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Annual Conference Scottsdale, AZ

The Worst SALT Decisions
Of The Year

October 25, 2022

2:00 - 3:00 pm



Moderator



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Authority? We Don't Need No Stinking Authority!

- *VAS Holdings & Investments LLC v. Comm'r of Revenue*, 489 Mass. 669, 186 N.E. 3d 1240 (Mass. 2022)
 - “Investee” apportionment is constitutional, but statutory authority did not exist to do so where a unitary relationship does not exist
- On the other hand...
 - *Oracle USA, Inc. v. Commissioner of Revenue*, 487 Mass. 518, 168 N.E. 3d 349 (2021)
 - (Good decision!) DOR lacked statutory authority to require certain documentation

Lift The Curtain To See The Tragedy

- *Goldman Sachs Petershill Fund Offshore Holdings (Delaware) Corp. v. NYC Tax App. Trib.*, 204 A.D. 3d 469 (1st Dep't 2022)
 - Limited partner has nexus due to distributive share of partnership income
 - (Who cares that Department policy was ignored? Not the courts.)
- As to substance, see also:
 - *VAS Holdings & Investments LLC v. Comm'r of Revenue*, 489 Mass. 669, 186 N.E. 3d 1240 (Mass. 2022)
 - *Compare*
 - *Noell Industries, Inc. v. Idaho State Tax Comm'n*, 167 Idaho 367, 470 P.3d 1176 (2020)
 - *Corrigan v. Testa*, 149 Ohio St. 3d 18, 73 N.E.3d 381 (Ohio 2016)

Surprise! You Have Nexus

- *Comm’r of Revenue v. US Auto Parts Network, Inc.*, Appeals Ct. No. 2022-P-0194
 - Seeking retroactive application of *Wayfair*
- *Jon Bargains Inc. v. Wash.*, Dkt. No. 19-078 (Wash. Bd. Tax App., Mar. 30, 2022)
 - Inventory in Amazon’s warehouses triggers nexus even though purported taxpayer was not aware that inventory was stored in state and had no control over where Amazon stored inventory
 - Compare *Online Merchants Guild v. Hassell*, Pa. Commw. Ct., Dkt. No. 179 M.D. 2021 (Sept. 9, 2022)
- *OOMA, Inc. v. Oregon*, 369 Ore. 95, 501 P.3d 520 (Ore. 2021), *cert. denied*, 142 S. Ct. 2839 (June 21, 2022)
 - California VoIP provider had nexus with Oregon

It's Only A Few Measly Bucks

- *Ferrellgas Partners LP v. Dir., Div. of Taxation*, Dkt. A-3904-18T1 (N.J. App. Div. Jan. 13, 2021), cert. denied 142 S. Ct. 1440 (Apr. 4, 2022)
 - Unapportioned per partner fee valid

Could Have Avoided The Problem

- *N.H. v. Mass.*, No. 154, Orig., 141 S. Ct. 2848 (U.S. Sup. Ct., June 28, 2021) (mot. denied)
 - Can a state subject nonresidents to income tax for work performed out of state?
- Cases that could have been avoided:
 - *Buckeye Institute v. Kilgore*, 2021-Ohio-4196, 181 N.E.3d 1272 (Ohio Ct. App., Nov. 30, 2021), *appeal denied*, 166 Ohio St. 3d 1449 (Mar. 29, 2022)
 - *Denison v. Kilgore*, Case No. 21 CV 00848 (Ohio Ct. Common Pleas, Franklin County Apr. 7, 2021)
 - *Schaad v. Adler*, 2022-Ohio-340 (Ohio Ct. App. Feb. 7, 2022), appeal accepted Case No. 2022-0316 (Ohio Sup. Ct. June 7, 2022)
 - *Morsy v. Dumas*, Case No. CV 21 946057 (Ohio Ct. Common Pleas, Cuyahoga County, Sept. 26, 2022)
 - *Curcio v. Hufford*, appeal filed Case No. G-4801 CL-22-1009 (Ohio Ct. App. Sixth App. Dist. Jan. 10, 2022)
 - *Boles, et al v. City of St. Louis*, Case No. 4:21-cv-00378 (E.D. Mo.) (complaint filed Mar. 29, 2021)

“Bad” For Some, Good For Others

- *Synthes USA HQ, Inc. v. Commonwealth*, 236 A.3d 1190 (Pa. Commw. 2020), appeal pending
 - Three-way fight between the Attorney General, the DOR, and the taxpayer
- *ROP Aviation Inc. v. Dir., Division of Taxation*, 32 N.J. Tax 346 (2021)
 - Cannot adjust NOLD once NOL-generating year’s SOL period has closed

Bad Debt, Bad Decision

- *Capital One N.A. v. Colo. Dep't of Revenue*, 2022 COA 16, 509 P.3d 1078 (Colo. Ct. App., Feb. 10, 2022), *cert. denied*, No. 22SC190 (Colo. Sup. Ct. Sept. 6, 2022)
 - Credit for sales tax on uncollectible debt denied

Bad Legislative History Makes Bad Laws, But Who Cares? We Need The Dough

- *Wash. Bankers Assn. v. Washington*, 198 Wn.2d 418, 495 P.3d 808 (2021), *cert. denied*, 142 S. Ct. 2828 (June 13, 2022)
 - Legislative history clearly indicates the law was expected to be paid only by out-of-state banks
 - But, per the courts, that doesn't mean it discriminates against out of state business

Regarding Disregarding Entities

- *Marmon Wire & Cable v. Comm’r of Revenue Services*, Ct. Supp. Ct. Dkt. HHB-CV-21-6064234-S (June 27, 2022)
 - No investment tax credit for member of a disregarded entity
- *BTG Pactual NY Corporation v. State Tax Appeals Tribunal*, 203 App. Div. 1347 (3d Dept. 2022)
 - Disregarded entity’s qualification for beneficial industry apportionment rule did not extend to member



Questions?

