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SUTHERLAND

SALT SHAKER

Shaking things up in state and local tax.

Waiving the Baton: Louisiana Court of Appeal Rules No Nexus for Passive Limited Partner

The Louisiana Court of Appeal recently ruled that a corporation's passive ownership interest in a limited partnership doing business in Louisiana is not sufficient to create Louisiana corporate franchise tax nexus. *Utelcom, Inc. v. Bridges*, Dkt. No. 535,407 (Division "D", Ct. App., First Dist., Sept. 12, 2011). The court held that because capital contributed to a limited partnership is no longer owned or used by the contributing partner, an ownership interest in the partnership does not create franchise tax nexus.

The Louisiana Department of Revenue issued a corporate franchise tax assessment against two out-of-state corporate limited partners. The limited partnership was engaged in the business of long-distance telecommunications in Louisiana. The Department asserted that the corporations were subject to tax because they acted in unison with the general partner to conduct business through the limited partners' capital contributions. The trial court upheld the assessment based on a Louisiana regulation, which provided that mere ownership of property in Louisiana through a partnership creates franchise tax nexus over an out-of-state corporation.

The Court of Appeal reversed the trial court decision and held that the regulation was an impermissible expansion of the portion of the franchise tax statute that imposes tax on foreign corporations that own or use a part of its capital in the state. The court emphasized that the franchise tax is not a tax on interstate business conducted in the state, but a tax on "doing business in Louisiana in a corporate form." The court reasoned that once the capital was contributed by the foreign corporations to the limited partnership, the capital was no longer owned or used by the foreign corporations.

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In This Issue

The SALT Shaker is now a compilation of recent posts from Sutherland SALT Online.

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Virginia Taxpayer Fails to Follow Procedure: Must Add Back (At Least for Now)

The Virginia Department of Taxation refused to consider whether a taxpayer was entitled to claim an exception from the state's addback statute because the taxpayer failed to follow the statutory procedure. P.D. 11-174 (Oct. 12, 2011).

Virginia law requires the addback of intangible expenses and costs, which includes losses related to, or incurred in connection with, factoring transactions. The taxpayer paid factoring fees to a related company and deducted them on its federal income tax return. The taxpayer claimed an exception from Virginia's addback requirement on its original Virginia return based upon the exception that it had a valid business purpose other than the avoidance of tax. Upon audit, the Department disallowed the exception from the addback rules because the sales lacked a valid business purpose.

The Department disallowed the taxpayer's claimed exception because the taxpayer did not petition the Department to consider whether there was clear and convincing evidence that the related party transactions had a valid business purpose other than the avoidance or reduction of tax. Because the taxpayer had claimed the business purpose exception on its original return—rather than applying the addback, paying the tax, and petitioning for relief—the Department upheld the assessment.

The ruling went on to recognize that facilitating the securitization of receivables and complying with lending requirements of unrelated third-party lenders may be a valid business purpose. The Department invited the taxpayer to follow the proper procedures within the applicable statute of limitations to claim the valid business purpose exception.

Indiana Combination Is Last Resort

The Indiana Tax Court granted a motion for partial summary judgment to AE Outfitters Retail Co. and held that the Indiana Department of State Revenue may require combined reporting only after first determining that other alternative apportionment methodologies would result in an equitable apportionment of the taxpayer's income. *AE Outfitters Retail Co. v. Ind. Dep't of State Revenue* (Ind. Tax Ct. Oct. 25, 2011).

The dispute in the case was whether the Department was required to first apply statutorily provided remedies to adjust a taxpayer's income before applying combined reporting. Like many states, Indiana statutes provide alternative apportionment methods for re-determining income if the taxpayer's income is not fairly represented, including separate accounting, the exclusion of factors, the inclusion of additional factors, or any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. Ind. Code § 6-3-2-2(l). Furthermore, in the case of commonly owned or controlled businesses, the statute allows the Department to "distribute, apportion or allocate the income derived from sources within the state of Indiana between and among those organizations, trades or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers." Ind. Code § 6-3-2-2(m). The statute, however, limits the Department's ability to use combined reporting in situations where it "is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by" those other statutory provisions.

