

# ***Business Acquisition Overview Including Bankruptcy Sales***

*Detroit Chinese Business Association  
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# Market Snapshot: A Good Time to Buy?

- Q3 2008 US Valuations 9.7x EBITDA; Q3 2009 US Valuations down to 5.9x EBITDA, but firming\*
- Distressed M & A up 2x in 2009 in number of deals (551) and 5x in dollar value (\$71B) through Q3
- Non-US purchasers of US companies up; global buyers were 7.4% of market in Q3 by value\*
- Deloitte Corporate Finance suggests that sellers believe things will not get much better in the near future and buyers believe they will not get any worse

\*Source: Thomson Financial, S & P

# Strategic Planning – the Starting Point

## Analysis of Strengths and Weaknesses Leads to an Acquisition Strategy

### Market Intensification

Horizontal Integration - head on competitor

Market Extension – new geographic area

### Vertical Integration

Backward – Supplier

Forward – Customer

### Diversification

New Product – Same Customers

New Product – New Customers

Complements or Supplements

# Finding Targets

- Search and Screen Program
- Brokers, Finders and other intermediaries

# Negotiated Sale

- Select and contact targets
- Execute non-disclosure agreement
- Obtain seller's price
- Conduct financial due diligence, value target, and structure transaction
- Negotiate preliminary price and terms – letter of intent (LOI)
- HSR and regulatory filings
- Conduct thorough legal due diligence
- Negotiate final purchase documents
- Satisfy Contingencies
- Develop Integration Plan
- Close

# Competitive Sale (Controlled Auction)

- Non-disclosure agreement
- Confidential information memorandum
- Preliminary indication of interest
- Due diligence
- Final bids and purchase agreement markup
- Selection of buyer, negotiation of final documents
- Closing

# A Few Words on Negotiations

- Knowledge is leverage (DUE DILIGENCE)
- Have a plan – identify key issues and negotiators
- Know your walk-away conditions
- Listen/build trust
- Be creative – look for win-win solutions

# Structuring the Deal

## Asset Purchase

### Advantages

#### Non-tax

- Must do if a division or part of a company
- Assume only specified liabilities (some successor liabilities can't be avoided)

#### Tax

- Ability to step up basis of acquired assets

### Disadvantages

#### Non-tax

- Third-party consents may be unavailable or burdensome
- Regulatory approval more likely to be required
- Time consuming – Bulk Sales Act (not Michigan)

#### Tax

- Double tax to corporate sellers (unless NOLs)
- Real estate transfer taxes
- If NOLs or other tax benefits that would benefit buyer

# Structuring the Deal

## Stock Purchase

### Advantages

#### Non-tax

- Can possibly avoid consents

#### Tax

- No double tax to corporate sellers
- Good if seller has tax attributes that benefit buyer

### Disadvantages

#### Non-tax

- Assume all liabilities (can mitigate through indemnification)
- May be difficult if numerous shareholders

#### Tax

- No asset write-up (unless IRC 338 election)

Generally, the tax advantages to the buyer of an asset purchase will be less than the tax costs to the seller and its shareholders.

# Letter of Intent

- Nonbinding expression of price, structure and general terms (including non-competition and employment agreements), subject to due diligence and definitive purchase documents
- Binding provisions:
  - ✓ Access for due diligence/due diligence period
  - ✓ No shop/exclusive dealing and break-up fee
  - ✓ Continuing confidentiality/non-disclosure
  - ✓ Conduct of business
  - ✓ Costs
  - ✓ Termination

# Due Diligence

- In depth assessment of benefits and risks of the acquisition
- Extremely important
- Usually extensive, time consuming, and expensive
- Corporate
- Contracts
- Real and personal property
- Financial
- Tax
- Environmental
- Litigation
- HR/Labor
- Regulatory
- Insurance
- Antitrust

