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5 KEY TAKEAWAYS

The Latest Tax Issues: State of the States

Kilpatrick's **David Hughes** and **Jordan Goodman**, two of the nation's top state and local tax thought leaders, recently spoke on the leading tax issues of the day at the **Spring Meeting of the Nebraska Chapter of the Tax Executives Institute** in Omaha on the **"State of the States."**

David and Jordan's five takeaways include:

1

Evolving State Tax Conformity and Foreign Source Income Issues:
States are increasingly diverging in how they conform to federal tax changes, with particular attention on foreign source income provisions like Net CFC Tested Income (formerly GILTI). Key concerns include how states treat sales factor inclusion, the lack of state-level foreign tax credits, and growing discrepancies in conformity, creating a patchwork of compliance requirements for multistate businesses.

2

New Taxation Challenges in the Digital Economy:
States are rapidly introducing or expanding taxes targeting digital products, digital advertising, and social media services to capture revenue from the digital economy. This trend includes new taxes and litigation (e.g., Maryland and Washington), and cities like Chicago are adopting specific excise taxes on digital and social media platforms. Businesses must monitor and adapt to these fast-evolving tax obligations.

3

Shifting Nexus and Apportionment Rules:
States are moving away from transaction count thresholds for sales tax nexus, focusing instead on sales revenue thresholds. Many states are also shifting from the Joyce rule (nexus-based inclusion) to the Finnigan rule (group-wide inclusion) for combined reporting, affecting how sales are apportioned and potentially broadening tax obligations for multistate groups.

4

Expanding Tax Base and Apportionment Litigation:
There is increased litigation around the definition of business income, sourcing of receipts, and apportionment factors, especially as states seek to broaden their tax base. Recent cases address issues like market-based sourcing, cost of performance, and the distinction between gross vs. net receipts. These developments underscore the need for careful analysis of state-specific rules and evolving judicial interpretations.

5

Increased Scrutiny of Tax Incentives and Compliance with Changing Regulations:
States are reconsidering large tax incentives for data centers and other industries, driven by budget pressures and local opposition. At the same time, agencies and courts are reinterpreting the limits of P.L. 86-272, expanding the scope of "unprotected activities" and subjecting more remote and online activities to state tax. Businesses must be prepared for stricter eligibility, reduced benefits, and heightened enforcement.

For more information, please contact:
David Hughes, **dhughes@ktslaw.com**
Jordan Goodman, **jgoodman@ktslaw.com**