

## Income/Franchise:

### Vermont: Taxpayer Asks US Supreme Court to Review Case Allocating Capital Gain to Commercial Domicile

*Docket No. 20-1159*, US (petition for cert filed 2/18/21). Following the Vermont Supreme Court's 2020 ruling in a case affirming that a telecommunications company's capital gain from the sale of certain Federal Communications Commission (FCC) licenses constituted nonbusiness income allocable entirely to the company's in-state commercial domicile, rather than to an out-of-state location [see Case No. 2019-280, Vt. (10/9/20) for more details on this ruling], the taxpayer has asked the US Supreme Court (Court) to consider whether the Vermont Supreme Court erred in holding that a federal license, that can be used only in one state, lacks a situs in that state under the 1937 *Whitney* case's interpretation of the federal due process principles governing state taxation. In doing so, the taxpayer explained that even though the licenses at issue granted rights to broadcast exclusively in New York, the Vermont Supreme Court essentially held that they were not "localized" in New York and thus had no "situs" given that the FCC licenses were created by federal law rather than state law. In response, the Vermont Department of Taxes has filed a brief in opposition of the taxpayer's petition to the Court. Please contact us with any questions.

**URL:** <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-1159.html>

**URL:** <https://www.vermontjudiciary.org/sites/default/files/documents/op19-280.pdf>

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