



# This Week in State Tax (TWIST)

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## Michigan: Appeals court holds electricity sales sourced to Michigan

The Michigan Court of Appeals recently ruled that a taxpayer selling electricity wholesale to a Michigan buyer was not entitled to a corporation income tax refund because the sales were properly sourced to Michigan for apportionment purposes. The taxpayer generated electricity in Michigan that was sold wholesale to a regional transmission operator that coordinated transmission and sales to consumers in several states. The relevant agreements required that the electricity be made available to the transmission operator at a location in Michigan. The taxpayer sourced these sales entirely to Michigan on its original income tax returns for tax years 2013 to 2016, then later sought a refund from the Michigan Department of Treasury, arguing that some of the sales should not have been sourced to Michigan because the “ultimate destination” of the sales was outside the state. The Department denied the refund request because, per the relevant service agreements, the electricity was delivered to the wholesale buyer at a location in Michigan. The taxpayer then petitioned to the Tax Tribunal which granted summary disposition to the Department, and this appeal followed.

On appeal, the Court of Appeals disagreed with the taxpayer, holding that the sales were properly sourced to Michigan. Michigan corporate income tax statutes provide that “[s]ales of tangible personal property are in [Michigan] if...in the case of electricity...the contract requires the property to be shipped or delivered, to any purchaser within [Michigan] based on the ultimate destination at the point that the property comes to rest regardless of free on board points or other conditions of the sale.” The court first noted that the sales to the regional transmission organization constituted a “sale” for purposes of the Michigan corporate sales factor. Further, the electricity was required to be delivered to the purchaser at Michigan locations where title transferred to the purchaser, and the taxpayer was compensated for the electricity delivered, thus meeting the requirements of a sale to be sourced to Michigan,

The taxpayer also argued that because Michigan law requires sourcing to the ultimate destination without regard to free-on-board (FOB) and other conditions, the transfer of temporary flash title to the wholesale buyer was a FOB point that must be disregarded. The court disagreed with the taxpayer’s argument that the transfer of title to the wholesaler was a mere condition of the sale. Ultimately, the court found that although any FOB points or other conditions of sale must be disregarded, there were no such points or conditions in this case. Please contact [Dan De Jong](#) and [Arthur Orzame](#) with questions on [CMS Energy Corp. v. Dep’t of Treasury, Mich. Ct. App., No. 374696](#).

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