



This Week in State Tax (TWIST)

16th January, 2024



To listen to the podcast please [click here](#)

Michigan: Holding Company Has City of Detroit Income Tax Nexus

Recently, a City of Detroit income tax dispute came before the Michigan Court of Appeals for the third time. In sum, the Court of Appeals reversed the Tax Tribunal (and its own prior conclusion) and held that a passive holding company formed to hold an investment had City of Detroit Income Tax (CDIT) nexus. The facts are as follows. After a Detroit-based private equity firm identified an investment opportunity in a Canadian company, the firm formed a fund to invest in the Canadian entity. The corporate taxpayer at issue, Apex, was subsequently created to hold the fund's portion of the investment in the Canadian company. Although Apex possessed a Detroit mailing address, it did not have any employees, owned no real or personal property, provided no services, and sold no goods, either in Detroit or elsewhere. However, Apex's officers and directors were all employees of the private equity firm based in Detroit. In 2012, Apex sold its interest in the Canadian company. The taxpayer paid CDIT on the gain from the sale, but the City later assessed additional tax. At that point Apex argued that it did not have nexus with the City and filed refund claims for all taxes paid. The matter eventually came before the Michigan Tax Tribunal; the Tribunal concluded that Apex was not subject to CDIT. The Michigan Court of Appeals affirmed, and the City appealed to the Michigan Supreme Court. Then came *Wayfair*. In light of the U.S. Supreme Court's decision, the Michigan's high court vacated the appeals court's previous opinion and remanded the case back to the Court of Appeals with further remanded it to the Tribunal for reconsideration in light of *Wayfair*, although the tax periods at issue in the case predated the *Wayfair* decision. Both parties filed supplemental briefs addressing *Wayfair*, and both parties filed competing motions for partial summary disposition. The Tribunal (once again) found that Apex was not subject to Detroit income tax because it lacked substantial nexus. This appeal followed.

The appeals court first addressed the Tribunal's conclusion that the taxpayer did not have substantial nexus with Detroit. The court found that Apex's officers and agents, who were employees of a private equity firm located in the city, took many actions on behalf of Apex in conjunction with the stock sale. In the court's view, these actions were sufficient to show that there was a nexus between Apex and Detroit. Further, Apex availed itself of the substantial privilege of carrying on business in the City. Recognizing that it had previously reached a different conclusion, the appeals court explained that it had applied the incorrect standard of review and had erroneously deferred to certain of the Tribunal's rulings in its original holding. The appeals court next addressed the Tribunal's conclusion that even if there was nexus, the taxpayer nevertheless had no income apportioned to Detroit because each of the numerators of the three-factor apportionment formula was zero. The Tribunal had also determined that an alternative apportionment method was not applicable because of the very minimal presence and activities conducted by Apex's agents in Detroit. This conclusion, the court determined, appeared at odds with the fact that all of Apex's business and its only presence was in the City of Detroit. The court concluded that because Apex's business did not involve the sale of goods and services, an alternative apportionment must be used. Ultimately, what type of method should be applied could not be determined on summary disposition and therefore the court remanded the case for further non-summary-disposition proceedings to address the alternative apportionment question. Please contact Dan De Jong with questions on *Apex Laboratories Intl. Inc. v. City of Detroit*.

Learn about us:



[kpmg.com](https://www.kpmg.com)