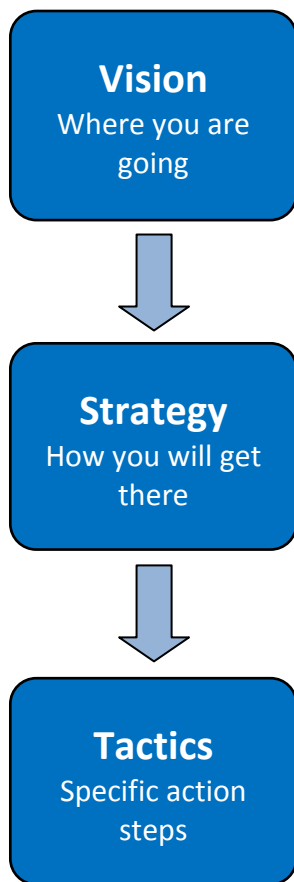




Is Your Tax Team Tactical or Strategic? Do You Proactively Promote Legislative Change?



The tax world of today is more complex than the tax world of yesterday, or is it? Aided by technology and prompted by tough economic times, governments have become more aggressive in audit and collection activities.¹ Regardless of economic conditions, tax matters present complex challenges which require a careful analysis of laws, regulations, judicial decisions, administrative decisions, customs, and practice. In addition to complex legal analysis, tax issues require a firm understanding of the facts. Closer scrutiny and heightened regulation of accounting for income taxes have increased the job requirement complexity for tax professionals. Ironically, companies have recently reduced resources allocated to the tax function as part of an overall business contraction.² By necessity, corporate tax teams generally adopt a tactical approach, largely ignoring the strategic potential of proactively promoting legislative change.

“Strategy [is] a process that spurs major change so that an organization can achieve outstanding results.”

–Executing Strategy, Harvard Business Press

The following example occurs regularly in business today and highlights a typical tactical approach to tax. When facing a large, unanticipated state tax liability due

¹ See, e.g., Michael Tonkovic, *Is The IRS Coming To Audit You?*, FORBES.COM, Dec. 10, 2009, available at <http://www.forbes.com/2009/12/10/irs-high-income-tax-audits-personal-finance-pwc-tonkovic.html>.

² See Accounting Practice, Tax Director Roundtable, *Urgent Issues for Tax Leaders*, CORPORATE EXECUTIVE BOARD, Aug. 2009, available at https://www.tax.executiveboard.com/Public/Documents/Tax_August.pdf.

Example: Film Production Tax Credit

The film and television industry is a significant part of the U.S. economy. However, in the early 1990s, foreign countries became a more economically attractive place to film movies.

Actors, directors, and producers had the vision that the U.S. could again be an economically appealing location to film.

The U.S. film industry and other interested parties developed a strategy to secure tax incentives for domestic filming.

Now, as a result of legislative change, there are both federal and state benefits, like film production tax credits. These tax incentives reflect the successful implementation of the vision and strategy of the U.S. film industry.

to a recent court holding, a company quickly analyzes the impacts on accounting and compliance. Once the tax team accounts for the impact of the case and prepares and files the current tax returns, the tax team moves on to other pressing matters of compliance and accounting. In this example, the tax team's focus is on the tactics of completing journal entries and tax forms. Whereas, a tax team that steps back and evaluates its strategy may identify an opportunity to change the law (strategy) to achieve the desired result of lower taxes (vision).

Many times, companies simply do not have the resources available to recognize and pursue the strategic opportunity to effect change through the legislative process. Every state provides a legislative process that allows individuals and companies to propose law changes.³ The process is fairly simple, requiring either a legislative sponsor or a public referendum. Regardless of the process, pursuit of legislative change requires investment, patience, and time.

Proponents of legislative change must invest resources to develop message points, promote action, and secure key legislative support. Synthesizing the "what" and the "why" are critical to any legislative change campaign. Well crafted, clear, and concise message points facilitate direct and efficient communication, increasing the likelihood of legislative support. Typically, a legislator can only devote a few minutes to listen to someone promoting a cause. If a compelling case cannot be made in this time period, then the initiative will most likely fail. Successfully linking the message to legislative high priority items will always help promote legislative action. Rising state budget deficits, all-time high unemployment levels, and projections of an economic recovery currently occupy the minds of most state legislators. Investment of resources to link a message to high priority items in 2010 will benefit proponents of any cause.

**“Synthesizing the ‘what’ and the ‘why’ is
critical to any legislative change campaign.”**

Patience is a virtue and anything worthwhile is worth waiting for. By its very nature, legislation requires deliberation. During the legislative process, opponents to a proposal will challenge assumptions and attack conclusions.

Proponents of legislative change should avoid the temptation to argue with opponents and remember to stay focused and promote the key message points of any proposal. Anyone wishing to maintain a certain level of composure and

³ For a listing of legislative session dates by state, see National Conference of State Legislatures, 2010 Legislative Session Calendar, <http://www.ncsl.org/?tabid=18630> (last visited Mar. 15, 2010).

sanity should recognize and embrace the need for the process to take these twists and turns.

Engaging in the legislative process requires a period of time to allow collaboration, buy-in, and consensus with a variety of stakeholders. Many times, a company will need to rally industry support, not to mention the support of various constituencies (e.g., trade groups, unions, league of cities, etc.) in order to effect legislative change. Collaboration requires two or more parties to meet, review proposals, discuss impacts, evaluate consequences, and seek input of others. Typically, consensus occurs over a number of meetings, telephone conversations, and emails. Clearly, collaboration, buy-in, and consensus cannot happen instantaneously, but can happen within a compressed legislative session (typically three to six months). Sometimes, collaboration, buy-in, and consensus span a one or two year time frame, based upon the complexity and potentially controversial nature of the subject matter.



What is the strategic potential of legislative change within your organization? Is your tax team tactical or strategic? Why? Are you open to allowing the time, investment, and patience required for pursuing a successful legislative agenda?

Please contact us to discuss how legislation change might apply to your particular facts and circumstances.

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You should consult with your professional tax advisor to discuss the potential application of this subject matter to your particular facts and circumstances.