



## MISSISSIPPI DEPARTMENT OF REVENUE'S ABILITY TO APPLY ALTERNATE APPORTIONMENT FORMULA RESTRICTED BY COURT OF APPEALS

The application of an alternate form of apportionment applied by the Mississippi Department of Revenue (“MDOR”) under Mississippi’s version of UDITPA Sec. 18 was restrained by the Mississippi Court of Appeals in *Equifax, Inc. and Equifax Credit Information Services, Inc. v. Mississippi Department of Revenue*, No. 2010-CA-01857-COA, May 1, 2012. Equifax computed its taxable income apportioned to Mississippi based on the standard statutory apportionment formula for service companies, but the MDOR redetermined the taxable income by applying an alternate formula under Miss. Admin. Code 35-III-8.06:402.10. Specifically, the MDOR used market sourcing to apportion the taxpayers’ income to Mississippi. MDOR’s assessment using the alternate apportionment was upheld by the Chancery Court.

Upon appeal, the Court of Appeals held that the Chancery Court committed reversible error by giving the MDOR the benefit of a rebuttable presumption and by incorrectly applying an arbitrary and capricious standard of review. The Court of Appeals ruled that Miss. Code Ann. §27-77-7(4)’s requirement that the Chancery Court conduct a trial *de novo* for appeals from MDOR rulings means that the case should be tried the same as if it had never been tried before, and that the Chancery Court may substitute its own findings and judgment. The Court of Appeals ruled further that when the MDOR seeks to apply an alternative apportionment method, the MDOR bears the burden of proof that: (1) the standard apportionment formula does not fairly represent the activities of the taxpayer within the state; and (2) the alternative formula to be used is reasonable.

The *Equifax* case will have a bearing on any cases now under audit or on administrative appeal where the MDOR is attempting to apply an alternative apportionment formula (e.g., forced combination) instead of the standard apportionment formula required by Miss. Adm. Code 35-III-8.06:402.09. Again, *Equifax* now requires that in order to apply an alternative apportionment formula the MDOR bears the burden to show that the State’s standard apportionment formula does not fairly represent the taxpayer’s activities in Mississippi and that any alternate formula to be used by MDOR is reasonable. Further, in any judicial appeal of an adjustment by MDOR based on an alternative apportionment method, there is no presumption that the MDOR’s alternative apportionment method is correct. Instead, the reviewing court must apply a *de novo* review and make a determination based on the evidence presented.

This decision is pending a petition to the Court of Appeals for rehearing by MDOR. While no decision has been made by MDOR at this time, it is likely a petition for rehearing will be filed. If the petition is denied, the Court of Appeals’ decision is final and not subject to review unless the Mississippi Supreme Court grants a writ of certiorari.

—[Robert E. Box, Jr.](#) and [Alveno N. Castilla](#)



*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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