

**The 97th Annual
Arizona Tax Conference**

**Co-sponsored by the Arizona Department of Revenue and
the Arizona Association of Assessing Officers**

***Trends in State and Local Tax
Including Certain Federal Legislation***

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Today's Agenda

- State of the States
- COST Tax Burden Study
- COST Property Tax Scorecard
- Business Tax Trends
- Trends Towards Independent Tax Tribunals
- Troubling Trends of Taxpayer Disclosure
- Reaching Extraterritorial Income
- Issues Before the SCOTUS
- Future of the Multistate Tax Compact (and Commission)
- Apportionment & Sourcing Trends
- Combined Reporting & Unitary Issues
- The Rush to Tax Services
- Nexus Developments
- Federal Legislation

State of the States: State Fiscal Conditions and Policy Implications

Just a Blip?

Income Tax Receipts Balloon, Deflate

- After 4 years of growth, state tax revenues collectively declined in the 1st quarter of 2014
- Overall state tax revenues decreased by 0.3% in the 1st quarter of 2013
- Preliminary 2nd quarter figures suggest further declines in personal income tax collections, and an overall decline of 0.8% compared to the same quarter of 2013

Fiscal Analysis from Rockefeller Institute of Government, State Revenue Report, August 2014

Performance of State and Local Tax Revenue Streams

- Income tax decline (1.2%) mostly due to the continuing impact of the “fiscal cliff”
 - In California, personal income tax collections declined by \$2 billion, or 11.1%
- Sales tax collections more stable in 2013 but softened significantly in the 1st quarter of 2014 (1.7% growth)
- Property tax growth remains relatively weak, at 2.3% (record was 6.5% in 2nd quarter of 2004)

Fiscal Analysis from Rockefeller Institute of Government, State Revenue Report, August 2014

Quarterly Revenue by Major State Tax

January-March, 2013-2014, Percent Change

	PIT	CIT	Sales	Total
AZ	13%	0.6%	(1.7%)	1.9%
Southwest (AZ,NM,OK,TX)	18.4%	(19.6%)	5.0%	5.9%
CA	(11.1%)	11.9%	2.0%	(4.4%)
U.S.	(1.2%)	1.4%	1.7%	(0.3%)

Fiscal Analysis from Rockefeller Institute of Government, State Revenue Report, August 2014

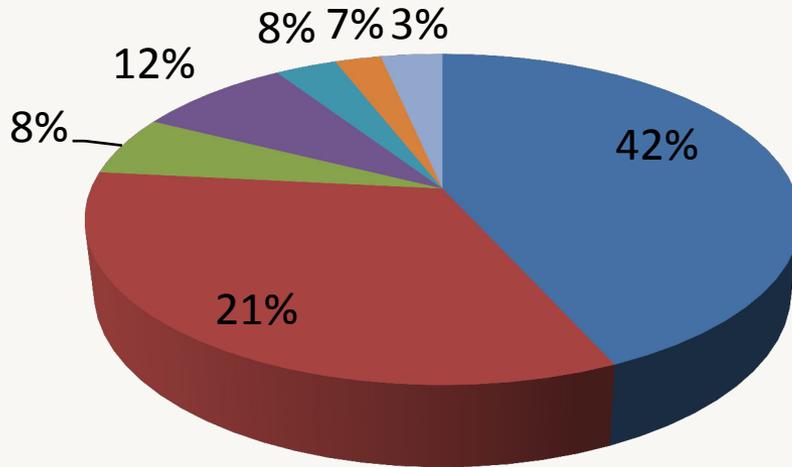
What do Businesses Pay?

- Businesses paid close to **\$671B** in U.S. state and local taxes in FY2013, an increase of 4.3%
- Accounts for **44.9% of all state and local taxes**
 - Businesses paid **50.7%** of all AZ state and local taxes
- The business share nationally has been within 1% of 45% since 2003
- “Tax/benefit ratio” for AZ businesses: 3.4/1 (1.5/1 if 50% of education spending benefits businesses)

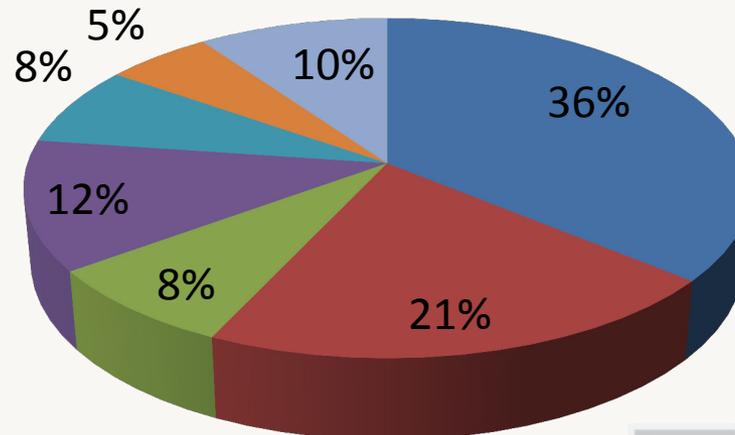
COST/EY Study, Total state and local business taxes: State-by-state estimates for fiscal year 2013, August 2014

FY 2013 Total State & Local Business Taxes – U.S. and Arizona

Airzona



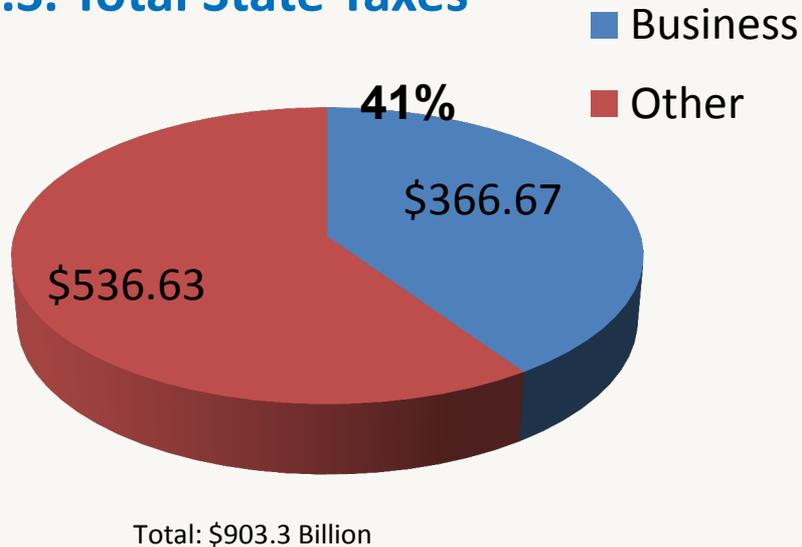
U.S.



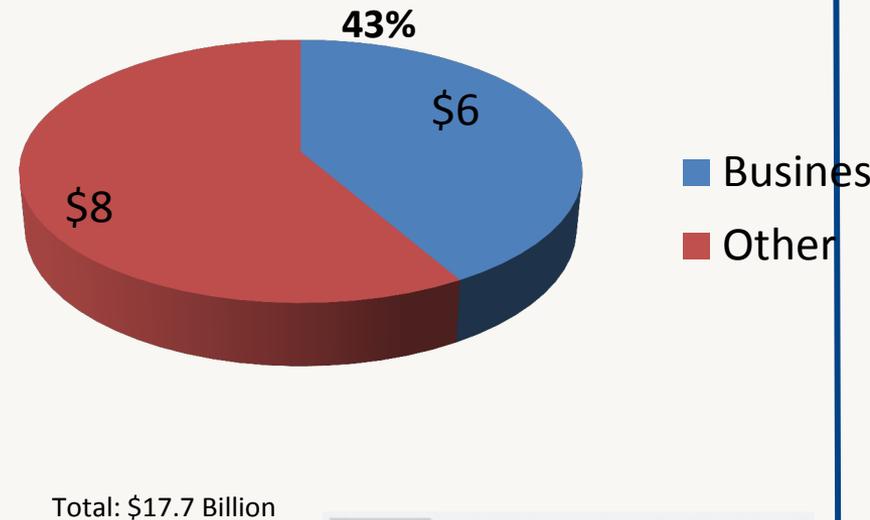
- Property
- Sales
- Corporate Income
- Excise Tax
- Unemployment Insurance
- Individual Income
- License & Other

FY 2013 State Only Taxes: Business v. Total – U.S. and Arizona (Billions)

