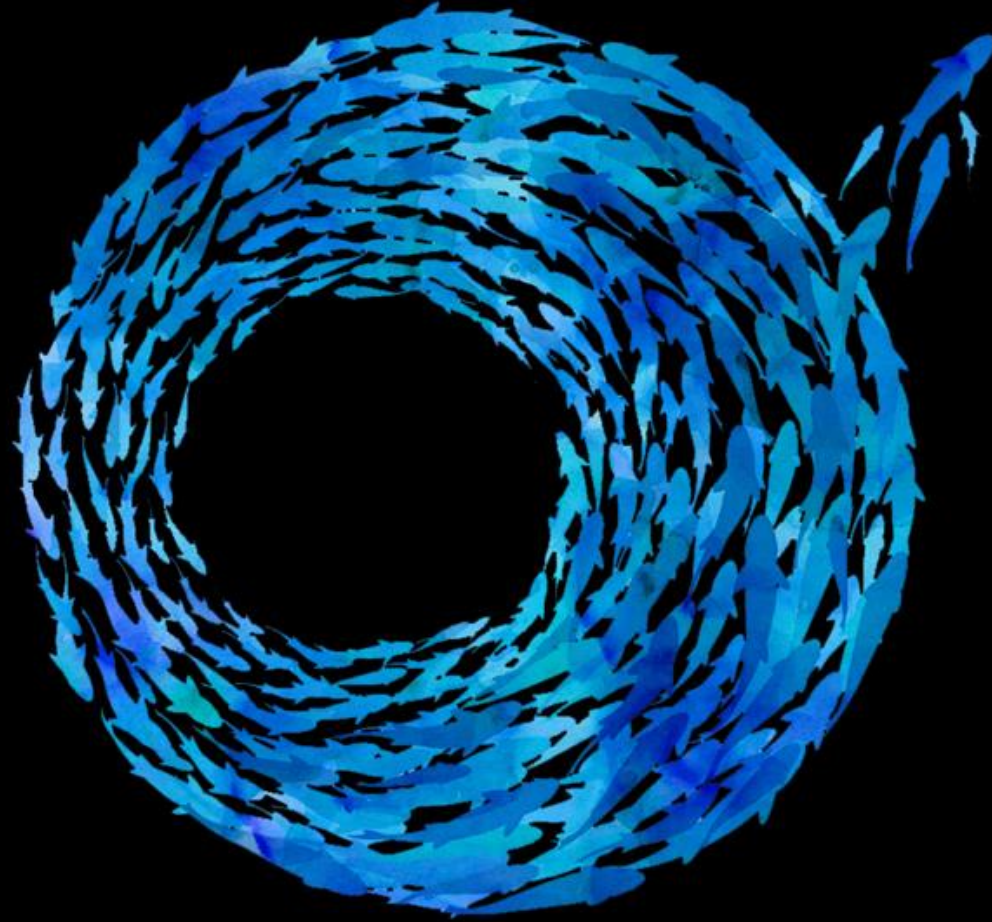


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**The 2018 National
Multistate Tax Symposium**

Take the lead—Tax reform and fortifying state positions

February 7-9, 2018





State tax twists and turns: What's happened that surprised us

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What's surprised us in 2017 – Cases and litigation

- SCOTUS

- Cert. granted: *South Dakota v. Wayfair*. What will become of *Quill*?

- Cert. denied: Washington retroactivity case and Michigan compact cases. *Carlton* remains.

- State court alternative apportionment cases

- (2016) Tennessee court upholds Department's determination that taxpayer must use market-based sourcing rather than statutory COP.

- South Carolina court rejects Department's imposition of alternative apportionment on taxpayer.

- Minnesota court rejects Commissioner's imposition of alternative apportionment on taxpayer but MN Supreme Court has agreed to hear Commissioner's appeal.

- Virginia court rejects taxpayer's bid to use market-based sourcing over statutory COP.

- Colorado court held Department was justified in invoking alternative apportionment on taxpayer's IP subsidiary, but that the Department's formula was unreasonable.

What's surprised us in 2017 – Cases and litigation (continued)

- Miscellaneous

- Utah's novel approach to transfer pricing: where is MTC's SITAS heading?
- Iowa nexus cases: no economic presence nexus
- Pennsylvania: NOL Cap Unconstitutional; beware the remedy!
- Oregon case involving online educational courses: When COP is more like market sourcing
- Arizona case: Can a locality enforce unpublished law?
- Illinois case: Stemming the tide on *Qui Tam* suits?
- Big win for class action defendants in NY on sales tax collection
- New Mexico: Taxpayers win attorney's fees at administrative level
- Texas Supreme Court: Property tax on temporarily stored natural gas
- Florida Supreme Court: Florida can tax satellite TV at higher rate than cable TV
- Colorado: Relatively aggressive use of Sec 18 alternative apportionment
- Illinois Supreme Court: Chicago can't impose lease tax on extraterritorial activities

What's surprised us in 2017 – Legislation and policy

- Proliferation of “Kill *Quill*” statutes
- Taxing the online marketplace – ITFA and other issues
- Interest (or lack thereof) in gross receipts taxes, millionaire taxes, CEO pay ratio taxes, local income taxes
- California dismantled SBE and created CDTFA and OTA
- Federal tax reform: conformity issues; retaliation by high-tax rate “**BLUE**” states
- Unclaimed Property: unprecedented battle between competing model acts
- Massachusetts declines adoption of daily sales tax remittance statute – for now
- Federal Mobile Workforce bill passed the House and has 60 Senate co-sponsors. Why isn't it law?
- Multistate Tax Commission celebrates its 50th Anniversary: What's in store for the next 50 years?

What's surprised us in 2017 – Regulations, administration, audit activity

- Market-based sourcing regulations in Illinois and California, and general inability to provide clear rules to investment managers
- California:
 - FTB's use of 25102 and forced combination
 - Surprise resurrection of 17951-4 and 25137-1 amendments and hasty IPM coupled with noticeable increase in audits of partnerships with out-of-state (nonresident) partners
 - Market-based sourcing audits begin in earnest: Asked to provide an explanation as to how the taxpayer determined that _____ was the location where the benefit of the service was received by the taxpayer's customer.
 - Aggressive audit positions on characterizing transactions as Abusive Tax Avoidance Transactions (ATATs)
- Is this a trend? New law in Mississippi allows DOR to contract with third-party auditors on a contingent fee basis

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