

# 2024 Arizona Tax Conference

August 16, 2024  
Prescott, Arizona

## **COST Advocacy and 2024 SALT Update**

by

**Fredrick J. Nicely**  
Senior Tax Counsel  
Council On State Taxation (COST)



# Agenda

- **COST Property Tax Advocacy**
- **State and Local Business Tax Burden**
- **COST's Policy Positions; Scorecards & Studies; Proactive Legislative Issues**
- **COST's Amicus Program**
- **2024 National SALT Issues**



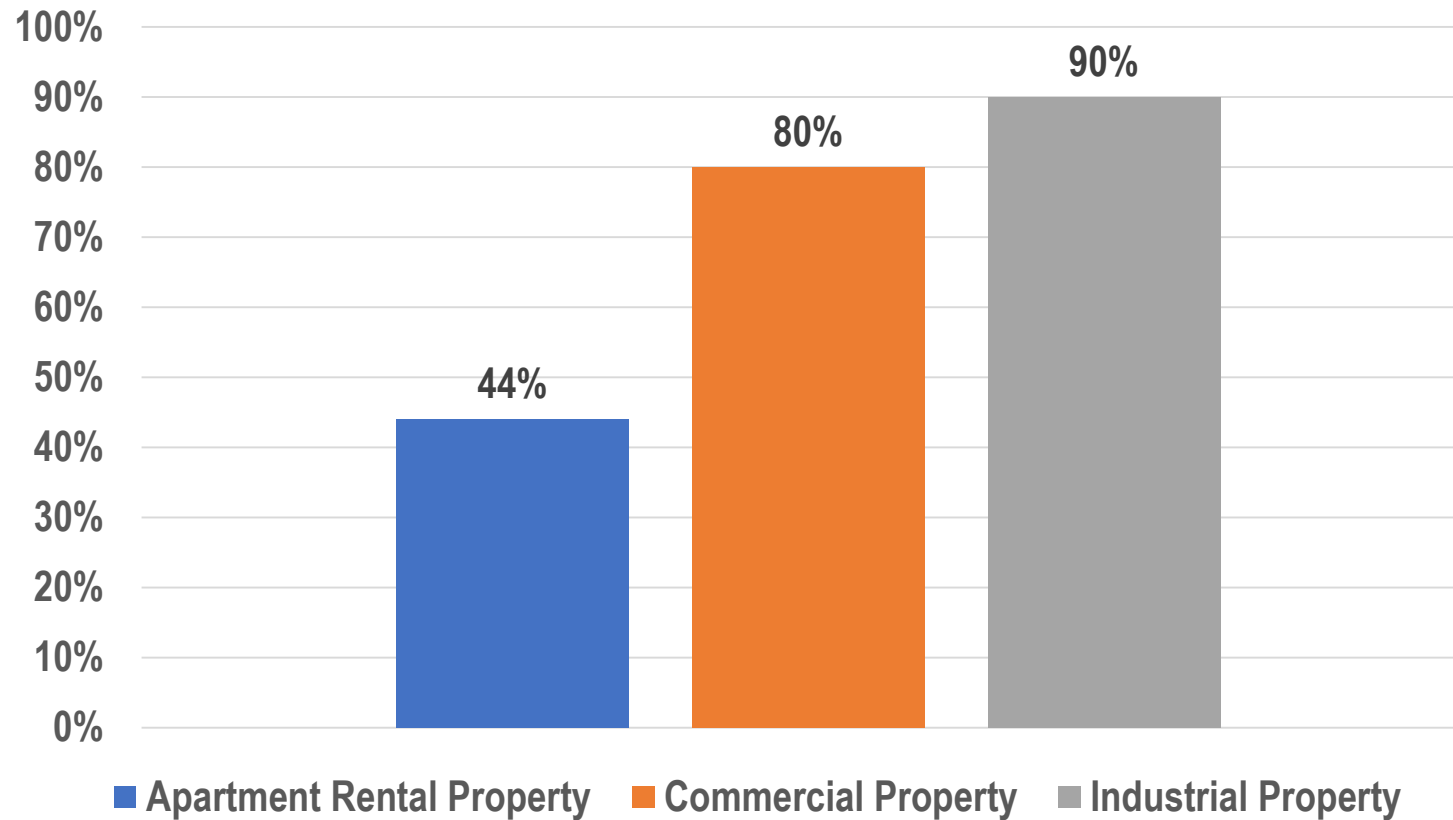
# COST Property Tax Advocacy

- COST began advocating for fair and equitable property administration in 2007
- COST has a policy position on property tax systems
  - Uniform tax base & rates (residential, business, and utility)
  - Efficient filing procedures (and payment)
  - Central review & uniform appeal procedures
  - Escrow or no payment of disputed valuations
- COST has annual property tax workshops



# The Business/Homeowner Property Classification Ratio

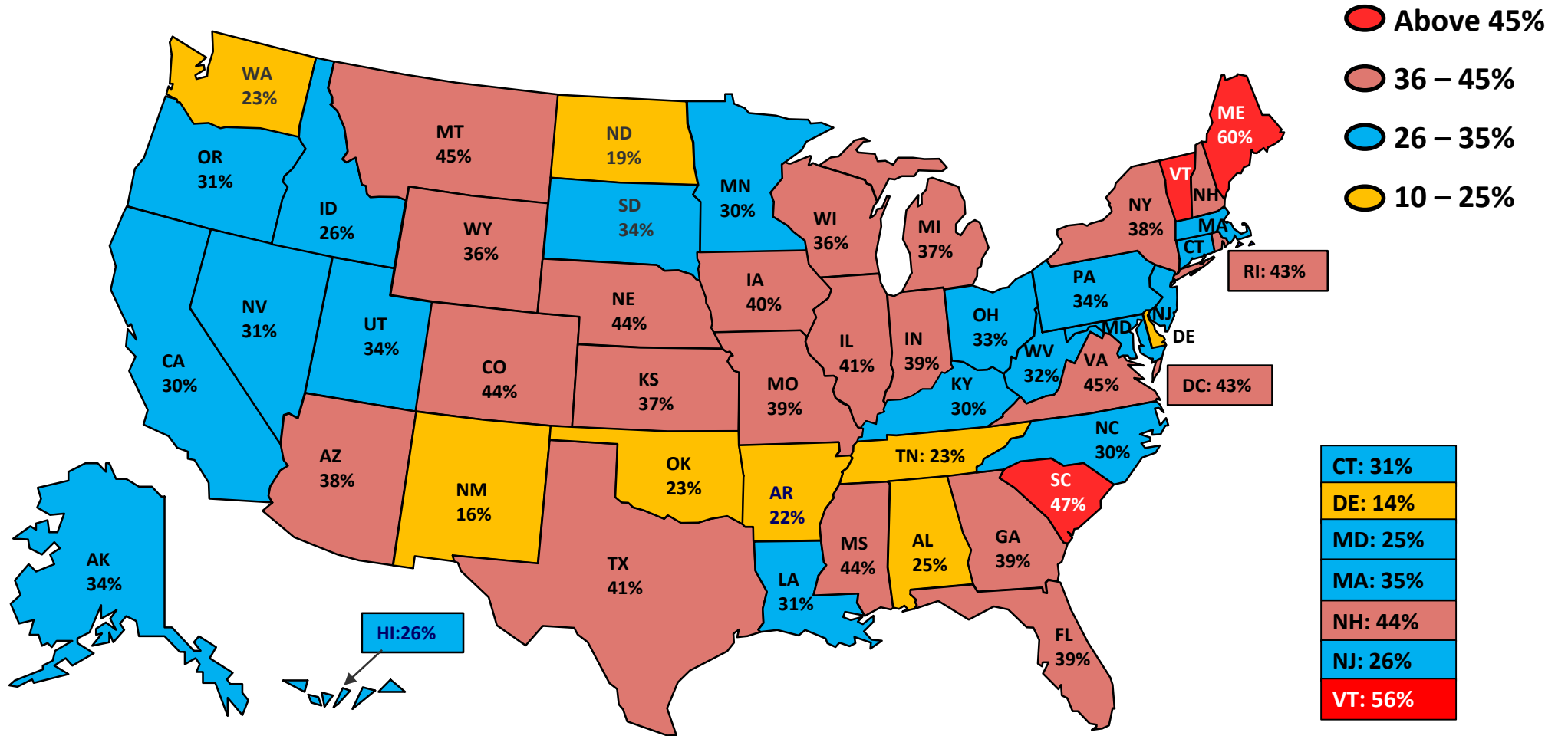
The Percent by Which Each Business Property Category's Effective Tax Rate Exceeds the Average Homeowner Property Effective Tax Rate



Source: Lincoln Institute of Land Policy and Minnesota Center for Excellence, 50-State Property Tax Comparison Study: For Taxes Paid in 2022, August 2023



# Property Tax as a Percentage of Total Business Taxes



Source: Total State and Local Business Taxes: State-by-State Estimates for FY22, prepared by Ernst & Young for COST and STRI, December 2023



# COST Property Tax Advocacy Continued

- COST has filed amicus briefs on several property tax cases (list since 2020):
  - *Olympic and Georgia Partners, LLC v County of Los Angeles* (CA, 12/23)
  - *Petrogas v Xczar* (Washington, 5/2023)
  - *County of Santa Clara v. Superior Court* (California, 3/2023)
  - *Walmart Stores v. Johnson Cty Bd. of Comm.* (Kansas, 4/2022)
  - *Level 3 Comm. V. Oregon DOR* (Oregon, 9/2020)
  - *California Property Tax Review in HGST* (California, 6/2020)



# COST Property Tax Advocacy – Scorecards

- COST has issued three scorecards (two with IPTI) and the last two scorecards focused on international property tax administration (initial COST Scorecard only on US property tax administration)
- Focus is primarily on using objective criteria of important property tax administration with bias towards issues of concern with business taxpayers
- **Grading is for comparison purposes**
  - It is acknowledged and understood, especially in *the U.S.* that *property tax administration can vary significantly locality by locality – in general, to the extent a state allows a locality to use what is considered a poor administrative practice – that was used as the scoring basis even though all the localities in a jurisdiction may not use that practice*
- **Tax rates, other than disparate rates/valuations, not evaluated**



# COST Property Tax Advocacy – Scorecards

## Three Buckets of Issues Reviewed:

- **Transparency**
  - Laws adequately explained on website
  - Adequate notice of proposed valuation
  - Ability to compare values placed on other properties
  - No disclosure of income and expenses
  - Frequent revaluations
- **Consistency**
  - Tax forms, assessment ratios, training
  - Centralized oversight of local assessors' practices
- **Procedural Fairness**
  - Sufficient time for taxpayers to file appeals
  - Balanced burden of proof review before independent arbiter
  - Ability to partially pay disputed tax
  - Interest rate paid on refunds matches rate on underpayments





# Do Businesses Pay a Fair Share of State and Local Taxes?

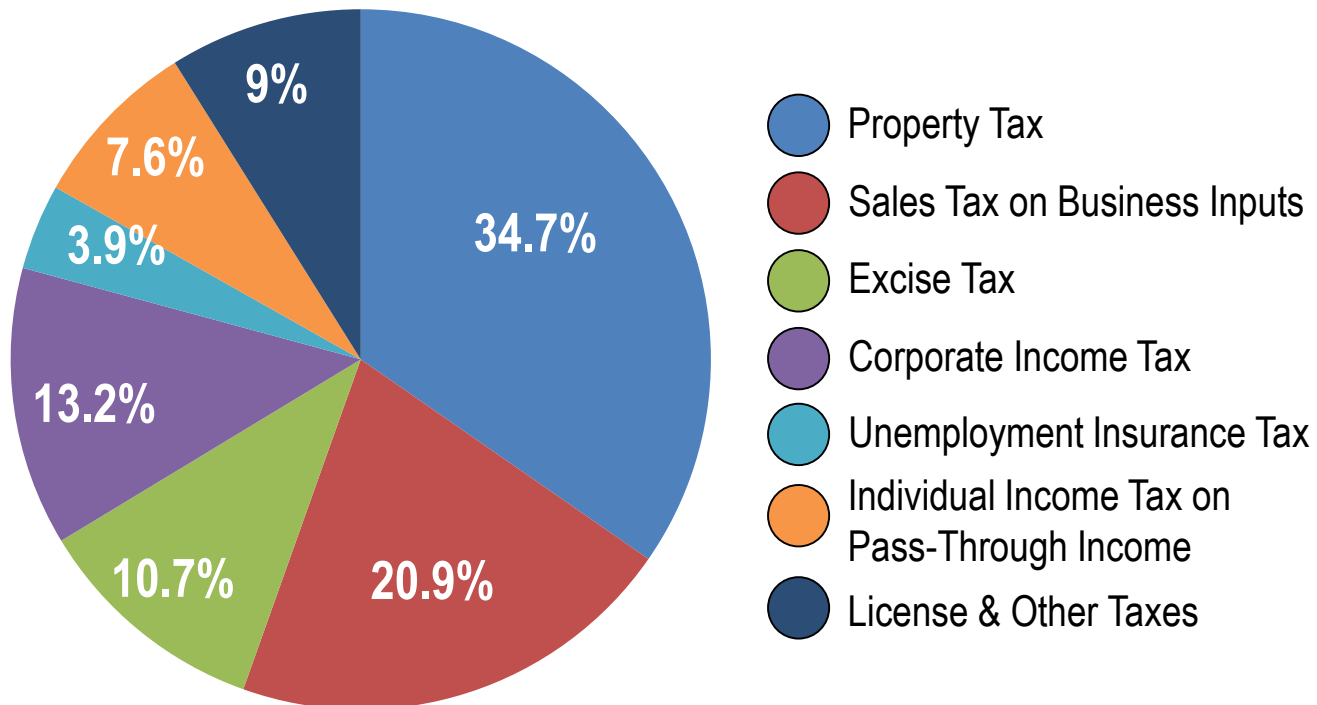
## COST/STRI FY2022 State and Local Business Tax Burden Study





