

Looking Back, With an Eye Toward the Future

by Craig B. Fields



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Behind the Board is a series that highlights the milestones, challenges, and lessons that members of *Tax Notes State's* advisory board have experienced over the course of their careers.

This installment features Craig B. Fields, a partner in the New York City office of Blank Rome LLP.

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What was the greatest milestone of your career?

I have really enjoyed the more than 30 years that I have spent in state and local tax. From the milestone perspective, it is a tie between my involvement in *MeadWestvaco Corp. v. Illinois*¹ and my work on the Model State Administrative Tax Tribunal Act.

In *MeadWestvaco*, we were successful in having a case not only accepted by the U.S. Supreme Court but in having the Court unanimously rule for our client. I was fortunate enough to have been involved since the beginning, with the trial and all the way through to the Supreme Court. The case was argued in January 2008 and the decision issued on April 15, 2008. I continue to believe that the Court waited to release the decision on what it viewed as “tax day.” It was the best belated birthday present that I have received so far. (My birthday was the day before.)

¹553 U.S. 16 (2008).

For the model act, in the final weeks of December 2003, I decided to draft an act that could be used by states that still had an internal hearing system but wanted to adopt an independent, prepayment (*i.e.*, no “pay to play” or “bond to play”) tax tribunal or court. The starting point was cherry-picking the best of the laws of several states that had independent tax courts (in the judicial branch) or tax tribunals (in the executive branch). I was actively involved with the American Bar Association at the time and, along with Garland Allen, we worked with other members of the ABA’s Committee on State and Local Taxation (individuals at law firms, accounting firms, and state taxing agencies) to make the model act as fair and balanced as possible. We even included commentary for each section explaining the choices available and why we made the choices that we did.

I was extremely happy when, on August 7, 2006, the ABA’s House of Delegates voted to recommend that states adopt the model act. Since then, several states that have adopted independent tax tribunals have used the model act as a basis or starting point for their law.

What was the biggest obstacle or challenge you encountered?

The biggest challenge that I have encountered is the level of deference given to state taxing agencies. I am happy to see that many states are moving away from such deference. For example, in 2018 the Florida Constitution was amended to prohibit state court justices, judges, and administrative law judges from deferring to administrative agencies in the interpretation of the statutes and rules that they administer. More recently, Georgia enacted legislation that, effective April 29, prohibits Georgia courts and the Georgia Tax Tribunal from granting any deference to the Department of Revenue’s interpretation of the tax law, unless that interpretation has been formally

adopted as a rule under the Georgia Administrative Procedure Act. I hope that other states will follow this positive trend.

What do you hope to achieve in the near future?

To see my colleagues, adversaries, and everyone else in the SALT area in person again soon. It has been way too long, and I look forward to assisting clients with their tax issues and continuing to achieve positive results.

What is the most important lesson you've learned?

To treat family members as well as strangers. My former boss, then mentor, and ultimately, close friend, Paul Frankel, whom I was lucky enough to know for over 25 years, taught me this ultra-important life lesson. He had observed, rightly so, that many people treat family members harsher than strangers. (Perhaps it is because we expect more of family members than of strangers.) However, it is the members of your family who are there for you and care for you, especially during times of need. It is a lesson that I try my best to live by and to pass on to others.

Do you have any additional thoughts to share?

This is a great field! Almost all of us involved in state and local tax fell into this fantastic area. (I know that I did not grow up telling everyone that I wanted to be a state tax professional.) However, the issues are interesting, there is not always an answer, and you oftentimes have to analyze both sides to determine which answer is better. Most importantly, it is an area in which people treat each other with respect, be they clients, service providers, state tax agency personnel, judges, or anyone else. It is a special area and one that I am grateful to have fallen into. ■

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