Insights: Publications

# 5 Key Takeaways | 2025 SALT Summer Update

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Kilpatrick's **David Hughes** and **Jordan Goodman** recently presented a "2025 SALT Summer Update" in association with AGN International - a worldwide association of separate and independent accounting and advisory businesses who provide assurance, accounting, tax and advisory services across the globe. They highlighted the critical role that accountants play in SALT planning and transaction structuring. The attendees gained insight into common income tax and sales tax pitfalls when SALT considerations are overlooked in transactions and heard strategies to minimize SALT exposure in M&A deals.

David and Jordan's key takeaways from their presentation include:

**1. The Importance of Early Tax Department Involvement in M&A Planning**
Tax issues are often not the primary focus during mergers and acquisitions (M&A) planning, but they can become significant if not addressed early. The tax department should be involved from the outset and should proactively stay informed about ongoing deals. This early engagement helps to identify and quantify potential tax issues before time pressures mount and ensures that tax considerations are not overlooked in the transaction.

**2. Seller Considerations: Income, Sales/Use and Other Taxes**
When selling a business, sellers need to be mindful of several income tax issues, including state tax basis, allocation versus apportionment of income, sourcing of gain, and the treatment of goodwill. Different transaction structures (stock deals vs. asset deals) can lead to varying tax obligations, including sales and use tax, real estate transfer taxes, and special taxes on titled property.

**3. Buyer Considerations: Successor Liability and Due Diligence**
For buyers, the importance of understanding and mitigating successor liability is critical, which can arise whether purchasing stock or assets. To mitigate this risk, buyers should conduct a nexus study, consider indemnification and escrow arrangements, and utilize voluntary disclosure agreements.

**4. Mutual Considerations: Contract Terms and Definitions**
It is important to consider contract provisions that affect both buyers and sellers, focusing on the need for clear definitions within the purchase agreement—such as what constitutes a "tax" and whether local taxes or unclaimed property are included. The agreement should also address which party will receive state tax refunds, who is responsible for transaction taxes, and the seller's obligations regarding post-sale audit defense, maintaining records, and forwarding tax notices.

**5. Due Diligence: Identifying Exposure and Integration Issues**
The due diligence process required in M&A transactions must be comprehensive. This includes investigating where the seller has filed or not filed taxes, understanding the nature of the seller's business and how it affects apportionment, and identifying states with material exposure. Due diligence also includes analyzing historical filings, audit history, and tax elections made by the seller to minimize current and future tax liabilities and to ensure a

smooth post-acquisition integration.

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