No.

In the Supreme Court of the United States

DIRECTV GROUP HOLDINGS, LLC,

Petitioner,

v.

MICHIGAN DEPARTMENT OF TREASURY,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Michigan

PETITION FOR A WRIT OF CERTIORARI

AMY L. SILVERSTEIN
Silverstein & Pomerantz LLP
12 Gough Street, No. 2
San Francisco, CA 94103
(415) 593-3502
asilverstein@sptaxlaw.com

CHARLES A. ROTHFELD
Counsel of Record
MICHAEL B. KIMBERLY
E. BRANTLEY WEBB
JOHN T. LEWIS
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
crothfeld@mayerbrown.com

Counsel for Petitioner

QUESTIONS PRESENTED

The Multistate Tax Compact is a multistate agreement that addresses significant aspects of the state taxation of interstate businesses. Among other things, the Compact is designed to prevent the over-taxation of such businesses, guaranteeing that Compact member States will allow such taxpayers to elect use of a specified formula when apportioning their income for state tax purposes. In 2014, the Michigan Supreme Court held that interstate taxpayers in Michigan, a Compact member State, had the right to use the Compact election. Michigan then unilaterally repealed the Compact, including the election provision, giving this new rule a retroactive effect of almost seven years. As a result, interstate businesses in Michigan were subject to retroactive taxes on business activities undertaken many years ago, in an aggregate amount exceeding $1 billion. In this case, the Michigan Court of Appeals held that the State's retroactive legislation is consistent with both the Contract and the Due Process Clauses of the United States Constitution.

The questions presented are:

1. Whether the Multistate Tax Compact has the status of a contract that binds its signatory States.

2. Whether a state law that imposes retroactive tax liability for a period of almost seven years, in a manner that upsets settled expectations and reasonable reliance interests, violates the Due Process Clause.

RULE 14.1(b) STATEMENT

Petitioner DIRECTV Group Holdings, LLC, was a plaintiff-appellant in the Michigan Court of Appeals. Sixteen other parties—Harley Davidson Motor Company, Inc.; Dun & Bradstreet, Inc.; L'Oreal USA, Inc. & Subsidiaries; Skadden, Arps, Slate, Meagher & Flom LLP; Easton Telecom Services, LLC; Anheuser-Busch, Inc.; Intuitive Surgical, Inc.; T-Mobile USA Inc. & Subsidiaries; General Aluminum Mfg. Co. & Affiliates; Conair Corp. & Subsidiaries; Johnson Matthey, Inc.; McNeil-PPC, Inc.; Fluor Corp. & Subsidiaries; Solo Cup Operating Corp.; ConAgra Foods, Inc. & Subsidiaries; and Boise, Inc.—also were plaintiffs-appellants in the Michigan Court of Appeals, but they are not participating in this petition.

Respondent, the Michigan Department of Treasury, was the sole defendant-appellee in the Michigan Court of Appeals.

RULE 29.6 STATEMENT

DIRECTV Group Holdings, LLC, a Delaware limited liability company, is a wholly-owned subsidiary of AT&T Inc. AT&T Inc., a Delaware corporation, is publicly traded on the New York Stock Exchange. There is no one person or group that owns 10% or more of the stock of AT&T Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS AND STATUTES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Petitioner DIRECTV Group Holdings, LLC, respectfully petitions for a writ of certiorari to review the judgment of the Michigan Court of Appeals in this case.

OPINIONS BELOW

The decision of the Michigan Court of Appeals (App., *infra*, 7a-28a) is unreported. The decision of the Michigan Court of Claims (App., *infra*, 29a-30a) is unreported. The order of the Michigan Supreme Court denying review (App., *infra*, 1a-6a) is reported at 884 N.W.2d 292.

JURISDICTION

The order of the Michigan Supreme Court denying leave to appeal was entered on September 6, 2016. This Court's jurisdiction rests on 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Contract Clause of the U.S. Constitution, art. I, § 10, cl. 1, provides in relevant part:

> No State shall * * * pass any * * * Law impairing the Obligation of Contracts.

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides:

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law.

Former MCL § 205.581 provided in relevant part:

> Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state * * * may elect to apportion and allocate his income in the manner provided by

> the laws of such state * * * without reference to this compact, or may elect to apportion and allocate in accordance with article IV.

Former MCL § 205.581 provided in relevant part:

> All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

STATEMENT

States entered into the Multistate Tax Compact ("the Compact") to establish a method for calculating state tax liability that would benefit out-of-state businesses by precluding duplicative state taxation. But a number of the Compact member States subsequently broke their agreement and departed from the Compact's terms, in a manner that deprived taxpayers of the intended benefit. The decision below is one of a series of recent state-court holdings that allowed States to avoid their Compact commitments in this manner, rejecting taxpayer arguments that a unilateral state departure from the Compact's guarantees violates the Contract Clause. The decision below then went a step further, allowing Michigan to give its departure from the Compact a retroactive effect of almost *seven* years.

The decision below in this case is substantively identical to that challenged by the petition in No. 16-699, *Goodyear Tire & Rubber Co.* v. *Michigan Department of Treasury* (docketed Nov. 25, 2016); the decision challenged in *Goodyear* and the holding below in this case both rest in relevant part on the related decision in *Gillette Commercial Operations N. Am. & Subsidiaries* v. *Dep't of Treasury* ("*Gillette Commercial Operations I*"), 878 N.W.2d 891, 901 (Mich. Ct. App.

2015), *cert. pending*, No. 16-697. For the reasons explained in the *Goodyear* petition, the Court should grant the petition in that case; it should hold this petition for disposition as appropriate in light of the resolution of *Goodyear*.

