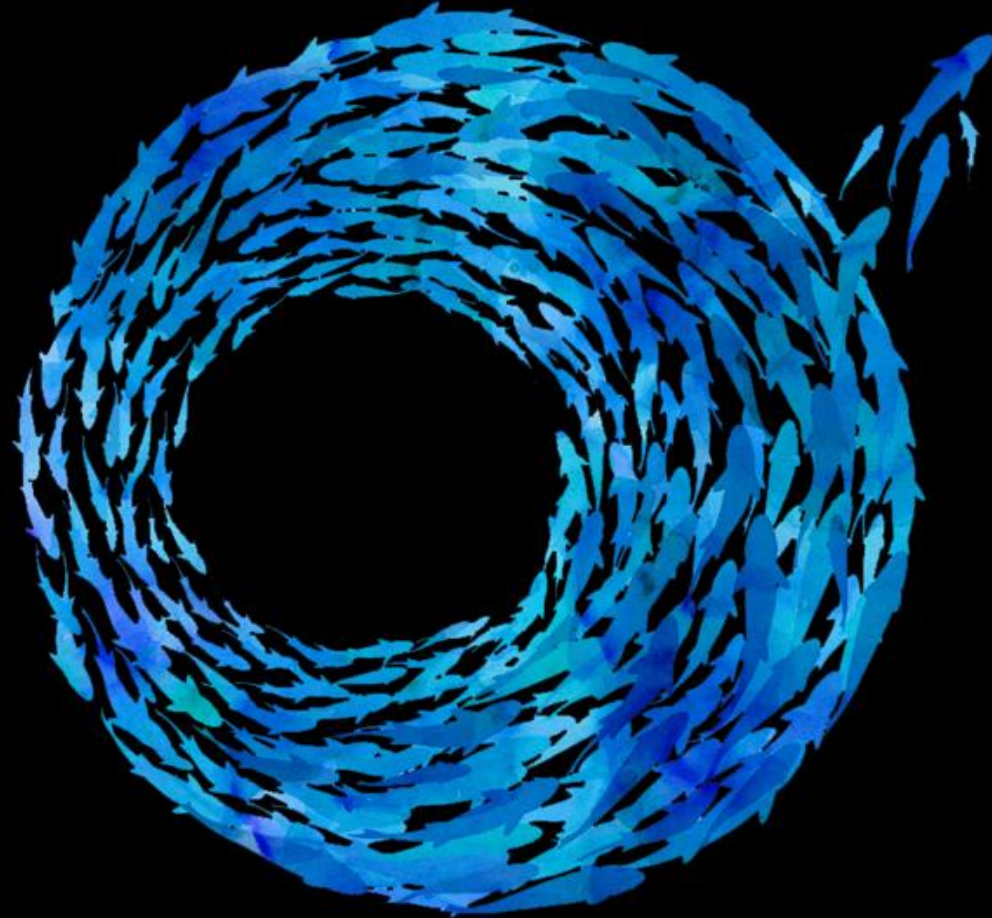


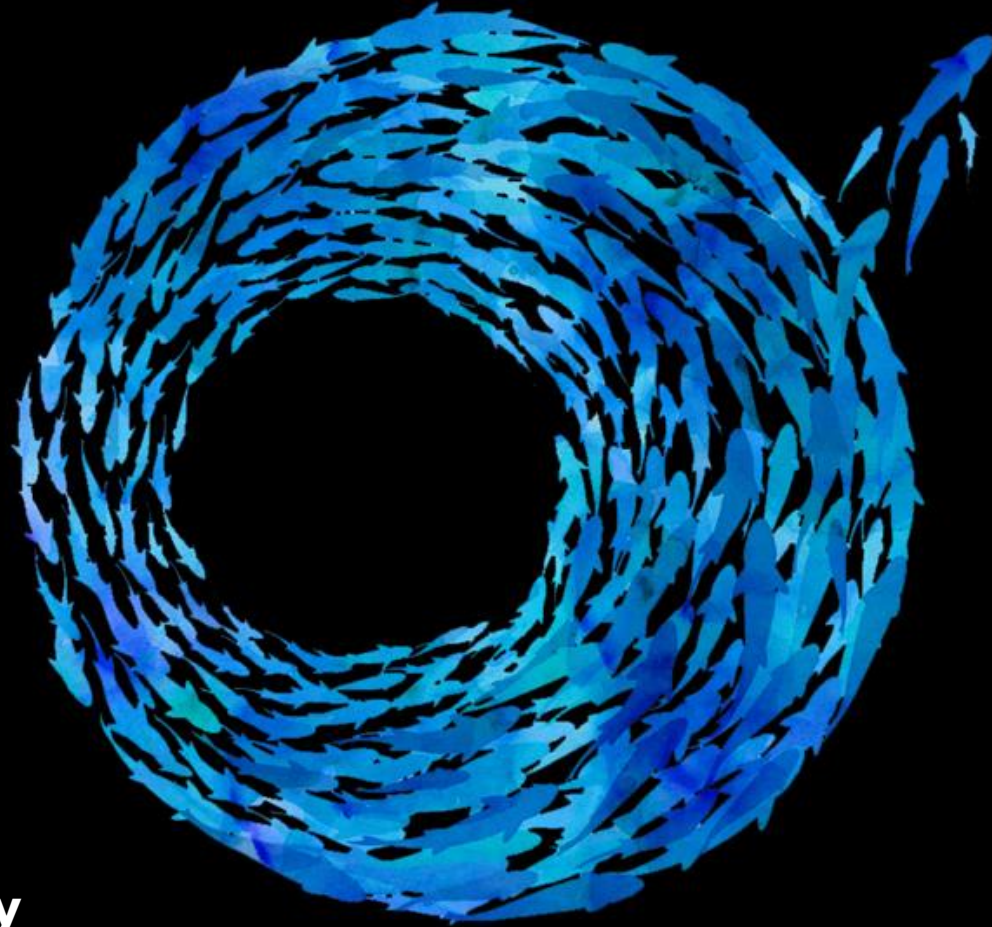
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**The 2018 National  
Multistate Tax Symposium**

