

Tax Executive

MARCH
APRIL
2024

THE PROFESSIONAL JOURNAL OF TAX EXECUTIVES INSTITUTE

Vol. 76
No. 2

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The logo for the Tax Executives Institute (TEI), consisting of the letters 'TEI' in a bold, white, sans-serif font inside a black square.

The SALT Team of the Future

An income tax perspective on the evolution of work environments

By Jamie Yesnowitz

To respond to rapidly changing state and local tax (SALT) developments, this article envisions how a well-balanced SALT team can serve the needs of a large multistate business. It is instructive to look at how things, from a tax perspective, used to run in office settings back in the day, which for many now in senior executive roles was around the turn of this century.

This article examines what today's hybrid office looks like for tax professionals and introduces the six vital roles that businesses should take on to ensure adequate coverage of their SALT affairs from an income tax perspective.

Turning Back the Clock

To consider the composition of the ideal SALT income tax team of the future, it's important to think about how, in the last quarter century, the SALT discipline has transformed in tandem with the overall work experience for many tax professionals. The accounting firm office model prevalent at the turn of the century (a venue in which many current tax executives began their careers) differs considerably from what it is today. Accounting firm employees in tax departments did substantially all of their work at the office. For most, literally no choice existed but to work at the office due to technological limitations and employer expectations. Many companies measured employees not only by their work quality but also by how consistently late they stayed at the office and whether they made routine weekend appearances, especially during the busy season. Workers generally did not carry their laptops to and from home, in part because desktop computers were still in vogue, and in many cases were tethered to designated desks. Email messaging and the internet were still catching on as vital tools to create, inform, and complete one's work.

Hard-copy work papers and paper-filed tax returns ruled the day, complete with runs to the office mailroom or even the post office. Meanwhile, the SALT subspecialty was just getting started as a standalone discipline in accounting firms and in companies with dedicated tax departments. Traditionally, federal tax generalists served as part-time SALT practitioners, handling SALT issues when they arose without much inclination for specialization.

Once SALT became a discrete function and people began to recognize the opportunities in this field, two divides emerged at many accounting firms—one between income tax and indirect taxes and the other between income tax consulting and compliance. Many attorneys were prized for the research and writing skills they had honed throughout law school, and so it was natural for them to gravitate toward consulting and controversy matters. In contrast, CPAs and enrolled agents tended to take on compliance-heavy roles. The push to specialize within SALT in these ways resulted in some employees excelling as subject matter experts in very narrow fields, with others feeling brushed aside, leading to eventual movement to different roles within and outside the tax industry.

Today's Dynamic Office Environment

In the post-pandemic world, office life differs greatly from the version that existed at the end of the last century. Today's office cannot be defined by one specific model, given that tax professionals are at the office, even while seemingly out of the office, all the time. They carry laptops and phones everywhere, tethered to work by the constant stream of electronic pings, badges, and event reminders, with the expectation of immediate responses to instant messages, emails, and impromptu and formal meeting requests, all of which range in priority from “needed an answer yesterday” to “need an answer really soon.” In some work environments, it is important to be in the office for frequent team events in the spirit of collaboration or simply because it's easier for some to concentrate in a formal office than at home. In other work situations, especially those in which serving a national team is important, the hybrid work experience hews more to the remote side, where the personal and professional sides of life can inextricably blend.

Wherever tax employees land on the work location spectrum, they face a completely new way of doing business. Specific to income tax, electronic filing has largely replaced paper-filed returns. It has become far easier to collaborate and share information with other professionals, and that is especially important for multistate businesses with far-flung enterprises and national staffs to manage. In the SALT arena, research tools are more powerful than

ever, a good thing for a subspecialty in which state tax legislation, regulations, case law, and other guidance is published more quickly and on quirkier topics. The days of assuming that an obscure SALT topic has never been addressed in some published venue are long past.

