MOFO
NEW YORK TAX INSIGHTS

Volume 5, Issue 1, January 2014

IN THIS ISSUE

The Top 10 New York Tax Highlights of 2013
Page 1

New York City Permitted to Collect Hotel Tax Prior to Explicit Statutory Authority
Page 3

Appellate Division Reinstates Tax Exemption for Public Parking Facilities
Page 4

State Tribunal Rejects Taxpayer's Attempt to Apply Federal TEFRA Requirements to Article 9-A
Page 5

City Hotel Tax Rate Reinstated Avoiding Hotel Industry Dilemma
Page 6

Insights in Brief
Page 6

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

Nicole L. Johnson
njohnson@mofo.com

Kara M. Kraman
kkraman@mofo.com

William T. Pardue
wpardue@mofo.com

Rebecca M. Ulich
rulich@mofo.com

THE TOP 10 NEW YORK TAX HIGHLIGHTS OF 2013

By Irwin M. Slomka

The New Year 2014 is now upon us, and this is the time of year for "Top 10" lists. We now look back with our own list of the Top 10 New York tax highlights of 2013.

1. U.S. Supreme Court lets stand the Court of Appeals decision upholding the New York "Amazon" law.

In what for now is the final word on New York's controversial "click-through" nexus law enacted in 2008, the United States Supreme Court declined to hear a facial constitutionality challenge brought by Internet sellers Amazon and Overstock. *Overstock.com., Inc. v. N.Y.S. Dep't of Taxation & Fin.*, No. 13-252 (Dec. 2, 2013); *Amazon.com LLC v. N.Y.S. Dep't of Taxation & Fin.*, No. 13-259 (Dec. 2, 2013). Earlier in 2013, the New York Court of Appeals upheld the law, which creates a presumption of nexus in New York for sales tax purposes based on an out-of-state vendor's compensation arrangement with in-State residents for referrals of potential customers through a link on the resident's web site. The New York law has spawned similar laws throughout the United States, and the Supreme Court's refusal to hear the appeal, while having no legal significance on the merits, will likely encourage even more states to do the same. The next battle will be over whether Congress enacts federal legislation (currently known as the "Marketplace Fairness Act") that requires all but the smallest Internet retailers to collect sales tax. For now, however, what was once a "bright line" test for sales tax collection nexus under *National Bellas Hess* and *Quill* has become a lot blurrier.

2. Governor Cuomo's Tax Reform Commission issues long-awaited report.

In November 2013, New York Governor Cuomo's Tax Reform Commission, appointed in late 2012, submitted its report of recommendations for changes to the State's tax system and administration. The commission's mandate was to make a "revenue neutral" set of recommendations to reform the New York tax system. The report turned out to be fairly

continued on page 2

comprehensive, consisting of five "packages" of suggestions, covering sales tax, estate tax, corporate tax, real property tax and tax simplification. It provided the Governor with a broad-based "menu" of options, and it appears likely that the Governor will include at least some of those recommendations in his upcoming Budget Bill for the State's 2014-15 fiscal year. In December 2013, the Governor's *other* tax commission – the New York State Tax Relief Commission, formed just two months earlier — released its own report that contained just a few targeted tax relief proposals, none of which involved reducing New York's high personal income tax rates.

3. *Qui tam* action allowed to continue against Sprint Nextel.

A July 2013 decision served to confirm taxpayer concerns over the far-reaching consequences of the 2010 legislative expansion of the New York False Claims Act to include private whistleblower *qui tam* tax actions *State of New York v. Sprint Nextel Corp., et al.*, 970 N.Y.S.2d.164 (N.Y. Sup. Ct., N.Y. County 2013). In this decision, a New York State Supreme Court judge ruled that State Attorney General Schneiderman could proceed with a $100 million lawsuit against Sprint Nextel for its alleged failure to collect sales tax on certain wireless calling plans. The suit, which began as a *qui tam* action filed by an unnamed whistleblower but has now been taken over by the Attorney General, is the first tax action brought under the New York False Claims Act. There remain deep concerns over the law, which subjects taxpayers that may have taken good faith filing positions, to potentially aggressive *qui tam* actions outside the normal course of established tax audit procedures, in a public record judicial proceeding, and without the normal protections of tax secrecy. By allowing the AG to proceed with the action against Sprint Nextel, the decision is a foreboding of what future tax administration may look like for some businesses, unless the False Claims Act is amended. In that regard, *State v. Sprint Nextel*, although still in its early stages, may be one of the most important cases to watch in 2014.

