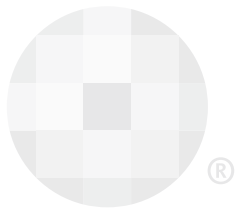


# A Perspective on Change—Where Does Fair Apportionment Stand?

*By Geoffrey J. Christian and James S. Helms*

Geoffrey Christian and James Helms explore the concept of fair apportionment in light of *Media General Communications, Inc. et al. v. South Carolina Department of Revenue* and other recent decisions.



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On June 14, 2010, in a case of first impression, the South Carolina Supreme Court handed down its unanimous decision in *Media General Communications, Inc. et al. v. South Carolina Department of Revenue*.<sup>1</sup> The Court ruled in favor of allowing use of the combined/unitary apportionment method<sup>2</sup> under relief statutes mirroring the Uniform Division of Income for Tax Purposes Act (UDITPA), Section 18—alternative apportionment relief provisions. The Court ruled in favor of allowing this combined apportionment method despite South Carolina's long-standing history of rejecting such reporting. In previous South Carolina Supreme Court rulings, the Court ruled against taxpayers desiring to combine their income and apportionment factors under the theory that South Carolina is a separate entity state.<sup>3</sup> However, these decisions were reached prior to the state's enactment of S.C. Code Ann. § 12-6-2320(A), a relief statute identical to Section 18 which allows for the use of "any other" method when the statutory method does not **fairly represent** the extent of the taxpayer's in-state activity.

While some may initially think this is a case solely about opening the door for use of combined filings in South Carolina, upon closer examination this decision ultimately confirms the broad spectrum of methods available to taxpayers and states alike when trying to obtain a clear reflection of taxable activities within a state. Indeed, the story of this case is proper

relief from distortive apportionment computations and resulting tax determinations.

With *Media General* as our backdrop, let us take the opportunity to explore the issues surrounding fair apportionment of a taxpayer's multistate activities while considering the implications of this decision to taxpayers in various states.

## Now Versus Then

In 1957, UDITPA was passed in an effort to promote conformity among states and their income tax reporting structures.

Originally, the drafters of UDITPA proposed a three-factor apportionment method for most businesses. This method involves those factors of economic activity essential to the enterprise itself including property, payroll, and sales.<sup>4</sup> These particular factors were meant to establish a reasonable reflection of where a company was

operating based on capital investment, costs of production, and the generation of revenue. Several cases have determined these measures to be relevant and confirmed their fairness in estimating the proper apportionment of taxable income.<sup>5</sup>

However, the economy of today and the business models in which corporations operate are more complex than those that existed in 1957. In 2010, the service sector, for instance, represents a far greater percentage of the Gross Domestic Product when compared to 1957. The sector including manufacturing decreased from 39.8 percent to 24.9 percent from 1957 to 1987, while the sector that includes services, excluding distributive services,<sup>6</sup> increased from 24.7 percent to 42 percent over the same time period.<sup>7</sup> As well, there is currently an explosion of electronic services, the use of revenue generating intangible assets, and e-commerce—items not prevalent at the time UDITPA was drafted. Finally, the segregation of various activities into separate entities for legitimate business and legal reasons has added to the complexities of our new economy.

In *Allied-Signal, Inc. v. Director, Div. of Taxation*,<sup>8</sup> the Court recognized the flexibility of the uni-

tary concept<sup>9</sup> in adapting to different economic activities and models. Recognizing that the ever changing economy continues to evolve, the U.S. Supreme Court in *Container* also acknowledged the unitary concept and gave states discretion in creating formulas to apportion activities. In an effort to improve under these guidelines and limitations, many states have passed legislation to adjust their apportionment approaches by giving greater weight to the sales factor or by eliminating the property and payroll factor altogether for service oriented or intangible based activities.<sup>10</sup>

In spite of these adjustments, the system continues to struggle with both the taxpayer's and state's need for predictable results in their respective tax expense/income planning and the need to legally meet the standards of interstate taxation established by the U.S. Constitution, as interpreted by the U.S. Supreme Court. This struggle has been the focus of

Historically, UDITPA Section 18 relief alternative formulas have stayed in the realm of including additional factors, excluding factors, or the use of separate accounting. However, these cases reveal that states are also looking at and implementing methods outside this list.