The Department argued that it was permitted to apply combined reporting even if one of the other methods would fairly reflect a taxpayer's income. Based on the plain meaning of the statute, the court rejected the Department's position and held that the Department does not have the discretion to determine which of the methodologies it should apply prior to requiring a combined report. The Department must apply all of the other statutory methodologies first to determine whether application of each of them would result in an equitable allocation and apportionment of the taxpayer's income. Only after making those determinations is the Department, under the law, allowed to require combined reporting.

Other states have similar limitations on Departmental ability to force combined reporting. For example, effective January 1, 2012, a new North Carolina statute allows the Secretary of Revenue to redetermine net income "properly attributable to [the corporation's] business carried on in the state" by "adding back, eliminating, or otherwise adjusting intercompany transactions to accurately compute the corporation's State net income." N.C. Gen. Stat. § 105.130.5A(b). That law allows the North Carolina Department of Revenue to require a combined report "if such adjustments are not adequate under the circumstances to redetermine State net income . . . ." *Id.* Further, it requires that the state "consider and be authorized to use any reasonable method proposed by the corporation" for determining the taxpayer's net income. *Id.* It remains to be seen whether North Carolina courts will interpret this limitation in a manner similar to the Indiana law.

SALT PET OF THE MONTH

Mustard

"They allow ponies in this neighborhood?!?" "You could ride him to work!" "He's bigger than me!" "Put a saddle on that thing!!"

Yea, yea, Mustard (the attention-magnet-only-"child" of Sutherland SALT extern Ted Friedman and his wife, Caroline) has heard it all before…and he no longer takes offense to the horse comments.

Mustard is a 17-month-old Great Dane, who is very proud that he just broke through to the 140+ pound weight class. Despite his imposing stature, his mom's nickname for him, "Sweet Baby Angel," is well-deserved. Mustard is the sweetest dog around—a true gentle giant—and is the most popular (and recognizable) dog in the neighborhood.

Mustard laughs at the fact that his coloring (Mantle-Merle) is not recognized by the AKC as "show-quality"… like he needs any more attention! He has no use for a "Best in Show" ribbon and no interest in traveling to the New York Stock Exchange to ring the bell (one of the "perks" of winning the Westminster Kennel Club Dog Show).

Mustard spent his formative months in Denver, Colorado, but is now so obsessed with rubbing shoulders with the movers and shakers on the D.C. streets that he will likely stay in this city forever. Plus, he loves the international vibe at the dog park.

Mustard has an exquisite palate, which the top-shelf stuff from the pet store cannot always please, and he is not afraid to go on a hunger strike to make his demands known. Consequently, his mom and dad spend a lot of time preparing organic grass-fed ground beef, steel-cut oatmeal, and long-grain brown rice (not the instant kind). Colorado really rubbed off on him.

Mustard is so proud that he is a SALT Pet of the Month…he will be adding it to his resume soon (resumes are a prerequisite for Great Danes trying to rent an apartment in the city). See attached!

SALT Pet of the Month: It's Your Turn!!
In response to many requests, the Sutherland SALT practice invites you to submit your pet (or pets) as candidates for SALT Pet of the Month. Please send us a short description of why your pet is worthy of such an honor, along with a picture or two. Submissions should be directed to Andrea Christman at andrea.christman@sutherland.com.

Massachusetts Appellate Tax Board Applies Wicked Mad Scrutiny to Taxpayer's Intercompany Interest Expense

The Massachusetts Appellate Tax Board recently upheld the Commissioner of Revenue's denial of deductions for interest expense on intercompany loans. *Sysco Corp. v. Comm'r of Revenue,* Docket Nos. C282656 & C283182 (Mass. App. Tax Bd., Oct. 20, 2011).

