

Income/Franchise:

Ohio Supreme Court Holds for Taxpayer on Sourcing Service Revenue Streams Under CAT Statute

Slip Opinion No. 2022-OHIO-4131, Ohio (11/22/22). In an Ohio commercial activity tax (CAT) case involving a combined reporting taxpayer that tried to source some of its nationwide service revenue receipt streams (including receipts derived from broadcast receipts, media revenue, license fees and sponsor fees pursuant to nationwide contracts licensing the rights to use its intellectual property (IP)) using a sourcing methodology that resulted in almost no receipts being sourced to Ohio, the Ohio Supreme Court (Court) reversed a 2021 Ohio Board of Tax Appeals (BTA) ruling to hold that the underlying CAT assessments for broadcast revenue, media revenue, sponsorship fees, and licensing fees did not lie within the Ohio Tax Commissioner's (Commissioner) authority under Ohio Rev. Code section 5751.033(F). Previously, the BTA held against the taxpayer and agreed with the Commissioner's sourcing determinations that allocated some of the revenue streams based upon population and "Nielsen Ratings" [see *State Tax Matters*, Issue 2021-14, for more details on this earlier ruling]. However, in this case, the Court chose a narrow view of the Ohio statute's application and explained that IP receipts may be sourced to Ohio only to the extent that they are "based on" the right to use the IP in Ohio. The Court reasoned that the contracts at issue in this case based payment to the taxpayer on broad rights to use its IP over large geographical areas rather than specifically in Ohio. The Court commented that to the extent the Commissioner believes such statutory language "fails to adequately reflect the policies underlying the CAT, he is free to take up that matter with the legislature." The case has been remanded back to the Commissioner "to calculate the amount of principal tax and penalty, if any, that the taxpayer owes after the amount of gross receipts subject to assessment is reduced in accordance with this opinion." Concurring and partial dissenting opinions follow.

URL: <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2022/2022-Ohio-4131.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/210409_11.html

See forthcoming Multistate Tax Alert for more details on this opinion, including some related taxpayer considerations, and please contact us with any questions in the meantime.

— Dave Adler (Columbus)
Managing Director
Deloitte Tax LLP
daadler@deloitte.com

Courtney Clark (Columbus)
Partner
Deloitte Tax LLP
courtneyclark@deloitte.com

Joe Garrett (Birmingham)
Managing Director
Deloitte Tax LLP
jogarrett@deloitte.com

Keya Warfield (Columbus)
Senior Manager
Deloitte Tax LLP
kwarfield@deloitte.com

Matt Culp (Columbus)
Senior Manager
Deloitte Tax LLP
mculp@deloitte.com

Paige Fitzwater (Columbus)
Manager
Deloitte Tax LLP
pfitzwater@deloitte.com

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