recent debate as to whether UDITPA Section 18 provisions are meant only for "unusual circumstances," as originally proclaimed by its drafters, what constitutes "unusual circumstances," and have the state courts unduly expanded the application of statutes similar to UDITPA Section 18. Two possible examples of such expansion would be the South Carolina *Media General* case and the *Carmax Auto Superstore West Coast, Inc. v. Department of Revenue* case.<sup>11</sup> Section 18 states:

18. If the allocation and apportionment provisions of this Act do not **fairly represent** the extent of the taxpayer's business activity in this State, the taxpayer **may petition** for or the [tax administrator] **may require**, in respect to all or any part of the taxpayer's business activity, if reasonable: [Emphasis added]

- a) separate accounting;
- b) the exclusion of any one or more of the factors;
- c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

- d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. [Emphasis added]

In *The Uniform Division of Income for State Tax Purposes*,<sup>12</sup> Professor William Pierce, a drafter of UDITPA, gives some insight into when Section 18 should be used with the following comments:

- [D]epartures from the basic formula should be avoided **except where reasonableness requires**. Nonetheless, some alternative method must be available to handle the constitutional problem as well as the unusual cases, because **no statutory pattern could ever resolve satisfactorily the problems for the multitude of taxpayers with individual business characteristics**. [Emphasis added]
- [When] the [standard apportionment] statute reaches arbitrary or unreasonable results so that its application could be attacked successfully on constitutional grounds. Furthermore, **it gives both the tax collection agency and the taxpayer** some latitude for showing that for the particular business activity, some more **equitable method** of allocation and apportionment could be achieved. [Emphasis added]

Further in the Comments of UDITPA Section 18, its drafters stated:

Section 18 is intended as a **broad authority**, within the principle of apportioning business income fairly . . . to the tax administrator to vary the apportionment formula and to vary the system of allocation **where the provisions of the Act do not fairly represent the extent of the taxpayer's business activity in the state**. [Emphasis added]

As noted in the comments above, Section 18 was intended to be utilized not only in unusual cases but also gives latitude to achieve a more **equitable method** of allocation and apportionment when provisions do not "fairly represent the extent of the taxpayer's business activity in the state." It is clear that the drafters of Section 18 realized the potential inadequacies of a standard method when applied to taxpayers with different characteristics.

Section 18 and its relief provisions focus on the equitable and fair representation of a taxpayer's business activity within a state over consistent application of a standard formula. Although Professor Pierce acknowledges its use in "unusual cases," such

an observation in this context does not appear to be a limitation to Section 18's overall application.

## Analysis of UDITPA Section 18

The question, which has yet to be answered definitively, is what constitutes the need to trigger the use of UDITPA Section 18 relief and what is appropriate relief?

UDITPA Section 18 has two fundamental requirements. The statutory method must result in distortion<sup>13</sup> while the proposed alternative method must fairly represent the extent of the taxpayer's business activity in the state. In *Twentieth Century-Fox Film v. Oregon Department of Revenue*,<sup>14</sup> the Oregon Supreme Court made an effort to define when an alternative apportionment method should withstand challenge as reasonable. The Court held that in order for a method to be reasonable a party must show that the method 1) would result in no more nor less than 100 percent of the income being taxed if applied uniformly; 2) promotes uniformity among UDITPA states; and 3) reflects the economic reality of the taxpayer's activity in the state.<sup>15</sup> It is of utmost importance that the alternative method meets constitutional standards that exist. The method must be internally consistent—tax 100 percent of taxpayer's income if applied uniformly among all states. The method must also be externally consistent—not result in "gross distortion" that is "out of all appropriate proportions to the business transacted in the State."<sup>16</sup>

Distortion has been separately defined at the constitutional and statutory levels. Constitutional distortion exists when either the internal or external consistency test (defined above) is not met. As of yet, no consistent benchmark exists as to when UDITPA Section 18 should be used.

Clearly, the provisions should be utilized when constitutional distortion exists. However, where the standard apportionment method does not fairly represent the extent of the taxpayer's activity within a state, resulting in statutory distortion, relief is also necessary. There is no bright line test that exists for statutory distortion but it is a level of distortion that is less than constitutional distortion when invoking relief provisions.<sup>17</sup> The best guidance to date regarding statutory distortion was given in *Microsoft Corp. v. Franchise Tax Bd.*,<sup>18</sup> where California laid out various qualitative and quantitative tests to determine whether an apportionment method reasonably reflects a taxpayer's activities:

- the qualitative differences between the company's principal business and treasury department;
- the quantitative difference between the income produced by treasury activities and the gross receipts generated by treasury activities;
- the quantitative difference between the treasury margin and the non-treasury margin; and,
- the overall quantitative difference between applying the UDITPA formula with the full redemption price included in the sales factor as opposed to without.

