

5 KEY TAKEAWAYS

From Torts to Taxes: When Non-Tax Cases Could Crash the State Tax Party

Kilpatrick’s [David Hughes](#) recently joined other thought leaders on a panel at the [57th Annual Meeting of the Council on State Taxation \(COST\)](#) to discuss “**From Torts to Taxes: When Non-Tax Cases Could Crash the State Tax Party.**” The panel examined how courts borrow reasoning from outside the tax world and the impact of that borrowing on tax analysis.

David provides the following key takeaways from the discussion:

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Constitutional Guardrails

State tax authority remains constrained by both the Commerce Clause and the Due Process Clause. The Commerce Clause protects interstate commerce from discrimination and undue burdens, while due process focuses on the taxpayer’s contacts with the state and the fairness of the state’s exercise of jurisdiction.

***Pike* Still Matters**

A state tax regime may face an undue-burden challenge under *Pike v. Bruce Church* even where the traditional *Complete Auto* requirements are satisfied. The key inquiry is whether the burden on interstate commerce is clearly excessive compared with the state’s legitimate local interests, although *National Pork Producers Council v. Ross* illustrates the difficulty of prevailing on that theory.

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Due Process Has New Force

Personal jurisdiction decisions reinforce that a state generally must ground tax authority in contacts created by the taxpayer, not merely by affiliates, third parties, or a resident beneficiary. *Wayfair* eliminated the Commerce Clause physical-presence rule, but it did not eliminate the separate due process requirement of a meaningful connection between the taxpayer, the state, and the income or activity being taxed.

Procedure Protects Property

Due process requires notice reasonably calculated to reach the taxpayer and a meaningful opportunity to be heard. Although states ordinarily may require payment before allowing a tax challenge, they must provide a clear and certain remedy, whether before payment, after payment, or through both procedures.

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Agency Deference Is Shifting

After *Loper Bright*, federal courts must independently determine whether an agency acted within its statutory authority rather than deferring merely because a statute is ambiguous. The decision does not automatically control state law, but states are increasingly reassessing judicial deference, so practitioners should determine the governing state-specific standard in every tax dispute.