



2024 Tax Symposium in New York City

March 5, 2024





Tax Controversy Update

NYC Tax Symposium

Agenda

US FEDERAL AUDITS

- State of play
- Dispute prevention toolkit
- Significant case updates

STATE

- Issues to watch
- Recent SALT litigation cases
- State tax transfer pricing

State of play

- IRS generational shift: Out with the retiring, in with the inexperienced
- Centralized knowledge and direction, but little control and oversight
- Greater scrutiny of privilege assertions
- Economic substance increased use as a *preliminary* attack on transactions
- Mandatory assertion of penalties
- Long timeframes for exams and negotiated resolution, contributing to uncertainty over multiple tax periods and litigation

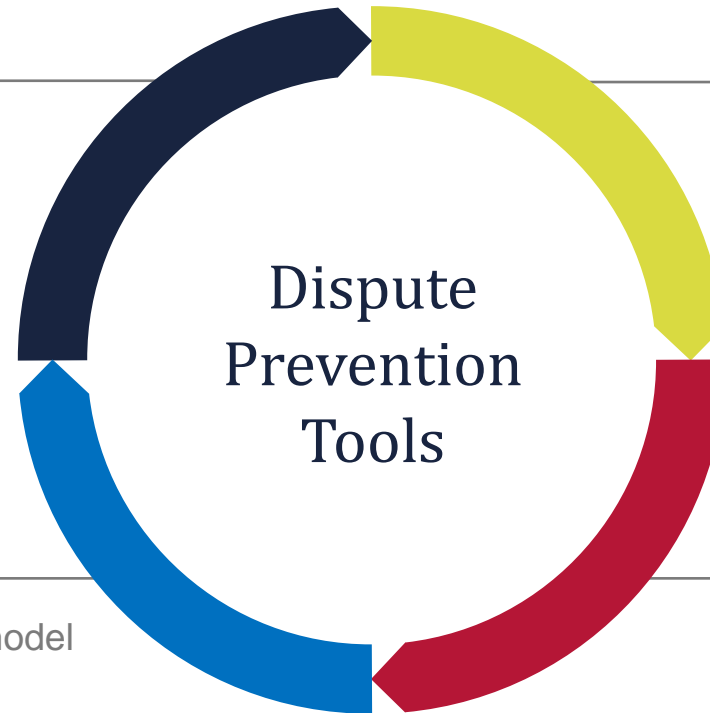
Dispute prevention toolkit

Defense files

Targets specific risks and issues that cannot be addressed in compliance-based documentation

Global controversy process/ organizational training

Rolling out a global process and training for those who will interact with tax authorities



Intra-group legal agreements

Baseline defense of the global transfer pricing model

Advance pricing agreements

Strategic use of APAs

Significant US tax cases

- *Moore v. United States* (S. Ct.)
- *3M Co. v. Commissioner* (Tax Ct. 2023)
- *Amgen, Inc. v. Commissioner* (Tax Ct.)
- *The Coca-Cola Company v. Commissioner* (pending appeal to 11th Cir.)
- *Facebook, Inc. v. Commissioner* (Tax Ct.)
- *Medtronic, Inc. v. Commissioner* (Tax Ct. → 8th Cir. → Tax Ct. → 8th Cir.)

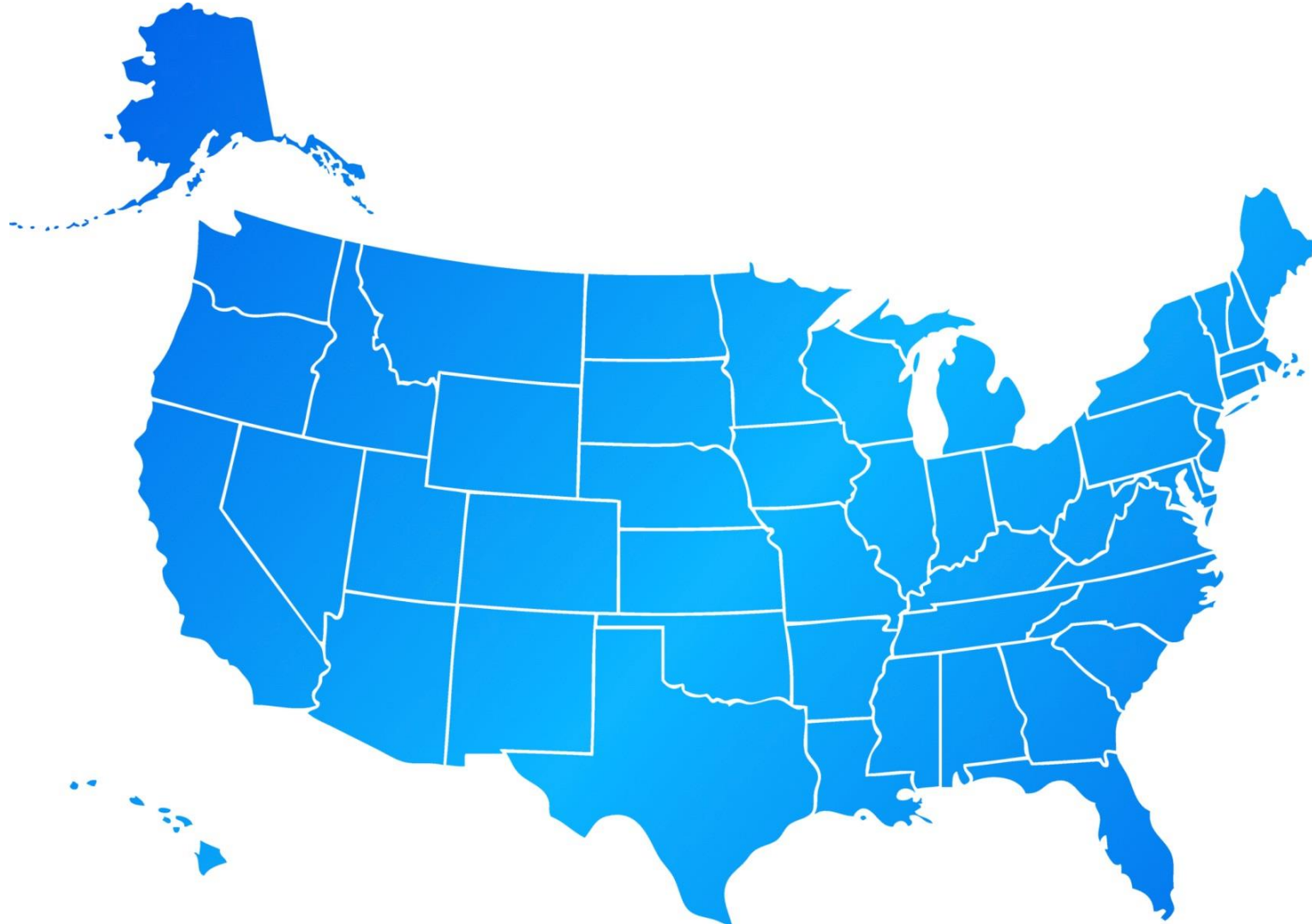
Moore v. United States (US S. Ct.; Appeal Argued 12/5/2023)

