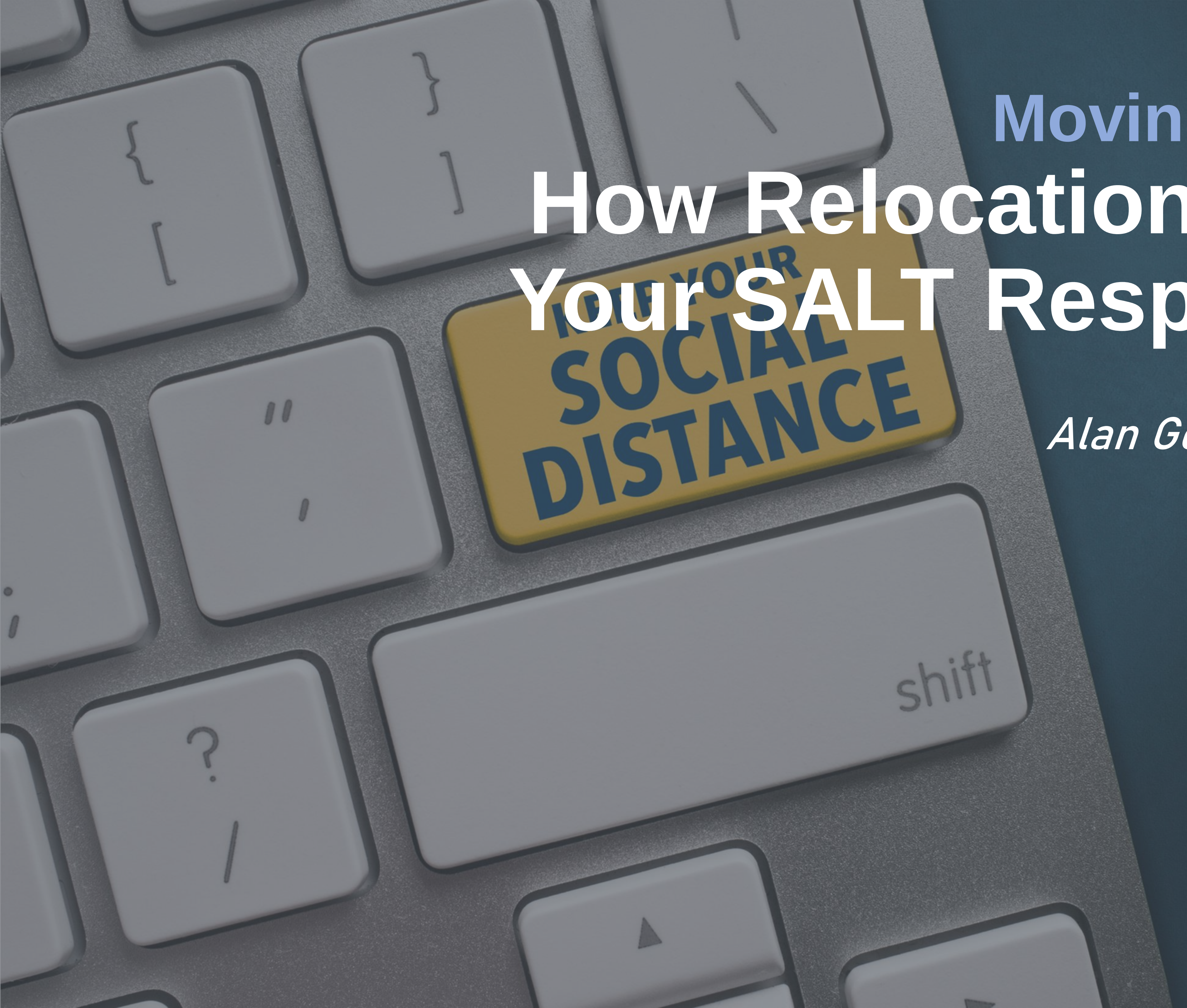

Moving and Shaking:

