

PUBLICATION

Spotlight on Mississippi: Statutory Requirements for Tax Appeals

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On September 6, the Mississippi Supreme Court reaffirmed in *Miss. Dep't of Revenue v. AT&T Corp*, the critical importance of strict compliance with statutory requirements for tax appeals. AT&T appealed an assessment of additional income tax, interest and penalties issued by the Mississippi Department of Revenue (Department). The assessment was based on a statute, since modified, governing consolidated income tax reporting by affiliated corporations. AT&T contended that the statute was inconsistent with the federal Constitution.

When the appeal was initiated and up until mid-2005, applicable Mississippi law required that taxpayers file a petition together with a bond equal to double the amount in controversy to perfect such an appeal. AT&T instead paid the entire tax assessment under protest and did not post the bond required by statute.

The Chancery Court found in favor of AT&T, concluding that statute in issue was in fact unconstitutional. Apparently the Chancellor and the Department accepted AT&T's payment as sufficient to satisfy the jurisdictional requirements of the appeal statute. For various reasons not material to this Alert, both parties appealed the Chancery Court's findings.

The Mississippi Supreme Court, on appeal, held that in the absence of the statutorily required bond, the Chancery Court had no jurisdiction to consider AT&T's appeal. The Supreme Court applied the longstanding judicial principle that the first consideration is always that of jurisdiction and that the parties to an action may not confer jurisdiction on a court by agreement or consent where jurisdictional requirements are not otherwise satisfied. This holding represents an unequivocal reminder to taxpayers that only strict compliance with legislated procedural requirements will suffice when pursuing tax appeals.

The decision is no doubt surprising from a practical standpoint. It would be entirely reasonable to conclude that, once a liability is paid, no logical purpose would be served by a bonding requirement. But as Justice Holmes wisely observed, "the life of the law has not been logic: it has been experience." The statute in question (which has been changed as discussed below) was a relic from a time when experience somehow led lawmakers to greatly disfavor tax appeals. The onerous requirement of double bonding an assessment before any independent review very effectively served the intended purpose of discouraging tax appeals, particularly for taxpayers with limited resources.

Current Mississippi law still retains some elements that tend to inhibit access to judicial review, but the system has been greatly improved since the time the AT&T appeal was filed. From mid-2005 to 2010, taxpayers' only alternative to paying the double bond, as required prior to mid-2005, was paying the assessment under protest. For most types of assessments, taxpayers are now entitled to a hearing before an independent Board of Tax Appeals before being required to make any payment or post any bond. Current law does, unfortunately, still require a taxpayer to post a bond to perfect an appeal for most types of taxes from the Board of Tax Appeals to Chancery Court. The requirement has been reduced to half the amount of the contested assessment. Additionally, the taxpayer can petition the Chancery Court, upon motion, notice and a hearing, to reduce or eliminate this requirement entirely, which should only be granted if the Chancellor finds that the state's interest in obtaining payment of the taxes, penalties and interest in the case are adequately protected. Current law further provides that taxpayers may obviate the bonding requirement by paying the contested

liability under protest, similar to the action taken by AT&T. It should be pointed out that no such statutory reform has yet occurred with respect to property tax assessments, where outdated and burdensome procedural requirements still prevail.

Should you have any questions regarding your right to appeal an assessment issued by the Department, please contact any attorney in the Firm's Tax Department.