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SUTHERLAND

# SALT SHAKER

Shaking things up in state and local tax.

## Texas Comptroller Gets Rocked: Geophysical Data Taxpayer Wins Apportionment Factor Sourcing Dispute

The Texas Supreme Court held that receipts from licensing data to customers were properly characterized as the sale of an intangible asset and were sourced to the customer's legal domicile under Texas's location of the payor sourcing rule. *TGS-NOPEC Geophysical Co. v. Combs*, 2011 WL 2112763 (May 27, 2011).

TGS collects and stores seismic and geophysical data on subsurface terrains around the world and then, pursuant to a license agreement, licenses the data to its customers. TGS delivers the data to customers in tangible mediums—tapes, printed materials, or film. The Texas Comptroller argued that TGS's receipts from licensing this data to customers in Texas were "licenses used in Texas" as set forth in Tex. Tax Code § 171.103(a)(4) because the revenue was derived from license agreements, and therefore, the receipts should be sourced to Texas (where the licenses were used). While the lower courts agreed with the Comptroller and upheld her assessment against TGS, the Texas Supreme Court reversed and held that TGS had correctly characterized its receipts as those from the sale of an intangible asset and sourced them to the licensee's legal domicile. The Texas Supreme Court determined that TSG sold, not licensed, its data despite the fact that TSG termed its customer agreements "license agreements."

## De-Combining Hoosiers

The Indiana Tax Court held that the Indiana Department of Revenue could not require Rent-A-Center East, Inc. (RAC East) to file a combined return with two of its affiliates. *Rent-A-Center East, Inc. v. Indiana Dep't of Rev*., 49T10-0612-TA-106 (May 27, 2011). Generally, Indiana requires corporations to file income tax returns on a separate entity basis. Indiana, however, permits the Department of Revenue to require entities to file a combined report if: (1) Indiana's standard apportionment provisions do not fairly reflect a taxpayer's income derived from sources within Indiana; and (2) the Department is unable to effectuate an equitable apportionment of the taxpayer's gross income by any other method.

RAC East filed its 2003 Indiana income tax return on a separate entity basis and owed no income tax based on this filing methodology. RAC East paid royalties on an arm's-length basis to RAC West, the entity that owned the trademarks and trade names associated with the Rent-A-Center brand, and paid management fees to RAC Texas. The Indiana Department determined that RAC East was required to file on a combined basis with RAC West and RAC Texas, assessing $513,273, including interest and penalties.

The Indiana Tax Court determined that the Department failed to provide any facts substantiating that the application of combined reporting was appropriate. An Indiana regulation specifically provides that the Department may not require a combined report "unless the department is unable to fairly reflect the taxpayer's adjusted gross income through use of" alternative apportionment or an adjustment of income between related entities. The Department stated that it considered disallowing RAC East's expense deductions to RAC West and RAC Texas, but that computation would nearly double RAC East's tax liability. The Indiana Tax Court held that the Department's argument was nothing more than a hypothetical and not a valid attempt to adjust the taxpayer's income without the use of a combined report.

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**Forecast**

Rain, leading to a legislative mudslide in the West.

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# CALIFORNIA SCREAMING

## Nexus Explosion: California Governor Signs Bill Expanding California Sales Tax Collection Requirements

With all the drama and suspense of a Hollywood movie, California Governor Jerry Brown signed AB X1 28 on June 29—more than two weeks after the bill originally passed the California legislature. AB X1 28 has been controversial because it significantly expands California's sales and use tax collection requirements by substantially incorporating all of the provisions of former AB 153 (click-through nexus), AB 155 (affiliate nexus), and SB 234 (constitutional nexus). Together, these changes combine California's recent efforts to force remote sellers to collect California sales tax. To further complicate matters, AB X1 28 provides that these changes become effective immediately.

AB X1 28 amends California's definition of "retailer engaged in business" for sales and use tax collection purposes, as set forth in Cal. Rev. & Tax Code § 6203, to include three new groups of "retailers" as follows.

