



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Litigation Committee Report July – November, 2010

The MTC Litigation Committee is chaired by Marshall Stranburg, Florida Department of Revenue. Mark Wainwright and Clark Snelson, Utah Office of the Attorney General, are the Committee's co-vice chairs. The Committee undertook the following activities from July through November, 2010.

In-Person Meeting

The litigation committee met this July, 2010 in Hood River, Oregon. Twenty-four representatives from fifteen states were in attendance. The Committee heard several presentations, including a presentation from New York and Colorado representatives on new state statutory approaches to use tax collection; presentations from Oregon representatives on state taxation of tribal entities and on cost-of-performance sourcing issues; and presentations from MTC staff on compact amendment issues, article III litigation, and class-action litigation. The Committee then held its roundtable discussion of recent State and U.S. Supreme Court decisions, and collaborated on pending state litigation.

State Tax Attorney Teleconferences

We continue to host our series of state tax attorney teleconferences. These teleconferences provide a forum for state attorneys general and revenue department attorneys to discuss recent significant legal developments in state tax law. They have been very well attended with approximately 40 state representatives on each call.

- On November 22, 2010 Rob Plattner, deputy commissioner for tax policy, and Daniel Smirlock, deputy commissioner and counsel, both with the New York State Department of Taxation and Finance, led a discussion on the Supreme Court of New York, Appellate Division decision in *Amazon.com, LLC v. New York State Department of Taxation and Finance*. Helen Hecht, counsel for FTA, and Shirley Sicilian, MTC general counsel, gave a brief update on related litigation in other state and federal courts.
- On November 15, 2010 we hosted a call following the U.S. Supreme Court oral argument in *CSX v. Alabama*, 09-520. The attorneys who argued the case for the state - Corey Maze, Solicitor General, and Will Parker, Assistant Attorney General - participated, as well as Cameron Comfort, Sr. Assistant Attorney General, and Don Cofer, Senior Counsel, from the Washington Attorney General's Office, who authored an amicus brief on behalf of 19 states. Dan Schweitzer, NAAG Supreme

Court Counsel also participated. Others who attended the oral argument, including Sheldon Laskin, MTC Counsel, gave their impressions as well.

- On October 7, 2010, Cliff Peterson, counsel for the New York State Department of Taxation and Finance, gave a presentation on the federal codification of the economic substance doctrine and the doctrine's proper function in state taxation. Several attorneys from the Massachusetts Department of Revenue, including Tom Condon and Michael Fatale, gave a synopsis of the decisions from their state that have helped develop thinking on this issue nationally. We heard from the states regarding their experiences, good and bad, in using the economic substance doctrine in various tax planning contexts and in varying statutory, regulatory and judicial environments. The attorneys then discussed the extent to which the federal codification may "flow through" for state tax purposes and the need for (or desirability of) state level legislation.

Paul Mines Award

In July, 2010, Benjamin F. Miller, Retired Annuitant for the California Franchise Tax Board, was presented with the third annual Paul Mines Award for Contribution to State Tax Jurisprudence.