A. The Multistate Tax Compact

1. The Compact addresses problems that arise from the state taxation of businesses that operate in more than one State. One of these problems concerns the division of a business's income between the concerned States so as to avoid duplicative taxation. To determine the percentage of the interstate company's income that is taxable by any one State, States use an apportionment formula. But when States use different formulas, taxpayers face complexity, burdensome compliance costs, and the risk of being taxed on more than 100% of their income. See H.R. Rep. No. 1480, vol. 1 (1964) ("Willis Report").

In an attempt to counter these problems, the National Conference of Commissioners for Uniform State Laws drafted a model law in 1957, the Uniform Division of Income for Tax Purposes Act ("UDITPA"). UDITPA adopts an approach to income apportionment that averages three fractions: (1) the cost of the taxpayer's real property in the taxing State, divided by the total cost of its property; (2) the compensation the taxpayer pays employees in the State, divided by its total payroll; and (3) the taxpayer's gross sales in the State, divided by its total sales. That figure is multiplied by the taxpayer's total income to determine its state taxable income. Although UDITPA's formula is widely regarded as the most neutral and least discriminatory approach to apportionment, by 1965 only three States had adopted it.

Separately, Congress's so-called Willis Commission embarked on an extensive and, ultimately, highly critical review of the state taxation of interstate business.[1] It concluded that taxation of multistate taxpayers was inefficient and inequitable, particularly criticizing the diversity in apportionment formulas and the propensity of States to change those formulas frequently. To address these problems, the Willis Commission recommended federal preemptive legislation to mandate uniformity in state taxation. See H.R. Rep. No. 89-952, at 1143-1164 (1965). Members of Congress introduced several bills to implement this preemptive recommendation. *E.g.*, H.R. 11798, 89th Cong., 2d Sess. (1965).

2. In response, state officials adopted the Compact, which took effect in 1967. There is no doubt that the Compact's purpose was to forestall federal preemption; the contemporaneous summary and analysis of the Compact offered by the Council of State Governments ("CSG"), under whose auspices the Compact was prepared, explained that the Compact "is the result of * * * the growing likelihood that federal action will curtail seriously existing State and local taxing power if appropriate coordinated action is not taken very soon by the States." CSG, *The Multistate Tax Compact, Summary and Analysis* 1 (1967); see *U.S. Steel*, 434 U.S. at 455-456. Following the Compact's adoption, none of the proposed federal bills became law.

The Compact directly addressed the Willis Commission's concerns regarding burdens on out-of-state

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[1] Congress was reacting to this Court's decision in *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U.S. 450 (1959), which was generally understood to expand state authority to tax the income of interstate businesses. See *U.S. Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452, 455 (1978).

companies. Most significantly for present purposes, the Compact's Article III(1) provides unequivocally that "[a]ny taxpayer * * * may elect to apportion and allocate" its income using UDITPA's equal-weighted, three-factor approach, while also allowing States to craft their own alternative formulas that taxpayers may, but need not, use. Petition for a Writ of Certiorari, Appendix at 23a, No. 16-699, *Goodyear Tire & Rubber Co.* v. *Mich. Dep't of Treasury* (Nov. 21, 2016) [hereinafter *Goodyear* App.].

To join the Compact, States enact its text into their domestic statutory codes. The Compact thus provides that it "shall become effective as to any * * * State upon its enactment" by that State. Art. X(1) (*Goodyear* App. 43a). And it offers a specific mechanism for withdrawal: after enactment, "[a]ny party State may withdraw from th[e] compact by enacting a statute repealing the same." Art. X(2) (*Goodyear* App. 43a).

The Compact provided that it "shall enter into force when enacted into law by any seven States." Art. X(1) (*Goodyear* App. 43a). Nine States joined the Compact within six months, making it effective. This Court subsequently rejected the contention that the Compact is invalid under the Constitution's Compact Clause, art. I, § 10, cl. 3, because it has not been approved by Congress. In *U.S. Steel*, the Court held that congressional approval of agreements between States is required only when an interstate agreement contains provisions "that would enhance the political power of the member States in a way that encroaches upon the supremacy of the United States." 434 U.S. at 472. The "pact" embodied by the Compact, the Court concluded, has no such effect on congressional supremacy. *Id*. at 473.

B. Proceedings Below

1. Michigan became a member State of the Compact in 1970 by enacting the Compact's terms, including the guarantee that taxpayers could make use of the UDITPA apportionment formula. MCL § 205.581 (1970). In 2007, Michigan revised its method of business taxation, enacting the Michigan Business Tax Act ("BTA"). Although that statute provided for the apportionment of income through a single-factor formula based on sales, it "did not expressly repeal the Compact" and the Compact's election guarantee. *Int'l Bus. Mach. Corp.* v. *Dep't. of Treasury* ("*IBM*"), 852 N.W.2d 865, 870 (Mich. 2014). When state tax authorities nevertheless took the position that the BTA precluded taxpayers from using the Compact's three-factor formula, taxpayers brought suit, contending that the Compact election remained available.

The Michigan Supreme Court agreed with the taxpayers, holding in 2014 that the Michigan Legislature did not repeal the Compact's election provision when it enacted the BTA in 2007. The court explained that "reading the Compact's election provision as forward-looking—i.e., contemplating the future enactment of a state income tax with a mandatory apportionment formula different from the Compact's apportionment formula—is the only way to give meaning to the provision * * * in Michigan." *IBM*, 852 N.W.2d at 874. The court added that "the Legislature, in enacting the BTA, had full knowledge of the Compact and its provisions," but "[e]ven with such knowledge * * * the Legislature left the Compact's election provision intact." *Id.* at 874-875. The court therefore held that "the BTA and the Compact are

compatible and can be read as a harmonious whole" for the tax years 2008-2010. *Id.* at 875.[2]

2. The Michigan Legislature responded to the 2014 *IBM* decision by purporting to repeal the Compact's election provision retroactively for a period of almost seven years, as of January 1, 2008. See App., *infra*, 12a; *Gillette Commercial Operations I*, 878 N.W.2d at 901; 2014 PA 282. When state revenue authorities sought to apply this rule, taxpayers contended, insofar as is relevant here, (1) that they had a contractual right under the Compact to use the UDITPA three-factor formula, departure from which violates the Contract Clauses of the federal and state constitutions; and (2) that a retroactive change in tax law dating back almost seven years violates the Due Process Clauses of the federal and state constitutions. The Michigan Court of Claims rejected these arguments, ruling for the State.

