MEMBER SPOTLIGHT: RICH JONES

Rich Jones is a long-time member of the SALT Executive Committee and a partner at Sullivan and Worcester in Boston, Massachusetts, where he concentrates on SALT litigation and transactional planning involving corporate, personal income, and sales / use tax matters.

Rich has developed a strong record in representing clients in SALT controversies over the years, including recent victories in *Oracle v. Commissioner of Revenue* (2021), which affirmed the right of businesses to apportion sales tax on software used in multiple states, and *Reagan v. Commissioner of Revenue* (2023), which reversed the state's policy of assessing sellers of exempt urban redevelopment projects.

Rich has received many awards and acknowledgments in his career. In 2022, he was selected as a finalist for "Litigator of the Year" by The American Lawyer. In 2021, he was named ~~a~~ "Lawyer of the Year" by Massachusetts Lawyers Weekly. Thank you, Rich, for your many contributions to SALT and the Executive Committee and for allowing us to interview you for Connexus.

Can you tell us about your background and how you got into SALT? Did you start as a litigator and get into SALT or were you a SALT lawyer who became a litigator?

Very much the former. Initially, I had a modest aversion to tax, a sentiment captured nicely by a parody of Meat Loaf song performed at my law school's annual musical revue. "I'd Do Anything For Love- But I Won't Do That", became "I'd Do Anything For Law – But I Won't Take Tax." At the time, it seemed to resonate. So I gravitated toward trial advocacy in school and began my career as a litigator in New York.

After about three years, a good friend at PricewaterhouseCoopers in Boston sent me some articles about his work in SALT. I was struck by the fact that SALT law involves constitutional law. Questions regarding nexus, the commerce clause, and due process clause, are what first inspired me to shift gears and get into the field. I joined PwC's 20-person State Tax Consulting group in 1999. In 2003, I joined Sullivan & Worcester, where I have been able to blend my litigation and trial advocacy interests with an always-developing technical expertise in SALT.

In some of your cases, like *Akamai Technologies v. Commissioner of Revenue*, you've had to explain to judges how complicated computer technologies intersect with tax law. How do you do it?

First I had to learn it myself. To fully understand how a content delivery network, like Akamai, works, I first needed to understand what the Internet actually is, i.e., how it works physically and conceptually. I did a lot of nonrequired reading and did not hesitate to tap colleagues, my client's computer engineers, my brilliant wife Abby, and anyone else who could help me learn. Then I had to train (plead with) my client's computer-scientist witnesses to simplify their language so that their testimony could be understood by the Appellate Tax Board judge, me, and all other technological neophytes in the courtroom.

***Oracle* was groundbreaking in that it allowed Oracle and Microsoft to apportion sales tax, on software purchased by a Massachusetts company, to other states where the software was accessed and seek abatements and refunds of tax. What were some of the challenges in the case?**

Two things come to mind. First, the wording of the sales tax statute presented a challenge. The statute directs the Commissioner to make rules for apportioning tax on sales of software used in multiple states. We needed the Court to agree that this language established a statutory right to apportion, regardless of whether the Commissioner issued rules for how to apportion.

Second, in arguing that case before the Massachusetts Supreme Judicial Court, it was important to convey to the justices, who are not tax specialists, how the sales tax collection and abatement process works. The commissioner had argued that without a MPU certificate presented at the time of the sale, there's no right to apportion. What's well known in the state tax community — though perhaps not in the broader legal community — is that exemption or resale certificates are mere evidentiary items. They may shift the burden of proof for determining whether the sale is exempt (or apportionable in this case), but they are not prerequisites. Fortunately, the justices appreciated the distinction.

In *Reagan*, the Massachusetts Supreme Judicial Court held that capital gains arising from the sale of urban redevelopment projects are exempt from Massachusetts taxation? Can you tell us why this case was important?

The decision, which restores a key incentive for private investors to develop low-income housing projects in blighted areas, represents a big win for urban renewal and affordable housing efforts in Massachusetts at a time of limited housing supply. Also, I think the decision serves as an important check on the Massachusetts Commissioner of Revenue's attempts to chip away tax benefits afforded to taxpayers by statute.

What are some of the challenges that you see in SALT in the future in Massachusetts and across the country?

In Massachusetts, there's a lot of uncertainty surrounding the new "Millionaire's Tax". The 4% surtax on income over $1 million was adopted by voter ballot initiative as an amendment to the state constitution. On a related note, we are expecting to see a sharp increase in domicile controversies.

Nationwide, I think the dust is far from settled in the five years since *Wayfair* was issued. Do we really have a sense of the constitutional parameters for economic nexus thresholds? In a post-Wayfair world, does *per se* physical presence nexus still make sense, especially if that presence does nothing to facilitate an economic market?

How long have you been active on the SALT Executive Committee? What do you enjoy most about working with this group?

I think it was in 2012 when Carolyn Joy Lee first invited me to sit in with the SALT Executive Committee. I feel honored to get to know and learn from the terrific SALT lawyers in our group.

What activities do you enjoy outside of work?

I play baseball in an amateur league – leftfielder for the Boston Astros in the Boston Amateur Baseball League. We've not implemented a pitch clock yet.

I bike to work just about every day and enjoy biking in the greater Boston area on weekends. I also belong to a book club of "grumpy old men" – running about 23 years – where we debate philosophy, politics, and occasionally the book.

Finally (we always ask), what advice can you give to young lawyer or even a seasoned SALT lawyer who is trying to develop their practice?

Find and connect with people who share your enthusiasm for SALT issues, talk with them often - about your work, their work, and interesting SALT developments. Of course I'd highly recommend joining the ABA SALT Committee and other SALT communities.

Rich, thanks for your time and all that you do for the Tax Section! We look forward to seeing you in person at the May Meeting!