



"Wisdom and Sageness" – Mississippi Supreme Court Denies Rehearing in *Equifax*

Today, the Mississippi Supreme Court denied the taxpayers' motion for rehearing in *Equifax, Inc. and Equifax Credit Information Services, Inc. v. Mississippi Department of Revenue f/k/a Mississippi State Tax Commission*.

The Court's decision to leave its original decision essentially unchanged was surprising in light of the significant attention the case has garnered throughout the state tax community and the numerous *amicus curie* briefs filed in support of rehearing by organizations such as the Mississippi Economic Council, the Mississippi Manufacturers Association, the Council On State Taxation, the Institute for Professionals in Taxation, the Taxation Section of the Mississippi Bar, the Mississippi Society of Certified Public Accountants, and the Satellite Broadcasting & Communications Association.

Notwithstanding the denial, the Court did make two minor changes in paragraphs 8 and 11. Specifically, the Court clarified that the courts cannot adjudicate "the wisdom/sageness of the agency's decision" as opposed to its earlier reference to the "merits (or lack thereof)" of the agency's decision.

These changes, however, do not appear to alter the fact that Mississippi taxpayers are no longer entitled to any on-the-record, *de novo* hearing of their issues before a judicial tribunal (and possibly *no* independent tribunal, whether that be administrative or judicial) in spite of statutory language that appears to provide that very safeguard. Also unchanged is the reality that the Department of Revenue now would appear to have virtually unbridled power to invoke its discretionary authority in the context of market sourcing, forced combination, computation of the franchise tax base, and numerous other instances, with the taxpayer having the burden to prove those actions are improper under an arbitrary and capricious standard of review. Furthermore, the Department's imposition of penalties, per the Court, now appears to be completely beyond judicial review.

A copy of our prior client alert regarding the standard of review is available [here](#). The Jones Walker SALT team will keep you updated on any further developments with the *Equifax* decision.

A copy of the Court's revised opinion is available [here](#).

— [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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