How Relocation Can Affect Your SALT Responsibilities

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01. *Personal Income Tax*

- Residency
- Non-residency

02. *Businesses*

- Sale of a business
- Relocating a business

03. *Pass-Through Entity Taxes*

- Trend
- New regimes

Personal Income Tax

New York's 2021 Tax Increase

- Rate increased to 9.65% from 8.82%
  - ➢Single - $1.07 million; joint - $2.15 million; head of household - $1.6 million
- 2 new, temporary tax brackets through 2027 for all taxpayers
  - ➢10.3% - $5 million to $25 million
  - ➢10.9% - $25 million+
    - Tax brackets benefit is gradually phased out as income increases
    - Total phase out of brackets benefit at $50,000+ of new bracket
- NYC residents subject to highest income tax rate in the country
  - ➢Up to 14.8%

Federal SALT Deduction

- Deduction for taxes paid to state and local governments
  - ➢TCJA limited deduction to $10,000 from 2018 through 2025
- Benefits the 10-15% of taxpayers who itemize their deductions
- If repealed more than half of the beneficiaries would be those earning $1 million +
  - ➢Matters most in CA, NY, and NJ
- Biden infrastructure plan did **NOT** include repeal
  - Repeal supporters are generally from most impacted states
  - Repeal would cost close to $90 billion in lost revenue for 2021 alone

Residency

- New, higher state income tax rates and COVID-19 remote working has people moving to new jurisdictions
- Significantly altering one's tax domicile and statutory residency
- States have ability to tax only one thing of residents: **EVERYTHING**
  - Nonresident state can only tax that state's sourced income
- Two residency tests:

1. ***Domicile***
   - **Permanent, primary home**
   - **Intent, supported with various factors**
2. ***Statutory Residency***
   - **183-days in-state presence (can be 200 days or up to 9 months in certain states)**
   - **Permanent place of abode**

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Domicile

5 Primary Domicile Factors

- Home
- Business
- Time
- Items Near and Dear
- Family

Business factor coming under intense scrutiny in remote work environment

- Business locations
- Active participation
- Change in leadership
- Retirement and succession

Domicile

- Home
  - Size and value
  - Sale or rental of historical home during/after pandemic
- Business
- Time
  - Quantity – decrease of time in old home and increase in new home
  - Quality – holidays, family gatherings, anniversaries, birthdays
- Items Near and Dear
  - Moving and shipping invoices – collectibles, heirlooms, artwork, jewelry
  - Insurance policies
- Family
  - Minor children
  - Schooling

Domicile Takeaways

- Prove a clear intention to change domicile
  - Implement a plan
- Change in lifestyle is important
  - Retirement
  - New job
  - Marriage/ divorce
  - Will COVID-19 fit the bill???
- Show establishment of life in new jurisdiction
- Permanency is paramount

Statutory Residency

- 183-day test
  - Partial day is considered a whole day
  - Travel
  - Medical
- Permanent Place of Abode
  - Availability
  - Habitable
  - 11-month rule
- Easy to track – credit cards, Outlook calendar, EZ Pass, office key cards, airline accounts, cell phone tower pings

Change of Residency

- Must "leave" historic state and "land" in the new resident state
  - Many taxpayers moved in 2020 (or at least they think they did)
  - Vacation homes turning into primary residences
- Taxpayers bear the burden of proof through "clear and convincing evidence"
  - Contemporaneous documentation
- 183-day test evaluation
  - Historic state – when did you leave?
  - New state – temporary stay exceed day count threshold?
- 20/20 hindsight on 2020 moves – residency examination will occur down the road
- States will be aggressive in trying to collect "lost" tax revenue

Common Audit Issues

- No one moves on December 31 or January 1st!
- Number of days listed on tax return
  - Anything close to 183 can be a red flag
- Tax documents (1099s, K-1s, chartable receipts) listing old address
- Real estate records
  - Reduced property tax or exemptions; Manhattan parking exemption
- Nonresident questionnaire
- State vs. city residency
- Separate state returns for spouses

