EVERSHEDS SUTHERLAND

SALT SCOREBOARD

Q4 2024

This is the fourth edition of the Eversheds Sutherland SALT Scoreboard for 2024. Since 2016, we have tallied the results of what we deem to be significant taxpayer wins and losses and analyzed those results. Our entire SALT team hopes that you have found the SALT Scoreboard's content useful. This edition includes discussions of Section 965 income and sourcing of the Ohio Commercial Activity Tax, as well as a spotlight on corporate income tax decisions.

4th quarter 2024

In the fourth quarter of 2024, taxpayers prevailed in 48.8% (21 out of 43) of the significant cases.* In comparison, taxpayers have won 37.0% (51 out of 138) of the significant cases for the year-to-date.

SIGNIFICANT TAXPAYER WINS AND LOSSES

2024 OVERALL RESULTS

51 WINS | 87 LOSSES

QUARTER 1		QUARTER 2		QUARTER 3		QUARTER 4	
11	26	12	25	7	14	21	22
W	L	W	L	W	L	W	L

*Some items may have been decided in a prior quarter but included in the quarter in which we summarized them.

Year-to-date

Taxpayers prevailed in **18** out of **49** significant corporate income and franchise tax cases across the country.

Taxpayers prevailed in **18** out of **48** significant sales and use tax cases across the country.

SIGNIFICANT MULTISTATE DEVELOPMENTS

Rebates

CASE: *Dakota Drug, Inc. v. Commissioner of Revenue*, 13 N.W.3d 387 (Minn. 2024).

SUMMARY: The Minnesota Supreme Court held that a wholesale drug distributor's rebate amounts were not subject to the Wholesale Drug Distributor Tax. Minnesota imposes the tax on the gross revenues from selling prescription drugs. The taxpayer offered rebate programs that provided a discount on future invoices based on a customer's purchases from the prior month/quarter. On assessment, the Commissioner added back the rebate amounts to the taxable gross revenues. The court held in favor of the taxpayer, concluding that because the taxpayer does not have discretion in paying the rebate amounts to customers once they are earned, the taxpayer could not reasonably come into possession of the rebate amounts. The rebate amounts were thus not includable in the taxable gross revenues. View more here.

Section 965 Income

CASE: *Amin v. Director, Division of Taxation*, Dkt. No. 007430-2022 (N.J. Tax Ct. Dec. 31, 2024).

SUMMARY: The New Jersey Tax Court agreed with a New Jersey-based couple that undistributed income reported under IRC Section 965 was not taxable as a dividend under the New Jersey Gross Income Tax. The taxpayers – who did not receive any actual distributions from their interests in controlled foreign corporations – were required to report accumulated earnings under Section 965 on their federal tax filings, but did not report the Section 965 amounts on their New Jersey return. New Jersey asserted that Section 965 income is a deemed dividend taxable under the New Jersey tax. The taxpayers argued that that the income did not meet the definition of taxable dividends under New Jersey law. Agreeing with the taxpayers, the Tax Court concluded that the New Jersey tax does not use federal taxable income as a starting point and only includes as dividends "distributions" in cash or kind. Because the taxpayers did not receive actual distributions, the Section 965 amounts were not taxable dividends. View more here.

Sourcing

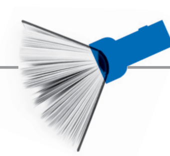
CASE: *Straub Nissan LLC v. Harris*, Case No. 2022-422 (Ohio Bd. Tax App. Oct. 23, 2024).

SUMMARY: The Ohio Board of Tax Appeals held that automobile dealers were not subject to the Ohio Commercial Activity Tax on their receipts from sales of motor vehicles when the purchase, receipt, and delivery of the vehicles take place entirely outside of Ohio. The Department claimed that the West Virginia dealers' gross receipts from sales of motor vehicles to Ohio purchasers must be sourced to Ohio because the purchaser accepted the vehicle in West Virginia before driving it to Ohio. Under Ohio law, gross receipts from sales of tangible personal property are sitused to Ohio "if the property is received in this state by the purchaser." Ohio Rev. Code Ann. § 5751.033(E). The Board agreed with the taxpayer and held that the taxpayer's gross receipts from sales to purchasers who took delivery of the motor vehicles outside of Ohio were properly sourced outside the state. View more here.

Severance Payments

CASE: *Matter of Vora*, Det'n No. 830987 (N.Y. Div. Tax App. Oct. 31, 2024).

