



Southeast State & Local Tax Law Fall Update

FRIDAY, OCTOBER 24, 2014
9:00 - 11:30 AM



WILLIAMS MULLEN
222 Central Park Avenue
17th Floor
Virginia Beach, VA 23462

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AGENDA

Presented by: Stephanie Lipinski Galland, Kyle H. Wingfield and Shane L. Smith

WELCOME & INTRODUCTIONS

INCOME AND FRANCHISE TAXES

SALES AND USE TAXES

**PROPERTY TAXES INCLUDING
MACHINERY AND TOOLS TAX**

LOCAL TAXES

TRENDING ISSUES FROM AROUND THE COUNTRY

U.S. SUPREME COURT CASES

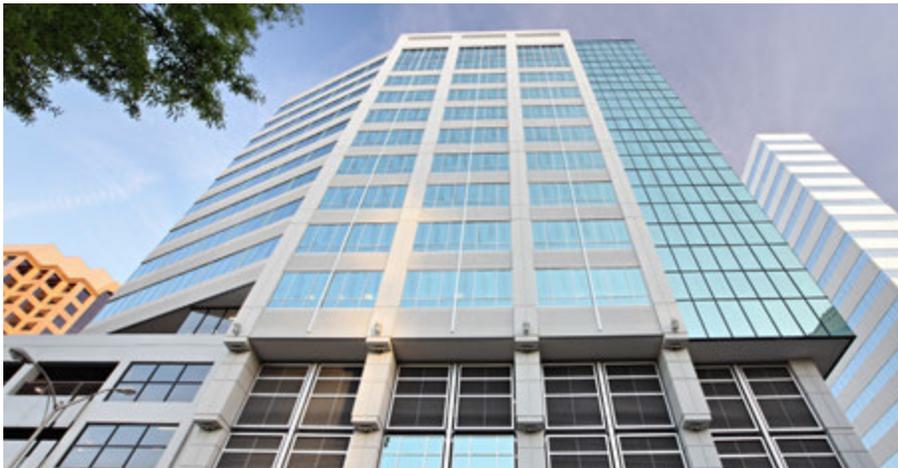
DISCUSSION TOPIC – WORKFORCE CLASSIFICATION

PASS THROUGH ENTITIES

“NEED TO KNOWS”

Q&A'S & FINAL THOUGHTS

ABOUT US



"About Us" may not be the right name for this section, because at Williams Mullen, it is about *you*.

At Williams Mullen, our goal is to help your business thrive in today's economy. Success is based on finding workable solutions for you. Representing more than 75 practices and industries, Williams Mullen focuses on finding answers and solutions for your business and legal issues. Whether you are the tax director for a Fortune 500 company, the owner of a private business, a director of a non-profit organization or head of a government entity, we have the right attorney or team of attorneys to help you meet your goals.

If you are looking for a legal partner to help you grow your business, you've found the right law firm. Now let's work together on "**Finding Yes.**"

Industries Include:

- > Banking & Financial Services
- > Construction
- > Economic Development
- > Education Law
- > Government Contracts
- > Health Care
- > Hospitality
- > Insurance Brokerages
- > Long Term Care
- > Manufacturing
- > Retail
- > Software & Technology
- > Transportation & Logistics

Practice Areas Include:

- > Business & Corporate
- > Employee Benefits & Executive Compensation
- > Energy
- > Environmental Law
- > Estate Planning - Private Client & Fiduciary Services
- > Financial Services
- > Government Relations
- > Infrastructure
- > Intellectual Property
- > International Law
- > Labor & Employment
- > Litigation
- > Real Estate
- > Tax Law

Included in *American Lawyer* magazine's Am Law 200.

Included in *BTI Brand Elite 2014* by *Corporate Counsel* at Fortune 1000 Companies.

20 attorneys and ten practice areas ranked by *Chambers USA* in 2014.

100 attorneys in 53 categories named 2015 *Best Lawyers in America*; 8 attorneys named among the 2015 "Lawyers of the Year."

Received a National First-Tier Ranking for the firm's Construction Litigation and Public Finance Law practices in the 2014 U.S. News – *Best Lawyers*' "Best Law Firms" list; Received 64 Metropolitan First-Tier Rankings.

Named a "Highly Recommended" firm in Virginia for 2014 by *Benchmark Litigation*.

Named a "Recommended" firm in North Carolina for 2014 by *Benchmark Litigation*.

45 lawyers named as "Legal Elite" in 2013 by *Virginia Business* magazine.

6 lawyers named as "Legal Elite" in 2014 by *Business North Carolina* magazine.

60 attorneys named "Super Lawyers" and 23 named "Rising Stars" in 2014 by *Virginia Super Lawyers Magazine*.

STATE & LOCAL TAX

Our state and local tax attorneys collaborate regularly with our corporate attorneys on behalf of clients on multistate tax consequences of corporate structures and transactions.

Our state and local tax practice group is staffed by experienced attorneys having practiced extensively in the state and local tax area for many years. We have handled matters involving all types of state and local taxes, including corporate income and franchise tax, sales and use tax, property tax litigation involving real and personal property and the tax exempt status of real and personal property, intangibles tax, excise and license taxes and personal income tax. We have counseled clients on county and state tax incentives, have assisted them in negotiations to obtain tax incentives and have defended against efforts by the Department of Revenue to attack tax credits. Our state and local tax attorneys also collaborate regularly with our corporate attorneys on behalf of clients on multistate tax consequences of corporate structures and transactions. While we have represented businesses which are wholly based in North Carolina and Virginia in various tax matters, most of our clients have been large multistate and international clients with significant North Carolina and Virginia operations.

Williams Mullen is the North Carolina contributor to the semiannual audit sessions of the Council on State Taxation (COST). The firm is also a member of the American Property Tax Counsel, the leading affiliation of independent law firms practicing property tax law. Admission to the APTC is by invitation only and is limited to the pre-eminent property tax law firm in each state and Canada.

SAMPLE REPRESENTATIONS

- > Litigation and negotiation of contested matters, corporate tax planning, transactional matters, lobbying and negotiation of tax incentive packages
- > Challenges to a discriminatory state franchise tax, to discriminatory property taxes and to numerous other tax assessments
- > Successfully trying the largest personal property tax appeal in North Carolina resulting in new valuation tables for computer and high tech manufacturing equipment
- > Reducing the real property assessment of numerous manufacturing, commercial and office properties
- > Advocating changes to tax statutes in the North Carolina General Assembly
- > Defending class action lawsuits involving state tax issues in both Federal and state courts
- > Extensive experience contesting state corporate income tax assessments involving holding companies, disputes over apportionment methodologies and defenses to combination of state corporate tax returns

STEPHANIE LIPINSKI GALLAND



Stephanie Lipinski Galland

Partner

Washington, D.C.

T: 202.327.5094

slipinskigalland@williamsmullen.com

Stephanie Lipinski Galland has extensive legal experience in state and local taxation with an emphasis on representation before state and local taxing authorities in income, franchise, sales, use and unclaimed property controversies. She has represented clients in developing, implementing and defending tax positions in state audits. Her experience in a Fortune 500 company, as a tax partner in a national law firm and in the Virginia Department of Taxation provides her with valuable skills in all areas of taxation.

Stephanie's experience includes working on a firm government contracts team with government contractors in developing responses to federal and state RFPs, subsequent modifications and appeals of terms and conditions. She has worked on multistate, state and local income, sales and property tax issues with a concentration on matters regarding tax and business planning, mergers and acquisitions (including due diligence issues), administrative appeals and negotiated settlements, tax incentive negotiations and maintenance, audits, unclaimed property issues including audits and voluntary disclosures, tax audits and multistate voluntary disclosures. Stephanie has additional experience in European VAT and Canadian HST. She advises clients on record maintenance as it affects audits, tax record maintenance and SEC issues.

She has also worked with contractors on compliance issues under the Federal Acquisition Regulation ("FAR") and the Federal Acquisition Streamlining Act of 1994 ("FASA") to ensure that the underlying contracts meet

all necessary requirements. In addition, she has worked with clients on proprietary information disclosure agreements (unilateral and bilateral), memorandums of agreement, teaming agreements and due diligence for teaming agreements.

