



State Tax Research

Jeana Parker, Principal, Raleigh

Andrew Grace, Senior Manager, Washington National Tax

Wednesday, December 7, 2022

Basic Principles of Resolving a SALT Issue

- Establish the facts
- Identify the issue(s)
- **Perform research**
- Evaluate the authority found
- Develop conclusions/make recommendations
- Communicate the results
- Refine/edit your work

Hierarchy of SALT Authorities

- U.S. Constitution
- State Constitution
- Federal law (e.g., P.L. 86-272)
- State tax statutes
- State court decisions interpreting tax statutes (pay attention to rules of precedent)
- Administrative guidance (regulations, rulings) generally will be given deference unless they are an impermissible interpretation of the statute
- Secondary sources (treatises, form instructions, judicial decisions from other jurisdictions)

Where to find SALT Authorities?

- Subscription services
 - Tax Analysts
 - CCH/IntelliConnect
 - Cheetah
 - Thomson Reuters Checkpoint
 - Bloomberg BNA
 - Westlaw
 - LexisNexis
- Considerations
 - Which of these services do you have access to?
 - Is there a service that is better for state tax, or the particular tax type you are researching?
 - If you have access to more than one service, have you looked for authority in both?
 - What do these have that I cannot find in the state's online free code?

Where to find SALT Authorities?

- State & local government sites
 - State revenue or tax department
 - Legislature
 - State attorney general
 - Secretary of State
 - Economic development agency
 - State court system
 - Administrative tribunal
 - Counties/ Local assessors
- Considerations
 - What are you looking for (draft regulations, proposed legislation, information on credit programs)?
 - If looking for local tax information/authority, the subscription services may not have a lot of content
 - Be careful not to substitute summaries of tax information for the statute

State Legislative Websites

- A wealth of information
 - Proposed and enacted bills (and all the versions in between)
 - Fiscal impact statements
 - Legislative summaries of the bill
 - Testimony submitted in support of or against the proposed change
 - May be able to live stream floor debates or committee hearings
 - May also need to check the Governor's page or the Secretary of State's website to confirm signing

Where to find SALT Authorities?

Third-party sites

- IPT - information on professional designations and programs
- COST - legislative update, COST tax burdens study, COST Scorecard
- MTC - Uniformity projects and history on changes to regulations
- FTA - Information on rates, tax agencies, motor fuels and tobacco
- Tax Foundation - studies and reports, articles
- Cornell Legal Institute - free access to laws and cases
- SEC/Edgar - form 10-Ks, other filings

More third-party sites

- ABA - Tax section articles, task forces, resources
- AICPA - policy and position papers, articles
- SSUTA - map of streamlined states, the agreement, information on CSPs
- Other sites of possible interest for articles and information on state tax issues
 - State Bar Association
 - State CPA Association
 - Law Firm websites
 - Accounting firm websites
 - Trade Association Websites-

Where to find SALT Authorities?

- What are the benefits to using third-party sites?
 - Free
 - May have content not found on subscription sites
 - May have articles written by other practitioners
- Likely best for non-primary sources
- But, beware
 - May not be best source for locating primary SALT authority (i.e., no way to shepardize cases), content may be biased (i.e., article on law firm or accounting firm site, or MTC site)
 - Don't always believe what you read!

Where to find SALT Authorities?

- Off the grid
 - State archives for legislative history
 - Department of Revenue regulation development files
 - Public Records Act/FOIA request
 - Law library
 - Older journals, digests and other reference materials

Where to find SALT Authorities?

- To Google or not to Google
 - Not a bad way to start research, but probably not most efficient way to search for case law or authority in a specific state
 - Google first, then dive in
 - If you're unfamiliar with an area or point of law, start with an Internet search to gain a general understanding, then pursue targeted research
 - Accounting/law/consulting firms often post blog articles and presentations that may help orient you to the subject
 - Be aware that whatever content you find on Google will likely need to be verified for accuracy and may not be the most up to date

Where to find SALT Authorities?

