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SUTHERLAND SALT SHAKER

Shaking things up in state and local tax.

"Functional Equivalent" Nexus: When Goodwill Goes Bad in New Mexico

The New Mexico Court of Appeals held that for purposes of imposing the state's gross receipts tax, Barnes & Noble Booksellers, Inc.'s (Booksellers) in-state activities may be imputed to an out-of-state retailer (Taxpayer) based on the use of common Barnes & Noble trademarks. *New Mexico Tax. & Revenue Dep't v. Barnesandnoble.com LLC,* No. 31, 231 (N.M. Ct. App. Apr. 18, 2012). Notably, Booksellers undertook no physical activities on behalf of the Taxpayer that would independently satisfy the physical presence standard established in *Quill*. However, according to the court, the goodwill generated by Booksellers' use of the same Barnes & Noble trademarks helped the Taxpayer establish and maintain a market in the state, thereby creating substantial nexus that is the "functional equivalent" of physical presence under *Quill*.

The court did conclude that some of the connections between the in-state retailer and the out-of-state Internet retailer did *not* support a physical nexus finding. For example, the Taxpayer's website included a "store finder" feature listing Booksellers' in-state locations and upcoming events at those locations. The court, however, noted the website had no physical connection with New Mexico, and the information on the website was provided on behalf of the parent corporation, Barnes & Noble, Inc., not the Taxpayer. As another example, the court highlighted the absence in the record of any indication that Booksellers' sales of customer loyalty program memberships impacted the Taxpayer's revenues by means of sales made or orders taken in-state by Booksellers.

Despite the absence of physical activities taken by Booksellers on behalf of the Taxpayer, the court nevertheless imputed Booksellers' in-state activities to the Taxpayer based on the use of common Barnes & Noble trademarks. Relying upon its reasoning in *Kmart Properties, Inc. v. Taxation and Revenue Department,* 131 P.3d 27, 36 (N.M. Ct. App. 2001), the court concluded that the use of Barnes & Noble trademarks combined with the Taxpayer's relationship with Booksellers constitutes the "functional equivalent" of physical presence under *Quill*. In addition, the court found that "cross-marketing activities," such as the "store finder" feature on the Taxpayer's website and the customer loyalty program *directly* increased the goodwill for the Taxpayer's website. Accordingly, the court held that these activities in the aggregate created substantial nexus between the Taxpayer and New Mexico by helping the Taxpayer establish and maintain a market in the state.

New Mexico is the latest in a growing number of states to embrace and expand the concept of affiliate nexus. By imputing the goodwill of an in-state affiliate to an out-of-state corporation based on the use of common corporate trademarks rather than on direct, physical activities undertaken by the former on behalf of the latter to establish taxable nexus, the New Mexico Court of Appeals is not generating any goodwill of its own in the minds of multistate taxpayers.

SUTHERLAND

In This Issue

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

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Without Intent to Mislead, Deceptive Trade Practices Claim Fails

A Rhode Island Superior Court decision may provide some comfort to retailers concerned about potential class actions for improper collection of sales and use tax. In *Long v. Dell Computer Corp.,* No. PB 03-2636 (R.I. Sup. Ct., Apr. 2, 2012), the court determined that Dell's improper collection of sales tax on optional service contracts lacked any evidence of "an intent to mislead the consumers" and did not violate Rhode Island's Deceptive Trade Practices Act (DTPA). The court, in granting Dell's motion for summary judgment, also rejected a negligence claim by the plaintiffs because Dell's duty to properly collect sales and use tax was owed to the State of Rhode Island—not to the consumer plaintiffs.

The facts of the case are fairly simple: Dell collected sales tax on the full amount of its computer sales to customers, including amounts charged for optional service contracts and shipping and handling fees. Based on Dell's interpretation of a 1991 response to its inquiry from the Rhode Island Division of Taxation, Dell collected sales tax on both the service contracts and transportation charges because such items were not separately stated in the sale to the purchaser. After the filing of the lawsuit in 2004, Dell sought and obtained letter rulings in 2005 and 2006 from the Division of Taxation, which again indicated that Rhode Island sales tax should be collected on the charges for service contracts and transportation chargers, which were not separately stated.

