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In this installment of Inside Deloitte, the authors discuss alternative apportionment and recent changes in the economy and state apportionment systems that have made it challenging for taxpayers and state tax authorities to apply standard apportionment rules to today's economic activity.

Why Alternative Apportionment?

For both corporate taxpayers and state tax authorities, flexibility is one of the most important factors in the fair, equitable, and ultimately constitutional apportionment of multistate income.[1] Case law dating back to the mid-20th century has held that standard, rigid income apportionment methods — from which multistate taxpayers could not deviate — could result in taxable income distortion that contradicted the due process guaranteed by the U.S. Constitution.[2] Thus, to satisfy the constitutional requirement of fair apportionment, states must provide alternative apportionment methods when their standard methods applied to taxpayer facts create unconstitutional distortion.[3] Having the option of an alternative method of apportionment can benefit both the taxpayer and the tax authority by providing this flexibility and a sense of certainty that fair apportionment of income is attainable.

While states can implement a wide range of apportionment and allocation formulas, the result of a state's apportionment method must be that only income "fairly attributable" to the state is taxed.[4] Although there are various methods of apportionment and allocation of corporate income, states must uphold the fair apportionment requirement in each instance.[5] Historically, states most commonly used a three-factor apportionment method that weighed a business's in-state property, payroll, and sales to the everywhere totals of those factors. Any distortive impact of one factor was most often mitigated by the other two factors. As we will discuss in detail later, this may no longer be the case.

Most states have moved to single-sales-factor apportionment systems, making the sourcing of sales all-important. In states with a single sales factor, the property and payroll factors cannot offset problems with the sales factor. In a single-sales-factor system, alternative apportionment may be the only source of relief from a problematic sales factor.

[1] *See Pacific Fruit Express Co. v. McColgan*, 153 P.2d 607, 610 (Cal. Ct. App. 1944); *see generally* Alex Meleney and Frederick H. Thomas, "Alternative Apportionment: Seeking a Fairly Apportioned Tax Base in a World of Increasing Reliance on the Sales Factor," *Weekly State Tax Report*, at 1 (Dec. 10, 2010).

[2] *See Pacific Fruit*, 153 P.2d at 610.

[3] *See Complete Auto Transit Inc. v. Brady*, 430 U.S. 274 (1977).

[4] *Id.*; *see* Cara Griffith, "Single-Sales-Factor Apportionment May Be Inevitable, But Is It Fair?" *Forbes*, Sep. 18, 2014.

[5] *Id.*

States with adequately functioning alternative apportionment systems can avoid fair apportionment issues before they arise. Likewise, taxpayers suffering from an arguably distortive standard apportionment method (as applied to their particular facts) may consider availing themselves of the alternative apportionment process or risk forfeiting their ability to raise the issue.

Because of recent changes in the economy and state apportionment systems, taxpayers and state tax agencies often find it challenging to apply standard apportionment rules to today's economic activity. Significant uncertainty is common. Alternative apportionment allows taxpayers and tax authorities to work together proactively to resolve this uncertainty and avoid potentially costly protracted disputes.

Economic Development and the Rise of the Single Sales Factor

For decades, the base state apportionment method was the three-factor formula of property, payroll, and sales.[6] This method, adopted in the Uniform Division of Income for Tax Purposes Act, was developed with a pre-technology economy in mind, in which taxpayers generally needed a brick-and-mortar presence to generate sales in a location, and in which actual people commonly performed services where the service customer was located. The original UDITPA three-factor method occasionally led to situations in which taxpayers thought that their business activities were not fairly represented and that an alternative method was required.[7] Still, alternative apportionment — and disputes over alternative apportionment — have been relatively rare in UDITPA three-factor systems. One reason for the infrequent use of alternative apportionment in these three-factor systems is that any problem with one factor was *significantly mitigated* by the other two factors in the calculation.[8]

For various reasons, including changes common to our internet-enabled economy and economic development concerns,[9] states have moved away from UDITPA's three-factor model to single-sales-factor formulas, with all sales generally being sourced to the location of the taxpayers' customers.