# FY 2022 State and Local Business Tax Burden Study

Composition of State and Local Business Taxes by Type, FY22  
United States



Source: Total State and Local Business Taxes: State-by-State Estimates for FY22, prepared by Ernst & Young for COST and STRI, December 2023

## How Much Do Businesses Pay?

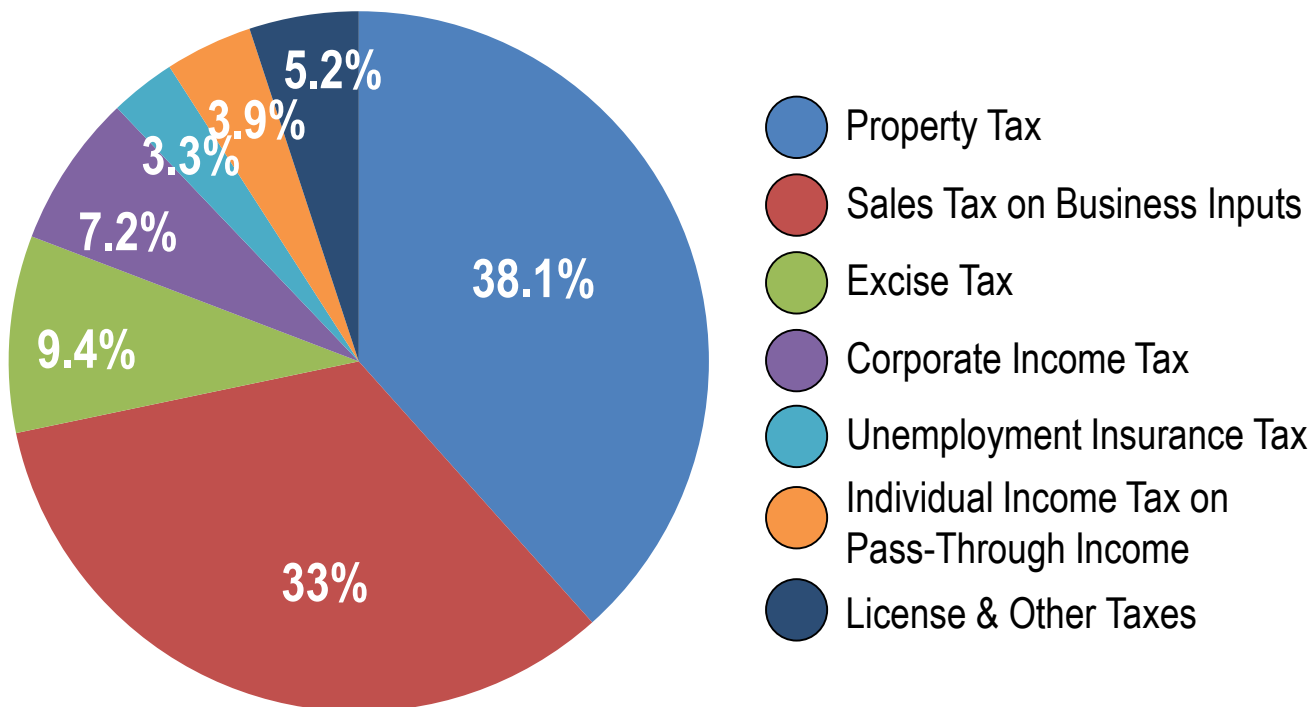
- Businesses paid more than \$1.07 trillion in U.S. state and local taxes in FY22, an increase of 13.7% from FY21
- State business taxes increased by 18% and local business taxes grew by 9%
- Corporate income tax revenue increased by 26.7% in FY22
- In FY22, business tax revenue accounted for 44.6% of all state and local tax revenue
- Remarkably, the business share of SALT nationally has been within approximately 1% of 44% since FY03



# FY 2022 State and Local Business Tax Burden Study

Composition of State and Local Business Taxes by Type, FY22

## Arizona



### How Much Do Businesses Pay?

- Businesses paid \$16.3 billion in Arizona state and local taxes in FY22, an increase of 18% from FY21
- In FY22, business tax revenue accounted for 41.3% of all state and local tax revenue in Arizona

Source: Total State and Local Business Taxes: State-by-State Estimates for FY22, prepared by Ernst & Young for COST and STRI, December 2023



# COST Business Tax Burden Study in Use

## Oregon Initiative Petition 17 / Measure 118

- Changes corporate minimum tax by adding a 3% tax on sales in Oregon above \$25 million
- Applies to C Corps and S Corps
- Separate from the CAT and CAT definitions, exclusions, etc.
- Revenue raised funds the “Oregon Rebate” (~\$750) which redistributes proceeds in equal payments to eligible individuals
- 168,854 signatures submitted (just over 117k valid required)
- Certified on July 24, 2024

## Legislative Revenue Office (LRO) report released July 3

- \$6.8B in the first year
- 2,401 businesses directly impacted
- 28,000 fewer jobs

For business tax ranking, the shift is more pronounced. The annual COST study attempts to incorporate all state and local taxes that are initially paid by business. Unlike the Census data, this approach includes unemployment insurance taxes because they are paid by businesses. The largest taxes on a national basis are business property taxes, general sales taxes on business inputs, corporate income taxes and unemployment insurance taxes. COST includes business taxes based on gross receipts in the corporate income tax category. This includes taxes such as Ohio’s Commercial Activity Tax, Washington’s Business and Occupation Tax, and Texas’ Margin Tax. Since IP 17 generates substantial revenue based on the sales or gross receipts of corporations, it appears to fit the method by which these taxes are considered.

Because Oregon does not have a sales tax on business inputs, Oregon’s business tax burden had historically ranked relatively low according to the method used by COST. With the addition of the Corporate Activity Tax, Oregon has moved closer to the national average. In 2021-22, Oregon received an estimated 41.7% of state and local tax revenue from business entities compared to 44.6% nationally. Oregon’s \$12.8 billion in business tax collections in 2021-22 were 4.8% of the state’s total personal income (one measure of the state’s economy). Nationally, business taxes were 4.9% of total income.

Table 8 shows an estimate of how IP 17 would affect Oregon’s business tax burden compared to other states. (This assumes other states have made no tax changes.) IP 17 moves the 2021-22 total business tax burden to an estimated \$18.6 billion in Oregon. This increases the

**Table 8 Business Tax Rankings**

| State Fiscal Year (2021-22) | Total Business Taxes (\$B) | Business Taxes as Percent of Total Taxes | Business Taxes as Percent of Total Income |
|-----------------------------|----------------------------|--|---|
| Oregon (Actual)             | \$12.8                     | 41.7%                                    | 4.8%                                      |
| Oregon with IP 17           | \$18.6                     | 50.9%                                    | 7.0%                                      |
| Washington                  | \$29.3                     | 49.7%                                    | 5.0%                                      |
| California                  | \$167.2                    | 41.8%                                    | 5.6%                                      |
| Idaho                       | \$4.3                      | 41.9%                                    | 3.9%                                      |
| U.S. Totals                 | \$1,074.5                  | 44.6%                                    | 4.9%                                      |

business tax share to 51%, above Washington’s 50% and above the U.S. average of 45%. Idaho and California are below the national average. Under IP 17, Oregon business taxes as a share of state personal income rises from 4.8% to 7%. This would move Oregon above California’s 5.6%, Washington’s 5%, and Idaho’s 3.9%, and the U.S. average (4.9%).



# Select State Tax Ballot Measures

| State                         | Title   | Description   |
|-------------------------------|---|---|
| California                    | Proposition 5; ACA 1 and ACA 10 (which amends sections of ACA 1)      | Constitutional amendment that will allow a city, county, or special district, with 55 percent voter approval, to incur general obligation bonded indebtedness to fund projects for affordable housing.  |
| California<br>(November 2026) | ACA 13  | “simply requires a measure that seeks to raise a voter threshold to meet that same threshold. For example, if a measure seeks to raise a voter threshold to two-thirds, it must also pass by that margin.”  |
| California                    | Proposition 35  | Permanently authorizes a tax on managed care organization to fund Medi-Cal programs.  |
| Colorado                      | Excise Tax on Firearms Dealers, Manufacturers, and Ammunition Vendors | Effective April 1, 2025, enact a 6.5% excise tax on the sale of firearms and ammunition levied on firearms manufacturers, dealers, retailers, and ammunition vendors. Estimated to generate approximately \$39 million in state tax revenue per year. |
| Colorado                      | Initiative 50   | Limits the growth in statewide property tax revenue to no more than 4% each year. If statewide property tax revenue is projected to increase by more than 4%, voter approval is required for the additional revenue to be retained.                   |
| Florida                       | Amendment 5   | Provide for an annual inflation adjustment for the value of the homestead property tax exemption.   |
| Georgia                       | Tax Court Amendment (HR 598)  | Amendment to the State Constitution to provide for the Georgia Tax Court. Georgia Tax Court judges will serve four-year terms and be appointed by the Governor subject to approval by the House and Senate Judiciary Committees.                      |



# Select State Tax Ballot Measures

| State        | Title  | Description  |
|--------------|--|--|
| Georgia      | Local Option Homestead Property Tax Exemption Amendment (HR 1022)                    | Provide for a local option homestead property tax exemption.   |
| Georgia      | Personal Property Tax Exemption Increase (HB 808)                                    | HB 808 was signed by Governor Brian Kemp (R) on May 6. The bill increases the ad valorem tax exemption for tangible personal property from \$7,500 to \$20,000 (subject to voter approval).  |
| Missouri     | Amendment 1  | Property Exemption Tax for Childcare Establishments Measure  |
| Nevada       | Question 5   | Whether the Sales and Use Tax Act of 1955 should be amended to provide an exemption from the tax for child and adult diapers. (SB 428 (2023))  |
| North Dakota | Prohibit Property Taxes Initiative   | Prohibits property taxes in the state except for those designed to pay for bonded indebtedness.  |
| Oregon       | Measure 118 (IP 17): Corporate Tax Revenue Rebate for Residents Initiative           | Corporations with Oregon sales of \$25 million or more would “pay the existing minimum tax for their applicable tax bracket, plus 3 percent of the excess over \$25 million.”  |
| South Dakota | Initiated Measure 28   | Prohibit State sales taxes on anything sold for human consumption (except alcoholic beverages and prepared food).  |
| Washington   | Initiative 2117  | Prohibit state agencies from imposing any type of carbon tax credit trading, and repeal legislation establishing a cap and invest program to reduce greenhouse gas emissions.  |
| Wyoming      | Property Tax on Residential Property and Owner-Occupied Primary Residences Amendment | The amendment would add <i>residential real property</i> as a fourth, separate, class of property and authorize the legislature to create a subclass within this new class for <i>owner-occupied primary residences</i> . This subclass could be assessed at a rate other than the uniform rate for property in the class. |



# COST Policy Positions

COST's advocacy is governed by a broad set of public policy objectives. When advocating on issues, COST first looks to its official policy statements, which are approved by the Board of Directors. Members interested in participating in the development of COST's policy statements are encouraged to join the Policy Committee, the body that drafts policy statements (in conjunction with COST Staff) for Board consideration. The COST Staff and Policy Committee also develop "Policy Toolkits" for COST Member government affairs personnel to use in their individual advocacy efforts on discrete issues.

- **Categories:**
  - **State tax administrative issues** focused on ease of compliance, fairness, efficiency
  - **Corporate income tax issues** focused on constitutional overreach, fairness, efficiency
  - **Sales tax issues** – taxation of business inputs, fairness, uniformity
  - **Property tax issues** – fairness and equitability
  - **Other issues** – focused on sound tax policy principles concerning gross receipts taxes, unclaimed property, local taxes



# COST Policy Position: Fair and Equitable Property Tax Systems

## **POSITION:**

**State and local property tax systems must be fairly administered and tax burdens equitably distributed among taxpayers. A property tax system that is inefficient or that disproportionately falls upon business is not equitable and will negatively impact a state's business tax climate.**

Property taxes are the single largest source of state and local tax revenue, accounting for nearly one-third of all state and local tax collections. Property taxes also account for the largest share— thirty-five percent—of total state and local taxes on business.

