



Report of the Litigation Committee

July 31, 2024

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

This past year the Litigation Committee has held attorney training programs and information sharing sessions in conjunction with the November 2023 MTC fall committee meetings in Montclair, New Jersey, the spring committee meetings in Kansas City, Missouri, and the summer meetings in Denver, Colorado. Agendas are attached.

Attendance at these programs was open to public sector tax attorneys only, except the afternoon session of the spring attorney training program was also open to non-attorney tax administrators and the last session of the summer program was also open to members of the public who could attend in person.

Attorneys who were not able to attend in person could attend these programs remotely. A \$100 technology fee was charged to remote attendees on each occasion to help cover the costs of providing remote access.

On July 29, 2024 the Committee held a regular committee meeting that 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 five leading tax practitioners who shared their perspectives on state tax administration, revenue codes, and evolving issues and trends.

The MTC legal staff has worked to expand the Litigation Committee roster of public sector tax attorneys to ensure that they are aware of Committee programs and other relevant MTC programs (and also to identify attorneys who may be resources to attorneys in other states). The roster contains more than 300 public sector tax attorneys.

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



MULTISTATE TAX COMMISSION

**MTC ATTORNEY TRAINING
MONTCLAIR, NEW JERSEY – NOVEMBER 13, 2023
AGENDA**

- 8:30-8:45** **Introductions and Other Information**
- 8:45-9:45** **Litigation Roundtable & Informational Sharing Session**
- 10:00-11:30** **State Taxation of Insurance**
Stetson law professor Andrew Appleby (co-author of the Hellerstein treatise on State Taxation) and a panel of senior DOR tax attorneys (Katie Frank---CA, Anne Mangiardi—CO, and Nicholas Souza—TX) will discuss the basics of insurance taxation, schemes taxpayers have used to avoid state taxes, and state responses.
- 11:30-12:00** **Navigating the Shoals of Auditor Depositions**
Senior tax litigator Ray Langenberg (TX) and MTC audit supervisor Larry Shinder will share their experience and wisdom.
- 1:30-2:30** **NC Solicitor General Ryan Young Park**
SG Park impressed us all in the much discussed *Quad Graphics* sales tax/constitutional law case. He will speak to brief writing, oral advocacy, litigating at the trial level with an eye towards the appeal, and a bit of *Quad Graphics*.
- 2:30-3:30** **Tax developments in New Jersey of Interest to all State Tax Attorneys**
A panel of NJ tax experts will discuss corporate income tax legislation just enacted by the state legislature, recent P.L. 86-272 guidance, major litigation, the Division of Taxation’s report on the digital economy, and more. (Alan Kline--Counsel to the Director, Allison Sheppard, Judge Mala Sundar—Presiding Tax Court Judge.
- 3:45-4:15** **Pending US Supreme Court Cases - Potential Impacts on State Tax Administration**
Discussion led by MTC General Counsel Nancy Prosser

4:15-5:30

Other Key SALT Developments and Emerging Trends around the Country

Prof. Appleby will discuss sales/use tax implications of crypto assets and a panel of public sector tax attorneys (Laurie McElhatton—CA, Melissa Tape—MN, and Bruce Fort—MTC) will discuss significant matters they have addressed recently.



