

South Carolina Supreme Court Decision Reached in Alternative Apportionment Case

Summary of Case

On June 14, 2010, the South Carolina Supreme Court issued a favorable decision to the taxpayer in *Media General, Inc., et al. v. South Carolina Department of Revenue*. The Court affirmed the Administrative Law Court decision in holding that the use of a combined apportionment method was allowed under relief statutes identical to UDITPA section 18 in what has historically been only a separate return state. The South Carolina Department of Revenue argued before the Court that the construction of statutory language defining “taxpayer” did not allow for a combined apportionment method. In addition, South Carolina contended that deference should be given to their long-standing interpretation disallowing the filing of a combined report. Finally, South Carolina bolstered its argument by relying on its Supreme Court decisions in *NCR Corp. v. South Carolina Tax Commission*, 304 S.C. 1, 402 S.E.2d 666 (1991) (*NCR I*) and *NCR Corp. v. South Carolina Tax Commission*, 312 S.C. 52, 439 S.E.2d 254 (1993) (*NCR II*) where a taxpayer’s request to use a combined apportionment methodology was disallowed. In addressing the arguments forwarded by the South Carolina Department of Revenue, the Court looked to the legislative intent of S.C. Code Ann. § 12-6-2320(A) under its standards of review. The Court relied heavily on the unambiguous language of section 12-6-2320(A)(4) allowing for “any other” method to be used when seeking relief from statutory apportionment methods resulting in distortion. Further, the Court noted that the relief provisions of section 12-6-2320(A) were adopted after the *NCR I* and *NCR II* decisions. The Court summarized its position by acknowledging that both parties stipulated to the existence of distortion under statutory apportionment methods, that the legislative intent of the relief provisions placed no explicit limitation on alternative methods under the “any other” standard, and that South Carolina had not established the appropriateness of another method.

The Case

<http://www.judicial.state.sc.us/opinions/HTMLFiles/SC/26828.htm>

In resolving this case, Dow Lohnes Price developed an alternative apportionment position to fairly reflect the apportionment of taxpayer’s income to South Carolina and provided tax technical, computational, and analytical expertise beginning with the audit phase through litigation. In partnership with Dow Lohnes Price, Burnet R. Maybank, III of Nexsen Pruet, LLC represented Media General, Inc. before the Court.

Please feel free to contact Geoffrey J. Christian or James S. Helms at 864-241-2001 with any questions you may have regarding the information contained herein.

About Dow Lohnes Price

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in Washington, D.C., Atlanta, and Oklahoma City, Dow Lohnes Price provides resources and expertise encompassing both an accounting and a legal perspective for all tax issues, thereby providing a well-rounded and cost-effective alternative to Big 4 firms and traditional law firms. Dow Lohnes Price is committed to handling each client with an individual focus. This focus, when coupled with an undeterred tenacity in resolving complex matters and advocating for taxpayers against adverse parties, allows Dow Lohnes Price to provide the best business solutions for each of its clients. To learn more, visit www.dlptax.com.

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