### • **Essential Components:**

- **Uniform tax base and rates**
- **Efficient filing procedures**
- **Centralized review and uniform appeal procedures**
- **Tax payment requirements on contested valuations**





# COST Perspective on Good Administrative Practices

- **COST presently has 4 Scorecards addressing the states' administrative practices**
  - Administrative Scorecard
  - Sales Tax Systems Scorecard
  - International Property Tax Scorecard (issued with IPTI)
  - Unclaimed Property Scorecard
- Focus is primarily on using objective criteria of important administration with bias towards issues of concern with business taxpayers
  - Scorecards do not grade subjective personalities of state tax administrators
- **Letter grading is for comparison purposes with goal to encourage tax policy makers (e.g., legislators) to improve administrative practices**
  - It is acknowledged and understood that tax administration varies significantly state-by-state



# COST/IPTI Property Tax Scorecard

- **Objective evaluation of important property tax administration criteria with bias towards issues of concern with business taxpayers**

- **Transparency - Evaluated**

- Laws adequately explained on website
- Adequate notice of proposed valuation
- Ability to compare values placed on other properties
- No disclosure of income and expenses
- Frequent revaluations

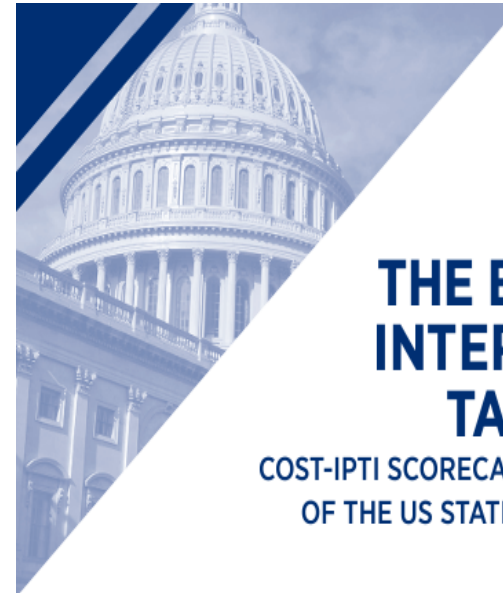
- **Consistency - Evaluated**

- Tax forms, assessment ratios, training
- Centralized oversight of local assessors' practices

- **Procedural Fairness - Evaluated**

- Sufficient time for taxpayers to file appeals
- Balanced burden of proof review before independent arbiter
- Ability to partially pay disputed tax
- Interest rate paid on refunds matches rate on underpayments

- **Tax rates, other than disparate rates/valuations – Not Evaluated**



## THE BEST (AND WORST) OF INTERNATIONAL PROPERTY TAX ADMINISTRATION

COST-IPTI SCORECARD ON THE PROPERTY TAX ADMINISTRATIVE SYSTEMS OF THE US STATES AND SELECTED INTERNATIONAL JURISDICTIONS

JUNE 2019\*

*Nikki Dobay, COST  
Fred Nicely, COST*

*Annabel Sanderson, IPTI  
Paul Sanderson, IPTI'*

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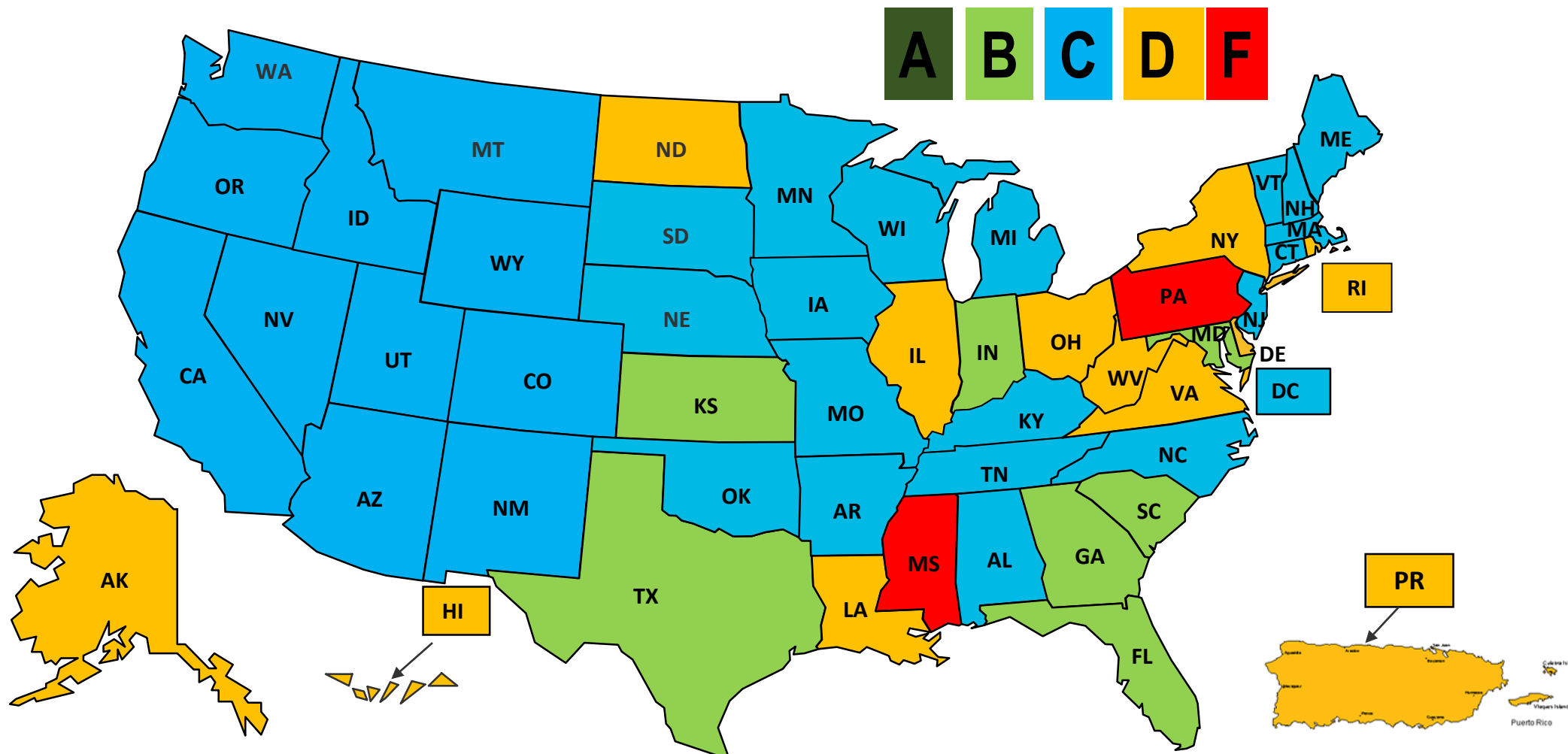
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*The Council On State Taxation (COST) is the premier state tax organization representing multi-jurisdictional taxpayers in the United States. COST is a nonprofit trade organization consisting of approximately 550 multi-state corporations. COST's mission is to pre-*





# Property Tax Scorecard: Grades for U.S. States and PR



Source: The Best (and Worst) of International Property Tax Administration, COST & IPTI, June 2019



# COST Administrative Scorecard

- **Objective evaluation of state statutes and rules that govern the degree of a taxpayer's access to an independent appeals system.**
  - ***Elements of an effective and independent tax appeals system - Evaluated***
    - The forum must be truly independent;
    - Taxpayers must not be forced to pay the tax or post a bond prior to an independent hearing and resolution of the matter;
    - The record for further appeals must be established at the independent tribunal; and
    - The arbiter at the hearing must be well versed in state tax laws and concepts.
  - ***Procedural developments - Evaluated***
    - Even-handed statute of limitations;
    - Equal interest rates for refunds and deficiencies;
    - Due dates for corporate income tax returns are at least one month beyond the federal due date with an automatic extension based on the federal extension;
    - Adequate time to file a protest before the independent forum;
    - Reasonable and clearly defined procedure for filing amended state income/franchise tax returns following a federal audit;
    - Transparency in the form of published letter rulings (redacted) and administrative tribunal decisions.
- **Tool for policymakers seeking to improve tax administration and the business climate**



## The Best and Worst of State Tax Administration

### COST Scorecard on State Tax Appeals & Procedural Requirements

Douglas L. Lindholm  
Fredrick J. Nicely  
Priya D. Nair

December 2023

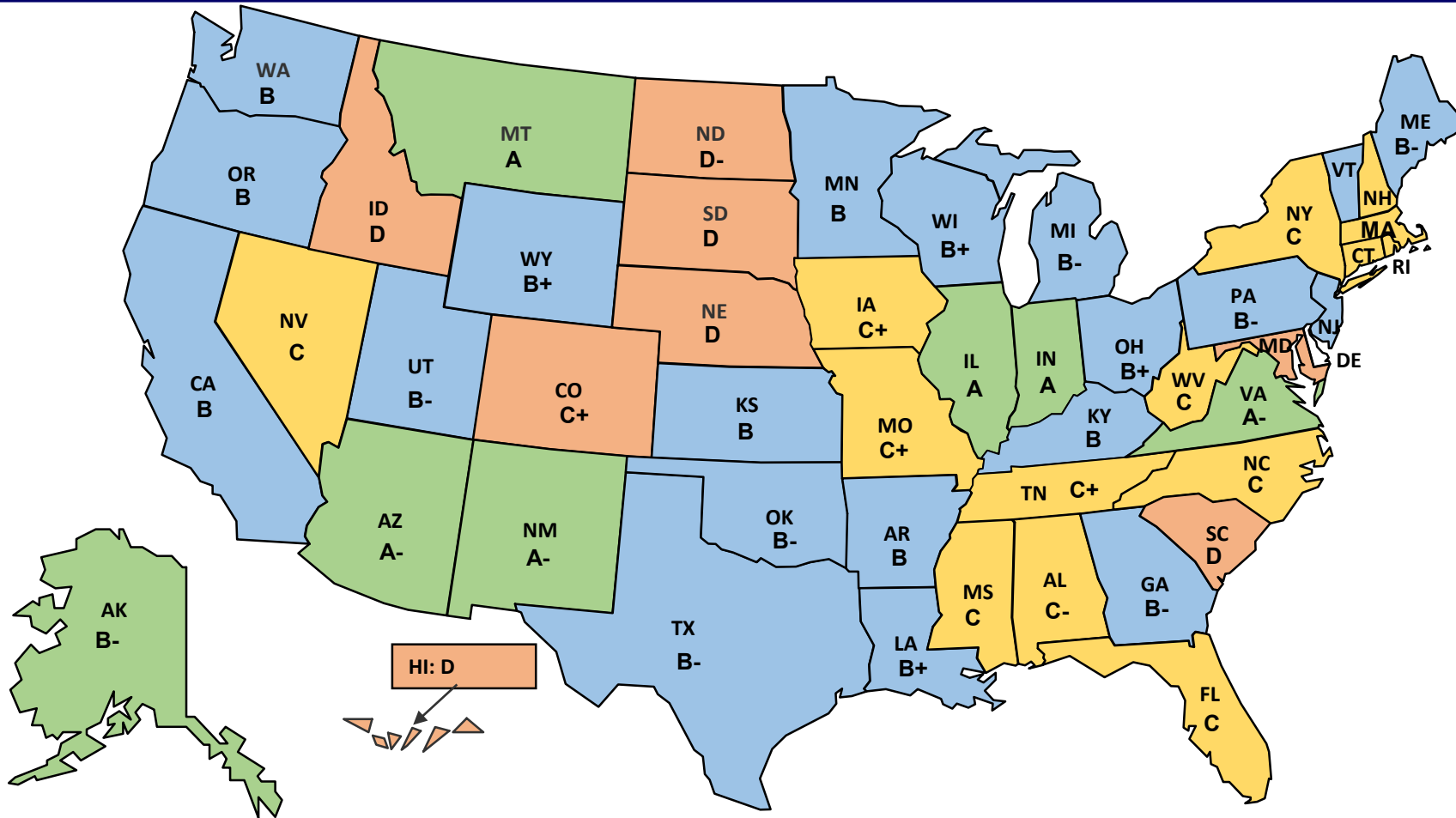
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#### Executive Summary

The Council On State Taxation (COST) has long monitored and commented on state tax appeals processes and administrative practices. Part of that effort has resulted in the regular publication of a scorecard ranking the states. Our focus is on the states' adoption of procedural practices that impact the fairness of states' laws and regulations for the administration and appeal of state tax matters. Why are these issues so important? Although compliance with state tax statutes and regulations is subject to audit scrutiny, the percentage of taxpayers actually audited is small. As



# State Tax Administration Scorecard: State Grades



|   |                 |
|---|-----------------|
| A | 3 to 5 points   |
| B | 6 to 8 points   |
| C | 9 to 11 points  |
| D | 12 to 14 points |
| F | 15+ points      |

|        |
|--------|
| CT: C- |
| DE: D  |
| DC: D- |
| MD: D- |
| MA: C- |
| NH: C+ |
| NJ: B- |
| RI: C- |
| VT: B- |

Source: COST's Scorecard on State Tax Administration, December 2023



# COST Sales Tax Systems Scorecard



- **Scorecard Categories – Evaluated:**
  - Exemption for Business Inputs
  - Taxation of Software and Digital Products
  - Sales Tax Simplification and Uniformity
  - Centralized Sales Tax Administration
  - Fair Sales Tax Processes
  - Reasonable Tax Payment/Credit Administration
  - Fair Audit and Refund Procedures
- **Tax Rate Differences and Tax Base Breadth (Other Than Taxing Business Inputs) – Not Evaluated**

