

## FEATURED NEWS

## State Tax Spotlight on Stephen Jasper

by Maria Koklanaris

“A lot of the disputes I work on are the result of the world changing — and the tax laws not keeping up,” Stephen J. Jasper said about his practice.

But in the 2017 legislative session of the Tennessee General Assembly, Jasper, of Bass Berry & Sims PLC in Nashville, played a large role in updating the tax laws, at least as they pertain to one dispute that had stretched out for many years.

“For decades, the property of local telephone companies and telephone cooperatives was classified by statute as public utility property for Tennessee property tax purposes,” said Jasper, 40. “This put those businesses at competitive disadvantage because the property used by their competitors was classified as commercial property, which is subject to a lower assessment percentage. The public utility classification was also no longer accurate due to the changes that have taken place in the telephone industry in relatively recent years.”

The General Assembly previously tried a fix that involved refunding sales tax to telephone businesses. That was supposed to offset the extra property tax they paid, but the approach was unwieldy and insufficient, Jasper said. So he worked with his client, AT&T Inc., along with the Department of Revenue and the General Assembly to come up with something better.

“We needed a tax professional that was knowledgeable about our business and its history [and] has credibility with the folks at the state,” said Joelle Phillips, the AT&T state president for Tennessee. “We ended up with an elegant solution, but it required someone with that kind of knowledge to craft that elegant solution,” Phillips said of Jasper.



Stephen Jasper

The solution, which is now Tennessee law, changes the classification of telephone company and telephone cooperative property from public utility to commercial. Because local jurisdiction revenue is affected by the change, the companies and cooperatives will also pay a five-year privilege tax to “mitigate the impact of transition to a more sound tax policy,” Jasper said.

“With Steve’s advice, Tennessee modernized that tax provision,” Phillips said. “We will get to parity, at least as to the rate, with our competitors.”

**Vodafone and Pharmaceuticals Leader**

Phillips and others said the successful resolution of a tax law change that satisfied several disparate parties speaks to the reputation Jasper has already acquired in less than 15 years of practicing state and local tax law. He has spent his

entire career with Bass Berry, starting out in general litigation in 2003 but quickly being recruited by Michael Sontag, the senior SALT attorney at the firm and one of Tennessee's best-known SALT lawyers.

"He is my protégé, and he has developed a reputation," Sontag said. "We've had a pretty good run in the last few years with the *Vodafone* case and others," he said, referring to *Vodafone Americas Holdings v. Roberts*. Sontag said that he "has been very honest with Steve" that he has been grooming him, adding, "I am not going to hang around forever. I think it's very important to develop younger lawyers, and you have to get out of their way."

"Mike went through a lot of associates," said Jay Hancock of EY in Nashville. "Steve is the one that kind of stuck — that's for a reason. Steve is at the cusp of becoming the preeminent SALT lawyer in Nashville, and maybe in Tennessee."

University of Connecticut law professor Richard Pomp, who has frequently worked with Jasper, called him a "consummate litigator."

In *Vodafone*, the Tennessee Supreme Court in March 2016 held that the commissioner of revenue did not abuse his authority by using a variance to require the company to apportion receipts for excise and franchise tax purposes using market-based sourcing. The court said the variance comported with the statute, regulations, and purpose of the tax statute.

Practitioners around the country were disappointed with the decision, and many firms issued alerts about it. Jasper said, however, that the primary issue in the case was a Tennessee matter, and thus the firm chose not to petition further. There were other significant developments. Just before the case became final, Tennessee adopted legislation to change its sourcing for services from cost-of-performance to market-based, "effectively making the terms of the variance that was imposed on *Vodafone* applicable to most other taxpayers as well," Jasper said. And *Vodafone* sold its interest in Verizon, so it no longer offers cell service in the United States.

Sontag said it was important to him that Jasper played such a large role in a high-profile case. "I don't think of him as a second chair," Sontag said. "When you get those cases, you need to make the most of them."

Before *Vodafone*, the two scored a telecommunications win at the Tennessee Court of Appeals. In September 2013 the appeals court reversed the trial court's decision in *IBM Corp. v. Farr*, holding that the taxpayer's charges for wide area network (WAN) services were not taxable as telecommunications services. The case was one of at least eight in a dozen years to address a similar issue.

"The department argued that the WAN was a communications service because what was being transferred was information that was in the form of what you would normally be able to send by email, so that was communication," Jasper said. "We argued that no, we are just providing access to the information stored on the computers."

Despite the ample precedent, telecommunications will remain an area ripe for dispute, Jasper said. "Telecom tax is one Tennessee and other states are willing to fight about because the line between taxable and not taxable is pretty thin," he said. "It's open to argument."

Jasper has frequently represented pharmaceutical companies. As local counsel for McDermott Will & Emery, he settled a Public Law 86-272 issue for nine companies that the DOR said were engaging in activities beyond solicitation. Representatives of the companies or independent contractors for the companies were negotiating placement of the pharmaceuticals on formularies at hospitals and insurance companies in Tennessee.

"We argued that those activities were analogous to putting something on the menu at a restaurant, where you couldn't actually sell the product if it wasn't on the menu," Jasper said.

