

Multistate Tax Compact update - Texas trial court dismisses taxpayer's Compact election challenge

January 17, 2014

In brief

On January 15, 2014, a Texas trial court denied a taxpayer's Motion for Summary Judgment requesting the court confirm the right to apportion margin to Texas under the Texas Franchise Tax using the three-factor formula provided by the Multistate Tax Compact. The court granted the Comptroller's Partial Motion for Summary Judgment, which dismissed the taxpayer's Compact election argument, but left other counts in the taxpayer's petition to remain with the trial court. A decision on how to proceed lies with Graphic Packaging.

In detail

On August 10, 2012, in its first decision following the California Court of Appeals *Gillette* opinion, the Texas Comptroller of Public Accounts denied Graphic Packaging'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. Click [here](#) for our summary of the Comptroller's decision.

Graphic Packaging filed a petition in a Texas trial court appealing the Comptroller's

ruling. The petition contained the following four counts:

- Count I – Graphic properly elected the Compact's three-factor apportionment method
- Count II – The Texas Franchise Tax's single-sales factor apportionment method, as applied to Graphic, violates the US Constitution
- Count III – The Texas Franchise Tax's rate structure, as applied to Graphic, violates the US Constitution
- Count IV – Alternatively, the Comptroller abused her

discretion in failing to waive penalties and interest

Graphic Packaging filed a Motion for Summary Judgment, arguing that Texas permits the use of the Compact's three-factor formula when the underlying tax base is computed by subtracting from gross income one or more indirect expenses. Graphic asserted that each of the measures of the Texas Franchise Tax satisfies this standard such that the Compact apportionment formula must be available to Texas taxpayers. A contrary ruling would undermine the validity of interstate compacts as a tool for resolving critical

multistate issues and would jeopardize the many vital interstate compacts to which Texas is a party. Click [here](#) for our summary of Graphic's Motion for Summary Judgment.

The Comptroller filed a Motion for Partial Summary Judgment, requesting that the taxpayer's motion be denied and requesting that Count I be dismissed.

On January 15, 2014, in an Order without a written opinion, the trial

court denied Graphic's Motion, granted the Comptroller's Motion, and dismissed Count I of the Graphic's petition. Counts II through IV remain.

The takeaway

The court's disposition in this matter was provided in a one page order. Without a written opinion, the rationale of the court is unclear.

In Texas, generally a partial summary judgment is interlocutory and not appealable until all issues are adjudicated or unresolved issues are

severed by the trial court. The court may, by severance order, render the partial summary judgment final and appealable. To the extent an appeal is filed in *Graphic Packaging*, at this point it is unknown whether such appeal will occur following the trial court's proceedings on Counts II through IV or whether Count I regarding the MTC election may be separately appealed.

Let's talk

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If you have any questions regarding the Multistate Tax Compact or are interested in learning about remedies associated with Compact cases, please contact:

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