- On December 5, 2023, the US Supreme Court heard oral argument in the *Moore* case, which could pave the way for many areas of the federal income tax system to be declared unconstitutional and with additional ramifications at the state and local tax level
- **Issue:** Whether the 16th Amendment authorizes Congress to tax unrealized sums without apportionment among the states
- **Background:** The taxpayers had argued unsuccessfully in the district court and in the Ninth Circuit that the Section 965 transition tax was an unconstitutional tax on unrealized earnings rather than a tax on income within the meaning of 16th Amendment
- **Potential federal income tax consequences**
 - Apart from direct effects on whether the Section 965 transition tax is unconstitutional, the Supreme Court's decision may affect whether the federal government can impose taxes such as a wealth tax and whether it can enforce parts of the Code that arguably tax unrealized gains (e.g., Subpart F, GILTI, Subchapters K and S, OID, mark-to-market regimes)

SALT issues potentially arising from *Moore* decision

- Potential impact on SALT if Supreme Court declares IRC § 965 unconstitutional
 - Review state-specific statutes of limitations (for corporations and individual taxpayers)
 - Does it allow later claims if law is subsequently declared unconstitutional?
 - How will federal audit changes in favor of taxpayer be applied at SALT level?
 - Very few states allowed similar eight-year installment payments as under IRC 965(h)
 - Will the state impose its own mandatory repatriation tax even if IRC 965 is unconstitutional?
- Potential impact on SALT if Supreme Court upholds IRC § 965
 - May depend on the basis of the Supreme Court's holding
 - If S. Ct. rules that deemed repatriation is realization of income by taxpayer, this adds validity to taxpayers' claims to include MRT amounts in numerator of apportionment factors
- Prepare to advise clients on the impact of *Moore*, regardless of outcome

Recent SALT issues and updates



Recent SALT issues and updates

- **Inclusion in the apportionment formula**

- *Appeal of Microsoft Corp. and Subsidiaries*, OTA No. 21037336 (2/26/2024) – allowing total receipts from foreign dividends to be included in the sales factor denominator
- *Vectren Infrastructure Services Corp. v. Department of Treasury*, Mich. Sup. Ct., No. 163742 (7/31/23): Whether the sale of assets should be included in the Michigan apportionment formula

- **Sourcing**

- *Nustar Energy, L.P. v. Hager*, 03-21-00669-CV (Tx. Ct. App. 12/21/2023) – Texas Court of Appeals decision upholding the state's apportionment rules that sources receipts based on where the seller ships or delivers property in Texas and not where the buyer ultimately uses the property
- *Synthes USA HQ, Inc. V. Commonwealth of Pennsylvania*, No. 11 MAP 2021 (PA S. Ct., 2/22/23) – Pennsylvania Commonwealth Court holding that the state's COP sourcing statute sources receipts based on where the service is fulfilled

Recent cases and issues to watch

- **Alternative apportionment**
 - *Tractor Supply Co. v. S.C. Dep't of Revenue* (S.C. Admin. Law Ct. 2023): Looked to using alternative apportionment for purposes of arriving at a combined reporting result.
- **Maryland digital advertising tax**
 - State is appealing lower court adverse decision
 - Denial of refund claims
 - Digital taxes across other states
- **Transfer pricing**
 - Status in separate reporting states
 - Dissolution of MTC's SITAS

Sample state transfer pricing considerations

- Does the state have transfer pricing initiative or statutory/regulatory standards for transfer pricing?
- Does the state follow federal IRC Section 482 standards?
- Economic substance or other judicial standards to challenge state transfer pricing issues?
- Can the state apply forced combination to prevent distortion of income?
- Can the state apply alternative apportionment by modifying certain factors or including/excluding items?
- Can the state force addback of certain intercompany payments?
- Does the state have a formal or informal APA program or other avenues of administrative relief (e.g., Voluntary Disclosure or Amnesty Program)? If so, we should discuss with the client:
 - Transfer pricing documentation (should be detailed and show the arm's-length fee)
 - Pre-audit planning
 - Audit Defense and judicial controversies

Relevant cases

Louisiana v. ConocoPhillips Co., Docket No. C-740344 (19th Jud. Dist. Ct 2023)

- ConocoPhillips was accepted into the LA Transfer Pricing Managed Audit Program in 2022
- Subsequently, LA terminated its agreement with ConocoPhillips under that program, claiming that the taxpayer had not provided necessary documentation in response to multiple state IDRs
- LA then sued ConocoPhillips in state court and asserts a tax deficiency of \$390 million for 2008-2011 (and notes that there may be an additional tax liability of over \$80 million for 2012-2015)
- LA claims that the taxpayer did not use the correct profit rate for intercompany transactions and that the CPM transfer pricing method should have been used
- ConocoPhillips filed a reply in November 2023 and claimed that the LA DOR was inventing “imaginary income,” and that the taxpayer had the right to use the CUP transfer pricing method
- Interestingly, in support of its transfer pricing methodology, ConocoPhillips attached a redacted 2012 decision involving transfer pricing issues for Microsoft that was litigated before the DC Office of Administrative Hearings

Thank you

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Investment Tax Credit Update

NYC Tax Symposium



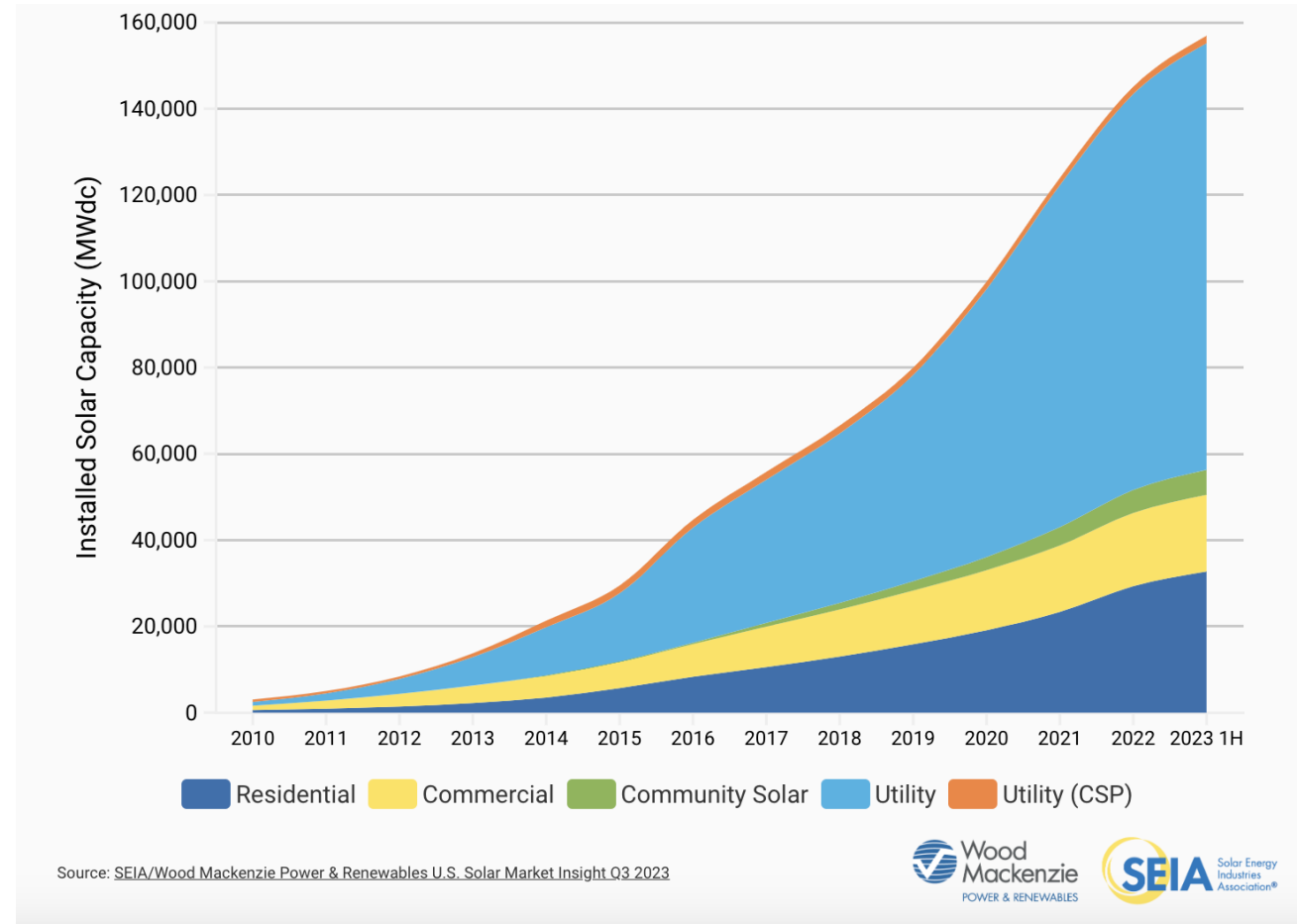
A brief history of renewable energy tax credits