In *Sysco*, the taxpayer employed a common cash management arrangement in which cash was swept on a nightly basis from its subsidiary entities to a common "cash manager" for investment purposes. If Sysco received more money from an operating company than it disbursed to it, the subsidiary earned interest (prime rate less 1%) on the balance, and if Sysco disbursed more money than it received, Sysco earned interest (prime rate) from the subsidiary.

The Board determined that the loans were not true indebtedness. The Board found that the purported loans were not memorialized in writing (whether in the form of promissory notes or formal agreements) and there were no repayment schedules or fixed maturity dates. Also, the Board determined that the upstream payments were intended to remain with Sysco for use in its corporate activities, including paying dividends. The Board found that Sysco had no intention of repaying the funds transferred by the operating companies and that the operating companies never once requested repayment from Sysco. The Board placed great reliance on the fact that the aggregate amount Sysco owed to its operating companies increased dramatically from approximately $700 million in 1996, to more than $1.8 billion in 2001. Further, the Board gave no weight to Sysco's experts because they "failed to demonstrate the existence of 'an unconditional and legally enforceable obligation for the payment of money' in the context of Sysco's cash-management system."

The Board's decision is troubling because it interferes with a common intercompany arrangement for large multi-entity businesses that is meant to reflect the compensation for the use of each legal entity's capital in an efficient manner. Some states have even imputed a charge on intercompany transactions when a taxpayer has not charged a related company for such an arrangement. *See, e.g., United Parcel Serv. Gen. Servs. Co. v. Director, Div. of Taxation,* 25 N.J. Tax 1 (2009). Finally, it is worth noting that the sting of the Board's decision is lessened by Massachusetts' shift to combined reporting.

These Cases Tried to Go to the U.S. Supreme Court, But the Court Said "No…No…Oh?"

In shocking similarity to the once-popular Amy Winehouse song "Rehab," the U.S. Supreme Court has denied certiorari in two nexus cases: *KFC Corp. v. Iowa,* 792 N.W.2d 308 (Iowa Sup. Ct. Dec. 30, 2010) and *Lamtec Corp. v. Wash. Dep't of Revenue,* Docket No. 83579-9, *en banc* (Wash. Sup. Ct. Jan. 20, 2011) but left open the possibility to hear *DIRECTV, Inc. v. Levin,* 128 Ohio St.3d 68 (Ohio Sup. Ct. Dec. 27, 2010).

KFC is an economic nexus case involving the licensing of intangibles. KFC did not have any employees or property within Iowa; KFC licensed the use of trademarks and other intangibles to independent franchisees in the state in exchange for royalties. The Iowa Supreme Court held that KFC's licensing of the intangibles was the "functional equivalent" of physical presence under *Quill* and that, in the alternative, physical presence was not required to find substantial nexus for corporate income tax purposes.

The Court also denied certiorari in *Lamtec Corp. v. Department of Revenue, State of Washington*. In *Lamtec,* the taxpayer's sole presence in the state was irregular employee visits to customers. The Washington Supreme Court determined that Lamtec had nexus with Washington for Business and Occupation (B&O) tax purposes and raised additional questions regarding how Washington views the physical presence test relating to the B&O tax, stating: "We conclude that ***to the extent there is a physical presence requirement,*** it can be satisfied by the presence of activities within the state." (Emphasis added).

The Court's decision to deny certiorari in *KFC* and *Lamtec* is not surprising in light of the long line of nexus cases that the Court has declined to review in recent years (*Capital One Bank v. Comm'n of Rev*., 899 N.E.2d 76 (2009), *cert. denied,* 129 S. Ct. 2827 (2009); *Geoffrey, Inc. v. Comm'n of Rev*., 899 N.E.2d 87 (2009), *cert. denied,* 129 S. Ct. 2853 (2009);. *Tax Comm'r v. MBNA Amer. Bank, N.A*., 640 S.E.2d 226 (2007), *cert. denied sub nom, FIA Card Services N.A. v. Tax Comm'r,* 551 U.S. 1141 (2007); *Lanco, Inc. v. Director, Div. of Tax*., 879 A.2d 1234 (2005), *aff'd,* 908 A.2d 176 (2006), *cert. denied,* 551 U.S. 1131 (2007); *A & F Trademark, Inc. v. Tolson,* 605 S.E.2d 187 (N.C. Ct. App. 2004), *cert. denied*, 546 U.S. 821 (2005)). However, the Court's decision is a disappointment, and we remain hopeful that the Court will provide additional guidance in this area, which so desperately is in need of clarity.

