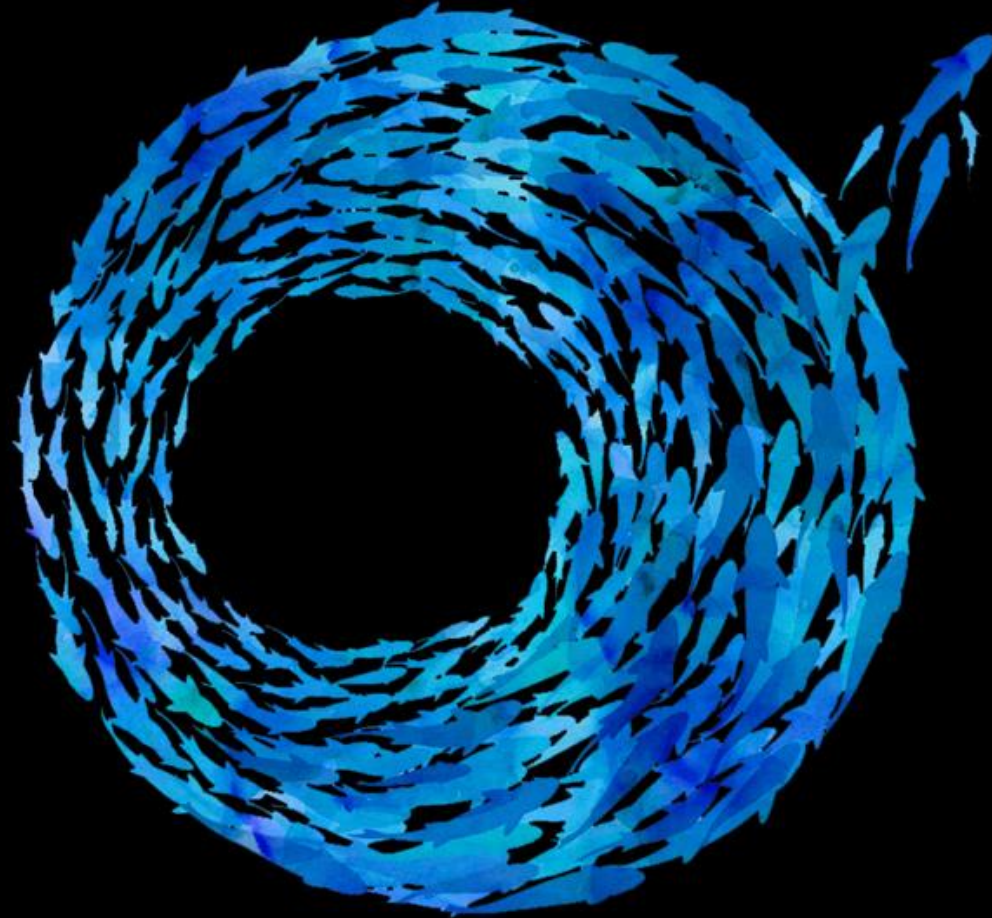


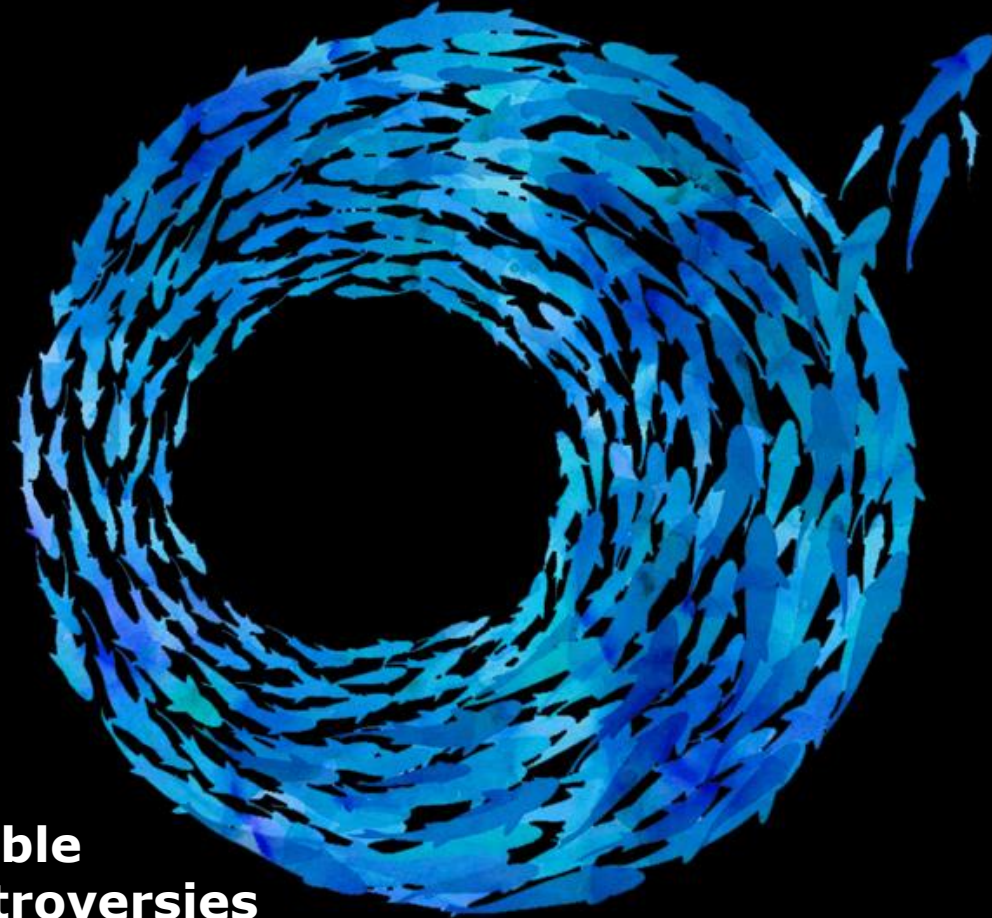
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**The 2018 National
Multistate Tax Symposium**