The Energy Tax Act of **1978** created the first tax credits for clean energy

The modern Production Tax Credit (**PTC**) was implemented in **1992**, and the modern Investment Tax Credit (**ITC**) was implemented in **2005**


Renewable energy tax credits grew to a ~\$20 billion market **pre-IRA**

Tax policy has driven substantial growth in solar installations in the U.S.



The opportunity

A new and active marketplace is now accessible



The Inflation Reduction Act of **2022 (IRA)** made several changes to federal income tax credits for energy transition and carbon reduction. These changes include extending and introducing new credits, as well as modifying the rules applicable to those credits

Historically, a taxpayer needed to be a direct or indirect owner of an energy project to benefit from the tax credits associated with that project

Now, any taxpayer who is unrelated to the seller, including those without any direct or indirect ownership interest in the property or activity giving rise to the credit, **may purchase eligible credits at a discount**

A conservative estimate suggests that the upwards of \$30 billion of tax credits will be available each year, and many estimates project much larger amounts

The opportunity

Key Highlights

- The IRA for the first time allows the transfer or sale of tax credits from one taxpayer to an unrelated taxpayer
- The IRA also created a ten-year or longer runway for clean energy tax credits
- Transferable credits cannot be resold
- Tax credits under the following US tax code sections, **representing a variety of technologies**, can be transferred: 45, 45Y, 48, 48E, 45Q, 45V, 45U, 45Z, 45X, 48C, and 30C
- Transferability eliminates the requirement for **equity partnership structures** to allocate credits from one taxpayer to another
- A key policy goal is **to broaden the pool of capital** to support clean energy projects through a simplified transaction process

How it works

Benefits



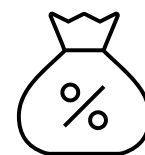
Treasury/ reporting

Return from discounted purchase price

Time value of money saving:

- Immediate reduction in estimated tax liability
- Cash to acquire credit only paid when credit transfer is closed

Improves free cash flow reporting



Cash tax

Effective tax rate reduced for net cash tax savings

Example:

- \$100 million credit transfer agreed end of Q1
- \$92 million transfer price – estimated close 12/31
- Pre-credit purchase EBIT of \$750m
- Pre-credit tax liability of \$158m
- Current year net tax savings = \$8m
- Current year rate impact = (1%)

Delta between credit value and purchase price is not taxable for Buyer

Amounts paid to Seller are not taxable for Seller

How it works

Timing of payment v. timing of benefits

- **The payment for the purchase can often be deferred until after the end of a quarter or possibly later, but always prior to the filing of the tax return.**
 - This results in cash equal to the full amount of the credits/offset taxes appearing on the balance sheet at the end of the quarter, for example.
- **The Buyer must pay solely in cash.** The payment must be made within a specific time frame that starts on the first day of the Seller's taxable year, when a specified credit portion is determined, and ends on the due date for completing a transfer election statement



Key Risks

Risk category	Key questions	Required diligence
Fraud	Was project actually built and placed in service?	Utility letter or equivalent
Trigger of recapture*	Was project abandoned, foreclosed, or sold within five years?	Due diligence on structure of debt, site control, and insurance
Cost basis*	Was cost basis properly calculated, and were only appropriate expenses included?	Third-party cost certification
Prevailing wage / apprenticeship	Was prevailing wage and apprenticeship labor used?	Documentation of adherence to PWA (eg, certified labor payroll)
Bonus credits, if applicable	Was project eligible for bonus credits? (eg, domestic content, energy community, low income community)	Documentation substantiating eligibility for bonus credits

*Specific to §48 ITCs; recapture and cost basis do not apply to §45 PTCs

How it works



Risk allocation

Risk allocations differs substantially from traditional Tax Equity Structures where the Tax Equity Investor runs, among others, project construction risk.

Transferability deals are meant to simplify structure and allocate risk in accordance to a more traditional purchase deal.

There is a strong **insurance market** available to help lessen this risk of recapture and others

Other credit support strategies also apply

- Parent Guaranty,
- LLC assignment of rights, etc.



