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South Carolina DOR Suspends Use of Forced Combination By Amy Hamilton

When the South Carolina Chamber of Commerce drafted legislative language for new alternative apportionment rules, the Department of Revenue asked the chamber to step down, formed a joint committee to work on a solution, and announced it won't assert forced combination on audit in the interim.

The South Carolina Department of Revenue will cease asserting its discretionary authority to force unitary combined reporting while a newly created committee of DOR personnel, business representatives, and tax practitioners attempts to reach agreement on the state's approach to alternative apportionment.

News that the DOR will no longer be forcing combination was tucked in a May 1 notice describing the formation of the joint study committee. In that notice, the DOR also confirmed that it has ceased work on a draft revenue ruling released in February.

The DOR at press time had no additional information about the timeline for the joint committee's work and what type of final product it might produce.

Businesses and practitioners were not happy with the draft revenue ruling. The Council On State Taxation, for example, asked the DOR to rescind the draft guidance, saying in submitted comments ~ that the revenue ruling would change the status of South Carolina from a separate-entity state to a combined reporting state at the DOR's discretion and on an ad hoc basis. COST said the DOR is misapplying the state supreme court's 2010 ruling in *Media General Communications Inc. v. South Carolina Department of Revenue* ~ that the state's version of section 18 of the Uniform Division of Income for Tax Purposes Act allows for the use of combined reporting as an alternative apportionment method.

"We have never been a unitary state and never considered being water's edge, and now DOR is taking that position," said Otis Rawl, president and CEO of the South Carolina Chamber of Commerce, in comments to Tax Analysts.

Rawl said the DOR balked when the chamber asked the DOR essentially to return to its *pre-Media General* approach of not forcing combination while making changes

that would allow a taxpayer to petition for the use of an alternative apportionment method.

At that point, the chamber went to the governor and to legislative leaders with draft legislative changes to the burden of proof provisions of South Carolina's apportionment rules, he said.

"We said, 'Hey, this is going to be an economic development issue for the state of South Carolina, especially in light of what North Carolina did last year and Mississippi's doing right now,'" said Rawl, who worked for 24 years at the DOR, including running its legislative affairs.

Rawl said the DOR asked the chamber to stand down until the parties have a chance to sit down over the summer to see if they can come up with a position that the DOR can take on the use of alternative apportionment that would be satisfactory for all sides. Rawl said the joint committee will be small but that the chamber is working closely with representatives from major accounting firms, smaller practices, and the South Carolina Retail Association to ensure that the committee's membership is representative of the state's business community.

In addition to Rawl, former DOR officials working on this project through the chamber include former Revenue Director Burnie Maybank, now a member of Nexsen Pruet LLC, and former Revenue Director Ray Stevens, now a partner with Parker Poe Adams & Bernstein LLP in Columbia, South Carolina.

"I think there's a good-faith effort being made by the business community and DOR to find a solution for this problem that doesn't hurt South Carolina economically and that doesn't raise the tax implications on our businesses to a point where it's hurting our taxpayers," Rawl said.

Rawl also said the joint committee likely won't get down to work until after the legislative session is over and the South Carolina Supreme Court renders its decision in *CarMax Auto Superstores West Coast Inc. v. Department of Revenue*, the state's pending alternative apportionment case. (Prior coverage @j.) He said it's too early to know whether the joint committee will produce a policy document or a technical advice memorandum or suggest a statutory change.

Rawl said that while the DOR is going to cease forcing combination on future audits, all sides right now are discussing what's going to happen to the businesses that have pending audits or already have been assessed under forced combination. "We're still working through that process and hopefully will have an answer before too long," he said.



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