MOFO
NEW YORK TAX INSIGHTS
Volume 5, Issue 2, February 2014

IN THIS ISSUE

EDITORS

Hollis L. Hyans
hhyans@mofo.com

Irwin M. Slomka
islomka@mofo.com

NEW YORK STATE + LOCAL TAX GROUP

Craig B. Fields
cfields@mofo.com

Paul H. Frankel
pfrankel@mofo.com

Hollis L. Hyans
hhyans@mofo.com

Mitchell A. Newmark
mnewmark@mofo.com

R. Gregory Roberts
rroberts@mofo.com

Irwin M. Slomka
islomka@mofo.com

Open Weaver Banks
obanks@mofo.com

Amy F. Nogid
anogid@mofo.com

Michael A. Pearl
mpearl@mofo.com

Richard C. Call
rcall@mofo.com

Michael J. Hilkin
mhilkin@mofo.com

Nicole L. Johnson
njohnson@mofo.com

Kara M. Kraman
kkraman@mofo.com

William T. Pardue
wpardue@mofo.com

Rebecca M. Ulich
rulich@mofo.com

MORRISON FOERSTER

GOVERNOR CUOMO RELEASES AMBITIOUS 2014-15 EXECUTIVE BUDGET

By Irwin M. Slomka

On January 21, 2014, New York State Governor Andrew Cuomo released the 2014-2015 Executive Budget. It contains an ambitious and potentially far-reaching set of tax proposals, many of which are consistent with recommendations recently made by the Governor's New York State Tax Reform & Fairness Commission and the New York State Tax Relief Commission. The deadline for enactment of the budget is April 1, 2014.

Corporate Tax Reform. The most sweeping set of proposals involves the repeal of the nearly 30-year-old New York State bank tax (and certain license taxes), subjecting banks to Article 9-A, and making far-reaching changes to Article 9-A itself. If enacted, the changes would be effective for tax years beginning after 2014. The proposals include a rate reduction from 7.1% to 6.5%, which would not go into effect until 2016. These proposed changes are the culmination of a Department-led initiative that began more than four years ago. Among the many changes being proposed are the following:

- *Unitary Filing.* The proposals adopt full "Water's Edge" unitary combined filing, while permitting corporate taxpayers to make a binding seven-year election to include in their combined returns all non-unitary members where a 50% ownership test is satisfied. This change would eliminate the distortion requirement for combination, as well as the concept of substantial intercorporate transactions as a basis for finding distortion. It would also, for the first time, provide for the combination of alien corporations that have Federal effectively connected income.

- *Economic Nexus.* The proposals adopt an "economic nexus" standard for taxation, based on corporations "deriving receipts from activity in" New York, with designated annual thresholds for receipts that would trigger nexus.

- *Repeal of Subsidiary Capital Treatment.* The proposals eliminate the 100% exclusion of income, gains and losses from subsidiary capital, which has been in place since the inception of Article 9-A in its present form in 1944. However, dividends from unitary corporations not included in a combined Article 9-A return would be exempt from tax.

- *Change in Taxation of Investment Income.* The proposals provide a scaled-back category of "investment income" – redefined to include only stock in non-unitary corporations held for more than six months or stock that is not a "qualified financial instrument" – which would be exempt from tax. The "investment allocation percentage" for apportioning investment income would be eliminated.

continued on page 2

- *Market State Sourcing Rules*. A new detailed regime would be implemented for apportioning business income, using a single sales factor based on market state/customer sourcing rules, with prescribed hierarchies for determining market/customer location. This regime would include, for the first time, rules for sourcing receipts from digital products.
- *Limits on the Investment Tax Credit*. The proposals scale back the investment tax credit for manufacturing, and completely repeal it for the financial services industry.
- *Expansion of Special Treatment for Manufacturers*. The proposals carve out special treatment for qualified New York manufacturers that conduct no business in the downstate Metropolitan Transportation District region that would completely eliminate the tax on income (currently, qualified manufacturing corporations in the State are taxed at a reduced rate on income). The proposals would also allow a 20% real property tax credit to qualified manufacturers in the State.