Take the lead—Tax reform and fortifying state positions

February 7-9, 2018



## **Corporate governance**

### **perspectives on controversy**

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February 7-9, 2018

# Agenda

- Corporate governance perspectives on controversy
- While the tax issues may lead the direction on state tax matters, many other business and organizational factors need to be considered as well.
- We will focus on controversy matters but the discussion also applies to other areas such as tax positions in original returns, amended or RAR return filings and even planning opportunities.
- We will discuss other factors such as:
  - Costs to the company
  - Tax accounting implications
  - Company’s core principles
  - Intra-Jurisdictional and Inter-Jurisdictional concerns
  - Industry-related factors (e.g., regulated companies, industry coalitions)
  - Government relations/Public perception/community impact

## Corporate governance perspectives on controversy (cont'd)

### Non-Tax related costs to the company

- What costs does a company incur besides the cash tax expense?
- Who bears that cost?
  - Tax Department?
  - Legal?
  - Business units?
  - HQ?
  - What if matter came about from acquisition and tax matters agreement coverage or through purchase accounting?
- Do those that bear the costs get to influence the tax matter at hand?
- What if Tax wants to appeal/litigate a particular issue but Legal or another department does not want to pursue due to budget, staffing or other implications?

## Corporate governance perspectives on controversy (cont'd)

- Tax accounting implications

- Does an accounting reserve impact the decisions that are made during the state tax matter?
- Do you settle the issue because it's for less than the reserve even though you believe you are right on the merits?
- Do you not settle because no reserve is established or is less than the settlement amount?
- Perhaps an income tax matter gets different treatment than an above-the-line tax expense?
- Does CAO, comptroller or C-Suite need to weigh in on decision to be made?
  - What if there is a difference in opinion as to the best path forward?
    - E.g., Tax department needs clarity for return purposes and prospective filing but accounting team may focus only on accounting implications

## Corporate governance perspectives on controversy (cont'd)

- Impact on the company's core principles
  - Is the company more conservative and willing to err on the side of caution or more aggressive in pursuing tax advantages?
  - What about companies that are involved in disruptive industries or technologies?
  - Is the company concerned about perceptions of integrity?
    - What does the company do when they discover their own error?
    - Does the size of the exposure impact the decision?
    - Does coming forward mitigate the exposure (e.g., VDA, waiver of penalties and/or interest)?
    - Does the cost of the compliance impact the decision (professional fees, staffing/resources)?
    - Is there a chance the state or public may hear about this?
    - Does Tax need to involve other departments as discussed earlier?

## Corporate governance perspectives on controversy (cont'd)

- Impact within a jurisdiction or in other jurisdictions
  - Intra-state considerations--What if the state matter involves a state where other matters are of importance?
    - E.g., pending approval of M&A deal, rate case being reviewed, expansion (or contraction) within a state
  - Inter-state considerations--What if the state matter is small relative to costs to pursue, etc., but could have impact in many other states?
    - Costs to pursue are large compared to individual state exposure, but not nationwide
    - Test cases
      - Forum issues—Willing to pursue test cases behind state revenue confidentiality versus in court?

## Corporate governance perspectives on controversy (cont'd)

- Industry-related factors (e.g., regulated companies, industry coalitions)
  - Does the tax matter have implications on the company's customers?
    - Type of tax—income v. non-income
    - Regulated industries
  - What other departments may need to be involved?
    - Regulatory group
    - Customer care
    - Government affairs
  - Does the outcome of your matter impact the overall industry?
    - Do your competitors face similar issues? Can/should the industry group work together?
    - Is it better to join the coalition or follow behind?



## Corporate governance perspectives on controversy (cont'd)

- Government relations

- What is the involvement of the government relations team?

- Does government relations have a pressing matter at stake that may impact how the tax matter may move forward?

- Business climate, incentives, job retention and expansion

- When can government relations team help resolve a tax matter by getting involved?

- Can lobbying for legislation or other relief be requested to address the issue?

- Is legislation a key component of the controversy matter (old statutes vs. new economy)?

- Does government relations have contacts within the DOR and can they perhaps shift the dynamic from legal to the policy concerns of the Commissioner?

- Does government relations have contacts outside of the DOR and does "going over the heads" of the DOR folks have consequences?

## Corporate governance perspectives on controversy (cont'd)

- Does the company want to stay out of the news/social media spotlight based off of their tax position?
  - “Front Page News” test
  - Tax haven legislation
- What about public company disclosures (10-K, etc.)?
- Does the tax matter impact the community? (e.g., TIF zones, credits/incentives)
  - How would they perceive the pursuit to pay lower taxes? Do you win the battle but lose the war?
- Impacts on other matters, regulations, etc.

**Questions??**

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