

Tax MVP: Reed Smith's Mardiros Dakessian

By Ama Sarfo

Law360, New York (December 19, 2013, 1:34 PM ET) -- Reed Smith LLP's Mardiros Dakessian helped his clients land a blockbuster \$100 million in tax relief in the past year and forced California to roll back unconstitutional portions of a small business stock incentive, earning him a spot among Law360's Tax MVPs.

Before Dakessian entered the world of BigLaw tax litigation, he honed his tax knowledge through graduate research work with the California State Board of Equalization and a stint as legal counsel to former BOE member Claude Parrish — experiences that have given Dakessian an easy familiarity with the public and private spheres of state tax practice and have been a boon to clients searching for the best ways to fight state assessments.

"Without that insiders' perspective I wouldn't be as practical and solution-oriented and would likely rush to litigate," Dakessian told Law360.

But when Dakessian does find himself inside the courtroom, he is a methodical and purposeful litigator, judging from his record in the past year.

Last August, Dakessian notched a first in California's tax incentive world when he successfully convinced a state court of appeal to strike provisions in the state's Qualified Small Business Stock Incentive because they violated the U.S. Commerce Clause, which regulates the flow of commerce between the states.

California's incentive gives taxpayers a tax deferral or income exclusion on gains they receive from selling the stock of qualified small businesses. But California classified "qualified small businesses" as those that maintained at least 80 percent of their payroll and assets in the state during the stock holding period. The incentive also required companies to maintain 80 percent of their payroll within the state during the stock purchase period.

Dakessian said the property and payroll requirements discriminated against interstate commerce and in a unanimous ruling in *Cutler v. Franchise Tax Board* the Second District Court of Appeal agreed, saying the property and payroll requirements tended to discourage California corporations from actively working in interstate commerce.

"The Franchise Tax Board can't do anything with constitutional issues — the court of appeal has to weigh in," Dakessian said. "So our strategy was to get the case to the court of appeal as soon as we possibly could. We knew that the longer we stayed at the administrative level or trial court, the longer we would be treading water."

Months after the appeal court ruling, the California Franchise Tax Board said it would issue retroactive assessments against other investors who had received the incentive dating back to 2008 — which was within a statute of limitations period — since the scheme was labeled unconstitutional by the courts.

But the announcement prompted Dakessian and his team to form the California Coalition of Qualified Small Business Investors, which lobbied the state legislature and ultimately influenced it to pass two bills — AB 1412 and SB 209 — that respectively provided full and partial relief from retroactive taxation.

In October, Gov. Jerry Brown signed AB 1412, the full relief bill.

“The Franchise Tax Board misread the court of appeal's decision and this was a complete debacle for them,” Dakessian said. “They said the opinion struck down the entire statutory scheme, which meant that people who claimed the benefit in previous years claimed a benefit that didn't exist, and were obligated to repay. But the court only ruled on the property and payroll elements.”

And in June, Dakessian and a team of Reed Smith attorneys scored a record \$1.2 million attorney fee award in a corporate income tax case, *Daniel V Inc. v. Franchise Tax Board*. Dakessian was lead counsel on the case and his client was the sole shareholder of a company that invested in Las Vegas real estate. Even though the company was incorporated in Nevada, the California Franchise Tax Board said the company was subject to California corporate income tax since its sole shareholder lived in California.

“The Franchise Tax Board had a hard time believing the company was being managed outside of California and assumed this was a tax-motivated arrangement,” Dakessian said. “But their case was all circumstantial, all supposition.”

In addition to the \$1.2 million judgment, Dakessian's team scored a full refund of all assessed taxes, interest and penalties for the client.

Also within the past year, Dakessian scored big ticket tax relief for his clients, persuading the California Franchise Tax Board to slash \$60 million from a client's \$100 million personal income tax assessment in June, and landing a \$20 million sales tax refund for a Fortune 500 defense contractor in February.

Dakessian has become so well known for his tax expertise that the Institute for Professionals in Taxation retained him to represent them as amicus in two closely watched California Supreme Court cases — *Elk Hills Power LLC v. State Board of Equalization*, which concerns the property tax treatment of intangibles, and *Gillette Co. v. Franchise Tax Board*, which concerns California's attempt to withdraw from the Multistate Tax Board.

When looking back on his success in the past year, Dakessian attributes a great deal of it to the team of attorneys that he works with, but he also says his victories are strongly linked to the love he has for his work.

“It's helpful to do work that squares with you who are as a person,” Dakessian said. “You must be authentic and have passion for what you do. My practice fits my identity and my philosophy, which is that the government often overreaches and needs to be held accountable when it does.”

--Editing by Stephen Berg.