She possesses broad experience in corporate governance, including interaction with operations and supply chain functions. This experience includes structuring domestic and international transactions, negotiating contract terms with third party vendors, negotiating with governments on the national, state/provincial and local levels for economic development projects and finance and tax accommodations. Stephanie also drafts and negotiates tax provisions in licensing agreements between brands and affiliated companies for both trademark and trade dress and with unrelated parties for use of various trademarks.

Stephanie's experience in both the corporate and law firm environment provides her with an understanding of how to work within a team not only to plan but to implement overall goals and objectives.

A frequent author and presenter, Stephanie is sought for her extensive knowledge in the area of taxation. She lectures on the State and Local Tax Program at Georgetown University Law School as an adjunct professor. She earned her B.A. from Christopher Newport University and her J.D., with an Emphasis on Taxation, from the College of William & Mary.

KYLE H. WINGFIELD



Kyle H. Wingfield

Associate

Richmond, VA

T: 804.420.6445

kwingfield@williamsmullen.com

Kyle Wingfield is a member of the State & Local Tax Group at Williams Mullen. Kyle routinely advises clients with business tax planning issues concerning state and local income, franchise, sales, use and property taxes. Kyle also advises clients in developing and defending tax positions in state and local tax audits. He has significant experience in tax controversies and disputes before the Virginia Department of Taxation and local taxing authorities.

Kyle also is experienced in federal and international income tax issues involving corporations, limited liability companies and partnerships. Before he joined Williams Mullen, Kyle worked for KPMG, LLP, where he developed expertise in business planning solutions, compliance issues and audit techniques throughout the United States and abroad.

Kyle is a teaching assistant for the class "Advance Topics in State and Local Taxation" at Georgetown University Law Center. He also volunteers at the Community Tax Law Project in Richmond, where he represents low-income taxpayers in disputes with the Virginia Department of Taxation and the Internal Revenue Service.

Kyle also is the co-author of the Williams Mullen SESALT newsletter, a monthly publication that reports on state and local tax developments in the Southeast, and has contributed to the *Virginia Lawyer* magazine on state and local tax matters.

Kyle earned his B.A. from the University of Virginia, his J.D. from the University of Richmond School of Law, *magna cum laude*, and his LL.M. from Georgetown University Law Center.

SHANE L. SMITH



Shane L. Smith

Associate

Norfolk, VA

T: 757.629.0706

ssmith@williamsmullen.com

Shane Smith's practice focuses on commercial litigation, specializing in real and personal property tax disputes. For more than 12 years prior to practicing law, Shane held several positions with San Antonio, Texas-based Valero Energy Corporation and its acquired companies, including service as its Manager, eCommerce Marketing and Manager, Credit Card Marketing. Shane joined the firm after completing a judicial clerkship with the Honorable D. Arthur Kelsey, Judge of the Court of Appeals of Virginia.

Shane is licensed to practice in Virginia. He is a member of the American Bar Association and the Norfolk & Portsmouth Bar Association. He has been listed as a *Rising Star* by *Virginia Super Lawyers* magazine for Business Litigation for 2009, 2010, 2011, 2012, and 2013.

Shane holds a bachelor of business administration degree in marketing, *magna cum laude*, from West Texas A&M University, and a juris doctor degree from William & Mary School of Law.

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INCOME AND FRANCHISE TAXES

Adjustments for Underreporting Flow Through to VALLC. The Department's auditors found underreported sales for a VALLC and revised the underlying member's FAGI based on their share of ownership in the VALLC. Additionally, the underlying VALLC was audited for withholding. Add to his that fact that some employees were paid in cash and no it was unclear if the "cash payments" were considered as expenses in the computation of the income tax liability. P.D. 14-35.

Filing Threshold in Virginia. This case is significant not because of what it says about the taxpayer having to file and pay tax but for the statement concerning pass through entities and an income threshold. Va. Code Sec. 58.1-392 C grants the Department the right to establish an income threshold for the filing of returns by pass through entities and their owners. The Department has NEVER established such a threshold.

Generally a pass through will have Virginia source income if there is sufficient business activity within Virginia to make any one or more of the applicable apportionment factors positive." P.D. 14-48

SALES AND USE TAXES

Manufacturing Exemption. The Department of Taxation ruled that a taxpayer, a provider of packaging and shipping services for an international tobacco processor (the "Manufacturer"), did not qualify for the manufacturing exemption to the retail sales and use tax under Va. Code § 58.1-609.3(2). The taxpayer argued that it was part of a vertically integrated manufacturing process with the Manufacturer. The Department ruled that the taxpayer did not qualify for the exemption because (i) it was not a manufacturer or industrial processor and (ii) the packaging and shipping did not occur on the plant site and, therefore, did not qualify as "manufacturing" under Va. Code § 58.1-609.3(2). As the consumer of all materials used in the packaging and shipping services, the Department ruled that the taxpayer was liable for sales tax on its purchases of materials used in providing the packaging and shipping services. P.D. 14-103.

Communications Sales and Use Tax. The Department of Taxation held that a taxpayer-provider of mobile communications services was subject to sales tax on activation fees charged to customers who entered into a service agreement for Internet access. Upon

subscribing to a plan, a customer would purchase Internet access service for a particular term in exchange for an upfront activation charge and monthly plan charges. The Department held the Virginia Communications Sales and Use Tax Act and the Internet Tax Freedom Act did not bar the Commonwealth from assessing sales taxes on such services. VA PD 14-131; see also VA PD 14-130.

PROPERTY TAXES

Refund Denied. The Virginia Attorney General opined that a locality may not refund erroneously assessed real estate taxes beyond the three (3) year period provided by local ordinance for issuing such refunds. In this case, the city assessor corrected assessments retroactively for nine (9) years and authorized a refund for the entire period. The actions were taken administratively by the city assessor. No lawsuit was ever filed, there was no settlement agreement, and no court had authorized the refund. Citing a prior opinion, the Attorney General noted that three procedures are available to correct an erroneous tax assessment: (i) administrative correction, (ii) administrative correction pursuant to a local ordinance and (iii) judicial correction. Since the city assessor chose to refund the taxpayer using an administrative adjustment, the Attorney General concluded that the taxpayer was bound by the three (3) year limitation imposed by the Code of Virginia and the local ordinance. 2014 Op. Va. Att’y. Gen. 13-081.

County and Town Tangible Personal Property Tax. The Virginia Attorney General issued an opinion holding that a county and town can concurrently assess tangible personal property taxes on business property located within the boundaries of both governmental entities. The attorney general noted that implicitly counties and towns in Virginia are separately authorized to assess tangible personal property taxes pursuant to Va. Code § 58.1-3511, and, because a town (unlike a city) is not independent of its host county, tangible personal property can be physically located in both a town and a county. Va. Atty Gen. Op. 14-017.

Business Tangible Personal Property Tax. This ruling is a unique one. In this Ruling, both the City and the Taxpayer withheld information from each other and the Tax Department. The City assessed the Taxpayer but it was unclear under what basis and with what information the City assessed the property in question. When the Tax Department requested information from the City to “facilitate rendering a determination,” the City declined the request citing “privacy requirements”. The Commissioner held that “[N]either the City nor the Taxpayer has provided a clear record of the facts, accurate documentation of the BTPP at issue, or the process as to how the assessments are derived.” The issue went back to the City. Results???????????

M&T Tax. This Ruling shows that the definition of something can be expansive or restricting depending on which one you use. The M&T tax is levied on machinery and tools "...used in manufacturing..." Case laws, Attorney General opinions and Ruling letters have all contributed to the definition of what machinery and tools would be subject to the tax. This Ruling also provided a thorough analysis of the Virginia Constitution, the Virginia Supreme Court cases, the Attorney General Opinions, and Rulings from the Commissioner. The result??? It is all a matter of facts. P.D. 14-22.

M&T Tax. Attorney General Opinion. What is "original cost" and "original total capitalized cost." ??? According to this AG's Opinion, it is the original cost paid by the original purchasers of the property for the manufacturer or dealer and not the price paid by the current owner. "Because the General Assembly has not amended this language since [this] Opinion was issued, I affirm its conclusion that "original cost" means "the cost paid by the original or first, purchaser of such personal property, and not the purchase price paid by a subsequent owner paying the tax." P.D. 14-018.