4. *Knowledge Learning* decision raises questions about the ability to justify combination through actual distortion.

One of the more problematic developments in recent years stems from the State Tax Department's efforts to decombine corporate filers under Article 9-A, where there are no substantial intercorporate transactions. Such decombination is sometimes pursued even where the same group has filed on a combined basis for many years. In the first decision issued by the Division of Tax Appeals interpreting the post-2007 combined return law, an ALJ held that under the facts presented the corporate affiliates could not file combined returns. *Matter of Knowledge Learning Corp., et al.*, DTA Nos. 823962 & 823963 (N.Y.S. Div. of Tax App., June 27, 2013). But it was the ALJ's response in a footnote to what she referred to as the taxpayer's "alternative argument" regarding actual distortion ("distortion is not the proper analysis in light of the 2007 statutory amendment") that generated the most controversy. Since the 2007 statutory amendments principally changed the law regarding the *presumption of distortion*, and did not change the law on *actual distortion*, the State Tribunal will undoubtedly be asked to clarify whether actual distortion continues to be a basis for combination, whether it is being advanced by the Department or by a taxpayer.

5. New York courts uphold constitutionality of MTA Payroll Tax.

Perhaps few were surprised this past June when the Appellate Division reversed a lower court decision and upheld the constitutionality of the MTA payroll tax in the face of an action by Nassau County claiming that the law was invalidly enacted without a "home rule" message. In October 2013, the Court of Appeals dismissed the appeal on the grounds that no constitutional issue was involved. *Mangano v. Silver, et al.*, 107 A.D.3d 956 (2d Dep't 2013), *appeal dismissed*, 22 N.Y.3d 892 (2013). The Appellate Division, Third Department, has now rejected a separate challenge, this one brought by Rockland County, which claimed that the county did not receive MTA transit services commensurate with the tax being imposed. *Vanderhoef v. Silver*, No. 516180, 2013 NY Slip Op. 8486 (3d Dep't, Dec. 19, 2013).

6. Significant changes made to related-member royalty add-back law.

At the urging of the State Tax Department, legislation was enacted in 2013 that significantly amended the State and City royalty add-back for tax years beginning on or after January 1, 2013. S. 2609D, A.3009D, Ch. 59, N.Y. Laws of 2013. Modeled after a Multistate Tax Commission model add-back statute, the changes included the elimination of the royalty income exclusion where the related payor is subject to the royalty expense add-back. The Governor's memorandum in support of the amendments referred to the royalty income exclusion as a "loophole," a favorite term of government proponents seeking passage of remedial legislation.

7. U.S. Supreme Court denies certiorari in New York "strip club" case.

In October 2013, the United States Supreme Court denied review of the New York Court of Appeals decision in *Matter of 677 New Loudon Corp. v. N.Y.S. Tax App. Trib.,* 19 N.Y.3d 1058 (2012), *cert. denied*, 134 S. Ct. 422 (2013). Previously, in a decision that (not surprisingly) generated a fair amount of attention outside the world of state and local taxation, the Court of Appeals had upheld the imposition of sales tax on admission charges at a strip club, rejecting taxpayer claims that the charges were for musical arts or choreographed performances.

continued on page 3

8. New York State "temporary" higher personal income tax rates extended for three more years.

In an action that generated surprisingly little controversy, the higher "temporary" New York State personal income rates, set to expire after 2014, were extended for another three years (the years 2015-2017). Part FF, Ch. 59, N.Y. Laws of 2013. The highest tax rate on individuals (currently 8.82%) had been scheduled to return to the 6.85% rate that was in effect prior to 2006. Although it may not make everyone's Top 10, it was certainly a reminder that "temporary" tax increases are often anything but temporary.

