



EQUIPMENT LEASING AND FINANCE ASSOCIATION

Financing a Growing Economy

Basics of Audits Workshop— Income Tax

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What are we doing here?

Hopefully Already Attended Sessions on Basics of Sales Tax Audits and Property Tax Audits—Avoid Repetition

Varied Jurisdictions and Personalities—One Size Fits All Solutions Are Difficult

Goal of This Portion of Presentation—Reminders of Substance and Process Approaches That Generally Pay Dividends

Focus on Pre-Litigation Issues

Income Versus Sales Tax Audits

- Less Reliance on Sampling
 - More precise
- More Areas for Adjustment
 - Nexus
 - Members of Tax Return Group (unitary states)
 - Tax Base
 - Conformity vs. Decoupling
 - Apportionment Calculations (Property, Payroll, and Sales)
 - Credits
- More Ability to Be Creative
- More Areas of Wilderness
- Conversion of Liability Issues Do Not Exist (Collection and Remittance)

Process Reminders

Process Lessons and Approaches

1. The Org Chart is Top Down—Results are Bottom Up
2. It's a Long Season
3. Tell the Story Early and Often (and Your Way)
4. Here Today, Gone Tomorrow
5. Be Like Boston (City of Champions)
6. Process is Power (or Know the Rules)
7. When Home Cooking Means Home Cooked
8. Hope for Settlement, Prepare for Trial
9. Wall Street Journal—Here We Come
10. Leaving on a Jet Plane—The Value of Away Games
11. When Clicking “Send” Can Cost You

Process Reminder #1

The Org Chart is Top Down—Results are Bottom Up

Resist the Temptation to Skip Over the Line Auditor

Temporary Results (Maybe) at What Price?

Audience with Supervisor Still Must Overcome Inter-Office Support, and Risk of “Sellout”

Line Auditors Often Progress to Supervisor Level

**Caveat: Substantive Issues Rarely Settled at Auditor Level
(Requesting Permission to Discuss Substantive Issues with Those That Make Departmental Policy is Rarely a Problem)**

Process Reminder #2

It's a Long Season

We Are All Competitive and Hate to Lose

Set Yourself Up for Potential Wins in Future by Being Professional and Graceful When You Lose

Live to Fight Another Day

With Client's Permission, Consider Pointing Out Computational Mistakes or Approaching Statute of Limitations

State Auditors Have a Difficult Job and Often Deal with Those Who Do Not Respect Their Efforts and Authority (always) be respectful

Process Reminder #3

Tell the Story, Early and Often (and Your Way)

Every stage of the contest, from early meetings with auditors to the final presentation before the trier of fact is an opportunity to tell the story your way

Many assessments are the result of misinformation or a failure to tell the full story

You have the facts, you control (and should control) the delivery of those facts

Process Reminder #4

Here Today, Gone Tomorrow

By the time a matter is taken to trial, the years to which the dispute relates may be distant history

The employees who control the facts may no longer be employees (and may have left under not the best circumstances)

Use of affidavits in the audit process and informal dispute resolution process

Well organized audit files are critical (retain them, retain the documents, document who understands the facts)

Process Reminder #5

Be Like Boston (City of Champions) Free Agents Can Help You Win

Know When You Need Help, and Hire the Best Person to Get Results

**Consistent Hiring of Local Counsel to Assist
Big 4 Expertise
Balance Costs and Relationship Benefits**

The Theater of Bringing in the Practitioner Can Break Logjams

Reducing Difficult or Irrelevant Information Requests

Jeopardy Assessment and Repairing a Troubled Relationship

Process Reminder #6

Process is Power (or Know the Rules)

Statute of Limitations (Obviously)

Pros and Cons of Extending the Statute

How Long to Independent Voice?

Procedure May Drive How Facts and Law Are Presented

Consider Using Early Process as Test Run for Litigation, Not Only for that State But Sometimes as Trial Run for Where Issue Really Matters in Terms of \$ (California Versus New Hampshire)

Process Reminder #7

When Home Cooking Means Home Cooked

Choose Your Dispute Resolution Path Deliberately

Use of “Local” Courts or State Controlled Internal Courts Can Have Disastrous Results

Don't Pay/Don't Pay/Don't Pay (But at what Price?)

