

Beyond Reproach

by *Jéanne Rauch-Zender*

State Tax Notes is honored to recognize George Isaacson, senior partner at Brann & Isaacson LLP, as its Person of the Year for 2016. Isaacson has been involved in constitutional litigation that has received attention in the state and local tax arena, and the lens through which he looks at commerce clause issues is influenced by that perception.

The long road traveled by electronic merchants and state governments has led to a great divide in determining who is better suited to establish the jurisdictional threshold for states to impose a sales and use tax collection obligation on remote sellers: Congress or the United States Supreme Court. This great flux has been met with one calm, brilliant advocate along the road — Isaacson.

The exceptional attorney from a college town in Maine has done the unthinkable — expanded a small firm into a national practice. Charles A. Trost, counsel with Waller Lansden Dortch & Davis LLP, said, “George is an outstanding lawyer who has surrounded himself with equally talented lawyers and in the process has created a national practice and a well-deserved national reputation for excellence — and he has done it in a small firm located in a beautiful but isolated small town in Maine. Even though his reputation has been built on a relatively narrow specialty, George is a broad-gauged, multit talented lawyer who excels in every facet of the law he pursues.”

Isaacson, who is also a professor of constitutional law at Bowdoin College, has worked in two fields for decades. Torn years ago over whether to attend law school or study political theory in graduate school, he ended up teaching at Bowdoin the year after he graduated from law school, while clerking. “I’ve actually never resolved that dilemma; I continue to straddle both fields, and that’s been tremendously gratifying to me.” Former student and former paralegal at Brann & Isaacson, Jordan Goldberg, who is now a student at Yale Law School, explained that “there’s a lot of overlap between what makes George such a wonderful teacher and excellent lawyer. In many ways, these roles reinforce each other. I think that his academic work allows him to take a deeper, more analytical and intellectual approach to his legal practice,” while “he brings practicality and real-world experience to the classroom in ways you don’t often get as an undergraduate. As anyone who has worked with or taken a class with George or worked on a legal project with him will tell you, he has a gift for constructively challenging everyone around him to think more deeply and more clearly about



the issue at hand.” Goldberg believes that what sets Isaacson apart is “that he finds great joy in working with both his clients and his students.”

In the Beginning

Isaacson’s first involvement with state and local tax was in 1986, when he represented L.L. Bean Inc. Pennsylvania was arguing that because L.L. Bean sold products to a company that liquidated goods for its own account and in its own name, it nonetheless was an agency relationship that would obligate L.L. Bean to collect sales tax. His victory in Pennsylvania, which included getting the rule declared unconstitutional, led to his representation of many direct marketing companies — at the time, catalog companies. Today his firm represents over 100 electronic commerce and catalog companies throughout the country. Trost fondly remembers this case, as it was the first time he met Isaacson, in 1987, when he engaged him as local counsel to defend

L.L. Bean from having to respond to an administrative subpoena for records served by the Tennessee Department of Revenue by mail. “It was at the beginning of what was to become for George and his firm an amazing legal career being at the center of the long-running dispute between mail-order and internet retailers and state revenue departments,” Trost said.

Isaacson attributes his success to several things, including the ability to focus on details that are often determinative of success in litigation, while also being able to relate those details to larger principles at issue. “I think lawyers can make the mistake of being myopic,” he said. Also critical is hard work, Isaacson said, adding that “there’s the expression that the law is a jealous mistress, and it’s true. There’s no substitute for putting in the effort that’s involved in research, good writing, and understanding your clients’ business as well as their predicament.”

Although Isaacson noted the hundreds of hours of work in preparing for oral arguments in front of the Supreme Court in possibly the biggest case of the year, *Direct Marketing v. Brohl*,¹ he explained that there was little difference in his approach to Supreme Court cases and others:

When you are dealing with a state or federal district court, you’re very conscious of the fact that that’s where you’re making your record. You’re going to live with that record for the entire [life] of that case, so the intensity of your effort in terms of preparing the evidence and the arguments that go with it is not significantly different, whether you’re at the trial court level or U.S. Supreme Court level. I think if you are going to represent a client and you’re going to be dealing with a constitutional issue, which is the nature of a lot of our litigation, you need to satisfy your own standards at each level of argument.

