



This Week in State Tax (TWIST)

13th November, 2023



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Maine: Receipts Sourced to Where Taxpayer's Clients' Members Received Services

The Maine Supreme Judicial Court recently addressed whether a pharmacy benefit management company was entitled to apportion its service receipts based on the location of its direct clients. The taxpayer at issue was a group of corporations whose primary business was administering prescription drug and pharmacy benefits for its health insurer clients. The clients, in turn, provided benefits to their members who were the primary recipients of the taxpayer's services. For the 2011 tax year, the taxpayer sourced its income on a "market member" basis, meaning that receipts from the performance of pharmacy benefit management (PBM) services were sourced to the state in which the prescription drug was dispensed to members by the retail pharmacies. On later returns and without informing Maine Revenue Services, the taxpayer apportioned such receipts on a "market client basis," i.e., to the location of the primary commercial and administrative headquarters of its clients. Following an audit, the taxpayer's returns were adjusted to source receipts from the PBM services on a market member basis. The taxpayer protested this adjustment, and after a trial court granted summary judgment in favor of the Maine Assessor on the apportionment issue, the taxpayer appealed.

Under Maine law, receipts from the performance of services are generally attributed to the state where the services are received. Under the Assessor's theory, income generated from the performance of the PBM services should be attributed to that retail pharmacy location where the services were received by members when they filled prescriptions and the taxpayer provided claims processing services. The taxpayer countered that the market client method was more appropriate. It contracted with its clients, not individual members, and therefore the appropriate location to which its PBM receipts should be sourced was the commercial and administrative headquarters of its clients. The court concluded that the taxpayer's arguments failed, and the trial court had properly granted the Assessor's summary judgment motion. In the court's view, the summary judgment record established that the PBM receipts resulted from the performance of claims processing services for members' prescription drug were received at retail pharmacies in Maine. Notably, the taxpayer's Form 10-K for 2011 stated explicitly: "Although we contract with health plans and employers, the ultimate recipients of many of our services are the members and employees of these health plans and employers." Further, the record made clear that if members had not gone to pharmacies to fill their prescriptions, the taxpayer would not have been entitled to that revenue. Because the record established that claims-processing services were received by members at retail pharmacies in Maine, and the receipts at issue were derived from the performance of these claims processing services, the court concluded that there was no genuine issue of material fact, and the Assessor was entitled to judgment as a matter of law. For more information on *Express Scripts Inc. et al. v. State Tax Assessor*, please contact Melissa DelleMonache.

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