It is difficult to argue that this trend toward a single-sales-factor formula has been motivated by a desire to better reflect the geographic sourcing of a business's activities and the income those activities produce.[10] Rather, as noted, the move to single sales factor is most likely driven by economic development concerns. The single sales factor generally benefits in-state businesses with in-state capital investments and labor forces. Likewise, the single sales factor generally harms taxpayers with out-of-state capital investments and labor forces that simply sell into the state.[11] The state revenue impact of the shift to a single-sales-factor formula may often be near revenue neutral, with in-state corporate taxpayers generally paying less corporate income tax and out-of-state taxpayers subsidizing this benefit to their in-state competitors with increased corporate income tax liabilities.[12]

Using the single sales factor in pursuit of economic development — an otherwise legitimate state interest — may not be appropriate when it

[6] *See* Griffith, *supra* note 4; *see generally Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983) (in which the U.S. Supreme Court described the three-factor formula as the benchmark apportionment formula).

[7] *See, e.g.*, *Container Corp.*, 463 U.S. 159 (in which the appellant, unsuccessfully, challenged California's three-factor formula on the basis that the state's use of the property and payroll factors distorted its true California business activities because the costs of production were higher in the United States).

[8] *See* Meleney and Thomas, *supra* note 1, at 5 (explaining that, in the case of the standard three-factor apportionment method, distortion in one formula will not necessarily result in distortion in the whole formula because of the possibility of mitigation by the other two formulas on the distortive effect).

[9] *See, e.g.*, Illinois Fiscal and Economic Commission, "Illinois' Corporate Income Tax," Illinois Commission on Government Forecasting and Accountability (July 2002) (stating that implementing a single sales factor was intended to encourage the growth of the manufacturing industry in the state); Wisconsin Joint Committee on Finance, "Corporate Income and Franchise Tax — Single Sales Factor Apportionment Formula," Wisconsin Legislative Fiscal Bureau (June 5, 2001) (finding that the results of studies outlined in the report supported the switch to a single-sales-factor apportionment method as a means of economic growth in the state).

[10] *See* Griffith, *supra* note 4; *see infra* note 15.

[11] *Id.*

[12] *See, e.g.*, Idaho H.B. 563 (2022); Maryland S.B. 1090 (2018); Minnesota House Research, "Short Subjects: Single Sales Apportionment of Corporate Franchise Tax" (2015) (all finding that the shift to a single sales factor is approximately revenue neutral, and that in-state corporate income taxpayers would pay less while out-of-state corporate income taxpayers would pay more).

fails to fairly reflect the taxpayer's in-state activities. Because the single sales factor narrows the activities considered in the apportionment calculation, it increases the risk of unfair apportionment under some fact patterns. Likewise, it increases the need for alternative apportionment — the statutory relief mechanism for unfair apportionment.

Lessons From *Moorman* Regarding Single Sales Factor

The U.S. Supreme Court addressed the constitutionality of the single sales factor in *Moorman*.[13] Moorman Manufacturing Co., the taxpayer, argued that due process was violated because the single-sales-factor formula attributed to Iowa business activity was not in appropriate proportion to the taxpayer's actual business activity in the state and that its application led to a gross distortion of the company's Iowa income. In finding for Iowa and upholding the single-sales-factor apportionment formula, the majority opinion in *Moorman* held that the formula was not a per se violation of due process and that to prove a violation, the taxpayer must show with its own clear and cogent evidence that the state's apportionment formula — as applied to its facts and circumstances — distorts its income attributable to the state.[14]

While this holding gave states wide latitude in their choice of apportionment methods, the majority opinion's conclusion provided a rather taxpayer-friendly forward application: "Accordingly, [. . .] Iowa is not constitutionally prohibited from requiring taxpayers to prove that application of the single-factor formula has produced arbitrary results in a particular case."[15] The Court noted multiple times that Moorman Manufacturing Co. did not provide evidence of how the single sales factor produced an arbitrary result as applied in its own case.

The lesson of *Moorman* is not that the single sales factor will always pass constitutional muster; rather, it is that a taxpayer challenging a single sales factor system must show how the formula fails to fairly reflect its in-state business activities and so distorts income attributable to the state. The taxpayer's claim must be taxpayer-specific, with the taxpayer's facts supporting its claim. It cannot simply rely on a system-level economic argument that the single sales factor is per se distortive.

So how does a taxpayer follow the lesson learned in *Moorman*? It avails itself of the state's alternative apportionment process, which allows the taxpayer to show how the state's standard apportionment method — often a single sales factor — fails to fairly reflect the taxpayer's business activities in the state using its own facts to support the petition.

