

State Tax Matters

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In this issue:

Income/Franchise: Maryland: US Supreme Court Considers if County Tax Requires Credit for “Taxes Paid to Other States;” Commerce Clause at Issue.....	1
Income/Franchise: Massachusetts: Department of Revenue Issues Revised Version of Proposed Market-Sourcing Regulation	2
Multistate Tax Alerts	2

Income/Franchise:

Maryland: US Supreme Court Considers if County Tax Requires Credit for “Taxes Paid to Other States;” Commerce Clause at Issue

Comptroller v. Wynne, US (argued 11/12/14). The US Supreme Court recently heard oral arguments in a case where the Maryland State Comptroller of the Treasury has sought review of a Maryland Court of Appeals 2013 ruling, *Maryland State Comptroller of the Treasury v. Brian Wynne, et ux.* 431 Md. 147 (2013), which held that the failure of Maryland individual income tax law to allow a credit against the county income tax for a Maryland resident taxpayer with respect to pass-through income of an S corporation that arose from activities in another state and that was taxed in that state violated the US Commerce Clause. The Maryland State Comptroller of the Treasury has asked the US Supreme Court to consider whether the US Constitution prohibits a state from taxing all the income of its residents – wherever earned – by mandating a credit for taxes paid on income earned in other states. Note that the Maryland tax code allows a credit for income taxes paid to other states with respect to the state income tax, but *not* with respect to the county income tax. Under both federal and Maryland law, a subchapter S corporation is deemed to “pass through” its income to its shareholders who are taxed on that income at the shareholder level.

URL: <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/13-485.htm>

Stay tuned for a forthcoming Multistate Tax Alert that summarizes Maryland's partial-credit scheme, the Maryland Court of Appeals 2013 decision, the parties' arguments before the US Supreme Court, and related taxpayer considerations.

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Income/Franchise: Massachusetts: Department of Revenue Issues Revised Version of Proposed Market-Sourcing Regulation

Proposed Regulation 830 CMR 63.38.1, Mass. Dept. of Rev. (10/30/14). The Massachusetts Department of Revenue has issued a lengthy revised proposed regulation that would, upon adoption, repeal and replace administrative rules pertaining to the apportionment of income from sales other than sales of tangible personal property in accordance with “market-sourcing” legislation that was enacted during 2013 [*H.B. 3535*; see previously issued Multistate Tax Alert for more details on this 2013 legislation]. This 2013 legislation, which applies to taxable years beginning on or after January 1, 2014, made explicit that all such sales, except as otherwise provided, are sourced to Massachusetts “if the corporation’s market for the sale” is in Massachusetts. The proposed regulation provides specific market-based sourcing rules for:

[URL: http://www.mass.gov/dor/businesses/help-and-resources/legal-library/public-hearings/public-hearing-december.html](http://www.mass.gov/dor/businesses/help-and-resources/legal-library/public-hearings/public-hearing-december.html)

[URL: https://malegislature.gov/Document/Bill/188/House/H3535.pdf](https://malegislature.gov/Document/Bill/188/House/H3535.pdf)

[URL: http://newsletters.usdbriefs.com/2014/Tax/STM/141121_2_supp.pdf](http://newsletters.usdbriefs.com/2014/Tax/STM/141121_2_supp.pdf)

- The sale, rental, lease or license of real property;
- The rental, lease or license of tangible personal property;
- The sale of a service;
- The license or lease of intangible property; and
- The sale of intangible property.

The proposed regulation also includes numerous examples illustrating the sourcing of each category of sale. The Massachusetts Department of Revenue is scheduled to hold its next public hearing on this regulation proposal on December 4, 2014.

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[Archive: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:em:na:stm:eng:tax](http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-archive0.html?id=us:em:na:stm:eng:tax)

Michigan Supreme Court Denies Treasury's Motions for Rehearing / Stay in IBM

On July 14, 2014, the Michigan Supreme Court in *International Business Machines v. Michigan Department of Treasury* (“*IBM*”) held that the taxpayer could elect to compute both the Modified Gross Receipts Tax and Business Income Tax components of its 2008 Michigan Business Tax (“MBT”) liability using the Multistate Tax Compact (“Compact”) election in lieu of the 100% sales-weighted apportionment formula under the MBT Act. By application of the election (Compact Article III), the taxpayer was allowed to use an equally-weighted, three-factor apportionment formula (property, payroll and sales).

On August 4, 2014, in response to the *IBM* decision, the Michigan Department of Treasury filed two motions with the court: a Motion for Rehearing, requesting that the court reconsider its decision; and a Motion to Stay, asking that the court suspend the effects of the case pending the outcome of the Motion for Rehearing.

On November 14, 2014, the Michigan Supreme Court denied both motions. Accordingly, the Michigan Supreme Court decision of July 14, 2014 stands, and the matter is remanded to the Michigan Court of Claims for entry of an order granting summary disposition in favor of IBM.

This Multistate Tax Alert summarizes the status of the Compact election for MBT purposes and provides some taxpayer considerations in light of the developments in *IBM* and the recent enactment of Public Act 282 of 2014, retroactively repealing the Compact provisions of Michigan law.

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URL: http://newsletters.usdbriefs.com/2014/Tax/STM/141121_alerts_supp.pdf

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