The battle over whether statutory distortion exists will continue to be fought between states and taxpayers as courts have differed on what level of distortion is required for UDITPA Section 18 relief to apply.<sup>19</sup> In addition, the issue arises as no specific method can be relied upon in all circumstances to be a standard benchmark by which distortion can be proven through a comparison to the result under statutory methods. As such, any claim of distortion must include not only an alternative computation but should also be supported with qualitative and quantitative analysis showing that the relief computation used reflects the taxpayer's true economic activities within the state.

Courts will continue to address, and hopefully better define, what constitutes statutory distortion and the appropriate UDITPA Section 18 relief as state taxing authorities chase taxpayer's ever-changing economic activities and structures and as taxpayers continue to seek proper apportionment of their taxable activities.

## Relief Cases

Many state courts addressed UDITPA Section 18 issues in the past. These cases have dealt with who bears the burden of proof in implementing relief provisions, whether distortion exists, and does a proposed alternative method reasonably reflect taxpayer's business activities.

### Who Is Responsible for Proving the Need for Section 18 Relief?

The predominant thought is that the party seeking relief bears the burden of proving its necessity. The burden of proof standard is generally one of clear and convincing evidence.

It is here where taxpayers are at a disadvantage. Although states and taxpayers are theoretically held to the same burden of proof standard, the

initial assessment of meeting one's burden of proof is made by an auditor (not a court) during either an amended return review or audit process. It is unlikely that a state will, by default, accept a taxpayer's claim for relief since typically the result will be less taxes.

Therefore, in order to fully recognize the benefits of relief provisions, taxpayers are inevitably going to have to defend their position, whether a claim for relief or a defense against state claims, in court. Otherwise, a state can propose an assessment based on an alternative method and, again, it will be up to the taxpayer to challenge the issue.

No efforts to date have lessened the taxpayer's burden in initially availing itself of relief provisions. As such, taxpayers will have to weigh the benefit of a relief claim, considering current and future tax periods against the costs of pursuing relief and the likelihood of success. Given the expansion of available methods and the lack of a standard by which distortion is measured, the chance of determining a level of success is arbitrary at best.

### Does Distortion (Statutory or Constitutional) Exist?

The existence of distortion is necessary before UDITPA Section 18 relief can even be considered. Many cases have looked to the existence of distortion with mixed results.<sup>20</sup> *Hans Rees' Sons, v. State of North Carolina*<sup>21</sup> is a U.S. Supreme Court case where distortion was determined to exist. In *Hans Rees'*, a difference between the statutory method and the taxpayer's alternative method in excess of 250 percent existed. However, it was not the "quantitative" difference alone that was determinative. Rather, the Court focused on a "qualitative" analysis to insure a proper representation of activities through appropriate apportionment methods. Its decision hinged on analysis provided by taxpayer showing business activity conducted within the state did not exceed 21 percent of its income while statutory methods apportioned approximately 80 percent to the state. The Court concluded, based on the aforementioned analysis, that the statutory apportionment method acted "unreasonably and arbitrarily."<sup>22</sup>

Similarly, in *Microsoft*, California courts focused on analyzing whether factors composing the standard apportionment method truly represented the activities of the taxpayer within the state. Items California considered included both qualitative and quantitative measures.

California courts ultimately concluded that the use of the statutory method did result in distortion. However, this case is important due to affirmatively establishing at a state statutory level that distortion is based on factors other than just percentage differences between methods. What truly matters is whether the factors used in apportioning income are representative of the income being apportioned among states.<sup>23</sup>

Fundamentally, taxpayers have to support any relief claims or their defense against state adjustments under UDITPA Section 18 with economic data reflecting a correlation, or lack thereof, between income being apportioned and the factors used to apportion such income. Without such data and analysis, any effort for relief will be futile.

### **Does the Proposed Alternative Method Reasonably Reflect Taxpayer's Business Activities?**

This point is the second requirement in effectively utilizing UDITPA Section 18 relief. In addition to providing a more equitable result, the alternative method must also pass constitutional muster—the internal and external consistency tests.

### **“Any Other” Method**

Although UDITPA Section 18 gives some explicit formula adjustments like excluding a factor, including a different factor, or separate accounting, the existence of “any other” method language offers a broad spectrum of possibilities. It is this broadening of alternative formulas that is both exciting and worrisome for taxpayers.

