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STATE AND LOCAL TAX TRENDS AFFECTING TECHNOLOGY COMPANIES

Speakers: Adam Beckerink, Matt Mock, Justin Cupples, Cosimo Zavaglia, Colleen Redden,
Adam Holmes, and Laura Grace Mezher

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Presenters



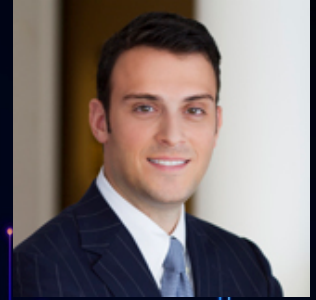
Adam Beckerink
Chicago



Justin Cupples
Philadelphia



Matt Mock
Chicago



Cosimo Zavaglia
New York



Adam Holmes
Boston



Laura Grace Mezher
Chicago



Colleen Redden
Chicago

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21st Century Workplace	Diversity, Environment, Social Justice	Medtech, Digital Health and Science
Artificial Intelligence and Automation	Fintech	Mobile Tech
Cybersecurity, Privacy and Big Data	Global Commerce	Regulating Tech

Today's Presentation

- What We Are Seeing from State Revenue Agencies
- Sales Tax
- Digital Advertising Taxes
- Income and Gross Receipts Tax
- Preview – Mobile Employees and Return to Work: Tax and Benefit Issues
- Cryptocurrencies



**Preliminary reports
show states lost
\$1.7B (.2%) in
revenue collection in
2020.**

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State Tax Agendas

- Budget Deficits
- Revenue Raisers
- Increased Audit Activities
- Tax Rate Increases (e.g., Massachusetts “Millionaires Tax”)

Sales Tax

The background is a dark blue to black gradient. It features a dense field of vertical lines of varying heights, each topped with a small, glowing dot. The lines and dots are colored in shades of blue, purple, and red. In the lower portion of the image, these vertical lines are connected by horizontal lines, creating a grid-like pattern that appears to recede into the distance, giving a sense of depth and perspective.

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Sales Tax Trends – Broadening Sales Tax Revenues

- Quick recap of *South Dakota v. Wayfair* (2018)
 - The US Supreme Court held that physical presence is **not** necessary for sales tax nexus
- Economic Nexus
 - Nearly all states have adopted economic nexus laws
 - Just recently, Florida and Kansas
 - Missouri is the last hold-out state; although, the Governor is expected to sign economic legislation (SB 153) this month
 - Common threshold for most states – \$100,000 or 200 transactions (mirroring original law enacted by South Dakota)
 - Now localities are adopting

Sales Tax Trends – Broadening Sales Tax Revenues

- Traditional sales tax paradigm does not neatly fit the digital economy
 - Traditional sales tax paradigm: sales of tangible personal property are subject to sales tax in the state the purchaser takes possession of or title to the property
- Problems with digital products
 - Place of transfer or possession might not be easily identifiable
 - No transfer of title (license)
 - Multiple use software/enterprise software sales

Sales Tax Trends – Broadening Sales Tax Revenues

- States respond by enacting regimes that permit taxation of digital products
 - States have addressed the issue in a variety of ways leading to a web of different regimes
- SaaS
 - Distinguishing between taxable sales of property from nontaxable sales of services
 - Cloud software
 - Are fees for remotely accessed software products as taxable transfer or non-taxable service transaction?
- Multiple Points of Use Software / Enterprise Software
 - Apportionment of software between states of use for sales tax purposes (Massachusetts)

Sales Tax Trends – Marketplace Facilitator Laws

- Nearly every state has adopted a marketplace facilitator law
 - Again, Missouri being the last hold-out
 - States continue to issue regulations and guidance
- Nuances and pitfalls of marketplace facilitator laws
- What's next?
 - Effort to create uniformity in rules?

Digital Advertising Taxes

- Several states have enacted various forms of “digital advertising taxes”
- Often measured by tax applied to gross receipts or revenue on sales of “digital advertising” receipts.
- Can include social media advertising, data mining, and banner advertising.
- Maryland tax is currently under challenge in both state and federal court.

Corporate Income and Gross Receipts Taxes

The background features a complex digital aesthetic. It consists of numerous vertical lines of varying heights, each topped with a small, glowing dot. These lines are primarily blue and purple, with some red and orange accents. The lines appear to be connected at their bases, forming a series of wavy, undulating lines that create a sense of depth and movement, similar to a data visualization or a stylized landscape of light.

