

31st ANNUAL

PAUL J. HARTMAN
STATE AND LOCAL TAX FORUM

SALT Audit Controversy Management

From Audits to Settlements and Everything In Between

31st ANNUAL

PAUL J. HARTMAN
STATE AND LOCAL TAX FORUM

Poll Everywhere

Join by Web

PollEv.com/hartmanforum

Join by Text

Send **hartmanforum** and your message to **22333**

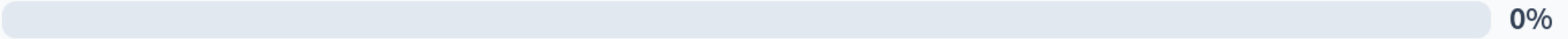
Join by QR code
Scan with your camera app



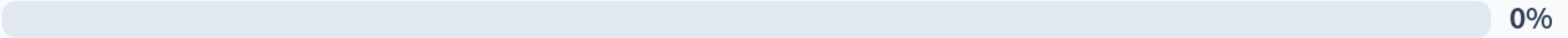
- › **Holly Coon**
Joint Audit Program Director
Multistate Tax Commission
- › **Jon Mieritz**
State Income & Indirect Tax Manager
Corteva Agriscience
- › **Claudia Smith**
Senior Manager, Income & Franchise Tax Services
Weaver

How much experience have you had with the MTC Joint Audit Program:

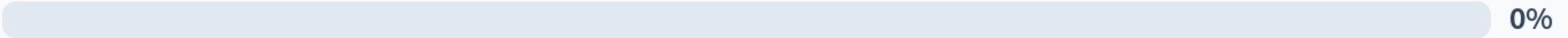
The MTC has an audit program?



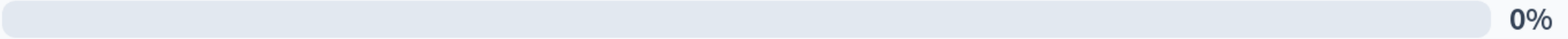
I know it exists, but I have questions.



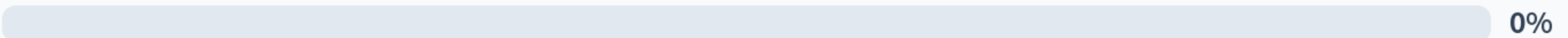
I have some experience with the MTC Audit Program.



I am very familiar with the MTC Audit Program.



None of the above





JOINT AUDIT PROGRAM

- MTC audit staff performs audits as if a member of the state's audit staff forwarding their findings and recommendations to the member states for assessment and collection at the completion of the audit.
- A single MTC audit takes the place of separate and duplicative audits by member states and provides obvious economies of scale to the states. At the same time, it relieves the taxpayer of the burden of multiple ongoing audits.
- **AUTHORITY:**
 - Multistate Tax Compact, Article VIII. Interstate Audits
 - U.S. Steel et al. v. Multistate Tax Commission et al.
 - Non-Compact member states via contract

MEMBER JURISDICTIONS

Income Tax (30)

Alabama	Kansas	New Mexico
Alaska	Kentucky	North Dakota
Arkansas	Louisiana	Oregon
Colorado	Maryland	Pennsylvania
Delaware	Mississippi	Philadelphia, PA
District of Columbia	Missouri	Rhode Island
Georgia	Montana	Tennessee
Hawaii	Nebraska	Utah
Idaho	New Jersey	Vermont
Iowa	New Hampshire	West Virginia