# Potential Regulatory Issues

## **Hart Scott Rodino (HSR)**

Size of person - \$130.3M AND \$13M assets or sales

Size of transaction -  $\geq$  \$65.2M

## **Foreign Investment and National Security Act (FINSA)**

Any merger, acquisition or takeover by or with any foreign person which could result in foreign control of an US person and that could affect US national security is subject to possible review by CFIUS

## **Regulated Industries**

Public Utilities

Telecommunications

Airlines

Railroads

Shipping

Banks and Financial Services

Insurance companies

# Purchase Agreement

Agreement to Sell/Buy

Assets or Stock

Exclusions

Consideration

- Fixed or formula
- Balance sheet or net working capital/adjustments
- Promissory Note
- Earnout
- Closing
- Representations and Warranties
- Covenants (before Closing/after Closing)
- Conditions Precedent
- Survival
- Termination
- Indemnification/Remedies
- General Provisions

# Ancillary Documents

Assignment (Stock/Assets)

Assumption

Bill of Sale

Employment Agreements

Non-competition/Non-solicitation Agreements

Release

Promissory Note and Security Agreement

Guaranty

Escrow Agreement

# Buying Assets in a Section 363 Bankruptcy Sale: An Overview

- Bankruptcy Court Approval Required
- Double auction process
  - ✓ First Auction – Purchase Agreement – Stalking Horse limited advance due diligence – access to data room
  - ✓ Notice and Hearing – opportunity for extensive due diligence by Stalking Horse limited due diligence/access to key customers and suppliers for other potential buyers
  - ✓ Second Auction (usually court supervised)
  - ✓ Sale Order
  - ✓ Closing

# Advantages

- Free and clear of liens and most liabilities
- No fraudulent transfer risk
- Good faith purchaser protection
- Price
- No bulk transfer liability (irrelevant in Michigan)
- Can bind non-consenting shareholders
- Can require non-consenting lenders to release liens
- Less due diligence asset-related liabilities

# Disadvantages

- Informal and subject to disruptions
- Public
- Court approval, timing, transaction costs
- Some liabilities cannot be eliminated, e.g. environmental, successor liability for certain tort claims such as products liability, and labor liabilities
- Buyers often assume certain specified liabilities such as key trade obligations
- Transfer of executory contracts and unexpired leases
  - ✓ Debtor must cure default or provide adequate assurance
  - ✓ Buyer must give adequate assurance of future performance
- Short due diligence
- Competitor access to due diligence – competitors may obtain a great deal of knowledge about acquired business
- Stalking Horse issues

# Due Diligence is CRITICAL

- Short time frame
- Minimal protection from representations, warranties and indemnifications
- Need to analyze executory contracts and unexpired leases
- Successor liability issues
- Intellectual property rights may be subject to many restrictions
- Buying a damaged business – need to truly examine how deeply damaged it is
- Insolvent businesses often have inadequate financial controls and records

# Thank You!

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# *Negotiations and Terms and Conditions of Purchase in the Automotive Industry*

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December 3, 2009*

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# Negotiations in U.S. Automotive Industry

- Lawyers are generally in the background providing ideas and drafts
- Lawyers directly involved if:
  - A party takes a hard line on a legal issue; e.g., Terms and Conditions
  - A party feels uncomfortable
  - A party is too busy
  - The issues are novel or complex, e.g., guaranteed minimums or amortization

- There is a natural reluctance to sellers to appear aggressive or overtly use its leverage against customers
- Buyers will threaten a loss of other business
- Leverage is used when Buyer is not economically strong

- A seller has leverage if:
  - It has significant IP protection, i.e., patents
  - There are limited sellers of the commodity, e.g., foundries
  - Buyer is being forced to resource quickly, e.g., supplier bankruptcy
  - The purchase order has not been accepted by Buyer
  - Seller is not dependent on Buyer
  - Seller has negotiated appropriate terms from beginning
- Leverage limited if Seller has signed Buyer's Terms and Conditions

- Good negotiations by seller include:
  - Experienced team – No panic
  - Knowledgeable as to Buyer's Terms and alternatives (e.g., termination for convenience)
  - Identification of key business issues (e.g., amortization)
  - Assessment of IP strength
  - Continued focus and assertion of key commercial and legal terms from beginning
  - Documenting terms in purchase order

- Stop Ship

- Used sparingly, serious repercussions possible

- First issue Demand for Adequate Assurance

- Must have reasonable grounds

- Provide opportunity to respond up to 30 days

- STOP performance while waiting?

