



This Week in State Tax (TWIST)

February 3, 2025



Michigan: Mother May I? – Treasury Requires Pre-Filing Permission for Nonbusiness Income

In an Administrative Bulletin, the Michigan Department of Treasury (Department) updated the requirements for requesting allocation of non-business income for the Individual Income Tax, Corporate Income Tax, and Michigan Business Tax. The bulletin was issued in response to the Michigan Supreme Court decision in *Vectren Infrastructure Servs Corp v. Dep't of Treasury*. The revised requirements treat the allocation of nonbusiness income as a form of alternative apportionment and indicate that a request for alternative apportionment must be filed prior to a taxpayer allocating nonbusiness income on a return. The guidance includes an example of a corporate taxpayer with nonbusiness income – generated by the sale of an investment in a nonunitary subsidiary – and notes that the Department would approve a request for alternative apportionment to exclude the associated gain from the Michigan apportionable tax base if requested through the procedure laid out in the bulletin. The guidance further provides that there is a presumption that the statutory apportionment method is valid, and the taxpayer must demonstrate either that the attributed business activity as determined per the statute is out of all appropriate proportion to its actual business activity within the state and causes a grossly distorted result, or that the statutory formula would unconstitutionally tax extraterritorial activity of the taxpayer.

A taxpayer must request approval to use alternative apportionment 90 days before the due date (including extensions) for the return on which the alternative apportionment method will be used. Similarly, for amended returns on which alternative apportionment will be used, a taxpayer must request approval 90 days prior to the filing the return. In addition to demonstrating by “clear and convincing evidence” that the statutory formula does not fairly represent business activity in the state, a request must also include a proposed alternative apportionment formula and a rationale as to why it is a reasonable alternative. The bulletin also notes that the Department will try to respond to the request in 60 days. If no response is received within this time, the taxpayer may treat the request as denied. A taxpayer may appeal the denied alternative apportionment request only to the Michigan Court of Claims. Please contact [Dan De Jong](#) with questions about [Revenue Administrative Bulletin 2024-24](#).

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