The court found that Dell improperly collected sales tax on those charges. However, the court rejected the plaintiffs' cause of action, claiming that Dell was negligent. The court noted that a seller is liable to the Division of Taxation and subject to penalties when it fails to properly collect and remit sales tax. As a defense to the DTPA claim, Dell also asserted that even if the sales tax was improperly collected, Dell's action did not rise to an "unfair or deceptive practice" required under the DTPA. The court accepted Dell's argument that the charge of sales tax on optional service contracts was "a good faith, reasonable interpretation of the tax law and regulations." Indeed, the court noted Dell's effort to gain clarity on the taxability of such contracts in its correspondence with the Division of Taxation in 1991. The court concluded that "Dell's honest misinterpretation of a delicate area of the state tax law cannot be held to be an unfair act" and that the plaintiff failed to present any admissible evidence that Dell acted "in an immoral or unethical manner at all."

SALT PET(S) OF THE MONTH

Charlie and Chloe

Charlie and Chloe are loveable 8-year-old Keeshonds (pronounced Kays-honds) who live with their parents, Sutherland SALT Counsel Michele Pielsticker and Mark Pielsticker, along with brother Noah and sister Abby, in Sacramento, California. Although Charlie and Chloe look alike, these co-Pets of the Month want you to know that they could not be more different. Charlie enjoys long naps, belly rubs, and the occasional walk (as long as it is not too far). As lazy as he is handsome, Charlie would prefer a tussle with a pit bull to time spent grooming himself or being groomed. "All rest, no work, and plenty to eat" are Charlie's words to live by. Chloe, on the other hand, enjoys barking at passers by, demands constant affection, and strives to protect her diva image. Her medical records indicate she may possess a feline gene, but if you ask, she will deny it vehemently. Despite her brother Charlie's disapproval, Chloe also enjoys scaling six-foot fences for day-trips around the neighborhood – at least until she is escorted home by a friendly neighbor. Differences aside, both dogs profess a common love for family, pizza, pancakes, and trips to the dog park, where they have adoring fans.

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 Katie O'Brien at katie.obrien@sutherland.com.

No Louisiana Nexus Over Out-of-State Corporate Partners

The Louisiana Supreme Court declined to review the Court of Appeal's holding that an out-of-state corporation's passive ownership of an interest in a limited partnership is not a sufficient basis, by itself, to subject the foreign limited partner to Louisiana franchise tax. *UTELCOM, Inc. v. Bridges,* No. 2010-0654, 77 So.3d 39 (La. App. 1st Cir. Sept. 12, 2011), *reh'g denied* (Nov. 1, 2011), *writ denied,* No. 2011-C-2632 (La. Mar. 2, 2012). The court's decision to not accept the case should prompt the Department of Revenue to reverse course on its current position.

In *UTELCOM,* the Department issued franchise tax assessments against two out-of-state corporations whose only connection with Louisiana was their ownership interests in a limited partnership engaged in the long-distance telecommunications business in Louisiana. The primary basis for the Department's position was a regulation that provided that owning property in Louisiana through a partnership is sufficient to create franchise tax nexus. The trial court upheld the assessments based on the Department's regulation.

The Court of Appeal reversed, holding that the regulation is invalid because it attempts to impermissibly expand the franchise tax statute on foreign corporations "owning or using any part" of their capital in the state. The court reasoned that once the capital was contributed by the foreign corporate partners to the limited partnership, the capital was no longer "owned or used" by the foreign corporate partners.

While the writ application was pending, the Department continued to assert that its position was correct and pursued audit adjustments on that basis. Now that the case is final, the Department should revise its current audit position that foreign limited partners are subject to the franchise tax.

