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5 Key Takeaways | State and Local Tax: Fundamentals of Formulary Apportionment

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Kilpatrick's **Jordan Goodman** spoke at the IPT State Income Tax School held at Georgia Tech on July 28, 2026. In one of his three classes, he discussed apportionment as is the mechanism for dividing business income among states.

Key takeaways from Jordan's presentation include:

1. The right to apportion income among more than one state generally exists only if the taxpayer is subject to tax in more than one state, meaning the other state either actually imposes a qualifying tax or has jurisdiction to impose one, even if it does not do so.

2. The traditional formula is property, payroll, and sales, but states are moving away from equal weighting.
Under the Uniform Division of Income Tax Purposes Act (“UDITPA”) business income is apportioned using a fraction based on the property factor, payroll factor, and sales factor, divided by three. However, there is an overwhelming trend away from the evenly weighted three-factor formula and toward double-weighted sales or single-sales-factor formulas.

3. Each factor has its own technical sourcing and valuation rules.
The property factor generally includes real and tangible personal property owned or rented and used in the state, with owned property typically valued at original cost and rented property often valued at eight times net annual rent. The payroll factor generally sources compensation to one state based on where services are performed, base of operations, place of direction or control, and ultimately the employee's residence if the other tests do not apply.

4. The sales factor is increasingly the most important and most litigated factor.
For tangible personal property, the general rule is destination sourcing to the state of the ultimate recipient rather than the shipping point. For services and intangibles, the major divide is between older cost-of-performance sourcing rules and newer market-based sourcing rules.

5. Special adjustments and constitutional limits are a major part of apportionment analysis.
The goal for apportionment formulae is to account for 100% of a business' income to be apportioned among the states. This goal has led states to create throwback and throwout rules, which can pull otherwise nowhere sales into a state's numerator or exclude certain sales from the denominator. It also explains that alternative apportionment may be used when the standard formula does not fairly represent in-state business activity, but

the party seeking the change usually bears the burden of proving the statutory method is unfair, and the proposed alternative is reasonable. Finally, apportionment is constrained by the Due Process and Commerce Clauses, including the requirements of fair apportionment, internal consistency, and external consistency.

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