

## Income/Franchise:

### Michigan: New Bulletin Reflects Updated Alternative Apportionment Procedures and Standards in Light of 2023 Caselaw

*Revenue Administrative Bulletin 2024-24*, Mich. Dept. of Treasury (12/17/24). A new and somewhat lengthy Michigan Department of Treasury (Department) revenue administrative bulletin (RAB 2024-24) replaces an older bulletin (RAB 2018-28) to update the description of the procedures and standards governing the alternative apportionment relief provisions in Parts 1 and 2 of Michigan's Income Tax Act (MITA) and in the Michigan Business Tax (MBT) Act in response to a 2023 Michigan Supreme Court decision addressing the use of standard versus alternative apportionment [see Case No. 163742, Mich. (7/31/23) and *State Tax Matters*, Issue 2023-31, for more details on this 2023 ruling]. In that 2023 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 standard statutory apportionment formula under the Michigan business tax, the Michigan Supreme Court held that applying the standard formula to the circumstances in that case did *not* run afoul of the US Constitution's Due Process and Commerce Clauses. In RAB 2024-24, the Department discusses issues like:

URL: <https://www.michigan.gov/taxes/rep-legal/rab/2024-revenue-administrative-bulletins/revenue-administrative-bulletin-2024-24>

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](https://dhub.deloitte.com/Newsletters/Tax/2023/STM/230804_4.html)

1. What constitutes alternative apportionment;
2. When a taxpayer must submit a request to use an alternative apportionment formula;
3. What a taxpayer must submit in a request for alternative apportionment;
4. Who has the burden of proving that the statutory apportionment formula does not fairly represent the taxpayer's business activity in Michigan;
5. What standard of proof must be met before an alternative apportionment method will be applied;
6. Whether the Department is required to respond to a request for alternative apportionment within a certain period;
7. If approved by the Department, to which tax periods may the alternative apportionment method be applied;
8. Whether there are any special instructions for filing a return for a tax period in which an approved alternative apportionment method is used; and
9. Under what circumstances the Department may impose an alternative apportionment method.

RAB 2024-24 helps illustrate when alternative apportionment is appropriate using a "gross distortion" example, as well as an "extraterritorial taxation" example. Please contact us with any questions.

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

Stephanie LaFave (Detroit)  
Senior Manager  
Deloitte Tax LLP  
[slafave@deloitte.com](mailto:slafave@deloitte.com)

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).