

PUBLICATION

Spotlight on Mississippi: Legislation Enacted to Amend Statute of Limitations for Tax Assessments

April 4, 2013

On March 27, 2013, Governor Phil Bryant signed House Bill 892 amending the rules setting forth the time period during which the Department of Revenue (Department) may conduct an examination of a taxpayer's Mississippi income, franchise or sales tax return in the state and thereafter assess any additional tax liabilities. Prior to the amendment, the Department was only required to provide a taxpayer with notice that an audit has been initiated during the three-year period following the filing of a return. After notice, the only continuing requirement was that the examination must be concluded "with reasonable promptness and diligence." In the only reported opinion interpreting this requirement, *Miss. State Tax Comm'n v. 3300 Corp* (1987), the Supreme Court of Mississippi upheld an assessment issued approximately three months after the expiration of the general three-year period as reasonably prompt and diligent.

House Bill 892 requires the Department to obtain an agreement consenting to extend the statute of limitations, signed by the taxpayer, prior to the end of the three-year period - beginning on the later of the taxpayer's date of filing the return or the due date for filing the return - to continue its examination beyond the three-year period provided by statute. The new legislation also provides the Department with an additional year beyond the three-year statute of limitations to make a determination and assess any additional taxes owed by a taxpayer, regardless of whether an agreement consenting to extend the examination period is obtained, so long as the taxpayer was notified of the initiation of an examination by the Department through the use of certified mail or hand delivery prior to the end of the three-year period. This amendment will not solve the problems that frequently lead to protracted audits. It will, however, give taxpayers a choice to bring the examination process to an end.

This new legislation does not amend the unlimited period during which the Department may examine and assess taxes against a taxpayer who files a false or fraudulent return or fails to file a return. Additionally, the three-year statute of limitations for auditing and assessing additional tax against a taxpayer or filing for a refund will not apply in situations where the Internal Revenue Service adjusts a taxpayer's taxable income. In that situation, the ability to assess additional tax or request a refund is limited to the specific IRS adjustment. Neither an assessment nor a request for refund may be made after three years from the date of the IRS's disposition of the tax liability in question. The Supreme Court of Mississippi, in *Buffington v. Miss. State Tax Comm'n* (2010), confirmed the Department's position that the IRS does not "dispose of the tax liability in question" until the Department receives notification of a change in a taxpayer's reported taxable income. Therefore, the three-year period during which the Department can make an assessment following a federal adjustment to taxable income will not begin to run until such time.

House Bill 892 further amends the statutory provisions for sales tax to include a protection under certain circumstances for taxpayers undergoing an audit who have relied on a previously-audited reporting method. Under revised Miss. Code Ann. 27-65-37, when (1) a taxpayer has employed a reporting method for reporting sales tax obligations that was previously audited by the Department and did not result in additional tax obligations, (2) the method under consideration in the audit is the same method that was used during the prior audit, (3) there has not been a statutory or regulatory change that would result in additional tax being owed under such method after the change, and (4) the taxpayer detrimentally relied on the fact that the method being used was previously audited and not found to result in additional tax, the Department is estopped from

collecting any additional tax as a result of the taxpayer's reliance on the method in question for any period prior to the Department's providing notice to the taxpayer during the current audit that the previously audited method would result in additional tax. This is an important change for taxpayers that will provide added certainty to the use of previously challenged tax positions.

The effective date for the amendment to the statute of limitations is January 1, 2013. The legislation specifically provides that any tax periods beginning prior to the effective date will not be affected. Accordingly, taxpayers should be mindful that the rules currently in effect regarding the statute of limitations for audits and assessments of tax will continue to control the Department's actions pertaining to tax periods beginning prior to the effective date.

Should you have any questions regarding this new legislation and its application, please contact any of the attorneys in the Firm's Tax Department.

@bakerdonelson.com