

MVP: Sullivan & Worcester's Richard L. Jones

By Theresa Schliep

Law360 (September 9, 2021, 4:20 PM EDT) -- Sullivan & Worcester LLP tax partner Richard L. Jones helped clients prevail in key decisions in Massachusetts implicating the technology industry, including Oracle's successful challenge in the state's highest court over sales tax on software, earning him a spot as one of Law360's 2021 Tax MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS PAST YEAR:

The Massachusetts Supreme Judicial Court found that Oracle USA Inc., along with Oracle America Inc. and Microsoft Licensing GP, were allowed under state law 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. This ruling, which dealt with the complex issue of state taxation of intangible software, could be highly instructive for companies and tax agencies nationwide, Jones told Law360.

The state high court decision specifically involved software that Oracle and Microsoft sold to Hologic Inc., a medical device company in the state. Those technology companies collected sales tax from Hologic, but the medical company eventually informed Oracle and Microsoft that the majority of its employees using the software weren't located in Massachusetts.

The Supreme Judicial Court found that the state tax agency's arguments — essentially contending that the state legislature gave it the power to decide if tax on software sold in Massachusetts but used outside its borders can be apportioned — raised constitutional issues.

Jones said that the way software is taxed, including whether it triggers sales tax or its impacts on a company's state corporate income tax liability, is particularly interesting, as is the law's frequent failure to keep up with developments in technology.

"The technology changes and moves a whole lot faster than the tax law," Jones said. Issues also abound over a state tax agency's authority to interpret relevant but potentially outdated rules, he added.



"Should the legislature have to change the law, or can the commissioner of revenue apply a broader meaning than what the rules say?" Jones said.

HIS PROUDEST MOMENT:

A different win at the intersection of technology and tax proved to be Jones' proudest moment over the past year, he said. That case in front of the state Appellate Tax Board involved Akamai Technologies Inc., a content delivery network services provider, and its eligibility for status as a manufacturer in the state, which Jones said has significant implications for tax liability in Massachusetts.

The tribunal ended up siding with Akamai in a \$7.5 million win for the company. During trial, Jones and his team had to explain the fundamentals of the internet and CDNs and prove that Akamai was providing a software and not a service as the state had contended, according to Jones.

In order to do that effectively, he and his team had to really understand the technology themselves, Jones said.

"I am proud of how our team came together to present volumes of information that we gathered into a really coherent case to explain what the internet is, what the content delivery network is," Jones said.

HIS BIGGEST CHALLENGE:

Jones said that, like attorneys and leaders at other firms, one of his biggest challenges over the past year was remote work due to the pandemic. Jones is the leader of the tax practice at Sullivan & Worcester and said that working with dozens of partners and associates remotely proved to be a challenge.

But the attorney gets more face time with some of his clients due to the ubiquity of platforms like Zoom and other work from home technology, he said. And Jones noted he's proud of his colleagues, some of whom had more experience with at-home work than others but who have been effective at communicating despite the abrupt pandemic transition last year. They've helped the firm provide the same level of service as it did prior to 2020, he said.

"I'm full of admiration and appreciation for all of my colleagues," Jones said.

WHY HE'S A TAX ATTORNEY:

Perhaps unlike some other tax attorneys, it wasn't early educational or career experiences in accounting that drove Jones to get into tax law. Instead, it was the constitutional issues raised by state tax, including questions over the commerce clause and due process clause under the U.S. Constitution, and some articles on those subjects sent to him by a friend that inspired him to get into the field, according to Jones.

Jones left law school looking to be a trial lawyer in general litigation, and practiced in New York for a few years. But those articles on constitutional issues in tax helped spur his desire to develop expertise in the field, and he ended up at PricewaterhouseCoopers. He joined Sullivan & Worcester in 2003, where he can try cases in state tax and also deal with constitutional issues, he said.

"What I really wanted to do was to blend my litigation and trial advocacy interests with a technical ability in tax," Jones said. "That's not necessarily a common blend."

WHAT MOTIVATES HIM:

While Jones acknowledged that many get into tax law because of the puzzle-solving potential in the

field, he said — with a laugh, noting it might sound "trite" — that injustice is his primary motivator in his day-to-day work.

"If I see a situation where I feel like a client or a potential client or any person is being treated unfairly, what's happening to them is something different from what the law says should happen or a reasonable interpretation of the law says should happen, and they are being injured by it, I feel motivated to fix it," he said.

These injustices don't necessarily need to have the biggest stakes or largest dollar amounts, Jones said. Instead, he said he gets pleasure out of fixing erroneous assessments for taxpayers and potentially getting a tax agency to fix policies, he said.

Some of his work includes aiding in challenges to the constitutionality of the Defense of Marriage Act, which denied same-sex couples the advantages of marriage, including tax and death benefits. He worked with a team at GLBTQ Legal Advocates & Defenders, led by Mary Bonauto, in successfully disputing the law in federal court, which helped lay some groundwork for the U.S. Supreme Court's decision in *Windsor v. United States* that found DOMA was unconstitutional.

Jones said that working alongside his colleagues at Sullivan & Worcester and GLAD is the proudest point of his career.

"I was a player on a deep team of a movement I was very proud of, and it was very remarkable to watch the tide turn and the decisions come down the way they did," Jones said.

— *As told to Theresa Schliep*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.