9. Drivers' licenses can now be suspended for failure to pay tax.

Part P of Chapter 59 of the N.Y. Laws of 2013 authorizes the Department of Taxation & Finance and the Department of Motor Vehicles to establish a drivers' license suspension program that will allow for suspending, with proper notice, the New York State drivers' licenses of certain taxpayers who owe past-due tax liabilities of at least $10,000.

10. Roberta Moseley Nero appointed President of State Tax Tribunal.

In an appointment that bodes well for the workings of the New York State Tax Appeals Tribunal, this past October, Governor Cuomo appointed Roberta Moseley Nero to serve as President of the State Tribunal, less than four months after she was confirmed by the New York State Senate to become one of the Tribunal's three Commissioners. Long-time followers of the State Tribunal will recall that Ms. Nero served as its Secretary for many years when it was headed by former Tribunal President John P. Dugan.

NEW YORK CITY PERMITTED TO COLLECT HOTEL TAX PRIOR TO EXPLICIT STATUTORY AUTHORITY

By Amy F. Nogid

New York's Court of Appeals reversed the Appellate Division, First Department, and upheld application of the City's hotel room occupancy tax ("HROT") to all charges by hotel room remarketers, finding that the City had the authority to amend its statute to impose tax on both the amount actually paid to the hotels and additional amounts paid to the remarketers by their customers. *Expedia, Inc. et al. v. City of New York Dep't of Fin. et al.*, No. 180, 2013 NY Slip. Op. 7759 (N.Y. Ct. App. Nov. 21, 2013), *rev'g* 89 A.D.3d 640 (1st Dep't 2011).

In 2009, a City statute ("Local Law 43") was enacted applying the HROT to all amounts collected by third-party travel intermediaries ("TPIs"), instead of just to the amounts that the TPIs actually paid to hotels as rent. A group of TPIs, including Expedia, Hotels.com, Orbitz and Travelocity.com, challenged the statute, arguing that it was unconstitutional, in that the City lacked the required State authority under the Enabling Legislation, CLS Uncons. Laws of N.Y., Ch. 288-C § 1(1), to expand the HROT. The TPIs also argued that the HROT could only be collected from hotel operators and not remarketers, and that the tax applied only to the amount actually paid to hotels for the right to occupy, and not to the amounts the TPIs received from their customers, which included amounts that did not constitute "rent" under the HROT.

[T]he City had the authority to amend its statute to impose tax on both the amount actually paid to the hotels and additional amounts paid to the remarketers.

The Court rejected the TPIs' "facial constitutionality" argument – the only argument before the Court – that the City did not have State authorization to revise the City's HROT, finding that the Enabling Legislation gave the City "broad authority." The Court found no merit in the TPIs' position that, because the State Legislature had initially rejected a 2007 bill that would have authorized the taxation of total booking fees, similar to Local Law 43, and did not pass legislation explicitly modifying the City's HROT until 2010, such events confirm that the original Enabling Legislation was not broad enough to cover the City's 2009 statute.

Two judges dissented in part, finding that, viewing the law "through the prism of the Enabling Legislation," the City exceeded its authority by taxing the portion of the fees received by the TPIs in excess of the amounts actually paid to the hotels. The dissent concluded that Local Law 43 "plainly exceeded the enabling statute" because the State had not authorized the City to tax "service and/or booking fees that are a condition of occupancy." The dissent also criticized the majority's failure to follow "black letter law," which requires that tax imposition statutes be narrowly construed.

The City views the decision as "cement[ing] the City's power to draft legislation addressing technological innovations that may not have been foreseeable when an enabling statute was drafted, but which fall within its original purpose." Press Release, *State's Highest Court Rules That New York City Can Collect Hotel Taxes from Online Travel Companies* (N.Y.C. Law Dep't, Office of Corp. Counsel, Nov. 21, 2013).

Additional Insights.

While the decision is worthy of note, and the City estimates that "several million dollars" in tax is at stake, its practical impact is

continued on page 4

limited since it only applies to transactions occurring between September 1, 2009 and September 1, 2010, when the new State legislation went into effect. *See Amendments Affecting the Application of Sales Tax to Rent Received for Hotel Occupancy by Room Remarketers*, TSB-M-10(10)S (N.Y.S. Dep't of Taxation and Fin., Aug. 13, 2010); *Tax on Hotel Room Occupancy Revised for Room Remarketers*, New York City Finance Memorandum No. 10-3 (Rev.) (N.Y.C. Dep't of Fin., July 28, 2011).