The Michigan Court of Appeals affirmed. See *Gillette Commercial Operations I*, 878 N.W.2d at 902-912. On the first point, the court ruled "that the Compact is not a binding contract." *Id.* at 903. The court opined initially that "'[t]here are no words in the Compact * * * that indicate that the state intended to be bound to the Compact, and specifically [in] Article III(1).'" *Id.* at 904.

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[2] The court added that in 2011 the Michigan Legislature enacted a law providing that, as of January 1, 2011, taxpayers would be required to use the BTA's single-factor apportionment formula rather than the Compact's three-part formula. See 852 N.W.2d at 875-876. This express repeal of the Compact's election provision only as of 2011, the court explained, "is evidence that the Legislature had not impliedly repealed the provision" as of 2008. *Id.* at 876.

The state court then turned to this Court's decision in *Northeast Bancorp, Inc.* v. *Board of Governors*, 472 U.S. 159 (1985), which the state court understood to identify "[t]he three 'classic indicia' of a binding interstate compact[, which] are (1) the establishment of a joint regulatory body, (2) the requirement of reciprocal action for effectiveness, and (3) the prohibition of unilateral modification or repeal." *Gillette Commercial Operations I*, 878 N.W.2d at 905 (bracketed material added by the court). These considerations, the court continued, each indicate that the Compact is not a binding contract because (1) the Compact "did not confer any governing or regulatory power on" a commission; (2) "[t]here is nothing reciprocal about the Compact's provisions" because "[e]ach member state operates its respective tax systems independently from the tax systems of other Member States"; and (3) "the Compact allows unilateral modification and withdrawal." *Ibid*. For these reasons, the court concluded, "the Compact was not a binding agreement on this state. Instead, it was an advisory agreement." *Id*. at 906.

The court next rejected the taxpayers' due process arguments regarding retroactivity. In its view, "retroactive modification of tax statutes does not offend due process considerations as long as there is a legitimate legislative purpose that is furthered by a rational means." 878 N.W.2d at 907. That standard is satisfied here, the court held, because the Michigan Legislature acted to "correct a perceived misinterpretation of a statute" by the Michigan Supreme Court and to "eliminate a significant revenue loss." *Id*. at 910. The court added that its conclusion was supported by its belief that the retroactive change does not "assess a wholly new tax," instead "clarif[ying] the method of apportioning the tax base for a

previously enacted tax"; that taxpayers could not reasonably have relied on the availability of the UDITPA formula in light of the State's litigation position that the formula was unavailable; that the legislature "acted promptly to correct the error" after the Michigan Supreme Court's *IBM* decision; and that "the 6½-year retroactive period was sufficiently modest." *Id.* at 911 (internal quotation marks omitted).

3. The Michigan Supreme Court denied review. *Gillette Commercial Operations N. Am. & Subsidiaries* v. *Dep't of Treasury* ("*Gillette Commercial Operations II*"), 880 N.W.2d 230 (Mich. 2016). But Justice Markman, joined by Justice Viviano, dissented from the denial, explaining that "the issues raised here are * * * of considerable constitutional significance as to matters affecting the tax policy and procedures, the fiscal and business environments, and the jurisprudence of this state." *Id.* at 231.

In particular, Justice Markman would have addressed whether Michigan's unilateral abrogation of the Compact election violates the Contract Clause "because the Compact is a reciprocal and binding interstate compact between the signatory states with respect to which a retroactive withdrawal from the Compact amounts to an unconstitutional impairment of the contract." *Gillette Commercial Operations II*, 880 N.W.2d at 232. He also would have addressed whether Michigan's retroactive tax legislation is "consistent with federal due-process protections, * * * given that the retroactive period here of six years and nine months arguably exceeds 'a modest period of retroactivity,' [*United States* v. *Carlton*, 512 U.S. 26, 32 (1994)], and that one justice has observed in this same regard in a frequently cited statement that '[a] period of retroactivity longer than the year preceding the legislative session in which the law was enacted would

raise * * * serious constitutional questions.'" *Ibid.* (quoting *Carlton*, 512 U.S. at 38 (O'Connor, J., concurring in the judgment) (ellipses added by the court)).

4. An identical tax challenge brought by the taxpayer in this case was considered separately by the Michigan Court of Appeals, which denied the challenge on the basis of its ruling in *Gillette Commercial Operations I*. App., *infra*, 13a, 15a-17a. The Michigan Supreme Court denied review, with Justices Markman and Viviano again dissenting. *Id.* at 6a.

REASONS FOR GRANTING THE PETITION

This petition is one of several that present the questions (1) whether the Compact is binding and (2) whether Michigan's retroactive tax legislation violates the Due Process Clause. In addition to No. 16-699, *Goodyear Tire & Rubber Co.* v. *Michigan Department of Treasury*, and No. 16-697, *Gillette Commercial Operations North America* v. *Michigan Department of Treasury*, these petitions, also arising out of the Michigan Court of Appeals' decision in *Gillette Commercial Operations I*, include: No. 16-687, *Sonoco Products Co.* v. *Michigan Department of Treasury*; No. 16-688, *Skadden, Arps, Slate, Meagher, & Flom, LLP* v. *Michigan Department of Treasury*; and No. 16-698, *International Business Machines Corp.* v. *Michigan Department of Treasury*.