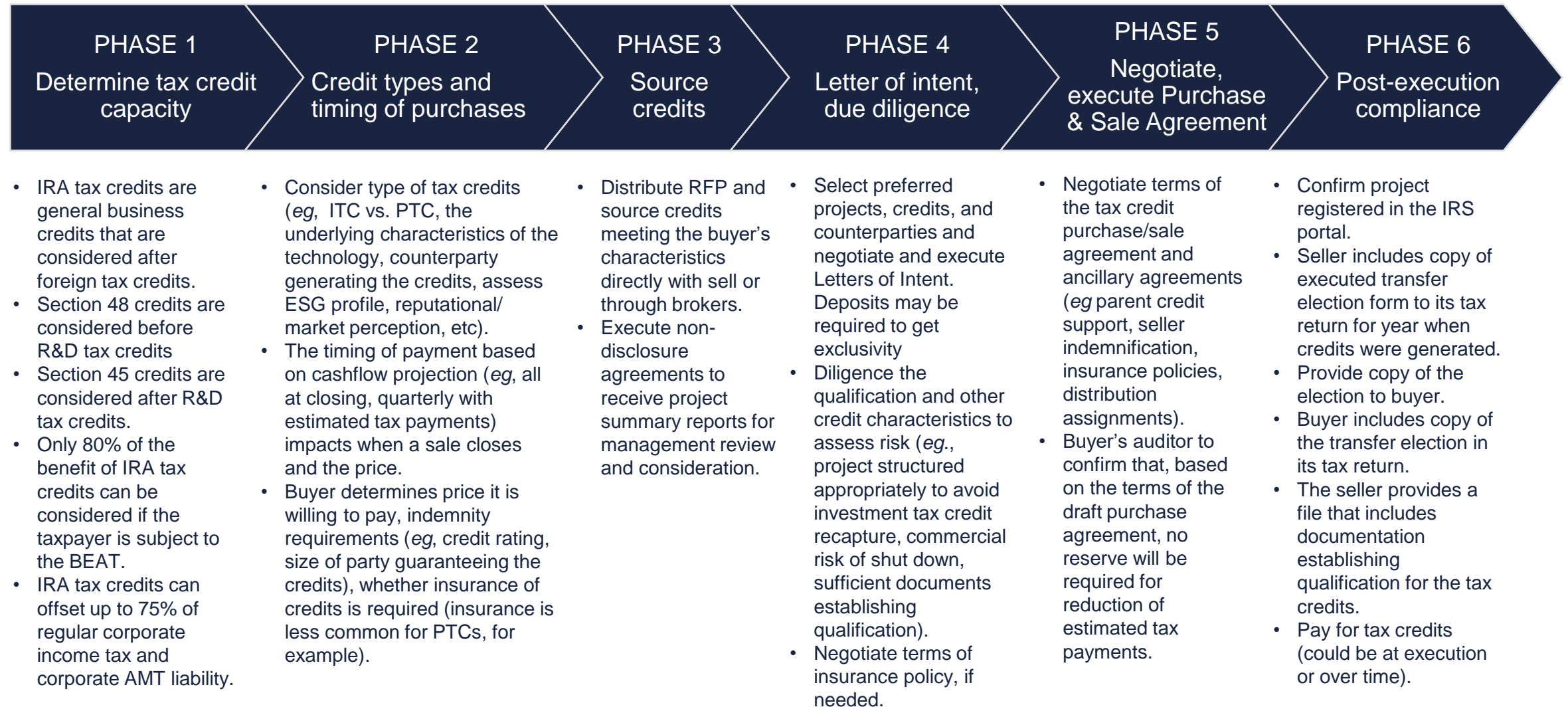
Transaction costs

Sellers often bear the cost of:

- Insurance premiums
- Legal fees
- Placement Agent fees

Therefore, the **price paid by Buyer typically represents the actual cost**

Tax credit purchase roadmap

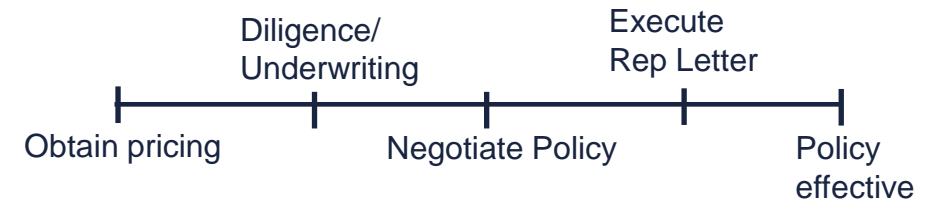


Tax insurance for credit purchasers

Benefits

- Avoid buy-side DD
- Avoid credit/dispute costs associated with indemnity
- Reduce payment delays/cash flow impact in unlikely event of recapture or other credit failure

Process



Coverage

- Ideally full wrap coverage
 - Recapture
 - Step up
 - Credit qualification
 - Adders/PWA
- Tax, penalties, and interest, dispute
- Policy term 7-10 years to mirror SOL
- Minimal exclusions
 - Affirmative seller acts
 - Gaps in property/casualty coverage

Cost

- Dependent on credit type (PTC/ITC) and adders
- Rates
 - ~2% for plain vanilla PTC
 - ~2.5% for plain vanilla ITC
- Underwriting fee ~\$50,000
- Smaller projects can be “packaged” for more efficient pricing (especially with regards to underwriting fee)

How DLA Piper can help

We help clients **pursue strategies** to either sell or purchase tax credits (ITCs and PTCs) and are well positioned to **facilitate introductions** between appropriate taxpayers.

We **identify issues that are relevant to potential buyers**. Seeking knowledgeable counsel is encouraged as the buyer bears the burden of the required documentation in addition to the risk of loss/recapture of credits. We can help buyers of credits:

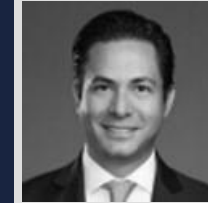
- Evaluate qualification for credits and the various bonus credits
- Assess the relative risks associated with different types of credits
- Negotiate access to relevant documentation and help build an audit file
- Structure indemnities and insurance coverage
- Evaluate the impact of buying credits under Pillar 2, base erosion and anti-abuse (BEAT) tax, and other US and non-US tax rules
- Structure purchase agreements that allow for some flexibility in bringing in third-party purchasers, if necessary

Thank you

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Tax Planning Fireside Chat

NYC Tax Symposium



Pillar 2 planning

Pillar 2: The future of tax competition

Overview

- Pillar 2 will likely reshape the nature of tax competition between countries
 - Developments in implementing jurisdictions
 - R&D tax credits have been or will be modified to qualify as a qualifying tax credit
 - Grants designed to achieve ETR below 15%
 - ✓ Consider requirement of general application
 - ✓ State Aid compliance
 - Non-refundable credit booked in financial statements as a DTA
 - Top Up Tax Calculation, Refundable vs. Nonrefundable Credit
 - Pillar 2 and related aspects of US tax policy
 - OECD July guidance and MTTC
 - Is the US to cede taxing rights to foreign jurisdictions?

Pillar 2: The future of tax competition

Tax credits versus QRTC's versus other classic incentives in the context of high and low-taxed jurisdictions

Country CIT rate:	25%		15%			25%	15%
Local tax	Tax Credit	QRTC	Tax Credit	QRTC		IP Box Regime	
<i>Gross Revenue</i>	1,500	1,500	1,500	1,500	<i>Revenue</i>	1,000	1,000
<i>Expenses</i>	(500)	(500)	(500)	(500)	<i>IP Box Revenue</i>	500	500
<i>Taxable income</i>	1,000	1,000	1,000	1,000		1,500	1,500
<i>Tax rate</i>	25%	25%	15%	15%	<i>Tax Rate</i>	25%	15%
<i>Tax due before credit</i>	250	250	150	150	<i>IP Box Tax Rate</i>	6%	6%
<i>Tax Credit (30% of expenses)</i>	(150)	(150)	(150)	(150)			
<i>Tax due after credit</i>	100	100	-	-	<i>Tax due</i>	280	180
Jurisdictional ETR	10%	10%	0%	0%		19%	12%
Pillar 2 tax							
<i>Net Revenue</i>	1,000	1,000	1,000	1,000		1,500	1,500
<i>GLoBE QRTC income</i>		150		150			
<i>GLoBE Income</i>	1,000	1,150	1,000	1,150		1,500	1,500
<i>Covered tax</i>	100	250	-	150		280	180
GLoBE ETR	10%	22%	0%	13%		19%	12%
<i>GloBE Top-up Tax</i>	50	-	150	23		-	45
Post-Pillar Combined ETR	15%	10%	15%	2%		19%	15%

