

BUTZEL LONG FILES AMICUS BRIEF WITH U.S. SUPREME COURT TO OVERTURN KENTUCKY DECISION THREATENING SINGLE STATE MUNICIPAL BOND FUNDS

The U.S. Supreme Court has agreed to review a Kentucky state court decision (*Department of Revenue of the Commonwealth of Kentucky vs. Davis*) which held that a Kentucky law that exempts from Kentucky state income tax interest paid on Kentucky municipal obligations, but not interest paid on municipal obligations of other states, violates the U.S. Constitution. If the Supreme Court affirms the Kentucky court's decision, Kentucky (and all other states that differentially tax interest paid on in-state and out-of-state municipal obligations) may then be required to accord equal income tax treatment to all interest paid on municipal obligations. Forty-three states engage in this long-standing practice of affording favorable tax status to in-state issued bonds compared to bonds issued by out-of-state entities. This practice is a cornerstone of the \$3 trillion municipal finance market.

Because of the importance of the question *Davis* presents, Butzel Long was engaged to prepare and file an amicus curiae brief with the Supreme Court on behalf of several state specific bond funds that are part of the Aquila Group of Mutual Funds and have been clients of our firm's New York office for many years. Butzel Long also represented and filed the amicus brief on behalf of other funds seeking to reverse the Kentucky court's decision. The *Davis* case is of great significance to the public finance and municipal bond markets, which are watching developments closely. A large number of mutual funds offer investments in single state bonds. All of these funds will be imperiled if the Kentucky court's decision is affirmed.

The Supreme Court's decision in *Davis* may turn on the extent to which the Court relies upon its recent decision in *United Haulers Association, Inc. v. Oneida-Herkimer Solid Waste Management Authority*, 127 S. Ct. 1786 (2007). In the *United Haulers* case, the Court ruled that

laws favoring government with respect to a "traditional government function" that treat all in-state and out-of-state private businesses in the same manner do not discriminate against interstate commerce for purposes of the "dormant" or "negative" Commerce Clause. This principle, that laws will be deemed constitutional under the Commerce Clause so long as they provide equal treatment to in-state and out-of-state private businesses, may be a persuasive consideration in *Davis*.

Argument before the Supreme Court has been scheduled tentatively for Monday, November 5, 2007. The Court will rule on *Davis* sometime prior to June 30, 2008. Butzel Long will keep you apprised of any developments in this case.

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