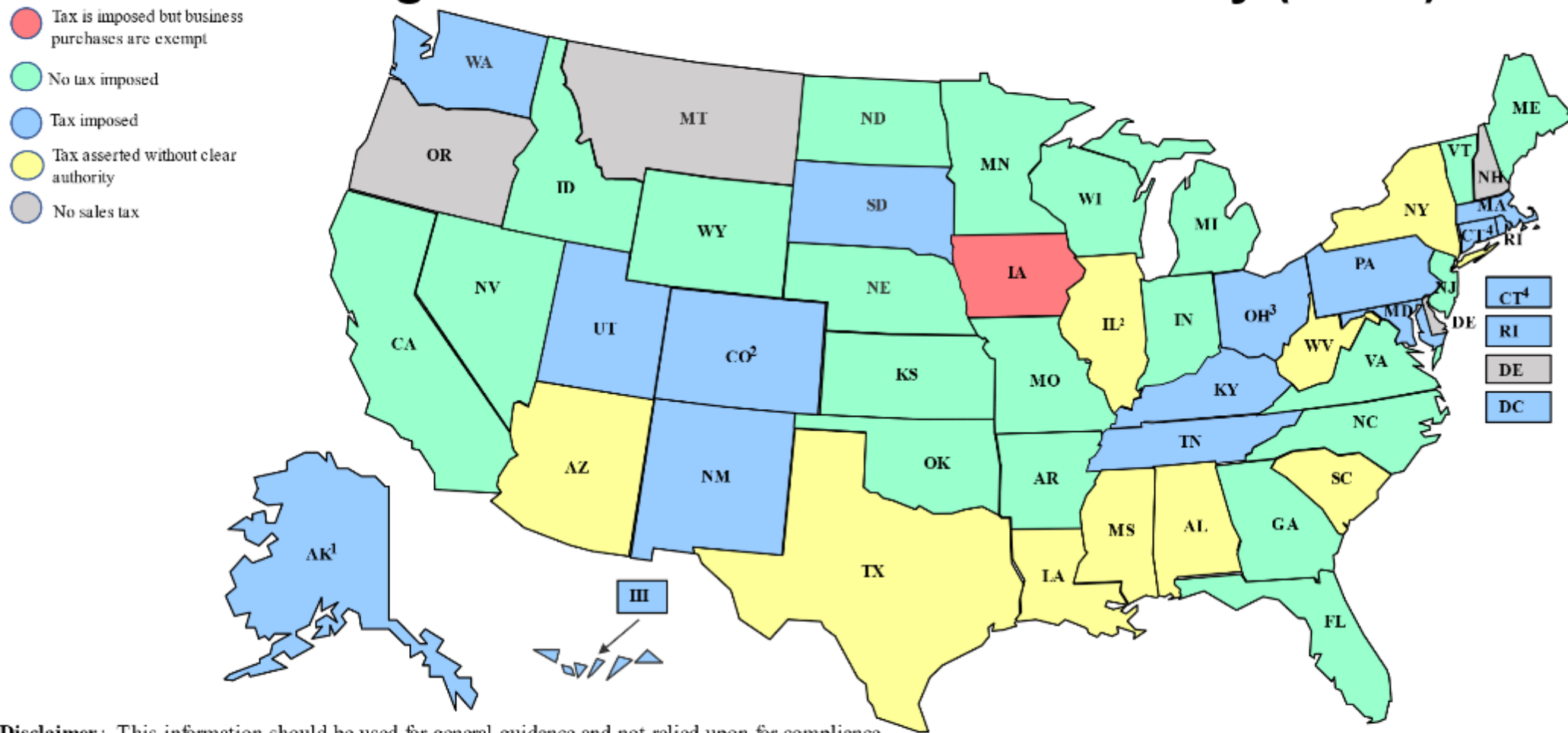


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# Tax on Digital Software Accessed Remotely (SaaS)



**Disclaimer:** This information should be used for general guidance and not relied upon for compliance.

**Source:** Council On State Taxation (COST)

<sup>1</sup>AK - Data is based on local municipalities since Alaska does not have a state-wide sales tax

<sup>2</sup>CO/IL - State does not impose a tax, but tax may be imposed by some localities

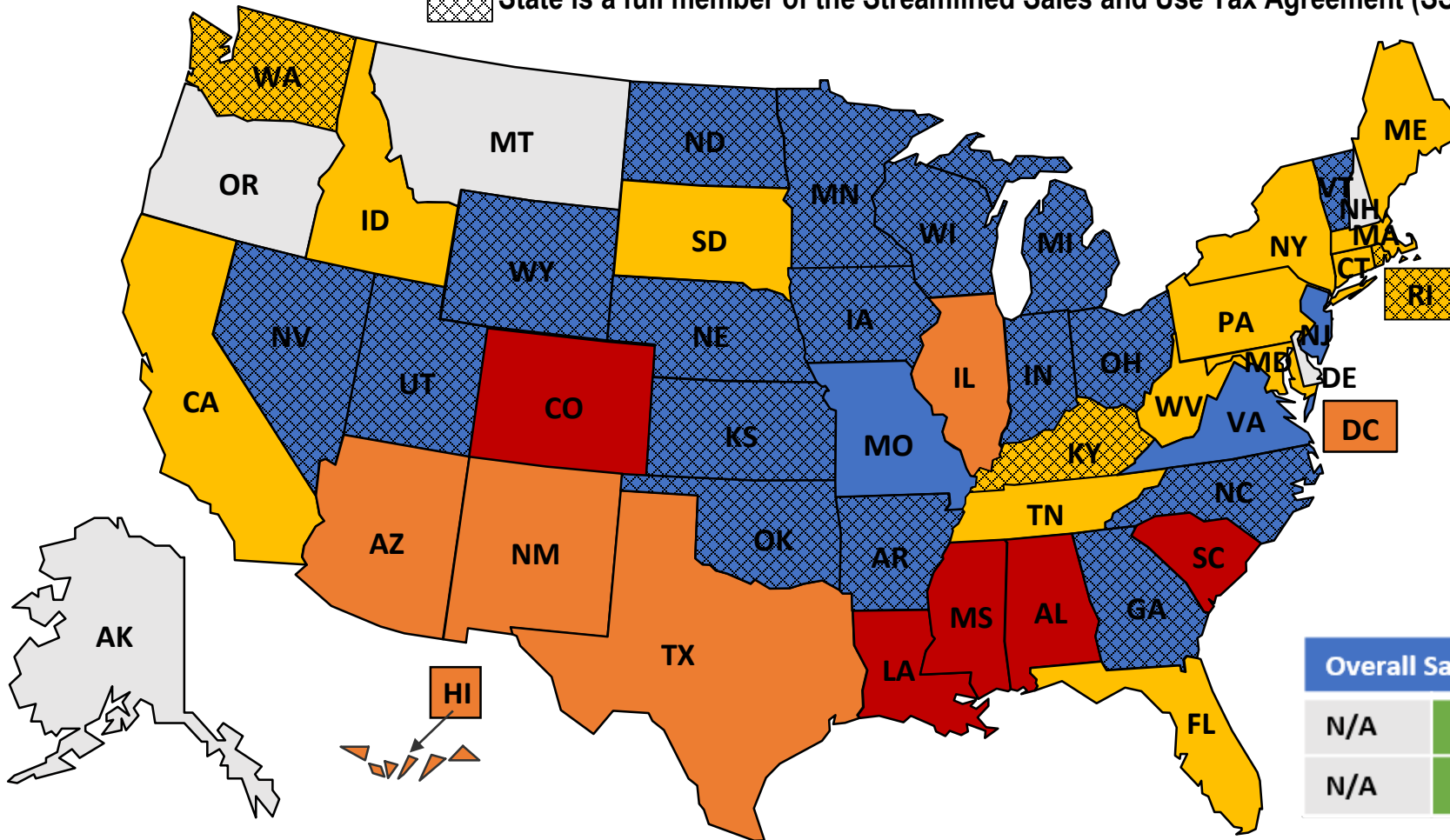
<sup>3</sup>OH - Tax only applies to businesses

<sup>4</sup>CT - Electronically delivered software is taxed at a 1% rate for businesses



# Sales Tax Scorecard: State Grades

 State is a full member of the Streamlined Sales and Use Tax Agreement (SSUTA)



| Overall Sales Tax Scorecard Grades |      |       |       |       |     |
|------------------------------------|------|-------|-------|-------|-----|
| N/A                                | 0-12 | 13-20 | 21-26 | 27-29 | 30+ |
| N/A                                | A    | B     | C     | D     | F   |

Note: Because Alaska has no statewide sales tax, its was not given an overall grade





# COST's Proactive Legislative Issues

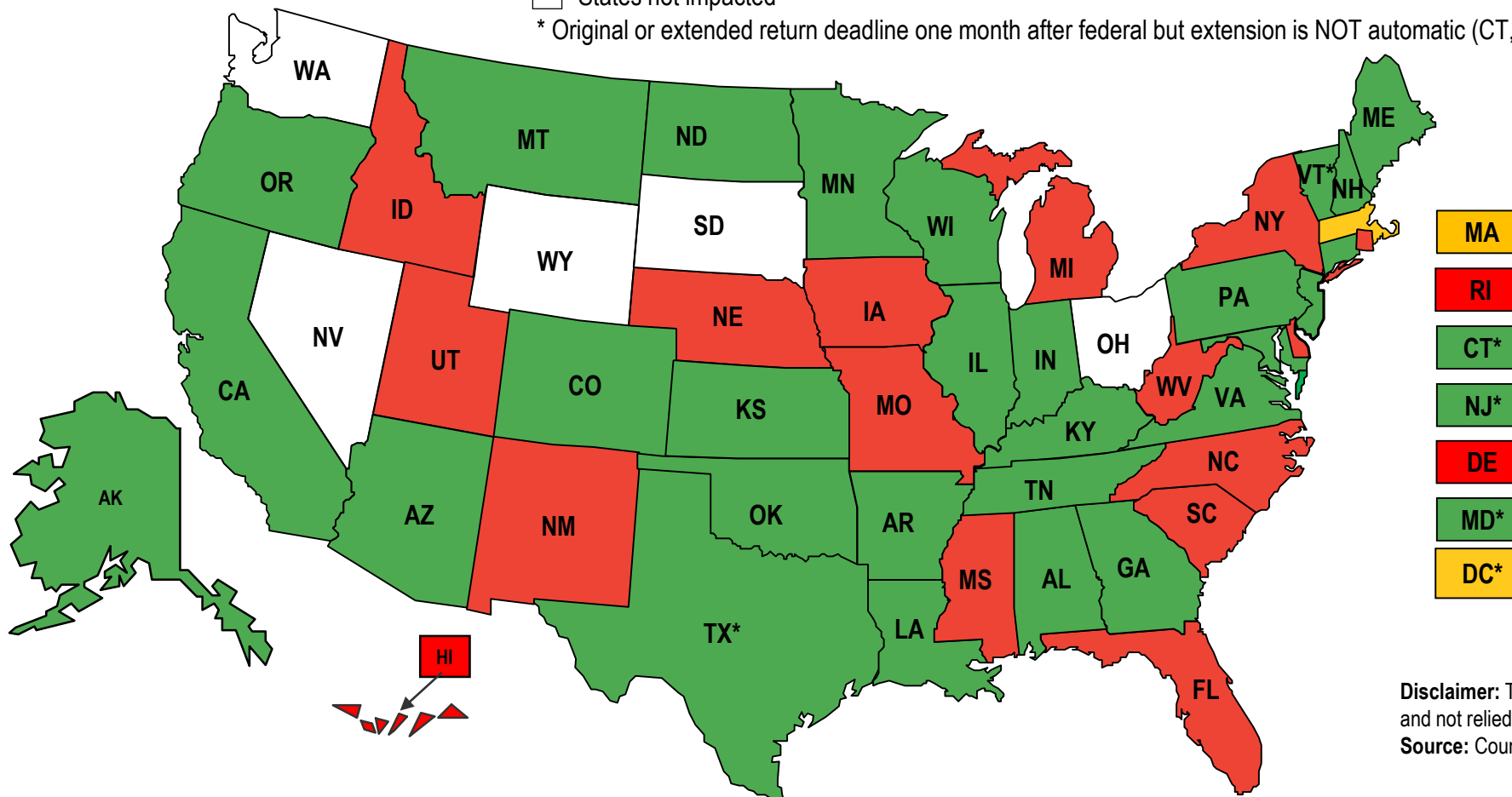
- One Month Extension Beyond the Federal Extended Due Date for Filing Corporate Income Tax Returns
- 30-Day Safe Harbor for Nonresident Traveling Employees
- Reporting of Federal Adjustments (RAR)
- Minimum 90-Day Appeal Period After Assessment (or Denial of Refund)
- SSUTA



