Kilpatrick

5 KEY TAKEAWAYS

State and Local Tax Hot Topics: 2026 and Beyond

Kilpatrick partners David Hughes and Jordan Goodman recently spoke at the annual **AGN International** "2026 Americas Regional Meeting." Their presentation discussed **"State and Local Tax Hot Topics: 2026 and Beyond."**

David and Jordan's key takeaways the presentation include:

1

Remote Work Continues to Generate Nonresident Income Tax Disputes
States are aggressively asserting taxing authority over nonresidents who perform work remotely, and courts are largely upholding those claims. New York's "convenience of the employer" rule, for example, was reaffirmed in multiple cases—including the *Zelinsky* and *Myers* decisions—where telecommuting from out of state during and after the COVID-19 pandemic did not relieve taxpayers of New York income tax obligations. Meanwhile, cases like *Markowski* in California and Corley in Alabama illustrate that the specific facts of where work is performed remain determinative with outcomes hinging on whether a taxpayer can demonstrate that services were truly rendered outside the taxing state.

2

Nexus Standards Are Expanding Beyond Physical Presence
Courts and agencies continue to broaden the scope of what activities create sufficient nexus for state tax liability. Wisconsin's *ASAP Cruises* decision held that selling services through in-state independent agents fell outside P.L. 86-272 protections, and a New York appellate court in *ACMA* rejected claims that federal law preempts the state's expanded income tax reach over out-of-state online retailers. The *Fishbone Apparel* ruling in California further underscored that participation in programs —where inventory is held in-state—is enough to establish a "doing business" presence triggering filing and tax obligations, even for small out-of-state sellers.

3

Apportionment and Sourcing Methodologies Remain Highly Contested
Several recent cases involve disputes over how receipts should be sourced for apportionment purposes, with outcomes turning on close statutory interpretation. The *Betts Patterson* case in Washington, for instance, held that defense litigation services are sourced to the jurisdiction where litigation occurs, not where the client's billing address is located. Similarly, the *Checkfree* decision in Florida reaffirmed that the taxpayer's own activities—not the customer's location—control under a cost-of-performance regime, while Ohio's *VVF Intervest* ruling sourced receipts to where the purchaser first receives the goods, regardless of their ultimate destination.

4

Sales Tax Is Reaching New Categories of Transactions and Digital Products
States are asserting sales tax authority over an increasingly diverse range of transactions. Colorado's *Netflix* decision held that digital streaming content is sufficiently "corporeal" to constitute taxable tangible personal property, signaling further erosion of traditional distinctions between physical and digital goods. New York decisions in *Dynamic Logic* and *Beeline.com* treated online analytics platforms and vendor management software as taxable information services and prewritten software licenses, respectively, while Arizona taxed a facility use fee embedded in Cardinals ticket prices as part of the gross income from amusement activities.

5

Procedural Compliance and Administrative Hurdles Can Be Outcome-Determinative
Several cases highlight how procedural missteps—rather than the merits—can decide a tax dispute. In *Mack v. Alabama Department of Revenue*, a taxpayer's appeal was dismissed because it was sent via UPS Ground rather than USPS or an IRS-designated private delivery service, arriving just one day late; the tribunal called the result "absurd" but found its hands tied by the statute. The *Coast Dental* decision in California denied an occasional-sale exemption not because the substance was lacking, but because the taxpayer failed to provide sufficient evidence that multiple contracts constituted a single coordinated sale—a reminder that the burden of proof in tax matters rests squarely on the taxpayer.

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