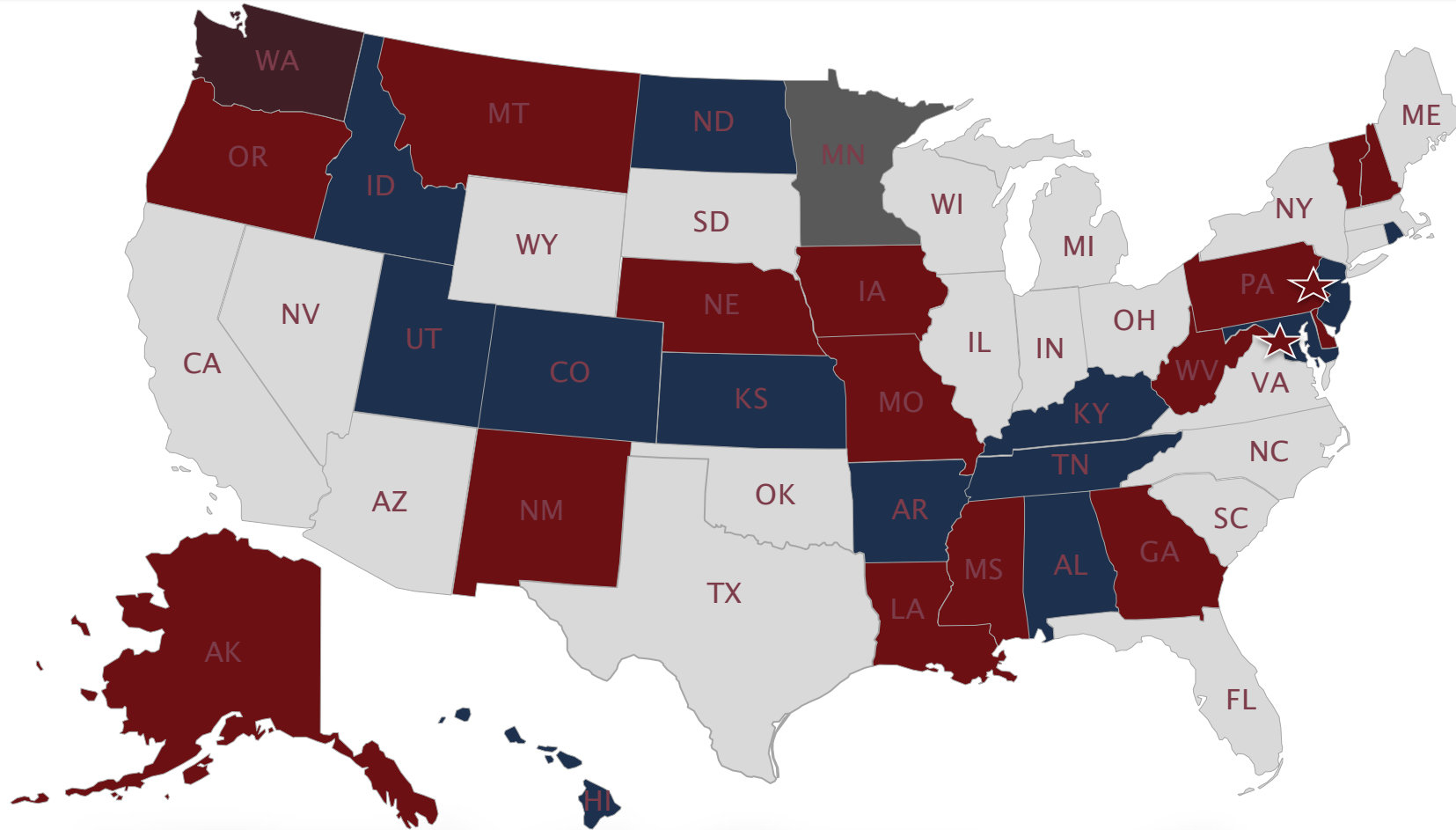
Sales Tax (16)

Alabama	Kentucky
Arkansas	Maryland
Colorado	Minnesota
District of Columbia	New Jersey
Hawaii	North Dakota
Idaho	Rhode Island
Iowa	Tennessee
Kansas	Utah

31st ANNUAL

PAUL J. HARTMAN

STATE AND LOCAL TAX FORUM



Income Tax Member
Sales Tax Member
Income and Sales Tax Member
Non-member state

The Audit Committee has the vital charge of administering, with the Commission, the joint audit program. The Audit Committee typically meets in person three times a year to discuss joint audits.

Composition:

States that participate in MTC Joint Audit Program have a representative on the MTC Audit Committee.

