

Income/Franchise:

Michigan Supreme Court Says Standard Apportionment is Valid as Applied to Gain from Deemed Asset Sale

Case No. 163742, Mich. (7/31/23). In a case involving the gain on sale of an out-of-state business pursuant to an Internal Revenue Code (IRC) section 338(h)(10) election and application of the standard statutory apportionment formula under the Michigan business tax (MBT) for the prior short-year at issue, the Michigan Supreme Court (Court) reversed a Michigan Court of Appeals ruling [see *State Tax Matters*, Issue 2021-40, for some underlying case history] to hold that applying the standard formula to the circumstances in this case – which includes the income from the asset sale in the tax base apportionment formula under the MBT – did *not* run afoul of the US Constitution’s Due Process and Commerce Clauses as the MBT formula, as applied, does not impermissibly tax income outside the scope of Michigan’s taxing powers. In the underlying case, the Michigan Department of Treasury declined allowing calculation under the taxpayer’s proposed alternative apportionment formula and applied the standard statutory MBT formula, which resulted in Michigan taxing approximately 70% of the gain on the sale. Agreeing with the Michigan Department of Treasury, the Court:

URL: [https://www.courts.michigan.gov/4a2539/siteassets/case-documents/opinions-orders/msc-term-opinions-\(manually-curated\)/22-23/vectren-op.pdf](https://www.courts.michigan.gov/4a2539/siteassets/case-documents/opinions-orders/msc-term-opinions-(manually-curated)/22-23/vectren-op.pdf)

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/STM/211008_5.html

- Reversed the Michigan Court of Appeals ruling that the taxpayer had demonstrated by clear and cogent evidence that the statutory apportionment formula created a grossly disproportionate result when applied to the one-time asset sale given that, arguably, a majority of the activities making up the underlying business’s fair market value at the time of the sale occurred outside Michigan’s borders;
- Vacated the remainder of Michigan Court of Appeals opinion; and
- Remanded the case to the Michigan Court of Claims.

Dissenting opinions follow. Please contact us with any questions.

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