

American College of Tax Counsel Files Amicus Brief with Supreme Judicial Court of Massachusetts

Tax lawyer's association filed "friend of the court" brief urging Massachusetts high court to preserve limits on state's ability to tax nonresident taxpayers

ROCHESTER, NEW YORK, UNITED STATES, January 18, 2022 /EINPresswire.com/ -- The American



The College hopes that the SJC will reverse the decision of the Appellate Tax Board, thereby providing greater certainty to taxpayers...on the sale of non-unitary investments."

*Caroline D. Ciraolo, President
of the American College of Tax
Counsel*

College of Tax Counsel (the "College") announces the filing on December 15, 2021, of an amicus brief with the Supreme Judicial Court of the Commonwealth of Massachusetts (the "SJC") in the case of VAS Holdings and Investments LLC v. Commissioner of Revenue (No. SJC-13139). The amicus brief was filed in support of the plaintiff's appeal from a decision of the Massachusetts Appellate Tax Board, which had upheld the determination of the Massachusetts Commissioner of Revenue regarding the State's ability to tax capital gains recognized by nonresidents. The SJC heard argument from the parties on January 5, 2022, and could announce a decision at any time.

The issue in the case is whether Massachusetts can tax a non-domiciliary subchapter S corporation and its nonresident owners, on the entirety of the capital gain realized on the sale of the S corporation's investment in a limited liability company operating in Massachusetts. The parties had stipulated that the S corporation itself conducted no activities in the state and that there was no "unitary" relationship between the S corporation and the LLC. The College filed its amicus brief in this case due to its concern that the position taken by the Massachusetts Commissioner of Revenue presented significant concerns both with respect to the proper application of the Massachusetts laws and with respect to the application and development of constitutional principles in state taxation throughout the country.

Background of the Case

As described in the briefs filed by the parties in the case, Massachusetts sought to tax 100% of the S corporation's capital gain on the basis of an "investee apportionment" theory. Under that

theory, the Commissioner argued that a unitary business relationship between the S corporation and Massachusetts was not necessary so long as the investment itself had sufficient connection with Massachusetts. The S corporation argued that this theory was inconsistent with United States Supreme Court cases that have consistently distinguished assets held in the nature of “investments” from assets that contributed to “unitary” business operations benefitting a group of affiliated entities. Specifically, the S corporation argued that the Supreme Court has held that a unitary business relationship must exist between the seller and the business interest being sold before a state can tax the gain on sale of a business interest under the Commerce and Due Process Clauses of the Constitution.

The College explained in its amicus brief that the Commissioner’s position runs counter to the well-settled Supreme Court jurisprudence that operates to limit a state’s ability to tax extraterritorial values and, in particular, the capital gain of a non-domiciliary investor on the sale of its interest in a nonunitary, in-state business. According to Caroline D. Ciraolo, President of the College, “The College hopes that the SJC will reverse the decision of the Appellate Tax Board, thereby providing greater certainty to taxpayers that they will not find themselves taxed by other states on capital gain recognized on the sale of non-unitary investments.” The amicus brief makes these important points, both for the benefit of non-domiciliaries and Massachusetts residents. As Richard L. Jones, counsel for the College stated, “If investee apportionment were sanctioned and adopted, it would expose Massachusetts businesses and residents to other states’ taxes when investing in out-of-state companies.”

About Amicus Briefs

A brief by Amicus Curiae (“friend of the court”), also known as an amicus brief, allows a person or organization with a strong interest in or important views on the subject matter of a case to file a brief explaining these views and urging the court to rule in a manner consistent with those views. Amicus briefs are often filed in cases of broad public interest and are filed with permission of the court and typically, as in this instance, with the consent of all the parties in the case.

About the American College of Tax Counsel

The American College of Tax Counsel is a nonprofit association of tax attorneys in private practice, in law school teaching positions, and in government, who are recognized for their excellence in tax practice and their substantial contributions and commitment to the legal profession. One of the chief purposes of the College is to provide a mechanism for input by tax attorneys into the development of U.S. tax laws and policy. The College’s brief was submitted by its governing Board of Regents, represented by attorneys Richard L. Jones, David J. Nagle and Caroline A. Kupiec of Sullivan & Worcester LLP in Boston.

Pamela Lyons

American College of Tax Counsel

+1 888-549-4177

[email us here](#)

This press release can be viewed online at: <https://www.einpresswire.com/article/560926512>

EIN Presswire's priority is source transparency. We do not allow opaque clients, and our editors try to be careful about weeding out false and misleading content. As a user, if you see something we have missed, please do bring it to our attention. Your help is welcome. EIN Presswire, Everyone's Internet News Presswire™, tries to define some of the boundaries that are reasonable in today's world. Please see our Editorial Guidelines for more information.

© 1995-2022 IPD Group, Inc. All Right Reserved.