U.S. Total State Taxes

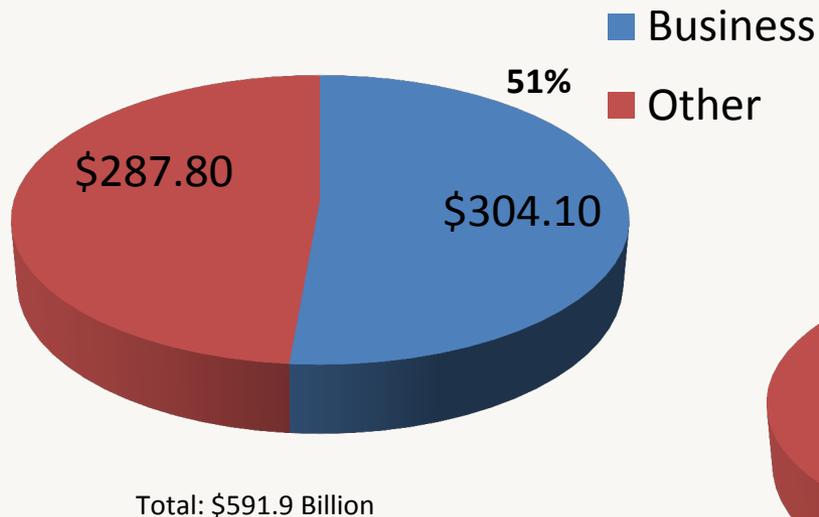


Arizona Total State Taxes

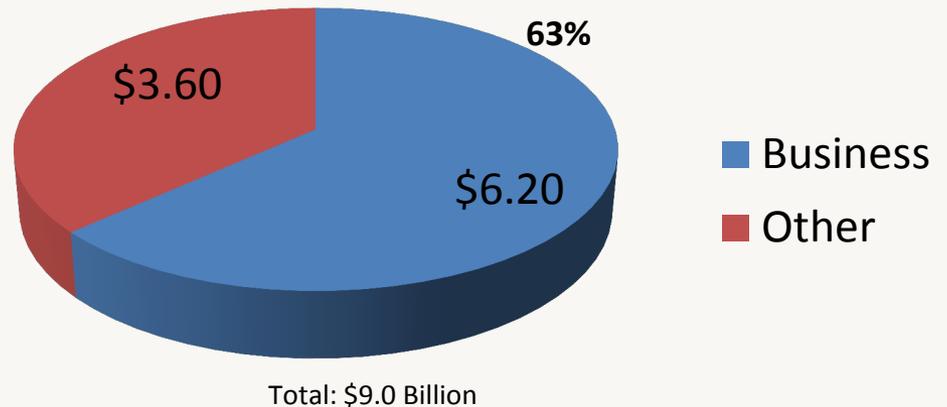


FY 2013 Local Only Taxes: Business v. Total – U.S. and Arizona (Billions)

U.S. Total Local Taxes

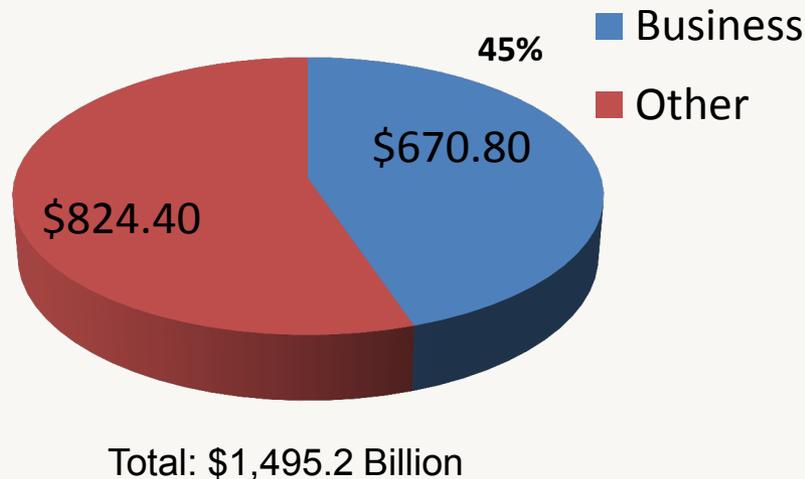


Arizona Local Taxes

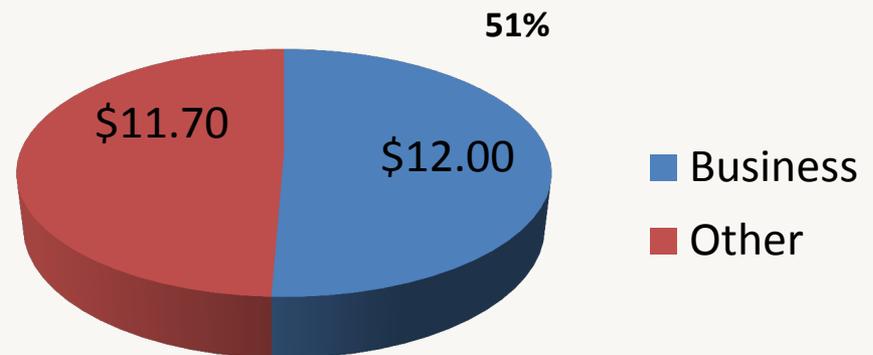


FY 2013 Total State & Local Taxes: Business v. Total – U.S. & Arizona (Billions)

U.S. Total State & Local Taxes

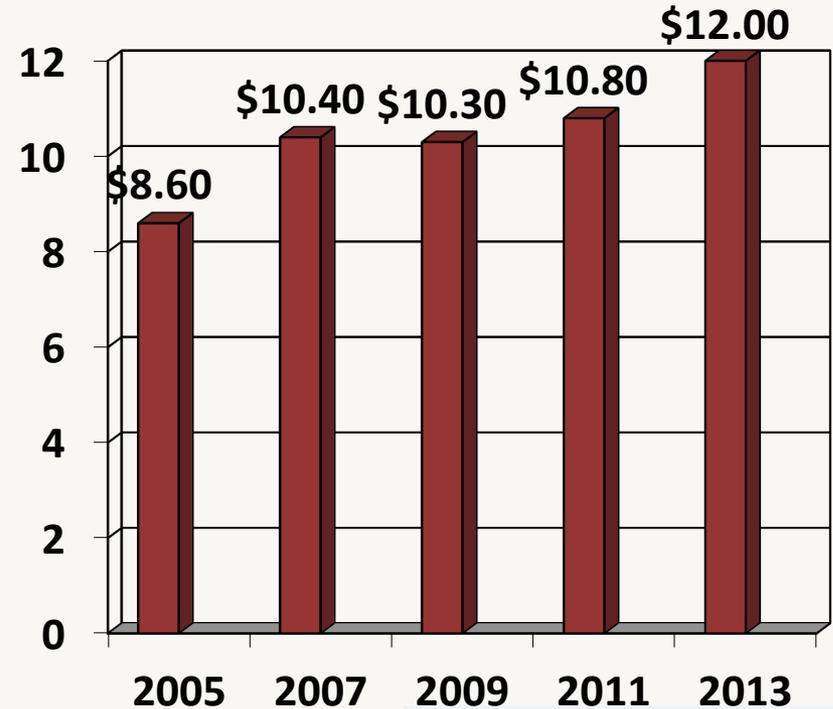
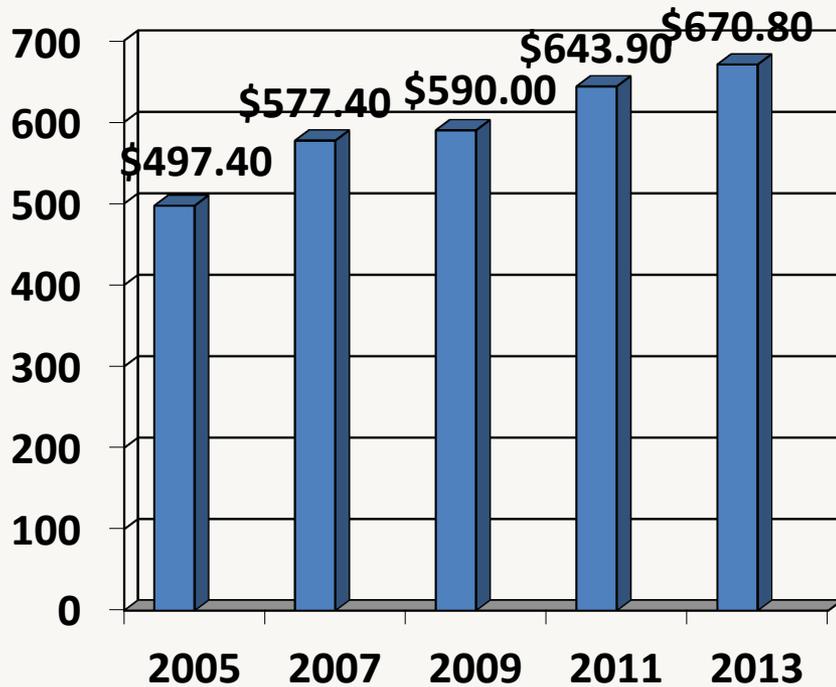