Of anecdotal interest – and reflecting the reality of so-called "temporary" taxes – the proposals also remove the word "Temporary" from the 17% "Temporary Metropolitan Transportation Business Tax" surcharge which was enacted *in 1982*.

The most sweeping set of proposals involves the repeal of the nearly 30-year-old New York State bank tax . . . , subjecting banks to Article 9-A, and making far-reaching changes to Article 9-A itself.

Other Budget Bill Items. The proposals contain various other changes. One proposal would comprehensively reform the estate tax by, among other things, increasing the exclusion threshold from $1 million through a four-year phase-in to the Federal exemption amount (currently $5.25 million), as well as phasing in a reduction of the top estate tax rate from 16% to 10%. Another long-overdue proposal would repeal the stock transfer tax, which has been completely refundable since 1981 and has served no discernible purpose since 2008, when the New York City Municipal Assistance Corporation bonds it secured were retired.

Although the proposals adopt several of the Governor's Tax Reform and Tax Relief Commissions' suggestions, many recommendations did not make it into the bill, including the creation of 14-day "safe harbor" before a nonresident individual working in the State becomes subject to New York State personal income tax.

THIRD DEPARTMENT HOLDS TRANSFER OF CONDEMNED PROPERTY DID NOT OCCUR UNTIL AFTER GAINS TAX WAS REPEALED

By Hollis L. Hyans

Reversing a decision of the New York State Tax Appeals Tribunal, the Appellate Division, Third Department, has held that the former real property transfer gains tax could not be imposed on the transfer of property to which the City of New York obtained title in a condemnation proceeding, since the City did not compensate the taxpayer for the property until years after the gains tax was repealed. *Matter of Malba Cove Properties, Inc. v. Tax App. Trib.*, 2014 NY Slip Op. 00145 (3d Dep't Jan. 9, 2014).

Underlying Transaction. In 1995, the City sought title to vacant waterfront land in Queens in order to build Powell's Cove Environmental Waterfront Park (the "Park"), which it was required to create by a consent decree entered into with the Department of Environmental Conservation. While claiming it already owned the property, the City brought a condemnation proceeding naming as parties Malba Cove Properties ("Malba") and the State of New York. In 1996, the City was permitted to withdraw its condemnation proceeding as it applied to the State, and its petition to condemn the property was granted. The condemnation order provided that title to the subject property would vest in the City as of February 29, 1996, the date it filed the order and acquisition map.

Although the Park was completed in 2001, years of litigation continued, in which Malba sought payment for the property and the City claimed that it already owned the property. In October 2001, the State trial court held that Malba had established title to the property, and ordered the City to make an advance payment. The City continued to contest that order, and did not make any advance payment until May 2005, when Malba received $880,000 plus interest, and then another $10,000 in April 2006. In February 2007, the value of the property as of the February 1996 vesting date was determined to be $9,067,480, which the City was directed to pay to Malba. After further appeals, payment was finally made by the City to Malba in September 2008.

Meanwhile, the gains tax was repealed by the State Legislature, effective June 16, 1996. After finally receiving payment in September 2008, Malba paid the gains tax and interest under protest and challenged the imposition of the tax, claiming that the tax did not apply to a payment it did not receive until eight years after the gains tax was eliminated.

continued on page 3

Decision Below. The Tax Appeals Tribunal, affirming an Administrative Law Judge determination, upheld the imposition of the tax. *Matter of Malba Cove Properties Inc.*, DTA No. 823671. (N.Y.S. Div. of Tax App., May 17, 2012). The Tribunal relied on the court determination of title and found that the City took Malba's property on February 29, 1996, and the property was valued as of that date. The Tribunal rejected Malba's attempt to rely on the "open transaction rule" to argue that the transaction remained "open" until the condemnation proceeding concluded, because the value of the property was determined by the court to be the value on the date of the 1996 transfer.