For the reasons described in the *Goodyear* petition, petitioner here respectfully urges the Court to grant the petition in *Goodyear*. It should then hold this petition pending resolution of that case and dispose of it in accord with the result of that proceeding.

CONCLUSION

The petition for a writ of certiorari should be held pending the disposition of No. 16-699, *Goodyear Tire & Rubber Co.* v. *Michigan Department of Treasury*.

Respectfully submitted.

AMY L. SILVERSTEIN
Silverstein & Pomerantz LLP
12 Gough Street, No. 2
San Francisco, CA 94103
(415) 593-3502
asilverstein@sptaxlaw.com

CHARLES A. ROTHFELD
Counsel of Record
MICHAEL B. KIMBERLY
E. BRANTLEY WEBB
JOHN T. LEWIS
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000
crothfeld@-mayerbrown.com

Counsel for Petitioner

DECEMBER 2016

APPENDICES

APPENDIX A

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

Robert P. Young, Jr.,
Chief Justice

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

Order

September 6, 2016
153594-608

HARLEY DAVIDSON MOTOR COMPANY, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153594
COA: 325498
Court of Claims: 13-000158-MT
_____/

L'OREAL USA, INC. & SUBSIDIARIES,
Plaintiff-Appellant,
v

DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153595
COA: 326130
Court of Claims: 14-000174-MT
_____/

L'OREAL USA, INC. & SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153596
COA: 326131
Court of Claims: 14-000178-MT
_____/

SKADDEN, ARPS, SLATE,
MEAGER & FLOM, LLP,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153597
COA: 326135
Court of Claims: 14-000296-MT
_____/

ANHEUSER-BUSCH, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153598
COA: 327057
Court of Claims: 11-000085-MT
_____/

INTUITIVE SURGICAL, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153599
COA: 327178
Court of Claims: 15-000012-MT
_____/

T-MOBILE USA, INC., AND
SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153600
COA: 327217
Court of Claims: 15-000071-MT
_____/

GENERAL ALUMINUM MFG COMPANY,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153601
COA: 327218
Court of Claims: 15-000021-MT

_____/

JOHNSON MATTHEY, INC.
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153602
COA: 327694
Court of Claims: 14-000269-MT

_____/

McNEIL-PPC, INC.
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153603
COA: 327964
Court of Claims: 12-000143-MT

_____/

FLUOR CORP & SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153604
COA: 327995
Court of Claims: 12-000147-MT

_____/

DIRECTV,
Plaintiff-Appellant,

v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153605
COA: 328193
Court of Claims: 13-000092-MT
_____/

SOLO CUP OPERATING CORP,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153606
COA: 328206
Court of Claims: 13-000062-MT
_____/

CONAGRA FOOD, INC. and SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153607
COA: 328317
Court of Claims: 15-000120-MT
_____/

BOISE, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

SC: 153608
COA: 328967
Court of Claims: 15-000133-MT
_____/

On order of the Court, the application for leave to appeal the March 15, 2016 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MARKMAN, J. I would grant leave to appeal for the reasons set forth in my dissenting statement in *Gillette Commercial Operations North America v Dep't of Treasury*, 499 Mich 960, 961-962 (2016).

VIVIANO, J. joins the statement of MARKMAN, J.

APPENDIX B

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 15, 2016

HARLEY DAVIDSON MOTOR COMPANY, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 325498
Court of Claims: LC No. 13-000158-MT
_____/

DUN & BRADSTREET, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 325499
Court of Claims: LC No. 13-000085-MT
_____/

DUN & BRADSTREET, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 325500
Court of Claims: LC No. 12-000125-MT

_____/

L'OREAL USA, INC. & SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 326130
Court of Claims: LC No. 14-000174-MT
_____/

L'OREAL USA, INC. & SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 326131
Court of Claims: LC No. 14-000178-MT
_____/

SKADDEN, ARPS, SLATE,
MEAGER & FLOM, LLP,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 326135
Court of Claims: LC No. 14-000296-MT
_____/

EASTON TELECOM SERVICES, LLC,
Plaintiff-Appellant,
v

DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 326862
Court of Claims: LC No. 15-000068-MT
_____/

ANHEUSER-BUSCH, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327057
Court of Claims: LC No. 11-000085-MT
_____/

INTUITIVE SURGICAL, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327178
Court of Claims: LC No. 15-000012-MT
_____/

T-MOBILE USA, INC., AND
SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327217
Court of Claims: LC No. 15-000071-MT
_____/

GENERAL ALUMINUM MFG COMPANY
AND AFFILIATES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327218
Court of Claims: LC No. 15-000021-MT
_____/

CONAIR CORPORATION AND SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327220
Court of Claims: LC No. 15-000007-MT
_____/

CONAIR CORPORATION AND SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327222
Court of Claims: LC No. 15-000072-MT
_____/

JOHNSON MATTHEY, INC.
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327694
Court of Claims: LC No. 14-000269-MT
_____/

McNEIL-PPC, INC.
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327964
Court of Claims: LC No. 12-000143-MT
_____/

FLUOR CORPORATION & SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 327995
Court of Claims: LC No. 12-000147-MT
_____/

DIRECTV,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 328193
Court of Claims: LC No. 13-000092-MT
_____/

SOLO CUP OPERATING CORPORATION,
Plaintiff-Appellant,
v

DEPARTMENT OF TREASURY,
Defendant-Appellee.
No. 328206
Court of Claims: LC No. 13-000062-MT
_____/

CONAGRA FOODS, INC. and SUBSIDIARIES,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 328317
Court of Claims: LC No. 15-000120-MT
_____/

BOISE, INC.,
Plaintiff-Appellant,
v
DEPARTMENT OF TREASURY,
Defendant-Appellee.

