
Mississippi Supreme Court – Taxpayer has burden of proof in state’s assertion of alternative apportionment

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In brief

The Mississippi Supreme Court ruled that a taxpayer bore the burden of proof when the Department of Revenue asserted an alternative apportionment methodology. Additionally, the court found that a trial court’s review of a Department decision is limited to whether that decision was unsupported by substantial evidence or that it was arbitrary and capricious. By applying a deferential review standard of Department findings, and imposing the burden of proof on the taxpayer, taxpayers may find it more difficult to challenge Department determinations, especially assertions of alternative apportionment methods. [[*Equifax, Inc. v. Mississippi Department of Revenue*](#), Mississippi Supreme Court, No. 2010-CT-01857-SCT (6/20/13)]

In detail

Facts

During the January 1, 2000, through December 31, 2003, years at issue, Equifax, Inc. and Equifax Credit Information Services (collectively, Equifax), were primarily engaged in providing credit reports, credit scores, and fraud alerts to customers across the US, including Mississippi. Equifax generated approximately \$22.6 million of gross receipts from sales to about 800 Mississippi customers. Equifax had no corporate office in Mississippi, but employed three Mississippi residents.

Equifax filed Mississippi state income tax returns for each year at issue. Equifax reported no taxable income apportioned to the state under Mississippi’s cost of performance method for sourcing service provider revenue. The Mississippi Department of Revenue audited Equifax and determined that Equifax should have applied an alternative apportionment method using a market-based approach.

The Mississippi Tax Commission Board of Review upheld the audit determination and the trial court affirmed. On appeal, the Court of Appeals

reversed, finding in favor of Equifax.

Standard of review

Mississippi law, section 27-77-7(4), provides that proceedings before the trial court require that the trial court “give deference to the decisions and interpretation of law and regulations by the [Department] . . . but it shall try the case de novo and conduct a full evidentiary hearing on the issues raised. . . . the [trial] court shall determine whether the taxpayer has proven, by a preponderance of the

evidence . . . that he is entitled to any or all of the relief he has requested.”

The trial court found that Equifax failed to meet its burden of proof and determined that the court could not substitute its judgment for the Department’s unless the Department’s interpretation was arbitrary or unreasonable. The court of appeal disagreed with the trial court’s standard of review, interpreting a ‘de novo’ review to mean that the case should be “tried the same as if it had not been tried before” and the trial court may substitute its own findings and judgment for the Department’s. The appellate court overruled the trial court, in part, because the trial court’s review should have “been conducted just as if the [trial] court were sitting as the [Department].”

The Mississippi Supreme Court (Court) interpreted a ‘de novo’ review to mean that the trial court’s limited purpose was to examine whether the Department’s decision was supported by substantial evidence and was not arbitrary and capricious. Finding that the trial court’s conclusion was consistent with this standard, the Court reversed the appeals court decision and upheld the trial court’s determination that the taxpayer had

the burden of proof, as discussed below.

Taxpayer bears the burden of proof

The court of appeal observed that Mississippi’s alternative apportionment regulation is similar to UDITPA section 18, which other states have interpreted to require the party asserting an alternative apportionment methodology to prove (1) that existing law does not fairly represent a taxpayer’s business activity in the state and (2) that the alternative method is reasonable.

The Court, however, disagreed with the appellate court’s reliance on other states’ interpretations of UDITPA, stating that UDITPA is not adopted into Mississippi law, but rather included in administrative regulations. Accordingly, the Court looked to section 27-77-7(4) to determine which party had the burden of proof. That section provides that in proceedings before the trial court, the taxpayer must prove by a preponderance of the evidence that it is entitled to relief.

The trial court ruled that Equifax failed to meet the burden of proving that it was entitled to relief. The Court

affirmed the trial court’s decision (using the aforementioned deferential standard of review) and found in favor of the Department.

The takeaway

The *Equifax* decision is important in two respects. First, by limiting the trial court’s review of Department decisions only to whether the Department’s ruling was unsupported by substantial evidence or that it was arbitrary and capricious, the case may make it more difficult for taxpayers to challenge Department decisions.

Second, *Equifax* makes taxpayer challenges of Department-imposed alternative apportionment more difficult. Equifax cited to decisions from several states, including California, Tennessee, and Utah, supporting that it is the proponent of an alternative apportionment methodology that bears the burden of proving that the statutory method does not accurately reflect in-state business activity. The Court, however, found the out-of-state decisions unpersuasive and ruled that the Mississippi Legislature specifically provided that the taxpayer bears the burden of proof in appeals of Department decisions.

Let’s talk

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