### Click-Through Nexus

First, "retailer engaged in business" is revised to include any retailer entering into agreements with a person in the state, for a commission or other consideration, where the person directly or indirectly refers potential purchasers, whether by an Internet-based link or an Internet Web site, or otherwise, to the retailer, provided that the retailer has more than $10,000 in sales from the referrals and more than $500,000 of total sales to California customers within the last 12 months. This provision has been commonly referred to as "click-through nexus" and is similar to laws enacted in several other states (e.g., New York, North Carolina, and Illinois) that attempt to assert that remote/online sellers are subject to a sales tax collection requirement by virtue of their agreements with unrelated third parties in the state. These laws are currently being challenged in New York (the first state to adopt such a provision) in *Amazon.com, LLC, et al. v. New York State Dep't of Taxation and Finance and Overstock.com, Inc. v. New York State Dep't of Taxation and Finance, et al.*, 81 A.D.3d 183, 913 N.Y.S.2d 129 (Nov. 4, 2010). Unlike other states, California's click-through nexus law also contains a provision that provides that "retailer includes an entity affiliated with a retailer within the meaning of Section 1504 of the Internal Revenue Code." This language appears to attempt to require any affiliates of the retailer to also collect California sales and use tax.

California's click-through nexus provision contains an exception that provides that to the extent the retailer purchases advertisements from persons in the state, to be delivered on television, radio, in print, on the Internet, or by any other medium, this relationship is not an agreement that creates a California sales and use tax collection obligation unless: (1) the advertisement revenue paid to the person in the state consists of commissions or other consideration that is based upon sales of tangible personal property; or (2) the person

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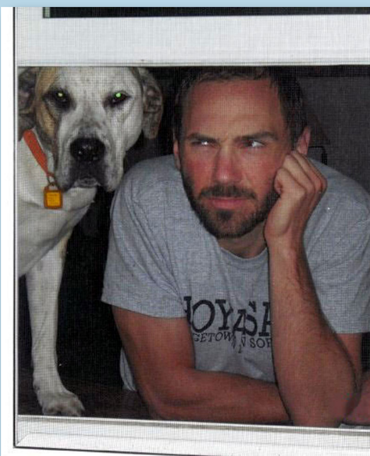
# SALT PET OF THE MONTH

## Mack



Meet Mack, the curly-tailed companion of Sutherland New York Associate Andrew Appleby. Andrew rescued Mack—allegedly an American Bulldog—from a Tennessee shelter. Mack is currently pulling a tour as a guard dog at Andrew's parents' house in Taxachusetts (and yes, she's a huge Red Sox fan like her owner). Mack's bark is definitely worse than her bite. She stands in the window barking and sporting a mean mohawk (also like her owner). But when someone actually comes in the house, Mack is quick to tuck her curly tail and hide behind the couch.

**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.

*continued from page 2*

in the state also directly or indirectly solicits potential customers through use of flyers, newsletters, telephone calls, electronic mail, blogs, microblogs, social networking sites, or other means of direct or indirect solicitation specifically targeted at potential customers in California. A retailer may also be excepted if it can be shown that person did not engage in referrals that would violate the commerce clause of the U.S. Constitution.

### Affiliate Nexus

Second, AB X1 28 also includes within the term "retailer engaged in business" a retailer that is a member of a commonly controlled group and a member of a combined reporting group that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer including, but not limited to, design and development of tangible personal property sold by the retailer, or the solicitation of sales of tangible personal property on behalf of the retailer. California law previously contained a statutory affiliate nexus provision (although different); however, the provision was successfully challenged in *Current, Inc. v. State Bd. of Equalization*, 24 Cal. App.4th 382 (1st Dist. 1994) and ultimately repealed.

### Constitutional Nexus

Finally, AB X1 28 modifies "retailer engaged in business" to include any retailer that has substantial nexus with this state for purposes of the commerce clause of the U.S. Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty. This provision attempts to expand California sales tax collection requirements to the full extent permitted under the U.S. Constitution.

