



This Week in State Tax (TWIST)

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Michigan: Claiming nonbusiness income requires alternative apportionment petition

In December 2024, the Michigan Department of Treasury (Department) issued a Revenue Administrative Bulletin (RAB) providing updated guidance on the requirements for allocating nonbusiness income. Specifically, allocation of nonbusiness income is now considered a form of alternative apportionment that requires approval from the Department before the filing of an original or amended return containing such an allocation. The RAB policy is being applied on audit.

A request for alternative apportionment must be submitted to the Department 90 days prior to the due date (including extensions) of the return, or 90 days prior to the submission of an amended return, for which alternative apportionment is to be used. To receive approval for allocating nonbusiness income, a taxpayer must provide clear and convincing evidence that the statutory method would create an unconstitutional result. Hence, to overcome the presumption that the statutory formula is fair, the taxpayer must demonstrate either that the statutorily attributed business activity is out of all appropriate proportion to its actual business activity within the state and would cause a grossly distorted result, or that the statutory formula would unconstitutionally tax extraterritorial activity of the taxpayer.

In evaluating the reasonableness of a taxpayer's proposed alternative to the statutory apportionment formula, the Department considers the filing position in other states as relevant, including whether the taxpayer has requested alternative apportionment in other states. If the application of a taxpayer's proposed method of apportionment results in income being untaxed in all jurisdictions, the bulletin notes that the Department views this as unreasonable. The Department has indicated it will try to respond to requests for alternative apportionment within 60 days of filing. If the taxpayer does not receive a response within 60 days, the taxpayer may treat the request as deemed denied. Taxpayers may appeal denied alternative apportionment requests only to the Michigan Court of Claims.

Recall that an RAB states the Department's position on a matter; although it is not binding authority, it may be relied on by taxpayers until it is revoked by the Department, new legislation is passed on the issue, or binding judicial precedent is provided. The policy in the RAB is applicable to the individual income tax, corporate income tax and the Michigan business tax. Contact [Dan De Jong](#) with questions about [Revenue Administrative Bulletin 2024-24](#).

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