

Income/Franchise:

Florida: Service Provider Permitted to Source Receipts Out-of-State Based on Costs of Performance

Case No. 2021-CA-002158, Fla. Cir. Ct. (11/28/22). In a case involving an out-of-state service provider that is a subsidiary of a nationwide online and brick-and-mortar retailer, a Florida circuit court (Court) held in favor of the subsidiary, concluding that it provided sufficient documentation in the form of employee payroll apportionment workpapers to show that the service receipts at issue may be sourced outside of Florida based on costs of performance, and thus the Florida Department of Revenue's (Department) underlying corporate income tax assessments for the tax years at issue must be abated in full. Accordingly, in this case, the Court held that the Department did *not* have the authority to employ an alternative apportionment methodology to reconstruct the subsidiary's sales factor for apportionment purposes based on the retail square footage of its parent's retail stores within and outside of Florida. In rejecting the Department's proposed alternative methodology, the Court added that the proposed apportionment formula conflates the parent's in-state business activity with the subsidiary's business activity, reasoning that the subsidiary is a distinct legal entity "separate and apart from" its parent. Please contact us with any questions.

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