AB X1 28 carries some additional baggage that will likely make it vulnerable to legal challenge. AB X1 28 is a budget trailer bill—it was not part of the main budget bills. Proposition 25, passed last year, modified the California Constitution to reduce the threshold to enact the state budget bill and "other bills providing for appropriations related to the budget bill" from a two-thirds vote of both houses of the Legislature to a majority vote. However, Proposition 26, also passed last year, modified Article XIIIA (Proposition 13) of the California Constitution to expand the types of charges considered to be tax increases subject to a two-thirds vote of both houses of the legislature. As a result of Propositions 25 and 26, there could be ambiguity over whether a bill requires a majority or two-thirds vote. AB X1 28 only passed both houses of the legislature by a majority vote.

## The Verdict Is In: No Jury Trials in California Refund Suits

Thomas Jefferson once described jury trials as "the only anchor yet imagined by man by which a government can be held to the principles of its constitution." Jefferson would likely be disappointed by the California Supreme Court's recent decision holding that taxpayers have no right to demand a jury trial in California income tax refund actions. *Franchise Tax Bd. v. Superior Court*, 2011 WL 2177248 (June 6, 2011).

A beneficiary of an estate filed a refund action to recover more than $15 million in California personal income taxes paid by the estate. The beneficiary demanded a jury trial rather than a bench trial. The trial court and California Court of Appeal both held that the Franchise Tax Board's (FTB) motion to strike the jury trial demand was properly granted. While the state statute authorizing refund suits (Cal. Rev. & Tax Code § 19382) is silent regarding jury trials, the appellate court held that taxpayers have a state constitutional right to a jury trial in tax refund actions because the statutory refund action is of the same nature or class as a historical common law tax refund action.
But the California Supreme Court reversed both lower courts, diving into a lengthy historical evaluation of the nature of a common law tax refund action "as it existed at common law in 1850, when the [California] Constitution was first adopted." The court ultimately found that no right to a jury trial exists because the present statutory tax refund action is "fundamentally different" from the old cause of action against tax collectors.

Perhaps the court was persuaded by the FTB's repeated allegations in its court filings that authorizing jury trials in tax refund actions would "fundamentally alter the practice of law in this field" and that, "encouraged by the prospect of arguing to a jury, taxpayers (especially affluent parties seeking large refunds) may be less likely to agree to any settlement, reducing the flow of revenue from that source."

## E-Commerce: New Jobs or Additional Revenue?

As e-commerce continues to grow, some leaders seek to tax this industry to establish a new revenue stream, while others attempt to attract this industry to create or retain jobs. The South Carolina legislature recently enacted a five-year sales tax exemption for out-of-state retail companies that own or use a distribution facility in the state. SB0036. Proponents argued that the bill would bring jobs into the state, while those opposed to the legislation argued that the bill would create an unlevel playing field slanted against in-state retailers.

On the West Coast, officials in San Francisco were scrambling to retain jobs. San Francisco imposes a 1.5% payroll tax that includes the value of stock options in the tax base. San Francisco Business & Tax Code § 902.1(a). While the tax on stock options had been in place since 2004, apparently the provision has never been enforced. As the demand for talented engineers increased, certain high-profile start-up companies—including Twitter, Yelp, and Zynga—that rely heavily on stock options to compensate employees became concerned that taxation of stock options would be enforced and the ability to retain the employees would be compromised. As a result of the public outcry when a certain high-profile technology company negotiated an incentive package that exempted the company from stock option taxation, San Francisco repealed its inclusion of the value of stock options in the payroll tax base on June 3, 2011.

## Goodwill Hunting for a Property Tax Exemption

The battle over the ad valorem taxation of intangible property rages on in the western states. On June 3, 2011, 15 counties were dealt a heavy blow when the Utah Supreme Court ruled that accounting goodwill is not subject to property tax. *T-Mobile USA, Inc., v. Utah State Tax Comm'n*, Nos. 20090298, 20090308 (June 3, 2011). The accounting goodwill at issue was booked by T-Mobile after Deutsche Telekom AG (T-Mobile's parent company) transferred common stock of another company to T-Mobile. Utah counties argued that this accounting goodwill should be included in T-Mobile's assessed property value on the theory that it constituted taxable tangible property or, alternatively, that it constituted taxable tangible enhancement value.