***Quill* Lives On**

Many have questioned whether *Direct Marketing* will be the vehicle for getting the Court to look again at *Quill Corp. v. North Dakota*,² but Isaacson says no, because “one, it’s not in our cert petition, and two, there is no adverse ruling by the Tenth Circuit in regard to *Quill*.” The Tenth Circuit Court of Appeals held that *Quill* should be limited to sales and use tax collection; because the statute was a notice and reporting law, the Tenth Circuit agreed that *Quill* didn’t apply, Isaacson explained. Further, he said, the Tenth Circuit also addressed whether the Colorado notice and reporting law discriminated against interstate commerce because it applied only to out-of-state companies. Only the discrimination ruling is the subject of the cert petition to the Supreme Court.

Nor does Isaacson believe it’s the beginning of the end for *Quill*. “When *Bellas Hess* was decided, it was a 6-3 decision; *Quill* was an 8-1 decision. When *Bellas Hess* was decided in 1967, there were less than 3,000 sales and use tax jurisdictions in the United States. When *Quill* was decided, there were 6,000 sales and use tax jurisdictions; today there are over 10,000.” Isaacson added that the United States is the only developed country with this “crazy quilt of subpolitical jurisdiction transaction taxes.” The European Union recently decided that having 28 different jurisdictions constrained the growth of electronic commerce, and it is reverting to a home rule for cross-border sales, and India decided that having 15 overlapping jurisdictions was limiting internet commerce, Isaacson said. “The logic that lay behind *Quill* and was made very clear in the 1992 decision was that when a state intends to expand its tax system across the border and you have the multiplicity of jurisdictions that exist in the United States, it creates confusion and burdens on retailers,” and the Court under the dormant commerce clause is obligated to protect commerce from those burdens, Isaacson said. The Court made clear in *Quill* that only Congress can balance the interest of states in increasing revenue from sales and use taxes by not losing revenue from transactions that go untaxed, against the burdens of different rates, taxable and exempt products, audit procedures, and filing requirements, he said. “There are proposals before Congress and a high level of interest in Congress in addressing this issue. . . . Although the states have gotten very excited over the fact that Justice [Anthony M.] Kennedy, in a single opinion, indicated that the Court should review *Quill*, no other justice joined him.”

Goodlatte’s Proposal

House Judiciary Committee Chair Bob Goodlatte, R-Va., set out a series of principles, based on simplification, that he believes should be in any federal legislation that would increase collection of sales tax on electronic transactions and catalog sales, Isaacson said. “Simplification should be a guiding principle for states, the industry, and the government. I see no advantage to any player by promoting complexity, by saying we’re going to have 46 different states that are running their independent tax systems subjecting companies to 46 different audits, and rates for 10,000 local jurisdictions. Is that good for the economy? Is that good for the states? Is that good for the industry?” The states have done little to standardize and simplify their tax administration systems, Isaacson said. “The streamlined project has been diluted at every juncture to create exceptions to diminish the uniformity objectives that it originally had. Goodlatte has done a good service to say we are open to having federal legislation, but it needs to be associated with real simplification and I’ve been surprised that the states have been so resistant to that. There are ways in which we can simplify sales and use tax administration, but state governments seem really hung up on the notion that this is a matter of state sovereignty, and they are going to protect their own

¹135 S. Ct. 1124 (2015).

²504 U.S. 298 (1992).

administrative systems and not make the kind of compromises that I think should be associated with federal legislation if that's what they are seeking," Isaacson added.

Giving Back

The law is not Isaacson's only passion. This family man from Maine gives back in many ways. "It is fairly common in Maine, among people who have had the opportunity to receive a good education and have prospered reasonably well, to make a commitment to the larger civic good," he said. He serves as board chair for the state's largest healthcare system, MaineHealth, and is a trustee of the Maine Public Broadcasting Network. Between practicing law, teaching, and civic involvement, he has been able to strike a balance that has made his life "very fulfilling and gratifying."

Yet if you want to find him outside of work, you'd better take to the outdoors. Childhood memories with his own father at the lake have helped shape "the kind of father that I hope I've been to my children and what I have the opportunity to be to my grandchildren," Isaacson said. He recently purchased his oldest granddaughter a fly-fishing rod, saying the 3-year-old "is in the very early stages, but I think she gets it!"

Reflecting on the year, Isaacson expressed gratitude for his opportunity to argue before the Supreme Court. "Getting ready for and presenting a case to the Court is a unique experience. Most lawyers don't have that opportunity in their professional lives, so I'm very grateful that I did," he said. Yet he doesn't hesitate to add that raising children has been the most gratifying life experience of all: "The opportunity to do that as a joint venture with my wife, Margaret, who is an assistant U.S. attorney, in a place that's as beautiful as Maine with a set of values that are perhaps not common in many places in America — raising children in a community where you care for each other and feel a commitment to the common good has been a very gratifying experience for me." ■

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