Corporate taxpayers whose only connection with Louisiana is through an ownership interest in a pass-through entity should evaluate whether refunds may be available as a result of this case. While the facts of the case involved a limited partnership, its holding should apply equally to an LLC, which is treated as a limited partnership for Louisiana franchise tax purposes. Taxpayers should be prepared to pursue their refund claims, if denied by the Department, to the Board of Tax Appeals or Louisiana District Court. Under La. R.S. § 47:1621(F), the Department has historically denied refund claims resulting from "a mistake of law arising from the misinterpretation by the [Department] of the provisions of any law."

Time to Pay Up: Public Law 86-272 Does Not Protect Watch Distributor's Merchandising Activities

On cross motions for summary judgment, the Minnesota Tax Court held the activities of an out-of-state watch and jewelry distributor (Taxpayer) went beyond mere solicitation of orders for tangible goods in the state of Minnesota and established sufficient nexus to impose Minnesota's corporate franchise tax. *Skagen Designs Ltd. v. Comm'r of Revenue,* Minn. Tax. Ct., No. 8168-R (Apr. 23, 2012). The Taxpayer employed two types of employees in Minnesota, sales representatives and merchandisers (Merchandisers). The application of Public Law 86-272 to the Merchandisers' activities, including completing weekly reports, maintaining product floor maps, holding product training sessions and inspecting display cases, were at issue before the court.

The court found that with one exception, the Merchandisers' in-state activities exceeded the protection of Public Law 86-272 because such activities had no connection to the solicitation of sales and otherwise served an independent business purpose. The weekly reports, for example, were submitted by the Merchandisers to the Taxpayer for inventory management or quality control purposes and not for reorder purposes. The court noted that, while the reports allowed the Taxpayer to collect valuable market data and may have facilitated sales, they did not facilitate the *requesting* of sales. Similarly, the court found that floor mapping was not ancillary to requesting purchases merely because it was display-related; rather, the maps were prepared for the competitive purpose of tracking competitors' displays. Moreover, the training and informational seminars conducted by the Merchandisers for in-state retailers' sales associates did not facilitate requests for orders from the in-state retailers but instead served to increase general sales, to improve product performance, and to relieve the Taxpayer from having to produce detailed product manuals for its retailers. Therefore, according to the court, these seminars also served independent business purposes. On the other hand, the court found the Merchandisers' inspection, rearranging, and refilling of display cases to be an essential component of soliciting sales from retail customers and that this activity qualified for protection under Public Law 86-272.

The court determined that, when taken together, the Taxpayer's non-immune activities could not be considered *de minimis*. Because the Merchandisers generated and submitted to the Taxpayer weekly reports for each in-state retailer, monthly photos, and floor maps each time a competitor's position in the retailer's watch department changed, and the Merchandisers conducted training presentations, the activities established a nontrivial connection to the state of Minnesota and sufficient nexus for the state to impose its corporate franchise tax on the Taxpayer.

Illinois Buys Into Providing Guidance for Deal-of-the-Day Voucher Transactions

The Illinois Department of Revenue (Department) issued General Information Letter (GIL) ST 12-0009-GIL (Feb. 28, 2012), which states that retailers that sell "deal-of-the-day" vouchers must collect and remit sales tax on the amount a customer pays for the voucher if the retailer can identify such amount. Otherwise, the retailer must collect and remit the full value of the "deal-of-the-day" item sold. The Department stated that it is in the process of preparing a bulletin to explain the tax treatment of deal-of-the-day websites, but it issued this GIL using guidance provided at a practitioners' meeting on February 2, 2012.

The taxpayer in ST 12-0009-GIL requested information regarding the taxability of a prospective business venture similar to GroupOn, a popular website that sells vouchers redeemable for items sold by retailers at a discount. The Department provided several examples of how a typical GroupOn-type transaction should be treated for Illinois sales tax purposes when a customer purchases a $25 voucher redeemable for $50 of food at a retailer.