For instance, in another recent South Carolina case, *Carmax*, the taxpayer's formula was adjusted to exclude a certain line of business from the apportionment factors on the basis that such line of business did not operate in South Carolina. This decision is troubling given its disregard for the unitary business principle. In the Tennessee *Bellsouth* case, the state statutes required the taxpayer to utilize a cost of performance method in sourcing its sales for

apportionment purposes. Tennessee argued, simply, that since such a method resulted in no tax, an alternative apportionment method should be used based on a market approach for sourcing sales. The court upheld Tennessee's position.

Historically, UDITPA Section 18 relief alternative formulas have stayed in the realm of including additional factors, excluding factors, or the use of separate accounting. However, these cases reveal that states are also looking at and implementing methods outside this list. Once again, the importance of supporting a taxpayer's claims with economic data is key and cannot be overemphasized given the seemingly unrestricted use of formulas. Proving the relevance of alternative formulas to the economic activities carried on by the taxpayer is key in defending or challenging their use.

### ***Media General*: Analysis and Implications**

As previously stated, some may initially think this is simply or only about the use of combined filings in South Carolina. However, it is the impact this case has on utilization of relief provisions by taxpayers that should be the focus.

In *Media General*, a multistate taxpayer was assessed income tax and license fees by South Carolina on several entities which had not historically filed returns due to lack of physical presence nexus. All entities in the consolidated federal group were part of and integral to unitary operations. After asserting nexus for these several entities, South Carolina separately assessed additional taxes and fees for each, based on their long standing and statutory method of separate entity apportionment. South Carolina supported its position based on previous decisions by the South Carolina Supreme

Court in *NCR I* and *NCR II* which disallowed a taxpayer's request to combine the apportionment factors of foreign subsidiaries with those of its parent (NCR). The Court determined it was not necessary to include the factors of the foreign subsidiaries in the apportionment of NCR merely

**Practically speaking, taxpayers that reevaluate their tax computations and seek relief to more fairly represent their true activities within a state face a more substantial and costly challenge in satisfying their burden of proof.**

because NCR received royalty and interest income from its subsidiaries.

In 1995, after the *NCR* decisions were issued, the state legislators passed relief provisions currently found in S.C. Code Ann. § 12-6-2320(A). These relief provisions are identical to UDITPA Section 18 and provide for the “employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s income ...”<sup>24</sup>

Significantly, the *Media General* case came to the South Carolina Supreme Court with both the Department of Revenue and the taxpayer agreeing that the statutory separate entity method for apportioning income “does not fairly represent [taxpayer’s] business activities in South Carolina, thus resulting in a statutory distortion of [taxpayer’s] activities within South Carolina.” See *Media General*, supra. Notably, the statutory method resulted in a tax liability 435 percent (\$3,758,320/\$863,179) greater than the alternative method proposed by the taxpayer.<sup>25</sup> Further, agreement was reached upon a method that did fairly represent the activities of the taxpayers within South Carolina—the combined apportionment method.<sup>26</sup>

As these elements satisfied taxpayer’s proper burden of proof, the only issue in the case came down to whether the combined apportionment method was allowed under South Carolina’s separate entity statutory practices and to what extent are any limitations placed on the alternative methods which may be utilized in reaching fair apportionment. Once again, it is worth repeating that the battle in most relief cases is fought over whether distortion exists under the statutory method and whether the alternative method sought by the party seeking relief fairly reflects a taxpayer’s business activities within the taxing jurisdiction.

South Carolina asserted that the separate entity approach was the standard in South Carolina, and that utilization of this methodology resulted in distortion. The state also asserted it did not have the statutory authority to utilize any method which combined factors or income of another entity. In support, South Carolina put forth the following arguments in *Media General*:

- The term “taxpayer” is defined as a “corporation” and does not include multiple entities;
- The combined apportionment method is not expressly provided for in the relief provisions so it should not be allowed;
- It is the long standing policy of South Carolina to apportion based on a single entity approach; and

- Another approach using only the single entity could be devised which would fairly represent the taxpayer’s activity within South Carolina.

In rebutting the positions of South Carolina, *Media General* relied on the following points:

- The clear language of the statute should be followed as it is “plain” and “unambiguous” so that the term “any other method” should be interpreted broadly;
- South Carolina’s long standing interpretation cannot outweigh the legislative intent of providing relief from statutory distortion; and
- The adoption of the relief provisions after the *NCR* decisions allows for methods other than the separate entity approach.