Nonresidents

- Leaving a state does **NOT** always mean one's tax obligation to that state ends
  - Common misconception

- Taxed on income sourced and/or earned (accrued) in the state
  - Businesses, profession
  - Deferred compensation/options
  - Installment sales
  - Real estate
  - Tangible personal property
  - S corporation and partnership income

Nonresidents

"Convenience Rule"

NY: Broad definition - Pandemic is NOT a business necessity to avoid the convenience rule

1. Establish office in new state
   - ➢ Assign employee to new office
   - ➢ Shared office space

2. Bona fide home office
   - ➢ Certain factors must be met to substantiate

3. Telecommuting
   - ➢ New working arrangement

Businesses

Apportionment

- Apportionment is the process multi-state entities use to divide taxable income among states
  - States lack uniformity in their apportionment formulas and sourcing methodologies

- Many states use a single-sales factor apportionment formula
  - Vast majority of states are single-sales for corporations
  - Growing trend to move partnership to single-sales factor

- Other states use a 3-factor apportionment formula that includes property and payroll factors
  - Some 3-factor states apply different weights to each of the factors
  - Can be significantly altered to due COVID-related remote working

Sourcing of Receipts for Sale of Business

- Asset Sales
  - Source to location of physical property
    - Real property
    - Tangible personal property
- Partnership Interest
  - Intangible – sourced to resident state
  - Some states assign to were business is conducted
    - NY: 50% or more FMV in real estate within state
- Stock Sales
  - Intangible – sourced to resident state
  - IRC Sec 338(h)(10)
    - NY: Treated as asset sale, not intangible

Sourcing of Service Receipts

- Market-based Sourcing – look to the location of the customer or where the benefit is received

- Cost of Performance (COP) Sourcing – look to where the costs incurred to render the services occur

- Businesses with employees teleworking from different states may have to adjust apportionment calculations for COP sourcing rules
  - ➢ Remote workforce in COP states will require the sourcing of revenues to where the remote workers perform
  - ➢ Potential for tax savings if the business is located in a COP state but remote workers are providing services from elsewhere
    - Revenue generating employees vs back office support staff

Moving a Business

- How a state apportions and sources income will impact the potential tax saving when moving a business
  - Big differences between corporations and partnerships

- C corporations less likely to achieve significant saving by moving to a different state
  - Common use of single-sales factor
  - Trend towards market-based sourcing
  - Can be taxable in states without a personal income tax (FL, TX)
  - **Nowhere income not currently taxed**

- Partnerships potential for more tax savings by moving to a "tax-friendly" jurisdiction
  - Continued use of traditional 3-factor apportionment formula
  - Cost of performance sourcing
  - **Partners may be exempt from state taxes if living and operating in a no income tax state**

Compliance of Moving a Business

- Close tax accounts
  - ➢ Final returns
    - Income tax
    - Sales tax
    - Payroll and Worker's Comp

- Withdraw entity
  - ➢ Secretary of State
  - ➢ Division of Corporations

- Beware of recapture of credits or incentives granted for operating within geographical area

Compliance of Moving a Business

- Register to do business in new state
  - Secretary of State
  - Tax authorities
  - Worker's comp and Unemployment insurance
  - Fees
  - Licenses
  - Autos and trucks

- Potential sales and use tax exposure for business property brought into new state

Considerations of Moving a Business

- Moving employees, hiring local talent, employment standards
- Current client/ customer interaction
- New market opportunities and business prospects
- Developing new relationships
  - Banking
  - Landlord
  - Insurer
  - Utilities
- Supply chain, warehousing, shipping, deliverables

Pass-Through Entity Taxes

Pass-Through Entities

- Pass-through entities (PTEs) are businesses that are not subject to corporate income taxes:
  - Sole proprietorships, partnerships, LLCs, S corporations
  - Flows through profit to owners/members who pay individual income tax on revenue
  - Avoids double taxation of corporations
  - Schedule C, E or K-1
  - PTEs account for about 95% of all businesses in the US