Although the Court dashed our hopes in the nexus arena, it invited the U.S. Solicitor General to submit a brief in *DIRECTV v. Levin,* rather than ruling on whether or not to accept the case. This case follows a string of defeats of DIRECTV's claim that the satellite industry is discriminated against (e.g., *DirecTV v. Treesh,* 487 F.3d 471, 480 (6th Cir. 2007) and *DirecTV, Inc. v. Tolson,* 513 F.3d 119 (4th Cir. 2008). Courts have rejected DIRECTV's Commerce Clause claim by holding that sales tax statutes that apply to satellite television providers, but not cable television providers, do not discriminate. For instance, the Ohio Supreme Court reasoned that Ohio's basis for differentiating between satellite and cable was not based on favoring an in-state enterprise over an out-of-state one. Stay tuned.…

Who Lost the Remote?: Virginia Disallowed Losses and Combined Reporting

The Virginia Department of Revenue (i) applied its narrow interpretation of the State's related member add-back provision to disallow discount losses from a taxpayer's factoring company, and (ii) prohibited the taxpayer and its affiliated factoring company from filing a combined return because the factoring company did not have nexus with the State. Va. Public Document No. 11-162 (Sept. 26, 2011).

The taxpayer sold, or "factored," its account receivables to a bankruptcy remote affiliate at a discounted price and claimed deductions for its losses on the discounted sales. The taxpayer did not add back its factoring discount losses paid to a related party because the add-back statute provides a "subject to tax" exception from the add-back requirement if the related party was subject to tax in <u>any other state</u>. In this case, the factoring company was subject to tax in one state. Notwithstanding the literal language of the exception, the Department interpreted the subject to tax exception narrowly to allow an exception only for the amount actually apportioned to and taxed by other states and, on audit, reduced the taxpayer's losses accordingly. The Commissioner upheld the auditor's narrow interpretation of the subject to tax exception, limiting it to post-apportionment amounts, consistent with prior rulings (*See* Va. Pub. Doc. Nos. 09-49, 09-115).

The taxpayer also argued that the statutory add-back exception for transactions with a valid business purpose should apply. The Commissioner declined to address the argument based on procedural grounds, ruling that the business purpose exception is only available if the taxpayer reports the add-back on its return, pays the resulting tax, and then petitions the Commissioner to allow the business purpose exception. The Commissioner may grant the request if the taxpayer demonstrates by clear and convincing evidence that the transactions had a valid business purpose other than the avoidance of tax. If granted, the taxpayer must then file amended returns and claim a refund.

In the alternative, the taxpayer argu ed that the factoring company should be included in the taxpayer's elective combined return. Under Virginia law, however, only companies with nexus in Virginia may be included in a combined return, and the Commissioner ruled that the factoring company did not have nexus and cannot be included in a combined report.

WHAT'S UP?

MORE "and" LESS Unclaimed Property: North Carolina's Grab for More Information and Delaware's Shrinking Look Back Period

North Carolina

North Carolina H.B. 692 contains several important, and somewhat disconcerting, changes for unclaimed property holders. The bill provides that for amounts due to the apparent owners of intangible property valued at $50,000 or more, holders must report the following information with respect to the owner: "full name, last known address, SSN or TIN, date of birth, driver's license or state identification number, email address…a description of the property, the identification number, if any, and the property amount." If amounts are held or owing under an annuity or life or endowment insurance policy, a holder must report "the full name and last known address, SSN or TIN, date of birth, driver's license or state identification number, and email address of the annuitant or insured and of the beneficiary." The Bill further provides that the dormancy period for "wages or other compensation for personal services" is reduced from two years to one year!

