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*Mississippi Supreme Court - trial court lacked jurisdiction when it ruled the dividends received deduction and the consolidated filing election unconstitutional*

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## *In brief*

The Mississippi Supreme Court vacated a chancery court's ruling that the following were unconstitutional: (1) the state's limitation of its dividends received deduction (DRD) to dividends paid by an entity that does business and files a return in Mississippi; and (2) the consolidated filing election available only to an affiliated group conducting 100% of its business in the state.

The Mississippi Supreme Court found that the chancery court lacked appellate jurisdiction and should not have reached the merits of the case. Accordingly, the Commissioner's order (from which the chancery court's dispute was appealed) imposing the DRD limitation and combined return remained in effect. [[\*Mississippi Department of Revenue v. AT&T Corporation\*](#), Miss. Supreme Court, No. 2010-SA-02013-SCT (9/6/12)]



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## ***In detail***

### **Facts and procedural background**

AT&T Corp. filed a Mississippi combined return in 1993 and consolidated returns in 1994 through 1996. During the years at issue, AT&T claimed a deduction for dividends received from affiliated corporations in computing its taxable income.

On audit, the Mississippi State Tax Commission adjusted AT&T's income and disallowed deductions for dividends received from affiliates that did not do business and file returns in Mississippi. The Commission also changed AT&T's filing method from consolidated to combined for 1994, 1995, and 1996 asserting that an affiliated group is prohibited from filing a consolidated return if it does business on a multistate basis.

After unsuccessful administrative appeals before the Commission, the Commission issued AT&T an order requesting that it pay the assessment or file a "petition and bond" in the chancery court and request a hearing.

AT&T petitioned the constitutionality of the two statutes before the chancery court. AT&T's petition was not "accompanied with a bond, approved by the clerk . . . in a sum double the amount in controversy" as then required by Mississippi law. Rather, AT&T paid the assessment "under protest" and filed its petition in chancery court.

### **Chancery court did not have appellate jurisdiction**

AT&T asserted that the chancery court had jurisdiction under Miss. Code Secs. 11-13-11 and 27-7-73. The Mississippi Supreme Court (Court) found that Sec. 11-13-11 provided jurisdiction for a "predeprivation process" limited to situations where the state had not yet collected a tax. Because AT&T paid its assessment before filing its petition, the court found that Sec. 11-13-11 was inapplicable.

Section 27-7-73 provided that a taxpayer may appeal an order of the Commission by filing a petition with the chancery court "accompanied with a bond . . . in a sum double the amount in controversy." The Court recognized that the failure to perfect an appeal under the statute did not divest the chancery court of *subject matter jurisdiction*. Subject matter jurisdiction refers only to the court's power to exercise authority over the nature of the case. The Court noted that "[c]learly, chancery courts do have subject matter jurisdiction over appeals from tax assessments ordered by the Commission."

The Court found that AT&T's failure to provide a bond with its chancery court petition rendered the chancery court without *appellate jurisdiction*: "[t]he chancery court lacked appellate jurisdiction over an administrative-agency appeal which is not in full compliance with statutory requirements" and "without jurisdiction the court cannot proceed at all in any cause." The Court further held that "because the chancery court should not have reached the merits of this case, the chancery court's order[s] . . . [are] vacated. The order of the Commission remains in effect."

## ***Actions to think about***

The challenged DRD provision remains in effect today. Income from dividends received are exempt from gross income only to the extent that the distributing corporation does business in Mississippi in the year a distribution is made and the

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distributing corporation files a Mississippi corporate income tax return in that year. See Miss. Code Sec. 27-7-15(4)(i). The chancery court found that this provision was an unconstitutional discrimination against interstate commerce. While *AT&T* vacated the chancery court's decision, the constitutionality of the DRD provision is still questionable. Mississippi taxpayers should review their filing positions to consider whether protective refund claims remain viable following the *AT&T* decision.

The challenged consolidated filing election allowed members of an affiliated group that conducted 100% of their business in Mississippi to "consolidate" (*i.e.*, offset on a pre-apportioned basis) the income and losses of the members. The election was eliminated effective January 1, 2004. To the extent Mississippi taxpayers have pre-2004 years open and could benefit from the consolidated filing election, they should review whether refund opportunities exist.

Taxpayers are cautioned to check the status of filed refund claims. If an overpayment of tax is not refunded to a taxpayer within six months after the date for filing returns as prescribed by law, the taxpayer may treat the failure to refund as a denial of a refund claim and appeal to the Board of Review.

### ***Let's talk***

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