

Income/Franchise:

Pennsylvania Supreme Court Affirms Refunds and Sourcing Revenue Under “Benefits-Received” Policy

Case No. J-16-2022, Pa. (2/22/23). The Pennsylvania Supreme Court (Court) affirmed a Pennsylvania Commonwealth Court ruling from 2020 [see *Case No. 108 F.R. 2016*, Pa. Commw. Ct. (7/24/20) for more details on this 2020 ruling], which held that a Pennsylvania-based taxpayer was entitled to claim state corporate net income tax (CNIT) refunds for the pre-2014 tax year at issue by sourcing certain service revenue outside of Pennsylvania based on the Pennsylvania Department of Revenue’s (Department) longstanding policy of interpreting the relevant statutory “costs of performance” sourcing provisions using a “benefits-received method” in calculating the sales factor. Under the Department’s established sourcing method policy, an income-producing activity for purposes of the CNIT “costs of performance” statutory provisions generally is deemed to occur at the location where the customer received the benefit of the service. The Pennsylvania Attorney General unsuccessfully argued that given there are no definitions in the relevant statute and no regulations or other formal authority on point, the benefits-received method should *not* apply and therefore the taxpayer was correct in its original CNIT filing when it applied a more traditional “costs-of-performance” analysis in sourcing the receipts from its services predominantly to Pennsylvania. The Court ultimately agreed with the taxpayer, as well as intervening counsel from the Department, that the taxpayer’s sales of services should be sourced according to where customers received the benefits of its services (*i.e.*, at the customer’s location) rather than where it incurred the costs of performing those services. Accordingly, the Court affirmed remanding the case to the Pennsylvania Board of Finance and Revenue for calculation and issuance of a tax refund by the Department to the corporate taxpayer for the 2011 tax year at issue. A concurring opinion and a concurring and dissenting opinion follow. Please contact us with any questions.

URL: <https://www.pacourts.us/assets/opinions/Supreme/out/J-16-2022mo%20-%20105441324213340331.pdf>

URL: http://www.pacourts.us/assets/opinions/Commonwealth/out/108FR16_7-24-20.pdf

URL: <https://www.pacourts.us/assets/opinions/Supreme/out/J-16-2022co%20-%20105441324213340540.pdf>

URL: <https://www.pacourts.us/assets/opinions/Supreme/out/J-16-2022cdo%20-%20105441324213340563.pdf>

— Kenn Stoops (Philadelphia)
Managing Director
Deloitte Tax LLP
kstoops@deloitte.com

Stacy Ip-Mo (Philadelphia)
Senior Manager
Deloitte Tax LLP
sipmo@deloitte.com

Bob Kovach (Pittsburgh)
Managing Director
Deloitte Tax LLP
rkovach@deloitte.com

Aaron Leroy (Pittsburgh)
Senior Manager
Deloitte Tax LLP
aarleroy@deloitte.com

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at www.deloitte.com.