Delaware

At the end of the 2011 Delaware legislative session, H.B. 229 was introduced. If enacted, the bill will make significant revisions to the Delaware Unclaimed Property Law. First, the "look back" period for a state-initiated audit could not extend to "any calendar year prior to 1995." This bill will trim 14 years off of an unclaimed property look back period (which is currently 1981).

Second, with respect to any holder who enters into a Voluntary Disclosure Agreement (VDA) with the state, the state would be precluded from conducting an audit or examination of records, or from "seeking payment of any amounts of property," for any calendar year prior to 2001. This provision shortens Delaware's VDA "look back" authority by 10 years.

Third, the legislation requires the state to be timely in any request for payment from a holder. Currently, there is a six-year limitations period in which the state may request payment after receipt of any report. H.B. 229 would limit the period to three years. However, the bill also provides that "if no report is filed or if a holder has filed a fraudulent report," the state may make a "request for Payment" to the holder at any time.

The bill has been assigned to the House Judiciary Committee for review, which will begin when the legislature is back in session in January.

POLICY WONK

Nexus? Who said Anything about Nexus?: A Summary of the Federal Nexus Bills

Recently, there has been significant activity in Congress related to sales tax nexus.

- In July, Sen. Richard Durbin (D-Ill.) introduced the Main Street Fairness Act (the "Durbin Bill"), the first of three bills introduced this year that would allow states to collect sales taxes from remote sellers.

- On October 13, 2011, Rep. Steve Womack (R-Ark.) and Rep. Jackie Speier (D-Cal.) introduced the Marketplace Equity Act of 2011 (the "Womack Bill") that would allow states to impose a sales or use tax collection requirement on remote sellers with no physical presence in a state.

- Yet another bill, the Marketplace Fairness Act, was introduced by Sen. Michael Enzi (R-Wyo.) on November 9 (the "Enzi Bill"). This bill appears to have bipartisan support, as senators on both sides of the aisle are co-sponsors: Sens. Durbin, Lamar Alexander (R-Tenn.) Tim Johnson (D-S.D.), John Boozman (R-Ark.), Jack Reed (D-R.I.), Roy Blunt (R-Miss.), Sheldon Whitehouse (D-R.I.), Bob Corker (R-Tenn.), and Mark Pryor (D-Ark.).

- In contrast to these bills, Sens. Ron Wyden (D-Ore.) and Kelly Ayotte (R-N.H.) introduced a resolution opposing the enactment of "new burdensome or unfair" tax collection requirements on small Internet sellers. Sen. Res. 309 (Introduced Nov. 2, 2011).

Despite the resolution, Congress will seriously consider the three proposed acts. The three acts attempt to address the same issue through slightly different approaches. All three would allow states to collect tax from remote sellers if certain uniformity requirements are met. The uniformity requirements are similar, for the most part, but with some slight differences as discussed below.

The Durbin Bill allows states who are members of the Streamlined Sales Tax Agreement to collect sales tax on remote sales, provided that the Agreement itself meets certain uniformity requirements. The Womack Bill allows states to collect if they meet certain simplification requirements, regardless of membership in the Agreement. The Enzi Bill is, in some ways, a hybrid of the Womack and Durbin Bills, as it would authorize members of the Streamlined Sales Tax Agreement to require collection similar to the Durbin Bill (though, importantly, the Enzi Bill does not require the Agreement to conform to any specific simplification requirements), but the Enzi Bill also offers an alternative simplification regime for non-member states to gain the same authority as member states, similar to the Womack Bill.

