



MULTISTATE TAX COMMISSION

Multistate Tax Commission 51st Annual Meeting
The Boston Westin Waterfront
425 Summer Street
Boston, Massachusetts

Litigation Committee Report

Clark Snelson, Chair

Mark Wainwright and Dee Wald, co-Vice Chairs

The Litigation Committee is composed of approximately 165 state assistant attorneys general, assistant solicitors, and state agency tax counsel. It is responsible for overseeing, coordinating, and sponsoring Commission activities to foster development of and cooperation between state tax attorneys on matters relevant to state tax jurisprudence and administration within the Commission's authority. The Committee also supports the Commission by providing advice on legal and tax matters when requested.

Regarding its activities during the past fiscal year, the Committee met in Louisville, Kentucky, during the 2017 annual meeting. At that time, Commission staff presented an update on the Commission's amicus brief activity and success rates. The Committee also heard a panel discussion from John Swain, Karl Freidan, and Bruce Fort, regarding the recent history of UDITPA's equitable apportionment provisions in litigation addressing the imposition of "market-based" apportionment rules in "cost of performance" states, standards of proof and distortion analysis in cases involving disparate sources of income and apportionment formulas, and the future of equitable apportionment litigation, regulations and statutes.

The Litigation Committee met for the second time during the Commission's April 2018 program committee meetings in Bloomington, Minnesota. The committee received an update on the Commission's amicus brief filings, and heard from Max Behlke, Director of Budget and Tax for the National Conference of State Legislatures, on "Taxation of the Digital Economy After *Wayfair v. South Dakota*: What the States Should be Doing, and Not Doing, to Modernize their Excise Tax Bases."