



## **Report of the Litigation Committee To the Executive Committee**

**November 21, 2024**

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

Since the beginning of this fiscal year, the Litigation Committee has held attorney training programs and information sharing sessions in conjunction with the 2024 MTC summer meetings in Denver, Colorado and the MTC fall meetings in Santa Fe, New Mexico. Agendas are attached.

Attendance at these programs was open to public sector tax attorneys only, except that the last session of the summer program was also open to members of the public who could attend in person.

Attorneys who were unable 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 and an MTC legal team update by then General Counsel Nancy Prosser which described the services the team provides. 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 provide staff support to the Committee.



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.



MULTISTATE TAX COMMISSION

**MTC ATTORNEY TRAINING  
SANTA FE, NEW MEXICO – NOVEMBER 18, 2023  
AGENDA**

**8:30-8:45      Introductions and Other Information**

**9:00-10:15    Legislative Drafting Seminar**

Four drafting artisans will share their wisdom on how to write legislation that provides clear guidance and that avoids litigation down the road. Their insights will benefit attorneys who draft or review legislation, regulations, and other guidance, those who litigate tax matters, and all attorneys who read statutes.

Presenters: Mark Chaiken (NM); Helen Hecht (MTC); Josh Pens (CO); Pam Stokes (NM)

**10:30-11:45    The Unitary Business Principle and Business/Nonbusiness Income  
Jurisprudence**

State tax attorneys regularly defend assessments issued to taxpayers that argue that the state did not have authority to impose tax because of the unitary business principle or because the income constituted nonbusiness income. This panel, consisting of state litigators and MTC staff, will address these important state tax law principles, discuss relevant caselaw, describe recent arguments raised by taxpayers, and provide helpful practice tips when litigating business/nonbusiness income case.

Presenters: Bruce Fort (MTC); Michael Hale (KS); Jordan Heller (KS); Bethany Atkins Rice (KY); Jenn Stosberg (MTC)

**11:45-12:30    Litigating an Effective Case Against a Legal Team Deploying Substantially  
More Resources**

Aaishah Hashmi, Corporate Tax Counsel at the D.C. Office of Tax & Revenue, has won a series of major tax cases where the taxpayer has been represented by Big Law. She will describe strategies and tools she has used to great success to level the playing field

Presenter: Aaishah Hashmi (DC)

**2:00-3:15      The World of Indian Law\***

This review will be of value to attorneys in states that must address matters involving Indian law and fascinating to attorneys in states that typically do not (at least not yet). The panel will discuss the development of Indian law and key Supreme Court caselaw, including the Court's recent decision in *McGirt v. Oklahoma* and its possible impact on state tax laws. Presenters: Elizabeth Field (OK); Joe Lennihan, former Chief Legal Counsel of the New Mexico Department of Taxation & Revenue; John Monforte (NM)

\* "Indian Law" is the term commonly used to refer to the body of law dealing with Native American tribes and their relationship with federal and state governments.

**3:15-4:00      The Impact of Bankruptcy Law on State Tax Enforcement**

This presentation will examine the application of the Bankruptcy Code to the collection and enforcement of state taxes.

Presenters: Elisa Magnuson (ID); John O'Donnell (MA)

**4:15-4:45      An Examination of *Precision Castparts Corp. v. Nebraska Department of Revenue***

This panel will discuss the Nebraska Supreme Court's recent decision upholding the state's taxation of repatriation income under the Tax Cuts & Jobs Act and potential implications of the decision on states' ability to tax income of multinationals' foreign affiliates.

Presenters: Scott Harrell (NE); Amanda Karr (NE)

**4:45-5:30      Litigation Roundtable and Information Sharing Session**