

## Legal Updates & News

### Bulletins

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#### State & Local Tax Insights -- Spring 2008

May 2008

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#### Related Practices:

- [State and Local](#)
- [Tax](#)

#### In this issue:

- [Morrison & Foerster Wins Mead](#)

The U.S. Supreme Court handed Morrison & Foerster a victory in a significant case concerning the constitutional limitations on a State's power to tax multistate businesses.

Morrison & Foerster represented MeadWestvaco Corporation in a dispute over whether the Due Process and Commerce Clauses preclude a State from taxing a nondomiciliary business on a capital transaction that occurred outside of the State. The State of Illinois attempted to tax a portion of a \$1 billion capital gain from MeadWestvaco's sale of its separate division Lexis/Nexis. The State appellate court sustained the tax, but the U.S. Supreme Court vacated that decision.

- [Gain From Sale Held Not Apportionable Income](#)

Recently, in *Tate & Lyle Ingredients Americas, Inc.*, Alabama's Chief Administrative Law Judge Thompson held that a taxpayer's gain from its sale of its one-third interest in a foreign corporation to its parent, which owned the other two-thirds of the foreign corporation, was not apportionable "business income" under the Alabama statute, and that Alabama is constitutionally barred from taxing the income "earned in the course of activities unrelated to the Taxpayer's business in Alabama."

- [California State Board of Equalization Adopts New Rules for Franchise Tax Board Tax Appeals](#)

Effective February 6, 2008, the California State Board of Equalization ("SBE") has adopted new Rules for Tax Appeals ("RTA"), which are found in Title 18 of the California Code of Regulations, beginning at section 5000. The new RTAs are intended to establish a comprehensive set of procedural regulations that cover all of the SBE's administrative review functions, including the SBE's appellate review authority with respect to appeals from actions of the California Franchise Tax Board ("FTB").

- [Alabama's VFJ Case: The Trial Court Got It Right!](#)

Last year, the Montgomery Circuit Court ("trial court") held that VFJ Ventures, Inc. ("VFJ") was entitled to claim the reasonableness exception to Alabama's add back statute with respect to royalty payments VFJ made to its affiliates. The trial court's decision concluded that VFJ was entitled to claim this exception because the add back statute would otherwise operate to deny VFJ a deduction for necessary costs of doing business in Alabama, and thus tax income fairly attributable to other states.

- [California Court of Appeal Affirms that LLC "Fee" Violated Commerce Clause](#)

On January 31, 2008, the California Court of Appeal issued a decision in *Northwest Energetic Services, LLC v. Franchise Tax Board* ("Northwest"). As described below, the court of appeal upheld in part and reversed in part the trial court's decision, which struck down California's LLC Levy under Revenue and Taxation Code former Section 17942. Most importantly, the court of appeal affirmed the portion of the trial court's decision finding that the LLC Levy was an unconstitutional tax in violation of the Dormant Commerce Clause of the United States Constitution.

- [The New Internet Tax Freedom Act](#)

President George W. Bush signed into law on October 31, 2007 legislation (House Bill 3678, the Internet Tax Freedom Act Amendments Act of 2007) that extends for another seven years, until November 1, 2014, the moratorium precluding state and local taxes on Internet access and multiple and discriminatory taxes on electronic commerce. The new Internet Tax Freedom Act (hereinafter the "2007 ITFA") also amends the previous law in several significant ways. Among the most important changes are that the 2007 ITFA: (1) amends the definition of "Internet access" to help clarify the nature and scope of services protected from state taxation under the moratorium; (2) extends for seven years but clarifies, both retroactively back to November 1, 2003 and going forward, the provisions grandfathering certain states that have historically taxed Internet access; and (3) excepts certain general business gross receipts taxes from the scope of prohibited taxes on Internet access.

### MoFo Attorney News

Morrison & Foerster's State and Local Tax Group would like to welcome the following new attorneys to the firm:

- Gary W. Maeder joins us as a partner in the Los Angeles
- Michael J. Duffy joins us as of counsel in the New York office
- Aaron Russell joins us as an associate in the New York office
- Jason M. Satterfield joins us as an associate in the San Francisco office

The State and Local Tax Group would also like to congratulate Andres Vallejo on becoming a partner. Andres resides in the San Francisco office.

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### Upcoming 2008 Conferences

Following is a list of SALT conferences through November 2008, in which Morrison & Foerster attorneys will be participating.

#### May 9

*American Bar Association  
Tax Section  
Washington, D.C.  
Hollis L. Hyans*

#### May 15-18

*Georgetown Advanced State &  
Local Tax Institute  
Washington, D.C.  
Paul H. Frankel, Hollis L. Hyans,  
Craig B. Fields, Carley A. Roberts*

#### May 20

*Tax Executives Institute State Tax Day,  
Dallas Chapter  
Dallas, Texas  
Eric J. Coffill, Hollis L. Hyans*

#### May 20

*Tax Executives Institute  
Chief Tax Officers Conference  
Chesapeake, Maryland  
Mitchell A. Newmark*

May 21  
*Tax Executives Institute State Tax School, Houston Chapter*  
Houston, Texas  
Craig B. Fields  
Mitchell A. Newmark

**May 22**  
*Council on State Taxation*  
*Income Tax Conference*  
Portland, Oregon  
Paul H. Frankel

**May 29**  
*MoFo Palo Alto*  
Palo Alto, California  
Eric J. Coffill, Thomas H. Steele, Andres Vallejo, Carley A. Roberts, Pilar M. Sansone

**May 30**  
*Tax Executives Institute New Jersey*  
*State Tax Day*  
Morristown, New Jersey  
Paul H. Frankel

**June 9**  
*Federation of Tax*  
*Administrators Conference*  
Philadelphia, Pennsylvania  
Paul H. Frankel

**June 19**  
*University of Wisconsin/Deloitte*  
*Tax Conference*  
Milwaukee, Wisconsin  
Paul H. Frankel

**July 14**  
*Southeastern Association of Tax Administrators Conference*  
Williamsburg, Virginia  
Paul H. Frankel

**July 31 - August 1**  
*Council on State Taxation*  
*"Great Issues" Conference*  
Beaver Creek, Colorado  
Paul H. Frankel, Thomas H. Steele,  
Hollis L. Hyans, Trevor James and  
Andres Vallejo

**November 6-8**  
*California Tax Policy Conference*  
San Francisco, California  
Carley A. Roberts  
Paul H. Frankel

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