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Insights: Publications

5 Key Takeaways | The Latest Twists and Challenges in Sales Tax, Use Tax, and Income Tax Laws

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Kilpatrick's **Jordan Goodman** recently joined other thought leaders at the ABA-IPT Advanced State Income, Advanced Sales/Use, and Advanced Property Tax Seminar in New Orleans where he co-presented on the latest twists in sales tax and use tax law and legal strategies for navigating sales tax and income tax challenges. The conference is designed for attorneys, accountants, tax directors, state and local tax managers, government tax officials, appraisers, property tax managers, commercial and industrial property managers, and others interested in sales, use, ad valorem taxation of property, and state income tax.

Jordan's key takeaways from the presentations, include:

1. The scope and boundaries of Public Law 86-272 are still being contested in states that impose an income tax. Sadly, the courts are narrowing the protections contemplated when this became a federal law in 1959.

2. Situsing receipts, even for tangible personal property, is a bit inconsistent as Ohio attempts to enforce in “ultimate destination rule.” The Ohio courts have been holding that even inventory that temporarily comes to rest in Ohio is counted as an Ohio receipt for CAT purposes unless the seller knows exactly where the ultimate destination of the good will be before entering Ohio.

3. South Carolina continues to be an aggressive taxing state. Despite the fact that it is a separate company state, it continuously asserts that a combined unitary return is necessary if it believes a taxpayer is not paying enough tax. However, legislator puts some legislative limits on the Department of Revenue's ability to do so.

4. The courts in California and Oregon have agreed that definition of income subject to tax is different than the definition of what gets included in the sales factor. In these states, income that is excluded from the tax base for a variety of reasons can still be included in the sales factor for apportionment purposes.

5. The movement towards expanding the base subject to tax is filled with uncertainly. State and taxpayers are struggling to identify services that fit into such broad categories as information services, data processing and personal services.

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