

HOW TO MINIMIZE  
**STATE TAXATION OF  
MULTISTATE BUSINESS**

FALL 2011

THE SEMINARS

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October 24-25  
Stamford Marriott Hotel & Spa  
Stamford, CT

**Advanced Sales & Use ..... p. 3**

October 26-27  
Stamford Marriott Hotel & Spa  
Stamford, CT

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November 7-8	November 14-15	December 5-6
Embassy Suites Dallas Dallas, TX	Hotel Intercontinental Chicago, IL	Courtyard Washington Embassy Row Washington, DC

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# ADVANCED INTERSTATE

October 24-25  
Stamford Marriott Hotel & Spa  
Stamford, CT

■ *State and local practitioners, including returning alumni, will obtain up-to-date analyses of current developments in state income taxation of multistate business and explore the planning opportunities arising therefrom. Delivery Method: Group-Live. No advance preparation required. However, prior attendance at a three-day Interstate Tax Planning conference, this course, or two years' experience in the field are suggested as prerequisites. Estimated continuing education credit: 16 based on a 50-minute hour, including 1 hour for ethics; 13.33 based on a 60-minute hour, including 1 hour for ethics.*

## Jurisdiction and Nexus

The latest interpretations by the states and the Multistate Tax Commission of *Wrigley* and *Quill*. State tax treatment of passive investment companies, financial institutions, service companies, credit card and Internet activities. Effect of having sales reps working at home, officers residing in-state, deliveries in company and third-party trucks, leased or mobile property, in-state affiliates, and other in-state activities. Impact of voluntarily registering to do business in a state. Nexus standards under recently revised state tax systems such as the Ohio CAT and Texas Margin Tax. Planning ideas for minimizing state income taxes.

## The Unitary Concept

An analysis of current cases interpreting the extent of a state's authority to apply the unitary concept in its many forms, e.g., domestic, worldwide, water's edge combination. Unique statutory and regulatory definitions. The MTC approach. Legislative developments. Structuring business to best take advantage of unitary reporting. Application of the unitary concept to non-income taxes.

## Business and Nonbusiness Income

Recent interpretations of the business/nonbusiness distinction by UDITPA and non-UDITPA states before and after *Mead*. Determining "operational significance." Using the functional, transactional, and unitary tests to minimize state taxation of short and long-term investment income, dividends, capital gains, rents, royalties, 338(h)(10) income, and other intangibles. Effect of operating under centralized cash management, through divisions, partnerships, S corporations and LLCs on a business/nonbusiness determination. Treatment of complete and partial liquidations. Legislative developments; update on MTC efforts to reconsider the UDITPA definition of business income.

## Accounting for Uncertainty in State Income Taxes

FIN 48: its requirements and the impact this FASB interpretation has had on the priorities of multistate corporate tax departments and their advisors. Discussion of the major issues in accounting for state income taxes on the financial statement. Practical application of FIN 48 and recent developments, including the effect of IRS Statement 2010-09.

## Conformity and Tax Base Issues

Limitations imposed by states on the deductibility of NOLs, depreciation, taxes imposed by other states. State tax treatment of related party dividends and fees, foreign source income, federal obligations and 338(h)(10) transactions. Computation of state AMTs, such as the Kentucky "alternative minimum calculation."

## Apportionment Factors

Characterizing business activities for purposes of apportionment. Does the company sell tangibles, intangibles, services, mixed products, or a combination? Discussion of sourcing issues and methods, including cost of performance and market sourcing. Treatment of installment, intercompany, drop shipment and dock sales; investment activities, service providers and specialized industries. Recent challenges to throwback and throwout rules, including the latest in the *Joyce/Finnigan* controversy and the *Pfizer/Whirlpool* case. Proving distortion to obtain relief from unfair apportionment. Update on MTC proposal to revise UDITPA apportionment rules.

