

MVP: MoFo's Mitchell Newmark

By James Nani

Law360 (November 15, 2019, 5:16 PM EST) -- Mitchell Newmark of Morrison & Foerster LLP's state and local tax group successfully argued an appeal for Lorillard Tobacco Co. in the New Jersey Tax Court and crafted the strategy and arguments that led the same court to reject a nearly \$5 million tax assessment levied against automaker Daimler AG, earning him a spot as one of Law360's 2019 Tax MVPs.

HIS BIGGEST ACCOMPLISHMENT OF THE PAST YEAR:

In a far-reaching win, Newmark said he was representing Lorillard Tobacco Co. when the New Jersey Tax Court handed down a decision that could apply to any pairing of companies dealing with related-party transactions. The court found in February that New Jersey's tax department improperly denied the tobacco company's attempt to deduct \$1.4 million in royalty payments to a subsidiary that was added back to its net income. The court granted Lorillard Tobacco summary judgment.

"It is a far-reaching decision that can apply to all related-party transactions — intellectual property, royalty transactions," Newmark said.

He said New Jersey wanted to be able to make all of the recipients pay tax in New Jersey and make all of the payors lose their deductions and get paid twice. The New Jersey Division of Taxation had only allowed the company to partially deduct its royalty payments to Lorillard Subsidiary Co. LLC from 2002 to 2005, citing a state regulation aimed at curtailing tax avoidance that only permits a partial deduction if the payment amounts don't match a subsidiary's reported amounts. But the tax court said discrepancies in the income allocation weren't enough to prove tax avoidance on their own.

"So for everybody that's got the situation, they now have the opportunity to fight back against the double-dip," Newmark said.

The case is currently at the state appellate division.

The MVP logo features the letters 'MVP' in a blue, serif font. A red circle is drawn around the 'V', with a red arrow pointing upwards from the bottom right of the circle.

Mitchell Newmark
Morrison & Foerster

HIS BIGGEST CHALLENGE THIS YEAR:

Elsewhere in New Jersey Tax Court, Newmark worked on the difficult task of crafting the focus and argument strategy for an appeal in a case involving automaker Daimler. In February, the court ruled that intercompany payments from Daimler's North American financing arm to affiliates do not constitute a tax and need not be added back into the financing arm's New Jersey taxable income.

Newmark said it was challenging to formulate a strategy in the complex tax case before Judge Mary Siobhan Brennan, whose background was in general civil litigation rather than tax.

"For me, the big challenge was analyzing and framing the case and the argument in a clear and concise way that made sense whether or not the judge had a tax background," Newmark said. "Would it just make sense? Would it just flow? Would it just feel logical?"

HIS PROUDEST MOMENT THIS YEAR:

It's not every day that a lawyer gets to argue a case in front of a former colleague and mentor, but Newmark did exactly that in June when he went before Roberta Moseley Nero, president and commissioner of the New York State Tax Appeals Tribunal. Moseley Nero was of counsel in the New York City office of Morrison & Foerster before she was appointed as commissioner in 2013.

"She's just so bright and so good and I was just so proud to go in," Newmark said.

The case Newmark argued in front of Moseley Nero involved a man from New Zealand who was found liable for more than \$2 million in New York income taxes because he wrongly filed his 2014 tax returns as a nonresident, the New York Division of Tax Appeals said in a decision in January this year. A decision is expected in the case in December, Newmark said.

HIS ADVICE FOR JUNIOR ATTORNEYS:

For those just starting out in the legal tax world, Newmark emphasized tenacity and the ability to work on all client issues with intellectual curiosity and determination.

"Do for them what you would want somebody to do for you if you were hiring them," Newmark said.

Newmark also pointed to a quote that inspires him by Winston Churchill, which is to never give in "except to convictions of honor and good sense." Junior attorneys would also be wise to take a page out of Churchill's book, Newmark said, and should believe in their positions and never give in. That's the spirit Newmark strives for on every case.

"One of my adversaries described me as like a dog on a bone," Newmark said.

— *As told to James Nani*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2019 MVP winners after reviewing nearly 900 submissions.