



This Week in State Tax (TWIST)

February 24, 2025



Michigan: Power Company Wholesale Sales to Independent System Operator Sourced to Michigan

The Michigan Tax Tribunal (Tribunal) ruled that an electricity generator making wholesale sales of power was required to source its receipts to Michigan—the state in which it “delivers” electricity to its distributor via a substation—rather than to the locations of the ultimate consumers of the electricity. Michigan law sources the sale of electricity to the state in which the sales contract requires the electricity to be shipped or delivered “based on the ultimate destination at the point that the property comes to rest...” After initially sourcing its wholesale receipts entirely to Michigan, the taxpayer later amended its returns for several tax years to source receipts from electricity that was ultimately delivered to out-of-state consumers to the state in which those consumers used the electricity (reducing its Michigan sales factor from 98 percent to approximately 89 percent).

At the Tribunal, the taxpayer relied on both the U.S. Constitution (arguing that sourcing 100 percent of wholesale receipts to Michigan violated the internal and external consistency tests under the Supreme Court’s due process jurisprudence) and Michigan law (arguing that sourcing receipts to the location of the ultimate customer better complied with the language of Michigan’s sourcing statute). In response, the Michigan Department of Treasury (Department) argued that the total amount of electricity exported from the Michigan zone to which the taxpayer injected its electricity did not support the quantity of out-of-state transmissions claimed by the taxpayer, that Michigan law sources receipts from the sale of electricity to where the “contract requires” the electricity to be delivered, and that the only contract entered into by the taxpayer required delivery to Michigan substations. The Department also sought to distinguish numerous cases cited by the taxpayer and argued as well that the proper remedy for any constitutional issues identified by the taxpayer was a petition for alternative apportionment.

The Tribunal began its decision by analyzing the transaction to determine (1) that the distributor was properly identified as the purchaser because title passed to the distributor; and (2) that the ultimate destination governed under the terms of the contract was the Michigan substation. The Tribunal acknowledged tension between the statute’s references to both the terms of the contract and the ultimate destination of the sale, but it determined that the destination identified in the contract was the sourcing location most in keeping with the statutory language because the contract did not support a determination of the ultimate destination. The Tribunal also rejected the taxpayer’s constitutional arguments, most notably by ruling that it was reasonable to source 100 percent of the taxpayer’s wholesale receipts to Michigan when all the taxpayer’s electricity was generated in Michigan. Contact [Dan De Jong](#) with questions about [CMS Energy Co. v. Dep’t of Treasury](#).

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