# One Month Extension Beyond the Federal Extended Due Date for Filing Corporate Income Tax Returns

- Original or extended return deadline at least one month after federal
- Original or extended return deadline at least one month after federal for combined filers only
- Original and extended return deadline less than one month after federal
- States not impacted

\* Original or extended return deadline one month after federal but extension is NOT automatic (CT, MD, NJ, TX, VT, DC)

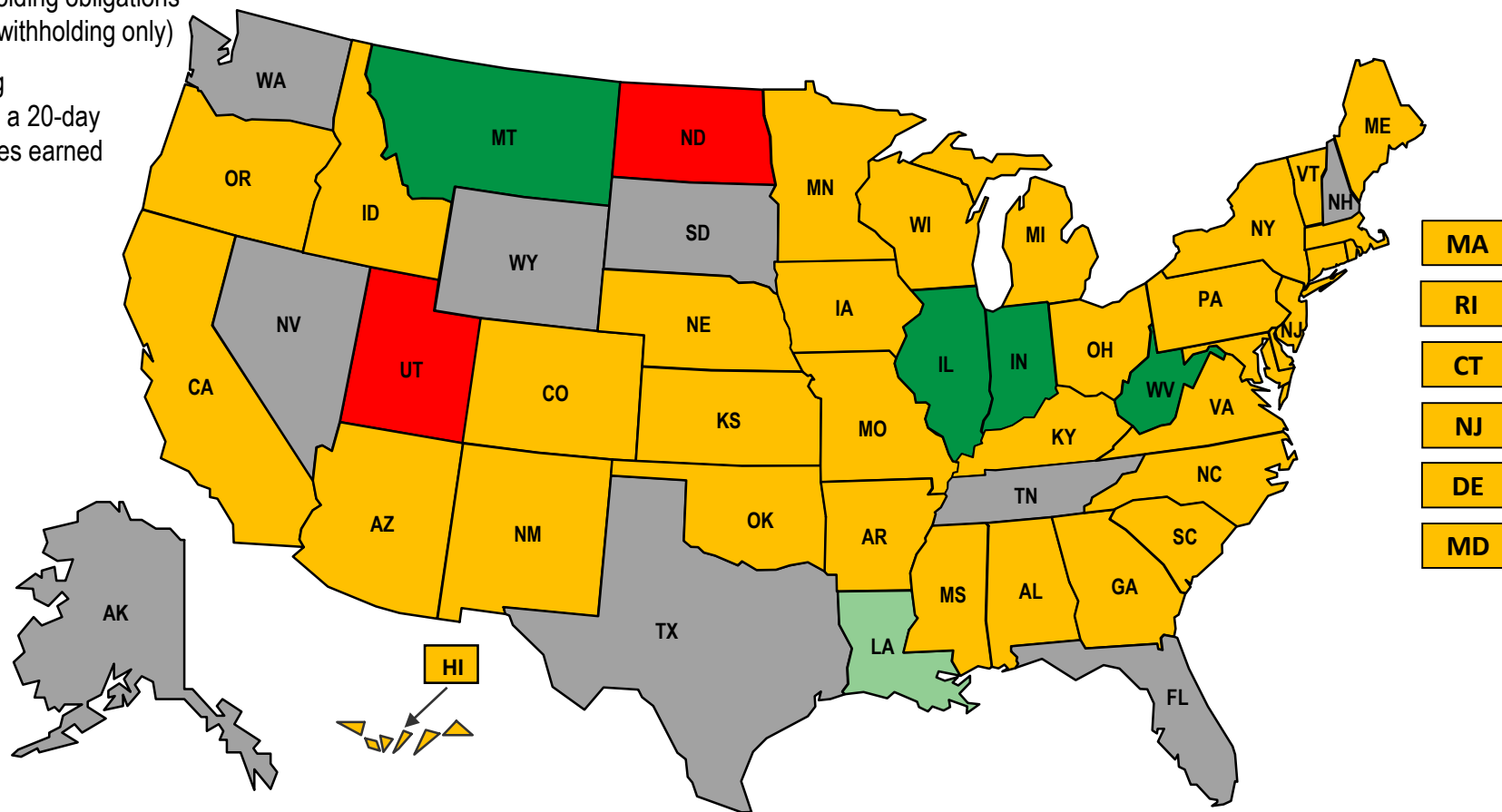


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**Source:** Council On State Taxation (COST)



# 30-Day Safe Harbor for Nonresident Traveling Employees

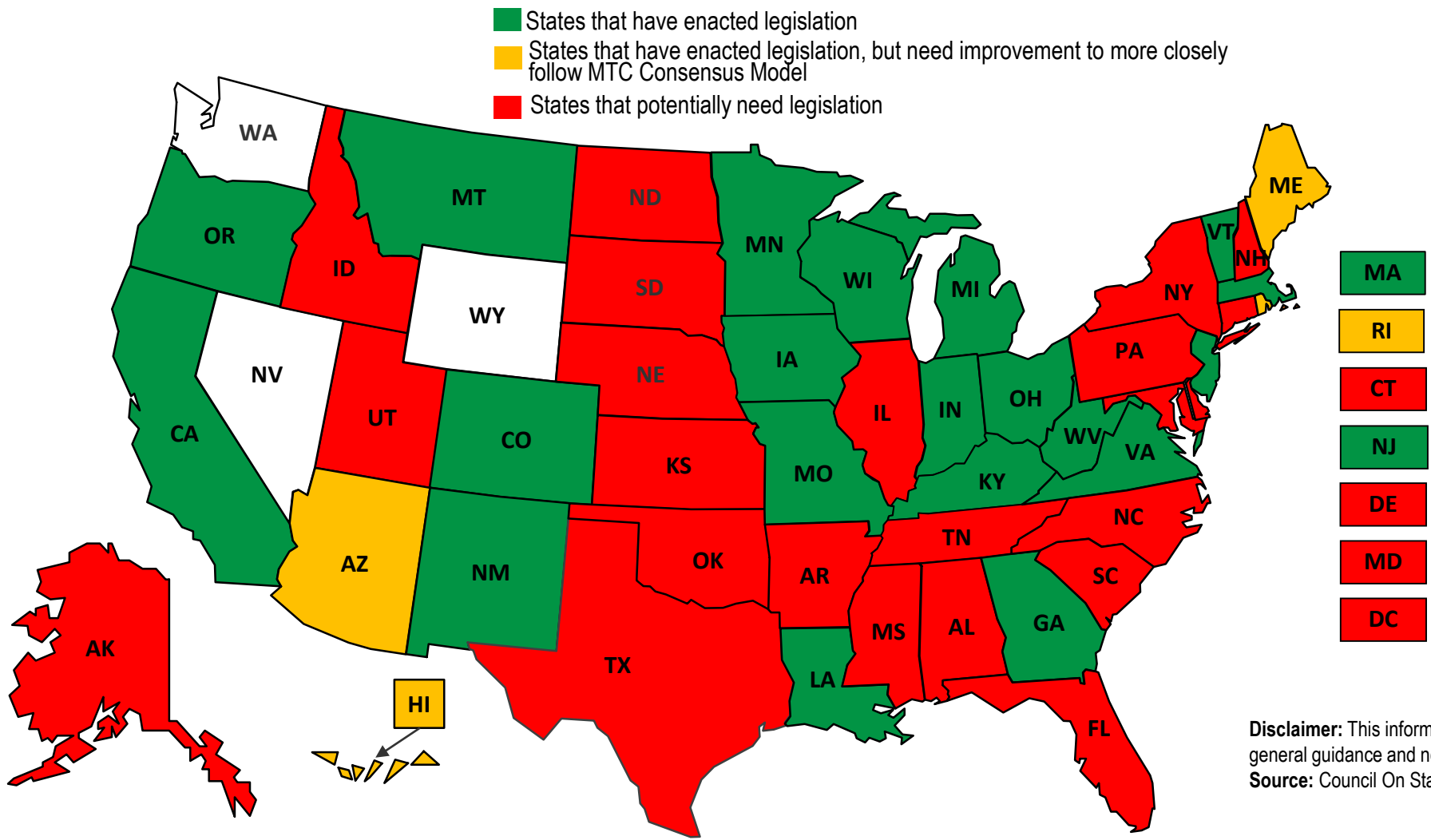
- State has enacted a 30-day threshold for both filing and withholding
- State has enacted the COST model statute with a 25-day threshold for both filing and withholding
- States that need a 30-day safe harbor for both filing and withholding obligations (AZ and HI have a 60-day, and VT has a 30-day threshold for withholding only)
- States that need a 30-day safe harbor for filing and withholding obligations and they have enacted the MTC model statute with a 20-day threshold and additional complicated provisions based on wages earned
- No general state personal income tax



**Disclaimer:** This information should be used for general guidance and not relied upon for compliance  
**Source:** Council On State Taxation (COST)



# MTC Consensus Model for Federal Audit Change Reporting



**Disclaimer:** This information should be used for general guidance and not relied upon for compliance  
**Source:** Council On State Taxation (COST)

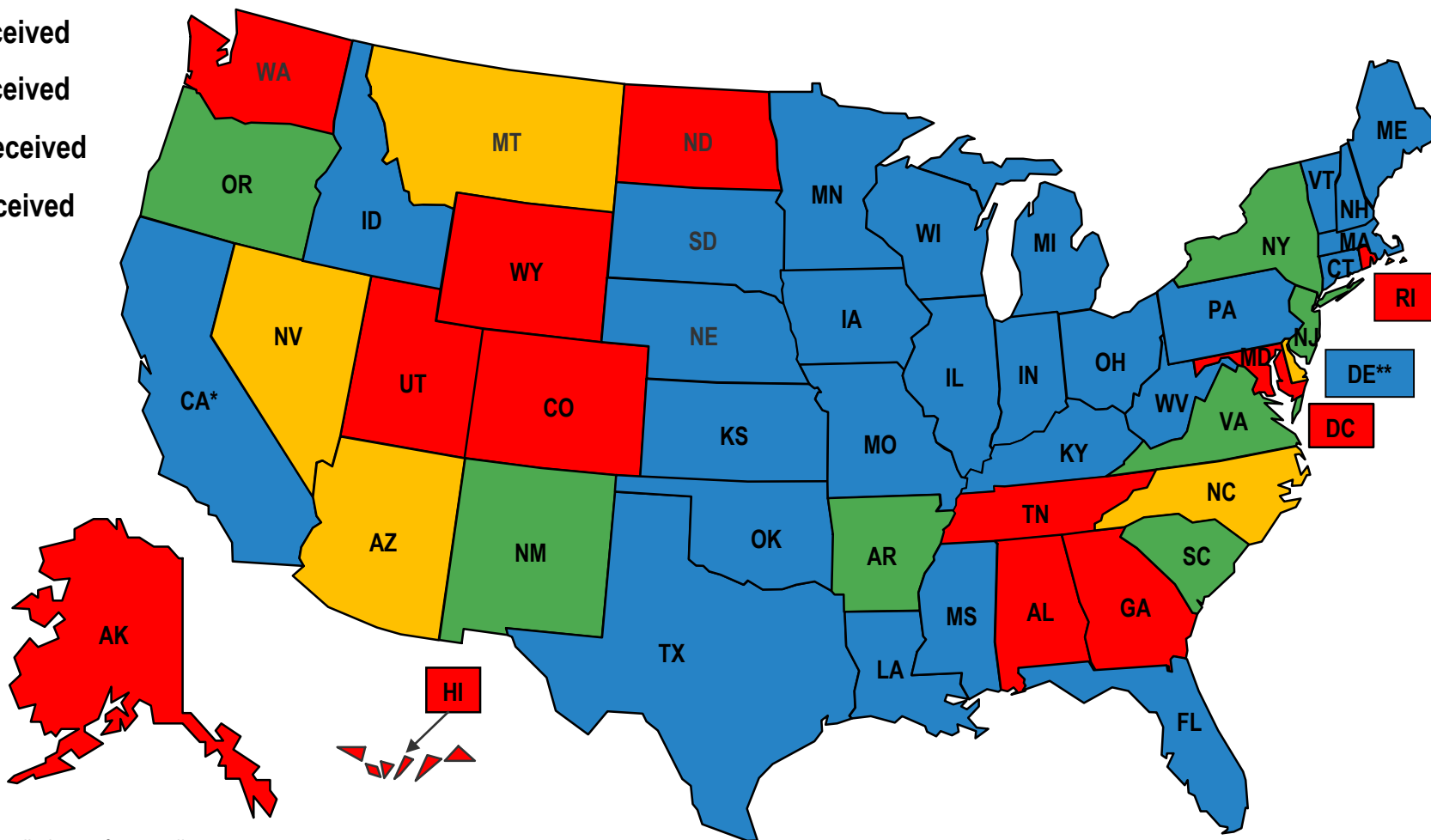


# 90-Day Appeal Period

- 30 days after assessment is issued/mailed/received
- 45 days after assessment is issued/mailed/received
- 60+ days after assessment is issued/mailed/received
- 90 days after assessment is issued/mailed/received

\*CA: 60 days after mailing of notice for income/franchise tax. CRTC §§ 19041(a), 19042. Petitions for redetermination must be filed within 30 days to appeal sales/use tax assessment. CRTC §6561. 90 days for denial of a refund claim; CRTC § 19324; 30 days for denial of protest; CRTC § 19045

