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## Mississippi Supreme Court Scuttles Use Tax Assessment on Yacht Purchase

*Important Clarifications on Different Rules of Construction and Burdens of Proof  
for Tax Exclusions versus Tax Exemptions*

[Vincent J. Castigliola, Jr. v. Mississippi Department of Revenue](#)

No. 2013-SA-001574-SCT (April 30, 2015)

The Mississippi Supreme Court last week reversed a lower court judgment which had upheld the Department of Revenue's imposition of use tax upon the out-of-state purchase of a yacht by a Mississippi resident. In doing so, the Court provided taxpayers with very useful guidance on two previously unanswered questions: (1) whether a difference exists between a tax *exclusion* and a tax *exemption* statute and, if so, (2) whether that distinction impacts the rules of construction and which party has the burden of proof when an assessment has been challenged. Answering these questions affirmatively, the Court's decision could have broad application in appeals involving numerous types of taxes.

In *Castigliola*, the taxpayer purchased a yacht directly from a Florida resident individual, but the seller had employed a Florida-based broker to arrange the transaction. The broker did not, however, take title, possession or control of the vessel at any time, and had no authority to negotiate on the seller's behalf or to accept or reject any offers on his behalf. The Court characterized the broker's activities as mere marketing services, and concluded the transaction was an isolated or occasional sale and exempt from Mississippi's use tax. The broker's involvement in the sale, under these circumstances, did not transform an otherwise non-retail person-to-person casual transaction into a taxable retail transaction, even though the broker otherwise was in the business of selling boats.

Yet, the most interesting aspect of the decision was that the Court placed the burden of proof on the Department because the applicable statute was a tax ***exclusion*** rather than a tax ***exemption***. The Court noted an important distinction between the two with respect to the appropriate rules of construction, holding that exclusion statutes are strictly construed against the state while the reverse is true with respect to exemptions. Specifically, the Court stated:

*While this Court has never explicitly found a distinction between an exemption and an exclusion, our caselaw makes it abundantly clear that Mississippi has long recognized such a distinction. First, under Mississippi law, it is clear that MDOR carries the burden to establish that a particular transaction falls within its statutory power to tax. Stone v. Rogers, 186 Miss. 53, 189 So. 810, 812 (1939); see Fishbelt Feeds, Inc. v. Miss. Dep't of Rev., 158 So. 3d 984, 988-90 (Miss. 2014). If MDOR fails to establish that a transaction is within its taxing power, that transaction necessarily will be excluded from taxation. See Rogers, 189 So. at 812. Furthermore, taxes such as use taxes "are to be strictly construed against the taxing power." Id. "The power cannot be implied" and "[a]ll doubts must be resolved in favor of the taxpayer." Id.*

In this case, because application of the isolated and occasional sale **exclusion** determines whether a transaction falls within the initial scope of the sales or use tax, *the Department bore burden of proof*. The Department, nonetheless, could not satisfy its burden. Indeed, under the rules set forth by the Court, *only if* the Department had satisfied this initial burden to prove taxability would the burden have shifted to the taxpayer to prove some other statute or regulation would exempt the transaction from the tax.

Significantly, this decision could have broad application to a wide range of tax disputes beyond the narrow context of isolated and occasional transactions within the sales and use taxes. Mississippi's sales, use, income and franchise tax chapters are rife with a broad range of tax exclusions, as well as exemptions. Taxpayers involved in a dispute over the taxability of a particular transaction or activity should pay close attention to precisely which type of statute is at issue when determining not only which party bears the burden of proof, but also in whose favor the courts will construe any uncertainty over the statute's application or interpretation. It is not difficult to imagine situations in which both an exclusion and an exemption might apply to the same transaction, making this determination even more critical.

Similarly, the Court's discussion concerning the rules of construction could be very important in any dispute over the validity of a regulatory interpretation of an exclusion or exemption statute. Although the courts typically defer to the Department's interpretation of a tax statute, that deference has limits, and the distinction between exclusions and exemptions could impact the scope of that deference even further.

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*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,*

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