

## Income/Franchise:

### Michigan: Taxpayer Asks US Supreme Court to Review Decision on Apportionment Formula Validity as Applied to Gain from Deemed Asset Sale

*Docket No. 23-443*, US (petition for cert. filed 10/25/23). In a case involving the gain on sale of an out-of-state business pursuant to an Internal Revenue Code section 338(h)(10) election and application of the statutory standard apportionment formula (*i.e.*, single sales factor) under the Michigan business tax (MBT) for the prior short-year at issue in which the Michigan Supreme Court recently held that applying the standard formula to the circumstances at hand did *not* run afoul of the US Constitution's Due Process and Commerce Clauses [see Case No. 163742, Mich. (7/31/23) and *State Tax Matters*, Issue 2023-31, for more details on this earlier ruling], the taxpayer is asking the US Supreme Court (Court) whether:

**URL:** <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-443.html>

**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.deloitte.com/Newsletters/Tax/2023/STM/230804\\_4.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_4.html)

- To comply with the requirements of fair apportionment and the prohibition on extraterritorial taxation, a state must include in its state tax apportionment formula the factors of a business giving rise to income to be taxed; and
- Whether factor representation includes a “temporal element.”

In its filed petition to the Court, the taxpayer contends that “this case concerns a state’s attempt to tax a company’s value based on *de minimis*, temporary contacts when that company is already subject to tax on such value in another state” – claiming that it involves “an issue of national importance affecting interstate commerce, extraterritorial taxation, and a split among state courts of last resort.” Please contact us with any questions.

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