



## **Report of the Litigation Committee**

**August 3, 2022**

Donnita Wald (North Dakota), Chair

Ray Langenberg (Texas), Vice Chair

The Litigation Committee has traditionally held in-person training and informational sharing sessions (commonly referred to as roundtables) 2-3 times a year. From the onset of the pandemic until the fall of 2021, these sessions were shifted entirely to the web.

During the first quarter of FY 2022, the Committee held two virtual roundtables, one on income and other business activity taxes (September 23, 2021) and one on sales and other transaction taxes (September 30, 2021). Attorneys from approximately three dozen jurisdictions registered for each session.

On November 8, 2021, the Committee held an in-person roundtable in Alexandria, Virginia in conjunction with an MTC Attorney Training program which was held that day. State attorneys who were not able to travel to Alexandria could attend the roundtable remotely. On April 19, 2022, the Committee held an in-person roundtable in Albuquerque, New Mexico in conjunction with an MTC Attorney Training program which was held that day. Attendance at the April 19 roundtable was limited to attorneys present in Albuquerque.

Roundtables give state tax attorneys employed by revenue departments and attorney general offices an opportunity to discuss current and recent tax cases and key litigation issues and to share ideas with colleagues in other states. At each virtual roundtable, the chair or vice-chair provided background and history of the Committee. Nancy Prosser, MTC General Counsel, introduced the members of the MTC legal team.

Attendance at roundtables is limited to public sector tax attorneys in order to preserve confidentiality and attorney-client privilege. In accordance with the MTC's public participation policy, roundtables are not decision-making meetings; rather they are opportunities for states to informally share information and ideas.

On March 10, 2022, the Committee held a virtual program entitled "Major SALT Developments: State Tax Attorneys Discuss Recent Litigation." Senior state tax attorneys from four states discussed major tax litigation they have handled.

The November 8, 2021 Attorney Training program included six substantive panels: litigation relating to taxation of the sale of partnership interests; the use and misuse of alternative apportionment in taxing business profits; emerging and re-emerging issues in sales and use tax: a

Maryland perspective; the growing presence of the Internet Tax Freedom Act in SALT litigation and state responses; and recent P.L. 86-272 litigation. It also included a presentation by Georgetown Law Professor Brian Galle.

The April 19, 2022 Attorney Training program included five substantive panels: a settlement and negotiation workshop; a pretrial practice skills workshop, a presentation to improve writing skills which focused on drafting legislation and regulations; a panel addressing research and development credits; and a panel addressing recent SALT cases and emerging issues.

To ensure that interested state attorneys are aware of Litigation Committee programs and other MTC programs that may be of interest to them (and also to identify attorneys who may be resources to attorneys in other states), MTC legal staff has continually worked to expand the Litigation Committee attorney roster. The roster now contains more than 300 public sector tax attorneys. More than 100 attorneys typically registered for each Litigation Committee virtual session since 2020.

Brian Hamer, MTC Counsel, has provided the primary staff support for the Committee.