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Corporate Income Tax Trends – Revenue Raising Measures

- Increased Rates (New York)
- Enforcement
- Expansion of Nexus
 - Continued consequences of *Wayfair*
 - P.L. 86-272
- New Local Taxes
 - San Francisco, Chicago (expansion of Amusement tax)
- New State Taxes
 - Washington Capital Gains Tax, Oregon Gross Receipts Tax
- Single Sales Factor

Entity Level Tax – Pass Through Entity Tax

- A number of states have adopted pass through entity (“PTE”) tax elections.
 - In response to \$10,000 SALT cap
 - Connecticut made the PTE tax mandatory
- PTE can pay tax at entity level and partners or members will be entitled to tax credit against individual income tax.
- IRS has “blessed” this methodology.
- Question of whether resident state of partner or member will respect corresponding credit as a “other state tax credit” against state income tax.

Corporate Income Tax Trends – Conformity to COVID Relief Packages

- CARES Act
 - Paycheck Protection Program
- Consolidated Appropriations Act
- American Rescue Plan Act



Mobile Employees and Return to Work: Tax and Benefit Issues

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Mobile Employees and Return to Work

- International Tax Considerations
- Federal Income Tax Considerations
- State and Local Tax Consideration
- Benefits Issues

State Tax Observations

- Payroll Tax
- Corporate Income Tax
- Sales and Use Tax
- Secretary of State Registrations

SALT Considerations for Cryptocurrencies

The background of the slide is a dark, abstract digital landscape. It features a dense field of vertical lines of varying heights, each topped with a small, glowing dot. The lines and dots are primarily in shades of blue, purple, and red, creating a vibrant, futuristic aesthetic. The lines appear to be connected at their bases, forming a grid-like structure that recedes into the distance, giving a sense of depth and perspective.

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Crypto

- Massive rise in use and popularity
 - Many businesses now accept bitcoin: PayPal, Expedia.com, Dell, Overstock.com
 - Ohio has begun to accept Bitcoin and Bitcoin cash as payment for taxes and other fee
- Garnering significant attention at the federal tax level
 - For federal tax purposes, Notice 2014-21 states that virtual currencies, such as Bitcoin are treated as property, as opposed to currency, for federal income tax purposes
 - Increased attention on enforcement and compliance
 - New crypto question on 2020 Form 1040
 - “Operation Hidden Treasure”
 - Pursued John Doe summons against cryptocurrency exchanges (e.g., Coinbase and Kraken)

Crypto

- State and local tax considerations
 - Income tax nexus
 - Sales tax implications
 - Incentives
 - New state and local crypto tax incentives (e.g., Kentucky)
 - Existing/traditional benefits and exemptions (e.g., energy-intensive processes, like crypto mining, qualify for manufacturing-based exemptions?)
 - A Multistate Tax Commission (MTC) standing subcommittee is exploring cryptocurrency issues
- Unclaimed property considerations

Coronavirus COVID-19 Resources

We have formed a multidisciplinary **Coronavirus/COVID-19 Task Force** to help guide clients through the broad scope of legal issues brought on by this public health challenge.

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To help keep you on top of developments as they unfold, we also have launched a resource page on our website at www.morganlewis.com/topics/coronavirus-covid-19

If you would like to receive a daily digest of all new updates to the page, please visit the resource page to [subscribe](#) using the purple “Stay Up to Date” button.



Biography



Adam P. Beckerink

Chicago

+1.312.324.1495

adam.beckerink@morganlewis.com

Adam Beckerink represents clients, including multinational corporations and high net-worth individuals, in tax disputes, controversies, and litigation with revenue authorities throughout the United States. His practice spans all aspects of the tax planning and dispute resolution process, including audit, litigation, and appeals in matters including state False Claims Act tax defense, state tax refund class action defense, individual residency, telecommunications excise tax, and sales and income tax.

Biography



Justin D. Cupples

Philadelphia

+1.215.963.4911

justin.cupples@morganlewis.com

Justin D. Cupples focuses his practice on providing the highest quality State and Local Tax (SALT) counsel and advocacy to Fortune 500 companies and large multistate organizations. Justin obtains significant state tax savings for his clients by developing and implementing state tax return positions, defending state tax audits, and advocacy through administrative appeals and litigation.

Biography



Matthew S. Mock

Chicago

+1.312.324.1701

matthew.mock@morganlewis.com

Matthew S. Mock advises clients on state and local tax litigation and planning, regularly representing them in all stages of state and local tax controversies, including sales tax, income tax, and unclaimed property disputes. Matt is often called on to counsel on audits, protests before state administrative agencies, and appeals to state courts. He also advises multinational companies on the state and local tax aspects of corporate restructurings and transactions.

Biography



Cosimo A. Zavaglia

New York

+1.212.309.6646

cosimo.zavaglia@morganlewis.com

Cosimo A. Zavaglia advises corporations, partnerships, and individuals on state and local tax controversy, planning, and transactional matters. Cosimo routinely represents clients in high-stakes state and local tax audits, appeals, and litigations in matters throughout the United States, including defending clients in state False Claims Act cases and sales and use tax, individual residency, withholding tax, corporate income tax, and real estate transfer tax audits and disputes. He also advises clients on developing state and local tax planning strategies for corporate acquisitions, dispositions, restructurings, and mergers.

