

Four Key Takeaways from the Top SALT Cases Impacting the Technology Sector

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Kilpatrick's [Jordan Goodman](#) recently spoke at the [Council On State Taxation – 2025 SALT Technology Workshop](#) in the San Francisco Bay Area about the “**The Top SALT Taxes Impacting the Technology Sector**”. This workshop covered the key state and local tax issues that technology companies (both start-up and established) are facing such as state taxation of Digital Business Inputs, FITFA, sourcing, apportionment, streaming, marketplace facilitators, digital service taxes and much more. Jordan offers the following key takeaways from his presentation:

1. Some companies can avoid adding back expenses paid to foreign affiliates if the income is subject to tax in a foreign jurisdiction.

Certain states take the position that when a domestic company pays an expense to its foreign affiliate it must “add-back” the expense if the income to the foreign affiliate is not “subject to tax.” However, some state courts have held that the foreign affiliate does not actually have to pay a tax in order to be “subject to tax.” The courts have looked to see if the foreign affiliate's failure to pay a tax is related to tax treaties, special deductions or other reasons unique to the foreign jurisdiction.

2. The California Office of Tax Appeals has distinguished the calculation of tax base from the calculation of the sales factor denominator.

California has taken the position that if certain income is not included in the tax base, the sales related to that income cannot be included in the sales factor. The OTA disagreed and stated that calculation of the tax base is different than the calculation of the sales factor. However, after the taxpayers won these cases, California quickly changed its laws to make sure income excluded from the base is also excluded from the factor. This new law is being challenged in court.

3. States continue to wrestle with market-based sourcing.

Market-based sourcing has proven to be more complicated than originally planned. Often times, states employing a market-based sourcing regime have to deal with two impactful questions. The first is determining who is the customer. Then, once the customer is identified, determining where the service is delivered/enjoyed. South Carolina recently held that the customer is not necessarily the business that pays for the service and seemingly converted their cost of performance statute to a market-based approach.

4. Bundled Transactions can be subject to sales tax even though the bulk of the service being provided may not be subject to the tax.

New York recently held that certain personal information services, which are excluded from the sales tax, are

taxable because they have a small quantitative component of taxable information services. Another New York case found that if a company sells a service that includes both software and a nontaxable service, the state will take the position that the entire charge should be taxed. Bottom line is that companies must be careful about how they package and sell their services.

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