

Income/Franchise:

New Mexico Appellate Court Says Package Delivery Company May Use Volume Method to Apportion Income

Case No. A-1-CA-38585, N.M. Ct. App. (6/22/23). The New Mexico Court of Appeals (Court) affirmed a New Mexico Administrative Hearing Officer's (AHO) decision abating the New Mexico Taxation and Revenue Department's (Department) state corporate income tax assessment, agreeing that a package delivery company established by clear and cogent evidence that the Department's use of a special mileage apportionment formula pursuant to a state administrative rule (3.5.19.15 NMAC) resulted in gross distortion of the company's actual in-state business activities contrary to the fair apportionment requirement of the US Constitution's Commerce Clause. In the case, the company challenged the Department's use of the special multistate trucking apportionment regulation to calculate the portion of its multistate sales revenue attributable to its New Mexico business operations. According to the company, its business operations largely did *not* include the use of New Mexico's highways to transport packages through to other states, which it claimed is the primary activity measured by New Mexico's special mileage rule. Rather, the taxpayer successfully showed that it uses an extensive New Mexico workforce located in centers or hubs in multiple locations in New Mexico, who sort, distribute, and deliver or pick up packages having a connection to New Mexico. In this respect, the Court agreed with the AHO's finding that the company was entitled to equitable apportionment and that its proposed "state-to-state volume method" was reasonable in calculating the sales revenue properly apportioned to New Mexico for the tax years at issue. Please contact us with any questions.

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