## Flow-Through Entities and Their Owners

Nexus, unitary, apportionment, tax base, conformity issues as applied to flow-through entities and their owners. Hot topics in this area such as how to handle non-resident owner withholding and coping with the various state tax reforms designed to reach the income of flow-through entities.

## Ethical and Procedural Issues

Ethical and strategic dilemmas involved in conducting state income tax audits and running the state tax department, including application of ethical standards set by the AICPA, ABA, local state CPA societies and bar associations. Determining the availability of refunds and the associated procedural requirements, such as payment under protest and "pay to play." Writing a protest; alternative dispute resolution; the right to an administrative appeal. Statute of limitations issues, including the effect of RARs, waivers, settling with the IRS, and choosing the date from which the limitations period should be measured. Using nonrefundable overpayments to offset deficiencies and interest.

## Problems Session

Practical application of the concepts presented.

## REGISTRATION

The registration fee is \$855 for the two-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$30 discount is available if payment accompanies the registration form and is received by Interstate Tax Corporation no later than September 26, 2011. See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# ADVANCED SALES & USE

October 26-27  
Stamford Marriott Hotel & Spa  
Stamford, CT

■ Sales and use tax practitioners, including returning alumni, will obtain up-to-date analyses of current developments on the most critical topics in the field and explore the planning opportunities arising therefrom. Delivery Method: Group-Live. No advance preparation required. However, prior attendance at a Sales & Use Tax Planning conference, this course, or two years' experience in the field are suggested as prerequisites. Estimated continuing education credit: 16 based on a 50-minute hour, including 1 hour for ethics; 13.33 based on a 60-minute hour, including 1 hour for ethics.

## Jurisdiction and Nexus

Advanced issues in determining "substantial nexus" for sales and use tax purposes after *Quill*. What current business practices cause nexus: drop shipments, advertising, delivery in company-owned trucks, use of independent contractors, unpaid representatives, maintenance of inventory, occasional visits by employees? Affiliate and economic nexus. Consequences of using the Internet to conduct business, voluntarily registering to collect sales taxes and establishing "temporary nexus." The latest on state attempts to tax Internet and mail order sales.

## The Streamlined Sales Tax Project

Detailed update and discussion on the current status of, and issues surrounding, the SSTP. Why the Streamlined Sales Tax Project is important. Substantive state tax changes already made. Which states are participating and at what level? Related federal legislation. Prospects for the future.

## Ethical and Procedural Issues

Sufficiency of evidence and ethical issues on audit — maintaining exemption certificates and other records, including those kept electronically, defining good faith, using statistical sampling. The effect of Sarbanes-Oxley on recordkeeping for sales and use taxes; how to put internal controls in place to ensure that the sales and use tax department is run with ethics and integrity.

## Contractors and Tax Exempt Entities

Distinguishing between exempt sales to the federal government and taxable sales to government employees. Treatment of purchases made with GSA-Smart Pay and other types of government cards. Sales to state, county, city governments, branches and agencies; religious, charitable, educational and not-for-profit organizations. Critical differences in tax treatment between the states. Structuring the transaction to produce the best result.

## Manufacturing Exemptions

Determining whether a manufacturing exemption is available in a particular state and how far it extends — to manufacturing, processing, fabricating, packaging, R&D, testing, pollution control; to machinery, materials, chemicals, electricity, natural gas, computers, transportation equipment; to the production of intangibles; to retail or service industries. Must the final product be sold? Proving substantial transformation. Manufacturing incentives.

## Services and Mixed Transactions

Identifying the type of transaction involved — pure service, mixed or bundled. Sourcing issues, especially for services offered electronically or through "cloud computing." Sales and use tax treatment of computer software and other digital products, data processing, telecommunications, engineering services, delivery charges, maintenance, access to information and the Internet, and other services. Planning methods to minimize sales and use taxes on mixed transactions. Efforts to clarify this area, including the Streamlined Sales Tax Project and Internet Tax Freedom Act.

