



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

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LETTER RULING 2018-1

LR 2018-1. Sourcing of Gains from the Sale of a Government-Issued License.

You ask whether the gains from the sale of a government-issued license covering territory located entirely within the State of Michigan are sourced to Michigan for purposes of apportioning a taxpayer's tax base under the Corporate Income Tax (CIT).

You and your wholly-owned subsidiaries are telecommunications companies headquartered outside the State of Michigan that provide landline and wireless services. You hold a license issued by the Federal Communications Commission (FCC) that permits the holder to transmit and receive, or prevent others from transmitting and receiving, electromagnetic radiation signals at a specific frequency and bandwidth within an area entirely within Michigan for the purpose of mobile telecommunications. Though you never provided services to customers in Michigan under the license, as holder of the license you have the right to prevent others from doing so. The sale of the license and its attendant rights to an unrelated third-party is anticipated to produce a gain. Your filing of CIT returns in prior years indicates that you have nexus with Michigan.

Part 2 of the Michigan Income Tax Act, known as the corporate income tax, levies tax on a corporation's adjusted business income, which would include the gain from the sale of the license.¹ For taxpayers whose business activities are subject to tax both within and outside this state, the tax base must be apportioned using the sales factor.² You ask whether the gain from the sale is sourced to Michigan and thus included in the numerator of the sales factor.

Income received for the use of or for the privilege of using intangible property, including FCC licenses, is sourced to the state in which the property is used by the purchaser.³ Intangible property is used in Michigan if the purchaser uses the intangible property or the rights to the intangible property in the regular course of its business.⁴ As a provider of wireless telecommunications services, the acquisition and holding of an FCC license that permits, or in this case prevents others from, transmitting and receiving wireless signals is use of an intangible asset in the regular course of your business. Because the license covered a geographic area entirely within Michigan, the sale of the license is sourced to Michigan and must be included in the numerator of the sales factor for purposes of apportionment.

Issued: November 21, 2018
LR 2018-1

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¹ MCL 206.623(2).

² MCL 206.661(2).

³ MCL 206.665(1)(e).

⁴ MCL 206.665(1)(e).