- In the first example, the customer redeemed the voucher for $50 of food. The Department stated that the retailer must collect $2 of sales tax (applying Illinois's 8% sales tax rate to a $25 purchase) if the retailer knew the customer paid $25 for the voucher.
- In the second example, the customer also redeemed the voucher for $50 of food, but the retailer did not know the amount the customer paid for the voucher. The Department stated that the retailer must collect $4 of sales tax ($50 taxed at the 8% rate) because it did not know the amount paid for the voucher.
- The third and fourth examples were the same as the first two examples, except that the customer redeemed the voucher for $60 of food. The Department stated that both transactions are treated in the same manner as the first two examples, except that the retailer must collect sales tax on the additional amount sold—an additional $0.80 ($10 taxed at 8%).

The Department further stated that the taxpayer is not required to collect sales tax on the sale of the voucher because the taxpayer sold intangible property, which is not subject to Illinois sales tax.

Only a limited number of states have provided guidance on the taxability of deal-of-the-day transactions. Illinois's suggested treatment is similar to a handful of other states' guidance on this issue, including Iowa, Kentucky, and Maine. The Streamlined Sales and Use Tax Project (SSTP) is also working to provide uniform guidance on the voucher business model to its member states. The SSTP is in its preliminary analysis phase, but recently distributed the results of a survey issued to all member states attempting to determine how states treat the voucher transactions. While states are slowly issuing guidance on the issue, Illinois's deal is "on" for vouchers.

"Dear Illinois Department of Revenue: *With all (taxes) due respect…*"

The Illinois Court of Appeals held that a taxpayer that did not participate in an amnesty program because it was under federal and state audits, and did not know its ultimate tax liability, was not liable for the special amnesty penalty. *Met. Life Ins. Co. v. Illinois Dep't of Revenue,* 2012 IL App (1st) 110400, at *1 (Ill. App. Ct. Mar. 5, 2012).

A 2003 Illinois amnesty program provided amnesty to taxpayers that paid "all taxes due" for eligible tax years by November 2003. A double interest penalty applied for those taxpayers that had a tax liability eligible for amnesty but failed to pay it. In 2000, the Internal Revenue Service began an audit of MetLife for prior tax years and concluded in 2004 that MetLife owed additional federal tax. Additionally, in 2002, the Illinois Department of Revenue (Department) commenced an audit and, after 2004, concluded that MetLife owed additional state income tax for amnesty eligible tax years. Although MetLife had paid the additional tax, the Department notified MetLife in 2008 that the Department was assessing the amnesty double interest penalty.

In finding that the taxpayer did not owe the penalty, the Court of Appeals reasoned that "all taxes due" meant those taxes that a taxpayer knew were due and owed during the amnesty period. The court held that MetLife could not have participated in the protections afforded by the amnesty program to avoid the double interest penalty because MetLife did not know it owed additional taxes during the amnesty period, and the federal and state assessments were not made until after the end of such period. The court also found that the Department's rules stating that a taxpayer under audit during the amnesty period must make a "good faith estimate" of its tax liability and pay it "irrespective of whether that liability is known to the Department or the taxpayer" exceeded the authority that the legislature conferred to the Department.

Utah Quietly Expands Affiliate Nexus Statute

On March 22, 2012, Utah Governor Gary Herbert signed House Bill 384 (2012) into law, expanding the types of companies that are required to collect and remit Utah sales and use tax. HB 384 requires sellers that hold "substantial ownership interests" in certain "related sellers" to collect and remit Utah sales and use tax. The new law goes effective on July 1, 2012.

As amended, Utah Code Ann. § 59-12-107(2)(b) treats a seller as if it is selling tangible personal property, a service, or a product transferred electronically for use in Utah and will be required to collect and remit sales and use taxes if:

> (i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and
>
> (ii)(A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or
>
> (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in-state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.

