

WHAT THE “L,” LOCAL TAXES?

22ND Annual Paul J. Hartman State & Local Tax
Forum

October 27 – 29, 2015
Nashville, Tennessee

Jesse R. Adams, III, Partner
Jones Walker LLP
New Orleans, LA
jadams@joneswalker.com
504-582-8364

Jeffrey M. Vesely, Partner
Pillsbury Winthrop Shaw Pittman LLP
San Francisco, CA
jeffrey.vesely@pillsburylaw.com
415-983-1075

Local Tax Considerations

1. The entities that you are dealing with;
2. The individuals that act on behalf of those entities;
3. Any differences that may exist in the boundaries of the particular taxing authority;
4. The law that will govern the imposition and collection of the tax; and
5. Any possible exemptions or exclusions from the tax.

Major Local Taxing Entities

- County/Parish
- City/Municipality
- School Board
- Special Taxing Districts (*e.g.*, hospital service districts, convention center districts)

Major Local Taxing Entities

- Who has collection authority?
- Home Rule City
 - These cities, towns or units are vested with authority to create laws governing all local and municipal matters
 - The Home Rule City's laws *supersede* state laws in conflict with those laws, as long as it involves a *local* matter

Major Local Taxing Entities

- *International Paper Company v. Cohen*, 126 P.3d 222 (Colo. App. 2005).
 - City and County sought to collect sales tax on sale of a box plant as an ongoing business.
 - Unlike the State of Colorado, the City did not have an exclusion for casual and isolated sales
 - Because the City did not have such an exclusion, the taxpayer had to argue that the transaction involved real property and was not subject to sales tax

Do Locals Follow the State?

- Substantive Law
 - Imposition of sales and uses of TPP and limited services
 - Exemptions and exclusions
 - Procedures for reporting and collection, auditing procedures and protest and dispute procedures

Do Locals Follow the State?

- Statutes and Regulations
 - Local political subdivisions' taxing power is *granted to them by the state*, constitutionally or by statute
 - To the extent a local political subdivision's code or ordinance is inconsistent with the statutes and regulations of the state, the code or ordinance is invalid
 - *Compare* Home Rule Cities
 - States often grant local taxing authorities the option to exempt particular transactions

Do Locals Follow the State?

- Uniformity
 - For example, in Louisiana exemptions can be “suspended”
 - HCR 8 (2015) suspends the exemption from sales tax for certain business utilities for 1% of the state sales tax
 - State constitutions also may prohibit new exemptions or exclusions where revenue from sales and use taxes is dedicated to bonds – even if the exemptions and exclusions are included in the local ordinance

Uniformity

VANDERBILT UNIVERSITY LAW SCHOOL

STATE	UNIFORMITY REQUIRED
Alabama	NO; EACH COUNTY HAS INDEPENDENCE TO DECIDE
Alaska	STATE DOES NOT IMPOSE SALES OR USE TAX
Arizona	MODEL CITY TAX CODE (but cities may go out on certain provisions)
Colorado	YES FOR STATUTORY CITIES; NOT FOR HOME RULE CITIES OR COUNTIES
Louisiana	YES, BUT LEGISLATURE CAN VARY APPLICABILITY BETWEEN STATE AND LOCALS
Idaho	YES
Montana	YES (only at local level)
North Dakota	YES (Some cities have additional exemptions)

Do Locals Follow the State?

- Procedures
 - Louisiana Uniform Local Sales Tax Code
 - Attempts to mirror the local procedures to the state procedures, but there are still differences!
 - Reporting and Collection
 - Different forms
 - Different timing
 - Separate direct pay numbers

