

Bridging SALT Compliance and Advisory in the Classroom

by Tram Le

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In this installment of Spreading SALTovation, Le explains the importance for tax practitioners of understanding both the compliance and advisory aspects of state and local tax.

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In tax, seeking a professional to help with return preparation and provide advisory services may entail two different things. On the one hand, there are tax professionals who know deductions and credits and understand the facts and figures required to complete returns and achieve compliance. On the flip side, there are providers who dig into the laws, rules, and regulations to take a position where the law is gray. To address those gray areas in tax, a tax professional must have the proper knowledge and understanding of the decisions that interpret variable legal positions and applications in tax treatment for a particular business and transaction.

Few providers cross easily between those two facets of state and local tax — knowing the numbers and understanding the law — which can leave their clients exposed by what they do not know. This is the setting I address in my classroom at the University of Texas in Arlington, where I

teach graduate students the intricacies — and duality — of state and local tax. In the seats are the future CPAs, accountants, lawyers, and others who have an interest, for one reason or another, in finding out more about a complex and specialized area of tax where their perspective and experience may be limited.

Two Sides of SALT

Like in any profession, providers are generally experts at what they do. CPAs primarily charged with getting the numbers down accurately for return preparation know the best way to gather, update, and fill out returns. They may or may not engage in researching and interpreting the laws and regulations, which is where the nuances hit hard and risk to the client is the greatest. In areas where a provider is less sure-footed, they will generally reach out to others for that expertise.

It was not until I finished my undergraduate studies and went to work in accounting that I came to appreciate the two sides of SALT — compliance and advisory services. Compliance work for a multistate business is complicated because there are numerous tax types — income, sales and use, payroll taxes, and others — that could apply to a business with laws and rules that vary from state to state.

Those laws and rules are ever-changing and in flux — take, for example, the nexus standards for sales and use tax under *Wayfair*.¹ Approaching SALT compliance as merely reviewing books and records, calculating numbers, compiling data, and filling out tax forms without considering a client's activities in a state or local municipality is not enough and could create significant risk and liability. Understanding a client's tax position, however, and mapping out tax planning in view

¹ *South Dakota v. Wayfair Inc.*, 585 U.S. ___ (2018).

of a business's strategy and the current legal environment is providing advisory service.

The difference became clear in working with compliance clients early in my professional career. These clients relied on tax preparers to advise them on all federal and state tax matters and provided their financials and accounting records with little or no discussion of business activities and nature of those activities in preparation of their tax return filings. In many instances, these clients lacked the background, expertise, and experience to distinguish between compliance and the additional advisory services they might benefit from, especially in terms of SALT. It was this understanding that led me to law school, where I truly learned to appreciate the history and application of laws and regulations that got us to where we are today, and the implications on tax positions and filings in the future.

SALT compliance without taking a holistic approach and understanding the law is like getting only half the equation. For my students, there is typically a disconnect between tax return preparation and how the tax laws and administrative rules work. A goal in my classes is to address this disconnect.

All my students are graduate tax students getting tax certificates or a masters in tax. Most have an undergraduate degree in accounting. Some have had internships and jobs at national and regional CPA firms and are looking to grow and learn in their field. Some have exposure to the practical aspects of SALT, and it is usually enough exposure to tell them there is a lot they don't know.

Students who are interns or associates or in industry on the audit or federal tax side often see SALT as a new tax area to explore. They may even have filed an EZ franchise tax return in Texas or a no-tax-due return, but they may not have gotten into the rules that dictate why some numbers are collected and what those numbers mean. They may not have had to understand the business, know how to deal with related entities, or classify a business as a wholesaler, retailer, or service provider. They may not have had to dig into business activities to properly characterize income and revenue streams.

Understanding Business

Dealing with these items and issues is at the heart of my curriculum. We talk about the different types of businesses and how states characterize some industries and businesses and activities. Students don't learn the substantive tax laws and rules in a single state; rather, the focus is on the nuances in laws, rules, and regulations that can help a business make the right tax decision.

