



## MULTISTATE TAX

# Ohio Supreme Court rules in favor of Taxpayer regarding broadcast receipts and licensing fee sourcing

## Tax Alert

### Overview

On November 22, 2022, the Ohio Supreme Court decided in [NASCAR Holdings, Inc. v. McClain](#) that for Ohio Commercial Activity Tax (“CAT”) purposes broadcast and media receipts are not situated to Ohio based upon the location of the viewers. The court also decided that licensing and sponsorship fees received from granting the right to use the NASCAR brand are not situated to Ohio based upon the right to use the intangible property in Ohio.

This Tax Alert summarizes the Ohio Supreme Court’s decision and provides some taxpayer considerations.

### Ohio Supreme Court decision

NASCAR Holdings, Inc. (“NASCAR” or “Taxpayer”) is a corporation commercially domiciled in Florida that sanctions races in more than 30 states, including Ohio, and in multiple countries. NASCAR races are broadcast in over 150 countries. At primary issue is the siting of taxable gross receipts for Ohio Commercial Activity Tax (“CAT”) purposes for various income sources NASCAR received, including broadcast receipts (agreements with media outlets to air NASCAR races), media revenue received from contracts with media companies and other sponsors to incorporate NASCAR brands in its marketing efforts, and license fees from third-party licensing of the NASCAR brand.

From July 1, 2005 through December 31, 2010, Taxpayer held seven events in Ohio. During that period, Taxpayer situated broadcast receipts, media revenue, license fees, and sponsor revenue (hereafter referred to as intangible income) to Florida, and only situated receipts received from specific agreements related to sanctioned race events held in Ohio to the state for CAT purposes. In 2012, the Ohio Department of Taxation (“Department”) audited Taxpayer and assessed CAT on taxable gross receipts from multiple sources, including receipts from intangible income sources during that period. The Department situated broadcast receipts to Ohio based upon the percentage of viewers

located in Ohio by using Nielsen Ratings, while other intangible receipts were situated to Ohio based upon the percentage of Ohio population to the total United States population as reported by the US Census Bureau.

The Department applied Ohio R.C. 5751.033(I), which situates gross receipts from services based upon the purchaser's benefit received in Ohio and issued its audit assessment. Taxpayer claimed that R.C. 5751.033(F), which discusses the situsing of gross receipts from the sale/licensing of intangibles, was the correct statute to apply and asserted that this precluded the Department from altering its assessment. Taxpayer appealed the assessment to the Ohio Board of Tax Appeals ("BTA"). The BTA agreed with Taxpayer that the assessment should be based on R.C. 5751.033(F). The court viewed the assessment as a reasonable method of determining taxable receipts and on April 13, 2021, the BTA ruled in the Department's favor and upheld the CAT liability assessed by the Department.

Taxpayer appealed the decision to the Ohio Supreme Court ("OSC"), and the OSC reversed the BTA's decision. The Department argued that media companies broadcast in Ohio using their right to use Taxpayer's intellectual property in Ohio, which would be situated to Ohio under R.C. 5751.033(F). Taxpayer argued that the broadcast revenue should not be situated to Ohio since the agreements with the media companies are flat-fee multi-year contracts that are executed before events are planned, do not mention Ohio, and do not depend on viewership in Ohio. Third-party television providers buy the rights to broadcast from the media companies and do not involve Taxpayer in the broadcast process. The OSC determined, based on contracts with broadcasters, that the broadcast receipts were not based on the right to use the broadcast rights in Ohio specifically and therefore should not be situated to the state for CAT purposes.

The OSC also ruled in Taxpayer's favor regarding the situsing of other intangible income revenue streams. Taxpayer argued that the license fees should be situated to Florida since licensing contracts are fixed-fee contracts, did not depend on sales in Ohio, and none of the revenue received was based on the right to use property in Ohio specifically. The OSC found that the use of a census allocation method was not an appropriate method to determine Ohio use of such intangible property rights and reversed the BTA decision. The OSC found it unnecessary to address other potential constitutional arguments raised by Taxpayer in their appeal.

The OSC in summary stated "[t]o the extent that the commissioner believes that the statutory language fails to adequately reflect the policies underlying the CAT, he is free to take up that matter with the legislature."

## Considerations

Taxpayers receiving receipts from intangible assets similar to the taxpayer in this case should speak with their tax advisers to determine the Ohio CAT implications of this decision as it relates to sourcing receipts to Ohio under R.C. 5751.033(I) and R.C. 5751.033(F) and to determine the potential for seeking refunds of Ohio CAT to the extent that amounts have been overpaid.

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