

Income/Franchise:

New Jersey Tax Court Allows Taxpayer to Use Market-Based Sourcing for Pre-2019 CBT Years

Case No. 11113-2019, N.J. Tax Ct. (4/11/24). In a case involving a New Jersey-headquartered company's sourcing of receipts from services for state corporation business tax (CBT) apportionment purposes for the 2011 and 2012 tax years at issue, an unpublished New Jersey Tax Court (Court) opinion held that the company's use of market-based (customer destination) sourcing pursuant to an administrative rule in effect at that time (*i.e.*, pursuant to N.J.A.C. 18:7-8.10(a)) was a more appropriate sourcing method than the then standard "costs of performance" (COP) method because it was "more reflective of the economic realities of its business" under the facts. In doing so, the Court commented that for tax years prior to 2019, "there is no hard-and-fast rule as to the use of COP method" under CBT law and thus it is not unusual for a taxpayer or the New Jersey Division of Taxation to "prefer the approach most conducive to their respective positions, as is evident in this case." According to the Court "colorable arguments can be made" by both the taxpayer and the taxing authority whether an income-producing activity for purposes of allocation of revenues from sales of services "occurs either where the taxpayer produces the service or where the customer receives the service," and that the resolution of the issue requires a "fact-sensitive analysis based on the totality of the circumstances" – as was completed here where almost 99% of the company's clients were non-New Jersey entities. Please contact us with any questions.

URL: <https://www.njcourts.gov/system/files/court-opinions/2024/011113-2019.pdf>

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