

# Multistate Taxation

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*By Philip M. Tatarowicz and Ted W. Friedman*

## Developments in Multistate Taxation

### Alabama

The Alabama Department of Revenue, Administrative Law Division, found that a company's beer distribution rights did not qualify as goodwill under generally accepted accounting principles and, therefore, did not qualify for the goodwill exclusion under Alabama's business privilege tax.<sup>1</sup> The Chief Administrative Law Judge (ALJ) agreed with the Department's argument that the beer distribution rights did not meet the definition of "goodwill" because the rights constituted a "contract-based intangible asset" that was both "individually identifiable and separately recognized." The Chief ALJ ultimately agreed with the Department that because the distribution rights did not meet the definition of goodwill, they did not qualify for the state's statutory exclusion from net worth.

### Indiana

The Indiana Department of State Revenue ruled that an out-of-state company that made deliveries of its merchandise to customers in Indiana had nexus with the state for sales tax collection purposes.<sup>2</sup> The Department found that the merchandise in question was delivered to the company's customers in Indiana in the company's own conveyance, which constituted "an activity with more than a substantial nexus with Indiana" under established U.S. Supreme Court precedent, and that the imposition of a sales tax collection obligation was therefore justified.

### Missouri

The Missouri Administrative Hearing Commission ruled that the income earned by a company on



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**Philip M. Tatarowicz** is Of Counsel to Morrison & Foerster in Washington, D.C., and a Professor of Law and Distinguished Visitor from Practice at Georgetown University Law Center.

**Ted W. Friedman** is an Associate at Morrison & Foerster LLP in New York, New York.

its investment in a rabbi trust did not constitute business income.<sup>3</sup> The Commission recognized that the state's definition of "business income" imposed both a transactional test and a functional test. The Commission found that the income from the rabbi trust failed the transactional test because the company's "investment in the trust was not a business transaction in which it regularly engaged." The Commission found that the trust income also failed the functional test "because it was not attributable to the acquisition, management, and disposition of property constituting an integral part of [the company's] regular business." The Commission reasoned that the company "had no involvement in any acquisition, management, or disposition of any trust property or income" and that there was "no relevant 'acquisition' involved in the trust, and the trustee, not [the company], would manage or dispose of any trust assets." Furthermore, the Commission found that the company "exercised no control over the Trust and could not access the trust corpus or income, which could only be reached by [the company's] creditors in case of insolvency or bankruptcy."

## **New Jersey**

The Superior Court of New Jersey, Appellate Division, held that the Tax Court of New Jersey correctly decided that late payment penalties should have been abated because the companies acted in good faith in their tax reporting positions.<sup>4</sup> The court also held that amnesty penalties were not "automatic" for all assessments related to tax years for which amnesty was available and that the Tax Court was correct in finding that amnesty penalties did not apply because liabilities asserted as due on audit and assessed after the close of the amnesty were not liabilities "eligible to be satisfied" during the amnesty period.

## **Oregon**

The Supreme Court of Oregon held that the gain resulting from the sale of a Federal Communications Commission (FCC) license held by a telecommunications company constituted apportionable business income.<sup>5</sup> The court found that an administrative rule provided that both a statutory and an administrative definition of

business income applied to the taxation of utilities. The statutory definition of business income, a modified version of the UDITPA definition, set forth a transactional test and functional test to determine business income. The administrative definition, set forth in the rule implementing the statutory definition, provided that a gain or loss from the sale "of real or tangible or intangible personal property" constituted business income "if the property while owned by the taxpayer was used in the taxpayer's trade or business." The court determined that, by interpreting the functional test under the statutory definition as focusing on "a business's power to dispose of an asset that was, until its disposition, an integral part of the business's regular operations," the Oregon Department of Revenue reasonably gave effect to both definitions of business income and concluded that both definitions were broad enough to reach the gain from the sale of the company's FCC license.

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The Supreme Court of Oregon held that the gain resulting from the sale of the wireless assets of a telecommunications company constituted apportionable business income.<sup>6</sup> For the same reasons articulated in *Crystal*, the court held that Oregon's two definitions of business income are consistent with one another and reached the income that the company realized on the sale of its wireless assets.

## **Virginia**

The Virginia Tax Commissioner ruled that a taxpayer's purchase of all of the equipment, inventory, customer lists and other personal property from three related entities was an occasional sale and was not subject to Virginia's retail sales and use tax.<sup>7</sup> The Commissioner reasoned that, based on the terms of the asset purchase agreement, the sale at issue was for the sale of all or substantially all of the assets of the sellers' businesses and, therefore, was deemed an occasional sale that was not subject to retail sales and use tax.

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### **ENDNOTES**

<sup>1</sup> *Adams Beverages, Inc. v. Dept. of Rev.*, No. BPT. 12-221, Ala. Dept. of Rev., Admin. Law Div., Feb. 12, 2013.

<sup>2</sup> Letter of Findings, No. 04-20120449, Ind. Dept. of Rev., Feb. 27, 2013.

<sup>3</sup> *Minact, Inc. v. Dir. of Rev.*, No. 10-1951, Mo. Admin. Hearing Comm'n, Jan. 28, 2013.

<sup>4</sup> *United Parcel Svc. General Svcs. Co. v. Dir., Div. of Tax'n*, No. A-0940-10T3, N.J. Super. Ct. App. Div., Mar. 7, 2013. Mitchell A. Newmark and Paul H. Frankel of Morrison & Foerster LLP represented the taxpayers in the appeal.

<sup>5</sup> *Crystal Commc'n., Inc. v. Dept. of Rev.*, SC S059271, Or., Mar. 7, 2013.

<sup>6</sup> *Centurytel, Inc. v. Dept. of Rev.*, SC S059502, Or., Mar. 7, 2013.

<sup>7</sup> Rulings of the Tax Comm'r, No. 13-22, Va. Dept. of Tax'n, Feb. 20, 2013.



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