

MBT Appellate Court Decision Narrowing Scope of Unitary Ownership Test Now Final

Overview

On January 24, 2017, the Michigan Supreme Court issued an Order¹ refusing to hear the Michigan Department of Treasury's appeal request of the Michigan Court of Appeal's published 2016 decision in *LaBelle Management, Inc. v. Michigan Dep't of Treasury*. As a result, the ownership test for purposes of determining if a unitary business group exists - for both the Michigan Business Tax ("MBT") and Michigan Corporate Income Tax² ("CIT") - and specifically the interpretation of the term "indirectly," does not extend to "constructive" ownership situations, such as those that exist under IRC § 318 attribution rules.

In this Tax Alert we briefly summarize the Michigan Court of Appeal's decision in *LaBelle Management, Inc. v. Michigan Dep't of Treasury*³ and provide some taxpayer considerations.

Factual Background.

For the subject MBT tax years, LaBelle Management, Inc. ("Taxpayer"), a Michigan corporation, was principally owned by two brothers—neither of whom owned more than 50 percent of Taxpayer's common stock. Pixie, Inc. ("Pixie") and LaBelle Limited Partnership ("LaBelle LP") were also owned by the two brothers, however, neither brother held more than a 50 percent common stock ownership in Pixie, or more than a 50 percent partnership interest in LaBelle LP. Taxpayer filed a separate MBT return rather than filing as a member of a unitary MBT return with Pixie and LaBelle LP. Upon audit, the Michigan Department of Treasury ("Treasury") sought to require the three entities to file as a unitary business group, contending that the three related entities, all owned by the two brothers, *indirectly owned each other*—satisfying the "indirect" control element of the MBT's definition of "unitary business group."⁴

Michigan Court of Appeal's decision – "indirectly" does not mean "constructive" ownership

In its April 2016 decision, the Michigan Court of Appeals considered Treasury's contention that constructive ownership, as used in various federal contexts, was sufficient to satisfy the MBT statutory requirement that one unitary member own directly or indirectly, more than 50 percent of the other related member(s). The Michigan Court of Appeals rejected this argument, however, and held, "indirect ownership in MCL 208.1117(6) means ownership *through an intermediary*, not ownership by operation of legal fiction, as [Treasury] urges."⁵ Because the three related entities owned by the two brothers were not owned through an intermediary or otherwise, the three entities did not constitute a unitary business group for MBT purposes.

Considerations

In light of the Michigan Supreme Court's refusal to take up the appeal of *Labelle Management*, the Michigan Department of Treasury issued a "Notice to Taxpayers" on February 28, 2017, noting that the Michigan Court of Appeals decision is now "binding precedent" and rescinding elements of Revenue Administrative Bulletin 2010-1 and 2013-1 which had previously provided that the requisite ownership/control existed between brother-sister affiliated companies.⁶ In this Notice, Treasury also

¹ *LaBelle Management, Inc. v. Michigan Dep't of Treasury*, Jan. 24, 2017, Order Denying Application for Leave to Appeal (Mich. Supreme Court, SC No. 154016.), available [here](#).

² While the *Labelle Management* decision only considered the statutory definition of "unitary business group" for MBT purposes, the Michigan Corporate Income Tax definition of "unitary business group" is essentially identical in its reference to "owns or controls, directly or indirectly." MICH. COMP. LAWS § 206.611(6).

³ *LaBelle Management, Inc. v. Michigan Dep't of Treasury*, No. 324062 (Mich. Court of Appeals, published March 31, 2016) available [here](#). The appellate court's decision is discussed in more detail in our Multistate Tax Alert, dated April 7, 2016, available [here](#).

⁴ Treasury's conclusion was supported by its own administrative guidance, Revenue Administrative Bulletin 2010-1, "Unitary Business Group Control Test," which states that "Indirect ownership includes ownership through attribution...an ownership interest is indirectly owned by a person when that person constructively owns such an interest."

⁵ *Labelle Management* at 7. [Emphasis in quotation reflects text of opinion and was added by Michigan Court of Appeals.]

⁶ *Notice to Taxpayers Regarding Labelle Management Inc v Department of Treasury* (February 28, 2017), available [here](#).

External Multistate Tax Alert

states that the *Labelle Management* decision will be given “full retroactive effect and will apply it to all open years.”⁷ Taxpayers that have filed unitary MBT or unitary CIT returns should review their organizational structure and consider whether the Michigan Court of Appeal’s narrow interpretation of indirect ownership in *LaBelle Management* impacts their unitary filing group. Particular attention should be given to ownership structures involving affiliated domestic C corporations, with a common foreign parent and no common US parent.

Contacts:

If you have questions regarding the *LaBelle Management* decision or other Michigan tax matters, please contact any of the following Deloitte Tax professionals:

Pat Fitzgerald

Managing Director

Deloitte Tax LLP, Detroit
+1 313 396 3913
pfitzgerald@deloitte.com

Charles Wright

Senior Manager

Deloitte Tax LLP, Detroit
+1 313 396 5801
charleswright@deloitte.com

Ryan Johnson

Senior Manager

Deloitte Tax LLP, Detroit
+1 313 324 1147
ryancjohnson@deloitte.com

Melanie Hamilton

Senior Manager

Deloitte Tax LLP, Detroit
+1 313 396 3884
melhamilton@deloitte.com

Tom Cornett

Senior Manager

Deloitte Tax LLP, Detroit
+1 313 396 5808
tcornett@deloitte.com

For further information, visit our website at www.deloitte.com

Follow [@DeloitteTax](https://twitter.com/DeloitteTax)

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

As used in this document, “Deloitte” means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2017 Deloitte Development LLC. All rights reserved.

⁷ *Id.*