There has not been a clear challenge to the single sales factor's constitutionality since *Moorman*.[16] Most of the 45 states with a corporate income tax use a single-sales-factor formula.[17] Constitutionality aside, many alternative apportionment statutes predate the state's shift to single-sales-factor apportionment; nonetheless, many of these laws require state apportionment formulas — including the single sales factor — to produce a fair reflection of a taxpayer's business activity.[18]

Fairly Representing the Taxpayer's Business Activity

Many states with corporate income taxes provide for methods of alternative apportionment in specific situations.[19] The most common alternative apportionment provision is found in UDITPA section 18, which provides the following:

> 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: [a]

[13] *See Moorman Manufacturing Co. v. Blair*, 437 U.S. 267 (1978).

[14] *See Moorman*, 437 U.S. at 278-280.

[15] *Id.* at 281.

[16] Roxanne Bland, "Single-Sales-Factor Apportionment: A Look at *Moorman* in the 21st Century," *Tax Notes State*, Nov. 28, 2022, p. 753. *Moorman*'s holding results in Congress and state legislatures making the rules regarding fair apportionment and the dormant commerce clause. *But see Vectren*, *infra* note 29.

[17] *Id.*

[18] *See* Meleney and Thomas, *supra* note 1, at 4.

[19] *See id.*

> 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.[20]

The provision's text establishes a basic fairness test to be applied to the state's standard apportionment rules. If the standard rules fail the fairness test, the taxpayer is allowed to use an alternative method that will "fairly represent the extent of the taxpayer's business activity" in the state.

Alternative Apportionment Petitions: Process and Format

While all states that administer a corporate income tax also provide for an alternative apportionment method, the facts and circumstances necessary and the procedural process to pursue alternative apportionment claims in each state can be vastly different. For example, while most states require that some form of petition be filed, the timing and formality of the petition varies widely:

- Connecticut permits a taxpayer to petition for alternative apportionment via an attachment to the original return;[21]
- Minnesota requires taxpayers to file a petition using Form ALT, which must be filed on or before the date of the original or amended return;[22]
- Virginia requires the request for alternative apportionment to be made on an amended return;[23] and
- Georgia requires a formal petition to be filed well before the due date of the return.[24]

States like Oklahoma have no guidance on the medium for a request, while others — like California[25] and Pennsylvania — have multiple accepted methods for pursuing alternative apportionment claims. Regardless of the required method, the same general information is required by most states: a description of the alternative method, as well as an explanation of both why the standard apportionment method does not fairly represent business activity in the state and how the alternative method is a more accurate representation of in-state business activity.

To begin assessing whether a state's standard apportionment method fairly represents the taxpayer's business activity in the state, a taxpayer must analyze its apportionment of income under the state's standard apportionment method. But how? What kind of analysis? What are the appropriate comparisons?

Using Transfer Pricing's Economic Analysis

Successful alternative apportionment petitions often focus on the economic realities of the taxpayer's business. While no robust set of rules to support such an analysis has been developed in the alternative apportionment space, multistate tax professionals don't have to look far to find one. Transfer pricing — with its long history, refined econometric methods, and arm's-length standard — serves a similar purpose to alternative apportionment in the international income tax space. Transfer pricing principles, methods, and calculations can be used to demonstrate when a state's standard apportionment formula is failing to fairly reflect a business's in-state activities and, likewise, can show what result a reasonable alternative formula should produce given the taxpayer's facts.

[20] UDIPTA section 18 (emphasis added); *cf.* Ill. Comp. Stat. chapter 35 section 5/304(f) (requiring apportionment and allocation methods to represent the "market for the [taxpayer's] goods, services, or other sources of business income in Illinois").

[21] Conn. Gen. Stat. section 12-221a.

[22] Minn. R. 8020.0100.

[23] 23 Va. Admin. Code section 10-120-280.

[24] Ga. Comp. R. & Regs. r. 560-7-7-.03(5)(e)(3)3.

[25] Cal. Code Regs. tit. 18, section 25137(d)(2) provides the nuanced process for taxpayers filing alternative apportionment petitions in California. Taxpayers seeking alternative apportionment must submit a petition under this regulation to the chief counsel of the Franchise Tax Board Committee explaining the grounds for alternative apportionment. Upon submission, the FTB committee decides whether to grant or deny the petition; upon a denial, the taxpayer may either (i) appeal to the FTB three-member board, or (ii) appeal directly to the Office of Tax Appeals.

