

Income/Franchise:

Michigan: Deemed Asset Sale Gain Excluded from Sales Factor Denominator Under MBT Standard Formula

Case No. 17-000107-MT, Mich. Ct. Cl. (5/25/21). In a case involving the gain on sale of an out-of-state business pursuant to an Internal Revenue Code section 338(h)(10) election and application of the standard statutory apportionment formula under the Michigan business tax (MBT) for the prior short-year at issue, the Michigan Court of Claims (Court) held, on remand from the Michigan Supreme Court and Michigan Court of Appeals, that the proper method for calculating the amount of tax due under the MBT standard formula is to exclude such gain from the sales factor denominator. In doing so, the Court explained that the plain language of the applicable standard formula MBT statutes “does not support inclusion of the sale in the denominator of the sales factor formula.” The Court reasoned that the assets sold were depreciable assets, and the taxpayer failed to show that the out-of-state business held or sold property that would be considered “inventory,” or that the out-of-state business sold any property that was held primarily for sale to customers in the ordinary course of its trade or business. The Court essentially concluded that the taxpayer’s attempt to characterize the sale of the business and its assets as an includable sale of stock in trade or inventory is *not* supported by the record.

Under the case facts, excluding the deemed asset sale gain from the taxpayer’s sales factor denominator resulted in Michigan taxing approximately 70% of the gain on the sale rather than approximately 15% of it. In its remand order, the Michigan Supreme Court held that the proper method for calculating the MBT due under the standard statutory formula first must be determined before determining whether an alternative apportionment method may be warranted in this case. Furthermore, according to the Michigan Department of Treasury (see details on Treasury’s commentary on this case), the Michigan Court of Appeals retained jurisdiction in this case in its order on remand; therefore, this recent Court decision “may be reviewed directly” by the Michigan Court of Appeals. Please contact us with any questions.

URL: https://www.michigan.gov/documents/treasury/Treasury_Update_Newsletter_Aug2021_732655_7.pdf

— Pat Fitzgerald (Detroit)
Managing Director
Deloitte Tax LLP
pfitzgerald@deloitte.com

Stephanie LaFave (Detroit)
Senior Manager
Deloitte Tax LLP
slafave@deloitte.com

Drew Werner (Detroit)
Senior Manager
Deloitte Tax LLP
anwerner@deloitte.com

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