- May take commercially reasonable action

# Buyer's Terms and Conditions of Purchase

This is a short form presentation on current automotive OEM Terms and Conditions of Purchase. This presentation is also relevant to Tier One Terms and Conditions of Purchase.

A complete comparative analysis of all major Automotive North American OEM Terms and Conditions of Purchase is available from Original Equipment Supplier Association for \$225.00 ([oesa.org](http://oesa.org))

# WHAT IS YOUR CONTRACT?

# Topics

- Is there a contract?
- Do Buyer's or Seller's Terms and Conditions govern?
- What is effect of Buyer's Terms and Conditions?
- What other documents apply?
- What relief is available?
- Trends?

# Is There A Contract?

- Need writing (or exception) and quantity (haunting)
- Further along time line, more likely a contract
- Start-----→End  
RFQ / Info / Quote / Nego / Award / SOP
- No specific contracting event required (Acts like a Duck)

# Do Buyer's Terms and Conditions Govern?

- Despite early questions, Terms and Conditions enforced (Judges like KISS)
- Terms and Conditions can be referenced to website
- Required written acceptance by Buyer (Ford, Nissan)

# What If No Written Acceptance of Terms and Conditions?

- Determined by general contract principles
- Offer and acceptance
- What is the offer (RFQ, Quote, Purchase Order)?
  - (Chrysler & Toyota – Purchase Order is offer; BMW contract formed by Seller's acceptance)

# “Battle of the Forms”

## Too Complex to Discuss Completely

- UCC default rules (e.g., IP) apply if there are conflicting terms in Seller’s and Buyer’s terms
- No battle if written agreement that Buyer’s Terms and Conditions apply
- Sellers should still reference their own Terms and Conditions of Sale in quotes (do you have Terms and Conditions of Sale?)
- Despite your best form drafting, keep martinis close

# What Are Other Contract Documents?

- Parallel universe (Sales/Purchasing and Engineering)
- Terms and Conditions reference other documents
- General Priority Rule – Terms and Conditions rule
- The Toyota Rule – whichever Toyota says
- Includes Purchase Order and documents referenced in Terms and Conditions and Purchase Order

# Examples of Other Contract Documents

- Program Award Documents (RFQ, Quote, Purchase Order, ECN, Tri-Partite Agreements, etc.)
- “Independent” Agreements can be cross-referenced (Confidentiality Agreement, Tooling Agreement, etc.)
- Program Management and Quality Documents (PPAP, ISO 9000)
- OESA Extraneous Document List (70)

# How Sellers Get Contractual Relief – Choose Your Battles

- Put it into Covisint comments
- Put it into Quotations
- Put it into Purchase Order or separate document (e.g., IP)
- Confirm authority and process (e.g., Ford Mr. Brown requirements)
- What for expiration dates

# Secondary Sources of Relief, Subject To Integration Clause

- Prior performance under current and other deals
- Waivers and termination of suspended enforcement
- Industry practices
- UCC, bankruptcy and other non-waivable law provisions
- But not reasonable expectations

# Trends – BMW, Chrysler, GM, Honda, Toyota, VW

- **Format**– Nissan remains the only OEM with Terms and Conditions in a form of a Master Supply Agreement. Toyota and Honda Terms and Conditions are in the form of an agreement without signatures
- **Length** – Toyota (27 small type pages), VW increases from 4 to 17, Chrysler, GM and Honda remain relatively short

# Usual Objectionable Clauses

- Termination for Convenience
- Licenses of Supplier I.P.
- Warranties and Remedies
- Tooling
- No Volume Guarantee

