



MULTISTATE TAX COMMISSION

**Litigation Committee Report
Fiscal Year 2008**

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 co-vice chairs of the Committee.

• **In-Person Meetings**

Approximately 40 attorneys, representing 25 states, attended our July 2007 in-person meeting in Minneapolis, Minnesota. Twenty-four attorneys, representing 17 states, attended our March 2008 meeting in Tucson, Arizona. Both meetings included presentations from our members and the MTC legal staff on a range of topics covering both emerging litigation and implications from recent decisions. Topics included REITs, economic presence nexus, arm's length pricing, financial institutions apportionment, bankruptcy issues, use of Delaware series LLC's and constitutional limitations on federal regulation pursuant to the commerce clause. Walter A. Pickard, Esq., Faegre & Benson, LLP, gave a presentation on the attorney-client and other privileges. Professor Mona Hymel of the University of Arizona Rodgers Law School made a presentation on some of the state and federal tax implications in choice of entities. John Taylor, Esq. of Ernst & Young, LLP made a presentation on the complexities of federal net operating loss calculations and stranded gains and losses in the context of mergers and acquisitions. As usual, we also discussed recent U.S. Supreme Court and State court decisions, and collaborated on pending litigation.

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

We have begun hosting regular bi-monthly teleconferences for all government tax attorneys. These teleconferences generally involve 2 presentations on topics of current interest and allow time for discussion. Our last teleconference was held May 2008 and included a presentation on U.S. Supreme Court decisions for this term by Dan Schweitzer, Counsel for the National Association of Attorneys General, with special focus on the U.S. Supreme Court decisions in *Davis* and *CSX Transportation Inc.* by Doug Dowell, Kentucky DOR, and Warren Calvert, Georgia DOR, respectively.

• **Other Litigation Committee Projects**

Litigation committee has worked on a number of projects, including:

- An exchange of information agreement tailored to sharing litigation related information among state tax attorneys (draft completed this year).
- An annual award, in honor of Paull Mines, for a state tax attorney who has contributed significantly to state tax jurisprudence (established this year)
- An MTC brief bank (version 1.0 complete – version 2.0 under development)
- Organizing a third in-person Litigation Committee meeting for the fall (under development for October 2008 in conjunction with the Hartman SALT Forum)