



**Report of the Litigation Committee  
Multistate Tax Commission  
November 2017**

Clark Snelson, Chair

Mark Wainwright and Dee Wald, co-Vice Chairs

The MTC Litigation Committee is composed of approximately 145 state assistant attorneys general, assistant solicitors, and state agency tax counsel. It is responsible for overseeing, coordinating, and sponsoring Commission activities directed to improving legal analysis and fostering cooperation between state tax attorneys on state tax matters relevant to multiple states. The Committee also supports the Commission by providing advice on legal and tax matters when requested.

The Litigation Committee meets twice a year in person to conduct training and to discuss current legal developments in the states, and serves as a platform for disseminating information about legal developments throughout the year through periodic telephonic informational and training sessions.

During the litigation's committee most recent in-person meeting, held in conjunction with the MTC's 2017 annual meeting in Louisville, Kentucky, MTC staff presented a report to the committee outlining statistics related to the MTC's amicus activities. Also at the annual meeting, Professor John Swain and Karl Friedan, Vice President and General Counsel at the Council on State Taxation, engaged in a debate on the history and predicted future of equitable apportionment under Compact Art. IV Section 18 as states move to market-based sourcing and single sales factor apportionment.

The amicus briefing report to the committee covered several topics. The report explained that the MTC's legal staff spends 15% to 20% of its time on appellate-related activity, primarily drafting amicus briefs in support of member states. Based on a review of recent state and federal appellate decisions in which the Commission filed as an amicus, the Commission's positions were frequently upheld.

The litigation committee in early 2017 was also involved in the formation of a group of state attorneys intended to help states coordinate efforts in drafting and obtaining support for amicus briefs in state tax matters. Robert Dodd, an assistant attorney general from Colorado, leads those group discussions. The group has recently decided to call themselves the State Tax Amicus Group (STAG). STAG is not a Commission body, but Commission staff provides support to the group.

Although not held as part of the Litigation Committee's in-person meeting in Louisville, one noteworthy event at the annual meeting was a day-long "State Tax Appellate Advocacy and Brief-Writing Workshop." The workshop was dedicated to improving all aspects of state tax appeals, from deciding what case to appeal, making a proper record and the nuts and bolts of upholding an agency determination through briefing and argument.

Faculty included (in alphabetical order): Lila Disque, MTC Dep. General Counsel; Helen Hecht, MTC General Counsel; Ray Langenberg, Texas CPA; Clark Snelson, Utah Attorney General's Office; Mark Sommers, Frost, Brown, Todd, LLC; Grant Sullivan, Colorado Solicitor General's Office; and Ray Stevens, Parker, Poe, Adams & Bernstein, LLP. The participants in the event gave it high marks. The Committee is looking at including similar workshops in future meetings as part of its mission to train state attorneys.<sup>1</sup>

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<sup>1</sup> The committee would like to give special thanks to Bruce Fort for his efforts in suggesting and organizing the workshop.