The Evolving SALT Environment

Why have SALT technical developments over the past twenty-five years proliferated? Many states have experimented with disparate and at times completely novel tax regimes, with attempts to blend concepts of income and gross receipts with varying levels of success. The revised Texas franchise tax and the Ohio commercial activity tax have lasted, but the iterations of the Michigan business tax that incorporated a gross receipts tax base component did not. In states that have stayed with more traditional corporate income taxes, tax regimes have become significantly more complicated with the emergence of nexus determinations, sophisticated modifications to the tax base calculation, and filing methodologies that do not correlate easily with traditional federal consolidation concepts. Moreover, apportionment trends skewing toward the use of a single sales factor and market-based sourcing rules have become more prevalent, but do not apply consistently across the states. Finally, political shifts and budgetary pressures in numerous states have resulted in a slew of state-specific tax reforms.

The advent of the Tax Cuts and Jobs Act (TCJA), as modified by the CARES Act at the outset of the pandemic, only heightened the complexity in SALT. A centerpiece of the TCJA was the substantial reduction in the corporate tax rate from thirty-five to twenty-one percent. As part of the trade-off for the lower tax rate, a significant reconfiguration of the federal income tax base occurred, with new iterations of technically robust provisions like bonus depreciation deductions, the research and development deduction, the net operating loss deduction, and the interest deduction limitation. These provisions have continued to change since enactment, some by the TCJA's own effective date provisions, and others by design of the CARES Act. As of this writing, the federal government is considering further changes to the TCJA rules to provide additional relief to business taxpayers.

The lower tax rate brought on by the TCJA did not directly lead to changes in income tax rates on the SALT side, but the broader federal income tax base gave states the ability to make their corporation income tax bases more expansive. Although some states have responded to the TCJA in an environment of budget surpluses by reducing their state corporation income tax rates and making decoupling modifications to some TCJA provisions, the TCJA's overall effect has been to make aggregate

SALT income tax liabilities comparatively more important to businesses than in the past. At the same time, states that conformed to the TCJA have grappled with the complexity brought on by more complicated federal deduction regimes. Technical gray areas have proliferated, resulting in more compliance difficulties for large multistate businesses, along with more aggressive auditing approaches by state taxing authorities. Beset with federal changes, state-specific tax reforms, and vague tax laws, tax executives are having great difficulty keeping up with everything needed to mount a first-class response to SALT matters.

Introducing the SALT Team of the Future

The SALT world is spinning faster than ever due to changes driven by the federal and state governments alike, and businesses must consider how to prospectively handle SALT from an income tax perspective beyond designating one professional as the default SALT resource. With that in mind, what kind of team should multistate businesses devise to successfully address the many SALT challenges that come their way? The SALT team of the future should consist of a core group of the following practitioners.

THE TECHNOLOGIST

Harnessing the power of technology is essential to ensuring that a multistate business can complete its SALT function promptly and accurately. Making the right choice when determining the type of technology needed for SALT research is rewarded when a team member finds guidance supporting a SALT position that would not have been found on other research platforms. Choosing the right technology to complete work papers and tax returns in order to put the right numbers in the right boxes at the right moment is also important. Having someone on the SALT team who knows the best method to troubleshoot the technology when limitations appear the week before a tax return is due can prevent a missed tax filing deadline.

THE TECHNICAL TRACKER

Given the rapid pace of SALT technical progress, having one person dedicated to tracking SALT developments, and how they may directly or indirectly affect the business, is invaluable. To ensure that a company's financial statements are in order, the technical tracker establishes and updates a multistate income tax matrix that accounts for the material legislative, regulatory, and case law changes. In addition to watching for SALT developments, the technical tracker should consider federal developments as well, given that state income tax bases are generally derived from reported federal taxable income. The technical tracker is especially

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useful when a significant piece of federal tax legislation makes things messy from a conformity perspective, and one is left to guess how states will interpret the federal provision. When these events occur, as they did when the TCJA and the CARES Act were enacted, the experienced technical tracker can envision what states will collectively react to particular issues and provide the business with a potential competitive advantage over competitors that do not closely follow these developments.

THE COMPLIANCE GURU

Some multistate businesses view completing SALT income tax compliance as a seasonal requirement that lacks significant additive value. That view is somewhat outmoded, given the tremendous year-long effort that goes into the SALT process and the benefits of proper completion of tax returns. From a timing perspective, stakeholders that operate businesses always need to know when taxes are due and how much will be owed, particularly in material jurisdictions. That means the compliance guru must know exactly when estimated payments are due and calculate those payments within a narrow range of accuracy. Go too high, and the business unnecessarily provides a tax authority with a tax-free loan. Go too low, and the specter of underpayment penalties arises. In addition, the compliance guru must have the composure to deal with a knock on the actual or virtual door from the federal tax compliance team suggesting that an amended federal return will be filed. When that federal taxable income number inexplicably moves two weeks before the first set of state income tax returns is due, the compliance guru must have the flexibility to adjust and trace how the federal change could affect state items that go well beyond the construction of the tax base.