When petitioning for alternative apportionment, taxpayers need to provide economic measures of business activity in different states where they operate and the sourcing of profits among states. Note that accounting-based approaches that are often used may not fully capture the business activity in states or the economic reality of a taxpayer's business. For example, if a state's standard apportionment formula only uses sales of services to source profits, in which sales of services are assigned to the service provider's state, then this approach is likely to ignore and potentially undervalue the contribution of the consumer and customer network in other states. Likewise, if a state's standard apportionment formula only uses sales of tangible products to source profits, in which sales are assigned to the state of an intermediate distributor, then this approach is likely to overconcentrate profits at distribution points in the supply chain and potentially undervalue the contributions of both the consumer and customer network and production operations in other states. In these cases, economics-based approaches will likely provide more reliable measures of business activity and profits among states.

The transfer pricing regulations and methods promulgated under IRC section 482 and the associated Treasury regulations (Treas. reg. section 1.482) significantly support the development of economic and value-based analyses of alternative apportionment of income based on business activity. The purpose of these regulations is to ensure that taxpayers clearly reflect income attributable to controlled transactions and to prevent tax avoidance regarding these transactions by comparing controlled transactions to uncontrolled transactions (the so-called arm's-length standard) and properly remunerating a controlled taxpayer's functions, assets, and risks.[26] Treas. reg. section 1.482 may be used to allocate income, deductions, credits, allowances, basis, or any other item affecting taxable income between or among the members of a controlled group, including between related taxpayers in different states.[27] State tax authorities also generally defer to the principals of Treas. reg. section 1.482.[28]

In this respect, transfer pricing experts can provide useful support by conducting an economic analysis consistent with Treas. reg. section 1.482. This analysis would source profits based on the taxpayer's functions, assets, and risks undertaken in specific states and the value creation thereof. Specifically, the concept of value drivers (that is, economic factors that contribute to profitability and growth of a business) used in transfer pricing can be closely connected to the business activity as defined by multistate regulations and relevant court rulings. For example, transfer pricing experts can connect business activity in a state to the value drivers and profit created in that state. In such a case, a transfer pricing analysis to apportion profits based on value drivers would provide significant economic and regulatory support to taxpayers' alternative apportionment petitions by giving credibility to the figures and scenarios presented by taxpayers.

Recent Alternative Apportionment Petition Developments

One area of recent taxpayer alternative apportionment success centers around large gains from types of transactions whose inclusion or exclusion in apportionment formulas occasionally distorts the tax base.

For example, ongoing litigation has focused on whether the statutory exclusion, or throwout, of proceeds from the sale of a business — which resulted in a large gain — fails to fairly reflect a taxpayer's business activity in Michigan.[29] A Michigan appeals court recently found that applying the statutory exclusion may not fairly

[26] Treas. reg. section 1.482-1(a)(1).

[27] Treas. reg. section 1.482-1(a)(2).

[28] *See, e.g.,* Ala. Code section 40-2A-17(f) (requiring the Alabama Department of Revenue to apply the state's tax laws in a manner consistent with IRC section 482 and any rulings and regulations thereunder); N.C. Admin. R. section 17:05f.0301(b) (requiring adherence to IRC section 482 and its regulations when determining whether transactions between affiliated members were made at fair market value).

[29] *See generally* Order, *Vectren Infrastructure Services Corp. v. Department of Treasury*, Mich. No. 163742; Mich. Ct. App. No. 344462; Mich. Ct. Cl. No. 17-000107-MT (Mar. 23, 2022).

reflect a taxpayer's business activity in the state in some cases, and allowed the use of an alternative apportionment method in those cases. Unfortunately for the taxpayer, the Michigan Supreme Court ultimately held in favor of the state Department of Treasury; however, the court's reasons for its decision are distinguishable from most taxpayer petition filings and state statutory requirements.[30]

While this narrow decision[31] is clearly a setback for future Michigan taxpayers seeking alternative apportionment, it's important to note that Michigan's alternative apportionment statute required the taxpayer to show that the statutory apportionment formula, as applied, led to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.[32] Not only do these thresholds create significant hurdles for taxpayers in trying to show that statutory apportionment formulas do not fairly reflect their business activity in Michigan, but most other states with statutes allowing for alternative apportionment petitions do not use these thresholds in their provisions.

