



Report of the Litigation Committee to the Executive Committee

November 17, 2022

Ray Langenberg (Texas), Chair

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

Roundtables give state tax attorneys employed by revenue departments and attorney general offices an opportunity to discuss key litigation issues and to share ideas with colleagues in other states. 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.

This fiscal year the Litigation Committee has held in-person roundtables and attorney training programs on two occasions, the first attorney training program was held on August 1 in Anchorage in conjunction with the MTC's summer meetings and the second program was held on November 14 in Little Rock in conjunction with this week's fall meetings. State attorneys who were not able to travel could attend the attorney training sessions (but not the roundtables) remotely. A \$100 technology fee was charged to remote attendees to help cover the costs of providing remote access.

The August 1 attorney training program included five substantive presentations: a trial practice session that addressed how to deal with expert witnesses; a second trial practice session that addressed trial day strategy; a panel that discussed the Tax Injunction Act and recent efforts by taxpayers to circumvent state courts; a panel that discussed recent developments relating to the taxation of gains upon the sale of partnership interests; and finally a special Alaska tax panel that explored how states can address a changing economy.

In addition to the roundtable, the agenda for the November 14 attorney training program included presentations by two law professors: University of Texas Law Professor Wayne Schiess who conducted a three-hour legal writing seminar and New York University School of Law professor Daniel Hemel who discussed the impact of the Supreme Court's 2018 *Murphy* decision on federal preemptions of state taxing authority. The agenda also included a panel consisting of four senior state tax attorneys who examined how the Internal Revenue Code impacts state tax bases.

On August 1, the Committee also held a regular meeting (in addition to the Attorney Training), which was open to the public. The agenda included the annual review of the Committee's

charter, a discussion of the MTC's Continuing Legal Education (CLE) policy, and an update by MTC General Counsel on the MTC legal team and services, and a discussion to solicit program ideas, to include attorney training sessions and the structure of roundtable/informational sharing sessions.

At this meeting, the Committee received comments that roundtables needed more focus. The Committee appointed Renee Nacrelli, Deputy Counsel with the Office of the Comptroller of Maryland, to chair a subcommittee to consider alternative formats. The outcome of this process was that the notices for the November training included a request for attendees to submit roundtable discussion topics prior to the November meeting. I expect that the Litigation Committee and the subcommittee will consider additional ways to curate the roundtable discussion without suppressing spontaneity.

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 worked to expand the Litigation Committee attorney roster. The roster now contains more than 300 public sector tax attorneys.

Dee Wald, General Counsel at the North Dakota Office of State Tax Commissioner, stepped down from her position as Committee chair at the close of the MTC summer meetings in Anchorage. Ray Langenberg, Special Counsel for Tax Litigation at the Texas Comptroller of Public Accounts (and vice chair of the Committee), has served as chair until a successor is selected.

Brian Hamer, MTC Counsel, has provided the primary staff support for the Committee. Recently, Jennifer Stosberg, MTC Counsel, has provided staff support as well.