Pillar 2: The future of tax competition

Implementing considerations for jurisdictions

Qualified Refundable Tax Credits and Marketable Transferable Tax Credits

QRTC	MTTC	Jurisdictional benefits	Jurisdictional challenges
<ul style="list-style-type: none">• Refundable in cash within 4 years• As a matter of substance, and not only form, refundable• Must be generally available (cannot exclude certain companies e.g. loss companies)	<ul style="list-style-type: none">• Transferable within 15 months of origination• There must be a 'market'	<ul style="list-style-type: none">• Tax credit has 'income treatment' for Pillar 2 purposes.• Can drive combined ETR below 15% without Pillar 2 top-up tax	<ul style="list-style-type: none">• Fiscal impact:<ul style="list-style-type: none">• Hard to budget• Cash out cost• General applicability• Benefits loss making companies• Meaningful ETR impact requires meaningful credit• Basis for credits: substance and nexus• OECD scrutiny<ul style="list-style-type: none">• Peer review• Credit may not be used as a means to 'give back' Pillar 2 taxes• EU State Aid risks

Pillar 2: The future of tax competition

Some other key considerations for jurisdictions

- IIR and UTPR or not?
- Qualified Domestic Minimum Top-up tax versus Domestic Minimum Top-up tax
- Implement Pillar 2 for all companies or only for in-scope companies
- Tax attributes treatment (only relevant prior to Pillar 2 coming into effect?)
- Grants
- Non-tax incentives and subsidies

International planning

Section 174 – Current Law

- The Tax Cuts and Jobs Act (TCJA) amended Section 174 by removing the ability to expense specified research and experimental expenditures (SRE) (generally, R&D expenses) on a current basis
 - Change applied to tax years beginning after December 31, 2021 (*i.e.*, starting in 2022 for calendar-year taxpayers)
 - Taxpayers are required to capitalize and amortize SRE expenditures over a period of 5 years (for domestic research) or 15 years (for foreign research)

Section 174 – Draft Legislation

- On January 31, 2024, the House voted 357 to 70 to approve H.R. 7024, the Tax Relief for American Families and Workers Act of 2024
 - Among other provisions, H.R. 7024 would allow taxpayers to deduct domestic SRE costs that are paid or incurred in tax years beginning after December 31, 2021 and before January 1, 2026
 - SRE costs that are attributable to research that is conducted outside of the US would continue to be deducted over a 15-year period
- Draft legislation does not restore pre-TCJA Section 174(b)
 - Rather, it proposes a new Section 174A which would provide temporary rules for domestic SRE expenditures that would not be subject to capitalization under Section 174(a)
 - Section 174A would apply to amounts paid or incurred in tax years beginning after December 31, 2021, and prospectively through tax years beginning before January 1, 2026
- Elective options to capitalize domestic SRE

Section 174 – US International Tax Implications

- **BEAT:** Consider impact of full R&D expensing on BEAT calculations and amount of base erosion payments
- **FDII:** If Section 174 capitalization had increased US taxable income, it may have also increased the FDII deduction proportionally
- **Section 163(j):** Consider impact of change on limitations on business interest
- **Foreign tax credits:** Consider impact of change on R&D expense apportionment and impact on GILTI-tested income and related credits
- **State tax implications:** Consider whether state law conforms to federal law on a rolling basis or potential for mismatches

Transfer pricing considerations

TP and Tax Planning/Restructuring

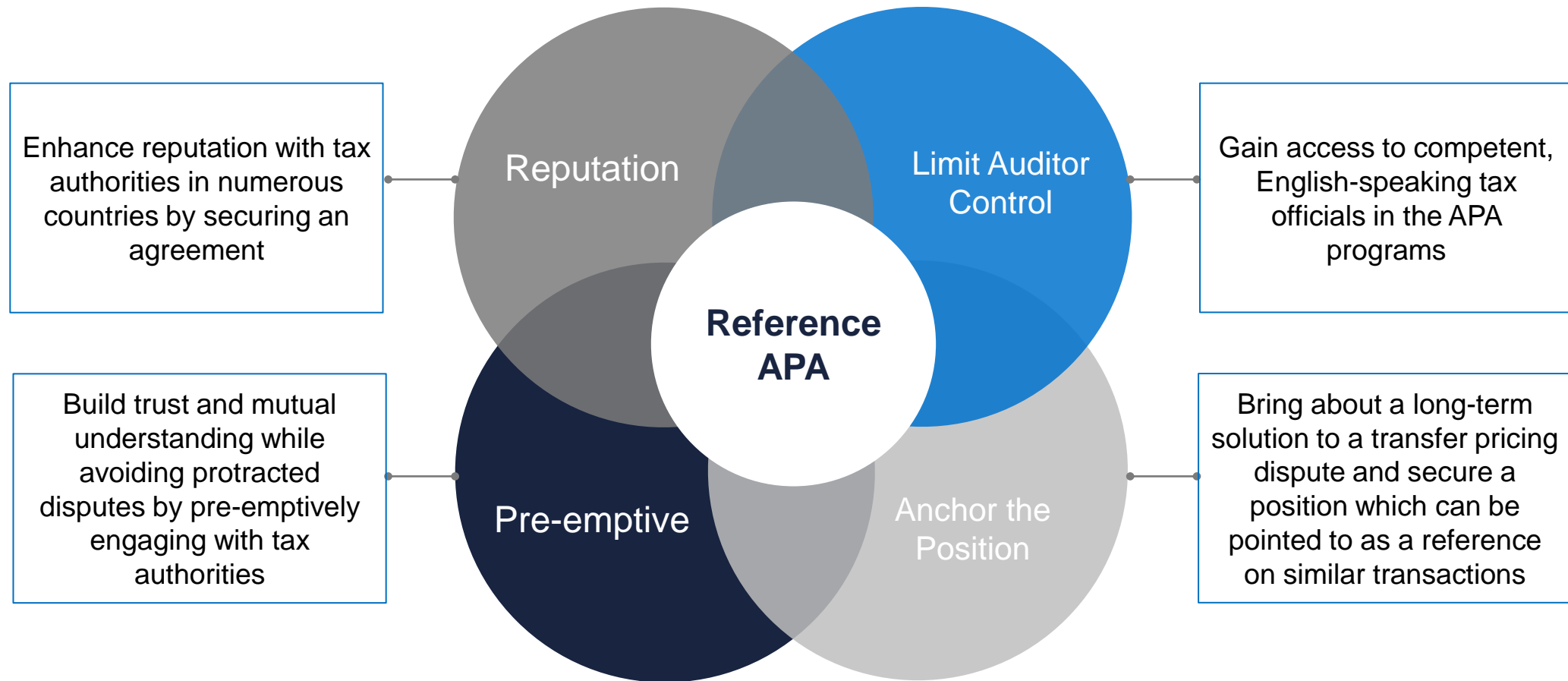
- Managing integration
 - Financial systems, if acquisitions are involved
 - Assuring consistency with:
 - Transfer pricing policies
 - Amongst local files
- Assessing and managing risk
 - Proactively defend against tax risk associated with specific actions or transactions carried out or anticipated by the group
 - Assess risk and adopt defensive measures in line with domestic law and administrative practices, as well as international standards
 - Think strategically about transfer pricing documentation, defense files, APAs

APA strategy

When does it make sense

- Companies considering a change in business model (from restructurings, acquisitions, etc.) and wanting to obtain certainty and limit risk of audit
 - IP migration
 - Entering a market with aggressive tax authorities
 - Conversions, e.g., full fledged manufacturer to contract manufacturer
- Companies starting or at risk of complex TP audits
- Companies with significant TP exposure that extends beyond one year
- Companies with a stable business model

APA strategy (Cont.)



