

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

NATIONWIDE AGRIBUSINESS INSURANCE
COMPANY,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

Supreme Court No. 167608

Court of Appeals No. 364790

MTT No. 21-000039

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**MOTION FOR LEAVE TO FILE AN AMICUS CURIAE
BRIEF BY THE COUNCIL ON STATE TAXATION**

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Amicus Curiae, the Council On State Taxation (COST), respectfully moves this Court pursuant to MCR 7.311 and MCR 7.312(H) for leave to file an amicus curiae brief in the above captioned case. In support its Motion, COST states:

1. COST is a nonprofit trade association based in Washington, D.C. Its membership comprises approximately 500 of the largest multistate corporations engaged in interstate and international business and represents industries doing business in every state across the country.

2. Many of the COST members do business in Michigan.

3. Over the past fifty-six years, COST has participated as amicus curiae in numerous cases before the U.S. Supreme Court and state courts, including Michigan courts. Notably, in the past 25 years, COST has filed amicus briefs addressing Michigan issues in: *Dine Brands Global Inc v Rachael Eubanks*, ___ Mich ___ (Docket 165391, March 24, 2025); *Int'l Bus Machines, Inc v Dep't of Treasury*, 496 Mich 642; 852 NW2d 865 (2016); *Thompson Reuters, Inc v Dep't of Treasury*, Michigan Supreme Court Docket No. 149902, 2014 Mich App Lexis 836 (2014); *General Motors v Dep't of Treasury*, 290 Mich App 355; 803 NW2d 698 (2010); *Int'l Home Foods, Inc v Dep't of Treasury*, 477 Mich. 983; 725 NW2d 458 (2007); and *Topps Co, Inc v Dep't of Treasury*, 462 Mich 53; 611 NW2d 801 (2000).

4. COST's objective is to preserve and promote equitable, transparent, and non-discriminatory state and local taxation of multijurisdictional business entities.

5. This case presents an issue of first impression concerning whether the State's Corporate Income Tax (CIT) requirement that a unitary business group file a single combined return includes insurance companies. MCL 206.691(1). Specifically, does the CIT's requirement for filing a single combined return require the inclusion of insurance companies subject to taxes under Chapter 12 of the Act. MCL 206.635.

6. The Court of Appeals, interpreting the plain meaning of the statute, concluded that a unitary group of insurance companies are required to file a single combined CIT return. Additionally, the Court of Appeals held the combined return requirement also applies to the retaliatory tax, MCL 500.476a, and the Michigan Automobile Insurance Placement Facility (MAIPF) credit (MCL 206.637).

7. The issue presented in this case is important to COST and its members. This Court's ruling, based on the plain meaning of the statute's words, would promote sound tax policy and create certainty and predictability, reduce confusion, prevent unintentional non-compliance, and enhance fairness and equity in the tax system. Adopting the Department of Treasury's ("Treasury") statutory interpretation would render several sections of the CIT meaningless. Treasury's statutory interpretation is contrary to the rationale for requiring a single combined return for all unitary group members and it also directly contradicts the statutory language.

8. Should the Court grant this Motion, COST intends to address in its brief why this Court should affirm the Court of Appeals decision and issue an Order in favor of the Appellees.

9. COST, as a long-standing representative of multistate and multinational businesses, many of which do business in Michigan, is uniquely positioned to provide this Court with the analytical underpinnings for why the Court of Appeals correctly applied the concepts of a unitary combined reporting system to include insurance companies.

10. A copy of the proposed amicus curiae brief is attached to this Motion as Attachment 1.

11. Counsel for Nationwide Agribusiness Insurance Company has no objection to the filing of an amicus brief.

WHEREFORE, the undersigned respectfully requests this Court to grant its Motion for leave to file a brief amicus curiae in support of Petitioner-Appellee in this matter and consider the attached proposed amicus curiae Brief.

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Dated: August 6, 2025

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ATTACHMENT 1

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Council On State Taxation (“COST”) is a nonprofit trade association based in Washington, D.C. Its membership comprises approximately 500 of the largest multistate corporations engaged in interstate and international business and represents industries doing business in every state across the country.¹ Many of the COST members do business in Michigan. COST over the past fifty-six years, has participated as amicus in numerous cases before the U.S. Supreme Court and state courts, including Michigan courts. Notably, in the past 25 years, COST has filed amicus briefs addressing Michigan issues in *Dine Brands Global Inc v Rachael Eubanks*, ___ Mich ___ (2025) (Docket 165391, March 24, 2025); *Thompson Reuters, Inc v Dep’t of Treasury*, Michigan Supreme Court Docket No. 149902, 2014 Mich App Lexis 836 (2014); *General Motors v Dep’t of Treasury*, 290 Mich App 355; 803 NW2d 698 (2010); *Int’l Home Foods, Inc v Dep’t of Treasury*, 477 Mich 983; 725 NW2d 458 (2007); and *Topps Co, Inc v Dep’t of Treasury*, 462 Mich 53; 611 NW2d 801 (2000).

