

STATE TAX RESOLUTION PROTOCOL

INCOME - SALES & USE - PROPERTY - INCENTIVES

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Dear Business Leaders and Trusted Advisors:

State and Local Taxes ("SALT") are a significant percentage of the overall taxes paid by companies and individuals. State and Local governments in the United States annually collect over \$2,300,000,000,000 in State and Local individual income, corporate income, sales and property taxes. This is equal to approximately 40% of the annual amount of U.S. income taxes collected by the federal government.



The State Tax Resolution Protocol

Over the course of the past few decades we have worked with national and local companies and with their Trusted Advisors to help resolve many types of SALT and Tax Incentive audits, appeals and other disputes.

Key to the successful resolution of SALT and Tax Incentive matters is a Protocol which we have developed to help achieve the best outcomes. The details of this Protocol are included in this guide

This includes the principal Nebraska State and Local Tax protocols that we have been working on with our clients and their in-house and outside tax and legal professionals. In this guide we discuss how SALT and Tax Incentive disputes can be best resolved.

Before, During and After the Audit

As with all tax and incentive matters, SALT and Tax Incentives offer the opportunity to choose to plan ahead or to choose to not plan ahead. Planning ahead usually results in the better outcome. In either situation, all taxpayers are subject to being audited. All Audits are either resolved at the Audit level or resolved on Appeal.

This Protocol considers planning opportunities that can occur before the Audit, as well as certain best practices during the Audit and then after the Audit (i.e. the Appeal).

Our State and Local Tax Team

While we handle most of the SALT and Tax Incentive matters for the Firm, others from the McGrath North Tax and Litigation Groups work on or assist on SALT and Tax Incentive appeals.

We welcome the opportunity to discuss the planning, resolution and defense of your State and Local Tax matters as you look to grow as part of "The Good Life" in Nebraska.



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McGrath North focuses first and always on Client Success. We have a talented team of over 70 attorneys and professionals who effectively and successfully collaborate with our clients, including small and mid-size businesses to Fortune 500 companies operating in a broad range of industries.

We judge ourselves based on the real-world value we provide to our clients, whether they are operating in the Midwest, across the country, or in business centers across the globe. We are fueled to achieve that success by a relentless concentration on Excellence.

To be our best, McGrath North is always transforming and investing in talent, technology, and leadership, with a genuine commitment for building a talented, diverse team within our firm, our profession and our community. While we are proud of our first 60 years of service, we are always innovating and recreating ourselves for the challenges ahead for our clients.

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This Protocol has been developed and used by us over the past couple decades based on the key factors for achieving the best results in State and Local Tax and Incentive audits and protests/appeals. These are the stages we deploy:

Legal Representation. Attorneys are trained to cut to the root of the real issue and save the time, expense and potential harm of going down the wrong path. Determine both when an attorney's insight would be helpful and also when in the process the Nebraska Rules of Practice require a taxpayer to engage an attorney.

Engagement. Specify the scope of the engagement in the Engagement Letter - to be sure client goals are clear.

Determine Internal Team and External Team. Successful results are best achieved by a Team. This Team should consist of the right members of a Company's Internal Team, as well as the Company's regular Legal Counsel, outside CPA, and a State & Local Tax & Incentives Attorney.

Begin With the End in Mind. Know where you want to end up before beginning - and determine the best path to get there.

Start With the Statute. Tax and incentive results are always dependent on the actual, very precise (or imprecise) words of the actual statute, which the Legislature chose to include or exclude. Results are not dependent upon the Department of Revenue's opinion of the statute or the Department's wish as to what the statute said or didn't say.

Determine and Understand the Critical Facts. Unsuccessful cases often get bogged down in facts that are not important or miss facts that are important. Determine the facts needed to win and the facts that actually exist.

Proper Attitude. Determine from the beginning the proper attitude towards the position in the case and reflect this in all of the discussions and analysis.

Determine Other Relevant Law. Determine what regulations and case law exist on point and how these impact the result or are distinguishable.

Understand the Department's Rationale. To effectively rebut the interpretation of the Department of Revenue, fully understand the rationale and analysis that led the Department to that interpretation - and precisely where the wrong view of the facts or the law led it astray.