Defense documentation

Key Features:



The narrative in the documentation provides a reference point for defending local transfer pricing positions as it is tailored to address questions from local tax authorities



The documentation prepared is aligned with the content of any local transfer pricing documentation, but it is able to look beyond the compliance obligation to address specific tax risks such as exit charges and specific transfer pricing adjustments associated with business transformation



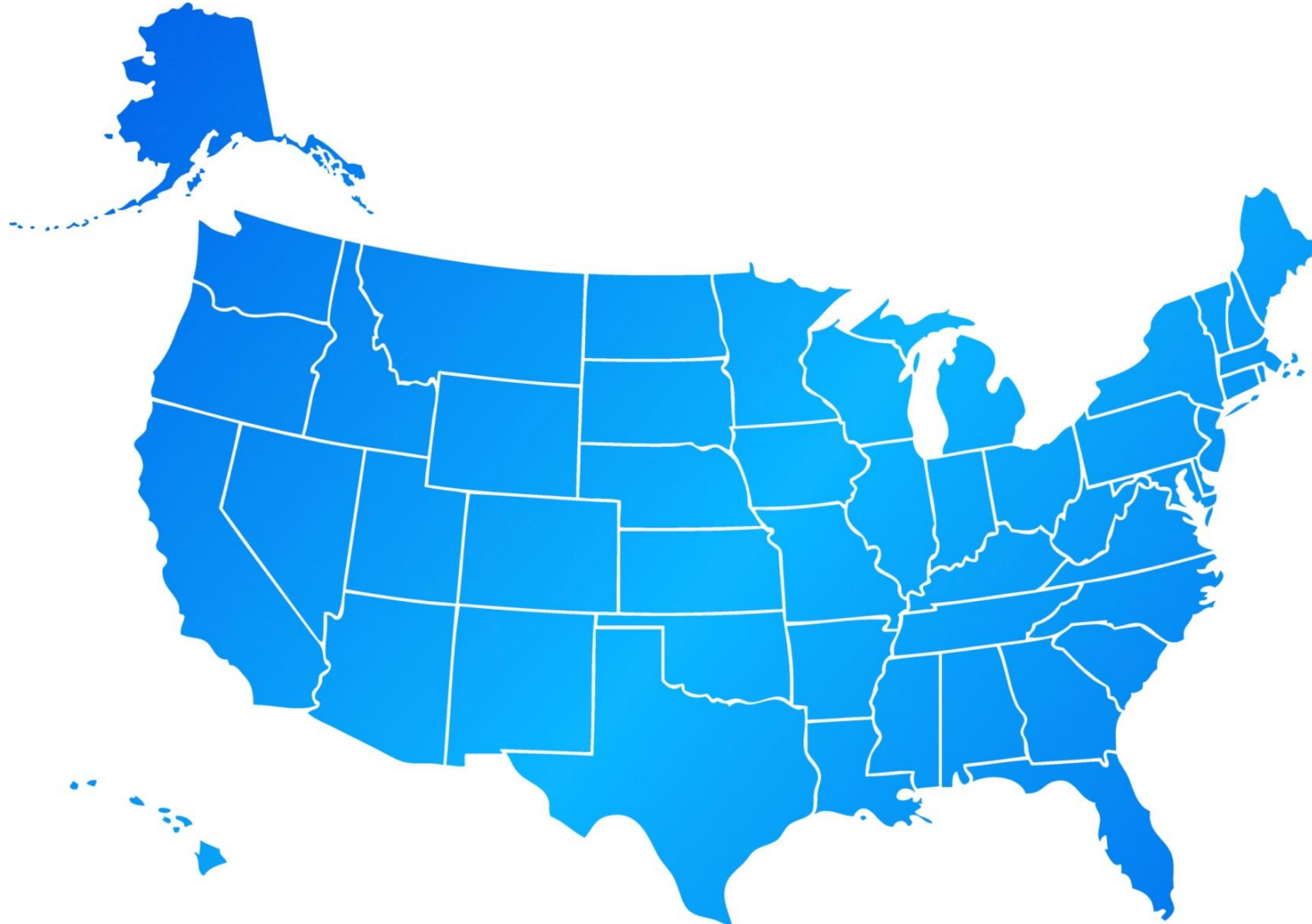
Defense documentation is localized, as it will be developed from local fact finding interview(s) to incorporate location specific fact patterns, and will be supported by engagement with local controllers



The documentation anticipates what tax authorities might ask, but it can be put in place more quickly as it is less dependent on tax authorities compared with the implementation of APAs

State and local tax (SALT) planning

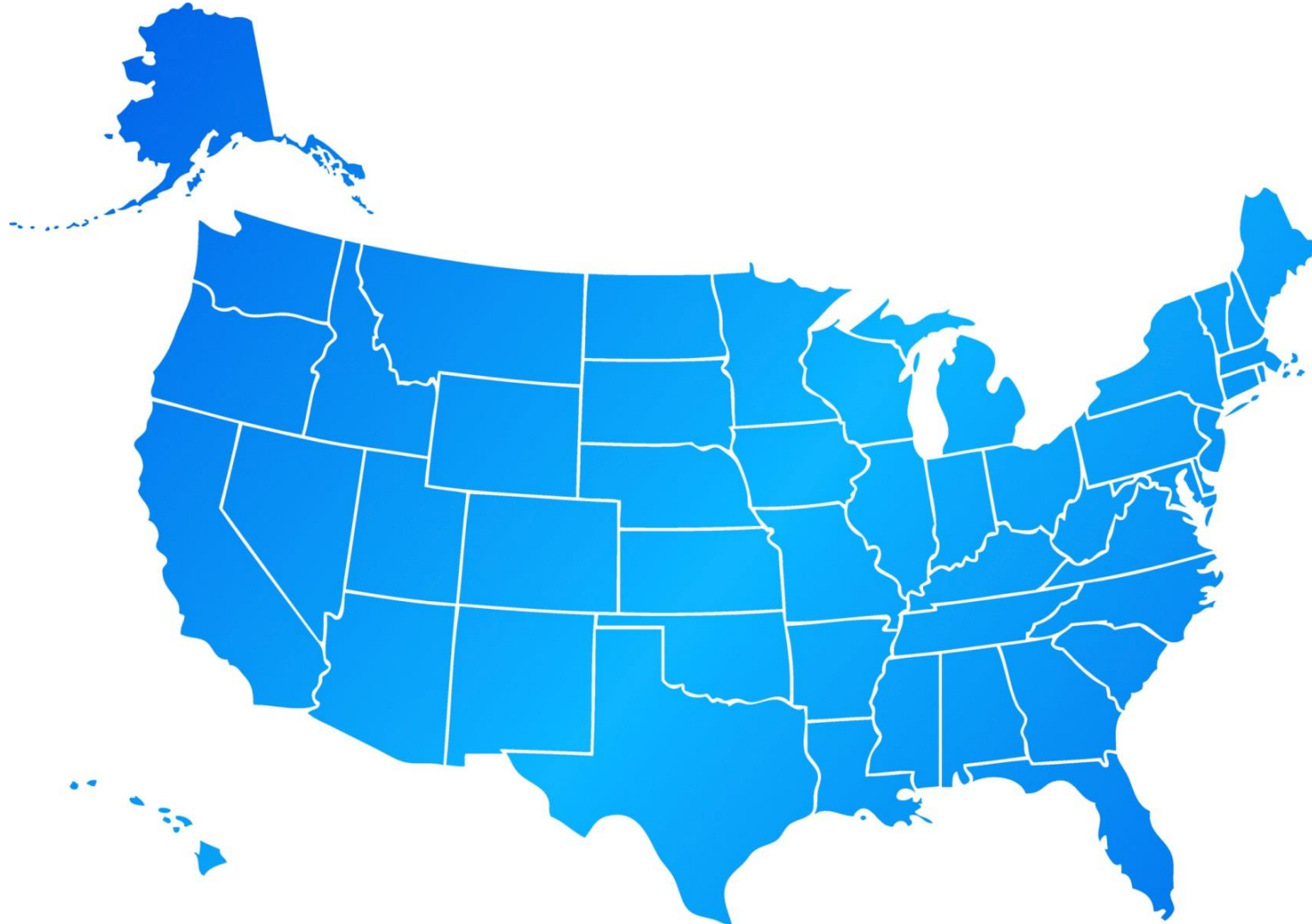
New York State general business corporation tax



