

PUBLICATION

Spotlight on Mississippi: Opportunity for Legislature to Level Playing Field

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New proposed legislation has been introduced in the Mississippi State Senate to reform several laws that directly affect Mississippi taxpayers. The new bill, S.B. 2487, was introduced on January 21, 2014 by the chairman of the Senate Finance Committee, Joey Fillingane.

This proposal comes on the heels of the Mississippi Supreme Court's denial of the taxpayer's motion for rehearing in *Equifax, Inc. and Equifax Information Services, Inc. v. Mississippi Department of Revenue (f/k/a Mississippi State Tax Commission)*, in which the court held that a judicial review of a tax assessment is limited to the deferential arbitrary and capricious standard of review. A more detailed review of the court's holding in *Equifax* and its implications for taxpayers can be found in our [November 26, 2013 alert](#).

S.B. 2487 not only addresses the disadvantage to taxpayers stemming from the *Equifax* decision, but it also implements new taxpayer-friendly laws and amends several other laws that are considered by some to be inequitable. A few of the changes offered under the new bill are as follows:

- an explicit affirmation of taxpayers' rights to a de novo trial at the chancery court level, to be retroactively effective;
- retroactive elimination of the "pay-to-play" requirements, which generally obligate taxpayers seeking to challenge Department of Revenue (Department) decisions to provide a bond equal to 50 percent of the amount at stake;
- prohibition of the Department's use of forced combination until clear standards for its application are adopted;
- codification of taxpayers' and the Department's ability to utilize an alternate method for apportioning multi-state income when the general apportionment standards do not fairly represent the extent of the taxpayer's business
- activity in Mississippi, but the burden of proof (must be proven by clear and convincing evidence) is expressly shifted to the party seeking to invoke the alternate method;
- general prohibition against the Department's application of penalties in circumstances where forced combination or alternative apportionment are invoked;
- modification of rules to provide that the appeal period begins when a notice is mailed via certified mail or hand delivered, not the date an action is taken;
- implementation of a rule providing that documents are deemed filed when they are mailed (i.e., mailbox rule), not when they are received; and
- reduction of the current deficiency and refund interest rates from one percent to one-half percent per month, which is more reflective of market rates.

The Mississippi Economic Council, along with other Mississippi groups, have announced support for this legislative initiative. Although it is difficult to know how this initiative will fare on the Senate and House floors, it is clear that Mississippi taxpayers and tax practitioners have reason to be hopeful for change in an environment that has become increasingly unfavorable.

If you have any questions concerning how this proposal or any other Mississippi tax-related developments can affect you or your business, please contact one of the attorneys in the Firm's Tax Group.