



## Preliminary Agenda

### MTC Litigation Committee Meeting Informational & Training Session for State Attorneys\*

Sheraton Tucson Hotel & Suites  
5151 East Grant Road  
Tucson, Arizona 85712

Thursday, March 13, 2008

- I. Welcome and Introductions (8:30 a.m.—8:45 a.m.)
- II. Public Comment Period (8:45 a.m.—9:00 a.m.)
- III. Recent Actions by Congress and the U.S. Supreme Court Affecting State Taxation and State Sovereignty (9:00 a.m.—10:00 a.m.):

**A. Congressional Actions** Update on federal legislation affecting state taxes and sovereignty, including Business Activity Tax Simplification Act, the Mobile Workforce Tax Fairness Act, and the proposed Hotel Intermediaries legislation. Shirley Sicilian, General Counsel, MTC; Bruce Fort, Counsel, MTC.

**B. Actions of the U.S. Supreme Court Since August 2007 Affecting State Taxation and Federalism:**

Decided:

*CSX Transportation, Inc. v. Georgia State Board of Equalization*, S.Ct. No. 06-1287 (12/4/07). Case below: 472 F.3d 1281 (11<sup>th</sup>. Cir. 2007). The Supreme Court rules that the “4-R Act”, which provides a limited exception to the tax injunction act to allow railroads to challenge property tax assessments in federal court, allows railroads to challenge a state’s chosen valuation methodology, reversing the 11<sup>th</sup>. Circuit. The Court holds that while the states are not restrained in choosing a valuation methodology, nothing in the 4R Act suggests a congressional intent to limit the railroad’s introduction of evidence based on other methodologies.

---

\* In accordance with the Multistate Tax Commission’s public participation policy, the informational and training session is open only to attorneys who represent revenue agencies or associations of revenue agencies. See Section 5(c)(3) of the MTC’s public participation policy.

Argued:

*Department of Revenue of Kentucky v. Davis, et ux.*, No. 06-666, argued 11/05/07. Case below: 197 S.W. 3d 557 (Ky. App. 2006). In the case below, the Kentucky Court of Appeals held that the state's exemption of Kentucky state and local bonds from taxation was facially unconstitutional as it discriminated against holders of other states' bonds in contravention of the Commerce Clause. The court further ruled that the defenses of the classification offered by the Commonwealth, including the market-participant doctrine, did not justify the discriminatory classification.

*Meadwestvaco Corp. v. Illinois Department of Revenue, No. 06-1413*, argued 1/16/08. Case below: *Mead Corporation v. Department of Revenue*, 861 N.E.2d 1131 (Ill. App. 1<sup>st</sup>. Dist. 1/12/07). In the case below, the Illinois Court of Appeals held that the \$1.056 billion gain on the sale of Lexis/Nexis in 1994 constituted business income under the functional test of business income. Mead disputed the apportionability of the sale proceeds under *Allied Signal v. Director*, 504 U.S. 768 (1992). Illinois argued that the gain was subject to apportionment because of the operational connection between the Mead and Lexis/Nexis divisions, and because Lexis/Nexis conducted business in Illinois. Mead contends the second argument is not properly before the Court.

Certiorari Granted:

*State of Florida v. Piccadilly Cafeterias, Inc.*, No. 07-312 (12/7/07). Case below: *In re Piccadilly Cafeterias, Inc.*, 484 F.3d 1299 (11<sup>th</sup>. Cir. 2007). The 11<sup>th</sup>. Circuit ruled that 11 U.S.C. § 1146(c) of the Bankruptcy Code, which exempts from stamp or similar taxes any asset transfer "under a plan confirmed under section 1129 of the Code," applies to transfers of assets occurring prior to the actual confirmation of such a plan.

Certiorari Denied:

*General Electric Co. v. New Hampshire*, No. 06-1210 (10/29/07). Case below: 914 A.2d 246 (N.H. 2006). New Hampshire's Supreme Court ruled that a dividends-received deduction limited to dividends from foreign subsidiaries doing business in New Hampshire did not violate the foreign Commerce Clause, citing footnote 23 of *Kraft General Foods v. Iowa*, 505 U.S. 71 (1992). The U.S. Solicitor General submitted a brief supporting the state.

*Panhandle Producers and Royalty Owners Association, et al. v. Oklahoma Tax Commission, et al.*, No. 07-451 (12/3/07). Case below: (unpublished)(Okla. Ct. Civ. App., 3/28/07). The lower court upheld the constitutionality of an Oklahoma statute requiring the withholding of tax on oil and gas royalty payments to nonresidents (but not on payments to residents), against challenges based on the Privileges and Immunities, Equal Protection and Commerce Clauses.

Certiorari Pending:

*Ford Motor Co. v. City of Seattle*, No. 07-623 (petition filed 11/5/07). Case Below: 156 P.3d 185 (Wash., 4/12/07). Question presented: was municipality required to apportion business and

occupations tax under Commerce Clause where components of taxed activities (wholesale sale of automobiles) arguably occurred in multiple jurisdictions.

**IV. Closed Session for Information and Training for State Tax Attorneys  
(10:00 a.m.--5:00 p.m.)**

**Friday, March 14, 2008**

**IV. Closed Session for Information and Training for State Tax Attorneys, Continued  
(8:30 – 12:00)**

**V. Adjourn (12:00 p.m.)**

*Additional information on this meeting and agenda may be secured from Shirley Sicilian, Multistate Tax Commission, 444 North Capitol Street, NW, Suite 425, Washington, D.C. 20001-1538, telephone: (785) 312-9779, [ssicilian@mtc.gov](mailto:ssicilian@mtc.gov).*