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MISSISSIPPI TRIAL COURT DECLARES CORPORATE TAX STATUTES UNCONSTITUTIONAL

by J. Paul Varner

A Mississippi trial court recently found the state's dividends-received deduction and consolidated income tax return statutes to be invalid because they discriminated against interstate commerce.¹

Mississippi law permits a parent corporation to exclude from taxable income those dividends that are received from subsidiaries that are taxable by Mississippi.² The dividends-received deduction statute does not, however, permit a parent corporation to exclude dividends received from subsidiaries that do not have a taxable presence in Mississippi. Accordingly, the court ruled that the statute discriminated against interstate commerce. The court stated that Mississippi could not deny a parent corporation the right to exclude dividends merely because its subsidiaries chose not to do business in Mississippi.

As a general rule, Mississippi law allows multi-state affiliated corporate groups to file either separate or combined (post-apportionment) income tax returns. In addition, it allows affiliated corporate groups to file income tax returns on a consolidated basis only if all members of the group are taxable solely by Mississippi.³ The consolidated corporate income tax return statute did not permit affiliated

¹AT&T Corp. v. Miss. State Tax Commission, Case No. G-200-31 S 2, Hinds County Chancery Court, May 26, 2006.

²Miss. Code § 27-7-15(4)(i).

³Miss. Code § 27-7-37(2)(a)(i).

groups to file consolidated returns if any member of the group was taxable by another state. The taxpayer in this case showed that a material difference in tax liability would result for an affiliated group depending upon whether the group filed a consolidated return as opposed to a combined return. The court found that the statute discriminated against interstate commerce. It stated that multi-state affiliated groups are being denied the tax benefit of filing consolidated returns solely because they chose to engage in taxable activities outside of Mississippi.

The court's remedy for this discrimination was to order Mississippi to provide all multi-state affiliated groups the benefits of the dividends-received deduction and consolidated income tax return filing option. Any corporate taxpayer that can demonstrate that it overpaid its Mississippi corporate income taxes because it did not take advantage of those tax benefits will be entitled to an income tax refund for years not closed by the statute of limitations.

The Mississippi legislature eliminated the right to file a consolidated corporate income tax return for tax years beginning on or after January 1, 2004. Accordingly, the refund opportunity pertaining to the filing of a consolidated corporate income tax return will apply only for those tax years beginning prior to 2004 that are not closed by the applicable statute of limitations.

It is uncertain whether the Tax Commission will appeal the trial court's decision in this case.

J. Paul Varner is the Practice Group Leader for Butler Snow's Tax Group. Paul practices in the areas of tax planning and tax dispute resolution.

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