UNIFORM LAW COMMISSION

Rewrite of Unclaimed Property Model Act - Nov 7/8

LOCAL TAXES

Department Lacked Jurisdiction to Address BPOL Appeal. The Department of Taxation held that it lacked jurisdiction to address a taxpayer's BPOL appeal because the County making the assessment failed to issue a proper final determination letter. Under Title 23 of the Virginia Administrative Code § 10-500-710(D) and Va. P.D. 04-28 (Guidelines for Appealing Local Business Taxes), localities must include specific language regarding the taxpayer's appeals rights with respect to a BPOL assessment in the final determination letter. The County did not include the required language in its determination letter to the taxpayer. Also, the taxpayer did not give notice to the County before appealing the assessment to the Department. Accordingly, the Department returned the case to the County for a proper determination letter. Va. P.D. 14-72.

SUPPORTING MATERIALS

For SESALT Seminar Supporting Materials Index, visit: williamsmullen.com/sesalt-update to download any of the supporting materials referenced during today's presentation.

NAME	DOCUMENT LOCATION
H.R. 3086 An Act to permanently extend the Internet Tax Freedom Act	Part 1 – Supplemental Materials
NIHC, Inc. v. Comptroller of the Treasury No. 63, September, Term 2013	Part 1 – Supplemental Materials
13-1032 Direct Marketing Association v. Brohl	Part 1 – Supplemental Materials
12-1175 Direct Marketing Association v. Brohl	Part 1 – Supplemental Materials
13-553 AL Dept. of Revenue v. CSX Transportation, Inc.	Part 1 – Supplemental Materials
CSX Transportation, Inc. v. Alabama Department of Revenue, Commissioner, Alabama Department of Revenue	Part 1 – Supplemental Materials
13-485 Comptroller of the Treasury of Maryland v. Wynne	Part 2 – Supplemental Materials
Maryland State Comptroller of the Treasury v. Brian Wynne, et ux. No. 107, September Term 2011	Part 2 – Supplemental Materials
EO-24: Establishing an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud	Part 2 – Supplemental Materials
VA AG 13-081	Part 2 – Supplemental Materials
VA AG 14-017	Part 2 – Supplemental Materials
TAX BULLETIN 14-7	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 13-81	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-22	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-35	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-48	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-72	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-103	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-130	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-131	Part 2 – Supplemental Materials
Rulings of the Tax Commissioner 14-2	Part 3 – Supplemental Materials

EVALUATION FORM

We think your opinion is important to making our future seminars even more valuable. Please score the following items on a scale of 1 to 5 by circling the number that represents your opinion.

	AGREE			DISAGREE	
The seminar met my expectations.	5	4	3	2	1
The content was helpful.	5	4	3	2	1
The level of the seminar was appropriate.	5	4	3	2	1
The format was enjoyable.	5	4	3	2	1
The speakers had good understanding of the topics.	5	4	3	2	1
The materials were helpful.	5	4	3	2	1
The seminar was worth my time.	5	4	3	2	1
The length of the seminar was appropriate.	5	4	3	2	1
I would recommend this seminar to my colleagues.	5	4	3	2	1

What were the most useful aspects of this seminar?

What changes should be made to enhance/improve this program?

Please offer any comments or suggestions to help improve future session:

Suggestions for future topics:

If you would like to get copies of future mailing from our group please complete below

Name: _____ Organization: _____

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Email _____ Phone #: _____

THANK YOU FOR YOUR FEEDBACK.

CONTINUING PROFESSIONAL EDUCATION CERTIFICATE OF COMPLETION 2014

Name of Participant:	
Course Topics:	Tax Updates Trending Issues From Around the Country U.S. Supreme Court Cases
Instructors:	Stephanie Lipinski Galland Kyle H. Wingfield Shane L. Smith
Course Location:	Richmond, Virginia
Course Date:	October 24, 2014
Field of Study:	Tax
CPE Hours Earned:	Three (3) Hours* *50 minutes = 1 CPE Credit Hour

Southeast State & Local Tax : Important Developments

Virginia | North Carolina | Washington, D.C.
Maryland | South Carolina

BY: STEPHANIE LIPINSKI GALLAND & KYLE H. WINGFIELD

The Williams Mullen Southeast [State and Local Tax](#) (SESALT) team is pleased to provide you with a comprehensive recap of recent legislation around the U.S.

VIRGINIA

CORPORATE INCOME TAX

- **IC-DISCS.** An interest-charged domestic international sales corporation (“IC-DISC”) is a tax exempt entity that an export company may form as part of a planning technique to lower its federal rate of taxation on export income. Effective for taxable years beginning on or after January 1, 2014, IC-DISCS also are exempt from Virginia corporate income tax, the minimum tax on telecommunications companies, and the tax imposed on electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers. [S.B. 515](#), [H.B. 480 Leg. 2014 \(Va. 2014\)](#); see [Impact Statement](#).

PASS-THROUGH ENTITIES

- **Filing Requirements.** The Department of Taxation held that a State A LLC that provided engineering services to customers in Virginia was not required to file a Virginia income tax return because its activities in Virginia were not sufficient to create a positive apportionment factor for Virginia income tax purposes. Although its employees occasionally made visits to Virginia, the majority of the LLC’s work was performed in State A. The LLC did not have any Virginia source income because it did not have any property or payroll in Virginia. In addition, it did not have any sales attributable to Virginia, as more than 50% of the cost for providing services to Virginia customers was incurred in State A. [Va. P.D. 14-48](#).

FIDUCIARY INCOME TAX

- **Resident Trusts.** The Department of Taxation held that three generation-skipping trusts (“GSTs”) were not required to file a Virginia fiduciary income tax return because they did not satisfy any of the criteria to be treated as “resident trusts” under Va. Code § 58.1-381. The GSTs were established outside of Virginia by grantors who never resided in Virginia, and none of the GSTs owned property in Virginia. The GSTs were administered by two co-trustees. Co-Trustee 1, a State A corporation, administered the day-to-day

SESALT TEAM

Stephanie Lipinski Galland
Co-Chair, Author
202.327.5094
slipinskigalland@williamsmullen.com

Charles B. Neely, Jr.
Co-Chair
919.981.4007
cneely@williamsmullen.com

Nancy S. Rendleman
Co-Chair
919.981.4034
nrendleman@williamsmullen.com

William F. Devine
757.629.0618
bdevine@williamsmullen.com

Robert W. Shaw
919.981.4310
rshaw@williamsmullen.com

Shane L. Smith
757.629.0706
ssmith@williamsmullen.com

Brian C. Vick
919.981.4023
bvick@williamsmullen.com

Kyle H. Wingfield
Author
804.420.6445
kwingfield@williamsmullen.com

operations of each GST. Co-Trustee 2, a Virginia resident, could not make decisions individually and was limited to participating in committee meetings in State A to set annual distributions by each GST. Citing Va. P.D. 02-101, the Department concluded that the GSTs were not administered in Virginia. [Va. P.D. 14-49](#).

SALES AND USE TAX

- **Accelerated Sales Tax Payment.** The Department of Taxation issued guidelines regarding the additional payment made by dealers required to make an accelerated sales tax payment. Effective for calendar year 2014, any dealer having taxable sales and/or purchases of \$48.5 million or greater during the 12-month period beginning July 1 and ending June 30 of the immediately preceding calendar year must make a payment equal to 90% of the retail sales and use tax liability for the previous June on or before each June 30 if paying by electronic funds transfer. If payment is made by another method, the payment must be made on or before June 25. The guidelines include information on the accelerated sales tax payment requirement, affected dealers, exceptions, accelerated sales tax payment and reconciliation, penalties and interest, hardship exceptions, requests for reconsideration and disposition of revenues. [Va. P.D. 14-58](#).
- **Contractor vs. Retailer.** The Department of Taxation held that a taxpayer, a commercial interior business located in Tennessee, is a contractor with respect to real property for Virginia sales and use tax purposes. As such, the Department held that the taxpayer is subject to Virginia use tax on tangible personal property purchased for use and consumption when it supplies and installs window treatments and cubicle curtains in the performance of real property jobs in Virginia. In instances where the taxpayer is required to pay Tennessee sales or use tax on property consumed in Virginia jobs, and if an audit is performed, the taxpayer may be allowed credit for any Tennessee use tax on such property. [Va. P.D. 14-43](#).

