

Tax Dispute Survival Guide Part 2: Exploring the “SALT” Mine

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Practice Area

Practice Areas

Practice Areas & Settings

Tax

Summary

- Learn how to navigate state and local taxes (SALT)—a complex system in the United States with unique codes, agencies, and courts across states and cities, collecting almost \$2 trillion.
- Key considerations include identifying the taxing jurisdiction, understanding the stage of the process, and recognizing the type of tax dispute.
- It is important to meet response deadlines and distinguish between different taxes and dispute types.



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Outside of Krakow, Poland, in a region where part of my family is from, is the Wieliczka Salt Mine. Salt mines are seen as one of the most dangerous types of mines. This survival guide will help you navigate a different type of SALT, but one that is just as perilous if you don't pay heed before you enter.

The first "[Tax Dispute Survival Guide](#)" discussed the federal tax system. This guide discusses state and local taxes (SALT), which are the [tax systems within the separate states and cities](#). Each jurisdiction has a unique tax code and separate agencies, tribunals, and courts—collecting nearly \$2 trillion through their various taxing schemes. Understanding every jurisdiction's tax system is impossible. Thus, the goal of this survival guide is to leave you with a general layout of the practice to keep you safe as you explore SALT.



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The SALT Process Begins

Your descent into the SALT mine usually begins with a piece of paper, "[Hello, we think you owe tax.](#)" This paper notifies the taxpayer that they are being audited by at least one (often more) SALT jurisdiction. So, what do you do?

Where's the Problem?

The first question is to identify where the problem is: is it a state, a city, a county, or even a third-party law firm hired by the jurisdiction to pursue taxpayers? Before responding to any notice, ask yourself whether you are familiar with the laws of that jurisdiction.



Where Are We in the Process?

The second question looks at what stage you are at in the process (e.g., is this a first notice; do you owe tax?) or a final notice (you *allegedly* owe tax). The answer helps identify the next steps. Next, did the taxpayer respond and, if so, how (e.g., by physical letter, email, call, and what did they say)? Then, you need to know what years are at issue (i.e., is it three–four years, seven–eight years, or something longer?). The notice, correspondence with the jurisdiction, and years at issue will help you understand what's at stake, whether a lawyer needs to be involved (as opposed to an accountant), and the goal for remediation.

When Do We Need to Respond?

The third question is about deadlines and timelines. Generally, notices have response time requirements. These timelines are frequently based on a statutory clock that ticks closer to finalizing the assessment and has real consequences. As with all other practice areas, do not miss the deadline to respond.


Identify the Type of Tax

The next inquiry is the type of tax at issue. For example, is the tax issue a direct tax (i.e., federal income tax or a franchise tax), or is it an indirect tax (i.e., sales or use tax), or is it some other type of tax (e.g., excise tax, a property tax, a gross receipts tax, a corporate activity tax, etc.). Different taxes can alter the governing agency and application of statutes, regulations, and even case law.

How this plays out in the wild is readily apparent on the West Coast. In California, if you have a direct tax issue with the California income tax, then you will need to work through the Franchise Tax Board (FTB). For California sales and use tax issues, though, you will need to work through the California Department of Tax and Fee Administration, a separate government agency.

Alternatively, in Oregon, you could encounter the Oregon Corporate Income Tax, the Oregon Corporate Excise Tax, or the Oregon Corporate Activity Tax, all handled by the Oregon Department of Revenue, but what you will not have is a sales tax. If, however, you cross the border into Idaho, you will be dealing with the Idaho State Tax Commission, and then the sales or use tax issue may arise (which you did not have in Oregon). Crossing yet another border into Washington, you will work with the Department of Revenue, which has a remarkably different tax scheme from the rest of the West Coast and the rest of the states.

Classify the Type of Dispute

SALT disputes vary widely. For example, the dispute may cover federal constitutional issues (e.g., nexus, apportionment, or even if this is apportionable income), discrimination against interstate taxes, or whether the tax is fairly related to services provided by the state. On the other hand, the dispute could be a state constitutional issue, statutory construction and interpretation, or tax calculation methods. The specific dispute significantly changes the facts at play and the dispute strategy. 

Independently Review the Facts

Read the correspondence from the jurisdiction carefully. Before accepting the jurisdiction's theory of the case, do your own analysis. If you do not independently arrive at your theory of the case, you run the risk of allowing incorrect prior analysis to color your view of the facts and how you handle the dispute.

Always look at the taxpayer's publicly available information, from marketing materials to websites to forms filed with the SEC. If the materials exist, you can rest assured that a good state tax auditor or counsel will review and use them against you.

Stages of SALT Controversies

Audit Defense


The stage of controversy turns on what forum the dispute is in. For example, is the taxpayer still dealing with an administrative agency (e.g., Department of Revenue, State Tax Commission, FTB, etc.)? This portion of the SALT controversy is generally referred to as the audit stage and can have several transitions. The matter can move from one decision-maker to another. For example, the auditor is finalizing the assessment, and you will now need to move to appeals or administrative review, or the agency decision is coming to an end, and the exhaustion of the administrative remedies is impending.

Litigation

Once the final agency action occurs, you can move into SALT litigation. Your next venue may be a board of tax appeals, a tax court, a trial court, or some other venue. Many states have multiple paths available to continue fighting the assessment. For instance, Oregon has two divisions of its tax court, and Washington has the Board of Tax Appeals or Superior Court. Some of these jurisdictions are "pay to play" in that the only way to question or challenge the agency's action is for the taxpayer to pay the entire assessment, including the tax, penalties, and interest. Note that this is different than the ability to access the US Tax Court for a federal issue. Query whether this divergence between SALT and federal tax advances or harms diversity, equity, inclusion, and accessibility goals.

Formality of the Process

Another aspect of the SALT controversy is whether the process is informal or formal. Informal may include emails, letters, and hearings that function more as discussions. Informal hearings are generally during the audit stage and can be overseen by the agency or quasi-judicial agencies, such as a board of tax appeals.

If, however, the action is formal or has the ability to move from informal to formal, pay heed to the applicable rules. For example, what is the standard of review? Is it only reviewing the agency's action? Is this a matter where the rules of civil procedure (and the local adjustments to those rules, )

and the rules of evidence apply? The takeaway is that if you are venturing into a jurisdiction that you are not familiar with, beware!

A Diverse and Complex Area of Law

The best national SALT counsel knows and recognizes their limitations and lack of familiarity with the nuances of each jurisdiction and the benefit of using local counsel to navigate these intricacies. Conversely, the best local counsel understand the importance of knowing the peculiarities of the administrative process and the courts in the jurisdictions that they practice in. If they do not know, they know whom to call. If you want to practice SALT, try to appreciate that this area of law is diverse and complex, and sometimes, asking for help can mean the difference between a win and a loss for your client. Good luck as you navigate the SALT mines and know when to ask for help—remember to drink water!

Additional Resources in Tax Law

- [Tax Dispute Survival Guide](#)
- [Careers in Tax Law: Perspectives on the Tax Profession and What It Holds for You](#)
- [Guide to Multijurisdictional Admission to Practice Requirements for State and Local Tax Lawyers](#)



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