# Take Aways for Suppliers

- Buyer's Terms and Conditions effective - get relief in the Purchase Order or Special Agreements
- Train sales, purchasing and engineering in contract issue identification and management
- Separate "Contract" files for customer by general (e.g., EDI, Confidentiality, Supply Agreements) and by Purchase Order
- Update your own Terms and Conditions of Sale and use in Quotes
- Get Change Order for price and other modifications
- Document grounds for waiver and modification

# Thank You

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# *Key Tax Issues and Strategies In International Transactions*

*Detroit Chinese Business Association  
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**The author is not recommending any particular tax planning strategy, rather this is meant as an educational document. To that extent, this document does not constitute tax or legal advice. You should consult with tax and legal counsel regarding these matters. In order to comply with tax regulations, this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the tax laws of the United States, or promoting, marketing or recommending to another party any transaction or matter addressed in this communication.**

# International Transactions Hot Topics

**Goal:** Optimization of Worldwide Tax

**Hot Issues:**

- International Hybrid Instrument Transactions (or the Debt-Equity Characterization)
- International Hybrid Entities
- Foreign Tax Credit Generators
- Transfer Pricing
- Branch v. Subsidiary

# International Tax Structures

## Business Income Tax Systems:

- Worldwide
- Sourced to Country

Deferral or Look-Through of Profits earned  
in Foreign Subsidiaries

Tax Base to which Tax Rate is Applied

# International Tax Structures

## Tax Equalization / Elimination of Double Tax

- Foreign Tax Credits / Limitation Rules
- Tax Treaties

# International Tax Structures

## Corporate Residency

- Approaches
  - Incorporation – U.S. Approach
  - Central Management and Control – Many Foreign Jurisdictions
- Dual Residency
  - Treaty tie-breaker
  - No Treaty

# International Tax Structures

## Other Issues

- Transfer Pricing between Affiliated Entities
  - Concern over tax motivated pricing
  - Arm's length standards / unrelated willing buyer/willing seller
- Capitalization of Affiliated Entities / Debt v. Equity
- Allocation of Interest Expense – among activities in various countries
- Withholding at Source
- Reporting Obligations

# International Tax Structures

## Overview of the U.S. Tax System

- U.S. taxpayers subject to tax on worldwide income
- Deferral of profits earned by foreign corporate subsidiaries
- Corporations: Double level of tax
- Flow-Through Entities: Single level of tax (LLC, P/S, LP, S corporation)
- Foreign Branch / Division subject to tax similar to a U.S. corporation on “ECI”
- ECI v. Non-ECI
- Debt v. Equity
- U.S. Real Estate

# Income Tax Treaty Between The U.S. and PRC

Permanent Establishment (PE) or fixed place of business, including:

- place of management
- branch
- office
- factory
- workshop
- natural resource location
- construction site lasting more than 6 mos.

# Income Tax Treaty Between The U.S. and PRC

## Permanent Establishment Exceptions

- Use of facilities solely for storage display or delivery of merchandise
- The maintenance of a stock of goods or merchandise solely for the purpose of storage, display, delivery or processing by another enterprise
- The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, advertising, supplying information scientific research, or for the preparations relating to the placement of loans, or for similar activities which have a preparatory or auxiliary character
- Any combination of the above activities, provided that the total activity is of preparatory or auxiliary character

# Income Tax Treaty Between The U.S. and PRC

Dividends: Recipient country can tax; and source country can tax dividends at a rate not exceeding 10% provided that:

- Above rule not applicable if recipient has a PE in source country
- Tax resident in other country when profits derived in first country are repatriated back to first country or EC with a PE or fixed place in the first country

# Income Tax Treaty Between The U.S. and PRC

Interest: Taxable by the source country at a rate not exceeding 10%

Exceptions: Persons in contracting state that are exempt from interest withholding

- Government agencies
- Permanent establishment or performs independent personal services in the other state

# Income Tax Treaty Between The U.S. and PRC

Royalties: Taxable by source country not exceeding 10%

Capital Gains: No special rate on sale of real estate and equipment. Alienation of shares representing a 25% or more interest are taxable in the state in which the company whose shares are sold is resident.