Arizona Total State & Local Taxes

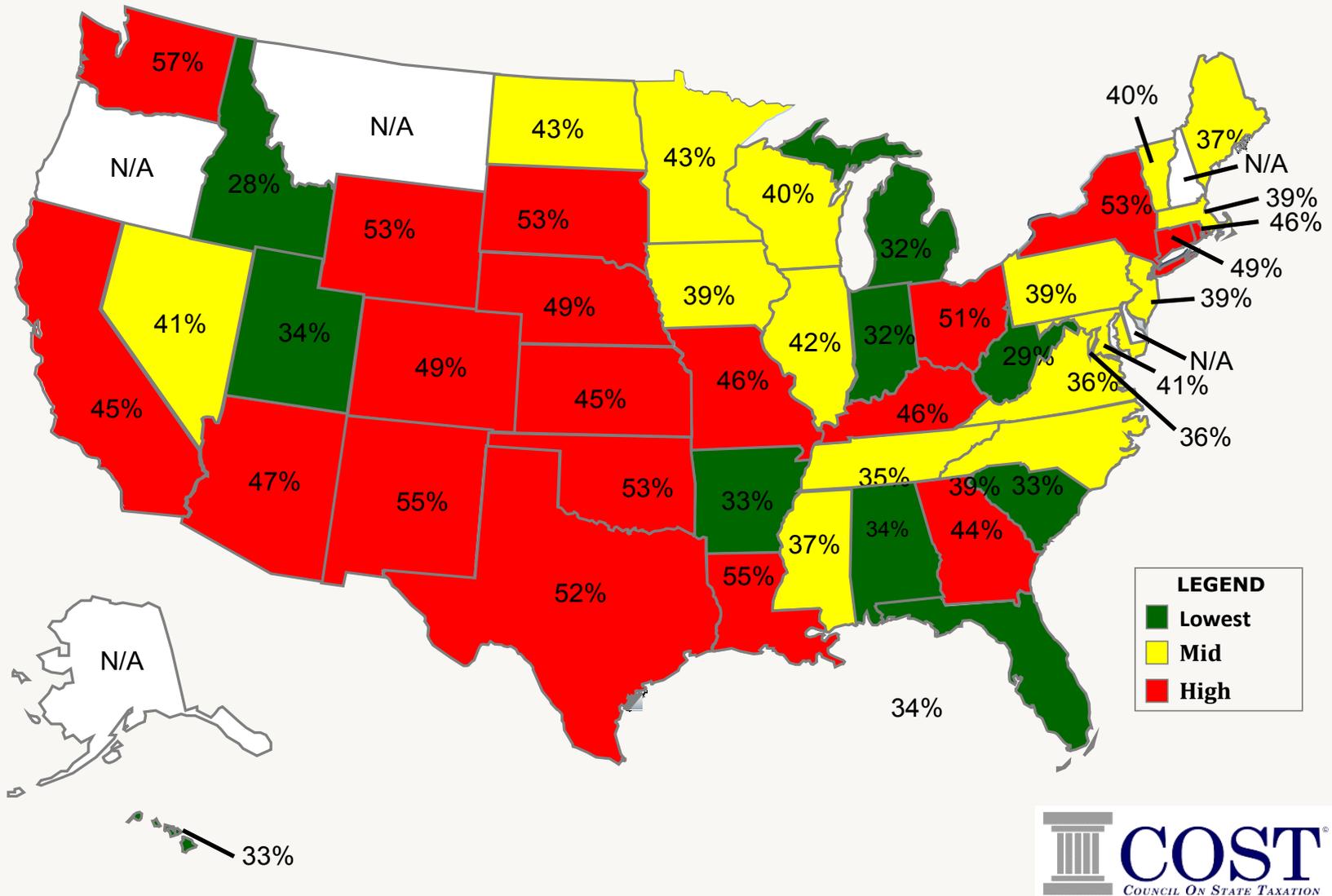


Total: \$26.7 Billion

Total Business Taxes – U.S. and Arizona (Billions)

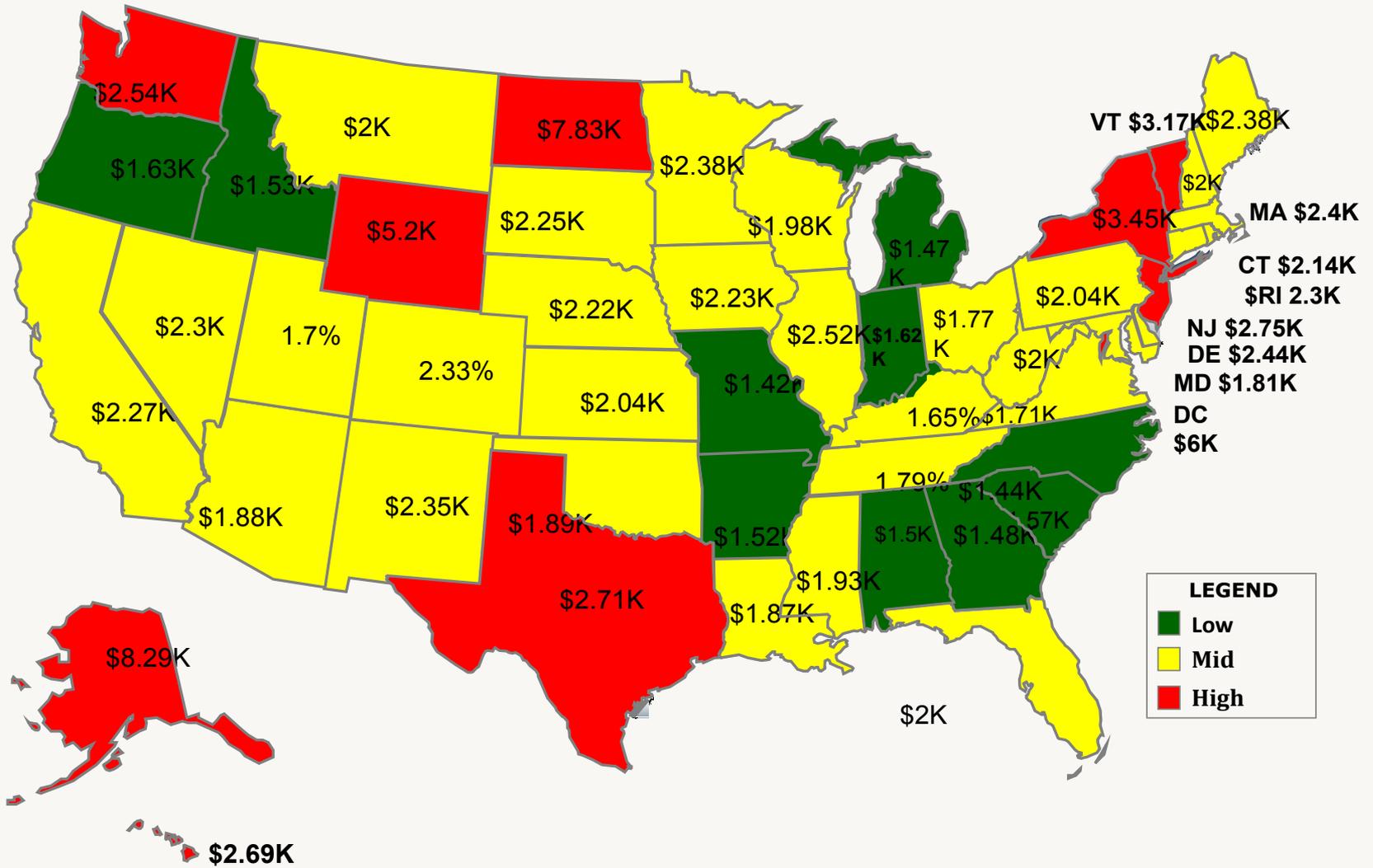


State and Local Sales Taxes Imposed on Business Input Purchases, 2011

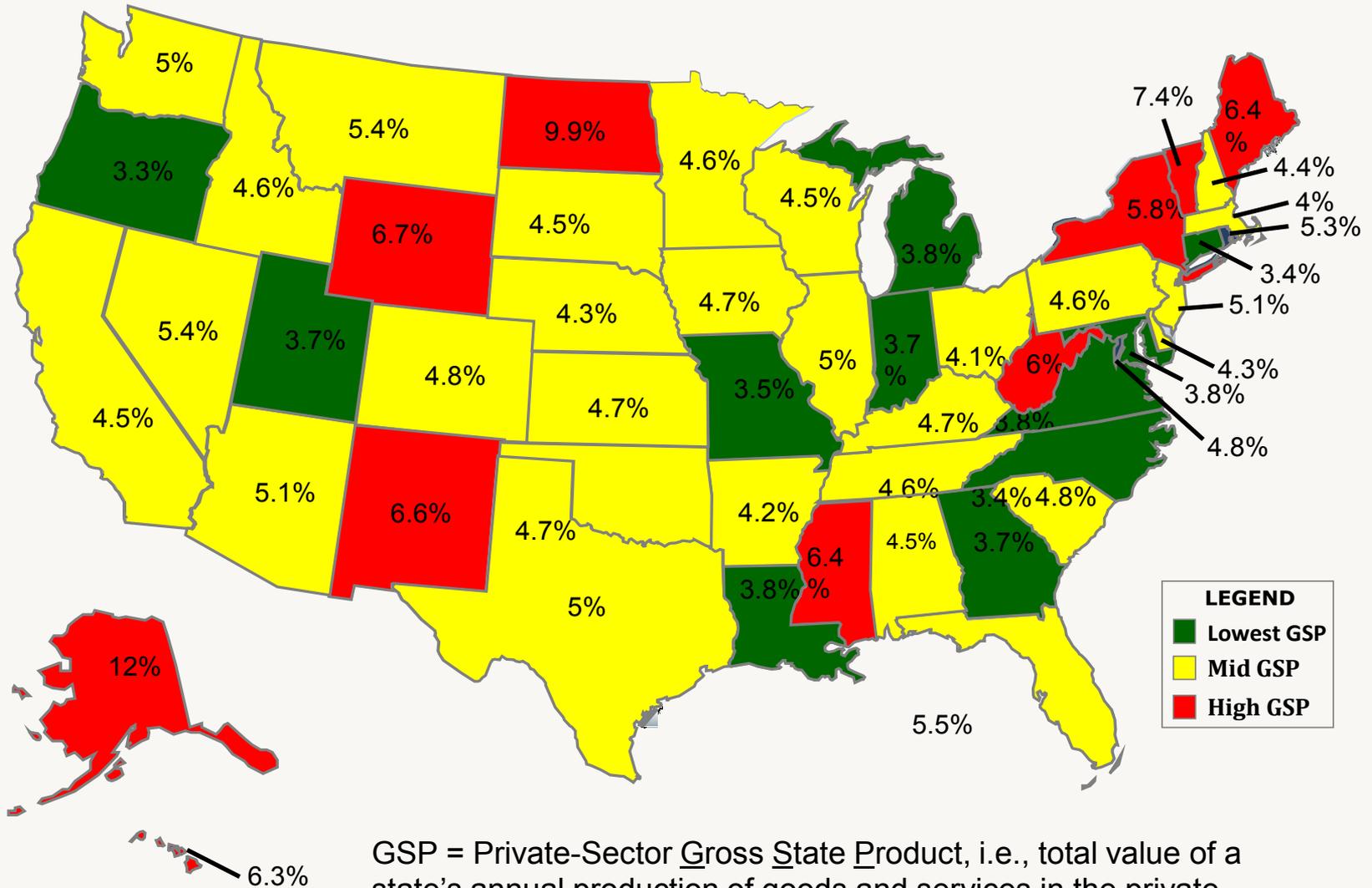


Business Taxes Per Capita

(Population data derived from US Census Bureau - April 2010 Census Data)



