

# Alternative Apportionment Methods: Will South Carolina Ruling Have Nationwide Impact?

By Geoffrey J. Christian and James S. Helms

Geoffrey Christian and James Helms discuss the South Carolina Supreme Court's *Media General* decision and question whether other states will also broaden their alternative apportionment provisions.



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States have long employed "apportionment" formulas to help multistate corporations calculate the amount of income to be taxed within their borders. Significant changes in the way multistate companies conduct their businesses have occurred since the 1950's when the general principles of apportioning/dividing taxable income among states were originally adopted. The process of fairly apportioning the income of business taxpayers is becoming a high stakes balancing act with a state's need to collect adequate revenue on one side and a stable business environment on the other.

Businesses and corporate structures have grown more complex and states have done a yeoman's job addressing issues associated with the changing tax environment to provide the aforementioned balance between states and taxpayers. However, as with any formula approach, strict compliance can fail to accurately and fairly calculate the taxable activity of complex businesses occurring within any particular state. In anticipation of such "failures," commonly referred to as distortion, many states have established corrective measures or relief provisions.

Recently, one state supreme court addressed the issue of tax fairness with its decision in *Media*

*General, Inc., et al. v. South Carolina Department of Revenue*.<sup>1</sup> This case deals with the application of South Carolina's relief provisions modeled after Uniform Division for Income Tax Purposes Act (UDITPA), Section 18. These provisions allow for the use of an alternative apportionment method when standard formulas do not fairly represent a taxpayer's in-state activities.

Currently, 33 states have provisions that are identical to Section 18 or which contain only minor variations. Another 11 states provide some form of their own relief provisions without utilizing language similar to Section 18.

States are expanding the activities being taxed within their borders beyond historic levels while protecting their sovereignty from the intervention of federal government into these practices. The expanded multistate taxing endeavors often provide examples of where standard business formulas developed during a different economic period, particularly when applied to an evolving business model, may not reflect a taxpayer's true activity within a state. As such, the need for relief provisions like Section 18 is an area of ever increasing relevance.

In the past, states have held the upper hand in using Section 18-type provisions due to strict burden of proof standards and/or statutory method restrictions. However, in *Media General*, the South Carolina Supreme Court held that the taxpayer could utilize an alternative method (*i.e.*, the combined apportionment method) to fairly apportion its income to South Carolina. The court went on to conclude that no express limitation exists under

the relief provision's "any other method" standard as to what apportionment method may be utilized in reasonably reflecting those activities occurring within the state.

The *Media General* ruling is also a landmark decision because it reverses South Carolina's long standing separate entity reporting policy. Perhaps more importantly, however, the ruling establishes that South Carolina is willing to broaden the methods utilized by multistate corporations to report business tax liabilities using alternative relief provisions.

Now, the larger question is—are other states ready and willing to do the same? *Media General* affords the ability to obtain fairer tax assessments in other states, which have relief provisions similar to Section 18, by providing further judicial groundwork on which

those states can rely. It should be noted that in this case, the "fair result" derived was a tax assessment less than that proposed by the state but more than originally reported by the taxpayer.

Although currently unique to South Carolina, the court's decision in *Media General* affirms that taxpayers can successfully petition for the use of relief provisions similar to Section 18 in reaching a more fair tax assessment. This ruling does not mean all multistate taxpayers will rush to petition for change in how they calculate taxes. However, one thing is certain—the options available to taxpayers who seek fair tax relief have increased.

#### ENDNOTES

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

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