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Tennessee Supreme Court to Review Opinion Limiting State's Authority to Tax  
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Summary by taxanalysts

The Tennessee Supreme Court has agreed to review an appellate court decision holding that the state's excise tax assessment on capital gains a subsidiary received from an out-of-state holding company was unconstitutional because the holding company was not unitary with its operating subsidiary (*Blue Bell Creameries, L.P. v. Chumley*).

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### News Analysis

The Tennessee Supreme Court has agreed to review an appellate court decision holding that an excise tax assessment on capital gains a subsidiary received from an out-of-state holding company was unconstitutional because the holding company was not unitary with its operating subsidiary (*Blue Bell Creameries, L.P. v. Chumley*, 2009 WL 3126249 (Tenn. Ct. App. 2009).

The supreme court's February 22 decision to grant a review threatens a sound decision from the Tennessee Court of Appeals. The *Blue Bell Creameries* opinion fairly -- as opposed to strictly -- construes the limits that the commerce and due process clauses impose on a state's ability to tax out-of-state income, even in circumstances in which the taxpayer has some activities within the taxing state. (For prior coverage, see *State Tax Notes*, Oct. 12, 2009, p. 91, *Doc 2009-21973* ¶, or *2009 STT 191-21* ¶. For the court of appeals opinion, see *Doc 2009-21729* ¶ or *2009 STT 189-18* ¶.)

The opinion directed courts conducting a unitary analysis to determine what entity controls the business activities and operations conducted in the taxing state. If those operations are controlled, managed, and conducted by a separate, out-of-state entity or are funded by income created out of state, a unitary business exists. But the appellate court decision implies that if the operations conducted within the taxing state are controlled by the taxpayer with a presence in the taxing state -- and not by the out-of-state entity or income the state is seeking to tax -- there is no unitary relationship.

The appellate decision also stands for the principle that ownership of one company by another does not equate with a unitary relationship. Instead, there must be a substantial contribution and dependency between the two entities for a unitary business to exist.

The Tennessee Supreme Court in *CAO Holdings, Inc. v. Chumley* recently granted review of another decision favorable to the taxpayer. These unusual grants indicate that the supreme court may have a renewed interest in tax cases, and they could be a bad sign for taxpayers who have received several recent favorable tax opinions from the court of appeals. (For previous coverage, see *State Tax Notes*, June 8, 2009, p. 810, *Doc 2009-12414* ¶, or *2009 STT 104-25* ¶. For the opinion, see *Doc 2009-12228* ¶ or *2009 STT 103-30* ¶.)

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