Below is a summary of different key aspects and uniformity requirements of the proposed bills:

- <u>Small Seller Exception</u>: All three bills exempt remote sellers from being forced to collect tax if they meet the requirements for the small seller exception. Under the Womack Bill, the remote seller must have total sales in the United States exceeding $1 million and exceeding $100,000 in the state seeking to tax those sales. Under the Enzi Bill, the remote seller must have remote sales in the United States exceeding $500,000 (no state-specific requirement), and under the Durbin Bill, the Streamlined Governing Board would determine the requirements for the exception.

- <u>Rates</u>: All three bills would allow the destination rate to be collected provided that adequate software and taxability matrices are provided to sellers. The Womack Bill would also allow states to impose a single, blended rate or the highest state-level rate in lieu of providing the destination rate with software. For the Enzi Bill, this requirement would only apply to non-members of Streamlined.

- <u>Administration & Audits</u>: All three bills would require states to have state-level administration of all sales and use taxes. For the Enzi Bill, this requirement would only apply to non-members of Streamlined. The Enzi Bill would specifically require non-members of Streamlined to subject remote sellers to only a single audit. The Durbin Bill would allow sellers to request a single audit by the Governing Board for all member states. The Womack Bill does not specifically address audit requirements.

- <u>Returns</u>: For the Womack and Enzi Bills, there must be a single state return for remote sellers. For the Enzi Bill, this requirement would apply only to non-members of Streamlined. Under the Durbin Bill, the returns must be filed at the state level, but there is no requirement for a single return.

- <u>Definition of Remote Seller</u>: In all three bills, remote sellers are defined as those who make remote sales. Under the Durbin and Womack Bills, remote sales are sales where the seller did not have "adequate physical presence to establish nexus" under the law existing the day before enactment. Under the Enzi Bill, remote sales are sales where the seller did not have "adequate physical presence to establish nexus" under Quill.

- <u>Consolidated Provider</u>: The Enzi Bill also allows sellers to use third-party single or consolidated providers to collect and remit sales taxes on their behalf. Single and consolidated providers would be certified by the state to collect for third parties and would bear the rights and responsibilities of the remote seller.

- <u>Sourcing</u>: Unlike the other bills, the Enzi Bill addresses sourcing requirements. Member states must comply with the Agreement's sourcing provisions, but non-member states must source sales according to delivery destination. If no delivery location is specified, then the sale is sourced to the address known to the seller, including the billing address. If that address is unknown, the sale is sourced to the seller's address.

Given the substantial activity associated with these federal bills, it is difficult to assess which, if any, federal bill will gain momentum.

CALIFORNIA SCREAMING

Giving Taxpayers the Business on the FTB's Application of the Factor-Presence Nexus Provision

The Franchise Tax Board (FTB) recently issued guidance on California's updated "doing business" provision for California corporate income tax purposes. FTB Notice 2011-06 (Oct. 12, 2011). This guidance clarifies recent amendments that specify when the Chief Counsel may issue a ruling regarding whether a taxpayer is doing business in the state.

Effective January 1, 2011, Senate Bill 858 amended Cal. Rev. & Tax Code § 23101 to add a "factor-presence" nexus provision. Specifically, California law now provides that a taxpayer is doing business in the state if the taxpayer meets any of the following conditions:

(1) The taxpayer has more than $500,000 of sales in the state or the taxpayer's sales in the state exceed 25% of the taxpayer's total sales;
(2) The taxpayer has more than $50,000 of property in the state or the taxpayer's property in the state exceeds 25% of the taxpayer's total property; or
(3) The taxpayer has more than $50,000 in compensation in the state or the taxpayer's compensation in the state exceeds 25% of the taxpayer's total compensation.

However, Cal. Rev. & Tax Code § 23101(a) continues to provide that doing business in the state means "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit."

FTB Notice 2011-06 makes clear that even if a taxpayer does not meet any of the factor-presence threshold tests, it may still impose income tax if a company is "actively engaging in any transaction for the purpose of financial or pecuniary gain or profit." Fortunately, the FTB will continue to provide Chief Counsel Rulings regarding whether a taxpayer is actively engaging in transactions for financial or pecuniary gain or profit, but it will not provide rulings on whether a taxpayer's specific facts trigger the factor-presence nexus threshold because the answers would depend principally on factual issues and would not require legal interpretation.