"Substantial ownership interest" is defined as a direct or indirect ownership interest greater than 10%. Utah Code Ann. § 59-12-107(1)(a), (c) (referencing 15 U.S.C. § 78p). A seller constitutes a "related seller" if (i) it has or uses an office, distribution center, or warehouse in Utah, and (ii) it delivers tangible personal property, a service, or a product transferred electronically sold by a seller that does not have or use an office, distribution center, or warehouse in Utah to a purchaser in Utah.

Unlike recent "affiliate nexus" bills adopted by Georgia, Maryland, and Minnesota that target online marketing affiliates of in-state retailers, HB 384 is not (necessarily) directed at online marketing affiliates. HB 384 is controversial as it could be applied in a manner that runs afoul of *Quill Corp. v. North Dakota,* 504 U.S. 298 (1992).

CALIFORNIA SHAKING

California Board of Equalization Skewered for Lack of Process

In *City of Palmdale, et al. v. State Board of Equalization,* __Cal. Rptr. 3d__, 2012 WL 1861121 (May 23, 2012), California's Second District Court of Appeal took to task the State Board of Equalization (BOE) for its adjudicatory process in a sales tax reallocation matter involving the City of Pomona. In 1994, the City of Pomona petitioned for reallocation of sales tax revenues that had been allocated to a countywide pool because a retailer's Pomona warehouse did not have a resale permit. Both BOE staff and the BOE denied the petition in 2000.

Eight years later, the City of Pomona requested that the BOE reconsider its denial of the 2000 appeal, and the BOE granted a partial reallocation, declining to state a basis for its decision. Several cities petitioned for a writ of mandate in the trial court to overturn the BOE's decision. The trial court granted the petition, stating that the BOE "'does not even hint at the reasons for the decision and does nothing more than compute the amount of sales tax revenue to be reallocated.'" *Id.* The trial court also suggested that the cities' due process rights may have been violated when they were deprived of revenue that previously had been allocated to them more than eight years earlier.

The court of appeal viewed the trial court's ruling as "tantamount to a public reproval and … an embarrassment to an agency charged with functions vital to the financial stability of California and its subdivisions and the finances of state taxpayers." *Id.* In denying a motion by the petitioner cities to settle the case and vacate the trial court's judgment, the court of appeal concluded that the public interest would be adversely impacted. The court stated: "This appeal deserves particular attention because according to the judgment, the Board displayed a repeated lack of concern for the statutory and constitutional procedures that restrict its decision-making authority. If the Board ignores applicable legal principles, an erroneous decision is more likely." *Id.*

Get It in Writing! Bill Requiring Board of Equalization to Publish Written Decisions Passes California Assembly

On May 30, 2012, California Assembly Bill (AB) 2323 (Perea) passed the Assembly floor by a vote of 47-19. AB 2323 would require the State Board of Equalization (BOE) to issue written decisions in cases involving amounts in controversy of $500,000 or more, excluding consent items. If enacted, the BOE could decide the type of ruling it publishes—a formal decision, memorandum decision, or summary decision; however, only formal or memorandum decisions would be citable as precedent. Regardless of the type of decision issued, each decision would be required to contain: (1) findings of fact; (2) legal issue presented; (3) applicable law; (4) analysis; (5) disposition; and (6) names of adopting board members. Moreover, the bill authorizes any board member to submit a dissenting or concurring opinion.

Franchise Tax Board's Broad Audit Authority to Review Returns and Ascertain Correct Amount of Tax Underscored in Enterprise Zone Hiring Credit Decision by California Supreme Court

The California Supreme Court reversed the appellate court's decision regarding the Franchise Tax Board's (FTB) authority to conduct an audit to determine whether a taxpayer is entitled to an enterprise zone hiring credit. *DiCon Fiberoptics, Inc. v. Franchise Tax Bd.,* Case No. S173860 (Apr. 26, 2012).

