EVERSHEDS SUTHERLAND SALT SCOREBOARD Q4 2020

This is the final edition of the Eversheds Sutherland SALT Scoreboard for 2020. 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 our take on the New Mexico Court of Appeals' decision regarding refund claim filing requirements, our insights regarding Massachusetts' corporate excise tax deduction for taxes paid, and a spotlight on Louisiana cases.

4th quarter 2020

In the fourth quarter of 2020, taxpayers prevailed in 45.8% (27 out of 59) of the significant cases.* Taxpayers won 50.0% (7 out of 14) of the significant corporate income tax cases and 38.9% (7 out of 18) of the significant sales and use tax cases. Overall, taxpayers won 40.2% (96 out of 239) of significant 2020 cases. Taxpayers prevailed in more significant cases than in 2018 (36.8%) and 2019 (38.1%), but fewer than in 2016 (43.0%) and 2017 (41.0%).

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

SIGNIFICANT TAXPAYER WINS AND LOSSES

2020 OVERALL RESULTS: 96 WINS, 143 LOSSES

	QUARTER 1	QUARTER 2	QUARTER 3	QUARTER 4
W	20	30	19	27
L	30	37	44	32

Year-to-date

Taxpayers prevailed in 29 out of 75 significant corporate income tax cases across the country

Taxpayers prevailed in 42 out of 115 significant sales and use tax cases across the country

SIGNIFICANT MULTISTATE DEVELOPMENTS

Statute of Limitations

CASE: *CIBL, Inc. & Subsidiaries v. New Mexico Taxation & Revenue Department*, No. A-1-CA-37122 (N.M. Ct. App. Oct. 26, 2020).

SUMMARY: The New Mexico Court of Appeals held that a taxpayer's refund claim was timely even though it did not comply with a regulatory requirement – not found in the relevant statute – prior to the expiration of the statute of limitations for refund claims. Citing New Mexico Supreme Court precedent, the court determined that imposing the additional requirement by regulation would abridge the taxpayer's right to pursue an otherwise timely refund claim. View more information.

Gain from Sale of LLC

CASE: *VAS Holdings & Investments LLC v. Commissioner of Revenue*, Dkt. Nos. C332269, C332270 (Mass. App. Tax Bd. Oct. 23, 2020).

SUMMARY: The Massachusetts Appellate Tax Board ruled that capital gain from a Florida S corporation's sale of a subsidiary Massachusetts LLC was subject to corporate excise tax and nonresident composite tax. The taxpayer contended that the U.S. Constitution's Due Process and Commerce Clauses forbade Massachusetts from taxing the income because the LLC's sale did not involve a minimum connection to Massachusetts or availment of the protections and benefits of Massachusetts law. The S corporation did not have any activities in Massachusetts, and none of its shareholders were Massachusetts residents. However, the Board concluded that the increase in value of the subsidiary was "inextricably connected to and in large measure derived from property and business activities in Massachusetts," which included improved management and staffing of a call center business. The Board ruled that these business activities "necessarily involved availment of the protection, opportunities and benefits given by Massachusetts" and these facets "supplied the requisite connection between Massachusetts and business activities that resulted in the" capital gain. View more information.

Deduction for Taxes Paid

CASE: *Bay State Gas Co. v. Commissioner of Revenue*, 157 N.E.3d 660 (Mass. App. Ct. 2020).

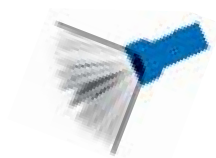
SUMMARY: The Massachusetts Appeals Court held that a taxpayer properly deducted its payment of the Indiana utility receipts tax in computing its Massachusetts corporate excise tax liability. Upon audit, the commissioner asserted that the tax could not be deducted because it was an "income tax." But, at protest, the commissioner argued that the tax is not deductible as a franchise tax for the privilege of doing business. The Appellate Tax Board ruled in favor of the commissioner, holding that the tax was a nondeductible franchise tax. The appeals court reversed, holding that the Indiana tax is essentially a tax on retail sales and, therefore, deductible. The court found that although the tax has some unique aspects, it is in substance "fundamentally similar to transaction taxes on retail sales." View more information.

Telecommunications

CASE: *Mississippi Department of Revenue v. SBC Telecom, Inc.*, 306 So.3d 648 (Miss. 2020).