However, the Court's deference to the City and the City's expansive view of its authority may have troubling implications. While changing modes of business operation and technological advances have caused headaches for both taxpayers and tax administrators, good government and sound tax administration require clear authority before taxes are imposed. Attempts to "conform" old tax provisions to apply to new technology should be accomplished explicitly and not via disputed interpretations of existing law to broaden the tax base. Allowing the City virtually unfettered authority "to craft and re-craft the details of the HROT to meet changing circumstances and emerging technologies," as the City claimed in its brief, is a dangerous precedent. Changes to tax imposition statutes should be made by the State Legislature as intended by Article XVI, section 1 of New York's Constitution.

Although the TPIs' "as applied" challenge to Local Law 43, which alleges that the former statute simply did not include as payment for rent the additional fees charged by TPIs, has not yet been addressed, it is unclear whether the TPIs will continue to pursue their challenge.

APPELLATE DIVISION REINSTATES TAX EXEMPTION FOR PUBLIC PARKING FACILITIES

By Hollis L. Hyans

Reversing a decision by a Queens County Supreme Court Judge, the Appellate Division, Second Department, has held that a charitable organization is entitled to a continued exemption from real property taxes for the public parking facilities it owns and operates. *Matter of Greater Jamaica Dev. Corp. v. New York City Tax Commission,* (2d Dep't, 111 A.D.3d 2013).

Greater Jamaica Development Corporation ("GJDC") was formed in 1967 as a charitable not-for-profit corporation, with a mission to promote the development of the business district of Jamaica, Queens. In 1998, it created Jamaica First Parking, LLC ("JFP"), to acquire, develop and operate parking facilities in Jamaica on a nonprofit basis. JFP operated five facilities, four of which had formerly been operated by the City Department of Transportation, and the fifth of which was built on vacant land purchased from the City and partly financed by a City grant. The parking facilities offered significantly lower rates than comparable for-profit facilities.

The IRS had concluded in 2001 that JFP's operation of the parking facilities was "substantially related" to GJDC's charitable purposes, and therefore would not adversely impact GJDC's federal tax-exempt status, and in 2007, the City Department of Finance granted an exemption from real property tax under RPTL § 420-a. However, in February 2011, the Department revoked the tax exemption on the grounds that the operation of parking facilities was not a charitable activity as contemplated by RPTL § 420-a. GJDC and JFP challenged the revocation, and the Supreme Court, New York's trial court, while noting that it might have been inclined to find a charitable purpose, upheld the revocation as having a rational basis.

The Appellate Division reversed. It began by noting that the critical issue is whether the "primary or principal use of the property is a tax-exempt purpose," and that generally the taxpayer bears the burden of proving that the property is exempt. However, where the municipality is trying to withdraw a previously granted tax exemption, the burden shifts and it is the municipality that must prove the property is subject to tax. This could be done, for instance, by showing a change in the law, a change in the use of the property, or that the exemption had been erroneously awarded initially.

Here, the court found that the City had done none of those things. While there is no precise definition of "charitable purpose," courts had found that such activities can include relief of poverty and advancement of municipal purposes. The court also found that, when an organization's tax-exempt status has been recognized by the IRS, that recognition creates a "'presumptive showing of entitlement to [the] exemption." The court also relied on GJDC's Certificate of Incorporation, and JFP's Certificate of Formation, both evincing charitable purposes, and specifically found that the use of the public parking facilities was consistent with the entities' exempt purpose, since they helped attract visitors and business to the Jamaica business district. The court concluded that the lower court's denial of the exemption was arbitrary and capricious and therefore should be reversed.

The Department has filed a notice of intent to appeal, indicating it intends to seek permission from the Court of Appeals to file an appeal.

Additional Insights.