THE DEFENDER

It is inevitable that a business with a substantial multistate presence will receive an unsolicited notice of adjustment from a state tax authority or a request to perform a full-scale audit with a preliminary information request attached. When that time comes, the defender must gear up. The defender has to consider various macro-level questions,

including how solid the positions taken on the tax returns are, what the overall tax exposure is for the tax years under audit, whether the audit will adversely affect the tax years following the audit period, whether a settlement is possible or warranted, and what procedural steps must be taken if the audit cannot be resolved. At the same time, the defender should be aware that state tax authorities communicate with each other. An unsuccessful outcome in one jurisdiction could lead to more audits on the same issues in other jurisdictions. A good defender argues passionately, engages in-house counsel for advice and to provide regular status updates, and is realistic in what can and cannot be achieved before the state tax authorities.

THE PLANNER

Often working as the second-in-command to the leader of the SALT team, the planner needs to have a sense of the organization's overall SALT posture, serve as liaison to the SALT indirect tax team to the extent that the income and indirect teams operate separately, and take the lead when the business wants to make significant structural changes through an acquisition or a reorganization. When the executive team requests the tax department's assistance in a planned acquisition of another business, the planner needs to help in the due diligence process. The planner should have a sense for what types of income tax positions the target company historically takes, whether state tax authorities are challenging these positions, and how these positions will be meshed into the business once the acquisition is complete. The planner is also responsible for a task list, the document that identifies who on the SALT team is responsible for what task, the approximate amount of time that task will take, the priority level of each task, and the date by which each item needs to be completed.

FINALLY, THE SALT TEAM LEADER

Although the title suggests that the leader's main role is to supervise the SALT team, there's more to it than that. The leader also serves as the liaison to stakeholders in other parts of the company. In some cases, that could mean to the overall tax practice or directly to the C-suite officers or the board of directors. Knowing all of the team members' major strengths and weaknesses, the leader serves the team best by not interfering unduly, but can step in for a period of time and Band-Aid a portion of the process as circumstances require. Balancing the line between macro-management and micro-management, the leader has to be aware of the items on the SALT returns that pose the biggest potential exposure along with the overall tax controversy profile. Of course, the leader also needs to manage the challenge of bringing the

other members of the SALT team into the office—perhaps for at least part of the week—to intentionally collaborate on their work, to the extent that doing so is feasible and practical.

Most important, when the SALT team completes a seamless compliance season, achieves a big win in a state tax controversy, or obtains a significant tax refund on a position it actively identifies, the leader gives credit to the team for their success. In contrast, when the SALT team misses a deadline, a due diligence item that could be material, or, worse, a financial statement item, the leader must step in and remediate the matter to the extent possible. And when that is impossible to do, good leaders often step forward and volunteer to take the hit on behalf of the team.

What If Having Six SALT Team Members Focused on Income Tax Is Not Feasible?

A perhaps self-evident question arises from this analysis: what happens if the business lacks the resources or wherewithal to employ a six-person SALT income tax team? A business might have six people responsible for covering all of SALT . . . or all of tax. Or, in some businesses, the work of six ends up being handled by two or three intrepid (and likely overworked) employees with a general sense of SALT principles. Even in that case, the six roles identified above cannot be ignored. The roles have to be combined and divvied up by that smaller group of employees, supplemented in some cases by employees outside of the tax department, or handled by a third-party outsourcing solution.

In making decisions on how those roles are ultimately filled, tax executives should closely consider appropriate time allocations for each role and be intentional in determining the non-negotiable tasks that must be done in-house. They should look to areas in which this smaller group regularly can collaborate at an in-person or remote venue away from distracting technological noise. Finally, they should understand that while the ideal six-person SALT team focused on income tax may consist of cutting-edge specialists, the realistically smaller group is more likely to require old-school generalists willing and able to contribute on all sorts of SALT compliance, consulting, and controversy matters. ●

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