



MULTISTATE TAX COMMISSION

Working Together Since 1967 to Preserve Federalism and Tax Fairness

Litigation Committee Report to Executive Committee

Fiscal Year 2009

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 during fiscal year 2009.

- **In-Person Meetings**

The Committee held two in-person meetings during fiscal year 2009. The first was held July 28 and 29 in Santa Fe, New Mexico. That meeting included presentations from our members and the MTC legal staff on several topics including the implications of recent U.S. Supreme Court decisions in *Meadwestvaco* and *Davis*, nexus issues related to pass-through entities, litigation regarding sales factor sourcing for intangibles and services, strategies for minimizing taxpayer attorney's fees, and hotel intermediary litigation.

Our second meeting was held March 19 and 20, 2009 in Nashville, Tennessee. Topics included federal net operating loss limitations, constitutional implications of throwout and throwback, nexus issues related to pass-through entities, application of the 4-R Act to use tax on railroad diesel fuel, and applicability of the work-product doctrine and attorney client privilege to communications with accountants.

As usual, at each meeting we also discussed recent U.S. Supreme Court and state court decisions, and collaborated on pending litigation.

- **Bi-Monthly Government Tax Attorney Teleconferences**

The MTC hosts regular bi-monthly teleconferences for all government tax attorneys. These teleconferences generally involve two presentations on topics of current interest and allow time for discussion. We do not hold a teleconference during the month of an in-person meeting. This year, we held four teleconferences.

In September 2008, Bill Porter of the Massachusetts Office of Attorney General and Tom Condon of the Massachusetts Department of Revenue gave a presentation on the assertion of attorney/client and work product privileges to bar disclosure of tax planning documents.

Our November 2008 teleconference included a presentation from Wade “Trip” Tomlinson, a partner at Pope McGlamry Kilpatrick and Morrison in Columbus, GA, Steve Wolens, a partner in McCool Smith in Dallas, TX, and Irv Foley, a partner in Foley Bryant Holloway & Raluy in Louisville, KY, regarding the status of the hotel intermediary occupancy tax cases currently pending in a number of states.

In February 2009, we heard a presentation on the sham transaction doctrine as applied to taxation of financial institutions. Our presenters were Timothy Gage and Danforth Cardozo III, both with the Vermont Department of Taxation.

Our last teleconference was held May 2009. It included an update on the *Franchise Tax Board v. Hyatt* case currently before the Nevada Supreme Court.

- **October Meeting Concurrent with Hartman SALT Forum**

This fiscal year we held an in-person meeting for litigation committee members attending the October 2008 Hartman SALT Forum. At the meeting we discussed recent state court decisions, heard a presentation on tax sheltering issues, and collaborated on pending litigation.

- **Paul Mines Award**

On July 30, 2008, Jim Peters was presented with the first annual Paul Mines Award for Contribution to State Tax Jurisprudence.