Business Taxes As a Share of Private Sector GSP, FY 2013

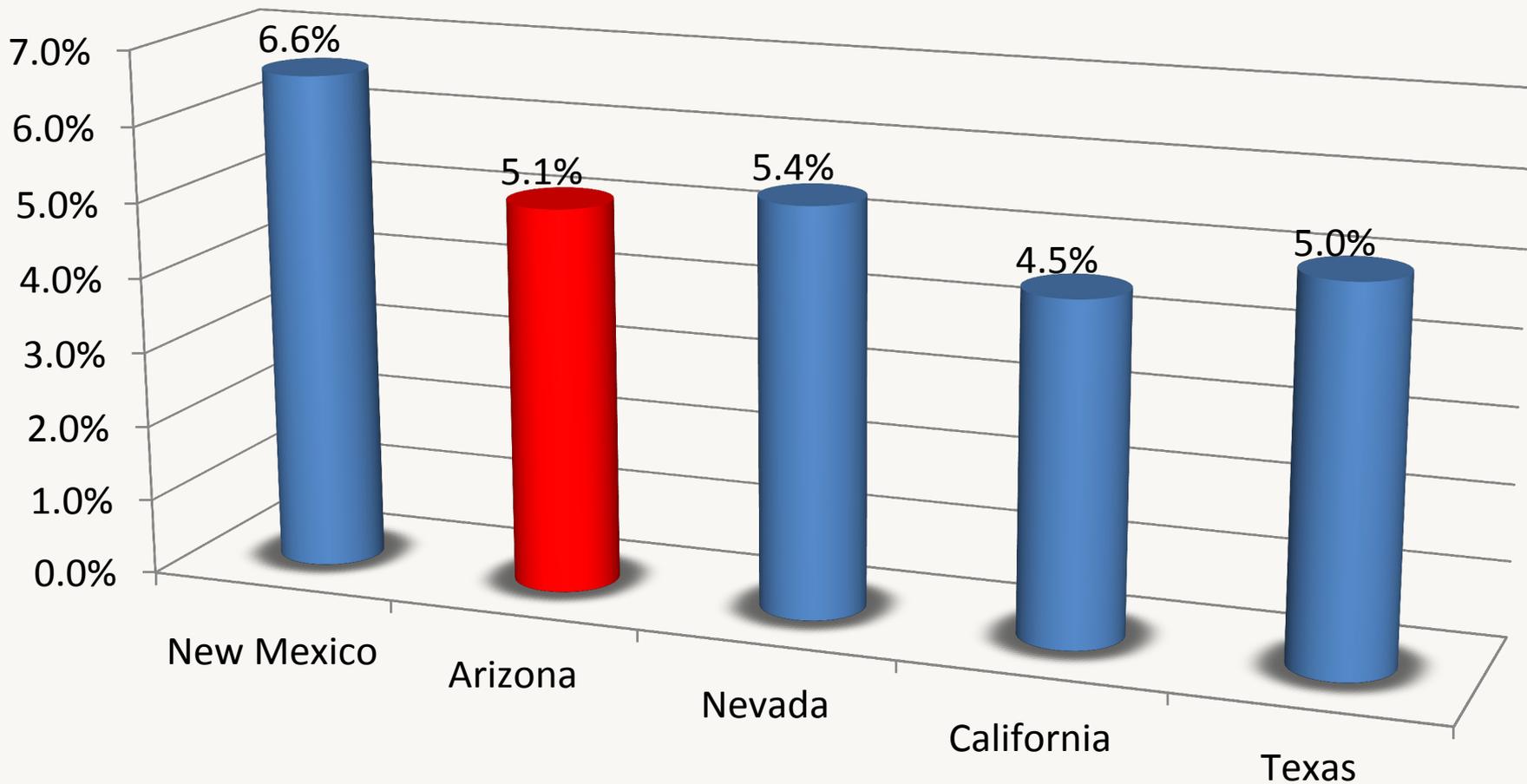


GSP = Private-Sector Gross State Product, i.e., total value of a state's annual production of goods and services in the private sector

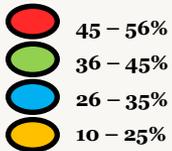


Business Taxes As a Share of Private Sector GSP FY 2013

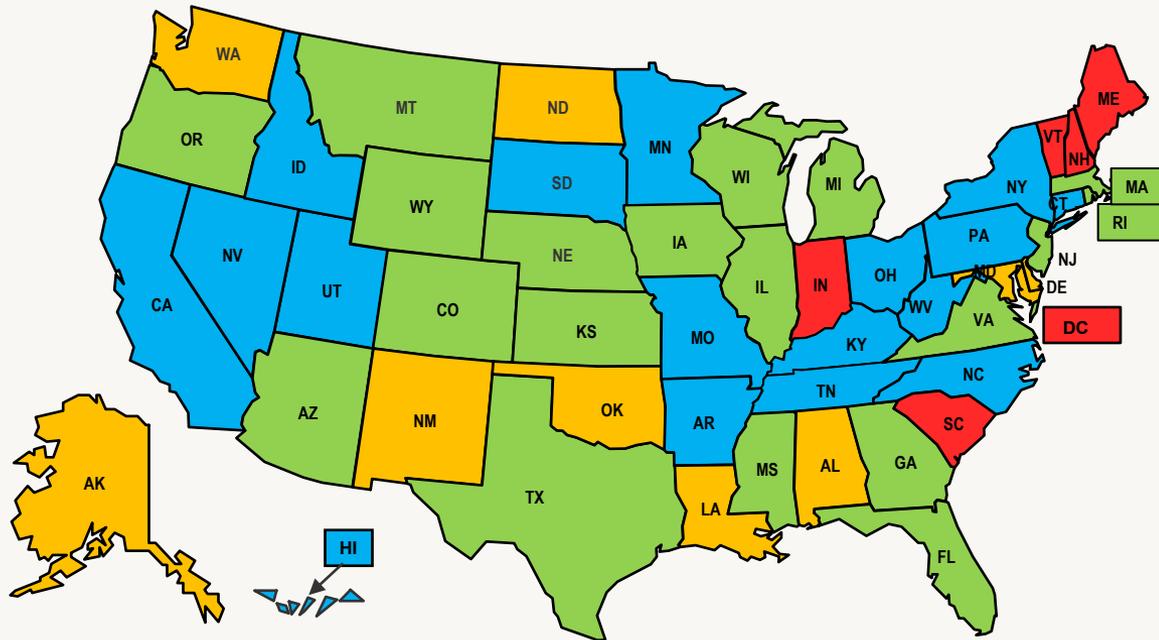
Rates for Region



Property Tax as a Percentage of Total Business Taxes



Source: Total State and Local Business Taxes, State-by-State Estimates for FY12, Ernst & Young LLP and COST, July 2013.



Note: From **FY 2012** E&Y/COST Tax Burden Study Published 7/2013

2014 International Administrative Property Tax Scorecard

COST/IPTI Scorecard

A. Transparency

1. Laws/Regs/Fomrs Accessible on Central Website
2. Clear, concise explanation of the property tax system
3. TP receives Valuation Notice
4. Valuation of Property available in central location

B. Simplicity and Consistency

1. Central Oversight
2. Standardized forms
3. Consistent Due Dates
4. *De minimus* Exclusion
5. Equal Assessment

C. Fairness and Effectiveness

1. Equal Interest Rates
2. 60 Day Appeal
3. Burden of Proof
4. De Novo Appeal
5. Escrow / Deferred Payments

Business Tax Trends

What's Hot: Tax Policy as an Economic Development Tool

- **NY:** Significant corporate changes (Article 32/9A merger, base changes, unitary, SSF/market sourcing, economic nexus), corporate rate relief (A. 8559D/S. 6359D)
- **DC:** SSF, corporate rate relief, limited sales tax base expansion (FY2015 Budget Support Act/B20-849)
- **RI:** SSF, coupled with combined reporting, corporate rate reduction (FY 2015 Budget/H.B. 7133 Sub A)
- **IN:** Extended rate relief, county option for business personal property tax relief (S.B.1)

What's Hot: Tax Policy as an Economic Development Tool

- **MN:** Repeal sales tax on certain B2B (*e.g.*, warehousing/storage, repair/maintenance) (H.F. 1777)
- **MA:** R&D credit expansion (H.B. 4377)
- **CA:** Enacts “new markets” credit (A.B. 1399), expands “GO Biz” tax credit (A.B. 1560) and film tax credit (A.B. 1839)
 - Rejects corporate tax surcharge based on CEO comp. (S.B. 1372)

What's Not: Taxing B2B Sales to Fund Income Tax Relief

- **Louisiana** – Gov. Jindal “parked” his broad-based services tax after significant opposition; enacted budget ultimately relied on tax amnesty, limits on certain tax credit programs.
- **Nebraska** – Gov. Heineman’s broad-based services tax put on hold; study underway.
- **Minnesota** – Gov. Dayton abandoned broad-based sales tax on services proposal. Expanded sales tax to certain repair/maintenance and warehousing/storage services and digital goods.
- **Ohio** – House GOP scaled down Gov. Kasich’s broad-based service tax proposal. The final bill taxes certain digital products, but eschews services tax.
- Other states: **Massachusetts; North Carolina; Maine**

The Rationale for Expanding The Sales Tax Base to Services

- The sales and use tax base is narrow, including only about 25% of all goods and services purchased by households.
- Services represent over 65% of individual spending nationally and are the fastest-growing area of consumption.
- Most countries rely more on consumption taxes as a percentage of total taxes than the United States (at all levels of government).
- Finally, many groups in this country favor consumption taxes over income taxes.