\*\*DE: 30 days for withholding tax appeals



Disclaimer: This information should be used for general guidance and not relied upon for compliance  
 Source: Council On State Taxation's (COST) State Tax Administration Scorecard, December 2023



# Recent COST Articles/STRI Studies

- **A State DAT Relabeled a ‘Digital Barter’ Tax is Still Bad Tax Policy** (Tax Notes State, August 5, 2024)
- **Is E-Invoicing Relevant in the US State Sales Tax Context?** (May 2024)
- **Wearing Blinders in the Debate Over Business’s “Fair Share” of State Taxes** (April 2024)
- **Mandatory Worldwide Combined Reporting: Elegant in Theory but Harmful in Implementation** (March 2024)
- **Digital Business Input Exemptions: Lessons From Sales Tax History** (January 2024)
- **FY22 State and Local Business Tax Burden Study** (December 2023)
- **COST Scorecard on Tax Administration** (December 2023)
- **Minnesota’s New Approach to Taxing Foreign Income Is Unfair and Unwise** (August 2023)
- **State Digital Services Taxes: A Bad Idea Under Any Theory** (April 2023)
- **Five State Tax Policy Changes That Would Modernize Laws and Ease Administration and Compliance** (April 2023)
- **COST Scorecard on Sales Tax Administration** (December 2022)
- **Down the Rabbit Hole: Sales Taxation of Digital Business Inputs** (July 2022)
- **Resisting the Siren Song of Gross Receipts Taxes: From the Middle Ages to Maryland’s Tax on Digital Advertising** (July 2022)

<https://cost.org/state-tax-resources/cost-studies-articles-and-reports/>



# COST Amicus Brief Advocacy

**COST files amicus briefs to support SALT litigation that impacts its membership. COST typically does not file an amicus brief until a case is pending at the highest court in a state or at the U.S. Supreme Court.**

- **COST has a Legal Committee that works with COST staff to make recommendations to the COST Board on the filing of an amicus brief.**
- **An average of 10 to 15 amicus briefs are filed each year, below are some recent filings:**
  - *OGP v. County of Los Angeles* (12/29/23) – CA property tax treatment of hotel asset intangibles
  - *MMN Infrastructure (Vectren) v. MI Treasury* (11/15/23) – Fair apportionment of capital gain
  - *Marathon Petro v. Cook County* (11/1/23) – Application of Cook County’s motor fuel tax
  - *Conagra & Citgo v. Hegar* (9/25/23) – Interpretation of inventory for TX tax purposes
  - *Walmart Starco v. MO DOR* (9/14/23) - MO’s resale and manufacturing exemption
  - *ADP v. AZ DOR* (5/19/23) – AZ’s tax on SaaS as a rental of tangible personal property
  - *Petrogas v. Xczar* (WA 5/9/23) – WA’s property tax imposition on good will (intangibles)
  - *Quad Graphics v. NC DOR* (US 4/18/23) – Sales v. use tax assessment and *Dilworth*
  - *Comptroller of MD v. Comcast* (3/31/23) – Constitutionality of MD’s digital advertising tax



# National SALT Issues

## Mandatory Worldwide Combined Reporting Proposals





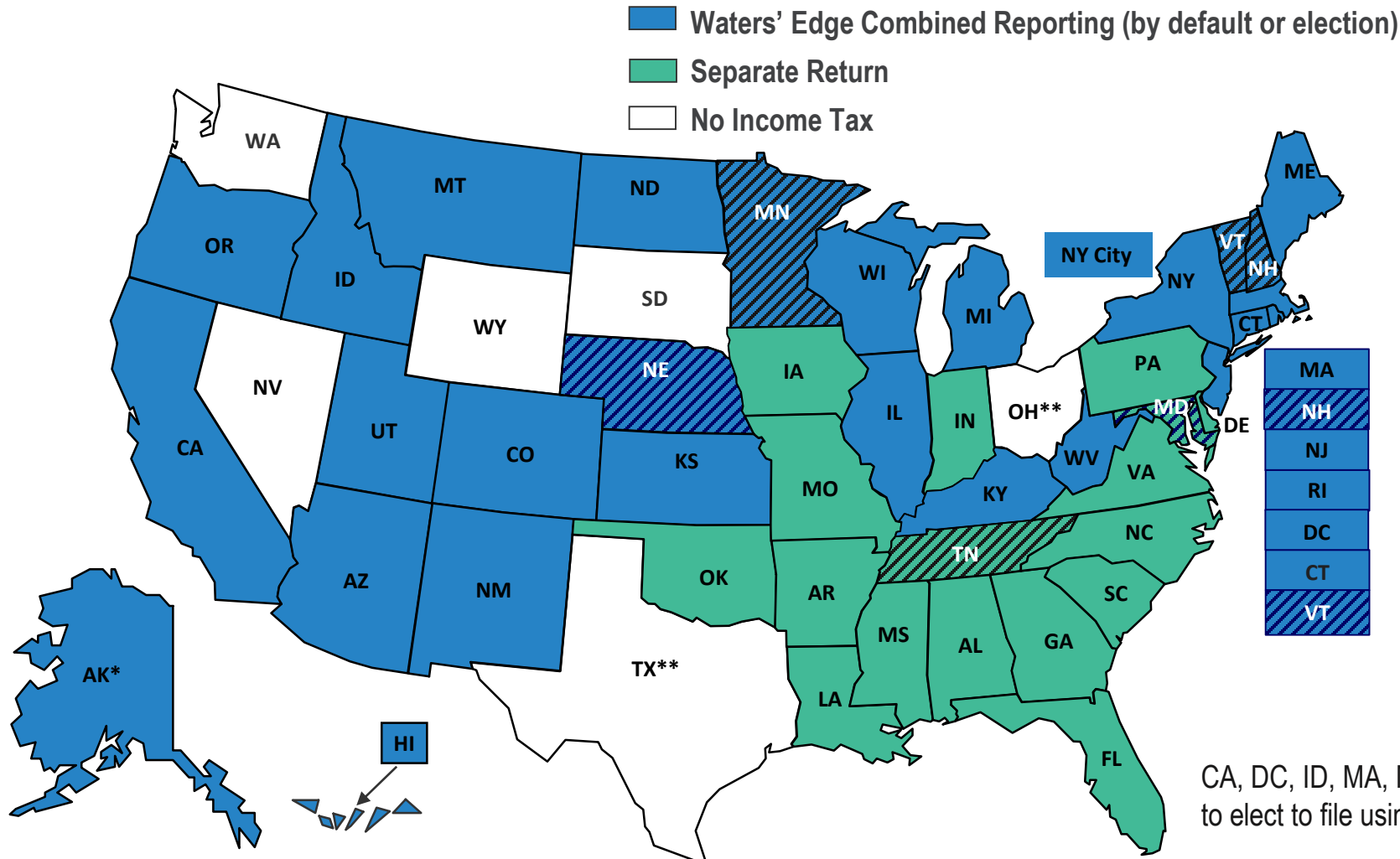
# What Is a Fair Share for Business of State and Local Taxes?

## The central Bucks/Enrich/Mazerov/Shanske (BEMS) thesis:

- 1) Business does not pay its “fair share” of state and local taxes, with a particular emphasis on the corporate income tax as a microcosm of the whole
- 2) The “underpayment” of state and local taxes is the result of flaws in the design of tax statutes that favor businesses
- 3) These structural deficiencies reflect inordinate business political influence over state legislative and administrative processes

**Problem/Concern:** Corporate income taxes are not the only taxes paid by business, lots of complicated compliance/audit issues, and no other country imposes WWCR.

# No State Currently Requires Mandatory Worldwide Combined Reporting



- 2024 Mandatory Worldwide Combined Reporting Proposals:**
- NH H.B. 121
  - VT House Ways and Means Committee Draft Language
  - TN H.B. 2043/S.B. 1934
  - MD S.B. 766/H.B. 1007 → S.B. 362 (Senate budget bill)
  - MN H.F. 5247 (Study bill on corporate tax base erosion)
  - NE LB 40 Special Session

CA, DC, ID, MA, MT, NJ, NM, ND, RI, UT, and WV allow corporations to elect to file using WWCR when it reduces their tax liability

\*Alaska has worldwide combined reporting for oil and gas producers  
 \*\*Combined reporting for a tax based on gross receipts

**Disclaimer:** This information should be used for general guidance and not relied upon for compliance.  
**Source:** Council On State Taxation (COST)



# Legislation

## Mandatory Worldwide Combined Reporting, GILTI & Foreign Dividends

### **MARYLAND:**

- The Maryland House of Representatives on March 21 passed SB 362, the Senate Budget bill, with amendments to impose worldwide mandatory unitary combined reporting in the State
- The measure as amended was rejected by the Senate on March 25 and will be brought to a conference committee
- The final version of SB 362 was adopted on April 5 and excludes the MWWCR provisions

### **MINNESOTA:**

- HF 5247 (Gomez), State tax omnibus bill had provisions dealing with the disclosure of corporate franchise tax information (Sec. 4), and corporate tax base erosion study (Sec. 16). The House Ways and Means Committee recommended adoption with amendments
- COST submitted testimony in opposition to both these provisions; COST opposed the corporate tax base erosion study because it is completely one-sided, only looking at structural tax design issues relating to the corporate income tax. The State recently expanded its tax base to include 50 percent of GILTI and foreign dividends
- While the legislation was enacted, these provisions did not make it through the Senate and were struck out in conference committee

### **NEBRASKA:**

- Governor Pillen (R) during regular session failed to get the Legislature to pass alternate revenue sources to offset projected losses from his property tax reform proposal and called for a special session that convened July 25
- Legislation under consideration during the ongoing special session includes MWWCR (LB 40); COST testified in person at the hearing on 8/1
- *Additional legislation of concern that COST also testified in opposition includes digital ad tax (LB 1); luxury tax and new taxes on business inputs (LB 1, LB 8, LB 19, LB 26)*



# Legislation

## *Mandatory Worldwide Combined Reporting, GILTI & Foreign Dividends*

### **NEW MEXICO:**

- HB 252, the State tax omnibus bill, was signed by the Governor on March 6. Among its provisions, it:
  - Establishes a flat corporate income tax at a 5.9% (removing the progressive rate at \$500,000)
  - Removes the state's IRC Section 952 subpart F exclusion and
  - Excludes U.S.-incorporated entities from the 80-20 rule for the water's-edge election

### **VERMONT:**

- House Ways and Means Committee considered MWWCR draft legislation in January. COST submitted testimony in opposition to the draft bill. Due to the greatly reduced fiscal estimate prepared by the Joint Fiscal Office for the committee's February 29 hearing, the committee gave up WWCR instead discussed taxing a greater percentage of GILTI
- The Vermont House on March 27 passed an amended version of HB 721, a measure that as amended would: Increase the corporate income tax rate from 8.5% to 10% and Decouple from the federal GILTI and FDII deductions by requiring an addback to federal income of "the amount of any deduction allowed under 26 U.S.C. § 250(a)." These changes would apply to taxable years beginning on or after January 1, 2025. The changes are estimated to raise \$2 million in FY2025 and \$33 million in FY2026
- HB 721 was referred to Senate Committee on Finance on April 18 where it failed to move



# Taxation of Foreign Source Income

*Precision Castparts Corp. v. Nebraska Dept. of Rev., Dist. Ct. Lancaster Cnty, No. C122-2106 ( July 3, 2023). Argued April 1, 2024 NE S. Ct.*

- Precision Castparts sought a refund of the taxes paid on §965 income that was included in its Nebraska taxable income.
- The company argued it was entitled to deduct the income under Nebraska Rev. Stat. §77-2716(5) which provides for a deduction of dividends received or deemed to be received from a corporation not subject to tax under the Internal Revenue Code. Specifically, the Section 965 income should be characterized as a deemed dividend.
- Applying statutory construction principles, the Nebraska District Court rejected the company's argument, finding the income was not a dividend as that term is defined for federal tax purposes nor was there an intent to characterize it as a deemed dividend rather was deemed additional income under Subpart F.
- Precision appealed to the Nebraska Court of Appeals and filed a petition to bypass the Court of Appeals, which the Nebraska Supreme Court granted.
- Case was argued on April 1, 2024.



