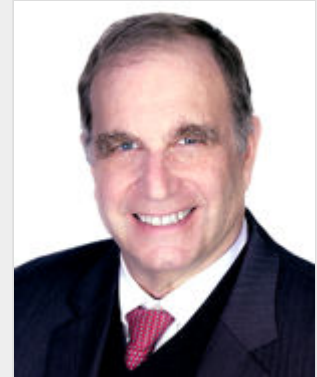


In Memoriam: George Isaacson

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George S. Isaacson (1948-2023), senior partner at Brann & Isaacson in Maine and a member of the *Tax Notes State* Advisory Board, died August 19. His colleagues Martin I. Eisenstein and Jamie Szal offer tributes to his legacy.



GEORGE S. ISAACSON

From the beginning, George pursued creative and incisive legal strategies that resulted in a string of victories for clients in state tax cases across the country. In 1986 he convinced a Pennsylvania court that L.L. Bean had no obligation to collect and remit use tax for sending catalogs into the state and then receiving over \$12 million in catalog sales. This case was one of the first attempts by a state to require catalogers to pay sales tax on their sales to the state. Building on that success, George and his team developed an innovative strategy to use a trade organization to avoid the strictures of the federal Tax Injunction Act and successfully challenged on commerce clause and due process grounds in California federal court the Board of Equalization's attempt to force out-of-state catalog companies to pay use taxes. The BOE took the position that a remote retailer's use of 1-800 numbers and acceptance from customers of payment by credit cards issued by California banks created a physical presence in the state. George successfully defended both large and small out-of-state remote sellers before state administrative tribunals and courts across the country.

The birth of the internet in 1996 spawned an entirely new set of challenges, and George, once again, developed innovative and winning arguments on behalf of internet and multichannel

companies. For example, in *Performance Marketing*, George convinced the Illinois Supreme Court to invalidate an Amazon affiliate statute that provided that the use of a link on a website operated by an Illinois company created a presumption of nexus, on the ground that it violated the federal Internet Tax Freedom Act. The Illinois law, George successfully argued, discriminated against the internet, because advertisements included in Illinois publications did not establish a presumption of nexus. This was the first decision under the ITFA. George successfully brought the same original and strategic thinking to numerous cases challenging states' efforts to tax other internet sellers.

In his first U.S. Supreme Court case in 2015, George convinced a unanimous Court that a trade association could challenge Colorado statutory notice and reporting requirements in federal court notwithstanding the TIA. Although the states were successful in causing the Court to overrule the 36-year-old *Quill* physical presence test in *Wayfair* — George's second U.S. Supreme Court case — he succeeded in persuading four justices that his contrary position was correct despite opposition from over 40 states and the U.S. solicitor general.

George's strategic vision continued until the end of his career. In 2022, working with the other tax lawyers at the firm, he developed and argued the successful post-*Wayfair* challenges to Massachusetts's attempt both to impose *Wayfair* retroactively and to use internet cookies to create a physical presence under the *Quill* standard.

In literally hundreds of cases involving rapidly evolving technologies, George brought insight, brilliance, creativity, unparalleled analytical and strategic thinking, and resolve to defend large and small companies in state tax cases.

George was truly a leader for the firm. One of his most enduring legacies is building a team at Brann & Isaacson to carry forward the firm's national reputation. George had an eye for talent, a genuine interest in mentorship, and a sincere belief that the practice of law is a collegial and team effort to strive to find the right answer to difficult questions. We will miss his guidance and wisdom, and the sparkle in his eye when he debated the finer points of a novel legal theory. But thanks in no small part to his counsel, we consider ourselves well equipped to follow in his footsteps and bring to our practice his values of creativity, inquisitiveness, and responsiveness. We are grateful for, and appreciate, the model he set for other members of Brann & Isaacson to carry on his legacy of out-of-the-box thinking about

state taxes, including a pending challenge to California Franchise Tax Board guidance and a pending challenge to a Colorado municipal tax ordinance.

For encouraging us to think creatively, and for being a great colleague, educator, and friend, we can thank George. We will miss him terribly.

Martin I. Eisenstein
Managing Partner
Brann & Isaacson
August 22, 2023

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Our esteemed colleague and friend George Isaacson passed away on Saturday, August 19. George was a great man in every sense of the word. His professional accomplishments are so numerous that it would take up to several pages to list them, but we should call out his two landmark arguments before the U.S. Supreme Court and his victories in many groundbreaking cases throughout the country.

George's substantial contributions to the firm and the legal profession are impressive, particularly given his considerable civic activities and 50-year teaching career at Bowdoin College. He served two terms as chair of the board of MaineHealth and was involved in many other nonprofits both in the state of Maine and on a national scale. And students at Bowdoin College have universally praised his constitutional law course. It was standing room only just to be able to take his class.

I remember sitting in George's office interviewing for a job at the firm. He asked me what really drew me to the firm and the opportunity. The Supreme Court, I told him; the realistic possibility of being involved in landmark tax litigation with the tax team. Eighteen months after that interview, almost to the day, George argued *Wayfair*. It was a privilege to work on that case — and even more of a privilege to have had the opportunity to learn from George over the last seven years.

Jamie Szal
Partner

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