



This Week in State Tax (TWIST)

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Virginia: Taxpayer May Elect Manufacturer's Apportionment Formula on an Amended Return

A Virginia appellate court recently held that a taxpayer was permitted to elect the single sales factor apportionment method allowed to manufacturers meeting certain criteria on an amended return. Under Virginia law, the default apportionment method is a three-factor double weighted sales formula. However, qualifying manufacturers may elect to use a single sales factor formula. The taxpayer at issue filed its returns using the default method, but later amended its returns to elect the single sales method applicable to manufacturers. The Department of Taxation asserted that the election could not be made on an amended return and the taxpayer protested. After a trial court ruled in the taxpayer's favor, the Department appealed.

The appeals court noted that the Virginia tax code liberally permits the filing of amended income tax returns within certain time periods but does provide that certain elections may be made only on or before the due date for filing the return. In contrast, the statute permitting qualifying manufacturers to elect single sales factor apportionment did not require the manufacturer to make the election on or before the due date and contained no other language barring a taxpayer from making the election on an amended return. However, the statute did provide for other limitations (e.g., an electing taxpayer must adhere to its choice for three tax years). In the court's view, this illustrated that the General Assembly knew how to limit a company's ability to make or change the election and intentionally did not include language prohibiting a taxpayer from making the election on an amended return. Absent such specific language, the court declined to add such a restriction. Next, the court rejected several arguments set forth by the Department of Taxation, including that its own guidelines should be considered. In the court's view, the Department's guidelines did not have the force of law and did not control its analysis. It is not known whether the Department will appeal further. Please contact [Diana Smith](#) with questions on *Commonwealth of Virginia v. 1887 Holdings Inc.*



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