

# State & Local Tax

Polsinelli's state and local tax attorneys are dedicated to providing counsel that goes beyond understanding tax law by presenting creative solutions to help clients navigate a challenging environment to advance their specific business goals and objectives. Today—more than ever—state and local taxing authorities are looking for every possible way to increase revenue.

Our attorneys make it a priority to be involved in current tax developments and we are experienced in managing a range of controversy matters with taxing authorities, including nearly all state Department of Revenues. Additionally, we have team members who possess legal experience that is reinforced by previous leading roles, such as certified public accountants working on complex corporate tax compliance and consulting matters. We focus our practice on counseling clients in the following areas:

## **Tax Audits**

We have extensive experience handling proposed assessments, and we implement proactive strategies to minimize clients' exposure to potential assessments.

## **Tax Appeals and Litigation**

Our attorneys manage state and local tax disputes at administrative levels, as well as with state trial and appellate courts.

## **Tax Planning**

We regularly structure transactions and business combinations to minimize state and local taxes. When it is practical, we obtain advance rulings and other guidance from taxing authorities.

## **Incentives**

State and local tax incentives can be key factors in business planning. We have significant experience with state and local tax incentive programs and obtaining exemptions from property and sales taxes.

## **Legislation**

Our attorneys frequently draft and advise clients on proposed tax reform and regularly counsel clients on the potential impacts of proposed and new tax legislation.

# Matters

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Our State and Local Tax practice has considerable experience advising clients on a variety of state and local tax matters involving income, sales and use, inheritance and property taxes. This includes audits of taxpayers, appeals to administrative agencies, appeals to the courts and judicial review of agency decisions. Polsinelli has litigated a number of state tax cases, including the following:

## Income, Sales & Use Taxes

- *The Kansas City Chiefs Football Club, Inc. v. Director of Revenue, Mo. S. Ct., Dkt. No. SC97730, 06/02/2020*. The Missouri Supreme Court ruled that Administrative Hearing Commission (AHC) erred in determining that the Kansas City Chiefs were liable for sales and use tax on certain items used in the renovation of Arrowhead stadium and related facilities. The Missouri Supreme Court found that the Kansas City Chiefs were not the source of consideration for the contested items and, therefore, could not be the purchaser of the items under the Missouri sales and use tax statutes.
- *AT&T Communications of the Southwest v. Director of Revenue (Mo. AHC 2013)*. The Missouri Administrative Hearing Commission ruled in favor of the taxpayer and found that passive investment income earned by the taxpayer was not Missouri source income and was not subject to Missouri corporate income tax. The Commission followed the holding in an earlier case handled by the Polsinelli tax team for Medicine Shoppe International (discussed below), by ruling that the Medicine Shoppe International tax treatment of passive investment income was applicable to the taxpayer, which calculated its Missouri taxable income under a different section of the tax law.
- *Matter of the Appeal of Chipotle Mexican Grill, Inc. (Kansas COTA 2010)*. The Kansas Court of Tax Appeals ruled in favor of the taxpayer and held that income earned from the investment of excess cash proceeds was properly treated as non-business income and was not treated as business income that can be apportioned to Kansas for corporate income tax purposes.
- *Western Blue Print Co. v. Director of Revenue, 311 S.W.3d 789 (Mo. S. Ct. en banc 2010)*. The Missouri Supreme Court affirmed the decision of the Missouri Administrative Hearing Commission and ruled that CDs prepared by the taxpayer from printed materials that were scanned, were not taxable. By applying the true object of the transaction test, the computer output produced by the taxpayer was not taxable.
- *Cabela's v. Department of Revenue (Kansas BOTA 2007)*. Represented the taxpayer in an appeal filed with the Kansas Board of Tax Appeals. The issues presented included whether the Internet sales of the taxpayer were subject to sales and use taxes in Kansas. The Department argued that the sales were taxable and that the taxpayer had nexus or physical presence in Kansas, because it had a retail store in the state that was owned and operated by an affiliated company. The appeal was settled by the parties.
- *American East Explosives, Inc. v. Director of Revenue (AHC No. 04-0422RS, 2006)*. The Missouri Administrative Hearing Commission ruled that the penalty assessed by the Department of Revenue could be offset by the amount of over-collected taxes remitted to the Department of Revenue by the taxpayer. Considering that the taxpayer had previously remitted the entire amount of taxes over collected, the result was a 'wash' and no further payment by the taxpayer was required.
- *Medicine Shoppe International, Inc. v. Director of Revenue. 2005 WL 147585 Mo., 2005. Jan 25, 2005*. The Missouri Supreme Court, looking at different years and different issues than were involved in the earlier case, held that income from temporary investments of excess cash is not Missouri source income and is not subject to taxation in Missouri under the Missouri single-factor formula.
- *UMB Bank, n.a. v. The City of Kansas City, Missouri, 121 S.W.3d 320 (W.D. Mo 2003)*. The Missouri Court of Appeals ruled that a City regulation imposing a restriction on taxpayers was contrary to Missouri law and was invalid and unenforceable. The case was remanded to the Circuit Court of Jackson County, Missouri, and the Circuit Court determined that the business expenses were "necessary expenses of operation" and issued a judgment in favor of the taxpayer.
- *Medicine Shoppe International, Inc. v. Director of Revenue. 76 S.W.3d 731 (Mo. S. Ct. 2002)*. The Missouri Supreme Court affirmed the rule that income from some passive investment sources is not subject to taxation in Missouri, but held that income from loans to franchisees did not meet this exemption.

