



Insights: Publications

5 Key Takeaways | States of the States: Takeaways from the Tax Executives Institute 9th Annual Spring Seminar

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Kilpatrick's **David Hughes** and **Jordan Goodman** recently spoke in Omaha at the **Tax Executives Institute 9th Annual Spring Seminar** sponsored by the organization's Nebraska Chapter. Their presentation was titled “**States of the States**”.

David and Jordan offer these key takeaways from their discussion:

1. Evolving Nexus Standards and State Tax Jurisdiction

Courts and legislatures continue to refine and expand the concept of nexus, especially in the context of P.L. 86-272 and economic nexus standards. Recent cases demonstrate that activities once considered protected, such as prebook orders and certain in-state data collection, now often exceed the threshold for state tax liability. This trend emphasizes that even minor or indirect business activities within a state can establish nexus and trigger tax obligations, underscoring the need for taxpayers to continually reassess their state presence and compliance posture.

2. Combined Reporting and Unitary Business Determinations

A common and recurring SALT income tax issue is whether affiliated entities should file combined or separate tax returns. Courts are increasingly scrutinizing the economic substance of intercompany transactions and group structures, as seen in cases involving unitary business concepts and forced combined reporting. Statutory changes, such as South Carolina's S.B. 298, provide tax authorities with clearer guidelines for requiring combined returns when transactions lack economic substance or do not reflect fair market value, highlighting the shift toward substance-over-form in state tax administration.

3. Sales and Use Tax Complexities in E-Commerce and Service Transactions

Multiple cases address the challenges of applying sales and use tax rules to modern business models, including marketplace facilitators, remote sellers, and service providers. Courts are clarifying the distinction between retail and wholesale sales, the taxability of bundled transactions, and exemptions that may unconstitutionally discriminate against out-of-state sellers. The ongoing disputes reveal the tension between traditional tax frameworks and contemporary commerce, particularly as states seek to capture revenue from digital and cross-border transactions.

4. State Conformity with Federal Tax Law

Several recent cases and legislative actions explore the extent to which states conform to federal tax statutes and interpretations. While some states follow federal definitions and methodologies (e.g., for NOL calculations), others explicitly deviate or set their own limitations, as seen in recent Florida and Illinois cases. These differences create complexity and potential conflict for multistate taxpayers, who must navigate both conformity and non-conformity in state tax regimes.

5. Judicial and Legislative Responses to Changing Tax Policy and Administration

From the overturning of Chevron deference at the federal level to state-specific reforms on unclaimed property and audit procedures, the regulatory environment is rapidly shifting. This underscores the importance for taxpayers and practitioners to stay informed and agile, as legal interpretations and administrative powers evolve, sometimes significantly altering compliance obligations and procedural rights.

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