# Trend Towards Single Sales Factor and Market-Based Sourcing Continues

**Alaska S.B. 122 (Pending - Carryover)** – would adopt certain MTC Model provisions including market-based sourcing, single sales factor for certain businesses, and would impose a throwout rule

**Arizona S.B. 1682 (Failed)** – would have moved the State to a double-weighted sales factor for taxable years beginning on and after December 31, 2023 and market-based sourcing for sales other than sales of tangible property

**Arkansas S.B. 482 (Enacted)** – will allow railroads to elect to apportion using either three-factor apportionment (with a double-weighted sales factor) or single sales factor apportionment

**Kansas H.B. 2110 (Pending - Carryover)** – would allow certain qualifying taxpayers (manufacturing or the production/storage of electricity in Kansas) to use single sales factor apportionment

**Massachusetts H.B. 4104 (Enacted)** – tax reform package moves to single-sales factor apportionment and has personal income tax cuts

**Montana S.B. 124 (Enacted)** – implement single sales factor apportionment effective January 1, 2025

**New Mexico H.B. 547 (Line-Item Veto)** – would have switched the State to single-sales factor apportionment

**Oklahoma H.B. 1375 (Pending - Carryover)** – allow qualifying corporations to elect to use single-sales factor or three factor apportionment

**Tennessee H.B. 323 (Enacted)** – provides a three-year transition period to single-sales factor apportionment for franchise/excise taxes

**Virginia H.B. 1978 (Enacted)** – will allow affiliated corporations filing on a consolidated basis to elect to apportion using a single-sales factor

# States' Shift to Single-Sales Factor Apportionment

**Arizona:** Taxpayer can elect to use a three-factor formula with double-weighted sales or single sales factor.

**California:** Businesses with 50% of their gross receipts from agricultural, extractive, savings and loan, and banking and financial business activities use an equally-weighted three-factor apportionment formula. Special rules apply to qualified taxpayers in the cable industry. [[Cal. Rev. & Tax. Cd. §25136.1.](#)]

**Georgia:** Different formula for corporations that have income derived principally from transporting passengers or cargo in revenue flight. Three factor formula: (1) revenue air miles; (2) tons handled factor; (3) originating revenue factor. Special rules for joint ventures, petroleum pipeline companies, and motor carriers. Ga. Comp. R. & Regs. 560-7-7-.03 section 5(e).

**Louisiana and Utah:** Varies, depending on the type of business.

**Mississippi:** Industry specific formulas, with single sales factor if no specific formula is specified.

**Montana:** Legislation enacted in 2023 shifts to single sales factor effective January 1, 2025.

**New Mexico:** If 80 percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing group, are employed in manufacturing or operating a computer processing facility, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year. 7-4-10(B).

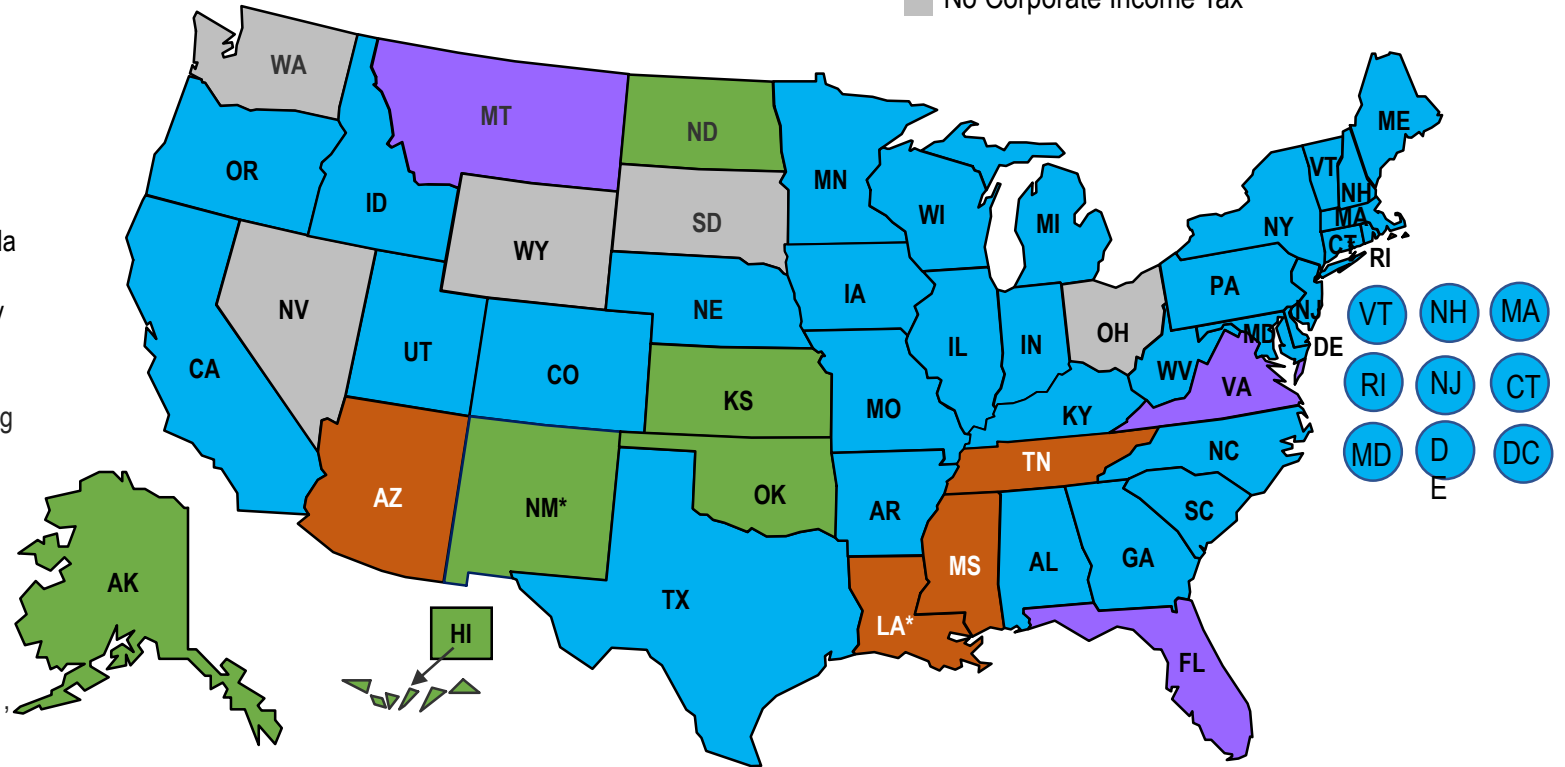
**North Dakota:** Option to choose three-factor formula or single sales factor.

**Oklahoma:** The sales factor is double-weighted, meaning that the denominator is four rather than three, for corporations whose taxable property has an initial investment cost of \$200 million or more, if the investment is made on or after July 1, 1997. In addition, the sales factor is double-weighted for corporations that expand their property or facilities in Oklahoma where such expansion has an investment cost of \$200 million or more over a period of three years or less, if the expansion is made on or after January 1, 2000. [[Okla. Stat. 68 §2358\(A\)\(5\)](#); [Okla. Admin. Code 710:50-17-71.](#)]

**Tennessee:** Three factor formula with triple-weighted sales. Enacted legislation in 2023 to phase-in single sales factor by 2025.

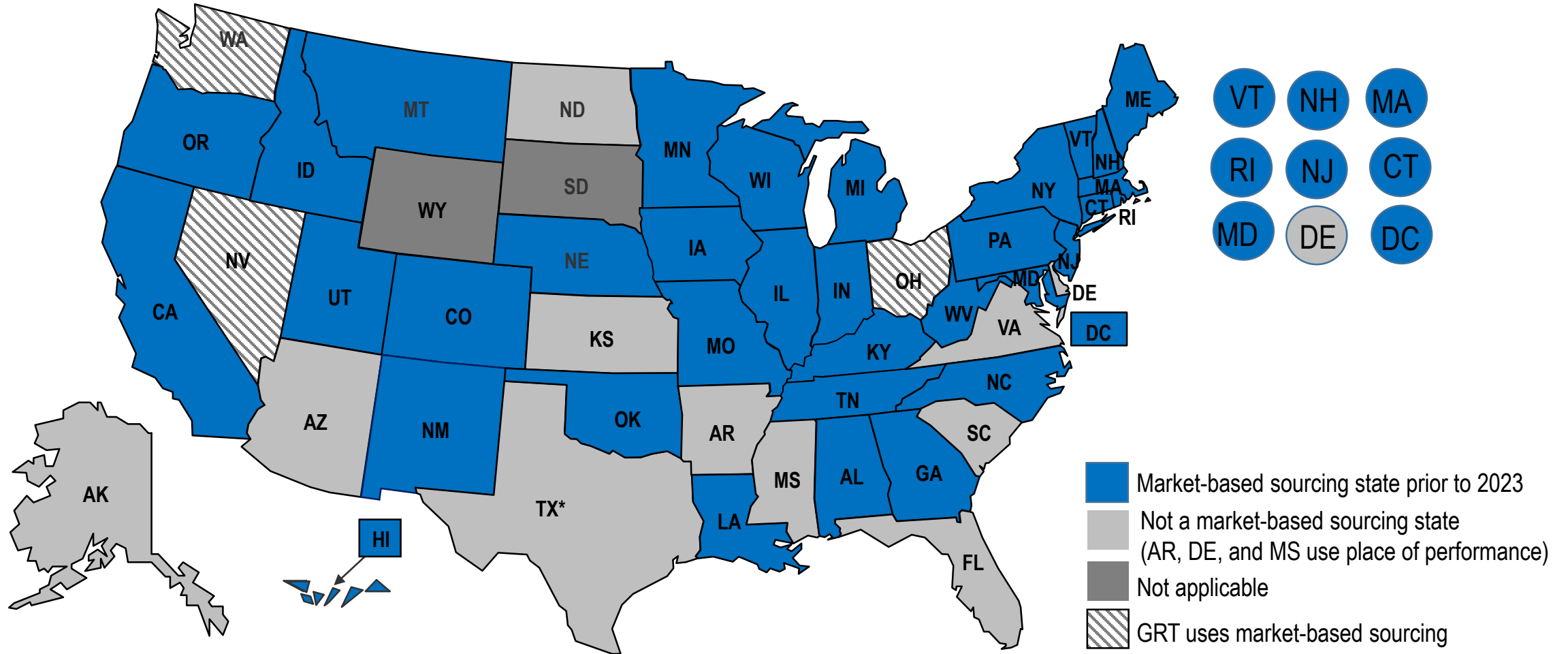
\* While it's not mandatory for everyone, qualified manufacturers can use single sales factor in **Louisiana and New Mexico.**

- Single Sales Factor
- Double-Weighted Sales Factor
- Equally Weighted Three Factors
- Other
- No Corporate Income Tax



**Disclaimer:** This information should be used for general guidance and not relied upon for compliance.  
**Source:** Council On State Taxation, Bloomberg Law

# Market-Based Sourcing vs. Cost of Performance Sourcing



\*\*Receipts from the sale of services are sourced to **Texas** if the service is performed in Texas. If the service is performed both inside and outside of Texas, the receipts are sourced to Texas based on the fair value of services rendered in the state.

Source: Bloomberg Law

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# Alternative Apportionment

## *Vectren Infrastructure Services Corp. v. Department of Treasury*, No. 163742, 2023 WL 4874684 (Mich. July 31, 2023). *Petition for Certiorari* denied

- Minnesota S-Corporation hired to perform cleanup and repair work on a Michigan pipeline (3-month project), creating a significant but temporary increase in Michigan sales.
- Vectren purchased the MN company—stock sale with 338(h)(10) election.
- Michigan’s single sales factor would tax 70% of gain because of uptick in Michigan business in the year of the sale (historically, about 7% of company’s business was in Michigan).
- The Michigan Supreme Court held:
  - The disputed gain was properly included in the tax base; and
  - Taxpayer had not shown “by clear and cogent evidence” that it was entitled to alternative apportionment.
    - Gains were properly included in the apportionable tax base because they were not unrelated to business activities in Michigan (the required constitutional threshold) and accumulated goodwill might be used in Michigan in the future.
    - Taxpayer had not shown “by clear and cogent evidence” that it was entitled to alternative apportionment.
- A dissent argued that it was improper to include gains from assets held and goodwill accumulated in other states.



# California: Apportionment – Matching Concept

*In re Microsoft Corp. and Subsidiaries*, No. 21037336, July 27, 2023 (Rehearing denied February 14, 2024)

- Microsoft filed a waters-edge combined return for 2018
  - 25% of dividends from foreign affiliates included in apportionable income because CA allows a 75% dividends received deduction.
  - 100% of dividends included in sales factor denominator (\$108.8 billion).
- FTB argued “matching principle” should apply and 25% of the dividends should be included in the sales factor denominator.
- **California Office of Tax Appeals (OTA) held for Microsoft:**
  - CA law does not preclude including 100% of dividends in denominator even though 75% of those dividends are deducted from apportionable income.
  - FTB’s request for alternative apportionment rejected because FTB did not demonstrate a qualitative difference or quantitative distortion.
  - OTA deemed this case “**nonprecedential.**”
- **California tax bill reverses OTA ruling to prevent \$1.3 billion in refunds.**



# Public Law 86-272

- Enacted in 1959 as part of the Willis Commission's review of state corporate income taxes
  - Was meant to be a “temporary” law to provide Congress with additional time to more thoroughly address state taxes
  - MTC (1967) and COST (1969) formation indirectly a result of this activity
- Protects sellers of tangible personal property from imposition of income taxes outside its home state.
- Three criteria must be met:
  - The only activity “within” a state consists of the soliciting of sales of tangible personal property,
  - Such sales are approved by the home office outside of the customer's state, and
  - The tangible personal property is shipped to the customer from outside of the state.
- States have long criticized P.L. 86-272 as a perceived intrusion on their state sovereignty



# MTC P.L. 86-272 Statement

- The Multistate Tax Commission approved proposed revisions to its Statement of Information Concerning Practices of Multistate Tax Commission and Supporting States Under Public Law 86-272 (Aug. 4, 2021).
- *These revisions effectively revoke the protection provided by P.L. 86-272, as any taxpayer with an interactive website (one with more than static information) would not receive P.L. 86-272 protection.*
  - COST opposed these protections noting that the revisions would render P.L. 86-272 a nullity
- **Several states (and localities) have adopted or are considering adoption of the revised Statement, e.g., California** (litigation pending), **D.C., Minnesota, New York** (rule is somewhat different from the MTC's statement), **and Oregon** (including Portland).