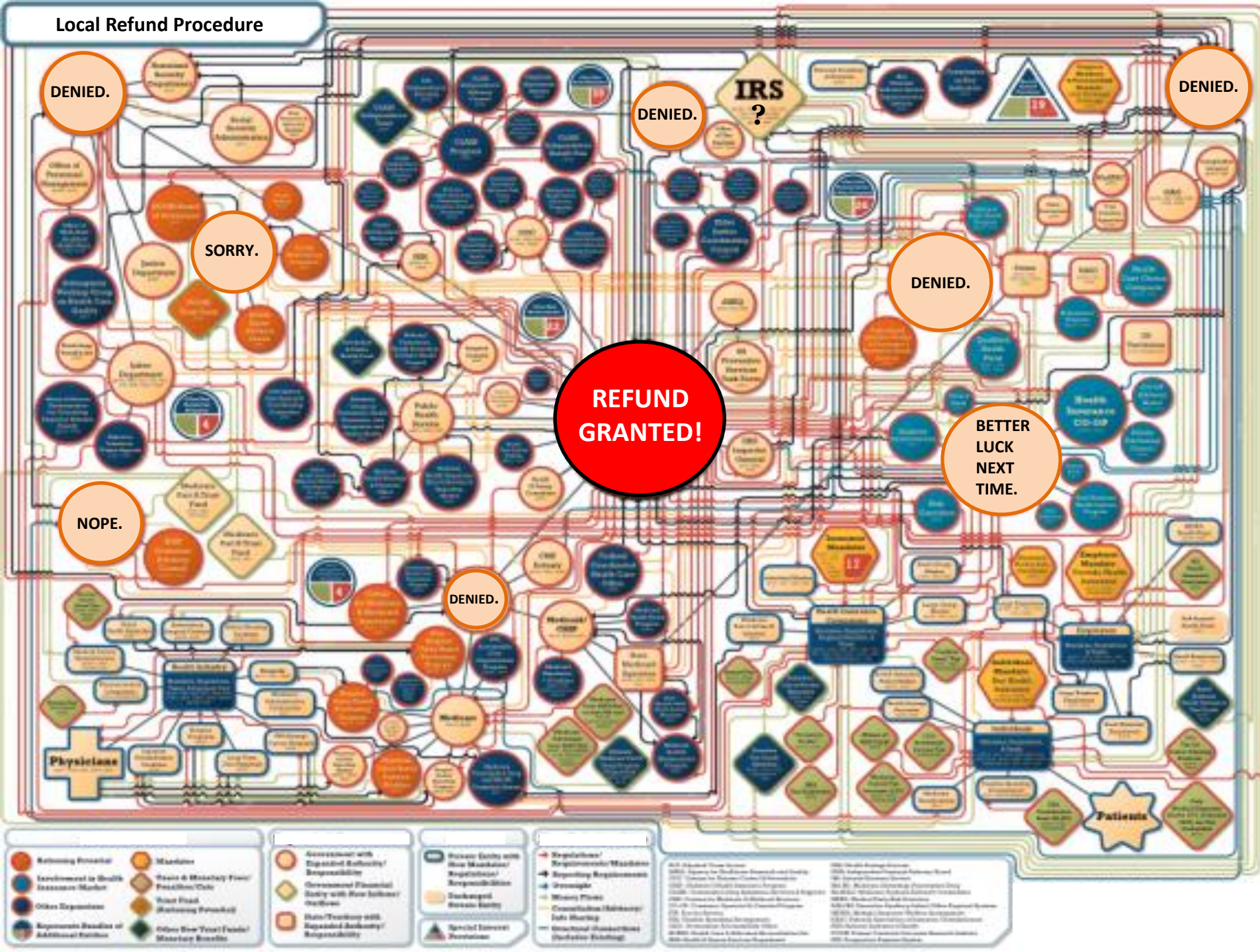
Do Locals Follow the State?

- Procedures
 - Auditing
 - Sampling
 - In Louisiana, the state and the local collector must enter into **separate** sampling agreements with the taxpayer.
 - » *See Bamboo Asian Grill v. Secretary*, BTA Docket No. 8825 (Apr. 15, 2015).
 - Contract Auditors
 - Check your rights!

Do Locals Follow the State?

- Procedures
 - Assessment and Protest Procedures
 - General audit, assessment and protest procedure
 - Local collector may have more informal protest and hearing approaches
 - Refund Procedures
 - Each local taxing jurisdiction likely has its **own** procedures for refunds, a taxpayer must carefully review and follow those requirements
 - Consider paying under protest, if possible

Local Refund Procedure



Information Sharing

- State statutes usually have exceptions to taxpayer confidentiality laws that allow local taxing authorities to share information with the state and other local taxing authorities
- Information sharing may streamline an audit or reduce issues for credits and offsets for taxes paid among the local taxing jurisdictions

Contract Auditors

- Key Issues
 1. Ensuring authorization from the local authority;
 2. Confidentiality of your records; and
 3. The ability to interact directly with the tax officials who ultimately will make the decisions regarding any purported tax deficiency.
- Obtain a satisfactory pre-entry agreement.
- Request and hold an exit conference
- Be sure to demand evidence and verification!

California Local Taxes

- Types of Local Taxes
 - Sales and Use
 - Property
 - Documentary Transfer
 - Gross Receipts
 - Payroll
 - Manufacturing

California Local Taxes

- City of San Francisco Gross Receipts Tax
 - Payroll expense tax replaced a two-tax regime in 2001
 - In 2013, voters approved a gross receipts tax on all taxable business activities attributable to the City
 - Combines features of California unitary tax, combined reporting and apportionment formulas and an expansive definition of “gross receipts.”
 - Phase-in over 5 years from January 1, 2014
 - Payroll expense tax phase-out over same period
 - Taxpayers are subject to *both* taxes for 5 years

California Local Taxes

- Documentary Transfer Tax
 - Imposed by cities and counties on realty sold
 - *926 North Ardmere Avenue, LLC v. County of Los Angeles*, Cal. App. Ct., Second App. Dist., Case No. B248536 (Sept. 22, 2014), petition for appeal pending before the California Supreme Court
 - County is seeking to apply the change in ownership rules of California's property tax law (Proposition 13) to the DTT
 - Specifically, tax transfers of entities owning realty, rather than simply transfers of the realty itself

California Local Taxes

- Local Sales and Use Taxes
 - Cities and counties authorized to impose 1% on sales or use of TPP
 - Paid with the state tax
 - Recent issues regarding allocation of local sales and use taxes
 - Generally, results from incentive agreements whereby a company sets up (or relocates) a place of business and allocates all sales tax to that city, in exchange for the city refunding a portion of the sales tax to the company
 - Elaborate procedures, with the company stuck in the middle

California Local Taxes

- Other Local Taxes
 - For example, the manufacturing tax imposed by Richmond, California on the value of raw materials processed by a business
 - Replaced local business license tax
 - Chevron challenged the tax on constitutional and statutory grounds
 - Court found that Chevron had been deliberately targeted by the tax, but that alone was not sufficient grounds to set aside the tax
 - The court found that the tax was facially invalid under the Commerce Clause and internal consistency test because of a significant risk of multiple taxation
 - The court also concluded the tax was a type of “use” tax that a city is not permitted to enact under California law

Questions?