



Is There Light at the End of the *Equifax* Tunnel? Mississippi Legislature Overwhelmingly Approves Sweeping Tax Reform Legislation

This morning the Mississippi Legislature approved—by overwhelming 121-0 and 40-9 margins in the House and Senate, respectively—the conference committee report on [House Bill 799](#) containing significant procedural tax reforms clarifying taxpayer rights at audit and in the administrative and judicial appeals process. The bill now goes to Governor Phil Bryant, who has publicly expressed strong support for the legislation.

This legislation has often been referred to as the "*Equifax* bill" as it addresses and attempts to correct several problematic issues resulting from the Mississippi Supreme Court's recent decision in that case ([see our prior Client Alert](#)), but the bill goes far beyond that case to remedy a wide range of perceived abuses and inequitable provisions under current law and resulting from other recent court decisions. Highlights of the bill are as follows:

- **Alternative Apportionment and Forced Combination**
 - Codifies the Department's "Section 18" alternative apportionment authority, but explicitly places the burden of proof on the party invoking it to prove by a preponderance of the evidence that the statutory or regulatory apportionment methods do not fairly represent the extent of the taxpayer's business activity in the state and, more importantly, that the proposed method more fairly represents that activity "*than any other reasonable method available*"
 - Clarifies that alternative apportionment is "intended to be invoked only in limited and unique, nonrecurring circumstances" where the standard apportionment rules "produce unanticipated results"
 - Amends the forced combination statutes to prohibit the Department from invoking that authority until regulations are adopted specifying the criteria and circumstances that will give rise to such combination, and clarifying what constitutes the "improper shifting" of income
 - Prohibits the imposition of penalties in alternative apportionment and forced combination cases unless the Department establishes that the taxpayer's method was without reasonable basis, was not in accordance with existing statutes or regulations, or the intercompany transactions giving rise to forced combination lacked any material non-tax business purpose

- **Administrative Appeals and Judicial Review**

- Confirms that both the Board of Tax Appeals and chancery courts are to provide a truly independent review of Department actions, specifically authorizing review of all substantive and procedural issues raised, including the imposition of interest and penalties, and explicitly prohibiting the courts from applying the more limited arbitrary and capricious standard of review at issue in *Equifax*
- Eliminating mandatory and jurisdictional pay-to-play requirements for judicial appeals, while preserving the state's ability to request a court require security be posted in limited circumstances in which appeal delays might jeopardize the state's ability to collect
- Removes the jurisdictional aspect of the current requirement that a taxpayer pay the uncontested portion of an assessment in order to be entitled to judicial review, another instance of the state's existing financial litmus test for appeals
- Changes the event triggering the 60-day appeal period from the date of the underlying action to the date the notice was mailed to the taxpayer, and re-establishes the traditional "mailbox rule" governing timely filing of Review Board and Board of Tax Appeals protests
- Guarantees taxpayers the right to appeal certain Department actions resulting in denial of claims for various tax incentives which previously were unappealable due to an unintended gap in statutory language
- Establishes optional "deemed denial" appeal rights if there has been no action following hearings on refund claims at the Review Board (six months) and Board of Tax Appeals (nine months)

- **Interest and Penalties**

- Clarifies that all interest and penalties are discretionary rather than mandatory, are imposed on the net tax deficiency rather than the original gross liability, and contain normal reasonable cause exceptions
- Reduces over a six-year period the interest rate on deficiencies from the current 12% per year to a more reasonable 6%
- Prohibits the imposition of the 50% sales tax fraud penalty based merely on the purported disregard of a field auditor's informal and unofficial instructions in a prior audit, but maintains the penalty if the Department can establish fraud or intentional disregard of the tax laws (this should directly impact the Department's recent regulation to the contrary, see [our prior Client Alert](#))
- Amends the 300% "trust fund monies" sales tax penalty to clarify that it may only be imposed in cases where the Department establishes the sales taxes were actually collected and not remitted, and that these penalties may not be based on a mere presumption that they were collected

The changes in the bill do not immediately go into effect, however, with complicated transition provisions that appear to preserve the current state of affairs for alternative apportionment, forced combination, penalties, interest and similar items for all tax years up to and including 2014, regardless of when the Department issues an assessment. The sections governing appeal rights, however, apply to any assessments or claims filed on or after January 1, 2015.

This bill was backed heavily by the Mississippi Economic Council and especially Scott Waller and Blake Wilson, as well as the Council on State Taxation ("COST"), the Mississippi Manufacturers Association, the Mississippi Society of CPAs, the tax section of The Mississippi Bar and a host of other businesses and trade organizations throughout the state.

— [John F. Fletcher](#) and [Justin B. Stone](#)

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