## Accounting for Undisclosed Sales and Use Tax Liabilities

Discussion of obligations under FASB Statement No. 5 (FAS 5 or ASC 450) to book appropriate reserves for undisclosed sales and use tax liabilities. Impact of recent SEC orders related to failure to maintain appropriate internal controls and adequately reflect sales tax liabilities for both public and private companies. Identification of typical tax risk drivers which contribute to undisclosed liabilities. Discussion of undisclosed liabilities and their impact on M&A. Strategies for identifying, quantifying and mitigating tax exposure, thus reducing undisclosed sales and use tax liabilities.

## Problems Session

Practical application of the concepts presented.

## REGISTRATION

The registration fee is \$855 for the two-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$30 discount is available if payment accompanies the registration form and is *received* by Interstate Tax Corporation no later than September 28, 2011. An additional discount of \$50 may be taken only by those practitioners who attend *both* Advanced Interstate *and* Advanced Sales & Use (all four days). See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# SALES & USE TAX PLANNING

**November 7-8**  
**Embassy Suites Dallas**  
**Dallas, TX**

**November 14-15**  
**Hotel Intercontinental**  
**Chicago, IL**

**December 5-6**  
**Courtyard Washington Embassy Row**  
**Washington, DC**

■ *An intensive two-day immersion into the concepts, problems and planning opportunities involved with sales, use and gross receipts taxes. This course is designed for the beginner to intermediate level practitioner; however, even the most experienced state tax professional will obtain practical ideas and valuable information concerning the latest administrative, judicial and legislative developments in sales and use taxation. Delivery Method: Group-Live. No prerequisites or advance preparation required. Estimated continuing education credit: 16 based on a 50-minute hour, including 1 hour for ethics; 13.33 based on a 60-minute hour, including 1 hour for ethics.*

## **Fundamental Concepts and the Streamlined Sales Tax Project**

Sales, use, gross receipts taxes – their similarities and differences. Determining whether the tax is imposed on the purchaser or seller. Taxation of services, tangible personal property, contractors, corporate and partnership transactions. Sales and use taxes on the local level. The administrative aspect: licenses, permits, collection fees, exemption certificates, filing requirements. The effect of the Streamlined Sales Tax Project on promoting sales and use tax compliance and uniformity between the jurisdictions. Recent developments.

## **Jurisdiction, Nexus and the Internet**

Coping with increased sales tax collection and use tax remittance requirements. Impact of in-state order acceptance versus telephone, direct mail or Internet solicitation, drop shipments, distribution from out-of-state, delivery in company trucks, warehousing, national versus local advertising, collection, financing, other service activities. Destination and title passage issues. Economic, physical, electronic presence and their tax consequences. How to respond to nexus questionnaires. Recent administrative, court and legislative developments.

## **Taxation of Services, Software, Leases and Other Special Transactions**

Application of sales and use taxes to the various forms of computer software – canned, custom, electronic, load-and-leave; pure services and mixed transactions; installation and fabrication labor; repairs and warranties; leases, short-term rentals, installment sales, sale/leasebacks, leases with an operator; sales of assets in mergers, acquisitions, liquidations or corporate reorganizations; sales to government, exempt and charitable organizations; construction contractors. Supporting the exemptions – problems of proof. Planning and refund opportunities.

## **Problems**

Practical application of the concepts presented.

## **Determining the Taxable Base**

The inclusion or exclusion of specific items in determining the gross proceeds or sales upon which the tax is based. Treatment of cash and trade discounts, coupons, rebates, returns and allowances, transportation expenses, trade-ins, finance charges, repossessed property, bad debts and taxes paid to other jurisdictions. Impact of the separately stated rule on the taxability of gross receipts and how transactions may be structured to minimize the imposition of tax.