COST’s objective is to preserve and promote equitable, transparent, and non-discriminatory state and local taxation of multijurisdictional business entities. COST has a longstanding policy addressing the treatment of tax attributes when filing a unitary combined return.² As a representative of multinational and multistate businesses, COST is uniquely

¹ Pursuant to MCR 7.312(H)(5) COST as amicus curiae represents that no party or party’s counsel authored this brief in whole or in part. Neither counsel for either party nor any party made any monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae made such monetary contribution.

² <https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/state-corporate-income-tax-filing-methods-policy-statement-final.pdf> (accessed August 6, 2025).

positioned to provide this Court with the analytical underpinnings for why the Court of Appeals correctly applied the concepts of a unitary combined group being treated as a single taxpayer, even if that group includes insurance companies. The Court of Appeals also calculated the overall tax due correctly by using the tax attributes from all the group's members.

STATEMENT OF QUESTIONS PRESENTED

Amicus COST accepts the Questions Presented for Review submitted by Appellant and Appellee.³

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus COST refers the Court to the Material Facts and Procedural Posture in the brief of the Petitioner-Appellee.

³ Amicus COST does not address Petitioner-Appellee's questions 3, 4, 5, and 10.

I. INTRODUCTION

Michigan's Corporate Income Tax Act (CIT), enacted in 2011, was designed as a unified and comprehensive regime for the taxation of corporations, insurance companies, and financial institutions. The statutory definitions make it clear that a "taxpayer" under the CIT includes a unitary business group (UBG) composed of insurance companies. MCL 206.611(5)-(6). Under MCL 206.691(1), a UBG must file a combined return and is treated as a single taxpayer for purposes of computing tax liability, exemptions, credits, and filing thresholds. The Department of Treasury's (Treasury) interpretation undermines the CIT's structural coherence and predictability. Treasury's interpretation seeks to isolate Chapter 12 (insurance company taxation) from the broader CIT framework. This directly contradicts the Legislature's intent to read the CIT statute as an integrated whole. Treasury's interpretation also contradicts its own prior guidance recognizing that insurance companies can be part of a UBG and file on a combined basis.

Multistate businesses must be able to rely on clear statutory language and administrative guidance when determining their tax obligations. Treasury's shifting interpretation fosters uncertainty and unfairness, hindering voluntary compliance and disrupting the reasonable expectations of taxpayers. Michigan has long embraced the unitary business principle, recognizing that affiliated corporations operating as a single economic enterprise should be treated as one taxpayer. The CIT carries forward this principle and explicitly defines UBGs to include groups of insurance companies.

II. ARGUMENT

A. Treasury's Statutory Interpretation Violates Sound Tax Policy

Clearly written and consistently interpreted statutes and ordinances are paramount to fair and equitable tax administration and compliance. All taxpayers need to be able to rely on the plain meaning and application of tax laws. Clearly written guidance adopted by a state or local

jurisdiction is particularly important for multijurisdictional taxpayers, who are required to know and follow the tax laws of multiple states and their local taxing jurisdictions. Guidance based on the plain meaning of a law's words promotes sound tax policy and creates certainty and predictability, reduces confusion, prevents unintentional non-compliance, and enhances fairness and equity in the tax system. By creating a transparent and understandable framework, clear interpretation of tax laws ensures that such laws serve their intended purposes while building and maintaining public trust in the tax system. This trust fosters voluntary compliance and promotes a stable economic environment for the states.

The CIT, which is contained in Part 2 of the Michigan Income Tax Act of 1967, MCL 206.1 et seq. was enacted as an integrated whole by the Michigan Legislature. Thus, the statute must be read holistically. The CIT, in Chapters 11, 12 and 13, sets forth the specific business type taxes, defines the tax bases, and the tax rates imposed on the business activities conducted within the State.⁴ At issue here is CIT Chapter 12, which addresses specific taxes imposed on insurance companies.⁵

Chapter 10 of the CIT provides the definitions that are applicable to all entities subject to the CIT. This Chapter specifically defines the term “taxpayer” as “a corporation, **insurance company**, financial institution, or unitary business group whichever is applicable under each chapter that are liable for tax, interest and penalty under this part.” (Emphasis added.) MCL 206.611(5). A “unitary business group” is defined as:

⁴ Chapter 11 defines the tax base and rates for corporations that are neither insurance companies nor financial institutions. MCL 206.623. Chapter 13 defines the tax base and rates for financial institutions. MCL 206.643.

⁵ A tax is imposed on gross direct premiums written on property or risk residing in Michigan. MCL 206.635.