## The Ruling

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The South Carolina Supreme Court in *Media General* held that the legislature, in passing the relief provisions, “placed no explicit limitation on the alternative methods that may be used under [the relief provisions].” Further, the Court held that the plain language of the relief provisions provided for the use of “any other method” by South Carolina to fairly reflect a taxpayer’s business activities within its borders. The Court dismissed the authority cited by South Carolina as it predated the enactment of the relief provisions by the legislature.

The South Carolina Supreme Court went on to recognize that the Department of Revenue did not have to automatically accept a method requested by the taxpayer and could itself select an alternative method. However, either method should be held to the same standard – fair apportionment.

## Broad Implications and Practical Considerations

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This decision, while it provides specific judicial authority in South Carolina, may have broader implications in other states which have the UDITPA Section 18 relief provisions or similar language. It is only the second case on record whereby a separate entity state has allowed relief using a combined apportionment method.<sup>27</sup> This case provides further judicial groundwork whereby other states with similar relief provisions can interpret the plain and unambiguous language of the term “any other method” when seeking a fair reflection of a taxpayer’s activities within its borders.

What conclusions can be drawn? Most states have relief provisions but, most often, they are used only to the state's advantage. Practically speaking, taxpayers that reevaluate their tax computations and seek relief to more fairly represent their true activities within a state face a more substantial and costly challenge in satisfying their burden of proof. There are ever changing economic conditions and corporate structures, coupled with a state's attempt to generalize an apportionment formula for every taxpayer that fairly reflects their activities, that must be considered and evaluated.

How do states and taxpayers make sense of this situation? In consideration of defending or asserting a UDITPA Section 18 relief position, taxpayers should analyze their filing and apportionment methodologies to determine whether or not their true economic activities are equitably reflected in the computations—is the income they are apportioning fairly represented by the apportionment factors. Further, if a determination is made to seek the use of an alternative method, quantitative and qualitative economic data and analysis must be documented to prove both the existence of statutory distortion and the appropriateness of the alternative method in fairly representing a taxpayer's business activities. It is no longer viable to merely reflect a large difference in tax liabilities based on the statutory and alternative method

as proof of distortion. In addition, taxpayers should be prepared for the state to reject any attempt to use a method other than the statutory method, leading to a lengthy set of appeals and possible court dates.

Taxpayers should also be prepared to defend against states seeking to adjust their apportionment computations using the relief provisions. Analysis and proof reflecting the proper apportionment under a statutory method provided during the audit process can help dissuade states from making such adjustments. However, if the state decides to go forward with its position, the inequalities in defending one's burden of proof will once again mean certain appeals and court dates unless a settlement can be reached.

The *Media General* case should be seen as providing some glimmer of hope for taxpayers seeking fair solutions, particularly in separate entity states with UDITPA Section 18 language. The key in these battles likely hinges on whether the state or the taxpayer provides the most reasonable support for the existence of distortion and the effectiveness of an alternative apportionment method to fairly reflect income. As in *Media General*, the ability for taxpayers to avail themselves of relief provisions and to use "any other method" has been confirmed and should be viewed without limitations in a taxpayer's planning or defense of an alternative position.

## ENDNOTES

<sup>1</sup> *Media General Communications, Inc. et al. v. South Carolina Department of Revenue*, South Carolina Supreme Court, No. 26828 (June 14, 2010).

<sup>2</sup> Under the combined/unitary apportionment method each member of a group carrying on a unitary business computes its individual taxable income attributable to activities within a state based on combined apportionment factors applied to the combined net income of the group.

<sup>3</sup> *NCR Corp. v. S.C. Tax Comm'n*, 304 S.C. 1, 402 S.E.2d 666 (1991) ("NCR I") and *NCR Corp. v. S.C. Tax Comm'n*, 312 S.C. 52, 439 S.E.2d 254 (1993) ("NCR II").

<sup>4</sup> UDITPA Sections 9-17.

<sup>5</sup> See *Container Corp. of America v. Franchise Tax Bd.*, SCt, 463 US 159, 103 SCt 2933, (1983), citing *Butler Bros. v. McCollan*, SCt, 315 US 501, 62 SCt 701, (1942); *Moorman Mfg. Co. v. Bair*, 437 US 267 (1978); and *General Motors Corp. v. District of Columbia*, SCt, 380 US 553, 561, 85 SCt 1156, (1965).