SUMMARY: The Mississippi Supreme Court ruled in favor of several telecommunications companies filing as part of an affiliated group by approving their computation of Broadband Investment Tax Credits. The credits may be used by a taxpayer to offset up to 50% of its tax liabilities in a given year. The taxpayers filed separate franchise tax returns and a single combined corporate income tax return. On the separate franchise tax returns, each taxpayer calculated its allowable credits by applying the 50% credit cap to the entire affiliated group's aggregate tax liability. The Department disallowed portions of the credits, arguing that, for computing the credit cap, each taxpayer's "tax liability" is that specific taxpayer's reported taxable income in the combined return. The court agreed with the taxpayers, concluding that each taxpayer's "tax liability" is the "sum of the taxpayers' separate franchise tax liability and the total combined income tax liability of the affiliated group." View more information.

Spotlight on Louisiana cases



CASE: *D90 Energy, LLC v. Jefferson Davis Parish Board of Review*, 2020 WL 6145158 (La. 2020).

SUMMARY: The Louisiana Supreme Court held that the Tax Commission did not act in an arbitrary and capricious manner when it rejected a property tax assessor's valuation for ad valorem taxes. In 2012, the taxpayer purchased several wells. It later appealed assessments by a parish assessor who refused to consider the purchase price of the wells when determining the fair market value. The assessor instead relied exclusively on valuation tables. Based on evidence and testimony presented by the taxpayer and applying a regulation that states that "[s]ales, properly documented, should be considered by the assessor as fair market value," the Commission reduced the valuations. On appeal to the state's Supreme Court, the assessor argued he had "the exclusive right to determine fair market value" and that the Commission may only review evidence already submitted to the assessor. However, the Court determined that the Commission may review new evidence and that recent sales should be considered when determining fair market value. View more information.

CASE: *Robinson v. Jeopardy Productions, Inc.*, 2020 WL 6162836 (La. Ct. App. 2020) (unpublished).

SUMMARY: A Louisiana Court of Appeal dismissed the Department of Revenue's petition to collect corporate and franchise taxes on royalties from a nonresident television production company. The taxpayer earned royalties from Louisiana between 2011 and 2014 through agreements to distribute its television show to stations and other agreements to use its trademarks on gaming machines. The Department filed suit to collect franchise and corporate taxes on that income. The taxpayer asserted the state lacked personal jurisdiction because the taxpayer did not transact any business in Louisiana and its contacts through unrelated third parties do not rise to the level of minimum contacts. The court concluded that the "random, fortuitous, and attenuated contacts" with Louisiana, initiated by the independent activities of third parties, were not sufficient to establish personal jurisdiction over the taxpayer. View more information.

CASE: *Boyd Louisiana Racing, Inc. v. Bridges*, 294 So.3d 503 (La. Ct. App. 2020).

SUMMARY: A Louisiana Court of Appeal partly affirmed and partly reversed a district court's rejection of the Louisiana Department of Revenue's franchise tax audit adjustments for a taxpayer that owned and operated casinos and horse-racing facilities. The court found there was a genuine issue of material fact regarding whether fees for management services should be apportioned to Louisiana. The court held that the taxpayer properly adjusted its surplus and undivided profits pursuant to the equity method of accounting and reflected the investments' fair value. The court also ruled that the Department did not improperly characterize the parent's funds furnished by its affiliates as borrowed capital included for purposes of computing franchise tax. The court concluded there was a genuine issue of material fact regarding whether the parent could include losses suffered by its wholly-owned partnership for purposes of the franchise tax business ratio. View more information.

Meet your SALT team


Michele Borens


Nikki Dobay


Jonathan A. Feldman


Jeffrey A. Friedman


Ted W. Friedman


Tim Gustafson


Charles C. Kearns


Todd A. Lard


Breen Schiller


Daniel Schlueter


Maria M. Todorova


Eric S. Tresh


W. Scott Wright


Eric Coffill


Douglas Mo


Open Weaver Banks


Todd G. Betor


Michael Hilkin


Justin Brown


Charles C. Capouet


Elizabeth S. Cha


Peter Hull


Dennis Jansen


Michael J. Kerman


Chris Lee


Lexi Louderback


Chelsea E. Marmor


Hanish S. Patel


Alla Raykin


Annie Rothschild


Samantha K. Trencs