BUSINESS PROFESSIONAL AND OCCUPATIONAL LICENSE TAX

- **Deductions.** The Department of Taxation held that a taxpayer was permitted a deduction for gross receipts attributable to business conducted in other states. The County had disallowed the deduction, claiming that there was no statutory basis for allowing the out-of-state deduction when a taxpayer uses payroll apportionment to situs gross receipts. The Department cited the Supreme Court of Virginia's decision in *Ford Motor Credit Co. v. Chesterfield County*, 281 Va. 321, 707 S.E.2d 311 (2011), to support its position. The Department also clarified the three-step process for computing the deduction where gross receipts have been sited by payroll apportionment. [Va. P.D. 14-29](#); see also [Va. P.D. 14-30](#) and [Va. P.D. 14-31](#).

MACHINERY AND TOOLS TAX

- **Manufacturing Process.** In an advisory opinion, the Department of Taxation indicated that post-production and packaging equipment used by a paper manufacturer may not be subject to the machinery and tools tax ("MTT"). The MTT applies to equipment (i) actually and directly used in the manufacturing process where new materials are transformed into a substantially different product or (ii) connected with the operation of machinery actually and directly used in the manufacturing process. The

Department noted that various machinery used by the taxpayer to roll, cut and package the paper after it has been made does not appear to transform the paper into a substantially different product. The Department declined to make a final determination without examining the taxpayer's operations. [Va. P.D. 14-22](#).

BUSINESS TANGIBLE PERSONAL PROPERTY TAX

- **Fixtures to Real Property.** The Department of Taxation ruled that gas pumps replaced by a service station to comply with federal requirements regarding debit card transactions were fixtures to real property and, thus, subject to local real property taxes and not local business tangible personal property taxes. Citing the Supreme Court of Virginia's decision in *Danville Holding Corp. v. Clement*, 178 Va. 223 (1941), the Department concluded that the gas pumps satisfied the three general rules to be treated as a fixture that is part of the real estate (annexation, adaption, intent). [Va. P.D. 14-53](#).

OTHER

- **Taxpayer Bill of Rights.** The Department of Taxation ruled that Virginia's Taxpayer Bill of Rights only applies to local taxes administered by the Department (e.g., audit and collection procedures for the local portion of the retail sales and use tax). The Taxpayer Bill of Rights does not extend to taxes administered by the locality, such as real estate taxes, tangible personal property taxes, and the Business, Professional and Occupational License Tax. [Va. P.D. 14-17](#).

NORTH CAROLINA

- **Exception to General Statute of Limitations for Refund.** The Department of Revenue has released guidance concerning legislation effective January 1, 2014 that provides an exception to the general statute of limitations for obtaining a refund of an overpayment due to a contingent event or an event or condition other than a contingent event. A "contingent event" is litigation or a state tax audit initiated prior to the expiration of the statute of limitations period that prevents a taxpayer from possessing the information necessary to file an accurate and definite request for refund of an overpayment. An "event or condition other than a contingent event" is an event or condition other than litigation or a state tax audit that has occurred and prevents the taxpayer from filing an accurate and definite request for refund of an overpayment within the statute of limitations period. The guidance provides procedures for claiming the refund. [N.C. Dept. of Rev., Exception to the General Statute of Limitations for Certain Events \(April 29, 2014\)](#).
- **Sales Tax – Rentals of Certain Accommodations.** The Department of Revenue has published guidance on its website about a previously published Important Notice regarding sales tax due on rentals of certain accommodations, including private residences and cottages. Until an amendment to the Notice on June 14, 2012, the Department's position had been that accommodations listed with a real estate agent or broker for rental to transients generally were available for rental to transients and that the "less than 15 days exclusion" was not applicable to such rental receipts. In the June 14, 2012 amendment to the Important Notice, the Department altered its interpretation to provide that the gross receipts

derived from the rental of accommodations for fewer than 15 days in a calendar year were not subject to sales tax, whether or not such accommodations were listed with a real estate agent or broker. Upon further review, the Department has concluded that the June 14, 2012 amendment did not reflect the intent of the law. The Department has asked the General Assembly to provide clarifying legislation upholding the longstanding interpretation prior to change, which the General Assembly will consider in the 2014 short session. [N.C. Dept. of Rev., Sales Tax on Rentals of Private Residences, Cottages, and Other Accommodations \(April 17, 2014\)](#).

- Adjustments for Code Section 179 Expenses. For tax years 2010 through 2013, North Carolina did not fully conform to federal law regarding expenses under Section 179 of the Internal Revenue Code (the “Code”). For 2013, North Carolina law provided that the North Carolina dollar limitation was \$25,000 and that the North Carolina investment limitation was \$125,000. The Department has been advised by the staff of the General Assembly that there was a drafting error in the law regarding the investment limitation for 2013. According to staff, the General Assembly intended the North Carolina investment limitation for taxable year 2013 to be \$200,000. The Revenue Laws Study Committee has voted to recommend that the General Assembly change the North Carolina investment limitation for the taxable year 2013 to \$200,000 during the 2014 legislative session. [N.C. Dept. of Rev., Important Notice: Income Tax Adjustments for Code Section 179 Expenses \(April 16, 2014\)](#).

MARYLAND

- Nexus Created by Lack of Economic Substance with Parent. Maryland’s highest court affirmed a Maryland Court of Appeals decision holding that two-out-of-state subsidiaries with no in-state physical presence were subject to Maryland corporate income tax. According to the court, nexus was established because the subsidiaries did not have economic substance separate from their parent, an entity with operations in Maryland. Among other factors, the court noted that (i) the subsidiaries depended on the parent for their income, (ii) there was a circular flow of money between the subsidiaries and their parent, (iii) the subsidiaries relied on their parent for core functions and services and (iv) there was a general absence of any substantive activity by the subsidiaries that would separate them from the parent. [Gore Enterprise Holdings, Inc. v. Comptroller of the Treasury, Md. Ct. App. No. 36 Sept. Term 2013 \(2014\)](#).
- Research and Development Tax Credit. The Comptroller of the Treasury adopted amendments to the regulations regarding Maryland’s research and development tax credit. Under the amendments, a “small business” is defined as a for-profit corporation, limited liability company, partnership, or sole proprietorship with net book assets of less than \$5 million. The maximum annual credits are increased from \$3 million to \$4 million, and if the credit allowed in any taxable year exceeds the state income tax for that taxable year, a small business may claim a refund for the excess amount. [Md. Regs. Code §§ 03.04.10.01, -.04, -.08 \(Effective March 31, 2014\)](#).

DISTRICT OF COLUMBIA

- Tax Reform – Recommendations. On September 14, 2011, the District of

Columbia created the Tax Revision Commission (the “Commission”) with the purpose of “preparing comprehensive recommendations” to address the fairness of apportionment of taxes, broaden the tax base, make the District’s tax policy competitive with the surrounding jurisdictions, encourage business growth and “modernize, simplify, and increase transparency in the District’s tax code.” After many meetings and input from a varied list of taxpayers and taxpayer groups, the Commission issued its Final report in May 2014. The Commission focused on the burden on individuals within the District and how the District compared to Maryland and Virginia. Of import to businesses, the Commission looked at two areas – business tax and sales/use tax. See [Williams Mullen Alert](#).

SOUTH CAROLINA

- Combined Reporting. The Department of Revenue announced that it will cease work on the proposed draft ruling on combined unitary reporting, [S.C. Dept. of Rev., Rev. Rul-14-STAFF Draft \(Feb. 28, 2014\)](#), and will form a committee to study alternative allocation and apportionment methods. The committee will include personnel from the Department, various industry groups and tax practitioners, who will study alternative apportionment methods, including combined unitary reporting, in an attempt to reach an equitable, balanced approach that provides taxpayers and the Department with objective and reasoned standards. While the committee studies the available options regarding this issue, the Department has stated that it will not assert on audit combined unitary reporting as an alternative apportionment method, and will work to resolve audit issues on other bases. [S.C. Dept. of Rev., Information Concerning the Department’s Review of Alternative Allocation and Apportionment Methods \(May 1, 2014\)](#).