[I]t was "not clear that there would be a payment of any compensation until the City lost the aspect of the litigation in which it claimed title."

Decision on Appeal. The Appellate Division held that, in this unusual situation, where the condemnor both claimed existing title to the property and also sought condemnation, it was "not clear that there would be a payment of any compensation until the City lost the aspect of the litigation in which it claimed title." The court rejected the Tribunal's reliance on *Matter of Forty Second St. Co. v. Tax Appeals Trib.*, 219 A.D.2d 98 (3d Dep't 1996), because in that case the fact that there would be a payment was settled at the outset, so that the property value was fixed as of the taking, with only the *amount* of that value in dispute. In Malba's case, it was not clear that Malba would receive any compensation at all until the title issue had been determined. Since that determination did not occur until after the gains tax statute had been repeated, the court held that the tax could not be imposed.

Additional Insights

As the appeals court noted, if the City had been successful in its position that it had owned the property from the outset, no transfer would have taken place, so there was no certainty that any entity would owe a tax at the time of the 1996 order. By proceeding as it did, the City was able to acquire undisputed title, while it continued to litigate the issue of whether it already owned the property.

Given its finding that the tax did not apply, the court did not need to reach the question of how much interest would have been owed. However, the Tribunal – since it upheld the tax – did reach that issue, and sustained the full amount of interest sought by the City, despite noting that it was "sympathetic" to Malba's position that it should not have been required to pay interest over the years in which the City contested Malba's ownership, noting that "it would appear that the City advanced a questionable position in its litigation for almost a decade."

TRIAL COURT UPHOLDS CONSTITUTIONALITY OF TREATING NONRESIDENTS' GAIN ON 338(H)(10) TRANSACTION AS NEW YORK SOURCE INCOME

By Hollis L. Hyans

A judge in the Supreme Court, Albany County, has upheld the constitutionality of statutory changes made to Tax Law § 632(a)(2) in August 2010 treating as New York source income gain on the sale of stock where an election was made to treat the sale as an asset sale pursuant to Internal Revenue Code § 338(h)(10). *Burton v. New York State Dep't of Taxation and Finance*, 2014 NY Slip Op. 24004 (Sup. Ct. Albany Cnty. Jan. 6, 2014). The judge rejected the argument that the statute violated the State constitutional provision that intangible personal property is deemed to be located at the domicile of the owner.

A group of plaintiffs, Mr. and Mrs. Burton and others, were residents of Tennessee and shareholders in an S corporation incorporated in Tennessee. In 2007 they sold their stock to a third party, and as part of the sale the S corporation and the buyer made a joint election under IRC § 338(h)(10) to treat the transaction as an asset sale. For Federal income tax purposes the S corporation reported a gain of over $88 million, but on its New York S Corporation return it did not treat the gain as New York income. The Department of Taxation and Finance determined that the gain constituted New York source income, and the plaintiffs paid the tax, claimed a refund, and then brought a declaratory judgment action in court when the refund claim was denied.

The Burtons claimed that the sale of the stock was not taxable as New York source income, since Article 16, section 3 of the New York State Constitution provides that "intangible personal property within the state not employed in carrying on any business therein by the owner shall be deemed to be located at the domicile of the owner of purposes of taxation." There was no contention here that the stock was employed in a business carried on in New York, so the only issue was whether the election under IRC § 338(h)(10) changed the nature of the transaction from a nontaxable sale of stock to a taxable sale of assets.