California's Enterprise Zone Act (the Act) permits a taxpayer that employs a "qualified employee" in an enterprise zone to claim a tax credit for five years. To be a "qualified employee," at least 90% of the employee's services must "directly relate[ ] to the conduct of the taxpayer's trade or business located in an enterprise zone," and the employee must perform at least 50% of his or her services in the enterprise zone. Cal. Rev. & Tax. Code § 23622.7(b)(4)(A). In addition, the employee must fall within one of several categories that demonstrate the employee is disadvantaged or endures some form of employment barrier. Cal. Rev. & Tax. Code § 23622.7(b)(4)(A)(iv). To claim the credit, taxpayers are required under the Act to: (1) obtain from the local zone government authority a certification (or "voucher") that provides the qualified employee meets the eligibility requirements; and (2) retain a copy of the certification and provide it upon request to the FTB. Cal. Rev. & Tax. Code § 23622.7(c).

At the Court of Appeal, DiCon successfully argued that the specific statutory voucher requirements under the Act took priority over the FTB's general statutory audit authority and that the FTB should not be permitted to displace the judgment of a local zone authority with expertise the FTB lacks. To wit, the Court of Appeal held that vouchers issued by local zone authorities are prima facie proof that a worker is a "qualified employee," which shifts to the FTB the burden of proof to demonstrate that an employee is not a qualified worker for whom no voucher should have been issued.

The Supreme Court, however, disagreed. In reversing the Court of Appeal, the Supreme Court reasoned that the statutory voucher requirements under the Act *supplement* but do not supplant the FTB's general audit authority with regard to the vouchers. The Supreme Court ultimately concluded that the FTB's general authority to review returns and ascertain the correct amount of tax gives the FTB authority to conduct an audit to determine whether a taxpayer is entitled to the enterprise zone hiring credit.

Taxpayers intending to claim hiring credits in California enterprise zones are well-advised to retain, as part of their normal books and records, the supporting documentation to establish that employees meet the qualified employee requirements under the Act. Taxpayers who historically have claimed hiring credits should examine potential assessment exposure for taxable years with an open statute of limitations if they failed to maintain the appropriate supporting documentation for the claimed hiring credits. *DiCon Fiberoptics* is also a stark reminder of the FTB's broad investigatory power as it relates to the examination of returns and its determination of the correct amount of tax.

POLICY WONK

Georgia Tax Reform 2.0: Three Bills Signed by Governor

Georgia Governor Nathan Deal signed three bills that will enact a wide range of changes to Georgia's tax structure and procedure (HB 386, HB 100, and HB 846). These changes include a new sales tax exemption for energy used in manufacturing, an affiliate nexus provision, creation of a new Georgia Tax Tribunal, publication of letter rulings, and changes to the taxation of motor vehicles, among others. The bills are the culmination of the comprehensive tax reform effort started in 2010 by the Tax Reform Council. While the bills fall short of the dramatic changes originally proposed by the Council (which included taxation of services and groceries, and communications tax reform), they nevertheless include a number of taxpayer-friendly changes.

HB 386, signed by Governor Deal on April 19, 2012, is the primary vehicle for the changes. The most high-profile change in this bill is a new sales tax exemption for energy used in manufacturing that will be phased in over four years. The exemption applies to both state and local sales taxes, other than the optional 1% local education component. Georgia's imposition of a sales tax on energy inputs was seen as a competitive disadvantage to the state's ability to attract and retain manufacturing jobs, particularly because several neighboring states already offer an energy exemption. To allow local jurisdictions to replace lost revenues, the bill authorizes a referendum to impose local excise taxes on energy at a rate of up to 2%.

HB 386 also codifies much of the existing sales tax manufacturing exemption regulation applying the "integrated plant" theory. Ga. Comp. Rules & R. 560-12-2-.62. The existing statutory exemptions that the regulation compiled are repealed and replaced with the new consolidated statutory exemption. A separate new exemption for "agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment" accomplishes a similar consolidation of the numerous existing agriculture-related exemptions. The changes largely are a codification and reorganization of existing law.