Take the lead—Tax reform and fortifying state positions

February 7-9, 2018



Positioning for more favorable outcomes: Indirect tax controversies

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Agenda

- Developing indirect tax positions
- Internal coordination of indirect tax positions
- Strategic defense of indirect tax positions

Developing indirect tax positions

Developing indirect tax positions

Why is this important?

- Tax departments need to manage financial and reputational risks
- States are increasingly implementing far-reaching nexus policies
- States are expanding tax bases and/or reporting requirements
- It is important to understand the practical aspects of proactively preparing for state indirect tax audits and assessments, to help reduce exposure

Developing indirect tax positions

What can we do today to minimize risk?

- Contemporaneous data collection and compliance responsibilities
- Technology considerations with an emphasis on data storage and retrieval
- Thoughtful consideration before agreeing to sampling proposals
- Reverse audits
- Taxpayer managed audits
- Voluntary disclosure and/or amnesty agreements
- Administrative ruling requests

Internal coordination of indirect tax positions

Internal coordination of indirect tax positions

Ensure record consistent with internal practices

- Avoid surprises and engage in frequent communication with management
- Ensure positions are:
 - Established by relevant authority
 - Maintained by documentation
 - Established in accounting system(s)
 - Reviewed periodically
- Manage confidentiality of discussions surrounding positions
- Be aware of parties who may review documentation supporting positions:
 - Internal teams
 - Financial statement auditors
 - State tax auditors

Internal coordination of indirect tax positions

ASC 450 reserves

- An estimated transaction tax liability shall be accrued by a charge to income (accrued liability) when payment is required by law, even if it is uncertain whether the taxing authority is aware of the obligation and will demand payment.
- An estimated loss from a contingency is accrued only if both of the following conditions are met:
 - It is PROBABLE that the liability has been incurred at the date of the financial statements, AND
 - The amount of the liability is reasonably ESTIMABLE.
- “Probable” means that the future event or events are likely to occur.
- “Reasonably possible” means that the chance of the future event or events occurring is more than remote but less than likely.
- “Remote” means that the chance of the future event or events occurring is slight.
- Even if an estimated loss is not “probable” or “estimable,” it should still be communicated with management.

Strategic defense of indirect tax positions

Strategic defense of indirect tax positions

Proactive management of ongoing indirect tax audits

- Provide a thoughtful presentation of your company's facts and circumstances
- Start a dialogue with the auditor immediately, and maintain frequent communication
- Follow up regularly, to confirm receipt and understanding of information provided
- Tailor IDR responses to the preferences of jurisdictions based on previous experience
- Ensure that responses are consistent among the states
- Respond to IDRs in a timely, thorough, and candid manner, and anticipate follow-up questions
- Provide requested information before record closes
- When possible, resolve issues at earliest stage possible
- Consider alternative dispute resolution possibilities
- Meet any appeal deadlines
- Ensure any refund claims are not deemed to be denied

Other considerations

Audit defense

Jurisdictions that ***deem a refund claim denied*** if a response is not received within a certain period of time.

Claim <u>IS</u> generally deemed denied if DOR fails to respond within:	
Alabama	6 months
Arizona	6 months
New Mexico	120 days

Claim <u>MAY BE</u> deemed denied if DOR fails to respond within:	
California	6 months
District of Columbia	6 months
Georgia	1 year
Hawaii	180 days
Louisiana	1 year
Maine	9 months
Maryland	6 months
Minnesota	6 months
Nebraska	180 days
Virginia	3 months
West Virginia	90 days

Strategic defense of indirect tax positions

Settlement negotiations

- Negotiating conciliation and settlement agreements
- Refunds may be used to offset outstanding liabilities
- Penalty waiver requests
- Interest abatement requests
- Resolving issues through current time periods
- Remediation, including commitments to:
 - Maintain current exemption certificates, or
 - Collect and remit tax going forward

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