

## Income/Franchise:

### Michigan Appellate Court Reverses Lower Court to Hold that Insurance Affiliate Must File as Part of Combined Return

*Case No. 364790*, Mich. Ct. App. (6/20/24). In a case involving a unitary business group (UBG) comprised of an insurance company and its Michigan corporate income tax (CIT)-filing affiliates and treatment under the Michigan premium tax (imposed under Mich. Comp. Laws section 206.635), the “retaliatory tax” (imposed under Mich. Comp. Laws section 500.476a), and calculation of the Michigan automobile insurance placement facility credit (under Mich. Comp. Laws section 206.637(1)(c)), the Michigan Court of Appeals (Court) reversed a Michigan Tax Tribunal (Tribunal) ruling to hold summary judgment for the insurance company and its affiliates. Specifically, the Court held that because it was undisputed that the insurance company and its affiliates comprised a UBG under Michigan income tax code provisions, they must file a collective unitary Michigan CIT return rather than respective separate CIT returns, including for purposes of calculating the insurance company’s underlying Michigan insurance taxes and credits at issue. In doing so, the Court explained that for purposes of defining a UBG and who must file a Michigan combined return, “the question is not whether the Legislature intended to include every subcategory of tax, but whether the Legislature intended to exempt any particular subcategory,” and that it “must apply a statute that clearly includes insurance companies within the UBG scheme without explicit exception or modification.”

**URL:** [https://www.courts.michigan.gov/49e08f/siteassets/case-documents/uploads/opinions/final/coa/20240620\\_C364790\\_32\\_364790.opn.pdf](https://www.courts.michigan.gov/49e08f/siteassets/case-documents/uploads/opinions/final/coa/20240620_C364790_32_364790.opn.pdf)

In its earlier ruling, the Tribunal confirmed that the collective entities met the elements of a UBG but held that Michigan law requiring UBGs to file Michigan combined returns did *not* apply to the insurance taxes at issue and such taxes must *not* be calculated on a groupwide basis. In a footnote, the Court acknowledged that it was “not entirely unsympathetic” to various policy arguments and “important questions” regarding the inclusion of insurance companies in the UBG scheme raised by the Michigan Department of Treasury, but it concluded that such issues “need to be addressed by the Legislature and not this Court.” Please contact us with any questions.

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