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Michigan Appeals Court Decides Proper Sourcing of Wholesale Electricity Sales for Apportionment

Companies that generate electricity generally sell to an electric grid operator that coordinates and controls the transmission of electricity. Such operators may sell electricity in multiple states. Questions arise as to where, for state income tax purposes, the generator is required to source its income. The Michigan Court of Appeals, in a ruling this month, held that for Michigan corporate income tax purposes, the generator must source its income to the point where the federally mandated transfer of title occurs under the tariff and not to an ultimate destination where the market participant uses the electricity. [*CMS Energy Corp. v. Dept. of Treasury*, Mich. Ct. App., Dkt. No. 374696 (Feb. 17, 2026)]

The relevant statute sourcing sales of tangible personal property specifically requires sales of electricity to be sourced to Michigan if the contract requires the electricity be shipped or delivered to any purchaser within Michigan. This determination is made based on the ultimate destination at the point that the electricity comes to rest, regardless of the free-on-board point or other conditions of the sales. [MCL 206.665(1)(a)]

The ultimate destination where the property comes to rest is the focus of the court's analysis, and the court opined that it is determined in context of a sale to "any purchaser." The statute does not require that the property be followed through subsequent resales to an ultimate destination.

In Michigan, the term "sale" is defined as the total amounts received by the taxpayer as consideration resulting from the transfer of property title. [MCL 206.609(4)] The court rejected the taxpayer's argument that the grid operator merely taking "flash title" is required for federal regulatory purposes. It stated that such transfer of title would not be required if the Federal Energy

Regulatory Commission (FERC) did not believe it was necessary, or significant.

Additionally, the taxpayer received money from the grid operator. The court determined that the grid operator's payments to the taxpayer for the electricity were a consideration, despite the taxpayer's argument that the grid operator merely collected money from a market participant buyer and remitted it to the taxpayer. Noting that the grid operator was a counterparty to the transactions, the court determined the operator had a personal right to the money because it had set off rights if a market participant filed for bankruptcy.

Thus, the taxpayer's transactions with the grid operator are considered "sales" and the grid operator is a "purchaser." So, the sales to the grid operator are sourced to Michigan if the electricity is delivered there under the contract.

The transaction between the taxpayer and the grid operator was governed by a tariff, **a legally** binding, regulated set of rates, terms, and conditions that govern how the generator connects to, injects power into, and uses the transmission or distribution grid. A tariff is generally approved by government regulators or public utility commissions to ensure fairness, transparency, and non-discriminatory access. Under a tariff, the point of receipt where the generator makes its electricity available to the grid operator is as specified in a service agreement. The taxpayer failed to challenge the Tax Tribunal's determination that the tariff was a contract. Based on the pertinent service agreement between the taxpayer and grid operator, delivery was to occur at certain substations or interconnection points, all of which were in Michigan. The taxpayer's argument that the grid operator's offices were all located outside of Michigan did not change the contractual points of delivery.

The taxpayer's arguments that the interconnection points serve as free-on-board points and that the federally mandated transfer of title is a mere condition of the sale also failed. The court concluded that the delivery of electricity to the grid operator in exchange for consideration is the sale itself, and that delivery occurred in Michigan under the contract.

The Michigan statute, unlike statutes in some other states, expressly provides for sales of electricity, and sourcing is where "the contract requires the property to be shipped or delivered."

The taxpayer's constitutional arguments were also rejected, as the court decided the internal and external consistency tests of the Commerce Clause were met.

What this means to you

Businesses selling electricity wholesale should review their Michigan apportionment calculation to determine if they have any exposure or refund opportunity.

Contact us

For further details or additional information, please contact Robert Romashko, Bill Schenkelberg, or a member of the Husch Blackwell State & Local Taxation team.