entity for MBT purposes. MCL 208.1512. That is, the disregarded entity is treated as a branch or division of its owner and will be included in a unitary business group as part of its owner if the owner is a member of a unitary business group. However, a controlled foreign corporation that is a disregarded entity for federal income tax purposes that filed separate from its owner under MCL 208.1512(2) or (3) is treated as a person separate from its owner for MBT purposes. Therefore, the controlled foreign corporation that files separate from its owner is a foreign person and would not be includable in any unitary business group.

U59. If you are an entity within the unitary group that does not have nexus without application of the unitary principal, are your shareholders liable for Michigan personal income tax?

No. If the (flow through) entity standing alone lacks nexus with the State of Michigan under the Due Process and Commerce Clauses of the U.S. Constitution, or under the statutory jurisdictional standards for activities protected under P.L. 86-272, the shareholders, partners, or other individual owners are not subject to Michigan income tax on their share of profits from the business activity. The Michigan Income Tax Act, 1967 P.A. 281, MCL 206.1 - 206.532, does not provide for unitary groups or combined reporting with regard to personal income taxes, and apportionment must be determined on a separate entity basis. For purposes of this

determination, separate entities do not include entities disregarded for federal tax income purposes, such as federal Qualified Subchapter S Subsidiaries (Q-Subs) or unincorporated single member limited liability companies (SMLLCs). Under MCL 208.1512, entities disregarded for federal income tax purposes are classified as disregarded for MBT purposes, except for certain exceptions described in the Department's *Notice to Taxpayers Regarding Federally Disregarded Entities and the Michigan Business Tax*, issued January 26, 2012.

U60. Is an individual a member of a unitary business group with the entities in which the individual has a controlling interest?

It depends. Under the MBT, a unitary business group is:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations. [MCL 208.1117(6).]

An individual that owns a controlling interest in one or more entities but is not otherwise engaged in a trade or business will have neither business income nor gross receipts under the MBT. MCL 208.1105, 208.1111. Furthermore, an individual not engaged in a trade or business has no business activities or operations which would result in a flow of value with, or would be integrated with, dependent upon, or contribute to, the entities in which the individual owns a controlling interest. Thus, an individual not engaged in a trade or business is not unitary with the entities in which that individual has a controlling interest.

On the other hand, an individual that is a sole proprietor or owner of a federally disregarded entity, which under MCL 208.1512 is classified as a disregarded entity under MBT, or is otherwise engaged in a trade or business resulting in business income or gross receipts under the MBT, may be unitary with the entities in which that individual has a controlling interest if the individual has business activities or operations (1) which result in a flow of value between or among persons included in the unitary business group or (2) that are integrated with, are dependent upon, or contribute to each other. MCL 208.1117(6).

U61. Are foreign entities includable in unitary business group? What if the foreign entity is the single member of a domestic single member limited liability company disregarded for federal tax purposes?

A unitary business group is defined - in part - as:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons . . . [MCL 208.1117(6) (emphasis added).]

"United States person" means "that term as defined in [IRC] 7701(a)(30)." MCL 208.117(7). Under IRC 7701(a)(30), "United States person" means:

- (A) a citizen or resident of the United States,
- (B) a domestic partnership,
- (C) a domestic corporation,

- (D) any estate (other than a foreign estate, within the meaning, of paragraph (31)), and
- (E) any trust if-
 - (i) a court within the United States is able to exercise primary supervision over the administration of the trust, and
 - (ii) one or more United States persons have the authority to control all substantial decisions of the trust. [IRC 7701(a)(30).]

A partnership or corporation is "domestic" when that entity is "created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations." IRC 7701(a)(4).

In other words, a foreign entity is not a U.S. person and is therefore excluded from unitary business groups. Similarly, foreign operating entities are also excluded from unitary business groups under the MBT. "Foreign operating entity" means a U.S. person that:

- (a) Would otherwise be a part of a unitary business group that has at least 1 person included in the unitary business group that is taxable in this state.
- (b) Has substantial operations outside the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of the foregoing.
- (c) At least 80% of its income is active foreign business income as defined in section 861(c)(1)(B) of the Internal Revenue Code. [MCL 208.1109(5).]

A foreign entity that is the single member of a domestic limited liability company disregarded for federal income tax purposes would likewise not be included in a unitary business group. Under MCL 208.1512, an entity that is disregarded for federal income tax purposes is classified as a disregarded entity for MBT purposes. That is, the disregarded entity is treated as a branch or division of its owner and will be included in a unitary business group as part of its owner if the owner is a member of a unitary business group. Since a foreign entity is not a U.S. person and, thus, may not be included in a unitary business group, the domestic disregarded entity treated as a branch or division of the foreign entity owner would likewise not be includible in a unitary business group.

U62. A dental practice organized as a sole proprietorship became a professional limited liability company ("PLLC") effective January 1, 2008. For federal income tax purposes, the PLLC is a disregarded entity and the member reports his income as a sole proprietor on federal schedule C.

Can the owner of the dental practice continue to file as a sole proprietor for Michigan individual and MBT purposes?