- *Kansas City Power & Light Company v. Director of Revenue*. 83 S.W.3d 548 (Mo. S. Ct. 2002). The Missouri Supreme Court ruled in a leading case involving intangible property that electricity is resold to hotel customers and is, therefore, not subject to sales tax when purchased by hotels.

## Property Taxes

- *Nance v. State Tax Commission of Missouri*. 18 S.W. 3d 611 (W.D.Mo. 2000). The Missouri Court of Appeals affirmed the rule that the assessed value of property is determined by valuing the fee interest and the leasehold interest separately and upheld the Commission's determination of value.
- *In the Matter of the Equalization Appeals of Prairie Commons Lawrence, LP*. (Ks BOTA 1999). The Board of Tax Appeals ruled that the assessed value of apartments rented to the elderly and to low-income persons was excessive and ordered the value reduced for property tax purposes.
- *In the Matter of the Application of Auction Marketing Institute* (Ks BOTA 1999). The Kansas Board of Tax Appeals ruled that a nonprofit organization that provides continuing education courses for professional auctioneers is an educational organization exempt from ad valorem taxation.
- *Dean Machinery v. Johnson County, Kansas* (Ks BOTA 1998). The Kansas Board of Tax Appeals ruled that equipment leased to customers is exempt from personal property taxes. The case was not appealed by the County.
- *Kansas Tax Statutes Amended*. Successful in changing provisions in the Kansas statutes that permitted counties to impose an intangibles tax on "money, notes and other evidence of debt" of taxpayers. The provision was repealed by the legislature in 1995 as a result of Polsinelli's efforts.

## Excise Taxes

- *McLane Western, Inc. v. Colorado Department of Revenue*, 126 P.3d 21 (Colo. 2005), cert. denied 127 S. Ct. 42 (2006). Represented a taxpayer organization, the Institute for Professionals in Taxation (IPT), in filing an amicus curiae (friend of the court) brief in support of the taxpayer in the U.S. Supreme Court. The constitutional issues presented to the Supreme Court included whether the treatment of the taxpayer by Colorado was in violation of the U.S. Constitution, where an in-state distributor of tobacco products is treated differently than out-of-state or foreign distributors with respect to the state excise tax on tobacco products. The Supreme Court did not accept the appeal of the case, so the decision of the Colorado Supreme Court was upheld.
- Represented heavy truck and equipment distributor in connection with IRS audit and appeal of excise tax assessment resulting in refund of more than \$3 million to taxpayer.