# P.L. 86-272 Cases

## ***American Catalog Mailers Association v. Franchise Tax Bd.***, Case No. CGC-22-601363 (Cal. Sup. Ct. Dec. 13, 2023)

- On summary judgment, the court determined that guidance adopted by the Franchise Tax Board (“FTB”) in TAM 2022-01 and FTB Publication 1050 were not implemented in compliance with California’s Administrative Procedure Act.
- Therefore, the State’s adoption of the Multistate Tax Commission’s updated P.L. 86-272 guidance for activities occurring through the internet through state guidance was an “underground regulation.”
- The FTB did not appeal this decision by the deadline.

## ***Uline, Inc. v. MN DOR*** (8/7/24)

- MN Sup. Ct. holds salespersons obtaining “Market News Notes” (competitor information) exceeded protections under P.L. 86-272.

**U.S. House also introduced H.R. 8021 to modify protection to include: “any business activity that facilitates the solicitation of orders even if that activity also serve some independently valuable business function apart from solicitation.” No action, thus far, has been taken on this bill.**



# Disclosure of Tax Information

## MAINE:

- On January 30, Maine’s Joint Committee on Taxation held a work session on LD 1337/HP 851, a corporate disclosure bill carried over from the 2023 session when COST testified in opposition
- As originally drafted, the bill required all corporations to file a form with Revenue Services that contains information virtually identical to the information disclosed on a tax return
- On February 28, sponsor’s substantial amendments removed the offending provisions instead the bill will require Maine Revenue Services to submit a biannual report of aggregate income tax data to the Taxation Committee
- Became law without Governor’s signature on April 16

## MARYLAND:

- HB 454/SB 679 introduced at the request of the Office of the Comptroller
- Legislation would allow the disclosure of tax information to “a person or governmental entity for the purpose of assisting the Comptroller in tax compliance activity.”
- COST submitted testimony on the bill asking the sponsors to specifically identify parties to whom disclosure is authorized; to ensure that penalties and protocols for existing data sharing (with the IRS and other states) are also followed; and to include a prohibition on contingent-fee payments to third parties by governmental entities in Maryland
- Governor signed HB 454 on May 16
- COST continues to engage on the ground to address taxpayer confidentiality issues



# Disclosure of Tax Information

## MINNESOTA:

- HF 4513/SF 4750, HF 5247 would require the Commissioner of Revenue to post corporate franchise tax return information of corporations with \$250 million or more in aggregate gross sales or receipts in a taxable year on a website
- On March 20 and April 17, COST submitted testimony in opposition highlighting violation of taxpayer confidentiality under the guise of transparency, and reasons for a corporation's income tax liability will not be apparent or understood from the information disclosed
- On May 19, these provisions were removed during conference committee

## TENNESSEE:

- HB 1893 (franchise tax refund) as amended would require the Department of Revenue to publish the name of each taxpayer issued a refund as a result of the bill and the amount of the refund



# Corporate Minimum Tax

## OREGON:

- Ballot Measure 118 (IP-17)
  - Would impose a 3% minimum tax on gross receipts.

## ARIZONA:

- HB 2840 would set the minimum tax for corporations with 50 or more employees at \$1,000. **Bill failed;** similar legislation was also introduced in 2023.

## NEW JERSEY:

- Governor's FY 2025 Budget includes proposal to institute a “corporate transit fee” – 2.5% surtax on corporations in addition to their corporation business tax liability. The new surtax would be imposed on corporations with allocated taxable net income over \$10 million with the proceeds dedicated to NJ TRANSIT – **Enacted – retroactive to the beginning of this year; expires in six years.**





# Expansion of Indirect Tax Base

- In the past few years, many states have expanded the indirect tax base to include non-traditional transactions and services, while considering more targeted taxes aimed at industries

## Broad sales tax expansion

- Maryland
- Louisiana
- Nebraska
- West Virginia
- Virginia

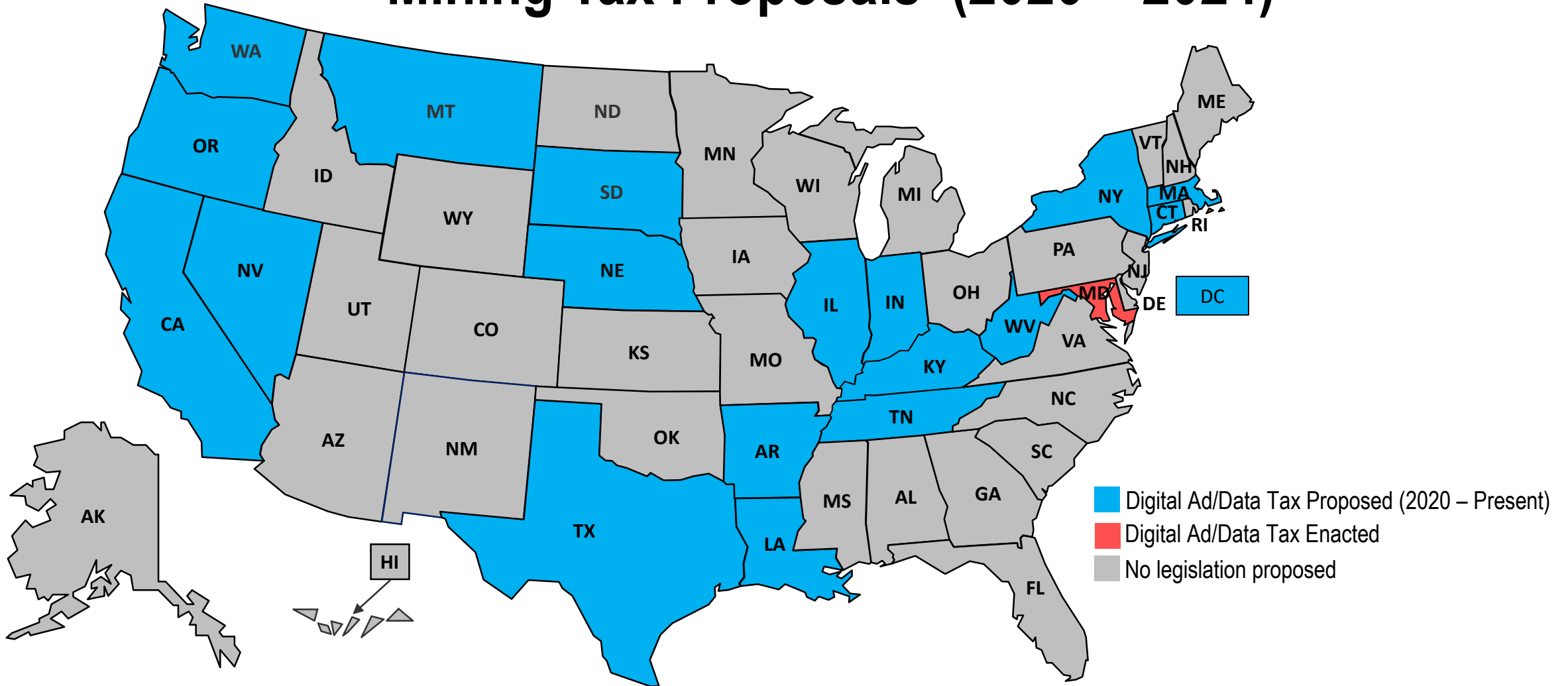
## Digital services tax

- Maryland (effective 2022)
- California
- Nebraska
- New York
- Nevada
- Tennessee
- Massachusetts

## Retail delivery fee

- Colorado (effective July 1, 2023) – 29 cents
- Minnesota (effective July 1, 2024) – 50 cents
- Nebraska
- Utah
- Washington

# State Digital Advertising Services and Data Mining Tax Proposals (2020 – 2024)



Source: Council On State Taxation research. Proposals include both digital services taxes (DSTs) and their sales tax equivalents.

Disclaimer: This information should be used for general guidance and not relied upon for compliance.



# Should Use Tax Be Apportioned?

## *Ellingson Drainage, Inc. v. Dep't of Revenue*, No. 30280 (S.D. February 7, 2024)

- **Facts:**

- Ellingson brought equipment into the state for 30 drainage projects.
- South Dakota DOR assessed a 4.5% use tax on the value of the equipment that Ellingson used in the state from March 2017 to January 2020.
- State valued the property at \$1.23 million, after accounting for depreciation, resulting in an assessment of ~\$60,000 in use tax and ~\$15,000 in interest.

- **Holding:**

- Upheld the DOR's assessment, reasoning: "Having paid the use tax on its equipment that had otherwise not been subject to sales or use tax in another state, Ellingson was and is free to bring the equipment back to work on jobs in South Dakota where Ellingson will continue to enjoy the privilege of conducting its business without being subject to additional use tax."
- Cert petition filed with SCOTUS on May 7, 2024.



# Class Actions – Use of Consumer Protection Laws?

*Garcia v. American Eagle, et al*, 2023 PA Super 40  
(March 14, 2023), *cert granted* (27 WAP 2023) (pending)

- Facts:
  - Garcia filed a class action under Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) after purchasing cloth face masks from various retailers.
  - Complaint alleges that the retailers “engaged in unfair trade practices by charging sales tax for items they knew or should have known were nontaxable.”
- Holding:
  - Collection of sales tax on nontaxable items doesn’t occur in the conduct of trade or commerce within the meaning of UTPCPL; and
  - The alleged conduct was not actionable under the UTPCPL.
- Cert granted by Pennsylvania Supreme Court 10/31/2023

*Caneer v. Kroger Co.*, no. 85009-1-I (Wash. App. Ct. July 8, 2024)

- Facts:
  - Caneer filed a class action under Washington’s Consumer Protection Act (CPA), after purchasing certain juice beverages
  - Caneer alleges that the retailers engaged in “unfair and/or deceptive act,” alleging that these beverages were exempt from sales tax.
- Holding:
  - Caneer’s claims all relate to a tax refund.
  - Caneer must follow the State’s tax refund procedures and Caneer must sue the State, not the grocery stores.
  - Lawsuit dismissed because Caneer did not follow the tax refund procedures.



# What is a Sale for Resale?

## *Walmart Starco LLC v. Director of Revenue*, No. 19-1217 (Mo. November 7, 2023)

- **Facts:**

- Starco is a Delaware LLC, a wholly owned subsidiary of Walmart Inc.
- Starco purchased electronic price scanners, credit card readers, computers, and servers, which it stored in a Missouri warehouse before selling them to Walmart and its subsidiaries for use in Walmart and Sam’s Club stores.
  - Starco claimed a resale exemption on the purchase of the equipment. When selling the equipment to Walmart and its subsidiaries, Starco charged the cost of the items plus a fixed-percentage markup; Starco occasionally modified the equipment by installing software or making hardware changes.
- State revenue director disallowed the exemption and assessed approximately \$8 million in use tax, interest, and additions against Starco.

- **Holding:**

- A Walmart subsidiary’s purchases of electronic equipment sold to other Walmart and Sam’s subsidiaries for store operations qualified for the resale exemption against Missouri use tax
- In agreeing that the resale exemption applied, it was noted that as Starco exchanged ownership of the equipment in exchange for consideration, these transactions qualified as a “sale” under Missouri law, and a “resale” for purposes of the resale tax exemption.



# Retail Delivery Fee Proposals

## Colorado (Fee enacted in 2022)

- S.B. 23-143 modifies the State's delivery fee to allow a retailer to pay and remit the retail delivery fee on behalf of its purchaser. Signed by Governor on May 4.
- H.B. 23-1166 (**failed**) – would have, effective July 1, 2023, eliminated the State's retail delivery fee.

## Minnesota (enacted in 2023)

- H.F. 2887, the State's Omnibus Transportation Bill, includes the State's new delivery fee and it was signed by Governor Walz. 5/24/23. Beginning July 1, 2024, a retail delivery fee of 50 cents is imposed on all transactions of \$100 or more with retail deliveries in Minnesota (with some important exceptions).

## New York

- S.B. 5895 – would impose a surcharge of 25 cents on every online delivery sale where delivery terminates within the city of New York. The surcharge would be “collected by the online seller but passed on to the consumer as a separate line item on the customer's receipt.”
- A.B. 6008 – would impose a \$3 additional fee on online delivery transactions terminating in NYC.

## Utah

- Delivery fee considered by the Unified Economic Opportunity Commission (chaired by Gov. Cox) as an option to help fund Utah roads. This could come up as a legislative proposal in 2024.

## Nebraska

- Delivery fee proposals in special session – proposed delivery fee of 27 cents on retail sales of TPP (LB 26)



# QUESTIONS?

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