The Utah Supreme Court disagreed with the counties' position. Utah law exempts "intangible property" from property tax, but the court found that the statutory definition of intangible property does not include accounting goodwill because accounting goodwill is not capable of private ownership separate from tangible property. Likewise, FAS 141 provides that accounting goodwill is not an exchangeable asset that is separate from other assets of an entity. The court also considered whether Utah statutory law was consistent with the state constitution. The Utah Constitution provides that the legislature may determine whether to tax or exempt intangible property, but it precludes double taxation; if intangible property is made subject to property tax, the income from the intangible property cannot be taxed. In this case, the legislature chose to tax the income from intangible property, so the Utah Constitution would exempt intangible property from taxation. Relying on definitions found in case law and *Black's Law Dictionary*, the court held that accounting goodwill was intangible property under the state constitution and was exempt from property tax.

Because intangible property is often valuable, it is little wonder why states and counties are aggressively pursuing taxing it.

# POLICY WONK

## Click It and Tax It: More States Pass Nexus-Expanding Legislation

Even as state legislative sessions begin to wind down, legislatures continue to enact legislation expanding states' sales and use tax collection obligations. Connecticut Governor Malloy signed Senate Bill No. 1239 on May 4, 2011, and House Bill No. 6652 on June 21, 2011. Both bills enacted a click-through nexus provision by expanding Connecticut's definition of "retailer." However, House Bill No. 6652—amended the definition of "retailer" retroactive to May 4, 2011, while the original bill—Senate Bill No. 1239—had a prospective effective date of July 1. It has been reported that the retroactive effective date was in response to Overstock.com's termination of its contracts with its Connecticut associates on May 5th. The new definition of "retailer" for sales tax collection purposes includes: "every person making sales of tangible personal property or services through an agreement with another person located in this state under which such person located in this state, for a commission or other consideration that is based upon the sale of tangible personal property or services by the retailer, directly or indirectly refers potential customers, whether by a link or an Internet web site or otherwise, to the retailer." The retailer must have cumulative gross receipts from sales to customers in the state who are referred to the retailer by all persons entering into these agreements with the retailer in excess of $2,000 during the preceding four quarterly periods.

In Arkansas, Governor Beebe signed Senate Bill 738 on April 1, 2011, expanding its existing affiliate nexus statute, effective June 20, 2011. The bill modifies Ark. Code Ann. § 26-52-117 by creating a presumption that a seller is "engaged in the business of selling tangible personal property or taxable services for use in the state if an affiliated person is subject to the sales and use tax jurisdiction of the state," and one of the following activities exist: (a) the seller sells a similar line of products; (b) the affiliated person advertises or promotes sales for the seller; (c) the affiliated person maintains a place of business to facilitate deliveries; (d) the affiliated person uses similar trademarks, service marks, or trade names; or (e) the affiliated person delivers, installs, assembles, or performs maintenance services for the seller's customers. Sellers can rebut the nexus presumption by demonstrating that the affiliated person's activities in the state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales.

Senate Bill 738 also expanded Arkansas sales tax collection requirements to include "click-through" arrangements. Ark. Code Ann. § 26-52-117 now includes a presumption that a seller who does not have affiliates in Arkansas is "engaged in the business of selling tangible personal property or taxable services for use in the state if the seller enters into an agreement with one or more residents of the state under which the residents, for a commission or other consideration, directly or indirectly refer potential purchasers, whether by a link on an Internet website or otherwise, to the seller." The seller must earn more than $10,000 in gross receipts during the year from sales through such referrals for the provision to apply. Sellers can rebut this presumption by submitting proof that the residents did not engage in any activity within the state that was significantly associated with the seller's ability to establish or maintain the seller's market in the state during the preceding 12 months.

