

Sales/Use/Indirect:

Michigan Appellate Court Affirms that Use Tax is Due on In-State Company's Direct Mail Advertising

Case No. 365613, Mich. Ct. App. (6/20/24). The Michigan Court of Appeals (Court) affirmed that an in-state company that periodically conducted direct mail advertising campaigns for its business through an out-of-state contracted marketing firm owed Michigan use tax on mailed advertisements that were prepared and purchased out-of-state but then distributed in Michigan, because the facts showed that the level of control the company exercised over the advertisements in Michigan was sufficient enough to warrant the assessment. Rejecting the company's claim that it had relinquished control over the advertisements before they became tangible property and were disbursed in Michigan, the Court agreed with the lower court that the company retained some level of control over the advertisements in Michigan at all relevant phases of the production and distribution process, rendering its use of the advertisements a taxable use under Michigan law – and highlighted that “only some control need be exercised.” Under the facts, the company was headquartered in Michigan and the relevant work of its employees (*e.g.*, reviewing and revising the advertisement proofs, and contributing to the data that went into deciding the customer mailing lists) was performed in Michigan. Please contact us with any questions.

URL: https://www.courts.michigan.gov/49e071/siteassets/case-documents/uploads/opinions/final/coa/20240620_c365613_35_365613.opn.pdf

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