CIRCULAR 230: Treasury regulations require us to inform you that neither you nor any other recipient may use any tax advice in this communication for the purpose of avoiding penalties under the Internal Revenue Code. Treasury regulations require attorneys and other tax advisors, who provide tax advice for such purpose, to perform increased due diligence to verify all relevant facts, provide a conclusion with respect to each tax issue and format the tax advice consistent with strict and detailed requirements. If you would like us to prepare written tax advice consistent with these requirements, please contact us, and we will be pleased to discuss the matter with you in more detail.

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WILLIAMS MULLEN

July 2, 2014 | Vol. 1 | Issue 13

Southeast State & Local Tax : Important Developments

Virginia | North Carolina | Washington, D.C.
Maryland | South Carolina

BY: STEPHANIE LIPINSKI GALLAND & KYLE H. WINGFIELD

The Williams Mullen Southeast State and Local Tax (SESALT) team is pleased to provide you with a comprehensive recap of recent legislation around the U.S.

VIRGINIA

BUSINESS PROFESSIONAL AND OCCUPATIONAL LICENSE TAX

- Department Lacked Jurisdiction to Address BPOL Appeal. The Department of Taxation held that it lacked jurisdiction to address a taxpayer's BPOL appeal because the County making the assessment failed to issue a proper final determination letter. Under Title 23 of the Virginia Administrative Code § 10-500-710(D) and Va. P.D. 04-28 (Guidelines for Appealing Local Business Taxes), localities must include specific language regarding the taxpayer's appeals rights with respect to a BPOL assessment in the final determination letter. The County did not include the required language in its determination letter to the taxpayer. Also, the taxpayer did not give notice to the County before appealing the assessment to the Department. Accordingly, the Department returned the case to the County for a proper determination letter. [Va. P.D. 14-72](#).

SALES AND USE TAX

- Internet Service Provider Exemption. The Department of Taxation ruled that certain assets purchased by an Internet service provider ("ISP") would not qualify for the exemption to the retail sales and use tax under Va. Code § 58.1-609.6(2) outside of Fairfax County, Virginia to the extent that the services were provided at wholesale rather than at retail. The Department's long-standing position is that the ISP exemption only applies to retail ISPs and not wholesale ISPs. In *Cisco Systems v. Thorson Tax Commissioner*, La No. 219609 (8/17/05), the circuit court for Fairfax County, Virginia ruled that the ISP exemption was available to both retail and wholesale ISPs. In the ruling, the Department notes that it has declined to apply *Cisco Systems* on a statewide basis because the Supreme Court of Virginia has not reviewed the issue or issued an opinion addressing the scope of the ISP exemption. [Va. P.D. 14-92](#).

UPCOMING SALT EVENTS

ABA Fall Tax Meeting
September 18 – 20, 2014
Location: Denver, CO
[Information](#)

SESALT TEAM

[Stephanie Lipinski Galland](#)
Co-Chair, Author
202.327.5094
slipinskigalland@williamsmullen.com

[Charles B. Neely, Jr.](#)
Co-Chair
919.981.4007
cneely@williamsmullen.com

[Nancy S. Rendleman](#)
Co-Chair
919.981.4034
nrendleman@williamsmullen.com

[William F. Devine](#)
757.629.0618
bdevine@williamsmullen.com

[Robert W. Shaw](#)
919.981.4310
rshaw@williamsmullen.com

[Shane L. Smith](#)
757.629.0706
ssmith@williamsmullen.com

[Kyle H. Wingfield](#)
Author
804.420.6445
kwingfield@williamsmullen.com

- **Communications Services – Activation Fees.** The Department of Taxation held that tax associated with activation fees should be removed from the taxpayer’s audit because the fees are not for communication services under Va. Code § 58.1-647. The taxpayer was a cellular telephone service provider that was assessed tax on “activation fees” charged to its customers. The Taxpayer maintained that the separate activation fee charged to its customers was an equipment charge, not a fee associated with activating an account, and that it used the fee to recoup some of its losses associated with selling the telephones phones. The Department noted that the taxpayer’s activation fees were not for activating “communication services” under Va. Code § 58.1-647. Therefore, the Department held that the taxpayer’s activation fees were not subject to the communications sales tax and must be removed from the audit. [Va. P.D. 14-64.](#)
- **Materials Not Attached to Real Property.** The Department of Taxation held that a contractor was not subject to retail sales and use tax on furniture, fixtures and equipment purchased under a contract for real property construction between the contractor and a governmental agency. Citing P.D. 87-210, the Department noted that if materials are actually resold to customers and do not become permanently affixed to the real property, the contractor may qualify for the sale-for-resale exemption to the retail sales and use tax. The Department also held that the contractor qualified for the governmental exemption under Va. Code § 58.1-609.1 because the purchases were made for use or consumption by the Commonwealth or its political subdivisions. [P.D. 14-91.](#)

PROPERTY TAX

- **Refund Denied.** The Virginia Attorney General opined that a locality may not refund erroneously assessed real estate taxes beyond the three (3) year period provided by local ordinance for issuing such refunds. In this case, the city assessor corrected assessments retroactively for nine (9) years and authorized a refund for the entire period. The actions were taken administratively by the city assessor. No lawsuit was ever filed, there was no settlement agreement, and no court had authorized the refund. Citing a prior opinion, the Attorney General noted that three procedures are available to correct an erroneous tax assessment: (i) administrative correction, (ii) administrative correction pursuant to a local ordinance and (iii) judicial correction. Since the city assessor chose to refund the taxpayer using an administrative adjustment, the Attorney General concluded that the taxpayer was bound by the three (3) year limitation imposed by the Code of Virginia and the local ordinance. [2014 Op. Va. Att’y. Gen. 13-081.](#)

NORTH CAROLINA

- **Sales Tax – Rentals of Certain Accommodations.** H.B. 1050, signed into law May 29, 2014 by Governor McCrory, provides that the gross receipts derived from the rental of a private residence, cottage, or similar accommodation listed with a real estate broker or agent where a person occupies or has the right to occupy such on or after June 1, 2014 is subject to the 4.75% general state and applicable local and transit rates of sales and use tax, plus any local occupancy tax imposed by a city or county. Also, a retailer is not liable for an overcollection or undercollection of sales tax or

occupancy tax if the retailer (i) has made a good-faith effort to comply with the law and collect the proper amount of tax and (ii) has, due to the statutory change, overcollected or undercollected the amount of sales tax or occupancy tax due for the period beginning June 14, 2012, and ending July 1, 2014. [N.C. Dept. of Rev., Important Notice: Rentals of Private Residences, Cottages, or Similar Accommodations \(5/30/2014\)](#).

MARYLAND

- Wynne Update. The U.S. Supreme Court granted certiorari in an appeal from the Maryland Court of Appeals case holding that the failure of the Maryland income tax law to allow a credit against the county tax for a Maryland resident taxpayer with respect to pass-through income of an S corporation that arises from activities in another state and that is taxed in that state violates the federal dormant Commerce Clause. [Wynne v. Comptroller of the Treasury, Md. Ct. App., Dkt. No. 107 Sept. Term 2011 \(2013\)](#); cert. granted, U.S. S. Ct., Dkt. No. 13-485, 05/27/2014. On a related note, Governor O'Malley recently signed S.B. 172, which provides an interest rate reduction for income tax refunds attributable to the final decision in Wynne. [S.B. 172 Leg. 2014 \(Md. 2014\)](#).

AROUND THE NATION

- Permanent Internet Tax Freedom Act. On June 18, 2014, the House Judiciary Committee approved H.R. 3086 (the Permanent Internet Tax Freedom Act). The Internet Tax Freedom Act (the "IFTA") prohibits federal, state and local governments from taxing Internet access and from imposing discriminatory taxes on electronic commerce. The IFTA is set to expire on November 1, 2014. If it is enacted, H.R. 3086 would eliminate the expiration date and make the IFTA permanent. The current version of the bill includes a grandfather clause and would allow certain states to tax Internet access if their statutes were in place before the IFTA was enacted in 1998. [H.B. 3086, 113th Cong. \(2014\)](#).