Why Have Proposals To Apply Sales Tax To Services Failed?

- Most of the proposals have been introduced as part of sweeping tax reform – which is often a “tough sell,” even as “replacement” taxes.
- In choosing to tax so many new categories at once, these proposals often garner opposition from widely diverse service industries.
- Some political groups oppose sales tax expansions as “regressive”; others are concerned consumption taxes will raise too much money.
- Many local factors are also at work in individual states.
- The most frequent explanation for failure of the proposals: the disproportionate impact of the proposals on business.

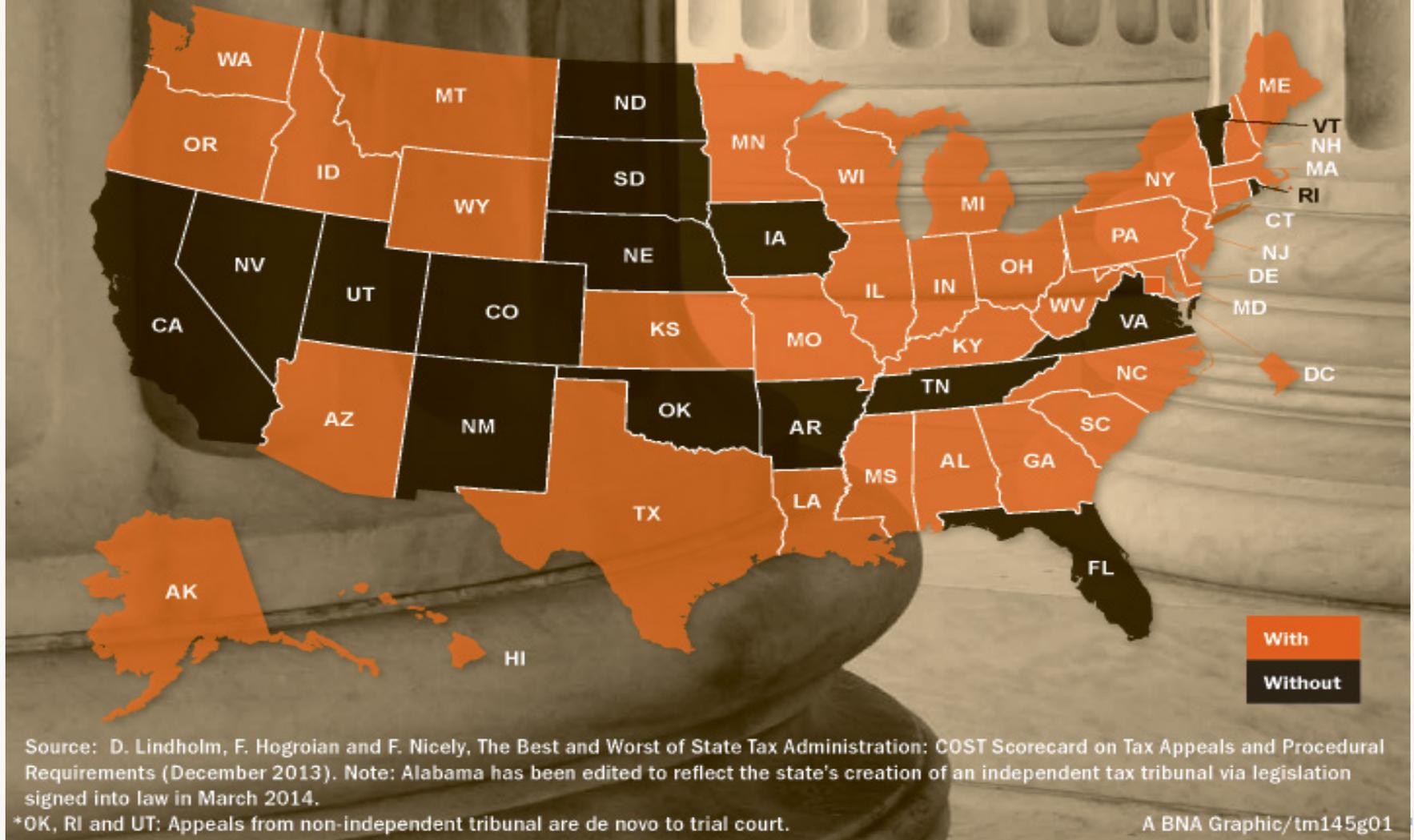
“What’s Wrong With Taxing Business Services?”

- COST/EY Study on Problems with Taxing Business Services: April 4, 2013
 - “Pyramiding” of the tax leads to arbitrary and hidden differences in effective sales tax rates on different goods and services that distort consumer choices;
 - Taxes on intermediate purchasers put companies at a competitive disadvantage and encourages businesses to relocate;
 - Encourages companies to self-provide business services, reducing efficiency and competition;
 - Detrimental impacts on a state’s business tax competitiveness; and
 - Extremely difficult compliance, sourcing and definitional burdens for taxpayers and tax administrators alike.

Trends Towards Independent Tax Tribunals/Administrative Reform

Independent Tax Tribunals

States with Tax Tribunals Independent of State Department of Revenue



Criteria for Independent Tribunal

- Independence
- Trained Tax Judges
- No Prepayment Requirement

A Troubling Trend: Taxpayer Disclosure Proposals

Public Disclosure of Tax Return Information

- Illinois legislation
 - Would require certain publicly traded corporations to file with the Secretary of State statements concerning their income tax liability. Provides that the Secretary of State shall make all information contained in those statements available to the public on an ongoing basis in the form of a searchable database accessible through the Internet.
 - Failed committee vote in 2012 (SB 282); did not pass in 2013/2014 (HB 3627)
 - Chicago proposed ordinance would mimic state proposal (Introduced Nov. 2013)

Public Disclosure of Tax Return Information

- Oregon HB 3161 (2013) - died:
 - Similar to Illinois proposal; would require any corporation doing business in Oregon to file a statement with the Secretary of State's Office disclosing extensive information regarding the corporation's confidential tax information and make that information publicly available.
- Maine LD 1126 (2013) - died:
 - Requires filing of annual tax disclosure statement including gross receipts, cost of good sold, taxable income, apportionment factors, nonbusiness income and NOLs.

Public Disclosure of Taxpayer “Subsidy” Information

- Maryland HB 1086 (2014 – died)
 - Would require information reporting (generally, regarding job creation) by recipients of certain “state subsidies”
 - Broadly drafted to include tax credits and exemptions
 - Amendments narrow scope, exclude S&U/property tax
- New Jersey A. 939 (passed Assembly, 5/22/2014; Senate Committee Hearing, 9/18/2014)
 - Broad definition of “tax expenditures”
 - Requires reporting by all expenditure recipients (formerly limited to “development subsidies”)

Reaching Extraterritorial Income: The New State Craze?

States Identifying “Tax Havens”?

- Under MTC model combined reporting statute, taxpayer members must take into account “the entire income and apportionment factors of any member that is doing business in a tax haven”
- States identifying “tax havens” by statutory list: Montana, Oregon
- States identifying “tax haven” characteristics: Alaska, D.C., Rhode Island, West Virginia
- Legislation vetoed in Maine this year; proposals offered in Massachusetts, West Virginia, Wisconsin

“BEPS” at the State Level?

- Renewed interest in worldwide combined reporting
- MTC transfer pricing project
 - Participating states include AL, FL, GA, HI, IA, KY, NJ, NC, PA, and DC
 - Potential role of MTC in transfer pricing audits
 - Continued use of third party auditors
- Inversions: the next big thing?
 - NJ proposal (S. 2361/A. 3678) would bar the State from contracting with “an inverted domestic corporation” for the purchase of goods or services

A Review of State Tax Cases Brought Before the U.S. Supreme Court

SALT Cases Accepted by SCOTUS

- ***Comptroller of Maryland v. Wynne*** – Docket 13-485, cert. granted 5/27/14 (from MD Court of Appeals, 431 Md. 147)
- **Question Presented:** Does the U.S. Constitution prohibit a state from taxing all the income of its residents-whenever earned-by mandating a credit for taxes paid on income earned in other states?
 - Can individual residents of a state be taxed on their full income without the state apportioning or providing credit for taxes paid to other states?
 - How far does this apply – sales/use taxes, piggyback and non-piggyback local income taxes, etc.?

