Insights: Publications

4 Key Takeaways | Is it Time to Start Apportioning Use Taxes?

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Kilpatrick's David Hughes recently participated in a panel discussion at the 55th Annual Council on State Taxation (COST) Annual Meeting in St. Louis. The session, “Is it Time to Start Apportioning Use Taxes?”, explored whether a use tax can and should be apportioned especially in light of the “external consistency” test applied by courts. The session considered situations where taxpayers have argued for an apportioned use tax on expensive, mobile equipment such as trucks and airplanes. The session also covered situations where an apportioned use tax is permitted such as with software and multiple points of use certificates.

David's key takeaways from the discussion include:

1. Owners of mobile equipment (airplanes, vehicles, construction equipment) often use their equipment in a state for a limited period of time yet a state Department of Revenue frequently claims that the owner owes use tax on the full value of the equipment. A petition for writ of certiorari has been filed with the United States Supreme Court in the case of Ellingson Drainage v. South Dakota to challenge this rule.

2. States frequently defend use tax on the full value of mobile equipment by claiming that the owner will receive a credit for tax paid in other states. This, however, is not always the case. Many states allow a credit only for tax paid in the state of purchase and not tax paid to a state where the asset is subsequently used.

3. While states generally do not permit “apportionment” of a sales/use tax on mobile equipment, they often allow tax apportionment on other goods or ervices such as software. A good example is the City of Chicago and SaaS.

4. Be careful what you wish for. While many taxpayers request an “apportioned” tax base, this potentially creates filing obligations in multiple states and the need to determine tax on a state-by-state basis.

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