NEW YORK, NEW YORK

New York Attempts to Take Taxpayer Out Behind the (Kell)Woodshed

The New York State Department of Taxation and Finance (Department) provided another example of its longstanding eagerness to force taxpayer combination—at least in cases where it results in increased tax revenue. *In the Matter of Kellwood Co.,* No. 820915 (N.Y. Tax App. Trib. Sept. 22, 2011).

The Department (or taxpayer) must prove three elements to require a combined report: (1) sufficient ownership, (2) existence of a unitary business, and (3) distortion. Under pre-2007 law, if related entities have "substantial intercorporate transactions," distortion is presumed. Because Kellwood and its subsidiaries were "engaged in a unitary business," were commonly owned, and had substantial intercorporate transactions, it was up to Kellwood to rebut the distortion presumption. Generally, taxpayers can rebut distortion by illustrating arm's-length pricing. However, when the Department also challenges the economic substance of the transactions at issue, as the Department did in *Kellwood*, the taxpayer must also prove that the transactions "merit tax respect." In other words, the transactions must have sufficient business purpose and economic substance to avoid being deemed "shams."

The Department attempted to combine an accounts receivable factoring subsidiary and a shared services subsidiary with the Kellwood parent company. The Tax Appeals Tribunal upheld the Administrative Law Judge's determination that the factoring company lacked economic substance and was thus properly combined. However, regarding the shared services company, the Tribunal held that the taxpayer: (1) satisfied the subjective and objective prongs of the sham transaction analysis; and (2) rebutted the presumption of distortion by proving that the intercompany transactions reflected arm's-length pricing pursuant to a transfer pricing study.

The Department is actively seeking to combine and de-combine taxpayers (depending on the circumstances). Taxpayers should review the *Kellwood* decision (and the burden to rebut the taxpayer's transfer pricing analysis) if they have a forced combination risk.

Come See Us

December 6, 2011
National Cable & Telecommunications Association State Leadership Conference
Mandarin Oriental Hotel – Washington, DC
Zack Atkins on The Next State Tax Battleground: Central Assessment

December 8, 2011
NCSL Meeting of the Task Force on State and Local Taxation of Communications and Electronic Commerce
San Juan, Puerto Rico
Beth Freeman on Principles for State Taxation of Cloud Computing Services

December 12-13, 2011
New York University Institute on State and Local Taxation
Grand Hyatt – New York, NY
Jeff Friedman on Mergers and Acquisitions
Diann Smith on Due Process – Significant Current Issues
Marc Simonetti on What's Happening Everywhere Today?

January 15, 2012
TEI Florida Chapter Meeting
Boca Raton, FL
Marc Simonetti will present

January 22-27, 2012
COST SALT Basics School
Georgia Tech Hotel and Conference Center
Charlie Kearns on Streamlined Sales Tax – Changing the Landscape

Recently Seen and Heard

October 30-November 2, 2011
TEI Annual Meeting
Marriott Marquis – San Francisco, CA
Michele Borens and **Marc Simonetti** on Top 10 Practical Tips for Successfully Settling State Audits

November 2-3, 2011
Arizona Public Service Company 2011 State Tax Roundtable for Utilities and Power (STARTUP)
Phoenix, AZ
Eric Tresh on Transfer Pricing – Appropriate Strategies for Utilities

November 3, 2011
2011 Georgia Chamber Tax Forum
Renaissance Atlanta Midtown Hotel – Atlanta, GA
Steve Kranz on Online Sales Tax and E-Fairness

November 3-5, 2011
2011 Annual Meeting of the California Tax Bar and California Tax Policy Conference
The Fairmont – San Jose, CA
Michele Pielsticker on The Framework That Shapes and Constrains California's Tax System

