

MTC's interpretation of *Wynne* seems to be that the Court eliminated the external consistency test, which was certainly not the majority's intent," Calhoun said.

"It's been fascinating to see the strong reactions to a Supreme Court decision that reached an unsurprising result and affirmed the status quo. I think we all need more time to process the Court's analysis; I know that based on what I'm reading, it seems that more of the reactions seem wrong than right," Calhoun added.

Citing its brief with the U.S. Supreme Court in *U.S. Steel Corp. v. Multistate Tax Comm'n.*, filed nearly four decades ago, the MTC reiterated that the compact consists solely of uniform laws and acts as an advisory mechanism for developing uniformity and compatibility in state and local taxation of multistate businesses.

The MTC attached to its brief some cases out of the Michigan Court of Claims that upheld the Legislature's retroactive repeal of the compact after the Michigan Supreme Court determined in *IBM* that the compact election was not repealed by implication when the state adopted the Michigan Business Tax Act.

Although Texas neither repealed the compact from its code nor is attempting to retroactively deny the compact election, Michigan trial court Judge Michael Talbot held that the compact is not binding and walked through the same line of reasoning that the MTC puts forward in its argument.

"It's not surprising that the MTC cites *Wynne* for the non-controversial point that the interplay of two states' tax regimes — by itself — does not lead to a determination that one is unconstitutional," Jeff Friedman of Sutherland Asbill & Brennan LLP told Tax Analysts.

"The MTC noted that the Court articulated this proposition in *Moorman* and reiterated it in *Wynne*. However, the MTC's auditors typically seek to challenge a taxpayer's income tax computations by comparing its filings in multiple states," Friedman added.

The Texas Court of Appeals is scheduled to hear arguments in *Graphic Packaging* on June 3. ☆

State Tax Spotlight On Margaret C. Wilson

by Maria Koklanaris —
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Professor Richard Pomp of the University of Connecticut has little good to say about *American Fire and Casualty Co. v. Division of Taxation*, which he argued before the New Jersey Supreme Court in 2006.

The case involved an out-of-state insurance company and "the esoteric retaliatory tax," according to Pomp. It was "too boring, even by tax standards," and "not worth the effort" to explain in detail to a reporter, he said.

Yet it's also one of Pomp's favorite cases — not because of the material, but because of his co-counsel, Margaret C. Wilson.

"She's a great wordsmith," Pomp told Tax Analysts, echoing other friends and colleagues of Wilson interviewed for this article. "She vetted every brief I wrote. She vetted every piece of paper that went to opposing counsel. I didn't do anything without Margaret sounding off. A good writer and a terrific ear for the language."

Wilson also recalled the nature of the case as "pretty obscure" but said it was an honor to work with Pomp, her professor when she earned an LLM in taxation from New York University.

"It's one thing to talk about legal principles in isolation, and it's another thing to use them strategically. I got to see him working in the trenches," Wilson said.

That case, which Pomp and Wilson won, was one of several that Wilson has taken to high courts in a 21-year career mostly spent in state and local tax. At the annual conference of the Institute for Professionals in Taxation (IPT) from June 28 to July 1 in San Diego, Wilson expects to mark another milestone when she's appointed as the organization's president.

"I think she's inspirational, both to clients and colleagues," IPT Executive Director Cass Vickers said. "She's always willing to share her experience, which is a trait that endears her to so many of us."

High-Level Litigation

At the beginning of 2012, Wilson founded her own firm. At what is now called Wilson Agosto LLP, she has one partner, David Agosto, and one associate, Beth Feig Bressler. To get there, Wilson first built a career at one local firm, two national firms, and Verizon, where she was associate general counsel of state and local tax action from 2006 to 2010. Like many SALT lawyers, she began thinking she would do something else.

Wilson spent her first four years engaged in commercial litigation, first at Ford Marrin Esposito Witmeyer and Gleser LLP in Manhattan and then at McCarter & English LLP in Newark, New Jersey. "I got a little bit fatigued from using discovery as a weapon," she said.



Margaret C. Wilson

McCarter partner Michael Guariglia saw it, too, thinking she was a fine litigator who needed a different direction.

“When she first came to our firm, she was doing business and insurance litigation,” Guariglia said. “I had heard she was going to get her LLM and she had some interest in tax and estate planning, and I spoke to her. I said, ‘I think you would like, given your litigation skills, to work with me on some tax controversy work, particularly in the state and local area.’ And that’s how we reeled her in.”

