

Tax MVP: Reed Smith's Mardiros Dakessian

By Alex Lawson

Law360, New York (November 19, 2014, 1:45 PM ET) --



Reed Smith LLP's Mardiros Dakessian boasted a productive year of work that saw him claim a watershed decision on legal fee recovery and a steady record of lucrative tax relief for his clients before trial courts, regulators and administrative panels throughout California, earning him a spot among Law360's Tax MVPs.

Dakessian bowed on last year's inaugural edition of our top tax attorneys due in no small part to his constitutional challenge of California's Qualified Small Business Stock Incentive, so it is fitting that his fight to obtain legal fees for his client in the same dispute paves the way for his repeat appearance.

Shortly after proving that the incentive did not jibe with the Commerce Clause of the U.S. Constitution, Dakessian and his team moved to reclaim fees under California's Private Attorney General Act. They were rebuffed, which bumped the matter up to the state appeals court, where the team faced the arduous task of proving an abuse of discretion by the trial court as laid out in PAGA.



Mardiros Dakessian

"We felt that, regardless of how we attempted to couch this, we knew it was an uphill battle," Dakessian told Law360. "We felt that we were right along and that if the court of appeals applied the proper analysis, they would conclude that the trial court abused its discretion, but you never know how it's going to turn out."

Under the PAGA, taxpayers are entitled to recover fees if their case confers a benefit on the public and shows that the fee total substantially outweighs the amount in dispute. While Dakessian argued that both prongs of that test were satisfied, he explained that the lower court took a more holistic approach by noting that the case did not "feel like" a public-interest matter.

"If only the subjective feeling of the trial court were the appropriate test," Dakessian said. "But it is not."

The appeals court reversed the decision in September, handing Dakessian another victory in the Cutler

v. Franchise Tax Board saga. In making his pitch for reversal, Dakessian stressed that the trial court 's failure to apply the PAGA test for fee rewards amounted to a clear error that demanded correction from the panel.

Despite the lofty legal standard, Dakessian noted that his side may have benefited from a certain strategic advantage due to the fact that, in its fight to resist the fees, the FTB was forced to argue that the case conferred no public benefit by downplaying the importance of the underlying decision before the very panel that wrote it.

“I think if you are the FTB, you are in the awkward position of going back up to that same appellate panel and basically telling them that the opinion they wrote was garbage, and it didn't really impact anything,” he said. “We were aware of that dynamic, and we felt like we wouldn't want to be in the FTB's shoes.”

The win marked the third time in as many years that Dakessian was able to secure a fee award from a California taxing agency, a trend that Dakessian said may serve to curb the considerable advantage that those bodies have in litigating against taxpayers.

Though Dakessian has earned his bona fides as a top-flight litigator, he was also hard at work on the regulatory front this year. In May, he helped convince the California Board of Equalization to clarify the state's business inventory exemption for space travel equipment that will be a boon for aerospace industry, such as Space Exploration Technologies Corp., or SpaceX.

Dakessian, a former BOE staffer himself, appeared on behalf of SpaceX as part of a multipronged push to consider the company's rockets used for space transport as business inventory that would be exempt from taxation.

Though there was no formal sale related to the rockets, used for deliveries to the International Space Station, and commercial satellite launches, among other things, Dakessian successfully argued that the single-use nature of the rockets constituted a “constructed sale” of sorts that should qualify the products for the exemption.

Relying on the board's past legal rulings relating to other transportation industries and items deemed business inventory without the passage of a title, Dakessian helped to secure approval of the industry-friendly regulation, which entered into force in October.

“We felt like there was enough wiggle room in the statute to push for this regulatory clarification,” he said. “Why not push for a regulation like this that's going to help companies like SpaceX that are really doing great things in California — and we wanted to encourage that kind of active industry.”

At the local level, Dakessian scored a victory in July for General Electric Corp. subsidiary New Stream Real Estate LLC by convincing the Los Angeles County Assessor's Office to pare nearly \$2 million from a \$2.2 million property tax reassessment on the company's property.

The county moved to reassess the value of the property after it believed that a change of ownership had occurred, spiking the value up to \$28 million. Dakessian and his team quickly fired back by showing that there had been no actual change in ownership but rather a “reorganization” of company resources.

Dakessian then had to convince the office to reassess its underlying a evaluation of the property, further

shrinking the tally down to just 10 percent of the original investment and substantially easing the burden applied to New Stream.

Asked to opine on the factors that gave rise to his big year, Dakessian continually heaped praise upon his Reed Smith colleagues.

“I want to underscore the fact that I don't accomplish things like this alone,” he said. “I appreciate the award and am grateful, but it's no mistake that I am surrounded by a great team of people that are really helpful and supportive and believe in our cause and our mission and trying to accomplish it with gusto.”

Dakessian added that he was dedicating his award to his father, Hagop Dakessian, who is currently recovering from a severe stroke.

--Editing by Christine Chun.

All Content © 2003-2014, Portfolio Media, Inc.