MULTISTATE TAX COMMISSION

**MTC ATTORNEY TRAINING
KANSAS CITY – APRIL 29, 2024
AGENDA**

- 8:30-8:45 **Introductions and Other Information**
- 8:45-9:45 **Litigation Roundtable & Informational Sharing Session**
- 10:00-11:00 **Prof. Adam Thimmesch, University of Nebraska College of Law**
Leading SALT Professor Thimmesch will discuss what is left of the dormant commerce clause following Wayfair, retroactivity, conformity to federal tax changes, and nexus.
- 11:00-12:15 **An analysis of *Kraft General Foods v. Iowa Dep't of Revenue* (1992)**
Attorneys continue to debate the meaning and implications of this seminal U.S. Supreme Court case addressing the state's treatment of domestic and foreign dividends. Michael Fatale, the general counsel of the Massachusetts DOR, and Bruce Fort, MTC senior counsel, will discuss the case and its impact on state taxing authority, including its implications for state conformity to the Tax Cuts & Jobs Act and GILTI.
- 1:45-3:00 **Partnership taxation: Why no one understands it and what states (and their counsel) should be thinking about**
This topic is of utmost importance to states as the business world increasingly turns from C corporations to pass-through entities.
Presenters: Helen Hecht—MTC Uniformity Counsel; William Barber—MTC Counsel; Jenn Stosberg—MTC Counsel; David Merrien—Audit and Pass-through Bureau Chief Montana Department of Revenue
- 3:15-4:15 **Worldwide Combined Reporting is the default apportionment rule in various states: how is it working?**
A growing number of state legislatures are considering whether to return to mandatory worldwide combined reporting to determine corporate income tax bases. State tax administrators and their counsel will be interested in learning how worldwide combination is currently working in states where it is the default rule.

Presenters: Matt Peyerl—North Dakota; Tom Shaner—Idaho; Gretchen Ducoing—California; Jeff Silver—MTC Audit Supervisor; Brian Hamer (Moderator)—MTC Counsel

4:15-4:30 **Break**

4:30-5:30 **Practice tips from a tax pro**

Kansas Secretary of Revenue Mark Burghart (former KDOR general counsel, former private sector tax practitioner) will share his knowledge and wisdom litigating, legislating and administering tax laws, from the perspective of both a department leader and former private sector practitioner.



MULTISTATE TAX COMMISSION

**MTC ATTORNEY TRAINING
DENVER, COLORADO - JULY 29, 2024
AGENDA**

10:15-10:30 **Introductions**

10:30-11:30 **Litigation Roundtable and Information Sharing Session**

11:30-12:30 **How State Revenue Departments Can Address International Income Shifting?**

Two state tax experts will present a case study to help state revenue agency staff and attorneys identify issues and develop responses when multinational companies shift income abroad.

Presenters: Matt Tidwell, Assistant Director, Alabama DOR; Holly Coon, Director of the MTC Joint Audit Program

2:00-4:00 **Trending SALT Topics**

When to Appeal a Tax Decision to a Higher Court?

This panel will discuss the factors to consider when deciding whether to appeal an adverse decision and which issues to bring to the attention of the higher court.

Presenters: Anne Mangiardi, Senior Assistant Attorney General, Colorado; Ray Langenberg, Special Counsel for Tax Litigation, Texas Comptroller of Public Accounts

Use Tax Apportionment?

This session will consider whether there are circumstances when use tax must be apportioned to meet the constitutional requirement of external consistency. It will also consider the sourcing and apportionment rules that apply to electronic transactions.

Presenter: Michael Fatale, General Counsel, Massachusetts DOR

Federal Taxation of State Tax Refunds

When are state tax refunds or rebates taxable to recipients? What are the pitfalls that states should watch out for? Hear from state counsel who have

recently interacted with the IRS on this topic which other DOR attorneys may be asked to opine on.

Presenters: Josh Pens, Director of Tax Policy, Colorado DOR; Brendon Reese, Senior Director of Taxation, Colorado DOR

4:15-5:00 Appropriate Disclosure of Tax Records

Learn what are the key federal and state rules governing the disclosure of tax return information, impact of subpoenas and nondisclosure agreements, and more.

Presenters: Brian Oliner, General Counsel, FTA; Dana Erlandsen, Chief Counsel, Wisconsin DOR; Robin Tillman, IRS

5:00-5:30 Generative AI: Chatbots Face Off Against State Tax Attorneys

MTC Senior Counsel Bruce Fort will emcee a head-to-head competition between chatbots and attorney training attendees on a series of SALT topics as a means to assess the quality of AI with respect to state tax. Expect legal analysis by Mr. Fort that will demonstrate that AI still has at least a few things to learn.