## Colorado Repeals Software Tax Faster Than a Silver Bullet

In what is surely a sign of more good things to come, Colorado repealed its short-lived sales tax on “standardized” (canned) software other than canned software delivered by tangible storage medium. The legislation, House Bill 1293, statutorily reinstates Special Regulation 7 by exempting software delivered or accessed by application service providers (ASP), electronic delivery, and load-and-leave. The bipartisan effort led by House Majority Leader Amy Stephens takes effect July 1, 2012. House Bill 1293 undoes last year’s House Bill 1192, which imposed tax on canned software regardless of delivery method as of March 1, 2010. Part of the so-called “Dirty Dozen” of tax increases proposed in 2010—nine of which were signed into law—House Bill 1293 hopefully represents a turning point for more taxpayer-friendly policies in Colorado. Next stop … the infamous Colorado reporting regime?

# FLAVOR OF THE SOUTH

## Tennessee Tax Has One Company Over a Barrel

The Tennessee Attorney General recently opined that the General Assembly may allow counties to impose a tax on liquor barrels. The proposed privilege tax on the use of liquor barrels would be imposed on any manufacturer of intoxicating liquor that operated before 1950. Tenn. Att’y Gen. Op. No. 11-49 (May 31, 2011). If this proposed tax sounds strange, that is because it is—only one company began distilling whiskey in Tennessee prior to 1950: Jack Daniel’s. Old No. 7 may be to Tennessee what apple pie is to America, but Moore County, the home of the Jack Daniel’s distillery, is expected to generate approximately $5 million per year from the tax.

Despite concluding that a proposed barrel tax would be valid, the Attorney General acknowledged that restricting this tax to particular counties could raise constitutional concerns. Classifications drawn with respect to the barrel tax will not violate the equal protection clause of the Tennessee Constitution if they are drawn for purposes having a reasonable relationship to a legitimate interest, a level of scrutiny similar to rational basis review under the United States Constitution. The Attorney General found a rational basis for restricting the tax to counties that approved liquor manufacturing before 1950 because they are more likely to be the site of large manufacturers that place a heavy burden on local government services. However, the Attorney General did not address the constitutionality of imposing the tax on a single taxpayer, Jack Daniel’s, and not other Tennessee liquor manufacturers. Despite the Attorney General’s approval, ultimately it will be up to the citizens of Moore County to decide whether Jack Daniel’s is a hand they want to bite.

## Tennessee PILOT Captured In Property Tax Net

A Tennessee taxpayer got a rude awakening when a state court ruled it was liable for ad valorem tax on its leasehold interest in tax exempt property despite having an agreement with local governments to make a payment in lieu of taxes. *Creative Label, Inc. v. Tuck*, 2011 Tenn. App. LEXIS 238 (May 11, 2011). The taxpayer, Creative Label, operated a manufacturing and warehousing facility that it leased from a local industrial development board. The lease called for annual payments of $1 for a term of 99 years. The taxpayer entered into payment in lieu of taxes (PILOT) agreements with the county and city in which the facility is located. The court addressed whether PILOTs discharge a lessee’s total liability for ad valorem taxes on its leasehold interest or whether PILOTs only reduce the lessee’s total tax liability by an amount equal to the PILOT amounts.

The court examined the legislative history of the operative Tennessee statutes and noted that the law during the years at issue, 1993 to 1998, was ambiguous with respect to whether PILOTs completely relieve holders of leasehold interests from ad valorem taxation. Finding no clear legislative intent to provide a blanket ad valorem tax exemption for leasehold interests in property owned by industrial development corporations, and relying on the premise that courts are not to imply tax exemptions, the court held that PILOTs reduce the taxable value of a leasehold interest in tax-exempt property but do not discharge a taxpayer’s total ad valorem tax liability.

Thus, before entering into PILOT agreements, taxpayers with leasehold interests in tax-exempt property should be careful to review all relevant ad valorem tax laws and consider whether PILOTs will actually relieve all of their ad valorem tax liability.