SALT Cases Accepted by SCOTUS (cont'd)

- ***Alabama DOR v. CSX*** – Docket 13-553, cert. granted 7/1/2014 (from 11th Cir. Ct. of Appeals, 720 F.3d 863)
 - Several states impose a sales/use tax if motor fuel is not subject to the state's motor fuel excise tax. (Some states impose both!)
- **Questions Presented:**
 - Does a state discriminate against a rail carrier in violation of the 4-R Act when the state generally requires businesses to pay a sales/use tax, but grants exemptions from the tax to competitors of the railroads?
 - In resolving a claim of unlawful tax discrimination under 49 U.S.C. § 11501(b)(4), should a court consider other aspects of the State's tax scheme rather than focusing solely on the challenged tax provision?

SALT Cases Accepted by SCOTUS (cont'd)

DMA v. CO DOR – Docket 13-1032, cert. granted 7/1/2014 (from 10th Cir. Ct. of Appeals, 735 F.3d 904)

- **Question Presented:** Does the TIA bar federal court jurisdiction over a suit brought by non-taxpayers to enjoin the informational notice and reporting requirements of a state law that neither imposes a tax, nor requires the collection of a tax, but serves only as a secondary aspect of state tax administration?
 - Colorado's State District Court issued a preliminary injunction (2/18/14) based on the statute discriminating against interstate commerce (using *Pike v. Bruce Church*, 397 U.S. 137 (1970)); permanent injunction granted 6/2/2014 based on finding that the statute was discriminatory (*Pike* held not relevant because statute was discriminatory).

Crystal Ball – Potential SALT Cases at SCOTUS

MTC “Compact” – Cases pending on whether equally-weighted three-factor election is mandatory (binding “compact”) for MTC Compact Member States or discretionary (AK, CA, MI, MN, OR, TX)

Tax Credits – Can a state provide direct relief from the imposition of an income tax for investment in the state or must it be done via a separate credit mechanism? *CDR v. Oklahoma Tax Comm.*

Crystal Ball – Potential SALT Cases at SCOTUS

Cure for Unconstitutional Tax – NV imposes a sales/use tax on coal used to generate electricity that was extracted outside of NV; however, coal extracted in the state is subject to an alternative minerals tax (not a complementary tax – a tax imposed pursuant to NV’s Constitution).

NV District Court held tax was unconstitutional and struck the exemption for coal extracted within the state.

What is the cure/remedy (*McKesson Corp.*, 496 U.S. 18)? No commercial grade coal is extracted in NV. Are the electric generation companies entitled to a sales/use tax refund? *NV Energy v. NV Dep’t of Taxation*.

Crystal Ball – Potential SALT Cases at SCOTUS

MTC Factor Nexus – Sales Factor Nexus - Ohio has case pending before the Ohio Supreme on its Commercial Activity Tax (GRT) – *LL Bean v. Testa*

Question: Is \$500,000 in Sales to customers located in a state sufficient to create substantial nexus?

Commerce Clause

What about the Due Process Clause? Can a dollar threshold constitute purposefully directed activity?

The Future of the MTC

What Does the MTC Authorize?

- Formed in 1965 in response to federal legislation “threatening” state taxing sovereignty
- Article IV adopts three-factor UDITPA apportionment as the centerpiece of the Compact.
- Article III provides multistate taxpayers with an election to utilize the three-factor UDITPA apportionment formula if state varies.
- Adopts model statutes and regulations to promote uniformity among states. Article VII of the Compact.
- Multistate Taxpayer Option for ADR on Apportionment Among Members? Article IX
- Operates a multistate audit program. Article VIII of the Compact.
- Other Commission programs
 - Operate a national nexus program including a multistate voluntary disclosure program.
 - Write amicus briefs

The Multistate Tax Compact Litigation: Case Status

- ***Gillette v. FTB*** – Pending Cal Supreme Court oral argument. Court has 90 days from oral argument to opine. Final briefs filed Jan 22, 2014.
- ***IBM v. Michigan*** – MI Supreme Court Ruled for Taxpayer, Treasury has filed motion for rehearing which is pending.
- ***Graphic Packaging*** – Texas – Case headed to Court of Appeal. Texas is denying all claims.
- ***HealthNet*** – Oregon – July 22nd oral arguments at the Tax Court on summary judgment motion. Case will go directly from the Tax Court to the Oregon Supreme Court.
- ***Kimberly Clark*** – Minnesota – filed in December. Expect summary judgment motions this year. Minnesota is denying all claims.

Repealing the MTC (at least parts of it)

- California repealed the Compact.
- South Dakota SB 239 (signed Feb. 28, 2013)
- Utah SB 247 (signed Apr. 1, 2013)
 - Repeals the MTC and temporarily reenacts the Compact for one year, without Article III election provision and the Article IV apportionment formula.
- Minnesota HF 677 (signed May 23, 2013)
 - Repeals MTC but retains MTC audits.
- Oregon SB 307 (signed June 13, 2013)
 - Repeals MTC and reenacts without Article III election provision or Article IV apportionment formula.
- DC Bill 20-199 (signed Aug. 1, 2013)
 - Repeals MTC and reenacts without Article III election provision or Article IV apportionment formula.
- Michigan SB 156 (signed Sept. 11, 2014)
 - Retroactively Expresses intent of 2011 Legislature to Repeal Compact Retroactively to 2008.

Evolution of State Apportionment and Sourcing Provisions

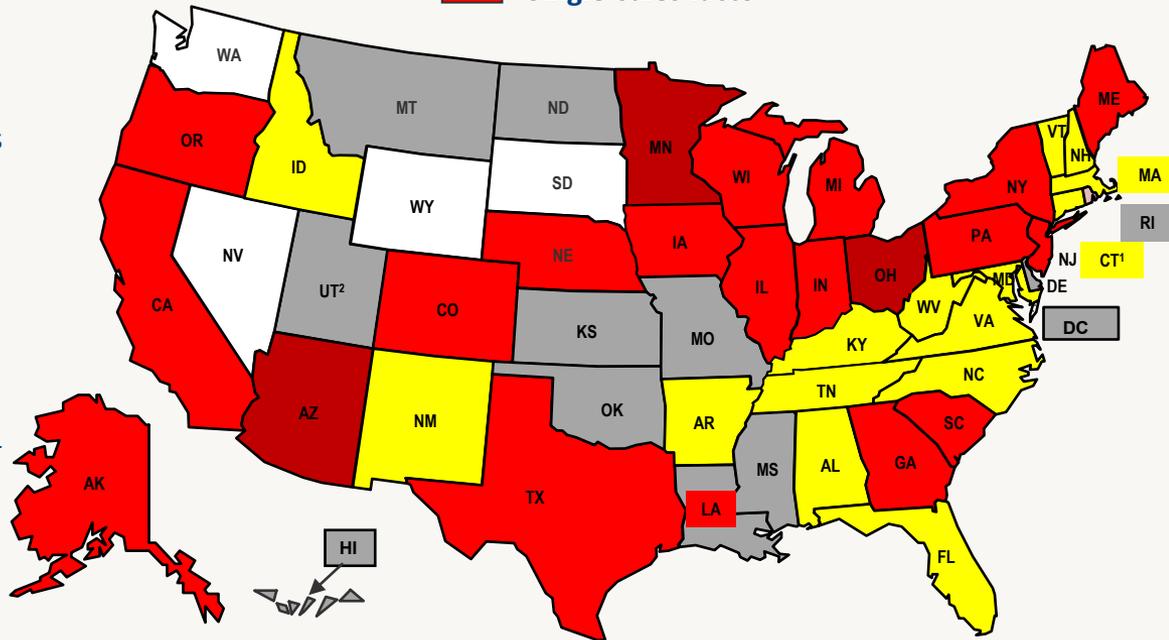
Apportionment Formulas - 2014

Key

- Equally weighted three-factor formula
- Double-weighted sales factor
- Triple or greater weighted sales factor
- Single-sales factor

¹Corporations that derive their net income (or losses) from the manufacture, sale or use of tangible personal or real property use a 3-factor formula with a double-weighted receipts factor. All other businesses use single-sales factor.

²Taxpayers have the option of electing to use an equally-weighted 3-factor formula or double-weighted sales factor formula



UDITPA Rewrite

- In light of the overwhelming lack of uniformity among the states and the 50+ years since the original drafting of UDITPA, the Multistate Tax Commission is working on a project to revamp five provisions of UDITPA:
 1. The definition of “sales”;
 2. The definition of “business income”;
 3. Factor weighting;
 4. Sales factor numerator for sourcing services and intangibles;
 5. Equitable apportionment.

UDITPA Rewrite: The Battle over Section 18

Alternative Apportionment

- The MTC's proposal modifies the equitable apportionment provision (Section 18) to allow states to establish regulations for taxpayers engaged in certain industries or activities.
- The Hearing Officer, Professor Richard Pomp recommended several changes to make Section 18 more even-handed for both states and taxpayers:
 - that the burden-of-proof be placed on the party invoking alternative apportionment.
 - that no penalties be imposed if the taxpayer files a return consistent with the statutory method.
 - that there be no retroactive revocation of alternative apportionment previously agreed to for a taxpayer.
 - that the government be required to adopt regulations before applying alternative apportionment to an industry or to a transaction or activity “of general applicability.”
- All of the Hearing Officer's recommendations were rejected by the MTC's Uniformity Committee. The Commission's Executive Committee will consider the Uniformity Committee's recommendations in May, 2014.

The UDITPA Rewrite: Is It Too Late?