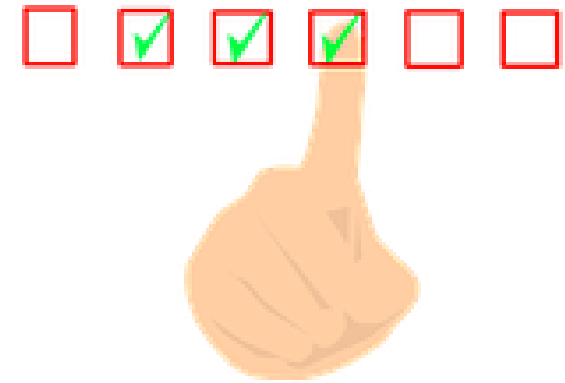
Responsibilities:

- ▶ Oversight of audit program.
- ▶ Selection of audit inventory.
- ▶ Provide direction to audit program staff on state policy regarding potential audit adjustments discovered during an audit.

Oversight Activity:

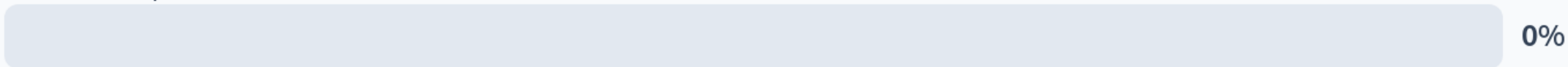
- ▶ Establish objectives for the audit program (consistent with Commission goals)
- ▶ Coordinate and communicate with other standing committees of the Commission
- ▶ Provide educational opportunities to member states
- ▶ Develop strategies to enhance audit resources

- Primary Process
 - Audit Director sends request for audit nominations to state representatives
 - State representatives return audit nomination candidates
 - Audit Director creates ballots to gauge a state's interest in a MTC audit for each nominee and circulates those ballots to state representatives
 - States representative return completed ballots
 - Audit Director summarizes voting results from ballots and circulates summary information to state representatives
 - Audit Committee reviews summary report and selects nominees to add to audit inventory
- Secondary Process
 - Nexus Committee refers audits to Audit Committee
 - Taxpayers may request an audit by the Commission.

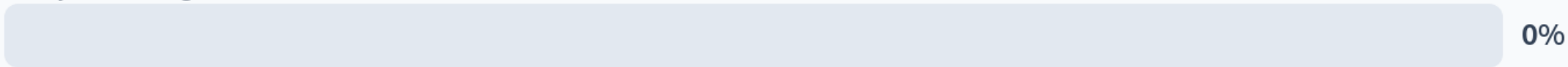


What do you think about the possibility of requesting an MTC audit?

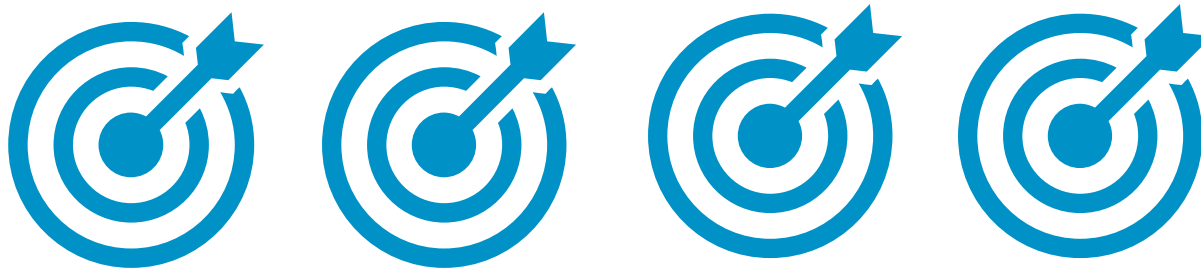
Attractive Option



Are you kidding me?



- How to become an attractive taxpayer for MTC audit selection?
 - Become a large multistate or multinational corporation with sales activity nationwide
 - Limit state access to detailed apportionment data
 - Create a complicated structure with many entities/partnerships





- Who is making decisions on the audit, the MTC or the jurisdiction?

Ultimately it is the jurisdiction

- MTC staff will develop the issues, then go to the jurisdiction's contact and determine the audit issues the jurisdiction wishes to pursue.
- MTC staff are unable to negotiate audit issues or settlements.

- Can the taxpayer communicate directly with states during an MTC audit?

