



Report of the Litigation Committee

July 26, 2023

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

Since the fall of 2021, the Litigation Committee has held both an attorney training program and an informational sharing session (“a roundtable”) in conjunction with the MTC’s fall, spring, and summer meetings. These programs are open to public sector tax attorneys only, both employees of revenue departments and of Attorney General offices participate.

Attorney training programs typically offer both skills training and substantive tax knowledge. Roundtables enable participants to discuss key issues with colleagues in other states. 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. Attendance is limited to public sector tax attorneys in order to preserve confidentiality and attorney-client privilege.

During the past year, the Litigation Committee held both in-person attorney training programs, which will be described below, and roundtables on three occasions. State attorneys who were not able to travel could attend attorney training sessions remotely (the roundtables in November and April 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.

- 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 Long Beach in conjunction with the MTC 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.

- July 24, 2023 training in conjunction with this week's summer meetings.

This attorney training included a presentation by Litigation Committee chair Ray Langenberg on how to conduct an effective cross-examination, a panel discussion addressing legal issues relating to the taxation of digital and other products, a panel addressing how to create an effective relationship among auditors and attorneys to improve tax compliance, and presentations on key recent and emerging SALT cases and developments. The agenda also included a joint session with the Nexus Committee where Prof. Richard Pomp and MTC Nexus Director Richard Cram reviewed recent Supreme Court cases addressing personal jurisdiction and their possible impact on state taxing jurisdiction.

Also on July 24, 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, an MTC legal team update by 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 informational sharing sessions. The meeting also included a presentation by three former administrative law judges from Texas who shared their insights about tax litigation and how attorneys can most effectively present their case.

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.