## **Hot Topics in Sales and Use Taxation**

The latest administrative, court and legislative developments on various hot topics in sales and use taxation such as: qualifying for the manufacturing and sale for resale exemptions; how states are taxing intercompany, Internet, telecommunication, advertising and other services; sourcing issues in multijurisdictional transactions on the state and local level; procedural limitations on refunds and assessments; and more, with a focus on the planning and refund opportunities arising therefrom.

## **Ethics and Managing the Sales and Use Tax Function**

Structuring the sales and use tax function to maximize effectiveness while complying with personal ethical standards and those set by the AICPA, ABA, local state CPA societies and bar associations. Organizing and maintaining electronic records that can be trusted. Motivating and training staff to apply sales and use tax laws correctly to both purchases and sales. Cost saving strategies. Using computer software programs to manage exemption certificates and file sales and use tax returns.

## **Preparing for Audits and Litigation**

How to handle a sales or use tax audit, from the arrival of the audit notice to the post-audit review. Ethical considerations. Statistical samplings – their benefits and burdens. Analyzing whether to protest an assessment to the administrative, trial and appellate levels. Working effectively with outside counsel.

## **REGISTRATION**

The registration fee is \$855 for the two-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$30 discount is available if payment accompanies the registration form and is *received* by Interstate Tax Corporation no later than four weeks before a conference date (October 10-TX, October 17-IL, November 7-DC). See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# INTERSTATE TAX PLANNING

**November 9-11**  
**Embassy Suites Dallas**  
**Dallas, TX**

**November 16-18**  
**Hotel Intercontinental**  
**Chicago, IL**

**December 7-9**  
**Courtyard Washington Embassy Row**  
**Washington, DC**

■ *An intensive three-day immersion into the concepts, problems and planning opportunities involved primarily with state income taxation of multistate business. This course is designed for the beginner to intermediate level practitioner; however, even the most experienced state tax professional will obtain practical ideas and valuable information concerning the latest administrative, judicial and legislative developments in interstate taxation. Delivery Method: Group-Live. No advance preparation required. Estimated continuing education credit: 24.5 based on a 50 minute hour, including 1 hour for ethics; 20.58 based on a 60 minute hour, including 1 hour for ethics.*

## **Jurisdiction and Nexus**

Constitutional limitations on state powers to tax interstate business. Protected solicitation and *de minimis* activities under Public Law 86-272. Attributional nexus. Consequences of selling over the Internet, through employees or independent contractors, advertising, delivering, owning or leasing property in a state, other issues. Dealing effectively with nexus questionnaires. The applicable standard for franchise, privilege, other non-income taxes and service companies.

## **Unitary and Separate Accounting**

Unitary, combined, consolidated and separate returns: When does the state or the taxpayer have the right to choose? Limitations on forced combination. Tests for determining when a business is unitary after *Container* and how they may be turned into planning opportunities for the astute tax practitioner.

## **Business and Nonbusiness Income**

The business/nonbusiness distinction as interpreted by UDITPA, Multistate Tax Compact and other states. The latest on the transactional versus functional tests. State taxation of capital gains, dividends, interest, rents and royalties after *ASARCO/Woolworth*, *Allied-Signal* and *Mead*. Factor representation and adjustment opportunities.

## **The Tax Base and Conformity Issues**

State tax treatment of income from federal obligations, taxes paid to other jurisdictions, depreciation, net operating losses, 338(h)(10) transactions, passive investment companies, corporate distributions, foreign source income. State imposition of alternative minimum taxes and the use of other alternative tax bases. Planning and refund opportunities.

## **Flow-Through Entities**

State taxation of flow-through entities and their owners. Types of entities used. Conformity, nexus, unitary, apportionment and tax base issues. Planning opportunities.

## **Ethics and Managing the State Tax Function**

Organizing state tax planning, compliance and audit activities in light of Sarbanes-Oxley, Fin 48 and other developments that have made ethics a more important part of the state tax practice. Conducting effective state tax research that can be relied upon. Computerization of state tax returns.