Further, the taxpayer failed to follow the alternative apportionment process prescribed in the applicable Michigan code provision in seeking alternative apportionment. As the court noted, the failure to adhere to statutorily prescribed methods and guidelines for pursuing alternative apportionment can leave taxpayers' petitions at greater risk of failure.[33]

State revenue agencies can also shoulder this risk.[34] Similar to *Vectren*, in a recent administrative opinion,[35] the California Office of Tax Appeals (OTA) noted that the issue of alternative apportionment was not initially asserted by the tax authority as a means to argue that the standard apportionment formula did not accurately reflect the taxpayer's business activities in California.[36] Because the tax agency did not assert alternative apportionment according to the statutorily prescribed methods, the OTA refused to analyze the issues according to the alternative apportionment method.[37] Also, the OTA noted that had the tax authority asserted alternative apportionment with its initial filings, it — not the taxpayer — would have carried the burden of proving distortion.[38] This is yet another example of the importance of asserting alternative apportionment according to statutorily prescribed methods and the risks associated with failing to do so.

Conversely, Idaho has allowed for a similar use of alternative apportionment in which a taxpayer's sale of a partnership interest is treated as business income and subject to apportionment.[39] The Idaho State Tax Commission has noted that when the application of the standard apportionment formula does not fairly reflect a taxpayer's business activity in the state, the taxpayer can request — or the commission can require — a reasonable alternative means of apportionment that need not be the most reasonable nor more reasonable than any other method; an alternative means of apportionment must simply produce a result that more fairly reflects a taxpayer's business activity.[40]

In Mississippi, a recent decision focused on the accurate representation of taxpayer capital in the tax base and allowed the inclusion of subsidiary apportionment data in the taxpayer's

[30] *Vectren Infrastructure Servs. Corp. v. Department of Treasury*, Dkt. No. 163742 (Mich. 2023).

[31] The Michigan Supreme Court found for the Department of Treasury by a 4-3 vote, accompanied by two dissenting opinions.

[32] Mich. Comp. L. section 206.667(3) (2021) (creating a rebuttable presumption of the validity of the statutory apportionment formula). The gross distortion and unconstitutional thresholds present much higher barriers than the other UDITPA-based alternative apportionment provision thresholds to showing that statutory apportionment formulas — as applied to taxpayers — do not accurately reflect the business activities taxable in a given state.

[33] *See Vectren*, Dkt. No. 163742.

[34] *See, e.g., Appeal of Southern Minnesota Beet Sugar Cooperative and Sub.*, 2023-OTA-343 (Cal. Office of Tax Appeals June 26, 2023).

[35] *See id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *See generally* In the Matter of the Protest of [Redacted], No. 0-976-965-632 (Idaho Tax Commission 2017).

[40] *See id.*

apportionment formula.[41] The Mississippi statutory formula contains an alternative-appointment-like provision[42] allowing taxpayers to present facts that demonstrate that the standard apportionment formula does not fairly reflect the value of capital used in the state. This alternative apportionment provision may allow the inclusion of subsidiary apportionment data in the apportionment calculation when a majority of the capital base is investment in subsidiaries.

Two-Way Street: Requiring Alternative Apportionment

State statutes and regulations provide that the taxpayer may petition for — or the tax department may require — an alternative apportionment method.[43] Revenue departments have not only imposed alternative apportionment methods under this authority,[44] but more recently have used alternative apportionment statutes to force combined filings by taxpayers and impose market-based sourcing methods.

The South Carolina Department of Revenue, for example, has used its alternative apportionment authority to force taxpayers to file on a combined basis. The South Carolina Supreme Court has held that UDITPA section 18, as adopted by the state under S.C. Code section 12-6-2320(A), permits taxpayers and the DOR to use any other method to effectuate an equitable apportionment of the taxpayer's income, including the combined entity apportionment method.[45]

States such as Arkansas and Tennessee have used their alternative apportionment authority to require market-based sourcing approaches in which their statutory methods impose an income-producing activity/cost-of-performance regime for sourcing sales other than tangible personal property.