No. 328967
Court of Claims: LC No. 15-000133-MT
_____/

Before: GLEICHER, P.J. and MURPHY and OWENS, JJ.

PER CURIAM.

In these 20 consolidated appeals, plaintiff-taxpayers challenge the Court of Claims' summary dismissal of their actions seeking tax refunds. Specifically, each plaintiff is a corporation that earns income in many states and made use of the elective three-factor apportionment formula in the Multistate Tax Compact to which Michigan previously adhered. With the passage of 2014 PA 282, the Legislature

clarified that its enactment of the Michigan Business Tax Act (MBTA), 2007 PA 36, withdrew the state from the compact and created a single-factor apportionment formula. 2014 PA 282 provided for retroactive application to 2008.

Plaintiffs challenge the validity and constitutionality of 2014 PA 282. However, this Court rejected identical arguments in *Gillette Commercial Operations North America & Subsidiaries v Dep't of Treasury*, ___ Mich App ___; ___ NW2d ___ (Docket No. 325258 *et al*, issued September 29, 2015). Certain parties raise other challenges that also lack merit. We affirm.

I. BACKGROUND

As discussed by this Court in *Gillette*, slip op at 14, the Multistate Tax Compact was enacted in 1967 by the legislatures of seven states, including Michigan. Of relevance to this case is the method of income apportionment described in the Compact:

> The present case, and others like it, concern two alternative methods of apportioning income for purposes of calculating MBT [Michigan business tax]. Under the [MBTA], created by 2007 PA 36, income is apportioned by applying a single factor apportionment formula based solely on sales. MCL 208.1301(2). In contrast, under the Compact's election provision, income may be apportioned using an equally-weighted, three-factor apportionment formula based on sales, property and payroll. The potential effect of electing "out" of the [MBTA's] single-factor apportionment methodology is a reduction of the overall apportionment percentage for

> companies that do not have significant property and payroll located in Michigan. [*Id.*]

On July 14, 2014, our Supreme Court issued its opinion in *Int'l Business Machines Corp v Dep't of Treasury*, 496 Mich 642; 852 NW2d 865 (2014) (*IBM*). In *IBM*, the Court considered whether the enactment of the MBTA required taxpayers to use the single-factor apportionment methodology or whether taxpayers could continue to opt into the three-factor Compact method. *Gillette*, slip op at 14-15. As summarized in *Gillette*, slip op at 15, the Supreme Court

> determined that for tax years 2008 through 2010, the Legislature did not repeal by implication the three-factor apportionment formula as set forth in MCL 205.581 et seq., and concluded that the taxpayer was entitled to use the Compact's three-factor apportionment formula in calculating its 2008 taxes. The Court also concluded that both the business income tax base and the modified gross receipts tax base of the MBT are "income taxes" within the meaning of the Compact.

The Legislature responded by enacting 2014 PA 282 on September 11, 2014. The act specifically indicated that 2007 PA 36 eliminated the statutory provision permitting taxpayers to elect into the Compact's three-part apportionment methodology and made the 2014 enactment retroactive to January 1, 2008. *Gillette*, slip op at 15.

Each plaintiff in the current appeals desired to use the three-part apportionment formula to calculate their Michigan income tax liability between 2008 and 2010. They filed suit in the Court of Claims seeking a refund of the excess taxes they were re-

quired to pay under the MBTA's single-factor formula. The Court of Claims summarily dismissed that portion of each plaintiff's action.

II. CONSTITUTIONALITY OF 2014 PA 282

In all the consolidated appeals, plaintiffs contend that they should have been permitted to apportion their income using the three-factor Compact method and assert that 2014 PA 282 violates the Compact, as well as the contracts, due process, separation of powers, commerce, and title-object clauses of the Michigan and federal constitutions and the five-day rule articulated in Const 1963, art 4, § 26. Accordingly, they contend that the Court of Claims should not have dismissed their refund counts.

We review de novo the grant of summary disposition under MCR 2.116(I)(1). *Gillette*, slip op at 16. MCR 2.116(I)(1) states: "If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." We also review de novo underlying issues of statutory interpretation and the resolution of constitutional issues. *Gillette*, slip op at 16.

Plaintiffs' arguments are identical in all relevant respects to those raised in *Gillette*. This Court rejected the plaintiffs' myriad challenges in *Gillette*, and we are bound by that ruling. MCR 7.215(C)(2). In particular, this Court held that the Compact was an advisory, not binding, agreement. Accordingly, 2014 PA 282's removal of Michigan from membership in the Compact was not prohibited and no contractual violation occurred. For the same reason, this Court found no violation of the Contract Clauses of either

the federal or state constitutions. *Gillette*, slip op at 21.

This Court held that "the retroactive repeal of the Compact did not violate the Due Process Clauses of either the state or federal constitutions or Michigan's rules regarding retrospective legislation. Nor did it violate the terms of the Compact itself." *Id*. at 22. "First, plaintiffs had no vested right in the tax laws or in the continuance of any tax laws." *Id.* at 25. Second, "the Legislature had a legitimate purpose for giving retroactive effect to 2014 PA 282": to "prevent a reduction in General Fund revenue of $1.1 billion." *Id.* at 25-26 (emphasis omitted). And the means selected were rationally related to the goals to be achieved. *Id.* at 26. Third, this Court concluded, the Legislature acted promptly following the *IBM* decision to correct the error perceived by the Supreme Court. Finally, this Court reasoned that the 6.5-year retroactive period "was sufficiently modest to time frames of other retroactive legislation" that had been upheld by appellate courts in the past. *Id.*

Gillette found no violation of the Separation of Powers clauses of either the federal or the state constitutions. The Legislature has the constitutional power to enact legislation to correct judicial misconceptions about the meaning of a law. *Id.* at 28, 30. This Court discerned no discrimination or undue burden placed on interstate commerce that would violate the United States Constitution's Commerce Clause. *Id*. at 31-32. This Court further found no violation of Michigan's Title-Object Clause, *id.* at 35-38, or the Michigan constitutional rule requiring that a bill be before each legislative house for a minimum of five days. *Id.* at 39.

