



The *Equifax* Fallout Continues – The Mississippi Legislature Responds

On January 21, 2014, the chairman of the Senate Finance Committee introduced [S.B. 2487](#) to make several changes to Mississippi tax assessment and appeals procedures. The issues covered by this legislation include troubling concerns surrounding the scope of the Department of Revenue's discretionary authority and the nature of judicial appeals of those actions raised in *Equifax, Inc. and Equifax Information Services, Inc. v. Mississippi Department of Revenue (f/k/s Mississippi State Tax Commission)* and several other unfortunate recent court decisions and Department of Revenue positions (see our prior coverage of the [Equifax decision](#), as well as recent proposed regulations, now final, governing [sales tax penalties](#)). A companion bill is expected to be filed in the House Ways and Means Committee shortly.

This bill has the strong support and backing of the Mississippi Economic Council and several other in-state trade and taxpayer organizations. Among the reforms encompassed in the bill are the following:

- complete, retroactive elimination of the "pay-to-play" judicial appeal requirements (note the implementation references in section 19 will likely be modified; the intended retroactive changes are those contained in sections 16, 17 and 18 governing administrative and judicial appeals)
- retroactive confirmation of a taxpayer's right to a true de novo trial at the chancery court level, with an explicit prohibition against the court giving any deference to the administrative decisions under appeal
- codification of the Department's alternative apportionment authority, but with an express delegation of the burden of proof to the party invoking that method
- express prohibition against the imposition of penalties in alternative apportionment and forced combination assessments absent a false or fraudulent return
- prohibition against the invocation of forced combination until the Department adopts clear standards
- confirmation that all interest and penalties are discretionary and within the scope of judicial review, and a reduction of the deficiency and refund interest rates to more closely reflect current market rates
- changing the appeal period to begin upon the date a notice is mailed via certified mail or hand delivered rather than the current date of the action, and implementation of a mailbox rule rather than receipt date to govern the filing deadlines

The bills do not appear to change any substantive tax policies or rules, but would seem to establish a far more equitable and level playing field for taxpayers when dealing with the Department. How these bills will fare this session is difficult to predict, but there is clearly an air of frustration amongst local tax practitioners and many legislators with what is widely viewed as the Department's steady erosion of taxpayer rights and protections and the courts' apparent reluctance to restrain those actions.

The Jones Walker SALT team will be closely following the progress of these two bills and other tax developments during the 2014 Mississippi Legislative Session. If you should have any questions about this or any other legislation, please contact John Fletcher at 601.949.4620 or jfletcher@joneswalker.com.

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

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:

John F. Fletcher
Partner, Jones Walker LLP
Suite 800
190 E Capitol St
Jackson, MS 39201
601.949.4620 tel
601.949.4804 fax
jfletcher@joneswalker.com

Justin B. Stone
Associate, Jones Walker LLP
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8293 tel
504.589.8293 fax
jstone@joneswalker.com

[Jones Walker State and Local Tax Practice Group](#)
www.joneswalker.com

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