

Income/Franchise:

Florida: Service Provider Must Source Receipts Based on Costs of Performance Sourcing Methodology

Case No. 2020 CA 000435, Fla. Cir. Ct., Leon County (7/11/23). In a case involving primarily out-of-state financial technology service providers, a Florida circuit court (Court) previously held that Florida's corporate income tax administrative rule on sourcing receipts from services, Rule 12C-1.0155(2)(I), F.A.C., requires application of a "cost of performance" sourcing methodology rather than the Florida Department of Revenue's (Department) attempt to impose a "market-based" sourcing methodology on the taxpayers pursuant to a corporate income tax audit [see *State Tax Matters*, Issue 2023-11, for more details on the Court's ruling from earlier this year]. In response to a motion by the Department to dismiss the taxpayers' lawsuit on procedural grounds, as well as subsequent counter-motions and cross-motions by both parties, the court recently issued two orders, and separately one final judgement.

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/STM/230317_1.html

The two orders sustained the Department's motion to dismiss, and denied the taxpayers' counter-motion for reconsideration or leave to file an amended complaint with respect to all but one of the plaintiff taxpayers, holding that all but one of the plaintiff taxpayers failed to meet the procedural requirement to either:

1. Pay the amount of the disputed assessment,
2. Ask for and receive a waiver in lieu of payment,
3. Post a cash or surety bond, or
4. Ask for and be granted alternative security, at the time the lawsuit was filed, as required by Fla. Stat. section 72.011(3)(1)(b)1-2.

Therefore, the case was dismissed with respect to all but one of the plaintiff taxpayers. The final judgement with respect to the one remaining plaintiff taxpayer, who was not assessed additional tax by the Department and therefore was not subject to the requirements of Fla. Stat. section 72.011(3)(1)(b)1-2, adopted the holding of the prior ruling that Rule 12C-1.0155(2)(I), F.A.C., requires application of a "cost of performance" sourcing methodology, and that the Department's attempt to impose a "market-based" sourcing methodology on the taxpayer was an "inconsistent interpretation of its own regulations" in violation of Florida's Taxpayer Bill of Rights. At this time, it is uncertain whether either the Department or any of the plaintiff taxpayers whose cases were dismissed will appeal. Please contact us with any questions.

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