# Income Tax Treaty Between The U.S. and PRC

## Other Items Covered:

- Management and administrative services
- Personal services
- Director fees
- Real estate
- Pension income

# APPENDIX

## U.S. and Michigan Tax Structures

# Available U.S. Business Structures

1. Corporation
2. Division
3. Limited Liability Company
4. Limited Partnership
5. General Partnership
6. Contractual Joint Venture

# U.S. Taxation of Income From Foreign Investment

Two approaches dependent on structure chosen

- Foreign person can use a U.S. domestic corporation to conduct U.S. activities (Non-Flow Through)
- Foreign person can operate U.S. activities through a “U.S. branch” when it chooses to use a partnership, limited liability company, joint venture or division to conduct U.S. activities (Flow Through)

# U.S. Taxation of U.S. Domestic Corporations

- All income less allowable deductions determines “taxable” income
- Taxable income subject to corporate tax rates
- Net operating loss (allowable deductions in excess of income) in a year can be carried back 2 years and forward 20 years (New Legislation allows carryback for 5 years in certain instances)
- Dividends paid to shareholders are not deductible by the U.S. domestic corporation but taxable to the shareholder (subject to certain exceptions) creating the U.S. Double Taxation System

# U.S. Taxation of U.S. Domestic Corporations

## Debt-Equity Requirements

- No mandatory minimum requirement
- Interest expense deduction limitations prevents taxable income reduction with “excess interest”
  - More than 1.5 / 1.0 ratio
  - “Disqualified Interest” paid to related person and not subject to full U.S. tax (30%)
  - “Disqualified Interest” limited to the interest expense (net) over 50% of adjusted taxable income

# U.S. Taxation of U.S. Domestic Corporations

## Applicable Tax Rates

### Taxable Income Rates

\$0 - \$50,000	15%
\$50,001 - \$75,000	25%
\$75,001 - \$10,000,000	34%
\$10,000,001 -	35%

### “Bubble Tax”

- Additional 5% for taxable income from \$100,001 to \$335,000: Flat rate at 34%
- Additional 3% for taxable income from \$15,000,001 - \$18,333,333: Flat rate at 35%

### Alternative Minimum Tax

- 25% / 28% on taxable income increased by certain preferences items

# U.S. Taxation Of Branch Operations

Income earned in the U.S. by a foreign corporation or non-resident alien is segregated in two broad categories

- Effectively Connected Income with a U.S. Trade or Business (ECI)
- Not Effectively Connected Income with a U.S. Trade or Business (Non-ECI)

# U.S. Taxation Of Branch Operations

## U.S. Taxation of ECI

- ECI less allowable deductions determines the amount of “taxable income”
- U.S. taxable income is taxed at the U.S. tax rates applicable to domestic corporations and U.S. residents

# U.S. Taxation Of Branch Operations

## U.S. Corporate Tax Rates Applicable to ECI

### Taxable Income Rates

\$0 - \$50,000	15%
\$50,001 - \$75,000	25%
\$75,001 - \$10,000,000	34%
\$10,000,001 -	35%

### “Bubble Tax”

- Additional 5% for taxable income from \$100,001 to \$335,000: Flat rate at 34%
- Additional 3% for taxable income from \$15,000,001 - \$18,333,333: Flat rate at 35%

### Alternative Minimum Tax

- 26% / 28% on taxable income increased by certain preferences items

# U.S. Taxation Of Branch Operations

Individual U.S. Rates Applicable to ECI for 2009 (Unmarried – different rate structures apply to other categories such as married filing a joint or combined return)

## Taxable Income Rate

\$0	-	\$8,350	10%
\$8,351	-	\$33,950	15%
\$33,951	-	\$82,250	25%
\$82,251	-	\$171,550	28%
\$171,551	-	\$372,950	33%
\$372,951	-		35%

Alternative Minimum Tax: 26% / 28%

Maximum Capital Gains Rate: 15%

Note: Certain rates scheduled to increase on January 1, 2010.