Pass-Through Entity Taxes Background

- Prior to the TCJA, IRC always allowed individuals a deduction for state and local taxes
- In 2017, the TCJA added IRC §164(b)(6) limiting the SALT deduction for individuals to not more than $10,000 annually
  - Perceived target on high tax “blue” states
- **Crucially** — Retained the provision in existing law allowing a deduction for SALT taxes incurred in a trade or business
- In response, states have begun to enact pass-through entity tax (PTE tax) regimes

Pass-Through Entity Taxes

State	PTE Tax		Partner Benefit		
	Mandatory	Elective	Full Credit	Partial Credit	Exclude Income
Connecticut	X			X	
Louisiana		X			X
Maryland		X	X		
New Jersey		X	X		
Oklahoma		X			X
Rhode Island		X	X		
Wisconsin		X			X

- New for 2021: Alabama, Arkansas, New York, South Carolina
- Waiting governor signature: Arizona, Georgia
- Proposed: CA, CO, MA, MI, NC, OH, PA

Pass-Through Entity Taxes

- Uncertainty existed as to whether or not the PTE tax deduction would be permitted for federal tax purposes

- Notice 2020-75 released November 9, 2020
  - "Specified income tax payments" to a state or political subdivision are deductible by partnerships and S corporations in computing their income

- Applies regardless of whether the PTE tax:
  1. Is mandatory or elective
  2. If the owners receive a deduction or credit

New Jersey BAIT

- New Jersey elective tax on pass-through entities = new for 2020
  - Annual election by due date of the return
  - All partners must approve of election

- The tax rate on the share of each distribution:
  - under $250,000 = 5.675%
  - $250,000 - $1,000,000 = $14,188 plus 6.52% of the excess over $250,000
  - $1,000,000 -$5,000,000 = $63,088 plus 9.12% of the excess over $1,000,000
  - Over $5,000,000 = $427,888 plus 10.9% of the excess over $5,000,000

- Nonresident withholding still required
  - Service Providers: Withholding based on market-based sourcing but tax return based on COP

- Will other states allow for credit for taxes paid?
  - NY – partnerships vs S corporations (Form IT-112-R)

New York PTE

- New for the 2021, available to partnerships and S corporations
- Annual, irrevocable election by March 15 (first estimate due date)
  - 2021 election by October 15 but no PTE estimates required (partners still pay personal estimates)
- Partnerships: NY taxable income of residents & NY-sourced income to nonresidents
- S corporations: NY-sourced income only (for both NY residents and nonresidents)
- Applicable rates:
  - 6.85% for taxable income of less than $2,000,000
  - 9.65% for taxable income of $2,000,000 to $5,000,000
  - 10.3% for taxable income of $5,000,000 to $25,000,000
  - 10.9% for taxable income of over $25,000,000
- Corresponding credit for partners/shareholders
- Formalizes credit of other state PTE taxes for NY residents

PTE Tax Fallout

- Will PTE owner's resident state provide a credit for another state's PTE tax?
  - Residents of no income tax states
  - Trading federal deduction for **INCREASED** resident state tax
- Inability to offset PTE income with losses from affiliated PTEs
- Inability of PTE owners to use other deductions to reduce nonresident state tax liabilities
- < 100% PTE tax credit can **INCREASE** partner's tax
  - CT partial credit: 87.5% causes a 6.99% personal income tax to become a 7.86375% tax
- What happens if SALT cap is repealed, increased or expires in 2026?
  - Will PTE regimes be continue or be eliminated?
  - Consideration to continue electing to avoid federal AMT

Questions?

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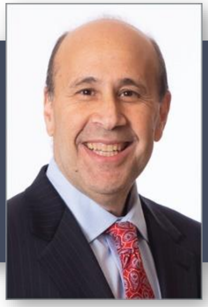

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Thank you