

PUBLICATION

Mississippi Supreme Court: Tax Assessments Not Subject to Meaningful Judicial Review

November 26, 2013

On November 21, the Mississippi Supreme Court denied the taxpayer's Motion for Rehearing in *Equifax, Inc. and Equifax Credit Information Services, Inc. v. Miss. Dept. of Revenue*, letting stand the court's earlier ruling that judicial consideration of tax assessments is limited by statute to the highly-deferential arbitrary and capricious standard of review. The history of this case is described in more detail in our earlier alerts regarding *Equifax* and *Fore*.

The statute providing for judicial review of tax assessments establishes that cases are to be tried *de novo* in chancery court with the judge to rule based on the preponderance of the evidence presented. The statute also contains a requirement that the judge give deference to the decisions of the Department of Revenue (Department) concerning laws and regulations as is required for other agencies.

In a case prior to *Equifax*, *W. C. Fore Trucking, Inc. v. Miss. Dept. of Revenue*, the Supreme Court had seemingly addressed the potentially conflicting portions of the statute and appeared to have rejected the Department's argument that the "deference" language required that judicial review be limited to the arbitrary and capricious standard. The court stated in *Fore* that while that standard "generally" and "ordinarily" applied to agency decisions, the inclusion of the deference language in the statute did not make the arbitrary and capricious standard applicable to judicial review of tax assessments.

The court further stated in *Fore* that the chancery court was to review questions of law *de novo*. With respect to factual matters, the *Fore* opinion held that the judge was to be the trier of fact, presumably without deference to the Department's position. The court explained that the deference language meant only that courts must give strong consideration to agency interpretations of statutes. A similar conclusion was reached by the Mississippi Court of Appeals in an earlier ruling in *Equifax*.

Nevertheless, in *Equifax* the Supreme Court relegated its prior decision in *Fore* to a footnote "clarifying" the *Fore* opinion. The footnote states that in *Fore* the court meant that the judge's role as trier of fact is to try the issue of whether the Department's assessment was arbitrary and capricious.

Somewhat overshadowed by the court's ruling on the scope of judicial review of tax assessments is the equally troubling ruling on alternative apportionment. After *Equifax*, Mississippi is apparently the first state to allow its taxing authority to depart from established rules of tax apportionment without being required to prove that exceptional circumstances would cause a distortion of income under such rules. Beyond merely allowing the Department to change the apportionment rules on audit, however, under the authority of the *Equifax* case the Department can also impose a penalty on the taxpayer for reporting its income as required by law.

It is too soon to predict all the consequences of the *Equifax* decision. Taxpayers and their counsel will no doubt have to labor long and hard to successfully challenge tax assessments afforded such a high level of judicial deference. Taxpayers with multistate operations will have to worry about penalties that can be imposed even when income is reported using the method prescribed by the Department. Another uncertainty will be the role of the independent Board of Tax Appeals given that courts will be required to defer to the

Department's decisions in the vast majority of cases. Perhaps the court's decision will prompt legislative changes to restore a more meaningful level of judicial review of tax assessments. Only time will tell.

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