Reset Form

Issued under authority of Public Act 281 of 1967, as amended.

2014 MICHIGAN Schedule of Apportionment MI-1040H

Type or print in blue or black ink. Print numbers like this : 0123456789 - NOT like this: Ø 1 4 7
Attach to Form MI-1040.

Attachment 09

1. Owner's First Name	M.I.	Last Name	2. Owner's Full Social Security No. (Example: 123-45-6789)
			— —
3. Name of Business Entity			4. Federal Employer Identification No. (FEIN)

5. Combined Unitary Apportionment

☐ Check this box if you elect to combine the apportionment of business income (loss) from entities unitary with one another. If this box is checked, write the word "Unitary" in box 3 and leave box 4 blank. Also, complete Part 3 in addition to Parts 1 and 2.

NOTE: If you elect to use combined apportionment, you must use combined apportionment for every unitary group from which you receive income (loss).

PART 1: COMPUTATION OF SALES FACTOR FOR APPORTIONMENT PERCENTAGE

6. Michigan sales (see instructions regarding throwback sales) .... 6. .00

7. Total sales.. 7. .00

8. **Apportionment Percentage.** Divide line 6 by line 7. .... 8. %

PART 2: COMPUTATION OF INCOME ATTRIBUTABLE TO ANOTHER STATE(S)

9. Business income included in adjusted gross income that is subject to apportionment (include ordinary, portfolio, and all other business income from this business activity)......................... 9. .00

10. Multiply the amount on line 9 by the apportionment percentage on line 8. .... 10. .00

11. Income or loss attributable to another state(s). Subtract amount on line 10 from line 9. Enter here and on Schedule 1, line 13 (income) or line 4 (loss). Nonresidents and part-year residents: Include this amount on the appropriate line in column C of Schedule NR............................ 11. .00

PART 3: COMBINED APPORTIONMENT UNDER THE UNITARY BUSINESS PRINCIPLE

12. If you checked box 5 above, list below the entities unitary with one another for which you are combining apportionment. Attach a separate schedule showing your computations. If more than eight entities will be listed, attach additional Form(s) MI-1040H with "Unitary" on line 3 and lines 6 through 11 left blank.

Entity Name	Federal Employer Identification Number (FEIN)

+ 0000 2014 41 01 27 5

Instructions for Form MI-1040H, *Schedule of Apportionment*

Purpose

Business income from business activity that is taxable both within and outside Michigan is apportioned to Michigan for individual income tax (IIT) purposes using this form.

General Instructions

In order to determine if apportionment is required rather than allocation, a taxpayer must determine if the business activity causes the taxpayer's income to be subject to tax in both Michigan and another state. The Michigan Income Tax Act definition of "state" includes a foreign country.

A taxpayer's business income is taxable in another state if:

1. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, or

2. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether the state does or does not.

Michigan IIT uses the standards prescribed by federal Public Law (P.L.) 86-272 to determine whether another state has jurisdiction to subject the taxpayer to a net income tax.

If apportioned business capital gains (losses) are reported on line 3 and/or line 8 of Form MI-1040D, do not include those amounts on line 9 of this form.

A separate Form MI-1040H should be used for each business activity that requires apportionment. If you have more than one MI-1040H and are a Michigan resident, do not net income and losses from multiple forms together. Instead, net losses on line 11 with other losses on line 11 and report the total losses from other states on Schedule 1, line 4; net income on line 11 with other income on line 11 and report total income from other states on Schedule 1, line 13. Nonresidents with more than one Form MI-1040H should net income and losses from lines 11 together before recording the amount on Schedule NR, column C.

Sales Factor

Business income subject to apportionment is sourced to Michigan by applying a sales factor. To compute the sales factor, divide the total sales in Michigan during the tax year by the total sales everywhere during the tax year.

"Sales" includes gross receipts from sales of tangible property, rental of property and providing of services that constitute business activity. Exclude all receipts of nonbusiness income.

Sales of tangible personal property are in Michigan if:

1. The property is shipped or delivered to a purchaser (other than the United States government) within Michigan regardless of the free on board (F.O.B.) point or other conditions of the sale, or

2. The property is shipped from an office, store, warehouse, factory or other place of storage in Michigan and the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

NOTE: The numerator of the sales factor for individual income tax may include "throwback sales." Throwback sales are sales of tangible personal property that originate in Michigan made to a purchaser in another state or country, and are "thrown back" to the numerator as Michigan sales because they are not taxable by the other state. Throwback sales follow federal P.L. 86-272 standards; the business must have physical presence in the other state or activity beyond solicitation of sales in order to exclude sales into another state or country from the numerator.

Sales of other than tangible personal property (e.g., services) are in Michigan if:

1. The business activity is performed in Michigan, or

2. The business activity is performed both in Michigan and in another state(s), but based on cost of performance, a greater proportion of the business activity is performed in Michigan.

There are special apportionment formulas for transportation companies and other authorized taxpayers. Those formulas are identified in Chapter 3 of the Michigan Income Tax Act.

Combined Apportionment Under the Unitary Business Principle

In 2013, the Michigan Supreme Court held that combined apportionment under the unitary business principle may be used to calculate IIT taxable income at the election of the taxpayer. *Malpass v. Department of Treasury, 494 Mich 237 (2013)*. Treasury previously applied the unitary business principle to each discrete legal entity's business operations. A taxpayer now has the option to apportion each discrete legal entity's income (loss) separately or to combine apportionment when entities are unitary with one another.

Entities that are unitary with one another have a flow of value between their various operations. An individual may elect to combine apportionment when the business operations show:

- Economic realities
- Functional integration
- Centralized management
- Economies of scale
- Substantial mutual interdependence.

These factors are not exhaustive or exclusive and the ability to elect combined apportionment will depend on the totality of the circumstances.

Unlike the Corporate Income Tax, there is no statutory right to eliminate intercompany transactions and there is no "water's edge."

The holding by the Michigan Supreme Court in the *Malpass* case is retroactive. Amended returns are required if business income is subject to apportionment and the taxpayer elects to apply the combined method to a year open to the statute of limitations.