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Tax Group Of The Year: Akerman

By **Jaqueline McCool**

Law360 (January 18, 2023, 2:02 PM EST) -- Akerman LLP's tax practice group has been involved in major decisions across the country over the past year, including successfully arguing that Massachusetts couldn't tax the capital gains of a company domiciled in another state and that a Target subsidiary isn't liable for Florida income tax, earning the firm a spot among Law360's 2022 Tax Groups of the Year.

Peter O. Larsen, the co-chair of the firm's tax practice group, which comprises 45 tax attorneys in locations across the U.S., told Law360 that the group is unique because Akerman's tax practice is its own stand-alone group, and it manages and externally markets itself. As a result, it's able to seek out big cases around the country.

Larsen added that the practice group's national practice and focus on issues that affect multiple states and taxpayers is yet another thing that draws clients to the group.

"That's one thing that tends to bring a lot of cases to use," Larsen said. "Because people know that we can strategically look at how they're set up nationally and help them solve more than just the dispute that's before them."

He noted that the group is strategic when it comes to selecting cases, specifically state and local tax cases, saying it does a good job looking at tax issues and finding the best place for those issues to be litigated.

Though Akerman boasts 750 lawyers across 10 practice groups, Larsen said the tax group really is a full-service tax practice that focuses on mergers, acquisitions, reorganizations and international tax issues.

David C. Blum, the other co-chair of Akerman's tax practice group, said that ultimately, it's the group of people that make up the firm's tax practice that sets it apart from its competitors, emphasizing that it's Akerman's diversity of people, locations and practices that made the tax practice group so unique.

Blum described the group as "a strong, diverse group" that has "differences of opinions," which has "made us stronger and better."

The firm represented VAS Holdings & Investments LLC in its high-profile case before the Massachusetts Supreme Judicial Court against the state's commissioner of revenue over the taxing of out-of-state gains.

At the heart of the case was the issue of whether the commissioner had the right to tax the gains of a company domiciled in Florida. The issue arose when the commissioner attempted to impose a $2.6 million tax on S corporation VAS Holdings & Investments, known as VASHI. The tax stemmed from VASHI's sale of 50% interest in Massachusetts-based Cloud5 LLC for $37 million. It had no connection to Massachusetts other than its interest in Cloud5, according to court documents.

In May, the court found that Massachusetts' tax laws and regulations reflect the unitary business principle, which allows taxes on gains if there is a unitary relationship between entities based on the centralization of management, among other factors, and if an "investment in the in-state entity serves an operational function of the out-of-state corporation."

The court held that because no unitary relationship existed between the entities, the imposition of the tax was not permitted under the state's tax statutes. It later refused to reconsider its decision, denying a motion from the Massachusetts Department of Revenue that claimed the court "overlooked or misapprehended the application of relevant statutes and regulations."

The case is seen as highly influential, and Larsen said the practice group was well aware of the case's potential, noting that it has long wanted a case with the same basic facts that could be litigated in a court that the practice viewed as fair.

"It's very helpful precedent," Larsen said. "Whether it's leveraging a settlement or whatnot."

Akerman's tax practice won a favorable outcome in another notable sourcing case, Target Enterprise Inc. v. State of Florida Department of Revenue, in which a Florida circuit court judge ruled that a Target subsidiary that provided services to its parent company in Minnesota isn't liable for more than $10 million in Florida corporate income taxes.

In November, Judge Lee Marsh wrote in a decision that Target Enterprise Inc., or TEI, which is also located in Minnesota, correctly sourced its receipts for services to that state under Florida's cost-of-performance rule, which sources income based on where an income-producing activity takes place. Judge Marsh rejected the state Department of Revenue's arguments that the receipts should instead be taxed based on the percentage of the square footage of Target's U.S.-based retail stores that are located in the Sunshine State.

The dispute involved a $10.2 million tax assessment that the department issued against TEI for tax years 2016 through 2018 on income that TEI received from Target Corp. to provide merchandising, marketing, and strategy and management consulting services. TEI didn't own any property in Florida and had less than 1% of its payroll costs attributable to the state during the years at issue, according to the decision.

Under Florida's regulations, a company has no service sales attributable to Florida if the greater proportion of the costs incurred to provide those services, or its "income-producing activity," occurred out of state. Judge Marsh agreed with TEI that the proper method to source the income received from providing its services would be to examine the locations of TEI's payroll costs.

Larsen said the case was important because Florida wasn't the only state to attempt a switch to a market-based sourcing approach when more revenue could be made.

States "often will just assert a market-based approach, even if they know their case is a little bit suspect," Larsen said.

Akerman may be known for its high-profile tax controversy cases, according to Larsen, but the group is a full-service tax practice, adding that it's well-poised to help during a potentially tumultuous next year for some states.

Namely, Larsen said some states that had a surplus due to COVID-19 aid would now be facing shortfalls, which could bring up a host of new issues in state and local taxation.

"I've never seen a situation where we've had such a divide where some states are just doing terrific budget-wise and other states are not," Larsen said. "But we're well positioned in all of the states, whether they're in a good or bad situation."

--Additional reporting by Paul Williams. Editing by Steven Edelstone.