- UDITPA is 56 years old and has become outdated.
- States have been moving away from the traditional three factor formula for decades – principally to promote economic development and favor in-state businesses.
 - Factor weighting
 - Market based sourcing
- Why are so few MTC proposals adopted by the states?
 - Extremely low adoption rate over the last 15 years.
 - Relatively few exceptions (special industry regulations; factor presence nexus).
 - The general absence of taxpayer involvement and support.
 - The lack of legislative involvement and support.

Corporate Apportionment: Alternative Apportionment

- *Equifax, Inc. v. Mississippi DOR* (Jun. 20, 2013), *rehearing denied* (Miss. Nov. 21, 2013), *cert. applied for* (U.S. Feb. 19, 2014).
 - The Mississippi Supreme Court held that the taxpayer bears the burden to prove that an alternative apportionment method imposed by the State is arbitrary and unreasonable
 - Granted great deference to DOR decisions on appeal (arbitrary & capricious standard)
 - Allowed imposition of penalties despite statutory compliance
- *CarMax Auto Superstores West Coast, Inc. v. South Carolina Dep't of Revenue*, No. 4953 (S.C. Ct. App. Mar. 14, 2012), *cert. granted* (S.C. Aug. 29, 2013) (pending before SC Supreme Court)
 - The South Carolina Court of Appeals held that a proponent of an alternative apportionment formula must prove that (1) the statutory apportionment method did not fairly represent a taxpayer's activities in the state; and (2) the proponent's proposed alternative apportionment method was more reasonable than any competing method.)

Combined Reporting & Unitary Issues

Combined Reporting Consideration and Adoption

As of 18 July 2013

¹ NY state and city requires combined reporting when there are substantial intercorporate transactions

² DC combined reporting effective for tax years beginning after 31 December 2010

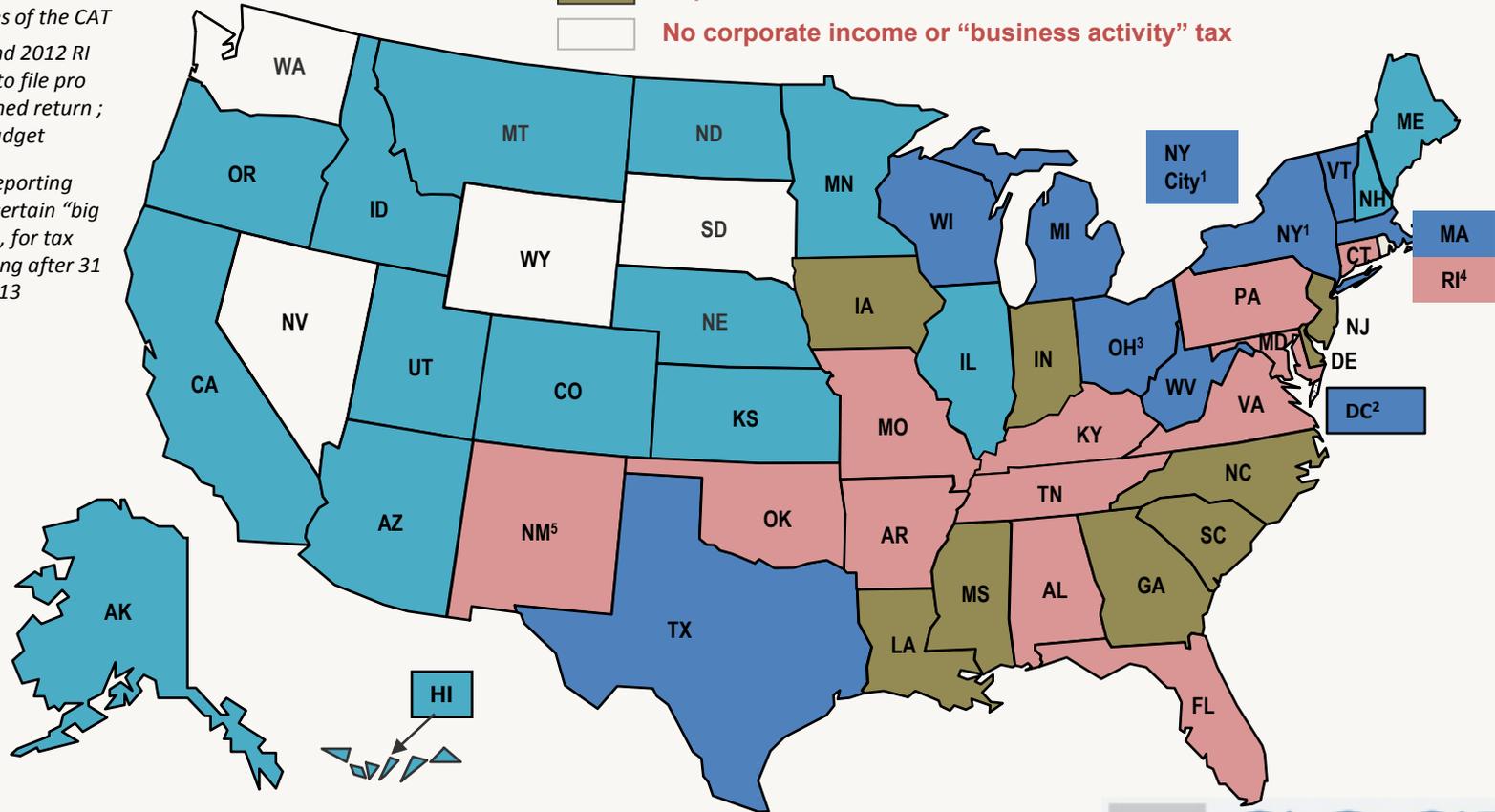
³ For purposes of the CAT

⁴ For 2011 and 2012 RI required TPs to file pro forma combined return ; CR in 2014 budget

⁵ Combined reporting required for certain "big box" retailers, for tax years beginning after 31 December 2013

Key

- Combined reporting/consolidated return required prior to 2004
- Combined reporting/consolidated return adopted for 2004 or later
- Combined reporting legislation proposed and rejected in 2012/2013
- Separate return state
- No corporate income or "business activity" tax



Unitary

- *Tesoro Corp v. Alaska, DOR*, 312 P.3d 830 (Alaska, 2013)
 - Petition for Writ of Certiorari filed February 24, 2014
 - Did the Alaska Supreme Court contravene Supreme Court precedents when it held that two companies owned by a common parent can be functionally integrated and thus unitary even when they are determined not to be either vertically or horizontally integrated?
 - Did the Alaska Supreme Court err in requiring “actual injury” to invoke the internal-consistency requirement?
 - The internal-consistency requirement protects interstate commerce and obliges a state to structure its tax “so that if every State were to impose an identical tax, no multiple taxation would result.” *Armco Inc. v. Hardesty*, 467 U.S. 638 (1984). The Supreme Court therefore has never required proof that the taxpayer challenging a scheme as internally inconsistent has suffered an “actual discriminatory impact” in the form of a higher tax burden. *Goldberg v. Sweet*, 488 U.S. 252, 261 (1989).

Nexus Developments

Unitary Nexus Does Not Exist

- *Gore Enterprise Holdings, Inc. v. Comptroller of the Treasury* (Md. Ct. App Mar. 24, 2014)
 - The Maryland Court of Appeals ruled that two out-of-state subsidiaries had Maryland nexus as they did not have economic substance as separate business entities apart from their parent that did business in Maryland.
 - **The court clarified that entities engaged in a unitary business did not confer nexus** on the out-of-state subsidiaries, but was merely a factor to consider in determining whether the entities had substance.
 - The court held also that it was proper to apply the parent's entire apportionment factor (i.e., property, payroll and sales factors) to the subsidiaries' incomes.

Click-Through Sales & Use Tax Nexus

- *Amazon.com, LLC v. New York Dep't of Taxation and Finance; Overstock.com, Inc. v. New York Dep't of Taxation and Finance*, 12013 N.Y. Lexis 542 (N.Y. Ct. App. Mar. 28, 2013)
 - New York Court of Appeals upheld the constitutionality of New York's click-through nexus law
 - Discretionary appeal to U.S. Supreme Court denied on Cyber-Monday
- *Performance Marketing Assn., Inc. v. Hamer.*, Dkt. No. 114496 (Ill. Oct. 18, 2013)
 - The Illinois Supreme Court upheld an Illinois circuit court decision and determined that the Illinois' click-through nexus statute was preempted by federal law.