View the Department's Rulings Properly. Generally, the Department's revenue rulings are not binding on taxpayers. They don't constitute the law. They constitute the department's opinion (on which taxpayers can generally rely).

Follow the Rules of Statutory Construction. When disputing the Department's interpretation of a statute, knowing and applying the accepted rules of statutory construction are critical. A faulty statute interpretation usually violates one of these rules.

Statute of Limitations Review And Extension Strategy. Determine when to keep the statute of limitations open or let it expire.

Respect the History. Legislative history (such as from the Nebraska Legislature's process and debate) can often be a good source of knowledge regarding the right way to interpret an unclear statute. However, like all tools, legislative history has limitations, too. This history must be used properly.

Protect the Attorney-Client Privilege. Take care to ensure that the attorney-client privilege, when applicable, is not lost through any of the ways this can be lost. And know the difference between this and the CPA privilege.

Respect Company Time. Respect the investment of time by the Company personnel who are assisting in the defense.

Retain Records and Keep the Evidence Admissible. Facts can often be proven multiple ways. Care needs to be taken to ensure that evidence documenting a fact will be available and admissible at each stage, whether or not a formal Hearing is needed.

Legal Analysis. Be precise, thorough, and truthful in how the legal analysis is developed, written, and presented.

Professionalism. Be professional and respectful in all discussions with everyone involved in the case.

Convincing Testimony. Care should be taken to ensure the right people are available to testify—and that any witnesses can provide clear and convincing testimony. Whenever possible, someone with firsthand knowledge should be available.

Nontax Principles. Various legal principles that exist in tax and nontax areas of the law can often be applied and should always be considered.

Presumptions. Know what presumptions and burdens of proof apply.

Don't Forget the Experts. Expert testimony may be needed to prove certain key facts. Identify where experts may be needed and secure the right experts in that case.

Play the "Devil's Advocate". Someone on the Tax Defense Team should always play the part of the contrarian—no matter how solid or weak your issue or case may seem. This helps uncover blind spots and helps ensure both the strengths and weaknesses of the issue or case are properly vetted and considered.

Be Visual. Realize that not everyone perceives in the same way. Always determine and prepare the best one-page summary that visually demonstrates the case. A one-page visual is important at each stage.

Other Unique Considerations. Determine what may be unique to the particular case and do what's needed to address it.

Respect Cost/Benefit. Always estimate the investment it takes (in-house and outside) to achieve a win or favorable settlement—at each stage of the process—compared to the amount at issue.

Negotiating a Settlement. Understand what it takes, how, when and with whom to negotiate an optimal settlement.

Prevent Repeats. Look at what steps are needed to avoid a repeat of the same issue in future years.



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Inspired By Excellence. Committed To Your Success.

For over 60 years we have been working with our nation's food companies, restaurants, farmers and ranchers to feed people better. We have been working with contractors and companies to build better and more affordable homes and new business facilities.

We have been working with technology companies to develop new ideas that improve lives. We have been working with inventors, startup companies and health care providers to develop patented medical devices, leadership teams and joint ventures that save lives. We have been working with energy companies to help fuel our homes and the businesses we all rely on.

We have been working with bankers, key partners, manufacturers, distributors, retailers and transportation companies to finance, produce and deliver better products and services to communities around the world. We have been working with family business pioneers and their other trusted advisors to transform, grow, carry on and transition the family business dream, the backbone of our great country.

We have been working with our community leaders to improve our cities and our schools. We have been working with our elected leaders to improve the business climate to create and attract new and better jobs for families.

For over 60 years, this has been the McGrath North Law Firm.

Working quietly behind the scenes closely with the talented leaders of great organizations around the world to make lives better.

Working together. Working stronger. Working faster. Working better. Overcoming Roadblocks. Avoiding Train Wrecks.

Inspired by Excellence. Committed to your Success.

Our diverse team isn't waiting for the future. We are helping to produce new, incredible, sustainable results right now.

We invite you to join us as we move quickly ahead towards the next 60 years.



Results Realized

Collaborating with Companies and Their Trusted Advisors on:

- State Tax Audits
- State Tax Appeals
- State Tax Planning
- State Tax Incentives
- State Business Incentives
- Site Development Incentives
- Property Tax Appeals

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