Kilpatrick

4 KEY TAKEAWAYS

Analyzing the Top Income Tax Cases in 2024

Kilpatrick's Jordan Goodman was recently a part of a distinguished panel at the 55th Annual Council on State Taxation (COST) Annual Meeting in St. Louis. This session analyzed the most impactful recent changes in state corporate income taxation, encompassing key court decisions and administrative rulings. It provided a comprehensive overview of the evolving landscape, highlighting the implications for businesses and the economy.

Jordan's key takeaways from the discussion include:

1

The Multistate Tax Commission has taken another swing at PL 86-272 basically making it an obsolete protection from a state's net income tax by declaring the following activities beyond its protection:

- A business has an employee that telecommutes on a regular basis unless the activities are limited to the solicitation of orders for tangible personal property.
- The company provides post-sale assistance to customers via either electronic chat or email that is accessed through a link on the company's website.

2

That the evolution from Cost of Performance to Market Based Sourcing for sales other than tangible personal property has created new and confusing issues. This confusion is caused in part by the lack of a uniform definition among and between the states as to how to define the marketplace. Is it where the service is delivered or enjoyed or where the benefit of the service is delivered or enjoyed. Each state has its own unique way of defining the market. This lack of a uniform definition coupled with an issue as to who the actual customer of the service has led to inconsistent sourcing of income from services.

3

Most states provide for the use of alternative apportionment when the statutory method of apportionment does not adequately reflect the amount of business activity in a state. However, the ability to use alternative apportionment is not an easy task to accomplish. First, it is unclear in all states if the taxpayer can even assert an alternative method of apportionment. Second, what is the standard for being allowed to request alternative apportionment and is there deference to the state's interpretation? Third, does the distortion have to be of a constitutional magnitude or can it be something less? Can alternative apportionment be done on a case-by-case basis? Finally, is unitary combined reporting an acceptable alternative apportionment method?

4

In separate company states, transfer pricing has become a big issue. States have been attempting to interrupt intercompany transactions by trying to establish that the intercompany transactions are not at fair market value and are therefore distortive. Questions concerning transfer pricing issues include:

- Do You Have a Contemporaneous Transfer Pricing Study?
- Do You Have Intercompany Agreements that Contain Arm's Length Terms and Conditions?
- Do You Follow Your Intercompany Agreements?
- Does the Transaction Have the Hallmarks of a Sham Transaction (e.g., circular flow of funds)?
- Does the Transaction Have Business Purpose and Economic Substance?

For more information, please contact
Jordan Goodman: jgoodman@ktslaw.com.

www.ktslaw.com