Wilson said she was “doubtful” when Guariglia first approached her, but “obviously, I loved it. It’s just a friendlier bar, for one thing, and you get down to the substantive issues a lot more quickly. And that’s what I really enjoy.”

Guariglia placed her, with him, on the 1999 *Playmates Toys v. Director, NJ Division of Taxation*. They wrote a petition asking the New Jersey Supreme Court to grant cert. It did, taking discretionary review. However, it affirmed the appellate court’s decision allowing the director of the Division of Taxation “to recover a refund mistakenly paid to a taxpayer after the statute of limitations had passed on the taxpayer’s right to seek a refund for overpayments in prior years.”

Such a case, Wilson said, “was part of what I had been missing” before moving into SALT practice. “I like statutory construction. I like procedural rules.”

Other high court cases soon followed. In *Stryker v. Director, NJ Division of Taxation* (2001), Wilson was part of the McCarter team arguing that receipts earned by the taxpay-

er’s wholly owned subsidiary in a drop shipment should not be included in its apportionment factor. The New Jersey Supreme Court ruled for the tax authority, as both the tax court and the appellate court had done.

In the 2002 *Reck v. Director, NJ Division of Taxation*, Wilson with the McCarter team argued that a partner’s contribution to a qualified retirement plan should be deductible for New Jersey gross income tax purposes. The tax court held for the taxpayer, but the appellate court reversed, and the state supreme court upheld.

Guariglia praised Wilson’s work in all three cases: “Margaret is a very smart person, and I knew this would be a perfect match for her, with her brains and skill. I’ll take some responsibility for introducing her to the practice area and hopefully providing some motivation and excitement about the practice area, too.”

Wilson remained at McCarter until 2003, when she moved to a larger firm, McDermott Will & Emery LLP, New York. In addition to arguing *American Fire* with Pomp, she successfully argued with Arthur Rosen the 2005 *MBNA America Bank, N.A. v. Minn. Comm’r of Revenue* before the Minnesota Supreme Court.

“In Minnesota, the main issue was the validity of the economic nexus statute,” Rosen recalled. “However, we had a sub issue on whether the Department of Revenue had followed the required rules in the taxpayer bill of rights in Minnesota. And the Supreme Court of Minnesota agreed with us that the department in fact had not followed those rules.”

Rosen said Wilson fostered the win by identifying *Gastime v. Director, NJ Division of Taxation* (2002) as a case in which the taxpayer prevailed using a similar argument. In *Gastime*, the McCarter team argued that the Division of Taxation’s notice to the taxpayer did not meet the New Jersey Taxpayer Bill of Rights’ requirement, and the tax court agreed.

Wilson said taxpayer bill of rights cases are among her favorites.

In *MBNA*, “it looked like we didn’t have a chance under the plain language of the statute, but when you layer on the taxpayer bill of rights and put into effect the state’s obligation to advise taxpayers — even sophisticated taxpayers — of how procedural rules work, their failure to do that appropriately caused the Minnesota Supreme Court to agree with us,” Wilson said. “That was a pretty fun one.”

That case was followed in 2006 by another MBNA economic nexus case, the often-cited *Tax Comm’r of the State of W. Va. v. MBNA America Bank, N.A.* There, the West Virginia Supreme Court of Appeals, the state’s highest court, decided that West Virginia could compel the taxpayer to pay corporate tax, even though MBNA was based in Delaware and had no property or employees in West Virginia.

“I left in the middle of that. I was gone when we got flipped on appeal,” Wilson recalled. “That’s one of the major nexus decisions that is still out there today. I wish it had gone a different way. But it was definitely an important case, one where we spent a lot of time developing the factual record.”

A Six-Year Case for AT&T

After three years with McDermott, Wilson took off in yet another new direction, becoming associate general counsel for state and local tax at Verizon, a position she held for the next four years.

The job challenged her in many ways, including changing her perspective on the business, Wilson said.

“It’s really challenging to own all of a company’s issues, good and bad,” Wilson said. “In some ways, it’s fantastic because you can really control things, and in other ways, it’s daunting. It’s easy as outside counsel to say, ‘Oh, we need X, Y, and Z,’ but when you’re in the position of actually having to get that from the people who have X, Y, and Z, suddenly it’s not so easy.”

