5 KEY TAKEAWAYS

Pomp v Goodman at the 32nd Annual Hartman SALT Forum

The Professor Paul J. Hartman Memorial State and Local Tax (SALT) Forum, sponsored in conjunction with Vanderbilt University Law School, is a premier event that offers industry professionals, practitioners, and state revenue employees the chance to participate in an insightful forum dedicated to exploring significant national developments and trends in state and local taxation. Kilpatrick's Jordan Goodman and University of Connecticut Law Professor Rick Pomp recently attended The Forum and provided an informative debate during their head-to-head discussion tackling the most pressing SALT topics facing businesses today.

Jordan's key takeaways from the presentation include:

1

Evolving State Tax Nexus and P.L. 86-272 Interpretations:
Several court cases and regulatory changes illustrate how states are challenging or limiting the protections of P.L. 86-272, especially regarding internet-based activities and business operations that go beyond mere solicitation of tangible personal property. For example, California and New York have both issued or challenged regulations affecting nexus, while cases like *Uline, Inc. v. Commissioner of Revenue* and *ASAP Cruises Inc. v. Wisconsin DOR* clarify that activities such as data collection and travel services do not qualify for P.L. 86-272 protections.

2

Tax Base, Apportionment, and Income Sourcing Disputes:
States are actively litigating and adjusting rules about what constitutes the tax base, how income should be apportioned, and which receipts factor into sales apportionment. Key cases involve *Microsoft* and *DuPont*, showing disputes over the inclusion of foreign dividends and financial contract receipts, and how these impact state taxable income or refund claims.

3

Expansion and Constitutionality of State Sales and Gross Receipts Taxes:
States are expanding the reach of sales and gross receipts taxes to new areas, including digital goods and services. Notable examples include Maryland's digital advertising tax (the first of its kind and under active legal challenge), the *Netflix Inc. v. Colorado DOR* case on defining tangible personal property, and Rhode Island's classification of online ancestry reports as taxable SaaS.

4

Combined Reporting, Group Taxation, and Nonbusiness Income Allocation:
Courts are addressing how combined group returns treat losses and gains among members (as in *Hologic Inc. v. Stepp*) and clarifying rules for allocating nonbusiness income (*Hudson v. Murphy Oil USA, Inc.*). These rulings affect how parent-subsidiary structures and atypical transactions are taxed at the state level.

5

Constitutional and Federal Preemption Challenges to State Taxation:
Taxpayers are raising constitutional challenges (Due Process, Commerce Clause, Supremacy Clause) against state tax rules, particularly when states attempt retroactive tax law changes or impose taxes potentially preempted by federal statutes like the Internet Tax Freedom Act. Cases such as *Matter of Verizon New York, Inc.* and the *California OTA's Microsoft* decision highlight the tension between state revenue goals and taxpayer protections under federal law.

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