As each challenge was raised, considered and resolved by this Court in *Gillette*, no new issues remain for our review. Accordingly, we discern no ground to overturn the dismissal of plaintiffs' refund claims. Nor are we convinced by plaintiffs' argument that we should express disagreement with *Gillette* and invoke the process for convening a special panel. See MCR 7.215(J)(2), (3). The plaintiffs' applications for leave to appeal in *Gillette* are currently pending before the Michigan Supreme Court. That appellate proceeding is sufficient to resolve the legal questions presented.

III. MODIFIED GROSS RECEIPTS

In Docket No. 327057, plaintiff Anheuser Busch, Inc. (Anheuser) argues that the predecessor Court of Claims judge erred in concluding that the Modified Gross Receipts Tax (MGRT) portion of the MBTA was not an "income tax" under the Compact's definition of that term. Anheuser contends that the MGRT is in fact an income tax under the Compact and therefore subject to the elective three-factor apportionment formula. Pursuant to *IBM*, 496 Mich at 663 (VIVIANO, J.), Anheuser would have been correct. Yet, we need not reach this issue. As 2014 PA 282 clarifies, Michigan has withdrawn from the Compact and its definitions no longer have relevance in apportioning one's income under Michigan tax law. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) ("As a general rule, an appellate court will not decide moot issues. A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights. An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief.").

IV. PENALTY WAIVERS

In Docket Nos. 327995 and 328206, plaintiffs Fluor Corporation & Subsidiaries (Fluor) and Solo Cup Operating Corporation (Solo Cup) presented their requests for penalty waivers before the Court of Claims. Plaintiffs were penalized because they made inadequate quarterly tax payments in 2008. Plaintiffs assert that their estimates were reasonable given the uncertain state of the law that year, excusing the shortfall. The Court of Claims dismissed plaintiffs' counts in this regard.

The Court of Claims granted defendant's motions for summary disposition of this issue under MCR 2.116(C)(10). In reviewing a (C)(10) motion, we consider "the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). We review underlying issues of statutory interpretation, and interpretation of administrative rules, de novo. *In re Petition of Attorney General for Investigative Subpoenas*, 274 Mich App 696, 698; 736 NW2d 594 (2007). Unambiguous statutory and administrative rule language must be enforced as written in accordance with its plain meaning. *Id.*

Under the MBTA, which was repealed effective May 25, 2011, a taxpayer who reasonably expected to pay taxes in excess of $800 for the tax year was required to file an estimated return and to pay an

estimated tax for each quarter of the tax year. MCL 208.1501(1), repealed by 2011 PA 39. Each quarterly estimated payment was to "be for the estimated business income tax base and modified gross receipts tax base for the quarter or 25% of the estimated annual liability." MCL 208.1501(3), repealed by 2011 PA 39. Defendant is statutorily required to assess a penalty when a taxpayer fails to make a sufficient estimated payment. See MCL 205.23(2) ("A deficiency in an estimated payment as may be required by a tax statute administered under this act shall be treated in the same manner as a tax due. . . ."); MCL 205.24(2) (requiring defendant to assess a penalty when a taxpayer fails or refuses to file a return or pay a tax).

MCL 205.24(4) provides for the waiver of a penalty as follows:

> If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the state treasurer or an authorized representative of the state treasurer shall waive the penalty prescribed by [MCL 205.24(2)].

Mich Admin Code, R 205.1013 sets forth the procedure for requesting a penalty waiver, in relevant part, as:

> (2) If a return is filed or a remittance is paid after the time specified, the taxpayer may request that the commissioner of revenue waive and the commissioner shall waive the penalty authorized by [MCL 205.24(4)] if the taxpayer establishes that the failure to

> file the return or to pay the tax was due to reasonable cause and not to willful neglect.
>
> (3) A waiver of penalty request shall be in writing and shall state the reasons alleged to constitute reasonable cause and the absence of willful neglect.
>
> (4) The taxpayer bears the burden of affirmatively establishing, by clear and convincing evidence, that the failure to file or failure to pay was due to reasonable cause.

Although each case must be evaluated individually, defendant has provided a list of examples that generally constitute reasonable cause and a list of factors that may establish reasonable cause when considered with other circumstances. See Mich Admin Code, R 205.1013(7), (8).

In Docket No. 327995, Fluor acknowledges that it underpaid its quarterly estimated taxes in 2008, but contends, for the first time on appeal, that this was due to uncertainty regarding the MBT, which had at that point only recently been enacted. Fluor asserts that defendant initially failed to provide guidance regarding the MBT because defendant did not release tax forms and instructions for the 2008 tax year until November 2008. Fluor also says that it was not negligent in electing to use the Compact's apportionment formula.

As Fluor did not raise this specific challenge until its appellate brief, there is no record supporting its claim. Defendant, on the other hand, replied to this new argument by appending to its appellate brief the instructions it published in December 2007, explaining when estimated quarterly payments were due, how the estimates were to be calculated, and the

penalty for not making the payments. We arguably cannot consider this document because it is not in the lower court record. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002) ("This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal."). Had Fluor raised this claim in a timely manner, defendant likely would have presented these instructions below. And pursuant to MRE 201, we may take judicial notice of facts that can be readily confirmed by sources whose accuracy cannot reasonably be questioned. Given this unrebutted evidence, the Court of Claims would have had no choice but to reject Fluor's challenge. In any event, parties are presumed to know the law, *Mudge v Macomb Co*, 458 Mich 87, 109 n 22; 580 NW2d 845 (1998), and Fluor has alleged no facts or law to overcome this fundamental principle.

