



Report of the Litigation Committee to the Executive Committee

April 27, 2023

Ray Langenberg (Texas), Chair
Aaishah Hashmi (Washington, D.C.), Vice Chair

The Litigation Committee has traditionally held in-person attorney training programs 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.

Roundtables give public sector tax attorneys 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 held in-person attorney training programs and roundtables on three occasions, which will be described below. State attorneys who were not able to travel could attend these attorney training sessions remotely (the roundtables were limited to in-person attendees). A \$100 technology fee was charged to remote attendees on each occasion to help cover the costs of providing remote access.

- August 1, 2022 training in Anchorage in conjunction with the MTC summer meetings.

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 a special Alaska tax panel that explored how states can address a changing economy.

Also on August 1, the Committee held a regular committee meeting. This meeting (unlike attorney training sessions and roundtables) 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, an MTC legal team update by MTC General Counsel Nancy Prosser which described the services the team provides, and a discussion to solicit program ideas covering both attorney training and the structure of roundtable/informational sharing sessions.

At the August 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 task force to consider alternative formats. The outcome of this process was that the notices for both the November 2022 and the April 2023 roundtables included a request for attendees to submit discussion topics in advance. We expect that the Litigation Committee will consider in the future additional ways to curate the roundtable discussion without suppressing spontaneity.

- November 14, 2022 training in Little Rock in conjunction with the MTC fall meetings.

The November 14 attorney training program included presentations by two law professors: University of Texas 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.

- April 24, 2023 training in conjunction this week's spring meetings.

The April 24 attorney training program included presentations by two law professors as well: University of California (Davis) Professor Darien Shanske, who among other things outlined the legal arguments supporting digital advertising taxes, and Chapman University Fowler School of Law Professor Lawrence Rosenthal, who discussed the art of writing amicus and party briefs, recent trends in judicial decision making, and how public sector attorneys should approach advocacy. Prof. Rosenthal has litigated at all levels of the federal and state judiciary, including the U.S. Supreme Court.

The April 24 agenda also included a panel of attorneys from the California Franchise Tax Board, the California Department of Tax & Fee Administration and the California Attorney General's Office who addressed key tax issues and developments in their state and another panel of nine attorneys from around the country who each discussed a major Supreme Court tax decision. Finally, three senior tax litigators who joined state government after decades practicing in the private sector shared their wisdom and insights.

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 contains more than 300 public sector tax attorneys.

At its November 17 meeting, the Executive Committee appointed Aaishah Hashmi, Corporate Tax Counsel at the District of Columbia Office of Tax & Revenue, to serve as Litigation Committee Vice Chair.

Brian Hamer and Jennifer Stosberg, members of the MTC legal team, provide staff support to the Committee.