Other significant changes made by HB 386 include: (i) a click-through sales tax nexus provision with a $50,000 annual gross receipts threshold along with an affiliate nexus provision; (ii) replacement of the sales tax on motor vehicle sales and the annual ad valorem tax on motor vehicles with a new 7%, one-time "title fee" roughly equivalent to the present sales tax (but eliminating the current exemption for casual sales); (iii) new limitations on the conservation easement tax credit; and (iv) elimination of the sales tax exemption for certain film production equipment and services.

HB 100, signed by Governor Deal on April 19, 2012, creates the Georgia Tax Tribunal, a new independent, executive branch forum dedicated to tax appeals. The highly anticipated Tribunal, which will be an autonomous division of the existing Office of State Administrative Hearings (OSAH), is expected to be a valuable new option for Georgia taxpayers.

Some of the important features of the Tribunal will be that: (1) taxpayers will have the option to bring appeals of assessments and refund denials to the Tribunal or to Superior Court; (2) the Tribunal is independent from the Department of Revenue and the Commissioner cannot override the Tribunal's rulings; (3) the administrative law judge, to be appointed by the Governor, will be proficient in state tax law with "at least eight years" of tax law experience; and (4) there is no "pay-to-play" requirement. Formal discovery and depositions are available but informal discovery is encouraged. The Tribunal will issue published decisions, and the losing party may appeal to the Fulton County Superior Court. Taxpayers may begin filing petitions to the Tribunal on or after January 1, 2013.

Finally, HB 846, signed by Governor Deal on May 1, 2012, will provide statutory authorization for the Department of Revenue to begin publishing redacted letter rulings. The bill will apply prospectively to rulings requested by taxpayers after the date the bill becomes law, although the Department is presently seeking permission to publish redacted versions from taxpayers that have previously been issued letter rulings. There has been a shortage of published guidance available to Georgia taxpayers, and the published decisions of the Tax Tribunal, together with published letter rulings, will go a long way toward remedying that shortage going forward.

Come See Us

June 11, 2012
UC Davis and FTB Summer Tax Institute
UC Davis – Davis, CA
Prentiss Willson on Constitutional Limits on State Taxation

June 14, 2012
Sutherland SALT Webinar
Carley Roberts, Prentiss Willson and **Michele Pielsticker** on California Technology Transfer Agreements

June 14, 2012
Multistate Tax Conference
Country Springs Hotel – Waukesha, WI
Jeff Friedman on Hot Topics in State Income Tax

June 17-20, 2012
Federation of Tax Administrators Annual Meeting
Fairmont Hotel – Washington, DC
Jeff Friedman on Cloud Computing Developments
Jack Trachtenberg on Application of False Claims Acts to Tax Enforcement

June 24-27, 2012
IPT 36th Annual Conference
Renaissance Esmeralda Resort and Spa – Indian Wells, CA
Steve Kranz on What Am I Selling Anyway? The Daunting Task of Characterizing Transactions that Mix Communications, Software, Information and Other Good Stuff

June 27-29, 2012
Interstate Tax Corporation Interstate Tax Planning Meeting
Courtyard Mariott – New York, NY
Jeff Friedman on How the Interstate Tax System Works: Jurisdiction and Nexus

June 27-July 1, 2012
TEI Region VII Conference
Westin Resort – Hilton Head, SC
Jeff Friedman and **Marc Simonetti** on State Tax Roundtable – Planning and Techniques

July 16-20, 2012
New York University Summer Institute in Taxation
Westin New York at Times Square – New York, NY
Carley Roberts on Hot Topics Regarding Public Law 86-272

July 25, 2012
Lorman Seminar
Jonathan Feldman and **Maria Todorova** on Multistate Taxation: Income, Sales and Use and Beyond

Recently Seen and Heard

May 1, 2012
TEI Tri-Chapter Meeting
RIT Inn & Conference Center – Rochester, NY
Jack Trachtenberg on Waive or Walk

May 2, 2012
TEI Nashville Chapter Spring Seminar
Nashville, TN
Marc Simonetti on State Tax Settlement Strategies