New York State final regulations

- New York State published its long-awaited regulations on December 27, 2023
 - Memorialized the most recent proposed regulations
- Highlights include:
 - 0-percent rate for qualified New York manufacturers
 - Sourcing of digital goods
 - P.L. 86-272 Application
 - Contract manufacturing
 - Passive investment customers
 - Relevant to hedge funds
 - Intermediary Transactions
- Is retroactivity a concern?
 - Constitutional questions surrounding whether the regulations can be retroactive

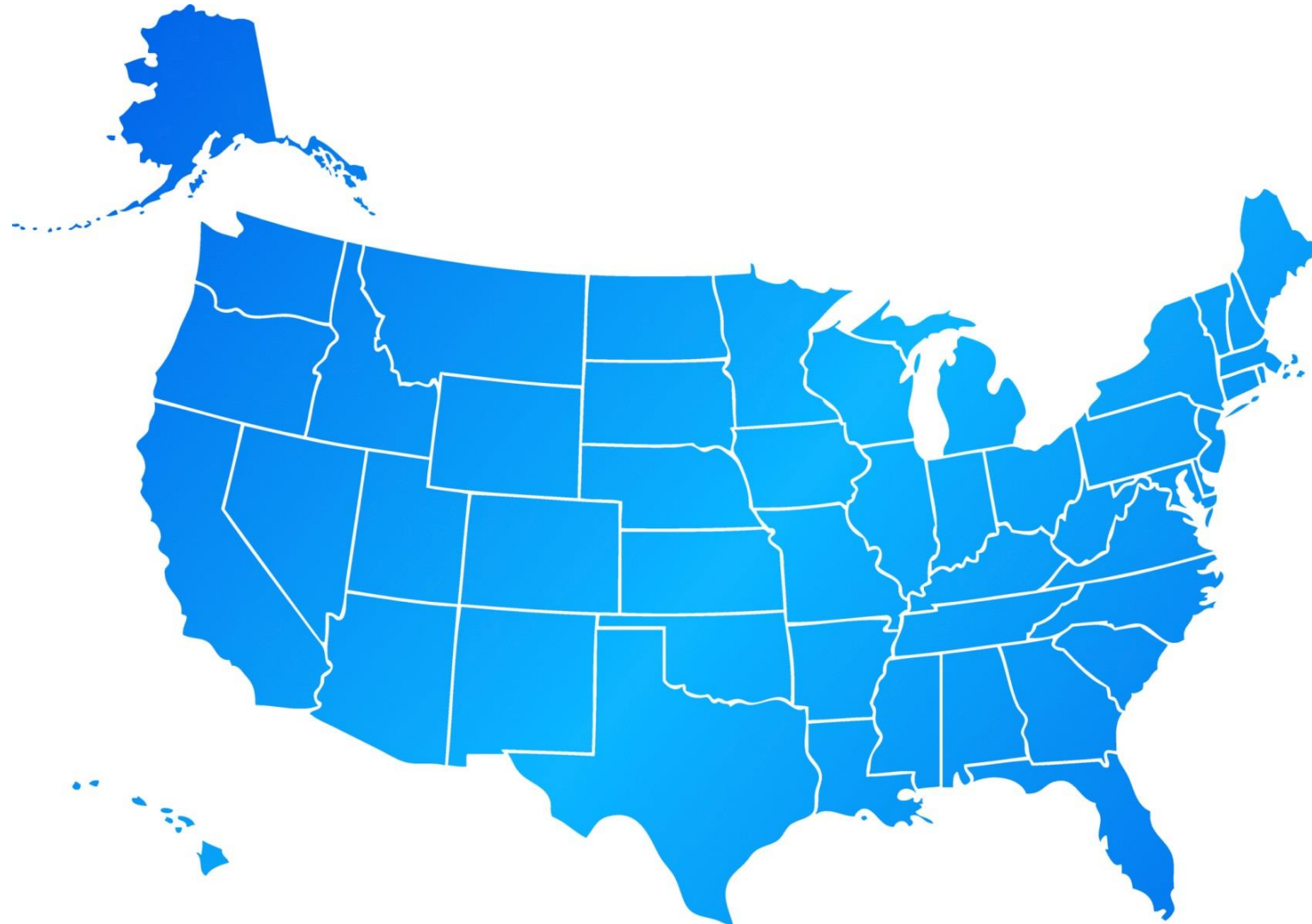
New York City business corporation tax updates



New York City business corporation tax updates

- NYC has enacted \$1 million economic nexus as of January 1, 2022
 - This is in line with New York State economic nexus rule that was enacted in 2015 corporate tax reforms
- Conformity of New York State/New York City corporate tax reform?
 - New York City Finance Commissioner stated last week that New York City intends to finalize its rules in 2024
 - New York City expects to conform to many of the New York State rules, but expects to deviate in some areas
 - For example, New York City imposes special taxes, including UBT (partnerships) and former GCT (S corps)
 - Partnership is subject to UBT and the corporate partner is subject to New York City BCT
 - Different sourcing rules for service income (UBT: place of performance; BCT: customer's location)
 - **Aggregate method:** Add partnership factors/income to corporate partner's factors/income
 - **Entity method:** Apportion partnership income based on partnership's factors, and corporate partner is only taxed on its distributive share of that New York City-source income from the partnership