Background. In 2009, an Administrative Law Judge had held that, under the version of Tax Law § 632(a)(2) as it then existed, nonresident shareholders did not have New York-

continued on page 4

source income when they sold their stock in an S corporation under an installment agreement. *Matter of Mintz*, DTA Nos. 821807 & 821806 (N.Y.S. Div. of Tax. App., June 4, 2009). A similar decision had been reached by the Tax Appeals Tribunal in *Matter of Baum*, DTA Nos. 820837 & 820838 (N.Y.S. Tax App. Trib. Feb. 12, 2009), which involved an election made pursuant to § 338(h)(10), and in which the Tribunal concluded that the transaction was "a simple stock sale," and the "fictitious deemed asset sale and the deemed distribution" were not applicable for New York purposes. The Department disagreed with those interpretations, although it did not seek to appeal the *Mintz* decision (and it had no ability to appeal the adverse decision in *Baum)*.

In August 2010, at the behest of the Department, Tax Law § 632(a)(2) was amended to specifically provide that gain recognized by a nonresident shareholder of an S corporation resulting from a sale where a § 338(h)(10) election was made will be treated as New York-source income based on the S corporation's New York business allocation percentage for the year in which the election was made. The amendment was made applicable to years beginning on or after January 1, 2007, that were open to assessment or refund. In *Caprio v. New York State Dep't of Taxation & Fin.*, 2012 NY Slip Op. 22273 (Sup. Ct. N.Y. Cnty. Sept. 22, 2012), *app. transf. to App. Div.*, 20 N.Y. 3d 1030 (2013), the Supreme Court, New York County, rejected a challenge to the retroactivity of the statutory change, holding that the 2010 amendment to § 632(a)(2) could be applied to 2007 and 2008 tax returns, finding that the amendment did not create a new tax, but was simply a "'curative or clarifying measure…'" intended to "clarify and ratify what the Department… had long believed was already clear in the existing statutes."

Burton decision. Against that background, the trial court in *Burton* took only one paragraph to determine there was no conflict between the revised statute and the State Constitutional prohibition against taxing a nonresident's intangible personal property. The court found that the plaintiffs had made an election to treat the transaction as an asset sale, and that the statutory change simply conformed "the characterization of the transaction on both the Federal and New York State returns." Since the legislation was intended to clarify the Department's position that *Baum* and *Mintz* had been incorrectly decided, the court determined that for the Department "to insist on conformity in the characterization of the sales event, as memorialized in the 2010 amendment…does not constitute an unconstitutional change in the law."

Additional Insights

This decision does not provide much analysis of why the court concluded there was no violation of the Constitutional direction against taxing the intangible income of non-New York residents, other than the reference to the plaintiffs having made an election. It may be that the court concluded that, by voluntarily electing treatment under § 338(h)(10), the plaintiffs had waived any ability to rely on the State Constitutional protection for intangible income of nonresidents. However, that election had been made at the time of the sale in 2007, so it would be difficult to conclude that a knowing waiver had been made of a statutory provision not enacted until 2010. The decision also notes that, at oral argument, plaintiff's counsel withdrew the argument challenging the retroactive application of the 2010 amendment, presumably in light of the *Caprio* decision discussed above. The appeal in *Caprio* was argued on November 12, 2013, and as of this writing no decision has been issued.

STATE RULES ON PRODUCTION CREDIT ALLOCATION METHOD FOR BROKER-DEALERS

by Kara M. Kraman

A recent Advisory Opinion holds that a corporate taxpayer may source certain principal transactions undertaken by related disregarded entities that are securities broker-dealers using the production credit method of allocation. *Advisory Opinion*, TSB-A-13(11)C (N.Y.S. Dep't of Taxation & Fin., Dec. 20, 2013). The Department allowed that allocation method even though the corporate taxpayer itself was not a broker-dealer.

The production credit method of allocation for broker-dealers sources gross income derived from principal transactions to New York State to the extent that the "production credits" for each transaction are awarded to the broker-dealer's branches, offices or employees within the State. "Production credits" are credits granted under the taxpayer's internal accounting system to measure the amount of revenue that should be awarded to a particular branch, office or employee. Under Article 9-A, broker-dealers have the option of using either the production credit method or customer location to source their income from principal transactions.