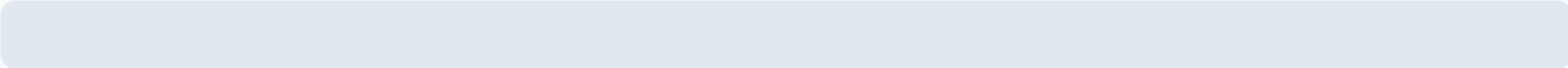
YES YOU CAN!

- Taxpayers can provide a narrative (brief, preferably no more than two pages) that can be reviewed at the annual meeting.
- Taxpayers can have direct communications with state contacts via conference call. Simply ask the MTC auditor to facilitate a meeting.



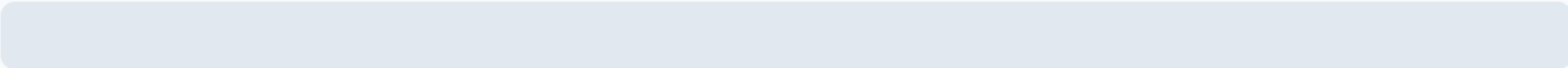
How likely are you to recommend the MTC Joint Audit Program to a friend?

Very likely



0%

Somewhat likely



0%

Again, are you kidding me?



0%

- The Audit Lifecycle
 - Pre-Audit Preparation
 - Audit Notification
 - Information/Document Request (IDR)
 - Workpapers
 - Notice of Proposed Assessment
 - Final Assessment
 - Appeal-Protest/Payment
 - Post-Audit Considerations

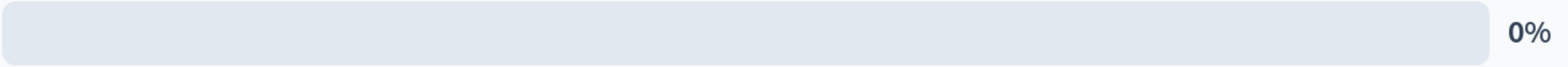
■ Pre-Audit and Audit Notification

- Identify potential issues and how they may be resolved
 - You may already have identified some issues when going through the process to determine the need for any reserves under ASC 740-10.
 - Can an audit issue be corrected with an amended return filing?
- Document the facts/process/position for your files contemporaneously with the filing of the return or soon thereafter
 - Make sure that any documentation maintains privilege, if necessary, such as attorney-client or work product, etc.
 - Transfer pricing studies performed for state purposes? Federal contemporaneous with return filing
 - Identify and gather information from non-tax personnel as soon as possible.
- Are there opportunities to file for VDAs, Amnesty programs or alternative apportionment rulings?

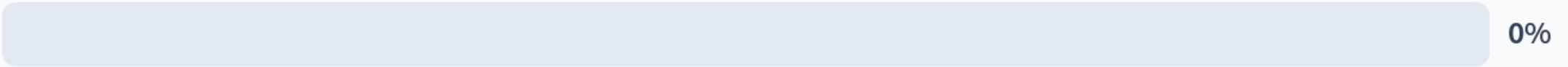
- Pre-Audit and Audit Notification
 - Manage expectations with the auditor and audit supervisor at the beginning of the audit
 - Who is the main point of contact
 - In person or virtual audit
 - Expected timeline to completion
 - How is information to be exchanged? Secure email? Secure data room? SFTP site?
 - Have you had prior audit experience with the same jurisdiction?
 - What were the audit issues in the prior audit cycle? Do you have carry-over issues? How were they previously resolved?

How many audits/controversies are you currently handling for your organization?

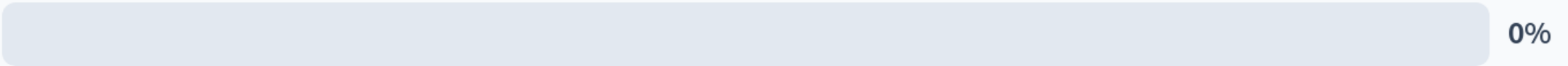
1-5



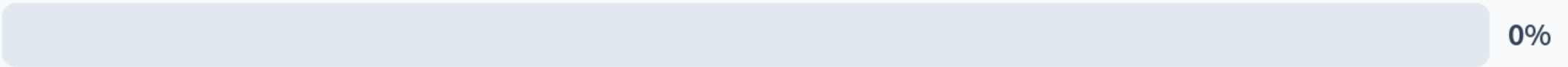
5-10



10-20



More than 20



- Information & Document Requests
 - Responding to IDRs
 - Limit response to only what was requested
 - If the request is overly burdensome, suggest alternative responses that achieve the same goal
 - Track due dates
 - Maintain copies of all information provided to auditors and document when provided
 - Provide easy to follow and tied-out workpapers