## Recently Seen and Heard

**June 1, 2011**
**Stafford Webinar**
**Maria Todorova** on Series LLCs: Emerging Opportunity or Trap for the Unwary

**June 9, 2011**
**TEI San Francisco Annual Meeting**
Marriott Union Square – San Francisco, CA
**Michele Pielsticker** on California Tax Policy

**June 12-14, 2011**
**Republican Legislative Campaign Committee 2011 National Conference**
Naples, FL
**Charlie Kearns** on State Communications Tax Reform

**June 12-15, 2011**
**Federation of Tax Administrators Annual Meeting**
Hilton Omaha – Omaha, NE
**Jeff Friedman** on Cloud Computing – Focus on the Legal and Policy Issues

**June 20-22, 2011**
**Interstate Tax Corporation Interstate Tax Planning Conference**
Jolly Madison Hotel – New York, NY
**Jeff Friedman** on How the Interstate Tax System Works and on Jurisdiction and Nexus

**June 22-25, 2011**
**TEI Region VII Conference**
Hilton Head Marriott Resort – Hilton Head Island, SC
**Jeff Friedman** and **Eric Tresh** on State Tax Roundtable – Planning and Techniques

**June 26-29, 2011**
**Southeastern Association of Tax Administrators Annual Conference**
Galt House – Louisville, KY
**Steve Kranz** on SALT Litigation Hot Topics

**June 26-29, 2011**
**IPT 35th Annual Conference**
JW Marriott San Antonio Hill Country – San Antonio, TX
**Jeff Friedman** on Retroactive Tax Legislation
**Steve Kranz** on Hey You! Get Off of My Cloud!

## Michigan's Tax Roulette Lands on a Corporate Income Tax

After nearly 60 years of experimentation with value added and gross receipts taxes, Michigan has now joined the rank-and-file corporate income tax states through its repeal of the Michigan Business Tax (MBT). Governor Snyder signed the tax package (H.B. 4361, H.B. 4362) into law on May 25, 2011. According to the Council on State Taxation, the legislation takes the state from 30th to 16th in the nation in terms of lowest state and local business tax burden.

The new 6% corporate income tax, effective January 1, 2012, retains many of the same features as the Business Income Tax component of the former MBT, including unitary combined reporting, single sales factor apportionment with market sourcing, a *Finnigan* apportionment rule, and the same tax rate. The MBT factor presence nexus standard is also retained, under which nexus is established if an out-of-state company has physical presence in Michigan for more than one day or actively solicits sales in the state and has Michigan gross receipts of $350,000 or more. The new tax also incorporates the same tax regimes for insurance companies and financial institutions that existed under the MBT. Insurance companies continue to be subject to the greater of a 1.25% tax on gross direct Michigan premiums or the retaliatory tax, and financial institutions will still be subject to tax based on 0.29% of net capital.

The new law introduces a number of changes from the MBT. Most importantly, the Modified Gross Receipts component of the MBT is eliminated. Also, flow-through entities are no longer subject to corporate income tax at the entity level, although new withholding obligations are imposed on flow-through entities with more than $200,000 of post-apportioned business income, and most credits are eliminated. Taxpayers with existing "certificated" credits (e.g., brownfield redevelopment, battery, film, and MEGA credits) may elect to remain subject to the MBT until those credits are fully utilized rather than losing the credits entirely.

While the change is generally favorable to taxpayers, several transition elements are unfair to taxpayers. Net operating loss carryforwards from the MBT, for example, cannot be carried into the new tax and are simply lost, as are many credits (unless a "certificated" credit election is made, as described above). Despite pleas by business groups, the final legislation does not provide any financial reporting transition relief similar to the FAS 109 provision included with the enactment of the MBT in 2007. Taxpayers, particularly those with significant Michigan deferred tax assets, may experience a significant, negative financial statement impact and should closely evaluate the impact of the law change. For calendar year taxpayers, the law's enactment close to the June 30 quarter-end date does not provide much time to perform the analysis.

A final piece of the tax package (H.B. 4479) prospectively eliminates the Multistate Tax Compact (MTC) apportionment election "beginning January 1, 2011." Although the Department has been challenging the MTC election claimed by many taxpayers under the MBT, this legislation arguably demonstrates an implicit acknowledgement that the election was valid in prior years (particularly given the Michigan legislature's historic propensity to retroactively deny tax benefits). Taxpayers that did not make the election in prior years should evaluate the possibility of amending their returns to do so.