## **The Property Factor**

Relevant property and the timing of its inclusion. Capitalizing leasehold interests. Using original cost, net book value, basis or fair market value to measure the property factor. Impact of depreciation strategies on, and the role of inventories in, the formula. Situs issues. Treatment of specialized industries.

## **The Payroll Factor**

Scope of the payroll factor — wages, salaries and other personal service compensation. Treatment of management fees, partnership reimbursements, outside contractors, leased or shared employees, specialized industries. Ascertaining the place where services are performed — defining “incidental services” and “base of operations.” Using the cash versus accrual method.

## **The Sales Factor**

Type of receipts included and the proper sourcing method to apply. Treatment of returns, allowances, installment and occasional sales, discounts; services, rents, royalties, investment income, other intangibles. Throwback, throwout and dock sales.

## **Current Developments**

Current administrative, court and legislative developments on such critical interstate tax topics as: whether states may deny refunds of unconstitutional taxes or limit the applicability of NOLs; challenges to discriminatory state tax statutes; how states define the unitary concept and business/nonbusiness distinction; jurisdictional standards after *Wrigley*, *Quill* and *Geoffrey*; apportionment sourcing issues for services and other industries; procedural traps for the unwary; changes to state tax systems such as those enacted by Kentucky, Michigan, Ohio and Texas. Planning and refund opportunities.

## **Problems Session**

Practical application of the concepts presented.

## **State and Multistate Tax Audits**

The audit process — from information requests and extensions of the statute to the final conference. Ethical considerations. Dealing with the consequences of centralized versus decentralized records. Handling a Multistate Tax Commission audit. Conducting audits in an electronic environment. The burden of monitoring unclaimed property: reporting responsibilities, recovering funds, potential audits.

## **REGISTRATION**

The registration fee is \$1125 for the three-day conference and includes continental breakfast, refreshments, specially-prepared seminar materials, and a cocktail reception the first evening of the program. A \$50 discount is available if payment accompanies the registration form and is *received* by Interstate Tax Corporation at least four weeks before a conference date (October 12-TX, October 19-IL, November 9-DC). An additional discount of \$75 may be taken only by those practitioners who attend *both* Sales & Use and Interstate Tax Planning (all week). See page 6 for participating speakers, hotel/airfare/car rental discounts and other details, page 8 to register, or call (203) 854-0704 for further information.

# SEMINAR INFORMATION

**Registrations** will be confirmed by e-mail upon receipt of the completed application form and payment. The e-mail will include your admission ticket, a printed copy of which must be presented at Formal Registration (see below). Please call us if you have not received your confirmation at least one week before the seminar. All seminar fees must be paid in full before entry to the meeting room.

**Formal Registration** will take place on the first day of the conference outside the meeting room at 7:45 AM. Dress is business casual. Please bring a printout of your admission ticket, as you will need it to get your badge and course materials. Badges should be worn to ensure admission to each session and to the cocktail reception given the first evening of each conference.

**The Meetings Start** at 8:15 AM on the first day, adjourn at 5:00 PM on the first day or days, and conclude at 4:15 PM on the last day.

**Cancellations, Transfers, Substitutions.** Cancellation qualifies for refund, less a nonrefundable registration fee of \$75, if received *in writing* by Interstate Tax Corporation no later than two weeks before a conference date. No refunds or transfers will be allowed for cancellations received after this date. Refunds for timely cancellation will be given after all the courses have concluded. Transfers are treated as cancellations and are subject to the same fees and timing limitations. Substitutions, with notice to Interstate Tax Corporation in writing, are permissible at any time without penalty. For additional information regarding administrative policies such as complaint and refund, please contact our office at (203) 854-0704.

**Continuing Education Credit** is required for attorneys and CPAs by many professional organizations and governmental agencies. Our courses are designed to meet CPE, enrolled agent and CLE credit standards. Those who request such credit on the registration form will receive a letter by mail *after the conference* certifying their attendance and the amount of credit hours earned.

