

Income/Franchise:

Michigan: US Supreme Court Denies Reviewing Case on Apportionment Formula Validity as Applied to Gain from Deemed Asset Sale

Docket No. 23-443, US (petition for cert. denied 11/20/23). The US Supreme Court (Court) denied the taxpayer's petition for review 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. Earlier this year, the Michigan Supreme Court held that applying the standard formula to the circumstances in the case 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]. In its filed petition with the Court, the taxpayer had contended 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," as well as 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.

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

— Pat Fitzgerald (Detroit)
Managing Director
Deloitte Tax LLP
pfitzgerald@deloitte.com

Stephanie LaFave (Detroit)
Senior Manager
Deloitte Tax LLP
slafave@deloitte.com

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