# SHOW ME THE MONEY

## Broker-Dealer Dodges Michigan Nexus

The Michigan Supreme Court recently reversed an odd Michigan Court of Appeals decision, which held that an out-of-state securities broker-dealer had nexus sufficient to subject it to the Single Business Tax (SBT) by virtue of the activities of in-state, independent registered representatives who contracted with the broker-dealer to facilitate trades for the representatives' customers on out-of-state security exchanges. *Vestax Sec. Corp. v. Dep't of Treasury*, 2011 Mich. LEXIS 945 (June 1, 2011), *rev'g*, 2010 Mich. App. LEXIS 2093 (Oct. 28, 2010).

Vestax Securities Corporation, an out-of-state securities broker-dealer company, had contractual relationships with independent registered representatives who used Vestax to facilitate securities transactions. These independent representatives had in-state customers who would request a securities trade from the representative, and the representative, in turn, would rely on Vestax to execute the transaction on a national securities exchange outside of Michigan.

The Michigan Court of Appeals ruled that the in-state physical presence of the representatives in Michigan was on behalf of Vestax and created in-state business for Vestax, resulting in substantial nexus sufficient under the Commerce Clause for SBT purposes. The appellate court noted at the outset that constitutional "substantial nexus" is met when a taxpayer's in-state physical presence is more than a "slightest presence," manifested by the presence of "property or conduct of economic activities in the taxing State performed by the vendor's personnel or on its behalf." The court reasoned that the representatives conducted business in Michigan on behalf of the taxpayer as its agents because they were required to use Vestax in order to process their customers' securities transactions.

The Michigan Supreme Court reversed the appellate court's judgment on the grounds that the evidentiary record did not support the determination that the representatives were Vestax's agents or that there was a substantial nexus between Michigan and Vestax's business activity.

# WHAT'S UP?

## Nevada Targeting High Rollers

Nevada Senate Bill 136 marks the first time that a state is explicitly targeting large-volume holders for special treatment under the unclaimed property laws.

The Nevada Senate Bill provides that if an unclaimed property holder reports more than $10 million in presumed abandoned property in a reporting year, the dormancy period is shortened from three years to two years. Such property would include, among other property:

- any stock or other equity interest in a business association or financial organization;
- any debt of a business association or financial organization other than a bearer bond or an original issue discount bond;
- a demand, saving, or time deposit, including a deposit that is automatically renewable; and
- any money or credits owed to a customer as a result of a retail business transaction.

Providing differing unclaimed property treatment to the same property, based on the status or size of the holder, is a new twist.

Is there a rational reason for making this distinction? The differing treatment of holders seems ripe for an Equal Protection Clause challenge. Of course, the most interesting question is: What will the states come up with next?

## Come See Us

**July 28, 2011**
**IPT-TEI SALT Day**
Santa Clara, CA
**Michele Pielsticker** on The California Train Wreck: When Politics and Tax Policy Collide

**July 24-28, 2011**
**Multistate Tax Commission 44th Annual Conference**
Grouse Mountain Lodge – Whitefish, MT
**Jeff Friedman** on Use Tax Collection Issues and Developments

**August 7, 2011**
**National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation of Communications and Electronic Commerce**
San Antonio, TX
**Steve Kranz** will present

**August 12, 2011**
**Manufacturers' Education Council 2011 Ohio Tax Course**
Cherry Valley Lodge – Granville, OH
**Diann Smith** on Major Trends and Multistate Tax Issues and Developments in Nexus

**August 23, 2011**
**Lorman Education Services Seminar: Sales and Use Tax in DC**
Four Points by Sheraton – Washington, DC
**Maria Eberle** on Affiliate Nexus Updates

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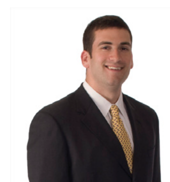
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