

State and Local Tax Bulletin

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Tennessee Edition



BRADLEY ARANT
BOULT CUMMINGS
LLP

Tennessee Franchise and Excise Taxes: Judicial Update on Unitary Business Principle Cases

By Joseph W. Gibbs, Patricia Head Moskal and Brian S. Shelton

Upcoming Seminars Involving Members Of Our SALT Practice Group

February 22-24, 2010

Council On State Taxation – 2010 Sales Tax Conference and Audit Session, San Diego, California. Bruce Ely will be a co-panelist in a presentation on Dealing with Contingent Fee Audits and Class Action Law Suits. For more information, please visit the COST website: www.statetax.org.

March 22-23, 2010

2010 ABA/IPT Advanced Income Tax Seminar. Chris Grissom will be a co-speaker with Erica L. Horn of Stites & Harbison PLLC and David J. Shipley of McCarter & English, LLP. Their topic will be "Add-Back Statutes: The Construction of Exemptions, the Disappointing Decision in the VFJ Ventures Case, Other Pending Litigation and Similarly Annoying Issues." For more information, please visit the ABA website: <https://meetings.abanet.org/meeting/tax/ipt10>.

In the December 2, 2009 issue of our SALT Bulletin: Tennessee Edition at [www.babc.com//files//upload/SALT Bulletin_12-09.pdf](http://www.babc.com//files//upload/SALT_Bulletin_12-09.pdf), we reported on two recent Tennessee Court of Appeals' decisions addressing the limits of the State's constitutional power to tax income earned outside of the State under the unitary business principle. We now have updates on the status of both cases.

***Siegel-Robert, Inc. v. Johnson, Commissioner of Revenue** – Court of Appeals Decision becomes Final.**

In the first case, *Siegel-Robert, Inc. v. Johnson*, the Tennessee Court of Appeals held in favor of the taxpayer, declaring that Tennessee's assessment of excise tax on interest earned on funds invested by the taxpayer in United States treasury securities was unconstitutional. The Court found that under the "unitary business principle" the investments were used for investment purposes, not operational purposes, and the taxpayer's investment activities conducted outside the state were not unitary with its manufacturing activities in Tennessee. The Commissioner of Revenue did not file an application for permission to appeal to the Tennessee Supreme Court and, therefore, the Court of Appeals' decision is now final. *Siegel-Robert, Inc. v. Johnson*, 2009 WL 3486625 (Tenn. Ct. App. Oct. 28, 2009).

* The authors' firm represented the taxpayer in this appeal.

***Blue Bell Creameries, L.P. v. Chumley, Commissioner of Revenue* – Commissioner Applies for Permission to Appeal.**

In the second case decided under the unitary business principle, *Blue Bell Creameries, L.P. v. Chumley*, the Tennessee Court of Appeals likewise found in favor of the taxpayer, holding that capital gains from a stock redemption transaction were not subject to apportionment in Tennessee for excise tax purposes because the taxpayer and its parent corporation were not part of a unitary business. The Commissioner of Revenue has filed an application for permission to appeal to the Tennessee Supreme Court (Docket No. M2009-00255-SC-R11-CV). As of this date, the Supreme Court has not granted or denied the Commissioner's application. *Blue Bell Creameries, L.P. v. Chumley*, 2009 WL 3126249 (Tenn. Ct. App. Sept. 29, 2009).

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2009 Legislative Update

For a summary of the 2009 Tennessee legislative update for franchise and excise taxes, please see our [SALT Bulletin: Tennessee Edition -- "2009 Tennessee Tax Legislative Update"](http://www.babc.com/files/upload/SALT_Bulletin_June_2009.pdf) at [www.babc.com/files/upload/SALT Bulletin_June 2009.pdf](http://www.babc.com/files/upload/SALT_Bulletin_June_2009.pdf).

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