



This Week in State Tax (TWIST)

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Florida: Circuit court upholds airline apportionment approach

A circuit court judge in Leon County rejected an airline's contention that the Florida special apportionment formula for airlines violated the Commerce Clause of the U.S. Constitution. For corporation income tax purposes, Florida apportions the income of an airline based on the ratio of "revenue miles" in Florida to revenue miles everywhere. A revenue mile in Florida is any mile flown by the airline within a designated rectangular box that includes most of the Florida landmass along with an area of open ocean that is approximately the size of the Florida landmass. The taxpayer objected to Florida's inclusion of open-ocean miles in its computation, contending that it violated the internal consistency test set forth by the U.S. Supreme Court in *Complete Auto Transit*. As the taxpayer articulated it, if other states adopted an identical approach to the Florida specific apportionment rule, these states may draw boxes that overlap with that drawn by Florida. This would result in an airline flying significant miles in overlapping sections, which could subject the airline to tax on more than 100 percent of its income, thus violating the internal consistency test.

The court disagreed with the taxpayer's application of the internal consistency test, reasoning that no state would be permitted to adopt an "identical" approach (because other states would be barred from taxing miles flown over Florida), and that how other states might draw their own boxes was a speculative question that went beyond what is permitted by the internal consistency test. The court also noted that, because only the states in which a flight takes off and lands are permitted to tax the airmiles of a flight, even if states did draw overlapping boxes, it would be inconceivable that these areas of overlap would be sufficient to tax more than 100 percent of an airline's income. In this specific case, for instance, the court calculated that the apportioned tax base of the taxpayer was less than 50 percent of its Florida economic activity, based on various information provided by the taxpayer during discovery. Finally, the court pointed to the state's alternative apportionment provisions as protecting an airline from an unreasonable level of Florida taxation. Contact [Henry Parcinski](#) for more information on *JetBlue Airways Co. v. Florida Department of Revenue*.

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