# U.S. Taxation Of Branch Operations

## Non-ECI Categories

- Interest
- Dividends
- Royalties
- Rents
- Salaries (unless ECI)
- Premiums
- Annuities
- Other Fixed or Determinable Annual or Period (FDAP) Gains, Profits and Income

# U.S. Taxation Of Branch Operations

- Non-ECI is subject to a flat 30% tax rate unless an in-force tax treaty applies a lower rate
- Payors of non-ECI are required to withhold the 30% or treaty rate on such income and remit to the United States Treasury on behalf of the foreign corporation or non-resident alien

# U.S. Taxation Of Branch Operations

## Decreased U.S. Investment with Effectively Connected Earnings and Profits (ECI)

- Subject to Branch Profits Tax of 30% or treaty rate
- Branch Profits Tax on “dividend equivalent amount”
- Purpose is to make similar to U.S. corporate subsidiary

# Special Treatment of U.S. Real Estate

(“FIRPTA Rules”)

- Typically holding or employing real estate is not considered a trade or business in the U.S.
- Gain from the sale by a foreign person of U.S. real estate is treated as ECI subjecting the gain to the ordinary income tax rates rather than capital gain rates
- Stock in a U.S. domestic corporation holding real estate owned by a foreign person is treated as a real property interest, therefore sale of stock is subject to U.S. ordinary tax rates

# U.S. Tax Rules

## Transfer Pricing

- Transactions between related parties must be priced at arm's length standards
- Treaty benefits based on properly set pricing
- Documentation of transactions and support for pricing is key to defend against IRS
- Large companies should have a formal economic analysis to support inter-company pricing
- Affects all related party transactions such as sales of goods and home office management and administrative charges
- Advance Pricing Agreements with the IRS can be obtained

# U.S. Tax Rules Foreign Currency

- Actual gains and losses on transactions due to change of currency rates are realized for tax purposes
- Translation gains and losses for reporting purposes are not realized for tax purposes

# State Taxation

- Many states tax corporations doing business in their state on the income “apportioned” or “allocated” to a state
- A taxpayer must meet the “nexus” standard of a state
- Nexus is similar to the PE concept but rules can vary widely from state to state

# Michigan Business Tax New Tax Regime In Effect For 2008

## Two Components:

- Business Income Tax: 4.95% of apportioned income
- Modified Gross Receipts Tax (gross margin tax): 0.8% of apportioned modified gross receipts
- Surtax: 21.99% of the combined BIT and MGRT
- Total tax is an allowable deduction for U.S. Federal tax purposes

# Michigan Business Tax New Tax Regime In Effect For 2008

## Business Income Tax

- Applicable to any business activity in which the Michigan nexus standard is met
- Nexus standard
  - More than one day presence
  - Actively solicits sales in Michigan and more than \$350,000 of gross receipts sourced to Michigan

# Michigan Business Tax New Tax Regime In Effect For 2008

Income is apportioned using a sales factor:

$$\frac{\text{MI Sourced Sales}}{\text{All Sales}}$$

Sales factor multiplied by Federal taxable income from taxpayer's U.S. Federal return adjusted for certain items

# Michigan Business Tax New Tax Regime In Effect For 2008

Sales apportioned to Michigan based on final destination rule

Goods: Michigan is ultimate destination

Services: Receipt of benefit from the services

# Michigan Business Tax New Tax Regime In Effect For 2008

All members of a “unitary group” are subject to MBT

Unitary Group: More than 50% direct or indirect voting rights and has a “flow of value” or “integrated”, “dependent” or “contributory”

Foreign operating entity is excluded from group:

- U.S. person
- 80% of income is active foreign business income

# Michigan Business Tax New Tax Regime In Effect For 2008

## Available Credits including:

- Small Business (effective rate of 1.8%)
- New Jobs Credit
- Compensation Credit
- Property Acquisition Credit
- Research and Development Credits
- Start-up Business Credit
- Venture Capital Credit

Some credits require pre-certification

# Employment Taxes

Employers are required to pay and withhold a variety of taxes based on the amount of wages paid.