In 2004, a corporate taxpayer ("Parent") – which was not a broker-dealer – owned several single-member limited liability companies ("SMLLCs") that were registered broker-dealers. The SMLLCs were treated as disregarded entities for tax purposes. In 2005, as a result of a restructuring, instead of owning the SMLLCs directly, Parent owned 89% of a partnership that owned the SMLLCs ("Partnership").

One of the broker-dealer SMLLCs, "Tradeco," was in the business of facilitating "matched principal transactions." In a matched principal transaction, Tradeco would anonymously match up buyers and sellers by purchasing a security from a seller, and then immediately reselling that same security to a buyer. Tradeco's income was derived from the spread between

continued on page 5

the price it paid for the security and the price at which it resold the security. In each transaction, Tradeco acted as the principal, took legal title to the securities and bore the risk of loss.

Although Parent was not a registered broker-dealer, the Department ruled that it could use the production credit method to source its income from the matched principal transactions. For the period when Parent owned the SMLLCs directly, it was entitled to be treated as registered broker-dealer for purposes of the allocation rules because it was the sole member of the disregarded entities that were registered broker-dealers. In addition, the Department ruled that the production credit method was available even when the Parent did not own the SMLLCs directly, but instead owned them through its 89% ownership interest in the Partnership that owned the SMLLCs. The Department applied the aggregate method of taxation of corporate partners, under which "a partner is treated as participating in the partnership's transactions and activities." 20 NYCRR 3-13.1(b). Under the Article 9-A regulations, a corporate partner in a partnership that is a registered broker-dealer utilizes the allocation rules for broker-dealers for its distributive share of the receipts from the partnership. 20 NYCRR 4-4.7(c).

The Department also ruled that the described transactions were "principal transactions" qualifying for the production credit method of allocation. A "principal transaction" is defined as "one where the registered broker-dealer is acting as principal for its own account, rather than as an agent for the customer. *Technical Memorandum*, TSB-M-02(5)C (N.Y.S. Dep't of Taxation & Fin., Sept. 24, 2002). Under the facts presented, the gross income derived from Tradeco's matched principal transactions could be sourced by Parent using the production credit method so long as the income was solely from the spread between the purchase and sale prices. Significantly, the Department ruled that if a portion of the income derived from a matched principal transaction was in the nature of a commission, or was attributable to any source other than the spread between the purchase and sale price, the production credit method could not be used. Moreover, the Department noted that on audit, Parent bore the burden to establish that all income sourced pursuant to the production credit method of allocation (i) qualified as gross income from principal transactions, and (ii) that the production credit method used by Parent was designed in material part to attribute gross income to the offices, branches and employees responsible for generating that income.

Additional Insights

The Advisory Opinion makes clear that the production credit method under Article 9-A can be used even where the corporate taxpayer is itself not a registered broker-dealer, but owns broker-dealer disregarded entities directly or through a partnership. It should be kept in mind that broker-dealers are not required to use the production credit method for principal transactions, but instead may elect to source income from principal transactions based on the location of the customers to whom the securities are sold. Tax Law § 210.3(a)(9)(A)(iii)(II).

ALJ FINDS GRAPHIC DESIGN FIRM FURNISHED ADVERTISING SERVICES EXEMPT FROM SALES TAX

By Irwin M. Slomka

A recent ALJ decision addresses interesting questions about the scope of the sales tax exemption for advertising services, as well as the proof necessary to qualify for sale for resale treatment where resale certificates are not timely furnished. *Matter of BorsaWallace, Inc.*, *et al.*, DTA Nos. 824173, 824174, 824175 (N.Y.S. Div. of Tax App., Jan. 9, 2014).

