

5 KEY TAKEAWAYS

Basics of Sales and Use Tax

Kilpatrick's [David Hughes](#) recently spoke at the [2025 Sales Tax Institute](#) in Chicago. He addressed numerous issues related to sales and use tax.

David's key takeaways from the presentation include:

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Resale Exemption and Documentation Requirements

Materials purchased for resale or for incorporation into items for sale are generally exempt from sales and use taxes, including certain packaging materials. However, to claim this exemption, retailers must obtain and retain a timely resale certificate from their customers. Audits frequently focus on the documentation of exempt sales so pre-audit preparation should include a careful review of exemption documentation.

Special Retail and Wholesale Tax Rules

States have specific rules regarding wholesale and retail taxes. For example, Hawaii imposes a 0.5% wholesale tax on sales at wholesale, paid by the distributor. In addition, retail equipment and supplies are usually taxable, though limited exemptions (e.g., for advertising items) might apply. Retailers should also be aware that some retail activities may be considered manufacturing, which could affect tax treatment.

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Tax Treatment of Advertising Materials

Advertising materials such as catalogs, inserts, and marketing materials are generally taxable, though there are exceptions based on delivery method, nexus, and state-specific rules. For example, in Missouri, catalogs mailed from outside the state to Missouri customers were not subject to use tax because the taxpayer did not exercise control over them in Missouri. The method of delivery (e.g., U.S. Postal Service in Pennsylvania) and the retailer's nexus in the state can affect taxability.

New Retail Delivery Fees and Their Application

Some states have instituted retail delivery fees. Colorado, for example, charges a fee per order for any transaction that includes a taxable item, with the rate and exemptions specified by law. Minnesota has enacted a similar delivery fee for transactions exceeding \$100. These fees are generally passed on to customers and require separate registration and reporting by retailers, with small seller exemptions provided under certain thresholds.

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Sales and Use Tax Treatment in Construction and Leasing

In construction, the contractor is usually considered the ultimate consumer and pays sales tax on materials used in real property improvements, though there are flow-through exemptions for certain entities. In leasing, tax treatment depends on whether the lessor pays tax upfront or collects tax on lease payments; recent law changes in Illinois and Maine shifted the tax to lease payments. Proper tracking and documentation are crucial for both lessors and lessees, especially regarding exemptions and property location for tax purposes.