It is generally true that a taxpayer should be prepared to shoulder the burden of proving that it is entitled to a tax exemption, since tax exemptions are commonly strictly construed *against* taxpayers, while tax imposition statutes are usually construed strictly against the government. Under RPTL § 420-a, a taxpayer claiming a property tax exemption

continued on page 5

must also show that the property is being used for a charitable purpose. However, when an exemption has been granted, and the government is trying to revoke it, the burden shifts to the government entity to prove its position, and this proposition is well established in New York law. Other than noting the Department of Finance's reversal of the exemption on the basis that operating a public parking facility is not a charitable purpose, the decision does not specify what grounds, if any, the City was relying on to explain why the previously granted exemption should be revoked, or how any facts or laws had changed since the exemption was originally granted. In the absence of such explanation, the exemption was reinstated.

STATE TRIBUNAL REJECTS TAXPAYER'S ATTEMPT TO APPLY FEDERAL TEFRA REQUIREMENTS TO ARTICLE 9-A

By Kara M. Kraman

The New York State Tax Appeals Tribunal has rejected a corporate partner's attempt, on federal conformity grounds, to apply certain federal Tax Equity and Fiscal Responsibility Act ("TEFRA") rules for adjusting the partner's distributive share of partnership items on its Article 9-A returns. *Matter of Wilmorite, Inc.*, DTA No. 823537 (N.Y.S. Tax App. Trib., Nov. 14, 2013). The Tribunal decision provides insight into the limits of federal conformity.

Wilmorite, Inc. was the sole parent of Rocter Property, Inc. ("Rocter"), which was the general partner of a partnership ("Rochwil") that generated Qualified Empire Zone Enterprise ("QEZE") credits. Wilmorite filed combined Article 9-A returns with Rocter for the tax years 2003, 2004 and 2005, in which it claimed Rocter's pro rata share of the unused QEZE credits – unused because Rochwil, as a flow-through entity, did not pay New York tax. Following a review of Wilmorite's refund claims, the Department of Taxation & Finance ("Department") adjusted the tax credit claims and partially denied the refunds, and an ALJ upheld the partial denial against Wilmorite.

On appeal from the adverse ALJ determination, Wilmorite argued, among other things, that federal law barred the denial of the refunds. Citing Tax Law § 607(a), which provides that terms used in the personal income tax law "shall have the same meaning as when used in a comparable context" in the federal income tax laws, Wilmorite argued that IRC §§ 6221 and 6229 (regarding federal audits of partnerships) were effectively incorporated into the New York Tax Law. IRC § 6221 provides that "the tax treatment of any partnership item . . . shall be determined at the partnership level," and IRC § 6229 imposes a three year statute of limitations on "assessing any tax" attributable to a partnership item. Based on those IRC provisions, Wilmorite claimed that the Department's refund denials were invalid because: (i) they were not issued to the partnership, but to the corporate partner, which is prohibited by IRC § 6221; and (ii) it was too late for the Department to deny the tax credits issue to the partnership that generated them (Rochwil) because the three-year statute of limitations against Rochwil had expired.

The Tribunal found these arguments unavailing, just as the ALJ had, and upheld the refund denials. First, the Tribunal held that the doctrine of federal conformity as reflected in Tax Law § 607(a) does not sanction the "wholesale importation" of federal laws into New York law. Instead, it merely "permit[s] construing terms in New York tax laws with the same meanings" as terms used in "parallel" federal statutes. The Tribunal pointed out that there were no parallel provisions in the Tax Law that required the Department to adjust partnership items only at the partnership level. The Tribunal also noted that the taxpayer did not establish that Rochwil was a partnership that was subject to the federal TEFRA provisions.

The Tribunal decision establishes that the principle of federal conformity does not mean that federal procedural rules are automatically incorporated into New York law.

Second, the Tribunal held that even if the three-year statute of limitations for assessments under IRC § 6229 was applicable in New York, that limitation would not matter in this case because the Department did not *assess* tax; rather, it disallowed claims for refunds. Under the New York tax law, there is no limitation period for the review of refund claims. Instead, the Tax Law allows a taxpayer to presume a refund claim has been denied if the Department takes no action on the claim within six months.

Additional Insights.