... a group of United States persons that are corporations, **insurance companies** or financial institutions, other than foreign operating entities of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other members, and that have business activities or operations which result in a flow of value between or among the members included in the unitary business group or has business activities that are integrated with, are dependent upon or contribute to each other. . . . MCL 206.611(6) (Emphasis added).

CIT Chapter 16 provides the procedural and substantive provisions for all Chapters within the CIT. Pursuant to MCL 206.691(1) a UBG shall file a combined return that includes each member of the unitary business group. The statute makes it clear that each person included in the combined return shall be treated as a single person. This Court has previously provided statutory interpretation guidance in *Int'l Bus Machines, Inc v Dep't of Treasury*, 496 Mich 642; 852 NW2d 865 (2014). It noted that when it reviews statutes *in pari materia*, and the Legislature “gave no clear indication that it has intended to repeal [a tax] provision, we proceed under the assumption that the Legislature intended for both to remain in effect.” *Id.* at 657, citing to *Wayne Co Pros v Dep't of Corrections*, 451 Mich 569, 577; 548 NW2d 900 (1996). Thus, while insurance companies may be subject to specific insurance taxes under CIT Chapter 12; without a clear prohibition from the Legislature, that does not also preclude the insurance companies from being part of a single UBG combined return filing, especially given the fact the Legislature explicitly provided that insurance companies are included in UBGs. MCL 206.611(6).

Nationwide Agribusiness Insurance Company, headquartered in Ohio and affiliated with Nationwide Mutual Insurance Company, is a member of a UBG of insurance companies.⁶ For tax years 2014 and 2015, the Nationwide Agribusiness UBG initially filed separate income tax

⁶ Appellee's Appendix 00027.

returns but later submitted amended combined returns aggregating gross premiums, subtractions, and credits at the group level. The fundamental issue in this matter is whether a UBG of insurance companies can and/or are required to file a combined, unitary return under the CIT and include the premiums tax (MCL 206.635), the retaliatory tax (MCL 500.476a, as incorporated into MCL 206.643), and the Michigan Automobile Insurance Placement Facility (MAIPF) credit (MCL 206.637). The Court of Appeals answered that question affirmatively, stressing that a combined return was required and not optional. Under the plain language of the CIT a UBG of insurance companies constitutes a single “taxpayer.” As such, the group must file a combined return for the premiums tax, retaliatory tax, and MAIPF credit. In so doing the Court of Appeals correctly rejected Treasury’s argument that combined filing depends on the tax type. The Court of Appeals correctly relied on the plain wording of the statute finding that MCL 206.611(5), the definition of the “taxpayer,” does not limit the UBG filing for insurance taxes under Chapter 12. Rather, MCL 206.691(1) mandates that a UBG file a combined return that includes each United States person that is included in the unitary business group, absent a specific statutory exemption.⁷ There is no statutory language that excludes insurance companies from the UBG filing requirement.

The Court of Appeals’ holding is consistent with both the plain wording of the statute and Treasury’s own written guidance. Treasury has concluded that for CIT purposes an insurance company is a taxpayer, that a UBG includes insurance companies and that two or more insurance companies may be unitary with one another and may constitute a unitary group.⁸

⁷ The only statutory exemption is for Michigan Business Tax certificated credits under MCL 206.680(3), and that is not applicable here.

⁸ Written guidance in the form of a letter from Mr. Lance Wilkinson dated May 13, 2016, Appellee’s Appendix 000004-000005. See also, the Michigan Corporate Income Tax Financial Institutions and Insurance Company Frequently Asked Questions where Treasury expressly

Sound tax policy requires that statutes be given their plain meaning allowing taxpayers to rely on and comply with the taxing statutes. Treasury's statutory arguments ignore the overall CIT structure and the plain language of the statute and reverse previously written guidance relied upon by taxpayers. Such actions do not promote sound tax policy. Rather, these actions lead to confusion, inequity, and unfairness in the tax system. The Court of Appeals recognized this, and its holding should be affirmed.

B. A Unitary Business Group Is a Single Economic Unit

Michigan's first adoption of the unitary approach for corporate income taxes was with the enactment of the Michigan Business Tax (MBT), MCL 208.1101 *et seq.*, 2007 PA 36. While the enactment in 2011 of the CIT required most taxpayer to file under the CIT rather than the MBT,⁹ the Legislature's enactment of the CIT did not eliminate the unitary approach of taxing business. Rather, the CIT retains the unitary concept incorporating a definition of a UBG. MCL 206.611(6). Specifically, the unitary concept refers to a principle that identifies, for state income tax purposes, separate business entities as parts of a whole. Under the unitary principle some business entities are viewed as interdependent units that rely on each other and mutually contribute to each other's profitability. These entities are deemed to effectively operate as one unit for CIT purposes.¹⁰ Unitary reporting, e.g. filing a combined return, is based on the premise that if affiliated companies

advised that a UBG of insurance companies can for a UBG for purposes of the CIT. Appellee's Appendix 000028.

