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Texas Comptroller issues first post-Gillette denial of MTC apportionment election



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In brief

In its first decision following the California Court of Appeals *Gillette* opinion, the Texas Comptroller of Public Accounts denied a taxpayer's election to apportion its Texas margin tax using the equally weighted three-factor apportionment formula under the Multistate Tax Compact. The Comptroller ruled that the election was not available under Texas franchise tax law. The taxpayer has subsequently filed a petition with a Texas trial court. [[Comptroller's Decision No. 106.503](#), decided 8/10/12, released October 2012]

In detail

Taxpayer filed its 2010 Texas franchise (margin) tax report using the equally weighted three-factor apportionment formula contained in the Multistate Tax Compact (MTC) as incorporated in Texas Tax Code Sec. 141.001 et seq. Taxpayer also filed refund claims for 2008 and 2009, contending that its taxable margin should be apportioned under the MTC election. Texas is a full member of the MTC, and has not passed any laws withdrawing from the MTC. However, Tex. Tax Code Sec. 171.106(a) apportions a taxable entity's margin to Texas using a single gross receipts factor formula.

Relying upon Texas law and prior Comptroller decisions, the Comptroller held that taxable entities are required to apportion using the single-factor apportionment



formula under Tex. Tax Code Sec. 171.106(a) and that "the three-factor formula may not be used." Consequently, the Comptroller rejected the taxpayer's 2010 report, assessed a deficiency for that year, and denied the taxpayer's claims for refund for 2008 and 2009.

On September 27, 2012, the taxpayer in the ruling, Graphic Packaging Corporation, filed a petition with a Texas trial court requesting the application of the Compact's election for the 2008, 2009, and 2010 report years. In its petition, Graphic Packaging also argues that the franchise tax's single-factor apportionment method and the tax's rate structure violate both the Due Process and Commerce Clauses of the United States Constitution as applied to Graphic Packaging.

Actions to think about

This decision is consistent with previous Comptroller decisions on the MTC apportionment formula election ([click here](#) for our summary of one such decision). While this is the first Texas decision following *Gillette*, the opinion makes no mention of the *Gillette* decision; includes no Compact law analysis, which was critical in *Gillette*; and does not address how the MTC provisions in Texas law impact the franchise tax.

The Comptroller provided limited reasoning for this conclusion and it remains unknown how a Texas court would rule following the rationale applied in *Gillette*. Accordingly, this decision should not dissuade Texas taxpayers from analyzing whether an MTC election would provide potential refund opportunities or support future filing positions.

Let's talk

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