In 2010 Wilson returned to McDermott, where she again embarked on a complex case with Rosen. And even though she stayed at the firm only two years this time before striking out on her own, the case — a huge multistate class action matter for AT&T — is ongoing for both of them.

“When I brought her into the AT&T class action matter, I was relatively confident she would do a fine job,” Rosen said. “But in reality, she ended up doing a superb, extraordinary job.”

Thomas Giltner, lead tax attorney at AT&T, said the case stemmed from the gradual change in the wireless cellular phone industry from one that provided voice services to one that moved into voice and information services and finally into Internet services. The company continued to charge transaction taxes, which are not applicable to Internet services. Its customers brought a large class action suit, which AT&T settled.

“That happened in 2010,” Giltner recalled. “Pursuant to that class, representing our customers, former and current, we agreed with plaintiffs’ lawyers that to settle the matter we would prosecute refund claims in all the jurisdictions across the country.”

The company further agreed, Giltner said, that whatever it was able to collect in refunds from the taxing jurisdictions would go into a fund to be divided among the plaintiff class.

“We have had to fight with the taxing jurisdictions about our ability to get that money back, and Margaret has led the charge in every jurisdiction with us,” Giltner said. “So she’s dealing with unique procedural rules in every jurisdiction, she’s dealing with the legal rules, she’s dealing with the substantive issues of whether or not a jurisdiction has the ability to impose its transaction tax on Internet access services. And she’s dealing with how the federal Internet Tax Freedom Act in fact applies to prevent the states from being able to retain that money.”

Wilson said the AT&T case, which Rosen estimated will go on for about another year, has been “fascinating because it’s the same claim over 40 different states and a lot of localities. Some of the states agreed with us pretty quickly and wanted to get the money back to customers who paid it, but some of the states have really dug in on what I think are obscure arguments.”

Giltner said he works with many outside attorneys and puts Wilson at the top, citing her “integrity and her openness.” He said he also benefits from the years she spent at Verizon. “She understands the chair that I’m sitting in,” he said. “Her background and experience help tremendously for me.”

Hong Donaldson, former state and local tax director at Quest Diagnostics and now a consultant with the company, agreed.

“And I think she writes a killer brief,” Donaldson said. “We can talk about something, and I provide her with my thoughts, and she writes it up, and I go, ‘Oh, wow, I didn’t even know I said that . . . You’re really good at this!’”

Peter Faber of McDermott also cited Wilson’s writing skills as a reason for her success. “She’s an excellent attorney, but I know a lot of good attorneys who can’t write their way out of a paper bag,” Faber said. “But Margaret has a very good sense of writing to convince people. I think she has an excellent sensitivity to language.”

Onward to IPT

In deciding to start her own firm, Wilson said she harked back to something one of her mentors at McCarter, the late Charles Costenbader, always told her.

“He said the only way you ever have any control of your career is to have clients of your own,” Wilson recalled. “He was right; that was some of the best advice I ever got.”

“I’m a control freak; I’m not going to lie,” Wilson continued with a chuckle. “I like being able to say I am going to eat a day looking at a potential argument that I’m not sure the client wants to invest in. I’m going to do it because I’ve got the ability and will not get grief from anybody, or have to explain to someone why I can’t charge a client for a certain amount of time.”

Wilson said being on her own has also afforded some additional personal flexibility. She and her husband, a criminal and matrimonial lawyer, enjoy escaping to their shore home in Ocean Grove, New Jersey, spending time with their nieces, and trying to control their “crazy” corgi, Wilson said.

Vickers said Wilson has “really done it all,” with the exception of government. He said he expects her varied career, plus roles as past chair of the New Jersey State Bar Association’s taxation section and current board member of the Paul J. Hartman State and Local Tax Forum, to serve her well as IPT president.

Both he and Wilson cited several goals they have for her term, including expansion of sponsored research, continuing mentoring, and offering valuable educational content for both newcomers and veterans.

“I like the fact that IPT focuses on networking and providing rigorous academic programs,” Wilson said. “On mentoring, it’s easy to say and hard to do well, but I’ve always benefitted from having folks who have taken an interest in me and looked out for me. We’re really lucky to have past presidents and board members and volunteers who are willing to give time, and I think we need to do more to tap into them as a resource and make their expertise available to our younger members.” ☆