

Income/Franchise:

Massachusetts: Release Addresses Interpretation of Apportionment Case on Gain on Sale of PTE Interest

TIR 22-14: Apportionment of Gain from the Sale of a Pass-through Entity (PTE) Interest Based Entirely Upon the Attributes of the PTE, Mass. Dept. of Rev. (11/30/22). The Massachusetts Department of Revenue (Department) posted a technical information release (TIR 22-14) explaining its prospective interpretation of a Massachusetts Supreme Judicial Court case which ruled that using the apportionment factors of an underlying partnership to source the sale thereof, regardless of the existence of a unitary business, was constitutionally permissible but that state law did not authorize imposition of this apportioned tax in that instance [see previously issued Multistate Tax Alert for more details on this case]. TIR 22-14 also explains the circumstances under which the Department will allow abatements for past periods by reason of the decision.

URL: <https://www.mass.gov/technical-information-release/tir-22-14-vas-holdings-investments-llc-v-commissioner-of-revenue-apportionment-of-gain-from-the-sale-of-a-pass-through-entity-pte-interest-based-entirely-upon-the-attributes-of-the-pte>

URL: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-massachusetts-supreme-court-denies-motion-for-reconsideration-in-apportionment-case.pdf>

Listing several specific scenarios under which the case holding does *not* apply, the Department explains that it will consider the case to apply to gain derived by a corporation that is commercially domiciled in Massachusetts from the sale of a pass-through entity (PTE) interest. In such cases, if the corporate seller is engaged in a unitary business with the PTE, TIR 22-14 provides that the gain must be apportioned using the attributes of the PTE and the seller. If the corporate seller is not engaged in a unitary business with the PTE, such seller must allocate the gain to Massachusetts.

See recently issued Multistate Tax Alert for more details on this technical information release, and please contact us with any questions.

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