Advertising Services. The sales tax is imposed on sales of tangible personal property, but only on enumerated services. The tax law expressly provides that receipts from the service of "advertising" are not subject to sales tax. Tax Law § 1105(c)(1). BorsaWallace, Inc. provides graphic design services in New York. Typically, public relations or advertising firms retain BorsaWallace to create promotional materials (referred to as "kits"), as well as materials such as letters, banners and posters. Those firms, in turn, use the promotional materials in public relations, marketing or advertising campaigns for their own clients. More than 80% of BorsaWallace's business is from DeVreis, a public relations agency that furnished public relations and marketing services to clients for such brands as Pepperidge Farm, Tide, Tropicana and Crest. DeVreis is not an advertising agency, which typically places advertising with media outlets.

The decision goes into considerable detail regarding the role of BorsaWallace in furnishing graphic design services, its dealings with public relations firms such as DeVreis, and the relationships between public relations firms and their own clients. In summary, BorsaWallace designed promotional material and retained third-party printers to produce samples for DeVreis. BorsaWallace retained ownership of the designs, but not of the actual promotional kits and other materials.

BorsaWallace billed DeVreis for its design services, as well as for its cost of printing the kits and other promotional materials, including an unspecified markup on its printing costs. DeVries, in turn, billed its own customers, and included the amounts billed by BorsaWallace. For some period of time, DeVreis marked up the cost of BorsaWallace's charges when invoicing its own clients.

continued on page 6

The Department of Taxation & Finance conducted an audit of BorsaWallace's sales tax returns, and concluded that additional sales tax was due. Allegedly based on informal advice obtained from the Department, BorsaWallace had been collecting sales tax on its charges for the printing of kits and other materials, but did not charge sales tax for design services if DeVreis could not alter the design. Where the design could be altered – as in the case of a PowerPoint presentation – BorsaWallace charged sales tax on both the design work and the printing. At the hearing, BorsaWallace submitted customer invoices reflecting sales of the promotional kits, which also showed that sales tax was charged on the printing charges, but not on its design services. BorsaWallace claimed that it was providing a nontaxable advertising service and thus was entitled to a sales tax refund. The Department contended that BorsaWallace was not an advertising agency and therefore did not qualify for the advertising exclusion.

The ALJ agreed with BorsaWallace that its activities constituted a nontaxable advertising service. Based on the nature of the services and the commonly accepted dictionary definition of "advertising," the ALJ concluded that "advertising" included design services. However, since BorsaWallace was seeking a refund of sales taxes already collected and remitted, the ALJ held that it was not entitled to a refund because it had not refunded the sales tax to DeVreis and other clients.

The ALJ agreed with BorsaWallace that its activities constituted a nontaxable advertising service. . . [and] concluded that "advertising" included design services.

Sales for Resale. BorsaWallace also claimed that its sales of kits and other promotional items to DeVreis qualified as nontaxable sales for resale. Neither DeVreis nor other public relations firms furnished BorsaWallace with a sales tax resale certificate. The Department agreed that the marketing kits were tangible personal property, but disputed that they were being resold. It claimed, among other things, that BorsaWallace did not present any client invoices showing that the clients collected sales tax on their sales to their own clients. The Department also noted that DeVreis had agreed to pay sales tax on its purchases from BorsaWallace as part of a Department audit for an overlapping tax period, allegedly evidencing that DeVreis did not believe it was making purchases for resale.

The ALJ held that the sales of kits and promotional materials to DeVreis qualified as nontaxable sales for resale. The ALJ cited *Savemart v. State Tax Comm'n*, 105 A.D.2d 1001 (3d Dep't 1984), *lv. denied* 65 N.Y.2d 604 (1985), where the Appellate Division rejected an electronics retailer's resale claim for sales of excess inventory of TV sets to a distributor, and noted that the taxpayer not only did not receive a resale certificate from the distributor, but did not provide "testimony or evidence to indicate what [the purchaser] intended to or did do with the televisions" purchased. In this case, the taxpayer offered the credible testimony of a former DeVreis official, who explained how the charges for the promotional kits were passed along to DeVreis' own clients.