Sales and use tax updates



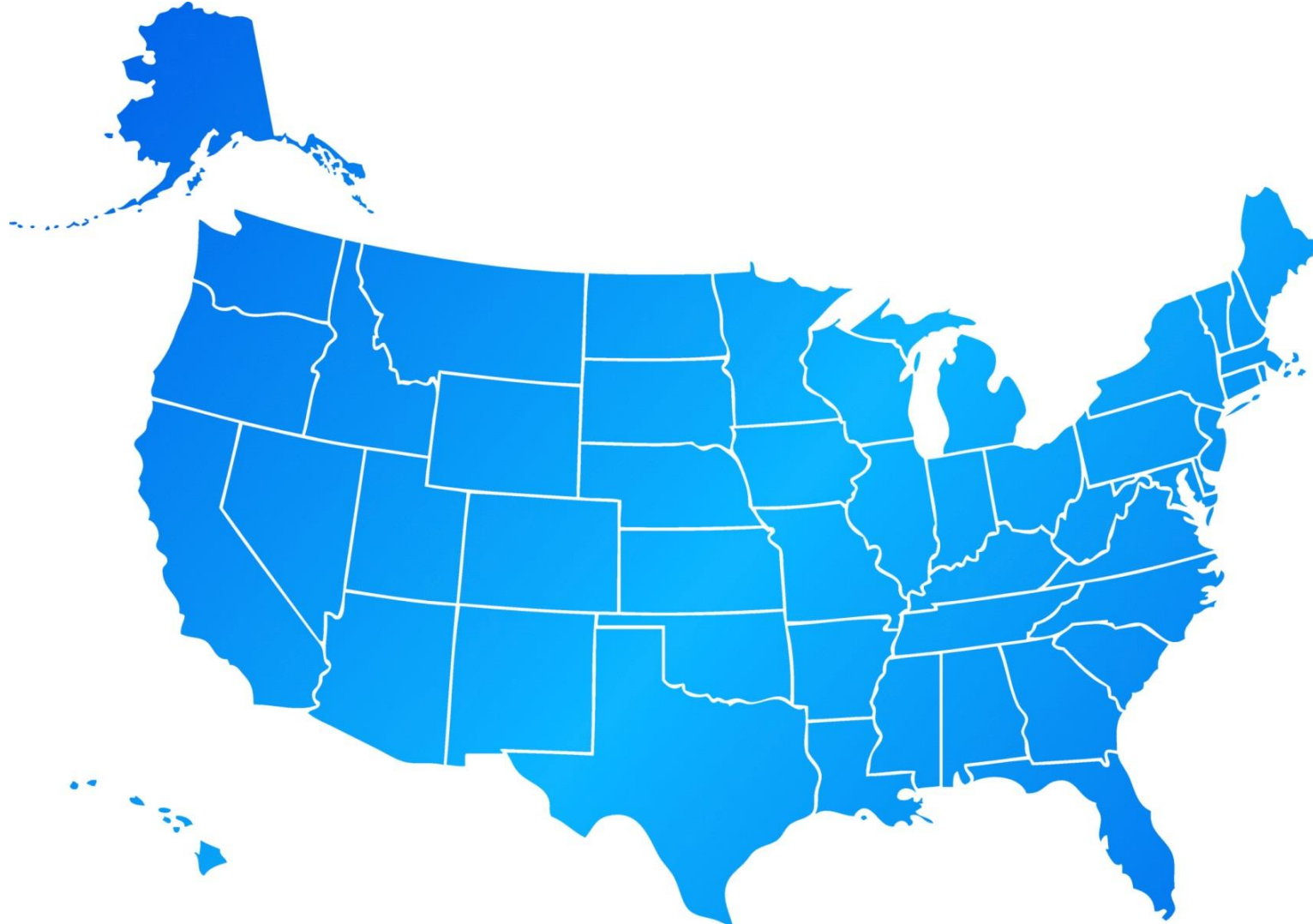
Recent case law and issues

- Location of the customer and delivery destination
 - *Va. Public Document Ruling No. 23-67* (1/1/2023) – Data center entitled to refund on certain equipment delivered to Virginia storage facility prior to delivery to data center outside the state
 - *VVG Intervest v. Harris*, BTA No. 2019-1233 (9/13/2023) – Ohio CAT (not sales tax) decision stating that products routed through an Ohio distribution center were not Ohio-source sales as they were delivered outside the state
 - *Jones Apparel Group / Nine West Holdings v. Harris* (9/15/2023) – Similar CAT case, but taxpayer failed to provide sufficient proof of delivery outside the state
- Documenting information
- Challenges with sourcing when multiple states could feasibly impose tax on a product/service

Recent case law and issues

- Taxability
 - *Dynamic Logic, Inc.*, No. 545335 (N.Y. App. Div. 3d, 2024) – NYS Appellate Division held that advertising research company was liable for sales tax as an information service. Company gauged effectiveness of its clients advertising campaigns as it was stored in a database used for reports to other customers
 - Taxation of digital products and services
 - *Montgomery v. Commonwealth of Pennsylvania* – whether Perrier water’s fizz is nontaxable as naturally occurring (addressing the state’s exemption for water).
- Sales tax holidays
- Complications in tax administration
 - *e.g.*, Florida sales tax exemption for baby and toddler products marketed for children ages five and younger

Remote employees: Tax nexus and convenience of employer litigation



Overview of SALT issues arising from remote workers

- **Corporate income taxes**
 - Impact of teleworkers on nexus for corporate income taxes
 - Impact of teleworkers on the apportionment factors for corporate income taxes
- **Sales and use taxes**
 - Impact of teleworkers on nexus for sales/use tax collection
 - Impact of teleworkers on thresholds for *Wayfair*-type economic nexus
- **Payroll taxes and personal income taxes**
 - Impact of teleworkers on wage withholding for employees working in different state
 - Hiring considerations for executives and other employees
 - Convenience of the employer test for non-residents (e.g., CT, DE, NE, NJ, NY, PA)

New York State Convenience of the Employer Rule – *In re Zelinsky*

In the Matter of Edward A. and Doris Zelinsky, DTA Nos. 830517 and 830681 (NYS Division of Tax Appeals)

- Most states only impose their personal income taxes on a non-resident employee who performs services in the state
- If a non-resident performs services inside and outside the state, then a wage allocation is required
- However, six states (including New York State) impose a convenience of the employer (COE) rule
 - If employee is assigned to an office of the employer in the state, then all work performed by that non-resident employee is attributable to the in-state office and subject to state tax withholding
 - **Exceptions:** The employee works out of state for the employer's convenience or works out of another office or a bona fide home office located outside the state
- Professor Zelinsky of Cardozo Law School performed some of his work at his home in Connecticut. New York State argued that the COE rule applied and all of Professor Zelinsky's wages were subject to New York State PIT. That rule was upheld by the NYS Court of Appeals in 2003 (and in a later 2005 case: *Huckaby*)

NYS Convenience of the Employer Rule – *In re Zelinsky*

In the Matter of Zelinsky, DTA Nos. 830517 & 830681 (NYS Division of Tax Appeals), appeal pending to NYS TAT

- This new New York administrative appeal concerns Professor Zelinsky’s work from home in 2019 and 2020
- The ALJ determined that the 2019 year was subject to the same holding as the 2003 Ct. Appls. case
- Due to the government orders limiting travel in New York City during 2020 due to COVID-19, Professor Zelinsky renewed his challenge to the COE Rule on the ground that he could not work in his Manhattan office
- From March 16 to December 31, 2020, Professor Zelinsky did not have a classroom or office available for his use at Cardozo Law School in Manhattan. He thus argued that the New York State COE rule can’t apply.
- The ALJ determined that Professor Zelinsky’s need to work from his CT home was still not for the necessity of his employer. Accordingly, the NYS COE should apply notwithstanding lack of facilities
- Surprisingly, the ALJ held that. while Professor Zelinsky was not physically present in New York during the pandemic, he was remotely connected to his students via Cardozo Zoom classes and, therefore, he derived a benefit from his connection to Cardozo Law School in New York. This is the equivalent of “virtual presence”
- The ALJ rejected Prof. Zelinsky’s Due Process & Commerce Clause challenges on the ground that he wasn’t engaged in an interstate business as a Cardozo employee and Due Process was satisfied.

Thank you



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