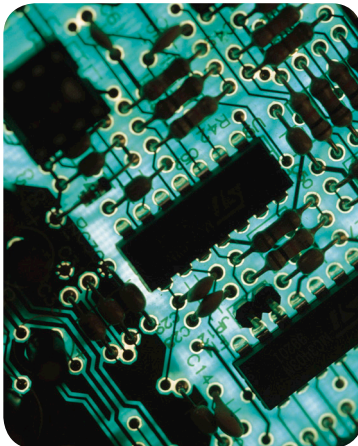


# In Tax Litigation — Our Results Speak for Themselves

In the past two years, Sullivan & Worcester's tax lawyers have handled numerous landmark tax cases — and won.

## Protecting Confidential Tax Planning

The pending IRS proposal to require companies to disclose information about their uncertain tax positions is just one recent threat to the protections afforded by the attorney-client privilege and the work product doctrine. State tax authorities facing looming state budget deficits are another serious threat, as evidenced by the Massachusetts Department of Revenue's relentless pursuit of ten-year-old tax planning memoranda that a public telecom company's in-house legal counsel asked Arthur Andersen to prepare. The question of the government's right to compel disclosure of the memoranda during an audit eventually reached the Massachusetts Supreme Judicial Court, which considered whether the state was entitled to the accounting firm's analysis of the pros and cons of various tax planning opportunities and the associated hazards of litigation. Noting that the attorney-client privilege is not available to accountants, the court nevertheless agreed that Arthur Andersen's memoranda were protected work product. S&W's client, Comcast Corporation, had inherited the dispute through a series of acquisitions and won an important victory for all taxpayers by staunchly defending the protections afforded to work product prepared in anticipation of litigation. *Comm'r of Revenue v. Comcast Corporation*, 453 Mass. 293 (2009).



## Start Ups Can Be Manufacturing Corporations Too

May a start-up company that has not yet made its first product still qualify as a manufacturing corporation and enjoy tax benefits intended to encourage manufacturing in the Commonwealth? The Massachusetts Appellate Tax Board and the Supreme Judicial Court have both answered "yes" in a case for S&W client Onex Communications Corporation. The Supreme Judicial Court affirmed the trial court's conclusion that Onex was entitled to certain sales/use tax exemptions while its new integrated circuit microchip moved from concept to production. In this win for Massachusetts start-ups, the Supreme Judicial Court accepted a broad definition of "manufacturing" and rejected

the Commissioner of Revenue's position that manufacturing requires a finished product. *Onex Communications Corp. v. Comm'r of Revenue*, 74 Mass. App. Ct. 643 (2009), *aff'd*, No. SJC—10623 (Jul. 30, 2010).

## Avoiding Border War Casualties

Multistate retailers understand their obligation to collect Massachusetts tax when they make taxable sales in the Commonwealth, but they were stunned when the Massachusetts Department of Revenue held a tire retailer liable for failing to collect Massachusetts tax on sales made in New Hampshire. The case reached the Supreme Judicial Court after the Appellate Tax Board upheld the Commonwealth's assessment against S&W client Town Fair Tire Centers, one of New England's largest tire retailers. Tax directors, industry groups and academics all followed the case closely because the Board's decision implied that any multistate retailer could be deputized to collect tax not only for the state where a sale occurs, but also for other states where customers might eventually take their merchandise. Rejecting the Commissioner's expansive theory of state jurisdiction, the Massachusetts Supreme Judicial Court held that Town Fair Tire Centers was not required to collect Massachusetts tax on sales that occurred entirely outside Massachusetts. The Commonwealth's border war with "tax free" New Hampshire continues to simmer, but multistate retailers escaped harm in this latest battle in one of the country's leading 2009 state tax cases. *Town Fair Tire Centers, Inc. v. Comm'r of Revenue*, 454 Mass. 601 (2009).



## Leaving Massachusetts: Residents May Change their Domicile without Abandoning All Ties

Individuals who move from Massachusetts and stop paying tax as residents have the burden of establishing that they have really changed their tax home, or domicile. The Massachusetts Department of Revenue has redoubled this burden with its recent surge of domicile audits targeting wealthy individuals who changed their tax home but still maintained ties to the Commonwealth. In a recent case involving the former chief financial officer of a public company, the Department asserted that the individual and his wife remained taxable as Massachusetts residents even after they retired to Florida. The Massachusetts Appellate Tax Board disagreed and rejected the Commonwealth's argument that individuals must abandon practically all ties to Massachusetts when establishing a new domicile, especially any Massachusetts residence. *Mee v. Comm'r of Revenue*, ATB Dkt. Nos. C287787, C293547 (2010).

**Sullivan & Worcester's tax lawyers represent clients in conflicts with the Internal Revenue Service and state tax authorities at all stages, including audits, administrative appeals and litigation. If you would like additional information, please visit our [Tax Controversies & Litigation Practice Group](#) page at [www.sandw.com](http://www.sandw.com), or contact:**

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