Insights: Publications

6 Key Takeaways | Whether There Is Any Limit on What Constitutes Tangible Personal Property

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Kilpatrick's **Jordan Goodman** recently participated in a panel titled – **"Is There any Limit to What Constitutes Tangible Personal Property?"** - at the Council on State Taxation (COST) Spring Meeting in New Orleans. The thought leaders explored the inconsistent and fluctuating meaning of tangible personal property (TPP) and the world has gone digital. The definition of tangible personal property has been addressed inconsistently by the courts around the country creating confusion in sales, income and property tax scenarios.

Mr. Goodman's takeaways from the panel discussion, include:

1. Defining what constitutes tangible personal property is extremely important in the tax world. At the federal level it can dictate the type of depreciation or eligibility for credits. At the state tax level, determining what constitutes tangible personal property can have profound impact. For sales tax it goes the fundamental question as to whether the sale of something is even subject to the tax. On the income tax side it goes to eligibility for PL 86-272 protection and situsing.

2. Even in the tax world there is not one consistent definition of tangible personal property. The Federal tax definition speaks to having physical form and capable of being moved. The states generally point to "things" that can be seen, weighed, measured, felt or touched. has been an unresolved issue for decades.

3. As indicated in recent decisions, the courts, tax administrators and taxpayers are struggling to distinguish tangible personal property from digital equivalents. Think books, advertising, music, video games, software etc.

4. Compounding the confusion is the lack of uniformity of what constitutes tangible personal property from state to state. This can affect taxability, situsing and the establishment of taxing jurisdiction.

5. Adding additional complexity are the potentially different definition of the term tangible personal property within a state by the various tax laws. Property tax, sales tax, gross receipts tax and income tax may all have different definitions within a single state.

6. There are vast and severe consequences of defining digital products as an intangible or as tangible personal property. A taxpayer should realize that this issue will continue to become more complex as the digital economy becomes more complex.

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