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WILLIAMS MULLEN

August 1, 2014 | Vol. 1 | Issue 14

Southeast State & Local Tax : Important Developments

Virginia | North Carolina | Washington, D.C.
Maryland | South Carolina

BY: STEPHANIE LIPINSKI GALLAND & KYLE H. WINGFIELD

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VIRGINIA

GENERAL PROVISIONS

- 2014 Legislative Summary. The Department of Taxation published its reference guide to state and local tax legislation enacted by the 2014 Session of the General Assembly and Special Session I, including the reconvened session on April 3, 2014 and actions taken as of July 1, 2014. State tax developments include legislation pertaining to interest-charged domestic international sales corporations, clarification of the intangible holding company addback provisions and various tax credits. Local tax developments include legislation pertaining to transient occupancy taxes, real estate taxes, severance taxes and tangible personal property taxes. [P.D. 14-97](#).

PROPERTY TAX

- County and Town Tangible Personal Property Tax. The Virginia Attorney General issued an opinion holding that a county and town can concurrently assess tangible personal property taxes on business property located within the boundaries of both governmental entities. The attorney general noted that implicitly counties and towns in Virginia are separately authorized to assess tangible personal property taxes pursuant to Va. Code § 58.1-3511, and, because a town (unlike a city) is not independent of its host county, tangible personal property can be physically located in both a town and a county. [Va. Atty Gen. Op. 14-017](#).

CREDITS AND REFUNDS

- Erroneous Professional Tax Advice. The Department of Taxation denied a claim for refund by two taxpayers who relied on their accountant to timely file their Virginia income tax return. The taxpayers filed their 2006 Virginia income tax return in 2013 and claimed a refund. The Department denied

UPCOMING SALT EVENTS

Georgetown Advanced State and Local Tax Institute

Location: Georgetown University Law Center - Washington, DC
[Registration](#)

ABA Fall Tax Meeting
September 18 – 20, 2014
Location: Denver, CO
[Information](#)

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[Stephanie Lipinski Galland](#)
Co-Chair, Author
202.327.5094
slipinskigalland@williamsmullen.com

[Charles B. Neely, Jr.](#)
Co-Chair
919.981.4007
cneely@williamsmullen.com

[Nancy S. Rendleman](#)
Co-Chair
919.981.4034
nrendleman@williamsmullen.com

[William F. Devine](#)
757.629.0618
bdevine@williamsmullen.com

[Robert W. Shaw](#)
919.981.4310
rshaw@williamsmullen.com

[Shane L. Smith](#)
757.629.0706
ssmith@williamsmullen.com

the refund because the return was filed beyond the refund period allowed by Virginia's statute of limitations. The taxpayers contended that the failure to file resulted from an error by their accountant. On appeal, the Department rejected taxpayers' argument, finding that a taxpayer's reliance on an accountant to prepare income tax returns does not relieve the taxpayer of the responsibility for ensuring that the return is timely filed and that the information reported on the return is accurate. [P.D. 14-101](#).

Kyle H. Wingfield
Author
804.420.6445
kwingfield@williamsmullen.com

SALES AND USE TAX

- **Manufacturing Exemption.** The Department of Taxation ruled that a taxpayer, a provider of packaging and shipping services for an international tobacco processor (the "Manufacturer"), did not qualify for the manufacturing exemption to the retail sales and use tax under Va. Code § 58.1-609.3(2). The taxpayer argued that it was part of a vertically integrated manufacturing process with the Manufacturer. The Department ruled that the taxpayer did not qualify for the exemption because (i) it was not a manufacturer or industrial processor and (ii) the packaging and shipping did not occur on the plant site and, therefore, did not qualify as "manufacturing" under Va. Code § 58.1-609.3(2). As the consumer of all materials used in the packaging and shipping services, the Department ruled that the taxpayer was liable for sales tax on its purchases of materials used in providing the packaging and shipping services. [P.D. 14-103](#).

NORTH CAROLINA

- **Property – Untimely Appeal.** The North Carolina Court of Appeals affirmed the North Carolina Property Tax Commission's dismissal of the taxpayer's revaluation appeal because the taxpayer's original request to the Guilford County Board of Equalization and Review (the "Guilford County Board") for a hearing was untimely. The taxpayer contended that statutory law permitted it to submit its appeal to the Guilford County Board at any time prior to the Board's adjournment for the year. The court concluded that the legislature intended for a local board of equalization and review to have the authority to set a reasonable deadline prior to its adjournment for accepting requests for revaluation appeals and that such time is the time prescribed by law. The Guilford County Board set July 2, 2012 as the deadline for appeal requests for 2012. As the taxpayer did not submit its hearing request by that date, the taxpayer did not timely request an appeal of the revaluation of its properties for the tax year 2012. [In the Matter of Appeal of: Dixie Building, LLC, N.C. Ct. App., Dkt. No. COA13-1170 \(July 15, 2014\)](#).
- **Rental Property – Revaluation.** The North Carolina Court of Appeals reversed a final decision of the North Carolina Property Tax Commission because the taxpayer produced competent, material, and substantial evidence tending to show that the assessor's valuation was arbitrary or illegal and substantially exceeded the true value of the property. The taxpayer owned rental community comprised of 121 adjacent tax parcels: 120 were residential lots with a detached single-family residence; and the remaining lot was improved with a clubhouse and amenities for tenants. The assessor determined the value of each parcel separately on a cost basis using the county's schedule of values and totaled the values assigned to each parcel to reach the aggregate value. The taxpayer's expert testified that the income approach was the most appropriate valuation

approach to employ and was based on the use of property as a rental complex. The court of appeals determined only that the taxpayer produced sufficient evidence to rebut the presumption of correctness afforded ad valorem tax assessments and remanded the case for the Commission to determine the appropriate valuation method. [In the Matter of Appeal of: Villas at Peacehaven, LLC, N.C. Ct. App., Dkt. No. COA13-1224 \(July 15, 2014\).](#)

DISTRICT OF COLUMBIA

- Sales and Use Tax – Sales in Federal Buildings. The Mayor signed the Fiscal Year 2015 Budget Request Act of 2014 (the “Act”), which will be sent to Congress for review. Under the Act, the following sales will be subject to DC sales and use tax: (1) sales at gift shops, souvenir shops, kiosks, convenience stores, food shops, cafeterias, restaurants and similar establishments in federal buildings, including memorials and museums, in DC that make sales to: (a) the general public, whether operated by the federal government, an agent of the federal government, or a contractor, and (b) other than the general public, if operated by an agent of the federal government or a contractor; and (2) sales of goods and services by government-sponsored enterprises and corporations, institutions, and organizations established by federal statute or regulation (collectively, “Federal Enterprises and Organizations”), including the Smithsonian Institution, National Gallery of Art, National Building Museum, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation, if the Federal Enterprise or Organization is otherwise exempt from such taxation, to the extent those sales would be subject to the sales and use taxes if the Federal Enterprise or Organization were organized as a nonprofit corporation under the D.C. Nonprofit Corporation Act and exempt from federal income taxation under IRC § 501(c)(3). [L. 2014, Act 20-370](#) (effective 30-day period of Congressional review.)

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U.S. SUPREME COURT

The United States Supreme Court has granted petitions for writ of certiorari in three state and local tax cases for its October Term 2014.