Arthur Rosen of McDermott said Jasper "offered insight into the current quasi-political situation in the DOR and in the office of the attorney general. That knowledge, coupled with his state tax expertise, enabled us to reach an acceptable resolution."

For Pfizer Inc. and other pharmaceutical companies, Jasper negotiated a complex sourcing issue in which the state said the companies made sales to a pharmaceutical distribution company in Memphis, and thus that the sourcing should be to Tennessee. But Jasper argued that under an agreement with the company, which maintained a

distribution center where the products were initially shipped, the products were going there as a stopover only before they were then sent out to other centers.

Sourcing to Tennessee “did not accurately reflect the market for the product,” Jasper said.

Susan Courson-Smith of Pfizer said in addition to technical knowledge and argument, Jasper stands out for his written communication.

“Whether it’s writing a letter or a filing in court, he effectively conveys our points in an interesting and compelling manner,” Courson-Smith said. “From working with him, I have become a better writer. He has contributed to my professional development.”

“He gets to the heart of the matter,” agreed Mark Blayney of Brown-Forman Corp. “He’s efficient, and he’s worth the expense. I can’t say that about everybody.”

Jasper said he comes by it honestly. For two years in college and one year between college and law school, he was a newsman. First he worked the morning shift and then the evening shift for the local ABC affiliate in Columbia, Missouri.

On the evening shift, “I would get to the office at 2 p.m., we would have a news crew meeting until 2:30, and then I was sent off to write the news and turn it in by 4:30,” Jasper said. “There was this crazy intense deadline to take all the news and turn it into sound-bite stories. I did that for a year, and I got better and better at just sifting through the news and finding the important parts.”

### A Trusted Liaison

In addition to working as a legal adversary of the state government, Jasper has long been — as he was in the AT&T property tax issue — a key government liaison. Tennessee Revenue Commissioner David Gerregano, who has been with the DOR 20 years, said Jasper is among the practitioners the DOR relies on when drafting regulations and administrative legislation.

“Sometimes we have opposing positions, other times we work collaboratively,” Gerregano said. “When we have bills, Steve weighs in to help us make it be the best bill it can be. We can’t always think of everything from the perspective of a practitioner, so the input is helpful.”

Loren Chumley of KPMG spent 12 years with the DOR, including as commissioner from 2003

until moving to private practice in 2007. She said she knows Jasper from both points of view. “I always found the issues Steve brought forward had merit,” Chumley said. “He had credible arguments. That is what you are paying your lawyer to do. From the government perspective, you don’t want to deal with issues that you are just going to waste your time on.”

Chumley said now they work together on client matters, and he is a sounding board for her when discussing income, franchise, sales and use, and other taxes. She said she admires his ability to explain them to others who may be encountering them for the first time.

“The technical legislation can sometimes be difficult; he can explain complex tax legislation in simple terms,” Chumley said. “Steve is very good at that.”

Jasper was the liaison between the DOR and practitioners as the DOR developed legislation that revised how taxpayers take intangible expense deductions for payments made to affiliates. Previously, he negotiated a settlement agreement on the same issue.

“After that process was over, the commissioner made it clear that he was going to want to change the statute to require applications to be submitted and approved before expenses could be deducted, and because of my role as a liaison for the settlement, the department nominated me to be the liaison for the legislation,” Jasper said.

Jasper knew from the start that his job would be to try to make the best of a change “that taxpayers didn’t want to see happen, but was going to happen regardless.” After working through several drafts, each with practitioner comments and revisions, he said the DOR “got the taxpayers to buy in and not to contest it over at the General Assembly, because we were all somewhat comfortable.”

It was a similar situation when Tennessee undertook its Revenue Modernization Act in 2015. The sweeping changes included significant expansion of nexus provisions and the state’s move to market-based sourcing.

“Again, my role in that process was to recognize that the department was going to do what it was going to do, and to try to get the best

spin on the language for taxpayers, as well as to address concerns that came up," Jasper said.

### **Cheerleading, Baseball, and the Talking Heads**

With Sontag, Jasper annually authors the sales tax desk book for the State and Local Taxes Committee of the American Bar Association Section of Taxation. For the *Journal of Multistate Taxation and Incentives*, they chronicled the ongoing results of Tennessee's switch of its business tax, which is a gross receipts tax, from local to state control. That happened in waves in 2009, 2012, and 2014, but taxpayers are still grappling with the many issues that have arisen, and they will be for some time, Jasper said.

Jasper, with Sontag, is also a contributor to *State Tax Notes*. He speaks at conferences for the Council On State Taxation, the Paul J. Hartman State and Local Tax Forum, and others.

Away from work, Jasper and his wife, Elizabeth, a pharmacist who has a chemical engineering degree, are parents to Allison, 13, and Daniel, 9. They drive to travel baseball games, cheerleading practice, and gymnastics, and listen to Allison play the clarinet and piano. They are avid St. Louis Cardinals fans.

Jasper, who spent time as a hip-hop DJ in college, is a devotee of all types of music, especially the Talking Heads.

"I am not at all a musical person like my daughter, but to my wife's chagrin I have a significant CD, and now growing record, collection," Jasper said. "I'm a collector, and an appreciator." ■