“Click-Through” Nexus

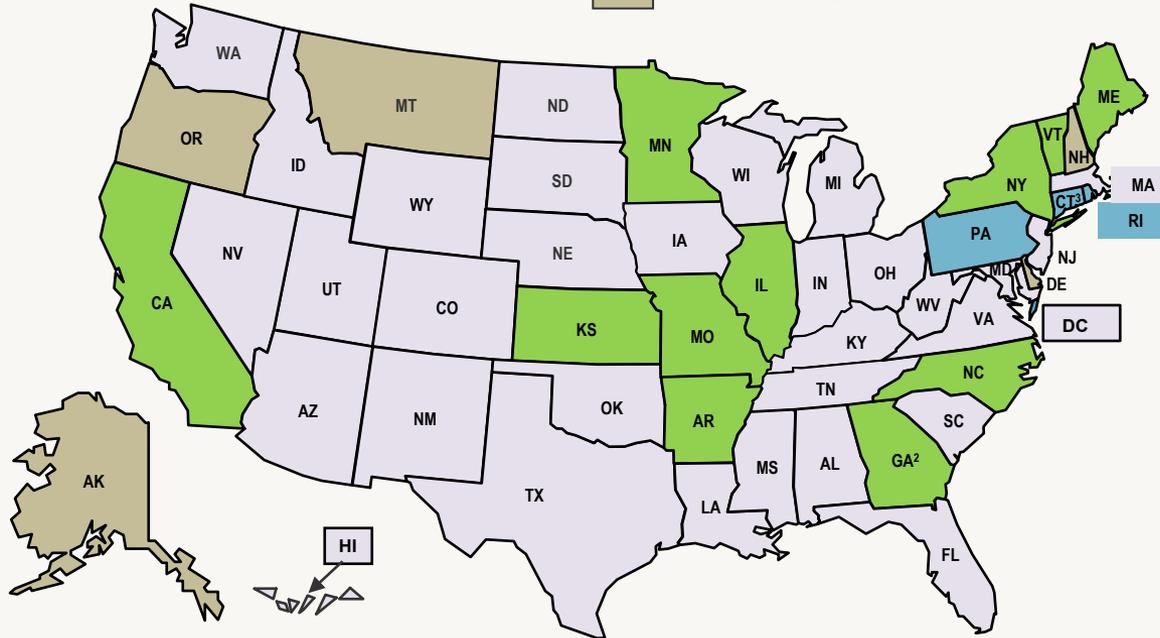
¹The corporation makes remote sales of tangible personal property to residents in your state from outside the state via a website and enters into an agreement with a resident of your state in which the corporation pays commissions or fees for referrals to the corporation’s website.

²Gross sales must exceed \$50,000 during the preceding 12 months.

³Gross sales must exceed \$2,000 during the preceding 12 months.

Key

-  State has Click-Through Nexus provision, requires less than \$10,000 in sales¹
-  State has Click-Through Nexus Provision, requires \$10,000 or more in sales
-  No Click-Through Nexus provision adopted
-  State does not impose a sales or use tax



Use Tax Reporting

- **Colorado** – customer notice and 1099-like annual notice to state and customer
 - *DMA Federal Case* – Court of Appeals dismissed case on Aug. 21, 2013, based on the federal tax injunction act; *en banc* hearing denied on Oct. 1, 2013; review requested by the U.S. Supreme Court.
 - *DMA Colorado Case* – Colorado District Court granted DMA preliminary injunction Feb. 18, 2014, stopping implementation of state’s notification/reporting requirement until trial has been held.

Economic Nexus – Are Quantitative Thresholds Constitutional?

- *L.L. Bean, Inc. v. Levin*, No. 2010-2853 (Ohio Bd. Tax App. Mar. 7, 2014)
 - The Ohio Board of Tax Appeals sustained the Department of Taxation’s assessment of L.L. Bean for the commercial activity tax based on the statutory bright-line presence test (taxable gross receipts of at least five hundred thousand dollars), even though L.L. Bean had no physical presence in Ohio.
- California Corporation Franchise Tax – Eff. January, 2011
 - A taxpayer is “doing business” in the state if:
 - Sales in state exceed the lesser of \$500,000 or 25% of the taxpayer’s total sales;
 - Property in state exceed the lesser of \$50,000 or 25% of the taxpayer’s total property; or
 - Sales in state exceed the lesser of \$50,000 or 25% of the taxpayer’s total payroll.

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- Do the U.S. Supreme Court’s “continuous and systematic” (*Goodyear Dunlop*, 131 S.Ct. 2846 (2011)) and “purposefully” directed activity (*J. McIntyre Machinery*, 131 S.Ct. 2780 (2011)) requirements allow for only a quantitative threshold?

Federal Legislation

Mobile Workforce State Income Tax Simplification Act of 2013

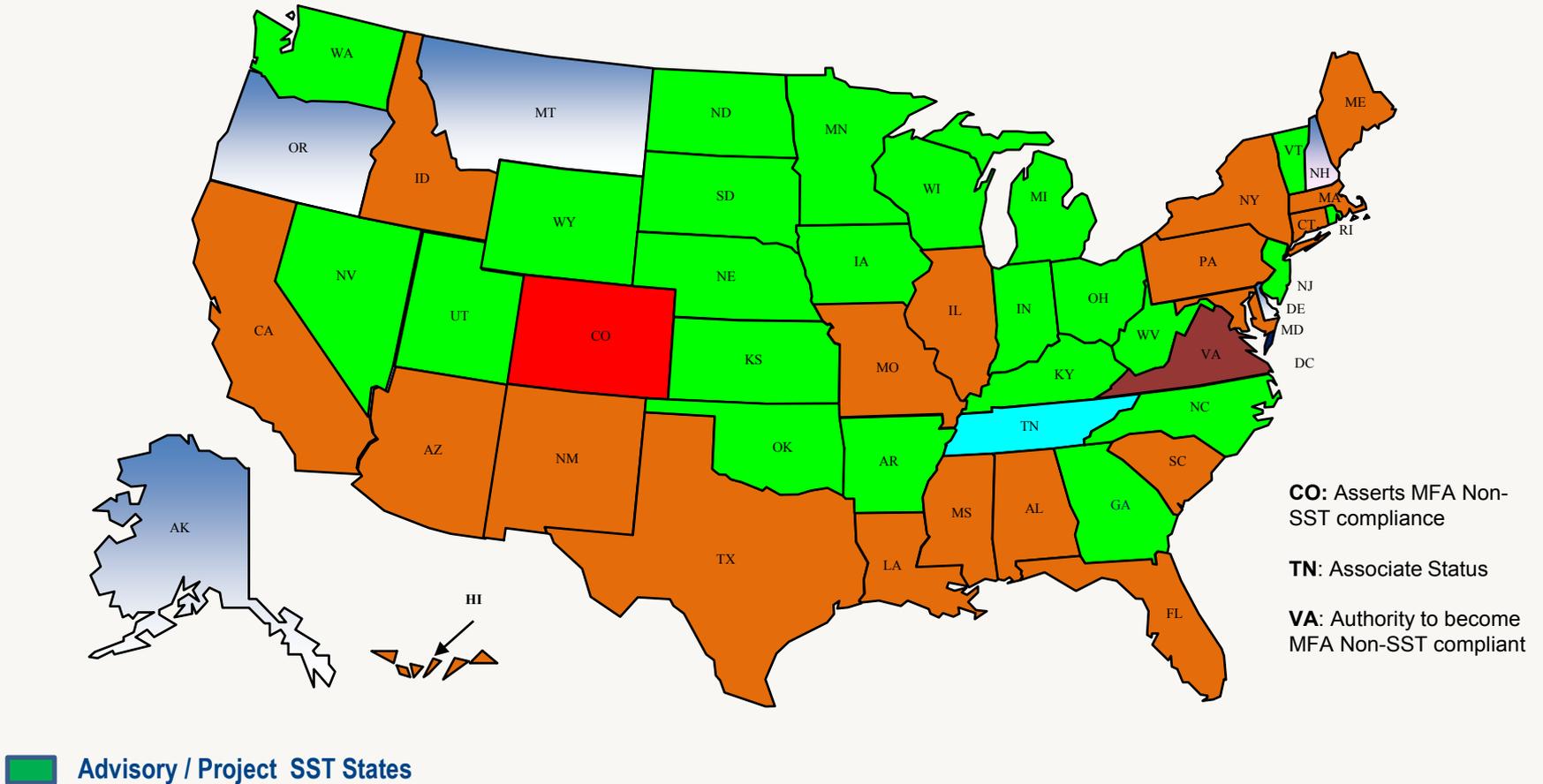
- H.R. 1129 (34 sponsors) & S. 1645 (14 sponsors)
- On March 13, 2013, Rep. Howard Coble (R-NC) and Rep. Hank Johnson (D-GA) reintroduced legislation identical to that which passed the full U.S. House in May, 2012
- On November 4, Sen. Thune (R-SD) and Sen. Brown (D-OH) introduced legislation in the Senate.
- In general, this bill protects nonresident employees (and employers) from a state's income tax if a person works in the state less than 30 days.

Marketplace Fairness Act

- Various federal legislation (S. 743; S. 336; HR 684) introduced addressing issue of sales tax collection on remote sales transacted via the internet
- Senate passed S.743 on May 6, 2013 by vote of 69 to 27
- House Judiciary Committee hearing held in March 2014
- S.743 provides two alternatives for states that affirmatively choose to exercise such authority:
 - (1) SSUTA member states - So long as SSUTA contains minimum simplification requirements and the state publishes its intent to collect tax with 180 days notice, or
 - (2) Non-SSUTA states – Required to enact legislation satisfying the minimum simplification requirement; authority commences no earlier than 6 months after enactment starting on the first day of a calendar quarter.

Streamlined Sales Tax Status

Streamlined Sales Tax Governing Board State Membership
as of 2-1-14



MFA: Some Issues

- Different levels of simplification between SSUTA and non-SSUTA states.
- MFA applies only to remote sellers.
- Who will police compliance?
- Retains nexus debate over whether a person is a remote seller.
- What “free” computer software do the states have to provide?
- Is there enough time – 1/3 of Senate and 100% of the House is up for reelection 11/2014.
- Possible Due Process challenges.

Other Federal Legislation

- Permanent Internet Tax Freedom Act of 2013, H.R. 434 & S. 31, introduced 1/2013
- Digital Goods and Services Tax Fairness Act of 2013, Introduced 7/25/2013, S. 1364
- Business Activity Tax Simplification Act, H.R. 2992 (“BATSA”)



Questions?

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