- *Comptroller of the Treasury v. Wynne*. In *Wynne*, the U.S. Supreme Court will consider whether a state or locality has to allow a credit for taxes paid on income earned in other states. Previously, the Maryland Court of Appeals ruled that the federal Commerce Clause is violated by Maryland's failure to allow a credit against Maryland county taxes for income earned in another state and taxed in that state. This decision may have a significant impact on a locality's ability to collect revenue. While most states provide full credits for income taxes paid to other states, many local jurisdictions do not. [Comptroller of the Treasury v. Wynne, 431 Md. 147 \(Md. Ct. App. 2013\)](#); cert. granted [U.S. Dkt. 13-485 \(May 27, 2014\)](#).
- *Alabama Department of Revenue v. CSX Transportation, Inc.* In *CSX Transportation*, the U.S. Supreme Court will consider whether a state discriminates against a rail carrier in violation of 49 U.S.C. § 11501(b)(4) when the state generally requires commercial and industrial businesses to pay a sales-and-use tax but grants exemptions from the tax to the railroads' competitors. While the case is specific to rail carriers, the case could be instructive for challenges of current or potential future federal laws that prohibit discriminatory state taxation. [Alabama Department of Revenue v. CSX Transportation, Inc., 720 F.3d 863 \(11th Cir. 2013\)](#); cert. granted [U.S. Dkt. 13-553 \(July 1, 2014\)](#).
- *Direct Marketing Association v. Brohl*. In *Direct Marketing*, the U.S. Supreme Court will consider whether the federal Tax Injunction Act ("TIA") prohibits third-party, non-taxpayer plaintiffs from challenging a state tax information reporting requirement in federal court. It is doubtful that the Court will consider the broader question of whether Colorado's use tax reporting requirements are constitutional. It is expected that the Court's

UPCOMING SALT EVENTS

ABA Fall Tax Meeting
September 18 – 20, 2014
Location: Denver, CO
[Information](#)

Tax Forum
October 1, 2014
8:00 - 10:30 am
Location: [Richmond Office](#)

SALT Seminar
October 24, 2014
8:30 - 11:30 am
Location: [Virginia Beach Office](#)

SESALT TEAM

[Stephanie Lipinski Galland](#)
Co-Chair, Author
202.327.5094
slipinskigalland@williamsmullen.com

[Charles B. Neely, Jr.](#)
Co-Chair
919.981.4007
cneely@williamsmullen.com

[Nancy S. Rendleman](#)
Co-Chair
919.981.4034
nrendleman@williamsmullen.com

[Kyle H. Wingfield](#)
Author
804.420.6445
kwingfield@williamsmullen.com

[William F. Devine](#)
757.629.0618
bdevine@williamsmullen.com

decision will clarify protections provided by the TIA and be instructive to out-of-state taxpayers on nexus issues. [Direct Marketing Ass'n v. Brohl](#), 735 F.3d 904 (10th Cir. 2013); cert. granted U.S. Dkt. 13-1032 (July 1, 2014).

Robert W. Shaw
919.981.4310
rshaw@williamsmullen.com

Shane L. Smith
757.629.0706
ssmith@williamsmullen.com

VIRGINIA

WORKER CLASSIFICATION

- Worker Classification Task Force Established. On August 14, 2014, Virginia Governor Terry McAuliffe signed Executive Order 24 to establish an inter-agency task force on worker misclassification and payroll fraud. The task force is a response to a 2012 report of the Joint Legislative Audit and Review Commission finding that one-third of audited employers in certain industries misclassify their employees. As part of the initiatives, the task force will review statutes, regulations and enforcement practices related to worker misclassification and payroll fraud. The task force's findings may have a significant impact on ensuring taxpayers' compliance with Virginia payroll and employment tax laws. See [Va. EO-24 \(Aug. 14, 2014\)](#).

TAX CREDITS

- Qualified Equity and Subordinated Debt Investments Credit. Virginia taxpayers are permitted a credit equal to 50% of the cash investment in a qualified business in the form of equity or subordinated debt. The aggregate amount of the credit that may be used per taxable year by the taxpayer cannot exceed the lesser of the tax imposed for the tax year or \$50,000. The tax credit cap will increase to \$5 million for Taxable Year 2014 and remain at the statutory cap of \$5 million for future years, unless the General Assembly takes future action. Certain procedures and filings must be made in order to claim the credit. [Va. P.D. 14-115](#).
- Conservation Easements. In [Va. P.D. 14-7](#), the Department of Taxation rejected a taxpayer's appraisal of a conservation easement and held that the individuals who purchased the credit from the taxpayers were liable for additional taxes. The Department concluded that a third-party appraisal commissioned by the Department more accurately reflected the value of the easement. The taxpayers have challenged the ruling in [Valley Medical, et al. v. Va. Dept. of Tax., Cir Ct. of Loudoun, Dkt. No. 86252](#). [Va. P.D. 14-125](#).

SALES AND USE TAX

- Manufacturing Exemption. The Department of Taxation held that cleaning chemicals used by a manufacturer of printing inks did not qualify for the manufacturing exemption to the retail sales and use tax under Va. Code §58.1-609.3(2). Citing previous rulings from the Commissioner and decisions from the Supreme Court of Virginia, the Department concluded that the printing chemicals were not used "directly" in the manufacturing process, as required by the statute, because production must stop before the cleaning chemicals could be used. [Va. P.D. 14-114](#).
- Communications Sales and Use Tax. The Department of Taxation held that a taxpayer-provider of mobile communications services was subject to sales tax on activation fees charged to customers who entered into a

service agreement for Internet access. Upon subscribing to a plan, a customer would purchase Internet access service for a particular term in exchange for an upfront activation charge and monthly plan charges. The Department held the Virginia Communications Sales and Use Tax Act and the Internet Tax Freedom Act did not bar the Commonwealth from assessing sales taxes on such services. [VAPD 14-131](#); see also [VAPD 14-130](#).

NORTH CAROLINA

- **Occupancy Taxes.** Occupancy Taxes. The North Carolina Court of Appeals held that the trial court did not err in concluding that the taxpayers, 11 online travel companies, were not subject to the occupancy tax imposed by Wake, Dare, Buncombe, and Mecklenburg Counties (the “Counties”) for periods prior to January 1, 2011. The taxpayers are web-based companies that allow customers to research and book travel reservations online at a discounted rate. The court held that each County’s respective occupancy tax did not apply to the taxpayers because they are not retailers subject to the state sales tax. [Wake County v. Hotels.com, N.C. Ct. App., Dkt. No. COA13-594 \(Aug. 19, 2014\)](#).
- **Individual Income Tax.** The North Carolina Business Court reversed an administrative decision that the taxpayers were domiciled in North Carolina and, therefore, overturned a \$10 million tax assessment against them. The taxpayers moved to Florida in January 2006. The Department of Revenue assessed \$10 million in income and gift taxes against the taxpayers on income and gifts made in connection with the sale of a majority interest in a closely held business in February 2006. The Business Court held that the taxpayers showed intent and took concrete steps to move to Florida in January 2006, prior to the sale of the majority interest in the business. [Fowler v. North Carolina Dept. of Revenue, N.C. Super. Ct., Dkt. No. 13 CVS 10989 \(Aug. 6, 2014\)](#).

Property Taxes. The North Carolina Court of Appeals reversed the North Carolina Property Tax Commission, which had granted the taxpayer an exemption from property taxes, because the property was not wholly and exclusively used for educational or scientific purposes. While the County did not dispute that educational and scientific activities occurred on the property, it contended that substantial retail, commercial, recreational, lodging and office uses also occurred on the property. The taxpayer was under the impression that a conservation easement would allow for the continuance of commercial activities. The court held that, while that assumption may be valid for purposes of the easement and maintaining the IRC § 501(c)(3) status, it is not sufficient to meet the statutory requirement that the real property must be “wholly and exclusively used for educational and scientific purposes.” [In re Grandfather Mountain Stewardship Foundation, Inc., N.C. Ct. App., Dkt. No. COA13-1447 \(Aug. 19, 2014\)](#).

MARYLAND

- **Corporate Income Tax.** The Maryland Court of Appeals held that a Maryland parent corporation’s out-of-state subsidiaries were subject to Maryland income tax relating to various transactions involving the parent’s trademark

licensing rights that shifted income away from the parent to its subsidiaries. The Comptroller assessed taxes against the subsidiaries. The Maryland Tax Court affirmed, finding that the subsidiaries lacked economic substance separate from the parent. The Maryland Court of Appeals affirmed appeals to the circuit court and special court of appeals, holding that the taxpayer did not satisfy its burden to show that the Comptroller's assessment was wrong. [NIHC, Inc. v. Comptroller of the Treasury, No. 63 \(Md. Ct. App. 2014\)](#).