■ Information & Document Requests – Waivers

○ Statute of limitations and waivers

- Ensure the waiver extends for both assessment and refunds.
- What is the reason for the waiver? Taxpayer delay, auditor delay? How much additional time is being requested?
- Are there waivers in place with the Internal Revenue Service (“IRS”) for the same periods as the state audit? Does the state follow waivers with the IRS?
- Are there state specific notification requirements when you have a waiver with the IRS?

○ Pro/Cons to Waivers

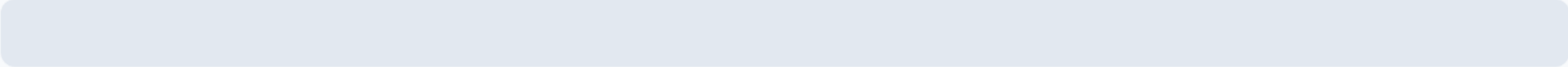
- Pros – Build goodwill with auditor, avoid estimated/jeopardy assessments and the additional burden of proving estimated assessment incorrect, opportunity to provide organized, tied-out documentation
- Cons – Provide additional time for state to identify other issues, need to maintain potential reserve longer, additional interest may accrue.
- Need to track the extensions provided in all jurisdictions for 10K reporting

■ Workpapers

- Auditor should provide opportunity for Taxpayer review prior to submitting workpapers
- Review the audit workpapers
 - Are there calculation or other errors that can be corrected so that they do not have to be appealed?
 - Is the auditor consistent with treatment of certain adjustments from year to year within the audit cycle?
 - Does the state allow settlement at the auditor's level?

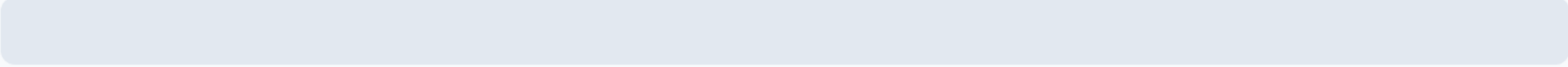
What is the most significant audit issue facing your company?

Apportionment & Sourcing of Receipts



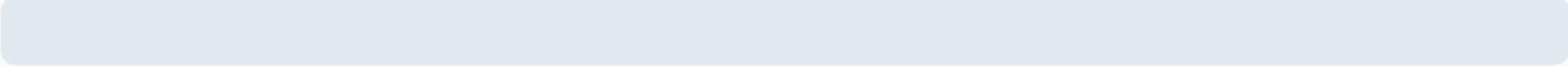
0%

Determination of business vs. non-business



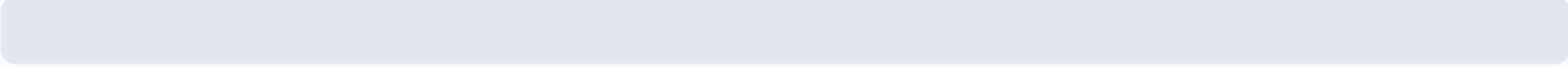
0%

Transfer pricing



0%

Expense Attribution



0%

■ Appeals / Protest

- Typically, must file an appeal within 30 to 90 days of receiving a Notice of Tax Due
- Is the appeal with a body that is independent of the Department of Revenue?
- Are you making a record, do you require testimony? If yes, consider the need for outside counsel/experts, etc.
- Is there is possibility for settlement at the appeals level?
- What if you miss your appeal deadline?
 - Assessment generally becomes final.
 - Pay the tax due and file for a refund claim?

■ Post Audit Considerations:

- Communicate changes internally so that errors can be corrected on future returns
- Consider a managed audit or other agreement to roll-forward adjustments due to taxpayer error to avoid future penalties
- Any new ASC 740 reserves needed?

31st ANNUAL

PAUL J. HARTMAN
STATE AND LOCAL TAX FORUM

Questions?

