

Income/Franchise:

Michigan: Holding Company Lacks Nexus for City of Detroit Income Tax Purposes Even Post-Wayfair

Docket No. 16-000724-R, Mich. Tax Trib. (8/19/22). In a case involving City of Detroit (City) corporate income tax nexus on remand from the Michigan Supreme Court and Michigan Court of Appeals to reconsider the facts in light of *Wayfair*, the Michigan Tax Tribunal (Tribunal) once again concluded that the passive holding company at issue was *not* subject to the City's income tax. Examining the issues "anew," the Tribunal explained that it is charged with determining whether the *Wayfair* decision would have changed the result of its 2017 determination (decided pre-*Wayfair*), which had held that the holding company was *not* subject to the City's income tax under the City Income Tax Act (CITA) framework due to lack of physical presence and requisite constitutional nexus. On remand, the Tribunal reasoned that in contrast to the facts under *Wayfair*:

URL: <https://www.michigan.gov/taxtrib/-/media/Project/Websites/taxtrib/Entire-Tribunal-Decisions/2022/16-000724-sd-final.pdf?rev=73f1c063a68d4576891041f265f66542&hash=C2BDA53392F3098AC4DACA9D45C98B5B>

- The holding company here did not avail itself of the Detroit marketplace;
- The holding company's contacts with the City were minimal;
- Activities of the holding company's agents (officers and directors) in the City were excluded by the CITA ordinance framework and regulations from the "doing business" determination; and
- The holding company's contacts overall did not rise to the level of directed economic activity that occurred in *Wayfair*.

Accordingly, the Tribunal concluded that the holding company lacked substantial nexus with the City under the Commerce Clause because it was neither physically nor virtually present within Detroit and did not have a Detroit marketplace. While the case's conclusion was deemed not to be impacted by *Wayfair*, the Tribunal commented: even if the holding company here had been found to have sufficient nexus under a *Wayfair* analysis, "any taxation resulting from the application of a new nexus standard to economic activity occurring prior to the adoption of the new standard would not pass constitutional muster." Please contact us with any questions.

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