Fluor further contends that it acted with reasonable cause and not willful neglect in choosing to calculate its 2008 quarterly tax payments using the three-factor Compact apportionment formula. However, as aptly noted by the Court of Claims, "according to the record, the penalty was based solely on the underpayment of total tax liability for 2008 as reported by plaintiff," not the taxpayer's apportionment method. Although defendant adjusted the number upward, Fluor reported a total tax liability using the Compact formula of $2,613,151.00. Pursuant to former MCL 208.1501(3), Fluor's quarterly payments should have been $653,287.75. Fluor's payments were all under $200,000, an excessive shortfall warranting the penalty imposed regardless of the calculation method.

In Docket No. 328206, Solo Cup argues that the Court of Claims erroneously concluded that it failed to exhaust its administrative remedies by petitioning defendant for a penalty waiver before filing suit. According to Solo Cup, there is no exhaustion of remedies requirement in the Revenue Act, and such a requirement would be at odds with the statutory provision requiring a taxpayer to file an appeal in the Court of Claims within 90 days after the assessment, decision, or order. See MCL 205.22(1). Solo Cup also contends that nothing in MCL 205.24(4) requires a taxpayer to submit a written request for a waiver of penalty and that Rule 205.1013(3) does not provide that a penalty waiver request must be submitted before filing suit in the Court of Claims. Even if a written waiver request were required, Solo Cup claims that its Court of Claims complaint qualifies as such a written request.

"The doctrine of exhaustion of administrative remedies requires that where an administrative agency provides a remedy, a party must seek such relief before petitioning the court." *Cummins v Robinson Twp*, 283 Mich App 677, 691; 770 NW2d 421 (2009). Nonetheless, if "it is clear that appeal to an administrative body is an exercise in futility and nothing more than a formal step on the way to the courthouse, resort to the administrative body is not required." *Turner v Lansing Twp*, 108 Mich App 103, 108; 310 NW2d 287 (1981); see also *Manor House Apartments v City of Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994). "[C]ourts should not presume futility in an administrative appeal but should assume that the administrative process will, if given a chance, discover and correct its own errors." *Citizens for Common Sense in Gov't v Attorney General*, 243 Mich App 43, 52; 620 NW2d 546 (2000) (quota-

tion marks omitted); see also *L & L Wine & Liquor Corp v Liquor Control Comm*, 274 Mich App 354, 358; 733 NW2d 107 (2007).

MCL 205.24(4) contemplates the submission of a waiver request *to defendant* by stating that a waiver shall be granted if "it is shown *to the satisfaction of the department* that the failure was due to reasonable cause and not willful neglect[.]" (Emphasis added.) Rule 205.1013 prescribes in further detail that the taxpayer must file a written request stating the reasons alleged to constitute reasonable cause and the absence of willful neglect and articulates that the taxpayer has the burden of establishing reasonable cause by clear and convincing evidence. Because defendant provides a remedy to taxpayers seeking a penalty waiver, Solo Cup was required to seek such relief before petitioning the Court of Claims. *Cummins*, 283 Mich App at 691.

Solo Cup's Court of Claims complaint did not fulfill the statutory and rule notice requirements. The complaint sought action from the court, not defendant, and sought to satisfy the court, not defendant, that the taxpayer's quarterly payments were reasonably calculated. Solo Cup's suggestion that it lacked sufficient time to pursue the administrative remedy in light of the 90-day time limit for filing an appeal in the Court of Claims is conjectural. It could have filed the waiver request and if a response was not forthcoming, it could have filed the Court of Claims action. Courts will not presume that an administrative appeal would have been futile. *Citizens for Common Sense in Gov't*, 243 Mich App at 52. A party's speculation about the outcome of an administrative remedy does not excuse the obligation to exhaust that remedy. *Id.* at 54.

Solo Cup relies on *Montgomery Ward & Co, Inc v Dep't of Treasury*, 191 Mich App 674; 478 NW2d 745 (1991), to support its argument, but that case in inapposite. *Montgomery Ward* involved a taxpayer's judicial appeal of a tax assessment. The statute at issue in that case included specific steps to perfect court jurisdiction. As the taxpayer had taken those steps, the court had jurisdiction over the case. Here, the taxpayer did not jump through the hurdles outlined in the relevant statutes and administrative rules. Therefore, the taxpayer failed to exhaust the available administrative remedies and the suit was premature.

V. SUBJECT MATTER JURISDICTION

The matter underlying Docket No. 327178 has a slightly different procedural history than its brethren. Plaintiff Intuitive Surgical, Inc. (Intuitive) first appealed defendant's tax adjustments for 2008, 2009, and 2010 to the Michigan Tax Tribunal (MTT). Defendant sought summary disposition of Intuitive's claims because the department complied with the plain language of 2007 PA 36 and 2014 PA 282. Defendant further argued that the MTT lacked jurisdiction to resolve the constitutional challenges to 2014 PA 282. In response, Intuitive filed a declaratory judgment action in the Court of Claims to resolve the constitutional issues. The MTT held the proceedings in abeyance pending the Court of Claims' resolution. And the Court of Claims found no constitutional violation and summarily dismissed Intuitive's declaratory judgment action.

