

Michigan Supreme Court to Provide Clarity on Alternative Apportionment of Income Tax for Out-of-State Companies

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The Michigan Supreme Court has agreed to hear one of the most significant cases in the country to examine the question of when the Due Process and Commerce Clauses of the U.S. Constitution require the application of an alternative apportionment method, *Vectren Infrastructure Services Corp. v. Department of Treasury*.

The Court will consider whether the amount of tax the Michigan Department of Treasury assessed due to the sale of a company was so misaligned with the taxpayer's actual business structure that it led to "a grossly distorted result." A determination of a distorted result is significant because the Court then would need to consider whether the statutory formula (which resulted in such a distorted result) runs afoul of the Commerce Clause and Due Process Clause as applied to the taxpayer. Moreover, if the apportionment runs afoul of either constitutional clause, the Michigan Supreme Court will then consider the procedure for determining an alternative apportionment method. The Court's decision on the latter two issues could alter the way Michigan assesses taxes against businesses sold that have either minor operations or no permanent business locations in Michigan.

The issues arose when the taxpayer, a Minnesota company with neither a permanent business location nor permanent employees in Michigan, sold its business in 2011. While the taxpayer did have a contract to provide oil spill cleanup services in Michigan when the company was sold, the Michigan Department of Treasury decided that roughly 70 percent of the taxpayer's business should be apportioned to Michigan for tax purposes.

After a prior remand from the Michigan Supreme Court, both the trial court and Court of Appeals concluded that the statutory method resulted in a constitutional violation. In response, the Michigan Department of Treasury sought leave to appeal, which resulted in this order.

Michigan taxpayers may have new options in apportioning their income to Michigan depending on how the Michigan Supreme Court decides these three issues:

1. whether apportionment is distorted in the present case,
2. whether a distorted apportionment runs afoul of the Commerce and the Due Processes clauses, and
3. whether the taxpayer must petition in advance for alternative apportionment where the statutory apportionment runs afoul of constitutional clauses.

Out-of-state employers with operations in Michigan will want to stay up to date on the developments of Vectren. Please contact the authors to discuss this issue further.