SUMMARY: The New York Division of Tax Appeals held that a taxpayer's employment severance payment received over a year after her relocation out of the state was allocable to New York for personal income tax purposes. The taxpayer worked for a New York school before taking leave and moving out-of-state at the end of 2018. The taxpayer was terminated a few months later and signed a severance agreement that provided for a severance payment. The taxpayer testified that her severance package was intended to compensate her for the missed opportunity to work at another school for the school year and for a release of any known or unknown claims against the school. The DTA held that the severance payment was properly sourced to New York under Tax Law § 631 (b)(1)(F) as income received by a nonresident related to a business, trade, profession or occupation previously carried in New York, including termination agreements, and it did not constitute damages received in settlement of litigation. View more here.



Spotlight on Corporate Income Tax

CASE: *Hudson v. Murphy Oil USA, Inc.*, 700 S.W.3d 891 (Ark. 2024).

SUMMARY: The Arkansas Supreme Court held that a taxpayer's interest expense incurred in connection with a corporate spinoff was a nonbusiness expense allocable to its commercial domicile in Arkansas. The taxpayer was spun off from its parent company. As part of the spinoff transaction, the taxpayer incurred debt and corresponding interest expense. It originally apportioned and deducted the interest expense from its apportionable income. Subsequently, the taxpayer amended its Arkansas return to allocate and fully deduct the interest expense, which resulted in a refund. The Arkansas Department of Finance and Administration rejected the refund claim on the basis that the interest expense was properly classified as an apportionable expense. The Arkansas Supreme Court agreed with the taxpayer that the expense was properly allocable to Arkansas because the spinoff was an extraordinary, nonrecurring event. View more here.

CASE: *Alcatel-Lucent USA Inc. v. Commonwealth of Pennsylvania*, 326 A.3d 816 (Pa. 2024).

SUMMARY: The Pennsylvania Supreme Court concluded that its prior decision to invalidate a limitation (or "cap") on net operating loss carryforwards *(Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth*, 171 A.3d 682 (Pa. 2017)) should be applied only prospectively. In so doing, the court rejected its prior holding in *General Motors Corp. v. Commonwealth*, 265 A.3d 353 (Pa. 2021) that *Nextel* applied retroactively. The Court held that the *General Motors* court misapplied the three-factor *Chevron* test for determining retroactivity because it focused only on one of those factors – i.e., whether the decision in question established a new principle of law. The Court found that each of the three factors – (1) whether the decision in question established a new principle of law; (2) whether retroactive application of the decision would forward the operation of the decision; and (3) whether the relevant equities favored prospective application – supported a prospective-only application of *Nextel*. View more here.

CASE: *In re Sunoco, Inc. (R&M) Combined Affiliates*, No. 829399 (N.Y. Tax App. Trib. Nov. 18, 2024).

SUMMARY: The New York Tax Appeals Tribunal determined that an energy company was not entitled to include receipts from buy/sell agreements in its New York receipts factor because they were derived from inventory exchanges, not bona fide sales for monetary consideration. The taxpayer refined and marketed oil, and entered into buy/sell transactions to alleviate costs associated with the transportation of oil to a customer's location. Between 2007 and 2010, the taxpayer included the sell side of these transactions in the denominator of its New York receipts factor on the basis that it constituted sales of tangible personal property to third parties for a price. On appeal from the Division of Taxation's denial, the Tax Appeals Tribunal determined that the buy/sell transactions constituted exchanges of inventory, followed by a sale to an end-customer. In the Tribunal's view, the transactions were not sales for purposes of the taxpayer's apportionment calculation, "as they lacked independent economic substance separate from the end customer sale" and the taxpayer "would not have agreed to sell oil in a buy/sell transaction unless oil was to be acquired in return." View more here.

Meet your SALT team


Todd Betor


Michele Borens


Elizabeth Cha


Jonathan Feldman


Jeffrey Friedman


Ted Friedman


Tim Gustafson


Charles Kearns


Daniel Schlueter


Maria Todorova


Eric Tresh


W. Scott Wright


Eric Coffill


Cyavash Ahmadi


Charles Capouet


Jeremy Gove


Chelsea Marmor


Laurin McDonald


John Ormonde


Alla Raykin


Madison Ball


Periklis Fokaidis


Daniel Hopper


Sebastian Iagrossi


Dennis Jansen


Megan Long


Olivia Dibb

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