Process Reminder #8

Hope for Settlement, Prepare for Trial

Most disputes end in settlement, but settlements often depend on being prepared for trial

Prepare, prepare, prepare (the one advantage you always have is to outwork the competition)

Get the Facts, Gather Witnesses Early

Process Reminder #9

Wall Street Journal—Here We Come

Increased Information Sharing Among States

Increased Public Distaste for “Corporate Tricks”

Increased Political Appetite for “Shutting Down Loopholes”

24/7 News Cycle

Process Reminder #10

Leaving on a Jet Plane—The Value of Away Games

In the Age of Electronic Communication, Personal Appearances Can Mean a Tremendous Amount in Repairing a Troubled Audit or Closing a Settlement.

Auditor: “First Time Someone Outside of This State Came to My Office to Work on Issues”

Unfortunately, Tone of Voice Often Dictated by Reader, Not Writer. Face to Face Allows Immediate Clarification Due to Other Attitudinal Evidence (Body Language, Actual Tone of Voice, Etc.)

Process Reminder #11

When Clicking “Send” Can Cost You

Era of Electronic Communication

**Communication with Auditors and DOR Staff—
Preferences and Risks**

Avoid Disasters--Pretend It's on Letterhead

Avoid Disasters--Tracked Changes Do What?

Substance Reminders

Substance Lessons and Approaches

- 1. Words Do Not Equal Numbers—Numbers Do Not Equal Words**
- 2. Wings are For Chickens**
- 3. Know When to Hold ‘Em, Know When to Fold ‘Em**
- 4. My Enemy Is Now My Friend**
- 5. Adverbs Do Not Reduce Your Tax Liability**
- 6. It’s Not Their Only Case (Part 1)**
- 7. It’s Not Their Only Case (Part 2)**
- 8. It’s All About the Benjamins**

Substance Reminder #1

Words Do Not Equal Numbers—Numbers Do Not Equal Words

Auditors Start with Numbers Only, Very Few Words on Tax Return

Chief of Multistate: We Are Looking for Anomalies and the Exceptions

IDR's are Words, but IDR's Often Purposely Do Not Integrate

As Practitioners, We Must Integrate Words with Numbers to Tie Up the Anomalies and the Exceptions

Don't Give Auditors the Pieces and Expect Them to Solve the Puzzle—Good Persuasive Writing Flips the $A+B+C=D$ Logic to: D Because of $A+B+C$

Substance Reminder #2

Wings are For Chickens

Facts, Facts, Facts

Law, Law, Law

20 Minutes of Preparation for Every Minute of a Meeting

Often, Practitioners Have Resource Advantages that Can Help Resolve the Issues

Substance Reminder #3

Know When to Hold 'Em, Know When to Fold 'Em

**Understand the Department's Policy Concerns
(Certain Substantive Positions Cannot be Settled)**

One Time Issue vs. Continuing Impact

Right on the Substance, Wrong on the Facts/Equity

**Group Settlement Discussions (Involve other
Practitioners with Similar Issues)**

Substance Reminder #4

My Enemy Is Now My Friend

Unlike Traditional Litigation, the Opponent Remains the Same

Needless (and Typically Useless) Depositions of Departmental Personnel Should Be Avoided

There Are Typically Two Sides to Every Issue, Be Respectful

Substance Reminder #5

Adverbs Do Not Reduce Your Tax Liability

Tempting to Let Frustration Show in Written Communication
Obviously, Clearly, Convincingly, Outrageously, Merely

Often Have the Exact Opposite Effect as Intended

Writing Tip—Scrub All “LY” Words From Final Product—Let the Facts and the Law Tell the Story

Substance Reminder #6

It's Not Their Only Case (Part 1)

Just Like You, Auditors Have Lots of Cases and Matters to Attend To

Trying to Make Their Job Easier Can Make Your Job Easier

Substantively tying facts and treatment to law pays dividends

Travel Budgets Smaller, Make Field Audit Worthwhile

Rarely Seen the “Make Life Difficult” Strategy Work—the Power of the State to Issue Assessment

Substance Reminder #7

It's Not Their Only Case (Part 2)

Auditors May Not Tell You About Dynamics That Could be a Bar to Resolving the Matter:

Confidentiality Concerns (Loss of Job and Criminal Violation)
Current Focus on Particular Types of Transactions
New Supervisors

When Encountering Resistance, Explore These Dynamics and Strategize Whether You Want to Be at the Front or the End of the Line

Substance Reminder #8

It's All About the Benjamins

Despite All the Facts and the Law, Eye is On the Bottom Line for Both Parties

All States Are Not Created Equal

**Approaches—Settlement Vs. No Settlement
Timing—Fiscal Situations (Know the State's
Position and FYE)**

Strategies for Difficult Fiscal Times

Strategies for Plentiful Fiscal Times