**NASBA.** Interstate Tax Corporation is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: [www.learningmarket.org](http://www.learningmarket.org).

**Hotel Accommodations** are arranged and paid for by the registrants themselves. A block of rooms at discounted rates has been reserved at each of the hotels listed below until one month before the conference dates; thereafter, reservations will be taken on a space and rate available basis. You must call the hotel directly, not the 800 number, and mention Interstate Tax Corporation in order to receive the applicable discounts and any amenities given specially to our group (see the Travel and Lodging page on our website, [www.interstatetaxcorp.com/hotels\\_fall.htm](http://www.interstatetaxcorp.com/hotels_fall.htm), for complete details). If you have any difficulty securing a sleeping room at the discounted rate, *even after the cut-off date*, please call our Meeting Coordinator at (203) 854-0704 for assistance. We urge you to make your hotel and travel plans early to avoid disappointment.

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1600 Rhode Island Avenue NW  
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(202) 293-8000

*Discounted Rates:*  
\$199 Single/Double

**Airline and Car Rental Discounts** are available. A discount of 5% off the lowest quoted fares may be obtained by visiting American Airlines at AA.com re: Promotion Code 51H1BE for the October conferences, 54N1AU for the November conferences, and 79D1AL for the December conferences. Discounts on car rentals may be obtained by visiting Avis at Avis.com re: AWD # D002760.

**Government Discounts** are available. Please call (203) 854-0704 for further information.

**Tape or Digital Recording** of Interstate Tax Corporation meetings is prohibited. Please turn off all electronic devices upon entering the meeting room.

# SPEAKERS

Listed below are the speakers scheduled to participate in the Fall 2011 conference series. Conferences (INT-income, S&U-sales & use) and locations (*i.e.*, CT, TX, IL, DC) are indicated next to each name. Please note that some names may be added and/or changed.