DISTRICT OF COLUMBIA

- Offer In Compromise. The District of Columbia Office of Tax and Revenue has updated Form OTR-10 Booklet, Offer in Compromise. The booklet describes what constitutes an offer in compromise and covers the following topics: (i) eligibility; (ii) important facts, (iii) payment options, (iv) calculating the amount of an offer and (v) instructions for submitting Form OTR-10 and other important forms. [See updated Form OTR-10](#).

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VIRGINIA

INDIVIDUAL INCOME TAX

- **Same-Sex Marriage.** The Virginia Department of Taxation has issued answers to frequently asked questions (“FAQs”) regarding Virginia’s income tax treatment of same sex marriage, which is now legal in the Commonwealth. The FAQs cover who can file joint returns; state versus federal filing status; computation of income; amendment of returns to file joint returns; tax consequences of filing joint returns; amendment of an employee’s withholding exemption certificate (Form VA-4) to claim exemption for a spouse; and an end to the imputation of the fair market value of employer-provided health insurance benefits for a same-sex spouse as income to the employee. Va. Dept. of Tax, Same-Sex Marriage FAQs (Oct. 7, 2014).

CORPORATE INCOME TAX

- **Sales Factor.** The Department of Taxation ruled that various items of equipment sold by a taxpayer for installation on a U.S. government naval vessel must be included in the numerator of the taxpayer’s sales factor. Pursuant to Va. Code § 58.1-415 and previous rulings of the Commissioner, the Department observed that a sale of tangible personal property is not included in the numerator of the Virginia sales factor when the initial delivery is for transportation services and the seller knows that the ultimate recipient is located outside of Virginia. However, under the facts of this ruling letter, the Department held that, because each of the destinations is located in Virginia, the taxpayer’s sales must be included in the Virginia sales factor. Va. P.D. 14-160.

UPCOMING SALT EVENTS

Williams Mullen – SESALT

Fall Update

October 24, 2014

8:00 - 11:30 am

Location: [Virginia Beach Office Registration](#)

ABA State and Local Tax –
Midyear Meeting

January 29-31, 2015

Location: [Hilton Americas Houston, TX Information](#)

SESALT TEAM

[Stephanie Lipinski Galland](#)

Co-Chair, Author

202.327.5094

slipinskigalland@williamsmullen.com

[Charles B. Neely, Jr.](#)

Co-Chair

919.981.4007

cneely@williamsmullen.com

[Nancy S. Rendleman](#)

Co-Chair

919.981.4034

nrendleman@williamsmullen.com

[Kyle H. Wingfield](#)

Author

804.420.6445

kwingfield@williamsmullen.com

[Shane L. Smith](#)

757.629.0706

ssmith@williamsmullen.com

RETAIL SALES AND USE TAX

- **Manufacturing Exemption.** The Department of Taxation ruled that various items, including transformers and electrical distribution equipment, purchased by a taxpayer to upgrade its manufacturing plant were exempt from Virginia sales and use tax. Pursuant to Va. Code §58.1-609.3(2), “machinery, tools, equipment or repair parts or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale.” Under this test, the Department also ruled that the foundation on which the equipment is located also qualified for the manufacturing exemption because it was directly used in quality control. Va. P.D. 14-172.

William F. Devine
757.629.0618
bdevine@williamsmullen.com

Robert W. Shaw
919.981.4310
rshaw@williamsmullen.com

BPOL TAX

- **Reimbursement of Expenses.** The Department of Taxation ruled that reimbursement expenses received by a taxpayer-operator of a warehouse (the “Operator”) were subject to BPOL tax. The owner of the warehouse (the “Owner”) reimbursed the Operator for all expenses paid by the Operator for operating the warehouse, plus a management fee. Pursuant to Va. Code § 58.1-3703.1, the Department ruled that the reimbursements were gross receipts to the Operator. The Department further determined that the Operator failed to substantiate that it qualified for the agency exception to the BPOL tax. Va. P.D. 14-146.

NORTH CAROLINA

- **Apportionment of Multistate Partnership Income.** The Department of Revenue recently issued a directive to announce a change in its policy regarding the apportionment and allocation of income by a multistate partnership. The Department has determined that the requirement in N.C. Gen. Stat. § 105-153.4(d) to use the ratio calculated under the corporate apportionment formula in N.C. Gen. Stat. § 105-130.4 necessarily includes use of an alternative apportionment method approved by the Secretary, as well as use of the statutory apportionment formulas set out in N.C. Gen. Stat. § 105-130.4(i) and N.C. Gen. Stat. § 105-130.4(m) through N.C. Gen. Stat. § 105-130.4(s 1) . The Department also has concluded that it imprudently exercised its authority under N.C. Gen. Stat. § 105-262 and N.C. Gen. Stat. § 105-264 when it required or allowed partnerships to separately account for business activities that were segregated from other business activities. Finally, the Department has determined that, in many cases, a partnership misconstrued the Department's guidance by segregating a portion of its apportionable income because it employed a method of accounting that clearly reflected the income of a specific activity. As a result of the review, the Department will revise its partnership income tax return form and instructions for 2014 to remove provisions for reporting income from segregated activities. N.C. Dept of Rev., Directive No. PD-14-02 (Oct. 10, 2014).
- **New Sales and Use Tax Provisions.** The Department of Revenue published a release regarding changes to the sales and use tax provisions enacted by the 2013 and 2014 Sessions of the General Assembly. The release includes (i) information regarding changes in sales and use tax rates for various items; (ii) transactions subject to sales and use tax as a

result of the expansion of the sales and use tax base through tax modernization efforts; and (iii) various sales and use tax exemptions repealed by the General Assembly. N.C. Dept. of Rev., Sales and Use Tax Law Changes—2014 Form E-505 (Oct. 6, 2014).

- Service Contracts. The Department of Revenue issued an important notice regarding service contracts. Effective October 1, 2014, a privilege tax is imposed at the 4.75% general state and applicable local and transit rates of sales and use tax on a retailer to the sales price of or the gross receipts derived from a service contract sold at retail. The notice provides information regarding the retailer of a service contract, exemptions, exceptions, basis of reporting, refund of tax paid on a rescinded sale or cancellation of service, service contracts and lease receipts from motor vehicles subject to the alternate highway use tax, and key definitions. N.C. Dept. of Rev., Important Notice: Service Contracts (Sept. 26, 2014).

DISTRICT OF COLUMBIA

- Business Tax Rates. The District has enacted the “Fiscal Year 2015 Budget Support Act of 2014.” The legislation sets the corporate and unincorporated business franchise tax rate at 9.4% for the taxable year beginning after December 31, 2014. Also for tax years beginning after December 31, 2014, business income will be apportioned to the District of Columbia using only the sales factor. D.C. Act 20-449 (2014) (Expires Jan. 7, 2015).

SOUTH CAROLINA

- Angel Investor Tax Credit. The South Carolina Department of Revenue issued a revenue ruling to provide general guidance regarding the “High Growth Small Business Job Creation Act of 2013,” which provides an angel investor credit for qualified investment in early stage, high-growth, job-creating businesses. The ruling is divided into three parts: (1) original investor guidance - qualifications, requirements, and claiming the credit; (2) transfer of credit - notification to the Department and claiming the credit; and (3) sale of an angel investor credit asset. Each part consists of questions and answers on various topics. S.C. Rev. Rul. No. 14-6, (Sept. 1, 2014).
- Sales and Use Tax – Hotels. The Department of Revenue revised its guidance regarding sales and use tax on additional guest charges by hotels, motels and other places furnishing sleeping accommodations. A sales tax of 5% is imposed on additional guest charges at any place where rooms, lodgings, or accommodations are furnished to transients for a consideration. Additional guest charges are limited to charges for: (1) room service; (2) laundering and dry cleaning services; (3) in-room movies; (4) telephone service; and (5) rentals of meeting rooms. The term “additional guest charge” no longer includes amenities, entertainment, special items in promotional tourist packages, and other guest services. Therefore, charges for these services are not subject to the sales tax as an “additional guest charge.” In addition, if separately stated on the bill to a customer and optional, these charges are not subject to the 7% sales tax imposed upon accommodations. Additional information can be found in the Department’s letter ruling, S.C. Rev. Rul., No. 14-5, (Oct. 1, 2014).