My classes are issue-spotting seminars, in which students who have not been exposed get to see where pitfalls lie. One key element is acquiring a comprehensive view of tax, which includes all different tax types — corporate income, gross receipts, sales and use tax, and other excise taxes and categories. In a work setting, graduate students and young professionals may be exposed to only one or a couple types of taxes as they get their bearings and may not have seen the full range and reach of taxes on the inner workings and strategies of a business. Any student who thinks SALT compliance is as simple as pushing a button is typically surprised by the intensity and complexity around tax decisions in this area. It is incumbent on the tax practitioner to understand all the complex tax issues and tax obligations that arise out of operating across multiple states.

Major topics such as nexus and the constitutional issues that restrain states are covered every semester. These are not typically addressed in graduate school unless a student is in law school. We explore the history of how the courts have interpreted the state's power to tax, including federal statutory and constitutional limitations, and the trends in court interpretation that dictate when a state is overstepping its boundaries.

In class, we track the history of pivotal SALT jurisdictional cases. Before *Wayfair* there was *Quill*, *Bella Hess*, *Complete Auto*, and *Miller Bros. Co.* — big cases that preceded where we are today.² And we cover the importance of taking a holistic approach to SALT, one that captures both compliance and advisory aspects — not isolating

²*Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); *National Bellas Hess v. Illinois*, 386 U.S. 753 (1968); *Complete Auto Transit Inc. v. Brady*, 430 U.S. 274 (1977); and *Miller Bros. Co. v. Maryland*, 347 U.S. 340 (1954).

any single tax niche — for the full picture and client strategy to take hold. We cover the importance of knowing your clients and understanding their circumstances well enough to best serve and advise them. Tax professionals who provide a client with an intake form and request their books and records to prepare SALT returns are leaving the client exposed. A tax provider must understand the business and transactions and anticipate what the business is looking to do as it expands and grows. A good tax practitioner will get to know their client and really understand what they are doing, when, where, and how.

Differentiating Compliance From Advisory

That is the threshold question in advisory — can a company do it, and why or why not? The mechanics of tax compliance are not enough for many businesses today to get a passing compliance grade from state or local tax authorities. The proliferation of the gray areas in tax law requires taking the extra steps to interpret laws and administrative rules before taking a tax position that meets compliance requirements everywhere a business operates.

The line that divides SALT compliance and advisory services is blurred by nuances in the law and the demographic spread of a nation. In the United States, tax laws cropped up and evolved as federal, state, county, municipal, and special district lines have been drawn and redrawn. Each state's laws were established or written to address unique economic environments. States geographically bordered with water anticipated imports and exports, as opposed to landlocked states, which focused their laws on how people were consuming goods and services within their own state lines.

A patchwork of tax laws exists across the nation, with some state tax law systems based on circumstances dating as far back as the colonial days. These laws have been reinterpreted over time by the courts and in response to the needs of government. States each choose their own way of writing laws. Sometimes those laws are aligned with other states, and other times states go it alone. Forty-six states impose sales taxes, but not all the taxes operate like a traditional sales tax. Arizona has a transaction privilege tax imposed

on buyers and sellers administered like more traditional sales tax return filings in other states. Its neighbor New Mexico has a gross receipts tax that — although it operates similarly to a sales tax — is not a sales tax. Hawaii has an excise tax, which creates a tax-on-tax circular tax calculation. Nevada and Washington levy taxes on various commercial activities in lieu of an income tax, or in the case of Ohio, in addition to one. The Texas franchise tax is based on the company's taxable margin.

A year out of undergraduate school, I was working for a small CPA firm doing compliance work in which senior staff, managers, and partners did not emphasize the importance of understanding the laws, the client, and their business activities in identifying potential pitfalls or opportunities that can either increase or minimize tax risk for businesses. I was given a file that included data from the year before and was expected to update the numbers and transfer them to a form.

My experience tells me that tax practitioners do not deliver the same solutions, which may not be problematic if businesses understand what services are being provided. There is, however, no such thing as half a coin. To best serve and protect clients, it takes both sides of the coin in SALT — compliance and advisory — to help minimize risk and design proactive tax strategies that help clients achieve their business goals. ■