

Income/Franchise:

Michigan: Newsletter Addresses Recent Case Involving Gain, Single Sales Factor and Alternative Apportionment

Treasury Update Newsletter, Mich. Dept. of Treasury, Tax Policy Division (9/23). A newsletter published by the Tax Policy Division of the Michigan Department of Treasury summarizes some noteworthy cases and developments, including a recent Michigan Supreme Court holding that Michigan's standard apportionment was valid as applied to a company's gain from a deemed asset sale [see Case No. 163742, Mich. (7/31/23) and *State Tax Matters*, Issue 2023-31, for more details on this case]. According to the newsletter, "this is an important case regarding the constitutionality of a single factor sales formula that does not factor the location of a taxpayer or its property and payroll," and "confirms the relevant question remains whether the sales factor fairly represents the business activity conducted in Michigan." Moreover, the newsletter comments that taxpayers have a high burden of proof when requesting alternative apportionment as Michigan's corporate income tax apportionment provisions are "presumed to fairly represent the business activity attributed to the taxpayer in this state" unless the taxpayer can demonstrate that "the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer." The newsletter also explains that the taxpayer must make this showing by "clear and cogent" evidence pursuant to this recent Michigan Supreme Court decision. Please contact us with any questions.

URL: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Newsletters/Treasury-Update-Newsletter_Sept2023.pdf

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/2023/STM/230804_4.html

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