**Steven G. Akian**, Senior Manager, Ernst & Young LLP, New York, NY (S&U-CT)

**J. Elaine Bialczak**, Director, Compton & Associates LLP, Marietta, GA (S&U-TX)

**Jack Bone**, Director, Ryan, Inc., Houston, TX (S&U-TX)

**Ronald L. Bueing**, Member, Pivotal Law Group, Seattle, WA (S&U-TX)

**Douglas J. DeRito**, Principal, Ryan, Inc., Atlanta, GA (S&U-CT)

**Maryann Evans**, Senior Manager, KPMG LLP, Washington, DC (INT-CT, DC)

**C. Eric Fader**, Senior Manager State Tax, Navistar, Inc., Warrenville, IL (INT-TX, IL)

**Lynn A. Gandhi**, Partner, Honigman, Miller, Schwartz & Cohn LLP, Detroit, MI (INT-CT; S&U-DC)

**Jeffrey C. Glickman**, Partner, Alston & Bird LLP, Atlanta, GA (INT-IL)

**Jordan M. Goodman**, Partner, Horwood, Marcus & Berk, Chicago, IL (INT, S&U-IL)

**Frank Guerino**, Executive Director, Ernst & Young LLP, Iselin, NJ (S&U-CT)

**June Summers Haas**, Partner, Honigman, Miller, Schwartz & Cohn LLP, Lansing, MI (S&U-DC)

**John B. Harper**, Director, KPMG LLP, Los Angeles, CA (INT-TX)

**Kendall L. Houghton**, Partner, Alston & Bird LLP, Washington, DC (INT-DC)

**David A. Hughes**, Partner, Horwood, Marcus & Berk, Chicago, IL (INT-CT, IL)

**Katie Jaques**, Instructor, San Diego State University, San Diego, CA (S&U-CT; INT-TX, DC)

**Maryann H. Luongo**, Counsel, Alston & Bird LLP, Washington, DC (INT-DC)

**Fred O. Marcus**, Partner, Horwood, Marcus & Berk, Chicago, IL (INT-IL)

**Caryl Nackenson-Sheiber**, Attorney/Editor, Interstate Tax Insights, Norwalk, CT (INT, S&U- CT, TX, IL, DC)

**Jill Nielsen**, Managing Director, KPMG LLP, Chicago, IL (S&U-IL)

**Brian D. Pedersen**, Managing Director, Alvarez & Marsal Taxand, LLC, Seattle, WA (INT-TX)

**Frank Schaefer**, Executive Director, Grant Thornton LLP, Edison, NJ (INT-DC)

**Joseph A. Vinatieri**, Partner, Bewley, Lassleben & Miller LLP, Whittier, CA (S&U-TX)

**Liezl Walker**, Senior Manager, KPMG LLP, New York, NY (INT-CT)

**Aaron M. Young**, Partner, Reed Smith LLP, New York, NY (INT-CT)

**Kenneth T. Zemsky**, Multistate Tax Consultant, New York, NY (S&U-CT)

**Jennifer A. Zimmerman**, Partner, Horwood, Marcus & Berk, Chicago, IL (INT-IL; S&U-IL, DC)

# INTERSTATE TAX INSIGHTS



## Wayne Farms: The Alabama Administrative Law Division Overrules Its Own State Legislature

J. ELAINE BIALCZAK

### Ingredient or Component Part Exemption

On January 14, 2008, the Alabama Administrative Law Division misinterpreted and evidenced 66 years of Alabama sales tax law when it denied the taxpayer's application for rehearing in Wayne Farms LLC v. Alabama Department of Revenue. The division refused to exempt as an ingredient or component part carbon dioxide sprayed onto chickens to cool them during processing because the resulting presence of the carbon dioxide was "merely incidental" to the cooling function. This never has been the test for allowing the ingredient exemption in Alabama. The division's action rejects its own earlier objective analysis of Alabama Code Section 40-23-1(a)(9), which defines "wholesale sale," and overrules the Alabama Legislature's amendments to the statute.

### Initial Decision in Wayne Farms

Wayne Farms sprays carbon dioxide on chickens twice while processing them: first, to cool the chicken after cooking, and second, during packaging to freeze and preserve the chicken for shipment. Wayne Farms initially paid sales tax on its purchases of carbon dioxide, but then requested a refund based on its claim that the carbon dioxide became an exempt ingredient and component part of the chicken.<sup>2</sup> It also asserted that the second application

(cont'd on p.2)

J. ELAINE BIALCZAK is a Director with Compton & Associates, LLP in Marietta, GA. She received her B.A. from The Ohio State University and a J.D. from The Ohio State University College of Law.

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■ **Since 1990**, Interstate Tax Corporation has provided its unique coverage of developments in state taxation of multistate business through its publication, first entitled Interstate Tax Report, now Interstate Tax Insights. With the help of authors who are active practitioners in the field, Interstate Tax Insights has examined current interstate tax cases, legislation, incentives, trends and planning opportunities on an ongoing basis.

■ **Earlier issues** of ITI have included in-depth articles on how to comply with the Texas "margin" and Ohio Commercial Activity taxes, Commerce Clause challenges to Pennsylvania tax statutes, the *Cuno* decision and its potential effect on the future of state tax incentives, the Alabama manufacturing exemption, recent developments involving California's water's edge election, and more.

■ **Upcoming articles** will discuss South Carolina litigation and its aftermath relating to combined reporting as an option under UDITPA Section 18- relief from unfair apportionment, Wisconsin developments concerning the distinction between canned and custom software, challenges to New York's website "linking" nexus statute and New Jersey's throwout rule, how states treat pollution control equipment for sales and use tax purposes, and other hot topics in interstate taxation.

■ **Why not subscribe today** and join your colleagues who are already benefiting from the in-depth analyses and tax savings ideas that appear regularly in Interstate Tax Insights?

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Caryl Nackenson-Sheiber

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