Additional Insights

Although ALJ determinations are not precedential, the decision is instructive in applying a common sense definition of "advertising" services, and in declining to apply an interpretation that elevates form over substance. While the decision denied the resulting sales tax refunds for BorsaWallace on procedural grounds, the analysis in the decision would appear to support the elimination of sales tax on the services prospectively. With regard to the resale issue, the decision confirms that the failure to timely obtain a resale certificate does not preclude a taxpayer from proving that it made nontaxable sales for resale.

INSIGHTS IN BRIEF

Highest Court Lets Stand Decision That MTA Payroll Tax is Constitutional

On January 14, 2014, the Court of Appeals declined to review, without comment, the decision of the Appellate Division that the Metropolitan Commuter Transportation Mobility Tax Law, commonly known as the MTA Payroll Tax, was properly enacted and therefore constitutional. *Mangano v. Silver, et al.,* Mo. No. 2013-1154 (N.Y. Jan. 14, 2014). The Appellate Division had reversed the trial court and rejected the argument that the statute, which imposes a payroll tax on employers and self-employed individuals to raise funds for the improvement of commuter transportation in the New York City area, had been invalidly enacted without a "home rule" message. Such a message is not required when a special law serves a "substantial state concern," and the appeals court had found that improvement of commuter mass transit in the New York City area has already been held to be such a substantial state concern.

ALJ Rejects Sales Tax Exemption Claims Made by Horse Stable

An Administrative Law Judge rejected a Long Island horse boarding facility's claim that its sales of horses and fees for horse boarding were exempt from sales tax. *Matters of Theodore P. Demetriou and New Windsor Stables, Inc.*, DTA Nos. 824430 and 824431 (N.Y.S. Div. of Tax App., Dec. 12, 2013). Although the tax law exempts sales of tangible personal property (including sales of horses) by a commercial horse boarding operation, the ALJ found that the exemption did not apply to charges for boarding horses. The ALJ also held that the evidentiary record did not prove that the taxpayer's horse boarding charges qualified for the sales tax exemption available to horse breeding operations, and did not demonstrate entitlement to another exemption available for sales of racehorses less than 24 months old.

Court Orders NYC to Grant a Property Tax Exemption to a Nonprofit Drug Policy Organization

A New York County trial court has found that the New York City Department of Finance improperly denied a tax exemption for charitable organizations to the Drug Policy Alliance (the "Alliance"), a not-for-profit organization formed to educate the public about drug policy issues. *Matter of Drug Policy Alliance v. New York City Tax Comm'n*, 2013 NY Slip Op. 33273 (Sup. Ct. N.Y. Cnty. Dec. 16, 2013). The Alliance claimed that its activities are similar to those of other organizations, such as the NAACP Legal Defense Fund and the Catholic Diocese of New York – which are exempt from property taxes – and that the denial was impermissibly based on the subject matter of its advocacy. The court found that the denial of the exemption was arbitrary or irrational, since the Alliance had already been granted tax exempt status by Federal, State and City authorities; similar organizations had been granted tax exemptions; and the Department was applying too narrow a definition of an appropriate educational purpose.

LAW360 NAMED MORRISON & FOERSTER AMONG ITS "PRACTICE GROUPS OF THE YEAR" FOR TAX.

"ONE OF THE BEST NATIONAL FIRMS IN THE AREA OF STATE INCOME TAXATION."
– *LEGAL 500* US 2013

CHAMBERS GLOBAL HAS NAMED MORRISON & FOERSTER ITS 2013 USA LAW FIRM OF THE YEAR. "THE US-BASED GLOBAL GIANT," THE EDITORS SAID IN ANNOUNCING THE HONOR, "HAS EXPERIENCED ONE OF THE MOST SUCCESSFUL YEARS IN ITS LONG AND ILLUSTRIOUS HISTORY."

U.S. NEWS – BEST LAWYERS® "BEST LAW FIRMS" 2013 RANKED OUR NEW YORK TAX LITIGATION, AND TAX LAW PRACTICES TIER 1