In a 2016 administrative decision, the Arkansas Department of Finance and Administration upheld the denial of the taxpayer's corporate income tax refund claim after the taxpayer attempted to amend its returns from market-based sourcing to an income-producing activity method. The taxpayer was required to use market-based sourcing by the department, which said that the method more fairly and accurately represented taxpayer activity in Arkansas than the standard income-producing-activity method.

A 2016 Tennessee Supreme Court decision held that the statutory cost-of-performance sourcing method did not fairly represent the taxpayer's business activity in Tennessee and that the DOR's alternative primary-place-of-use method was reasonable.[46] The taxpayer originally sourced its receipts to the state using its customers' billing addresses.[47] However, the taxpayer determined that it should have been using the cost-of-performance method to source its receipts from the sales of services and that, as a result, none of its receipts should have been sourced to Tennessee based on costs of performance.[48] Excluding receipts from the Tennessee numerator resulted in an 89 percent difference.[49] The court found for the DOR, stating that using the customers' billing addresses was a reasonable method of approximating the

[41] *See generally Department of Revenue v. Comcast*, 300 So. 3d 532 (Miss. 2020).

[42] *See* Miss. Code Ann. section 27-13-11 (providing an alternative-apportionment-like provision allowing "any organization" that feels that the true value of its capital base, as calculated under the codified franchise and excise tax provisions, is not properly reflected in the right to file "with the commissioner a petition and affidavit . . . setting forth the facts showing the true value of its capital").

[43] *See, e.g.*, Ala. Code Ann. section 40-27-1(IV)(13); Ky. Rev. Stat. Ann. section 141.120(12)(a); Or. Rev. Stat. Ann. section 314.667(1); S.C. Code Ann. section 12-6-2320.

[44] *See Vectren*, Dkt. No. 163742 (explaining the different standards under which state revenue departments pursue alternative apportionment — as opposed to the standards pursued by taxpayer-filed petitions).

[45] *Media General Communications Inc. v. South Carolina Department of Revenue*, 694 S.E.2d 525, 531 (S.C. 2010); *Tractor Supply Co. v. South Carolina Department of Revenue*, Dkt. No. 19-ALJ-17-0416-CC (Aug. 8, 2023).

[46] *Vodafone Americas Holdings Inc. v. Roberts*, 486 S.W.3d 496, 525-527 (Tenn. 2016).

[47] *Id.* at 499.

[48] *Id.* at 500-501.

[49] *Id.* at 521.

taxpayer's income from activities conducted in Tennessee.[50]

Some states, however, have been unsuccessful in attempts to impose an alternative apportionment method on taxpayers. In a recent decision, the Florida DOR applied a market-based sourcing approach to a multistate retailer's service receipts when the services were performed in Minnesota by an affiliate.[51] Concurring with the taxpayer, the court found that cost of performance — not the alternative market-based sourcing — should control.[52]

Going Forward With Alternative Apportionment

With its transitions to market sourcing and the single sales factor, today's apportionment landscape presents many challenges for taxpayers — some of which can only be addressed by alternatives. Taxpayers may want to use alternative apportionment when the standard methods act to tax more than the state's fair share of its income. While these processes vary, they likely involve a petition — supported by compelling documentation — explaining why the state's standard system is failing when applied to the taxpayer's facts. Once the petition is filed, taxpayers should be prepared to engage with state officials to support their claims and resolve the issues.

While alternative apportionment can be a strong statutory option for taxpayers looking to reduce taxable income distortion, it is neither a short nor straightforward process. But with appropriate guidance and state administrative processes, alternative apportionment can produce positive results for both taxpayers and state tax authorities, both of whom often face difficult standard apportionment rules that may produce unfair results in practice.

In addition to positive outcomes for taxpayers, alternative apportionment can benefit state tax regimes and revenue agencies. Either side can invoke the statute when it feels that the standard formula does not fairly reflect income attributable to the state. Moreover, the administrative processes of alternative apportionment petitions provide states with more streamlined administration of taxes that may allow them to avoid taxpayer disputes by providing certainty to both parties. With the right substantiation, an alternative apportionment petition can produce positive results for taxpayers in various factual situations and states.[53] ■

[50] *Id.* at 526.

[51] *See, e.g.*, *Target Enterprise Inc. v. State Department of Revenue*, No. 2021-CA-002158 (Fla. Cir. Ct. Nov. 28, 2022).

[52] *Id.*

[53] This article contains general information only and Deloitte is not, by means of this article, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This article is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this article.

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