Defendant now contends that the Court of Claims lacked jurisdiction to hear the matter because (1) the action was filed beyond the 90-day window, (2) the declaratory judgment complaint did not

allege an "actual controversy" as required by MCR 2.605(A), and (3) the Court of Claims' action was actually a collateral attack on certain MTT decisions, which should have been challenged through a direct appeal to this Court. Defendant did not raise these challenges below. However, "jurisdictional defects may be raised at any time, even if raised for the first time on appeal." *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 97; 693 NW2d 170 (2005). We review such jurisdictional questions de novo. *Id*. at 98.

The lack of subject matter jurisdiction is a serious defect. A court must dismiss an action without considering the merits when jurisdiction is lacking. See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002) ("The lack of subject-matter jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it. Indeed, having determined that it has no jurisdiction, a court should not proceed further except to dismiss the action.") (citation omitted). Accordingly, even though the Court of Claims correctly resolved the constitutional question, we must determine whether it had authority to consider the claim in the first instance.

First, we discern no error in the Court of Claims considering this action despite that it was filed more than 90 days after defendant's adverse decision. See MCL 205.22(1). This Court impliedly accepted the waiver of this time limitation in *Toll Northville, LTD v Northville Twp*, 272 Mich App 352; 726 NW2d 57 (2000), aff'd in part and vacated in part on other grounds 480 Mich 6; 743 NW2d 902 (2008), when a party seeks resolution of a constitutional issue that arises during the pendency of an MTT case.

Second, there existed an actual controversy to place before the Court of Claims for resolution. MCR 2.605 governs declaratory judgment actions. MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(2) continues, "For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment."

> Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve the plaintiff's legal rights. *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978); *Durant v Dep't of Ed (On Remand)*, 238 Mich App 185, 204-205; 605 NW2d 66 (1999). "What is essential to an 'actual controversy' under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Shavers*, 402 Mich at 589; *Fieger v Comm'r of Ins*, 174 Mich App 467, 470-471, 437 NW2d 271 (1988). Generally, where the injury sought to be prevented is merely hypothetical, a case of actual controversy does not exist. *Recall Blanchard Comm v Secretary of State*, 146 Mich App 117, 121; 380 NW2d 71 (1985). [*Citizens for Common Sense in Gov't*, 243 Mich App at 55.]

In *Toll Northville*, 272 Mich App at 355, the plaintiff appealed the defendant township's decision to increase the taxable value of its property in 2000 and therefore impose a higher tax liability in 2001 and 2002 to the MTT. During that action, the constitutionality of the underlying statute came into question. As the MTT lacks statutory jurisdiction to consider such constitutional attacks, the plaintiff filed a separate declaratory judgment complaint in the circuit court to resolve the issue. *Id.*; see also See *Meadowbrook Village Assoc v Auburn Hills*, 226 Mich App 594, 596; 574 NW2d 924 (1997) ("The [MTT] does not have jurisdiction over constitutional questions and does not possess authority to hold statutes invalid."). The defendant contended in both the MTT and the circuit court action that the MTT lacked jurisdiction to impose a remedy because the plaintiff attacked the 2001 and 2002 tax assessments, but the change in taxable value occurred in 2000. *Toll Northville*, 272 Mich App at 359-360. This Court concluded that the circuit court did have jurisdiction over the constitutional claim, however, because no decision had been made regarding the MTT's jurisdiction and the parties retained an interest in adverse claims. *Id.* at 361.

So too here, Intuitive filed an MTT action regarding tax years 2008 through 2010. The MTT had yet to resolve those actions and the parties retained an interest in their adverse claims. Accordingly, an actual controversy existed which the Court of Claims could resolve to guide the definition of the parties' rights in the future in the MTT action. Moreover, just as in *Toll Northville*, the current plaintiff sought a present resolution about past tax years. Although the financial injury had already occurred, resolution

of the parties' rights would affect the present and the future.

Defendant's claim that Intuitive's declaratory judgment complaint was actually a collateral attack is similarly unfounded. The MTT could not resolve the constitutional challenge and resolution of that question was necessary before the merits of Intuitive's underlying challenge to the tax assessment could be decided. Evidencing that the MTT could not resolve the matter, it held the case in abeyance pending the Court of Claims' decision. The MTT had yet to resolve the matter, so Intuitive's Court of Claims' action could not be a collateral attack.

Finally, defendant asserts that the Court of Claims should have dismissed Intuitive's declaratory judgment complaint because another action between the same parties raising the same issues remained pending in the MTT. This contention is completely inconsistent with *Toll Northville*, however, in which the MTT also held a matter in abeyance to permit the plaintiff to seek resolution of a constitutional issue in the circuit court.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ William B. Murphy
/s/ Donald S. Owens

APPENDIX C

STATE OF MICHIGAN
COURT OF CLAIMS

DIRECTTV
v
DEPT OF TREASURY

Case No. 13-000092-MT
Hon. Michael J. Talbot

ORDER

At a session of said Court held in,
Detroit, Wayne, Michigan, on
December 19, 2014.

Having reviewed the complaint in the present matter, the Court concludes that plaintiffs request for a refund is partially premised on the elective three-factor apportionment formula of the Multistate Tax Compact. In 2014 PA 282, the Legislature retroactively repealed the Compact provisions. For the reasons stated in this Court's December 19, 2014, opinions in *Ingram Micro, Inc v Dep't of Treasury,* No. 11-000033-MT and *Yaskawa America, Inc v Dep't of Treasury,* No. 11-000077-MT, the Court concludes that PA 282 applies to this action and negates the basis for plaintiff's claim. Accordingly, the Court grants partial summary disposition to the Department pursuant to MCR 2.116(I)(1).

With respect to the remaining claims, the parties have until February 2, 2015, to file dispositive motions. Any response must be filed within 14 days of the service of said motion. The parties will be notified if the Court determines that oral argument is necessary.

/s/ Michael J. Talbot, Chief Judge