- Phone a friend
 - Use your IPT/industry connections for their insights/experience with particular issues
 - Trade association staff may have background/intelligence on issue
 - Have you got a contact at the Department of Revenue? If so, use that contact information appropriately and wisely (i.e., use it sparingly and for answerable questions)
 - Walk down the hallway and talk to professionals in your office- both at your level and with more years of experience

Staying Current in Changing Times

- How to stay up-to-date on emerging tax news?
 - Daily updates from subscription services or from Law 360
 - Don't read everything—if you don't do individual tax work, skip those developments
 - Read once a week, or have on your phone to read when you have a few minutes
 - Encourage your colleagues to incorporate discussions of current developments into meetings

Research Tips and Tricks

- Version control
 - Always make sure you are using the version of the statute that was effective for the tax year that you are researching
 - Usually, this is easier to determine if using a subscription service to do state research
 - State online code may not be updated as quickly after law changes are enacted
 - Always confirm current status of the law or current version of the bill if reviewing legislation

Research Tips and Tricks

- Using subscription services
 - Beware: don't only read the explanations—go to the primary source
 - Always best to read the full statute/regulation/case
 - Use “create-a-charts” with caution; they may not be accurate or up-to-date
 - Always check more than one subscription site if you have access to multiple subscriptions—they are not all exactly alike and one may have content the others don't
 - If you need help, ask!
 - Oftentimes, subscriptions to these sites include free trainings and tech support

Research Tips and Tricks

- Effective searching
 - Narrow your focus – targeted precision
 - Use the “focus” or “keyword” feature available in the online services
 - Key identifiers – words, phrases, names, etc.
 - Multistate database research in subscription services
 - Don’t assume an answer is always in one specific section of the tax code
 - If you don’t find anything on point, don’t assume you missed it
 - It may be that there is no authority in your state on point
 - Consider looking for authority in other states

Research Tips and Tricks

Local tax research considerations

- Even when you are concerned with a local-level tax, start with state authority
 - Statutes and sometimes even a state constitution
 - No locality has inherent taxing powers, so look for enabling statutes or other state authority granting the locality the power to tax
 - But be careful, some local ordinances can trump state statutes! (e.g. CA)
- Most localities impose taxes by ordinance (essentially a local-level statute)
 - Many local ordinances are not available in commercial legal databases (e.g. Westlaw or Checkpoint)
 - Many are also not available on the locality's website

Research Tips and Tricks

Local tax research considerations

- American Legal Publishing Corporation (ALPC)
 - Codifies the ordinances of many (over 2,000) localities and publishes and hosts online over 800
 - Free! (At least to the public.)
 - May not reflect most current version. Should not always be relied upon as definitive authority.
 - Search function limited but still an excellent resource
- May need to rely more on forms, instructions, and guidance on website
 - Administrative codes much more rare than at state level.
- Contacting the local taxing authority can prove extremely useful, but not always

Research Tips and Tricks

- Getting verbal guidance from the state
 - If you don't have a contact, try to get one
 - Calling the general number probably won't get you to the right person right away
 - May ask to be connected to someone in policy or audit
 - If calling on behalf of a client, prepare to be asked about a POA
 - If you reach a contact person and get an answer, try to get a follow up email for your files

Research Tips and Tricks

- In reaching conclusions DO consider:
 - All sources of authority—statute, regulations, case law, revenue rulings, legislative history (if appropriate), etc.
 - Whether client would prevail if issue is challenged by the taxing authority assuming all pertinent facts are known by the taxing authority

Research Tips and Tricks

- DO NOT consider:
 - Possibility of audit
 - Likelihood that taxing authority will find item on audit
 - Possibility of settlement

Hierarchy of Standards

- **Will**
 - **Generally, a 95 % or greater probability of success on the merits if challenged by the taxing authority**
- **Should**
 - **Generally, a 70 % or greater probability of success on the merits if challenged by the taxing authority**
- **More-likely-than-not**
 - **A greater than 50 % probability of success on the merits if challenged by the taxing authority**

Hierarchy of Standards (Cont'd)

- **Substantial authority**
 - **A 40% probability of success on the merits if challenged by the taxing authority. The weight of authorities in support of a position is substantial in relation to the weight of authorities in opposition to the position**
- **Realistic possibility of success**
 - **A 1-in-3 possibility of success on the merits if challenged by the taxing authority**
- **Reasonable basis**
 - **Significantly higher than not frivolous (i.e., not patently improper) and lower than realistic possibility of success**
 - **Position must be reasonably based on at least one tax authority**