



Insights: Publications

5 Key Takeaways | Expanding the Sales Tax Base

March 3, 2026

Kilpatrick's [David Hughes](#) and [Jordan Goodman](#) recently presented on the topic of “Expanding the Sales Tax Base” at the Advanced Sales and Use Tax Workshop in Dallas.

Key takeaways from the presentation include:

1. States Are Rapidly Expanding Their Sales Tax Bases

Many U.S. states are aggressively expanding their sales tax bases by enacting new legislation and guidance, especially targeting services, software, and digital goods. This expansion includes redefining what is taxable, often moving beyond traditional tangible personal property to include a wide array of digital and service-based products. Businesses must stay alert to these changes to ensure compliance and avoid unexpected tax liabilities.

2. The “True Object Test” and Bundling Rules Are Critical in Determining Taxability

The “true object test” helps determine whether a sale should be classified as taxable or nontaxable, particularly when transactions involve both tangible and intangible components or a mix of goods and services. Bundling rules and how items are presented on invoices (e.g., separately stating taxable and nontaxable items) can dramatically affect tax outcomes. The burden of proof typically rests with the taxpayer, and failing to properly distinguish components may result in the entire transaction being taxed.

3. Tax Treatment of Digital Services, Software, and Related Offerings Varies Widely by State

States differ significantly in their approach to taxing software, digital goods, and related services. For example, Maine recently began taxing digital audiovisual and audio services; Tennessee taxes SaaS subscriptions if the software is the primary purpose; and Maryland's tax treatment depends on both purchaser and nature of the service. Companies offering digital products must carefully analyze each jurisdiction's rules, delivery models, and customer types to ensure proper tax handling.

4. Invoice Presentation and Contract Language Can Directly Impact Taxability

How taxable and nontaxable components are stated and described in invoices and contracts can change their tax treatment. Some states require separately stating nontaxable components to preserve exemptions, and terminology matters—a misnamed line item could result in unexpected tax. Coordination between billing systems and invoice presentation is crucial to avoid errors and ensure compliance.

5. Exemptions, Exclusions, and Adjustments to the Tax Base Are Statutorily Specific and Require Clear Evidence

Certain items—such as bad debts, discounts, trade-ins, freight, installation, interest, and returns—may be

excluded from the tax base, but these exclusions are strictly construed and must be established by clear and convincing evidence. Each state's statutes and definitions must be carefully reviewed, as rules for deductions, credits, and adjustments (including for coupons, rebates, and deposits) can vary widely and affect the tax base calculation.

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