

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

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.

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