<sup>6</sup> Distributive services include utilities, wholesale trade, retail trade, and transportation and warehousing—industries which still rely heavily on property and payroll in performing their business.

<sup>7</sup> See *Robert E. Yuskavage and Mahnaz Fahim-*

*Nader, Gross Domestic Product by Industry for 1947-86: New Estimates Based on the North American Industry Classification System*, SURVEY OF CURRENT BUSINESS, 70-84 (December 2005).

<sup>8</sup> *Allied-Signal, Inc. v. Director, Div. of Taxation*, SCt, 504 US 768, 112 SCt 2251, (1992).

<sup>9</sup> The unitary business principle considers a taxpayer's integrated business unit rather than a legal entity or geographical location. As such, the principle looks to a taxpayer's activities in determining what components represent an integrated business unit and then determines the appropriate apportioned share of such business unit taxable by any given state. The "hallmarks" of a unitary relationship between businesses are "functional integration, centralized management, and economies of scale." See *MeadWestvaco Corp. v. Ill. Dep't of Revenue*, 553 US 16 (2008).

<sup>10</sup> For tax year 2010, number of states with sales only: 12.

For tax year 2010, number of states with sales weighted apportionment factors: 20. *RIA Checkpoint State Tax Chart "Apportionment-Sales Factor-2010,"* RIA ¶ 11,860.

<sup>11</sup> *Carmax Auto Superstore West Coast, Inc. v.*

*Department of Revenue*, S.C. Admin. Law Ct., Docket No. 09-AJ-17-0160-CC (April 22, 2010).

<sup>12</sup> *W. Pierce, The Uniform Division of Income for State Tax Purposes*, 35 TAXES 747, 781 (1957).

<sup>13</sup> Cases are split on the determination of whether Section 18 applies only in the case of constitutional distortion or the lesser standard of statutory distortion. In *Media General*, the court determined statutory distortion met the requirements necessary to invoke relief provisions.

<sup>14</sup> *Twentieth Century-Fox Film v. Oregon Department of Revenue*, 299 Or. 220, 700 P.2d 1035 (1985).

<sup>15</sup> *Twentieth Century-Fox*, 700 P.2d at 1035.

<sup>16</sup> *Container*, 463 U.S. at 160.

<sup>17</sup> See J. Hellerstein & W. Hellerstein, STATE TAXATION (3rd ed.), para. 9.20.[3][a] and *Twentieth-Century-Fox*, supra.

<sup>18</sup> *Microsoft Corp. v. Franchise Tax Bd.*, 39 Cal.4th 750 (2006).

<sup>19</sup> Constitutional distortion is required in *Twentieth Century-Fox*, supra; cases that required only statutory distortion include *Magella Healthcare Corp.*, No. OTA-2003-01, Alaska Office of Tax Appeals (Jan. 2, 2004); *Microsoft*, supra; *Union Pac. Corp. v. Idaho State Tax Comm'n*, 139 Idaho 572,

83 P.3d 116 (2004); and *Montana Dep't of Revenue v. United Parcel Serv., Inc.*, 252 Mont. 476, 830 P.2d 1259 (1992).

<sup>20</sup> See *Microsoft*, *supra*; *General Motors Corp. v. Franchise Tax Bd.*, 39 Cal.4th 773 (2006); *Bellsouth Advertising & Publishing Corp. v. Chumley*, 308 S.W.3d 350 (Tenn. App. 2009); and *Carmax*, *supra*.

<sup>21</sup> *Hans Rees' Sons, v. State of North Carolina*, S.Ct, 283 US 123, 51 S.Ct 385, (1931).

<sup>22</sup> *Hans Rees'*, 283 US at 135.

<sup>23</sup> *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

<sup>24</sup> S.C. Code Ann. § 12-6-2320(A)(4).

<sup>25</sup> The use of tax amount discrepancies between different methods will rarely meet one's burden of proof. Rather, additional data supporting a taxpayer's activities within a taxing jurisdiction, along with data supporting how the method proposed properly reflects those activities, is likely necessary to sustain any distortion claim.

<sup>26</sup> During the pre-trial process, Media General provided various qualitative economic analyses, along with the percentage difference in apportionment methods, in reaching a conclusion with South Carolina regarding the existence of distortion and the equitable apportionment of its income under the proposed alternative method.

<sup>27</sup> *Leathers v. Jacuzzi, Inc.*, 326 Ark. 857, 935 S.W.2d 252 (1996).

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