While it is axiomatic that "terms" used in the New York income tax laws should be interpreted in the same way as when used in comparable context for federal purposes (unless a different meaning is expressly intended), it is unclear what "term" in the New York law the taxpayer here was seeking to interpret. The Tribunal decision establishes that the principle of federal conformity does not mean that federal procedural rules are automatically incorporated into New York law. As noted above, there is no limit on the amount of time the Department may take to review a refund claim, but if it does not act within six months, the taxpayer may deem the claim denied and appeal that denial. The flip side of this rule is that if the

continued on page 6

Department does not act on a refund claim, there is no limit on the taxpayer's time to appeal the "deemed" denial. In contrast, where the Department issues a notice of disallowance, the taxpayer must protest the disallowance within two years.

CITY HOTEL TAX RATE REINSTATED AVOIDING HOTEL INDUSTRY DILEMMA

By: Irwin M. Slomka

On December 19, 2013, the New York City Council approved legislation to reinstate the higher 5.875% hotel room occupancy tax rate, thus avoiding a dilemma that the New York City hotel industry faced over the past few weeks.

For several years, the City hotel room occupancy tax (the subject of the *Expedia* decision discussed on pages 3-4 of this issue) has been imposed at the rate of 5.875% of the daily room occupancy rent (plus an additional per room tax). It is in addition to the New York State and City sales tax on hotel room occupancies. The 5.875% hotel tax rate, a "temporary" rate increase over the former 5% rate, had been in place since 2009. This higher rate expired as scheduled on November 30, 2013, and reverted back to 5%. This past fall, former Mayor Bloomberg sought local legislation to extend the .875% surcharge beyond November 30. The problem was that December 1 came and went with no legislation to re-enact the higher rate.

Since hotels typically pass along the hotel tax to their guests, beginning December 1, they faced a dilemma: should they continue to bill guests at the higher 5.875% rate in anticipation of retroactive legislation being enacted? Or should they charge guests the actual 5% rate, with the knowledge that if the higher rate were retroactively imposed, the hotels will be unable to pass along that .875% increase to guests retroactively? The action by the City Council, which re-imposes the higher rate effective December 20, 2013, rather than retroactively to December 1, avoids the dilemma. On December 30, 2013, Mayor Bloomberg, in one of his final acts as Mayor, signed the new legislation into law.

INSIGHTS IN BRIEF

Tax Preparers Required to Register in New York State

The New York State Department of Taxation and Finance has adopted a new regulation on requirements for tax return preparers, which covers eligibility standards, continuing professional education requirements and competency examinations, grounds for discipline, and duties and responsibilities of all tax preparers. 20 NYCRR § 2600 *et seq*. It applies to anyone who is paid to prepare at least one New York State return as a tax return preparer, or who helps to issue or administer a refund anticipation loan or refund anticipation check (which are mechanisms to expedite receipt of funds by taxpayers who are expecting tax refunds). Commercial tax preparers are required to pay a $100 registration fee, and everyone registering as a tax preparer must certify either that he or she has no child support obligations, or that if such obligations exist, the person is not more than four months in arrears unless one of the exceptions is met.

Mortgage Finance Company Held Subject to Special Assessment on Generation of Hazardous Waste.

In *Matter of DVL, Inc.*, DTA No. 824165 (N.Y.S. Div. of Tax App., Nov. 21, 2013), a New York State Administrative Law Judge ruled that a mortgage finance company became subject to the special assessment on generation of hazardous waste when it excavated and disposed of contaminated soil as part of a site remediation process. The company argued that it had merely acquired the property by foreclosure, had no involvement in creation of the hazardous waste, and that it had acted properly and responsibly in promptly identifying the risks and entering into a "work plan" for a remediation program approved by the Department of Environmental Conservation. The ALJ rejected these arguments, noting that the company could have made an application to the Brownfield Cleanup Program which, if accepted, would have avoided the imposition of a special assessment, and that the company's arguments concerning public policy should be addressed to the Legislature.

ALJ Upholds License Fee Assessment Against California Corporation

An Administrative Law Judge has ruled that a corporation formed under California law was subject to the New York State per-share license fee at the rate imposed on no-par value stock, even though its stock had a deemed $1.00 per share par value under California law. *Matter of Frog Design, Inc.*, DTA No. 824375 (N.Y.S. Div. of Tax App., Nov. 27, 2013). According to the ALJ, since the corporation's articles of incorporation did not state a par value for the stock, the Department was not required to apply California law to find a deemed par value, which would have triggered a lower tax rate. The ALJ also rejected the taxpayer's Commerce Clause challenge, but did find that the taxpayer had reasonable cause justifying the abatement of penalties. The taxpayer has filed an exception with the Tax Appeals Tribunal.

