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5 KEY TAKEAWAYS

Sales Tax Case Law: Lessons from the Courts

Kilpatrick's Jordan Goodman recently joined a panel of other thought leaders to discuss "**Sales Tax Law: Lessons from the Courts**" at the **"Council of State Taxation (COST) 57 Annual Meeting"** in San Antonio. They presented key state and federal cases redefining taxability, nexus, sourcing, exemptions, and digital transactions and highlighted influential emerging judicial trends to translate legal reasoning into practical guidance.

Jordan's key takeaways include:

1

Sales-tax rules can vary significantly from one local government to another, not just from state to state. Some states, such as Colorado, Louisiana, and Alaska, have local jurisdictions that administer or impose their own sales taxes, which can make compliance difficult for businesses selling across many locations. Colorado has attempted to reduce this complexity through its Sales and Use Tax Simplification ("SUTS") system, but not every home-rule city participates.

2

The amount subject to tax often depends on the money a business keeps, rather than the amount initially listed on an invoice. In *Dakota Drug*, the Minnesota Supreme Court concluded that customer rebates were not part of the company's taxable gross revenue because the company returned that money to customers. Similarly, in *Perrigo*, the Ohio Supreme Court held that the company's taxable receipts were its real net sales price after agreed chargebacks and discounts, rather than the higher wholesale acquisition cost shown on invoices.

3

Calling a payment a "pass-through" does not automatically make it tax-free. In Arizona the Supreme Court held that a stadium facility-use fee was taxable because it was connected to ticket sales and the team controlled how the fee was collected and handled. Similarly, the Ohio Supreme Court likewise ruled that reimbursements from clients were taxable gross receipts because the taxpayer did not establish that it merely held the money on someone else's behalf.

4

Digital products and software are increasingly treated as taxable products. A Colorado appellate court concluded that streaming subscriptions could be taxed as tangible personal property because users can perceive the images and sounds delivered through the service. A New York court also upheld sales tax on a company's vendor-management platform because customers were effectively paying for the use of prewritten software, even though the platform also helped them find workers.

5

Businesses need complete records and must raise their strongest arguments early in a tax dispute. Mississippi cases show that incomplete records can make it very difficult to challenge a tax assessment, because the assessment may be presumed correct unless the taxpayer can prove otherwise. A Texas case also demonstrates that a court may refuse to consider arguments first made in a reply brief, even when those arguments might otherwise be important.

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