Biography



Adam M. Holmes

Boston

+1.617.951.8606

adam.holmes@morganlewis.com

Adam M. Holmes's practice is focused on federal and state tax law. He has experience with the taxation of public and private investment funds; federal and state income tax controversies; and corporate transactions, including mergers and acquisitions, public offerings, and lending and financing transactions. In addition, he advises foreign and domestic entities of their increased obligations under legislation known as the Foreign Account Tax Compliance Act.

Biography



Laura Grace Mezher

Chicago

+1.312.324.1713

lauragrace.mezher@morganlewis.com

Laura Grace Mezher advises multinational companies in a wide range of tax planning and controversy issues. In particular, Laura Grace focuses on issues concerning income tax, gross receipts tax, sales and use tax, franchise tax, excise tax, property tax, and unclaimed property matters. Before joining Morgan Lewis, she was an associate in the tax practice group of another global law firm.

Biography



Colleen M. Redden

Chicago

+1.312.324.1497

colleen.redden@morganlewis.com

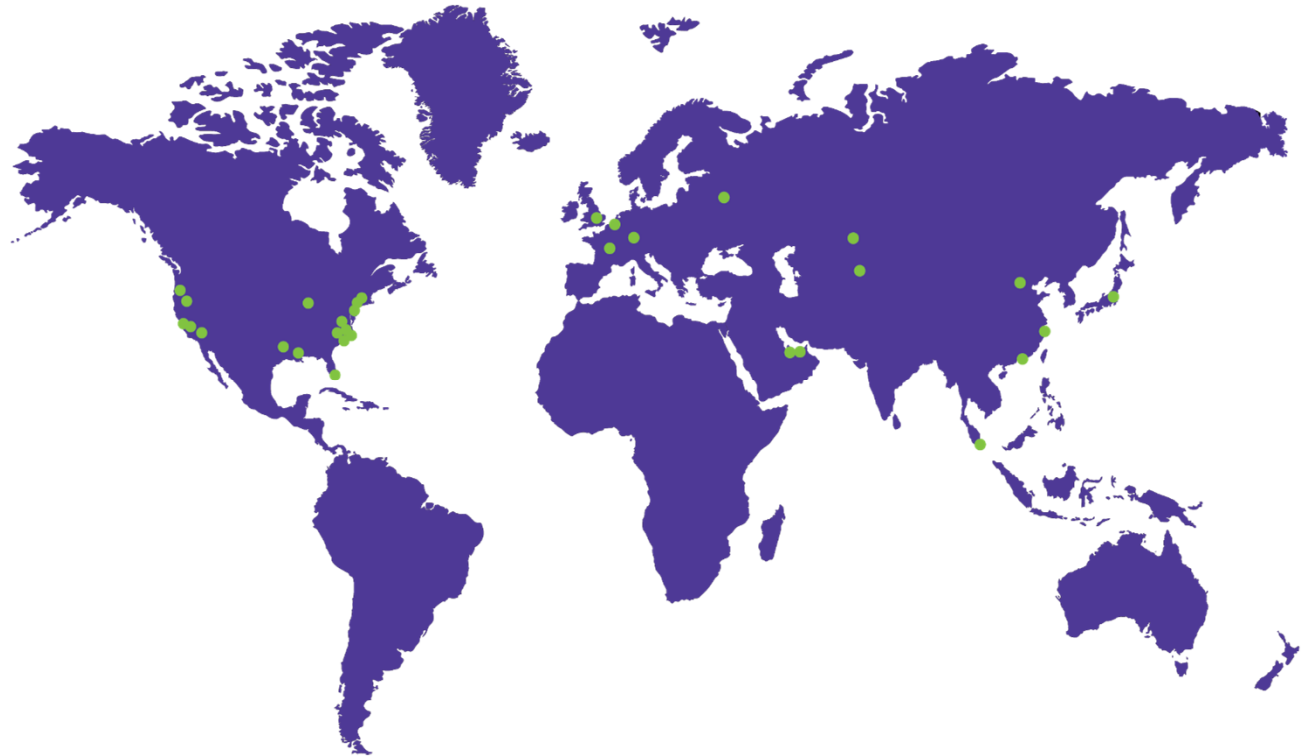
Colleen M. Redden advises clients on state and local tax matters. Her practice includes corporate income tax, sales and use tax, gross receipts tax, and other miscellaneous taxes. Colleen helps clients with tax strategy projects as well as controversy engagements. Prior to joining Morgan Lewis, Colleen worked as a senior associate at a Big 4 accounting firm.

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