Tax Relief Commission Issues Final Report of Recommendations

The New York State Tax Relief Commission, formed in October 2013 to make targeted tax relief proposals, has issued its Final Report. N.Y.S. Tax Relief Commission, *Final Report* (Dec. 2013). Among its recommendations are a two-year program to freeze residential property taxes outside of New York City for homeowners in jurisdictions that abide by a 2% property tax cap, a further reduction in the State corporate tax rate on income for "upstate manufacturers" (from the current 3.25% rate to 2.5%), and a reduction of the current corporate tax rate from 7.1% to 6.5%. It also recommended the elimination of certain "nuisance" taxes, such as the stock transfer tax.

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

ABB v. Missouri
Albany International Corp. v. Wisconsin
Allied-Signal, Inc. v. New Jersey
AE Outfitters Retail v. Indiana
American Power Conversion Corp. v. Rhode Island
Citicorp v. California
Citicorp v. Maryland
Clorox v. New Jersey
Colgate Palmolive Co. v. California
Consolidated Freightways v. California
Container Corp. v. California
Crestron v. New Jersey
Current, Inc. v. California
Deluxe Corp. v. California
DIRECTV, Inc. v. Indiana
DIRECTV, Inc. v. New Jersey
Dow Chemical Company v. Illinois
DuPont v. Michigan
EchoStar v. New York
Express, Inc. v. New York
Farmer Bros. v. California
General Motors v. Denver
GMRI, Inc. (Red Lobster, Olive Garden) v. California
GTE v. Kentucky
Hair Club of America v. New York
Hallmark v. New York
Hercules Inc. v. Illinois
Hercules Inc. v. Kansas
Hercules Inc. v. Maryland
Hercules Inc. v. Minnesota
Hoechst Celanese v. California
Home Depot v. California
Hunt-Wesson Inc. v. California
IGT v. New Jersey
Intel Corp. v. New Mexico
Kohl's v. Indiana
Kroger v. Colorado
Lorillard Licensing Company v. New Jersey
McGraw-Hill, Inc. v. New York
MCI Airsignal, Inc. v. California
McLane v. Colorado
Mead v. Illinois
Meredith v. New York
Nabisco v. Oregon
National Med, Inc. v. Modesto
Nerac, Inc. v. New York
NewChannels Corp. v. New York
OfficeMax v. New York
Osram v. Pennsylvania
Panhandle Eastern Pipeline Co. v. Kansas
Pier 39 v. San Francisco
Powerex Corp. v. Oregon
Reynolds Metals Company v. Michigan
Reynolds Metals Company v. New York
R.J. Reynolds Tobacco Co. v. New York
San Francisco Giants v. San Francisco
Science Applications International Corporation v. Maryland
Scioto Insurance Company v. Oklahoma
Sears, Roebuck and Co. v. New York
Shell Oil Company v. California
Sherwin-Williams v. Massachusetts
Sparks Nuggett v. Nevada
Sprint/Boost v. Los Angeles
Tate & Lyle v. Alabama
Toys "R" Us-NYTEX, Inc. v. New York City
Union Carbide Corp. v. North Carolina
United States Tobacco v. California
UPS v. New Jersey
USV Pharmaceutical Corp. v. New York
USX Corp. v. Kentucky
Verizon Yellow Pages v. New York
Wendy's International, v. Illinois
Wendy's International v. Virginia
Whirlpool Properties v. New Jersey
W.R. Grace & Co.—Conn. v. Massachusetts
W.R. Grace & Co. v. Michigan
W.R. Grace & Co. v. New York
W.R. Grace & Co. v. Wisconsin

WHEN THESE COMPANIES HAD DIFFICULT STATE TAX CASES, THEY SOUGHT OUT MORRISON & FOERSTER LAWYERS.

SHOULDN'T YOU?

For more information, please contact
Craig B. Fields at (212) 468-8193

MORRISON
FOERSTER