May 2-4, 2012
Cox Media Industry Tax Conference
One Ocean Resort & Spa – Atlantic Beach, FL
Eric Tresh and **David Pope** on Digital Media – Sales and Use

May 3, 2012
TEI Houston Chapter Tax School
Hyatt Regency – Houston, TX
Jeff Friedman on Alternative Apportionment
Prentiss Willson on Top 10 Cases

May 8, 2012, 2012
TEI New York Chapter Meeting
Carley Roberts and **Prentiss Willson** on California Legal Developments
Marc Simonetti on Top 10 Practical Tips for Successfully Settling State Tax Audits
Jack Trachtenberg on New York State Tax Issues You Must Litigate

May 9, 2012
STARTUP Conference
Montreal, QC, Canada
Jeff Friedman and **Eric Tresh** on Document Management/Retention

May 10, 2012
Sutherland State and Local Tax Roundtable
St. Regis Hotel – Houston, TX
Jeff Friedman and **Eric Tresh** on State Tax Update
Michele Borens, Marc Simonetti and **Melissa Smith** on Income Tax Apportionment Trends
Carley Roberts and **Prentiss Willson** on California Legal Developments

May 10, 2012
IPT Luncheon
Atlanta, GA
Zachary Atkins and **Scott Wright** on National Update on Transaction Taxes

May 15-18, 2012
COST Spring Audit Session/Income Tax Conference
Westin Gaslamp – San Diego, CA
Jeff Friedman on Top 10 Reasons for Inconsistencies: Multistate Corporate Taxpayers and Varied State Laws
Steve Kranz on To Be or Not to Be: The MTC's Audit Authority
Diann Smith on Special Report: DC Hearings Office Final Order Regarding Franchise Tax Assessment Based on a Third-Party Transfer Pricing Analysis

May 16, 2012
TEI Denver Chapter Meeting
Lakewood Country Club – Lakewood, CO
Michele Borens and **Jeff Friedman** on Transfer Pricing and Intercompany Transactions
Marc Simonetti on State M&A Issues and State NOLs
Prentiss Willson on California Developments

May 16-18, 2012
Telestrategies 2012 Communication Taxation Conference
Peabody Orlando Hotel – Orlando, FL
Steve Kranz and **Eric Tresh** on Telecommunications Controversies - Why and How Communications Companies Continue to Be a Favorite Target of State and Local Tax Authorities
Steve Kranz on Cloudy, with a Chance of TAX! Considerations to Minimize Tax Obligations on Cloud Services

May 19-22, 2012
Association of Life Insurance Counsel Annual Meeting
Sawgrass Marriott – Ponte Vedra Beach, FL
Marlyss Bergstrom on an Unclaimed Property panel

May 21, 2012
Interstate Tax Corporation Interstate Tax Planning Conference
Nikko Hotel – San Francisco, CA
Prentiss Willson on How the Interstate Tax System Works and on Jurisdiction and Nexus

May 22, 2012
TEI State and Local Boot Camp
Westin – Chicago, IL
Jonathan Feldman and **Maria Todorova** on Constitutional Issues/Nexus – What Are the Limits to What the State Can Tax?

May 24, 2012
California Tax Practitioners Conference
Millennium Biltmore Hotel – Los Angeles, CA
Carley Roberts and **Prentiss Willson** on What's New in State Tax Litigation

May 25, 2012
North Carolina Bar Association 11th Annual North Carolina/South Carolina Tax Section Annual Meeting
Kiawah Island Golf Resort – Kiawah Island, SC
Michele Borens and **Jeff Friedman** on State Tax Litigation Update

June 5-8, 2012
Internet Retailer Conference and Exhibition
McCormick Place West – Chicago, IL
Steve Kranz on The New Urgency for Developing a State Sales Tax Strategy

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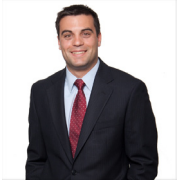

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