## Federal Payroll Taxes

- Social Security: 12.4% of wages up to a cap (\$106,400 for 2008). Obligation shared equally by employer and employee.
- Medicare: 2.9% of wages. Obligation shared equally by employer and employee.
- Federal Withholding: Employer responsible to withhold employee's U.S. personal income tax on wages and remit to U.S. Treasury.
- Federal Unemployment Tax: Paid by employer. Amount is nominal if a state unemployment tax applies.

# Employment Taxes

## Michigan Payroll Taxes

- Michigan Withholding: Employer responsible to withhold employee's Michigan personal income tax on wages and remit to State of Michigan.
- Michigan Unemployment: Rate based on employment turnover on each employee's wages up to \$9,000 per year. Initial contribution rate set at 2.7%.

# Sales and Use Tax

- Most states and some local governments assess sales tax on the ultimate sale of goods.
- Sales tax applies when the end consumer is an individual or a business.
- Use tax applies to the use of goods in a state purchased from a seller not subject to collect the sales tax. Credit allowed for sales tax paid in another state.
- Sales of goods used in industrial processing is exempt. “Industrial processing” is narrowly defined.
- Michigan sales and use tax rate is 6%.

# Property Taxes

- Real estate tax applied each year by local governments based on valuation.
- Tangible personal property tax used in business applied each year by local governments based on valuation subject to statutory write-downs as the property ages.

# Reporting

- The U.S. system is a voluntary reporting system obligating taxpayers to remit tax and file returns and reports.
- Information reporting on certain payments and withholdings tax on behalf of other taxpayers is also required.
- Separate penalties applied for the failure to timely file and/or timely pay.
- Failure to pay certain taxes can result in personal assessment against officers, owners and/or responsible persons.

# Thank You

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# *IP Protection, Dispute Resolution & Regulatory Compliance*

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# Introduction

- Experiences in Representing Chinese Companies
- Intellectual Property Right Protection
- Dispute Resolution
- Regulatory Compliance
- What We Can Help

# Experiences in Representing Chinese Companies

- Legal Problems of Chinese Companies Increased Significantly in the U.S.
  - Lawsuit
  - Arbitration
  - IRS audit/Criminal investigation
  - Government investigation
- What Makes Chinese Companies More Vulnerable:
  - Commercial culture
  - Experience
  - Cost
  - Management

# Experiences in Representing Chinese Companies - continued

- Areas That Could Expose You for More Legal Problems:
  - Corporate formation
  - Accounting
  - Business contract
  - Employment
  - Intellectual property
  - M&A
  - Product liability
  - Import/Export
  - Immigration
  - Taxation

# Experiences in Representing Chinese Companies *(continued)*

- How to Avoid Legal Problems:
  - Educate your management
  - Learn and follow the U.S. rules
  - Engage professionals to help
  - Use appropriate mechanism to resolve disputes

# IP Right Protection

- How to Protect Your Own Rights
  - Patents
  - Copyrights
  - Trademarks
  - Trade Secrets
- How to Avoid Infringing Rights of Others
  - Study
  - Search
  - Modification

# Dispute Resolution

- Ways to Resolve Your Disputes
  - Mediation
  - Arbitration
    - Public
    - Private
  - Litigation
    - State
    - Federal
- Jurisdiction Issue

# Regulatory Compliance

- Safety Compliance
- Environmental Rules
- Import/Export Control
- Foreign Investment Regulations
- Accounting, Finance, Tax, etc.

# How Can Butzel Long Help

- Selection of legal entities
- Legal documents/agreements
- Taxation
- Immigration
- Import & export
- Labor & employment
- Financial & accounting system
- Intellectual property
- Real estate transactions
- Environmental concerns
- Merger & acquisition
- Product liability
- Dispute resolution

Thank You

Questions?

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