

5 KEY TAKEAWAYS

State Tax Cases, Issues & Policy Matters to Watch

Kilpatrick's [David Hughes](#), [Jordan Goodman](#), and [Samantha Breslow](#) recently presented on the topic of “**State Tax Cases, Issues & Policy Matters to Watch**” at the [COST Mid-West Regional State Tax Seminar in Omaha](#). They discussed recent SALT cases as well as challenges faced by multistate companies with local taxes.

David, Jordan, and Samantha's five takeaways from the presentation include:

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States Are Narrowing the Scope of P.L. 86-272 Protections

Recent court decisions, such as *Uline, Inc. v. MN Comm. of Rev.* and *ASAP Cruises Inc. v. WI Dep't of Rev.*, show that states are scrutinizing business activities to determine what qualifies as “solicitation of orders” protected by P.L. 86-272. Courts are finding that activities like collecting market data or providing services beyond simple order solicitation exceed the federal law's protections and there are open questions about whether Congress will expand these protections in the future.

State Sourcing and Apportionment Rules Are Becoming More Complex and Fact-Specific.

States are adopting different approaches for sourcing income, often favoring the location where the ultimate customer receives the benefit (the “look-through” approach), as seen in *Humana MarketPoint Inc. v. MN Comm. of Rev.* and *Betts Patterson & Mines PS v. WA Dep't of Rev.* Courts emphasize the importance of precise statutory language, and taxpayers must carefully analyze each state's sourcing rules.

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Alternative Apportionment and Combined Reporting Are Actively Litigated and Strictly Applied.

Courts support the use of alternative apportionment methods where the standard formula does not fairly reflect income, as in *E.I. DuPont de Nemours v. MN Comm. of Rev.* The requirement that only unitary businesses can use combined reporting is strictly enforced, as illustrated by *VA Dep't of Tax v. FJ Management Inc.* and *Charter Communications, Inc. v. NY State Tax Appeals*.

Gross Receipts and Sales/Use Tax Cases Highlight the Importance of Economic Substance and Documentary Evidence.

Courts are defining gross receipts based on economic reality (net price after discounts/chargebacks) rather than formal invoicing, as in *Perrigo Sales Corporation et al. v. Harris*. Similarly, tax situs is determined by where goods are received, not the final destination, as seen in *VVF Intervest, LLC v. Harris*. Taxpayers seeking to source sales based on final destination (e.g., *Jones Apparel Group/Nine West Holdings v. Harris*) must provide reliable, documentary evidence for out-of-state sales.

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Taxation of Digital Goods, Streaming Services, and Modern Transactions Is Evolving Rapidly.

States are expanding their definitions to tax digital goods and services, as evidenced by *Netflix Inc. v. CO Dep't of Rev.*, which found streaming services to be taxable tangible personal property. Other cases, such as *Matter of Verizon New York, Inc. and Verizon Connect NWF, Inc. v. WI Dep't of Rev.*, show that the lines between taxable and exempt services are being tested in the context of evolving technology and federal preemption rules.