The owner or single member of the PLLC also owns the building the PLLC uses for the dental practice, and effective January 1, 2008, will be renting the building to the PLLC. The owner and spouse also own an additional rental property. Should the rental income be combined with the PLLC income for MBT purposes, or should the PLLC and rental activity each be separately reported?

A group of businesses that meets the definition of unitary group is a taxpayer and is required to file a combined return for MBT. Under the MBT, a unitary business group is defined in section 117 (MCL 208.1117(6)) as:

a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations. [MCL 208.1117(6).]

A single member PLLC that is a disregarded entity for federal income tax purposes is considered a sole proprietorship and similarly classified as a disregarded entity for Michigan Business Tax purposes under, MCL 208.1512(1). The single member PLLC also may be unitary with any other entities in which that individual owner has a controlling interest if the individual has business activities or operations (1) which result in a flow of value between or among persons included in the unitary business group or (2) that are integrated with, are dependent upon, or contribute to each other. MCL 208.1117(6).

In the case of an individual who owns and leases an office building or any other real or tangible property to a sole proprietorship, single member limited liability company, or any other business entity in which he or she has a controlling interest (greater than a 50% ownership interest), the business activity and rental activity will constitute a unitary group under MCL 208.1117 because the individual owns a controlling interest in each activity and there is a flow of value between the business activity and the rental activity, and they are integrated with, dependent upon, and contribute to each other.

If the individual owns another rental property that is not leased or rented to the business entity owned by the individual, the rental property will be part of the unitary group if there is a flow of value between the activities or if they are integrated with, dependent upon, and contribute to each other. As a general rule, rental properties owned and managed by the same individual owner will be integrated with, dependent upon, and contribute to each other, and therefore be considered a unitary group under the MBT.

For purposes of these ownership requirements, property owned by a spouse (other than spouses who are legally separated under a decree of divorce or separate maintenance) is deemed to be owned by the other spouse and vice versa.

U63. Can a UBG with one or more fiscal year members make the election between the actual and annual method for calculating its final MBT return?

Yes, if the group's designated member (DM) is a fiscal year filer and the taxpayer continues under the CIT or the MBT after December 31, 2011.

All taxpayers must file an MBT return for the period ending December 31, 2011. MCL 208.1117(4). A fiscal year taxpayer with a tax year ending after that date is considered to have two separate tax years: the first short tax year is the part of the fiscal year ending December 31, 2011, and the second short tax year is for the part of the fiscal year beginning January 1, 2012. MCL 208.1117(4).

Fiscal year taxpayers continuing to the CIT or making the MBT election may choose between two methods of calculating the short period return ending December 31, 2011, and the return beginning January 1, 2012:

1. Annual - The tax is computed as if the relevant tax was effective on the first day of the taxpayer's annual accounting period and the amount computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's short period tax year and the denominator of which is the number of months in the taxpayer's annual accounting period (typically 12).
2. Actual - The tax is computed by determining the tax base in the short period tax year in accordance with an accounting method satisfactory to the department that reflects the actual tax base attributable to the period. The method of accounting used in prior fiscal years will be assumed to reflect the actual tax base attributable to the period. MCL 208.1503; MCL 206.683.

The taxpayer must use the same method for its short period return ending December 31, 2011, and for its first CIT or MBT election return. MCL 208.1503; MCL 206.683.

If the taxpayer will not continue under the CIT or the MBT after December 31, 2011, it may use only the actual method for its short period return ending December 31, 2011.

For a unitary business group, the tax year of the group is the tax year of the DM. If the DM is a fiscal year filer, it will choose between the annual and actual methods and this choice will apply to all group members. All members of the UBG that continue as a group into the CIT or that make the MBT election must file consistent with the method chosen for the short period return ending December 31, 2011. If the DM is a calendar year filer, or will not continue as a taxpayer, the group must file using the actual method. MCL 208.1503; MCL 206.683.

If a member of a UBG will be a separate filer beginning January 1, 2012, that member is statutorily permitted the choice between the annual and actual methods on its first CIT return; regardless of the choice made by the member's previous UBG. MCL 206.683.

If a member was a separate filer for the period ending December 31, 2011, and joins a UBG for the first CIT return, that member should amend its short period return ending December 31, 2011, to use the same method used by the group. If, however, the member is switching groups from the period ending December 31, 2011, to the first CIT return, the member should follow the general rule and use the filing choice of the group, regardless of the method used by the member's previous group.

If a member of the MBT UBG holds a certificated credit and the group makes the MBT election, the membership of the group will not change unless there is a change to relationship or control. MCL 208.1500; MCL 208.1680. The UBG electing the MBT must file its short period return for the period beginning January 1, 2012, using the same method used on the group's short period return ending December 31, 2011. MCL 208.1503(3).

Example 1. UBG consists of three members, DM Corporation A, Member Corporation B, and Member Partnership C. DM A is a fiscal year filer. It elects the annual method for the group. The group will file its final MBT return using the annual method. DM A and Member B will file their first CIT return, as a UBG, using the annual method.

Example 2. UBG consists of three members, DM Corporation A, Member Corporation B, and Member Partnership C. DM A is a calendar year taxpayer. The DM does not have the statutory authority to choose between the annual and actual methods. The group will file its final MBT return using the actual method. DM A and Member B will file their first CIT return as a UBG, using the actual method.