

## Income/Franchise:

### Minnesota Supreme Court Affirms Gain Involving Goodwill from Unitary Asset is Business Income

*Case No. A23-0222*, Minn. (11/22/23). The Minnesota Supreme Court (Court) affirmed [see *State Tax Matters*, Issue 2023-1, for more details on the Minnesota Tax Court’s earlier ruling in this case] that a nonresident individual’s income stemming from goodwill generated by the sale of her stock ownership interests in two S corporations pursuant to an election under Internal Revenue Code section 338(h)(10) to treat the stock sales as sales of the underlying corporate assets constituted income of a unitary business subject to apportionment at the entity level under Minn. Stat. § 290.17, subs. 3 and 4. In doing so, the Court explained that income of a trade or business that does not constitute “nonbusiness income” is business income subject to apportionment under Minnesota law, and that the income from the sales of the corporations in this case was derived from a unitary asset and thus may be constitutionally apportioned as business income.

**URL:** <https://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Standard%20Opinions/OPA230222-112223.pdf>

**URL:** [https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230106\\_10.html](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230106_10.html)

As part of its argument to the contrary, the taxpayer claimed such income constituted nonbusiness income pursuant to unappealed Minnesota Tax Court caselaw that should be viewed as precedential and binding on the Minnesota Department of Revenue (Department). However, the Court declined to “announce a brightline rule about the binding nature of unappealed tax court decisions,” thus maintaining that Minnesota Tax Court decisions generally are non-precedential holdings. A dissenting opinion follows, commenting that the Department’s decision to disregard the Minnesota Tax Court’s interpretation of a statute and instead adopt its “own interpretation without notice to the public” raises “serious concerns about the fundamental fairness of the underlying audit that led to this appeal.” Please contact us with any questions.

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