November 8, 2011
TEI Arizona Chapter Meeting
APS Corporate Offices – Phoenix, AZ
Pilar Mata and **Maria Todorova** on Significant State Tax Litigation Around the Country
Michele Borens and **Steve Kranz** on E-Commerce and Cyberspace State Tax Issues: Use of Software & Data in a "Cloud" Environment
Michele Pielsticker on California Screamin': A Review of Recent Changes to California Sales and Income Taxes
Michele Borens and **Steve Kranz** on State Tax Litigation Tactics: A Review of Issues Associated with Statute of Limitations, Burdens of Proof, and Establishing a Full Record

November 9, 2011
TEI Philadelphia Chapter Meeting
Penn State Great Valley Campus – Malvern, PA
Jeff Friedman and **Pilar Mata** on Settled Expectations: Best Practices to Negotiate and Memorialize State Tax Settlements

November 9-11, 2011
IPT Credits and Incentives Symposium
Hyatt Regency – Monterey, CA
Madison Barnett on Gunfight at the C&I Corral: Audit Defense and Controversy

November 10, 2011
Maryland State Bar Association 2011 Advanced Tax Institute
Martin's West – Woodlawn, MD
Jeff Friedman on National Developments – Point Counter Point Discussion

November 11, 2011
William & Mary Tax Conference
Kingsmill Resort – Williamsburg, VA
Jeff Friedman on Going Big: Update on States Seeking to Expand Tax Jurisdiction, Tax Base and Enforcement

November 14, 2011
Wall Street Tax Educational Corp. and Wall Street Tax Association Fall Seminar
Grand Hyatt – New York, NY
Marc Simonetti on New York State Tax Audit Developments

November 15, 2011
COST Minneapolis Regional Meeting
Best Buy Offices – Minneapolis, MN
Maria Todorova on Discussion of State Tax Cases and Issues to Watch
Steve Kranz and **Mark Yopp** on E-Commerce and Cyberspace State Tax Issues
Steve Kranz and **Charlie Kearns** on State Tax Policy Update: 2011 and Beyond

November 15, 2011
National Premiums Tax Conference
Eldorado Hotel Casino – Reno, NV
Michele Borens on Impact of Federal Legislation and Other Uniformity Efforts on State Taxation

November 17, 2011
New York University Institute on Federal Taxation
The Fairmont Hotel – San Francisco, CA
Diann Smith and **Charlie Kearns** on State/Local Withholding and Information Reporting Obligations for the Mobile Workforce

November 17, 2011
TEI Virginia SALT Day
Dominion Resources Technical Center – Richmond, VA
Michele Borens and **Jeff Friedman** on Federal Legislation, National Income Tax Developments, National Sales Tax Developments, Settlement Best Practices

November 18, 2011
TEI Detroit Chapter Meeting
Kellogg Center – Lansing, MI
Jonathan Feldman, Andrew Appleby, Beth Freeman and **Melissa Smith** on Taxation of Digital Goods and Cloud Computing; Top 10 Sales/Use Tax Developments of 2011; Top 10 Income Tax Developments of 2011; and Top 10 Guidelines for Successfully Negotiating a State Tax Settlement

November 30, 2011
Sutherland Tax Education Series IX
Sutherland's Office – Atlanta, GA
Scott Wright, Madison Barnett and Tax Partners **Tom Cullinan, Joe DePew** and **Nick Djuric** presented

November 30, 2011
TEI Rochester Chapter SALT Half-Day Seminar
Rochester, NY
Marc Simonetti and **Mark Yopp** on Successfully Settling State Tax Audits
Charlie Kearns and **Mark Yopp** State Tax Legislative Update - What to Expect in 2012
Charlie Kearns and **David Pope** on State Tax Litigation Update (Income, Franchise, Sales & Use)
Marc Simonetti and **Andrew Appleby** on State Alternative Apportionment – Sword or Shield

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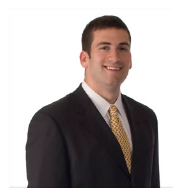
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