⁹ A taxpayer that holds certified credits may elect to continue to file and pay under the MBT until the certified credit and any carryforward from the credit is used up. MCL 208.1117 and MCL 208.1500.

¹⁰ The U.S. Supreme Court has set forth guidelines for determining the existence of a unitary business group. There must be (1) functional integration; (2) centralized management; and (3) economies of scale as well as a flow of value. *Butler Bros v Colgan*, 315 US 501; 62 S Ct 701; 86 L Ed 991 (1942) and *Container Corporation of America v Franchise Tax Board*, 463 US 159; 103 S Ct 2933; 77 L Ed 2d 545 (1983).

are sufficiently interrelated, all entities in the UBG should combine and apportion their income among the states as a single unit, using the UBG's income and apportionment factors.

Treasury's argument that the credit for payments made to the MAIPF, MCL 206.641(1)(c), and the retaliatory tax, MCL 500.476a(1), are excluded because they cannot be calculated on a unitary basis is contrary to the rationale for unitary combined filings. The purpose of requiring combined reporting is to accurately reflect the economic reality of an integrated corporate group. A UBG is treated as a single economic enterprise.¹¹ Michigan courts have recognized that a unitary business is a single economic enterprise and that the adoption of the unitary concept was intended to more accurately measure the related group's taxable income in Michigan. *D'Agostini Land Co. LLC v Dep't of Treasury*, 322 Mich App 525; 912 NW2d 593 (2018).¹² The *D'Agostini* court also recognized that once a group of businesses are characterized as a unitary business in a tax year the group must file a unitary return for the tax year.

More importantly, Treasury's arguments fly in the face of the language of the CIT. The statute is clear – a UBG is characterized as a single taxpayer. MCL 206.691(1). The statute specifically provides:

Each United States person included in a unitary business group or included in a combined return shall be treated as a single person, and all transactions between those persons included in the unitary group shall be eliminated from the corporate income tax base, the apportionment formula, and for the purpose of determining exemptions, credits and the filing thresholds under this part. (Emphasis added.)

¹¹ Hellerstein State Taxation ¶8.11[1] (3rd ed 2024).

¹² See also *Anthony L Soave and Unitary Affiliates v Dep't of Treasury*, ___, Mich App ___, ___, NW2d ___ (2024), recognizing a unitary business group as a separate and distinct taxpayer.

The plain language of the statute is clear, a UBG is treated as a single person (i.e., single economic enterprise) for computing the tax base and credits. Treasury's arguments would erase this provision from the statute. The argument that the retaliatory tax and the MAIPF credits cannot be computed on a combined basis has no statutory or theoretical support. The importance of states allowing the sharing of all tax attributes (e.g., tax credits and net operating losses, etc.) when they are required to file a mandatory unitary combined return is noted in one of COST's policy positions. That policy position correctly states that "[l]imiting the use of tax attributes to separate entities within the combined group violates the principle of treating the group as an economic unit."¹³

The Nationwide Agribusiness UBG is required to be treated as a single person under Michigan's CIT and, therefore, it was required to file single combined return for the tax periods at issue. MCL 206.691(1). Consistent with the statute because the Nationwide Agribusiness UBG must file a combined return, the MAIPF credits and the retaliatory tax must also be computed on a combined UBG basis. Thus, the Court of Appeals decision should be affirmed.

CONCLUSION

The Court of Appeals properly interpreted the plain language of the CIT in holding that insurance companies may form a unitary business group and are required to file a combined return under the CIT. The statutory framework clearly defines "taxpayer" to include a unitary business group of insurance companies and mandates combined filing absent a specific exemption. The Department of Treasury's proposed interpretation disregards this plain language, contradicts sound tax policy, and undermines taxpayer reliance on the statute.

¹³ See COST Policy Position on "State Corporate Income Tax Filing Methods, *supra*, at footnote 2.

Treating a unitary business group of insurance companies as single taxpayers for purposes of the premiums tax, the retaliatory tax, and associated credits is not only consistent with the legislative design of the CIT but also reflects economic reality and promotes equitable tax administration. Adopting Treasury's interpretation would effectively rewrite the statute and introduce unjustified complexity and uncertainty into Michigan's corporate tax regime.

COST respectfully urges this Court to affirm the decision of the Court of Appeals.

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Michigan Court Rules 7.212(B)(1), (3) because, excluding the parts of the document exempted, this document contains no more than 16,000 words. This document contains 2,306 words.

/s/ Daniel L. Stanley
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Dated: August 6, 2025