



2023 SelectUSA Investment Summit

UNDERSTANDING THE ROLE OF U.S. STATE AND LOCAL TAXES IN THE INVESTMENT DECISION

Moderator: Jay Biggins

Principal

Biggins Lacy Shapiro & Company, LLC

Princeton, NJ

Speakers:

Douglas Lindholm

President & Executive Director

Council On State Taxation (COST)

Washington, DC

Jeff Glickman

Partner & SALT Leader

Aprio

Atlanta, GA

Thomas Lind

Principal, Technology

CliftonLarsonAllen LLP

Tampa, FL

US Site Selection Process

Why we are here to talk about State & Local taxes: Everyone here is either seeking a new location to open or expand a business, or an EDO wanting to attract that business to their state... State & Local Taxes (aka “SALT”) is a complex and often under-estimated element in the decision where to locate.

Location Analysis & Decision Process:

- 1) **Analysis Phase:** Gather data on numerous locations, evaluating all aspects of the decision, including:
 - Access to markets - Logistics
 - Access to labor/availability of skilled workforce
 - Infrastructure requirements and availability (power, water/sewer)
 - Time-to-market
 - Costs of living & operations
 - Tax climate and tax costs, including tax credits and incentives, tax compliance, and stability of tax system
- 2) **Action Phase:** Narrow the candidate locations to the “shortlist” – the 3-5 best sites, where all key variables are favorable and relatively equal, and the negotiate terms:
 - Engage state economic development agencies – Request for Proposals
 - Synchronize with real estate procurement
 - Be prepared to negotiate everything, with tax incentives and other tax considerations paramount

Credits & Incentives

Most states provide tax credits and/or other incentives to businesses to encourage them to locate in the state (or in certain areas within the state) to create jobs and invest in the tax base.

- Monetary Grants
 - Income Tax Credits / Holidays
 - Property Tax Rebates / Abatements
 - Sales & Use Tax Exemptions
 - Job Creation and Retention Benefits
 - Environmental Tax Credits or Grants
 - Training Programs
 - R&D Tax Credits
 - Low Interest Rate Loans
 - Free or Discounted Property
 - Expedited Permitting and Approvals
 - Incentives for renewable energy and “green buildings”
- Some tax credits are “statutory” – businesses meeting employment or investment conditions can claim benefits “as of right.”
 - Other incentives, including cash grants, are “discretionary” – requiring negotiation and compliance with agreed-upon job and/or investment conditions.



Overview:

Understanding the U.S. State and Local Tax System

#SelectUSASummit



Our Unique Federal System

- **U.S. Constitution**
 - States formed the federal (i.e., U.S.) government and crafted and adopted the Constitution
 - Assigns powers and duties to the various branches of the federal government,
 - Places certain limits on federal and state governments, and
 - Defines individual rights of persons and citizens
- **States accorded substantial authority**
 - Those powers not specifically granted to the federal government are “reserved” to the states
 - 10th Amendment
 - States may exercise the authority granted them as they see fit within the contours of the rest of the Constitution
 - Federal laws within jurisdiction of Congress will preempt state law
- **Sets up the tension in our federal system**

State Sovereignty Over Taxes

- **Each state establishes its own tax policy within contours of Constitution and federal law**
- **Each state administers its own taxes**
- **States also have a multitude of local governments**
 - Local governments are generally limited to the powers and authority granted them by the state legislatures
 - Local governments are given wide authority to levy and administer ad valorem taxes on real and personal property
 - More commonly “piggyback” on state sales/use taxes and (to a lesser degree) on state business and personal income taxes
 - Often rely on a variety of other excise and license taxes
 - Local governments administer their own property taxes, and in a handful of states, their own sales and income taxes
- **Contrast with most other subnational systems of government**

Constitutional Restraints on State and Local Taxes

- Commerce Clause (*Complete Auto*)
- Due Process Clause (*SD v. Wayfair*)
- Other: Equal Protection; First Amendment; Anti-Commandeering Doctrine, etc.

Federal Statutory Restraints on State and Local Taxes

- Public Law 86-272
- Internet Tax Freedom Act
- Interstate Fuel Tax Agreement
- 4-R Act for Railroads
- Other: Taxation of Pensions, Interstate Transportation

Types of State and Local Taxes

- Corporate Income Taxes
- Franchise Taxes
- Digital Services Taxes / Data Mining Taxes
- Personal Income Taxes
- Sales/Use Taxes
- Property Taxes
- Gross Receipts Taxes
- Employment Taxes
- Other: Credits and Incentives, Unclaimed Property, Local Excise Taxes



State Corporate Income Taxes

#SelectUSASummit

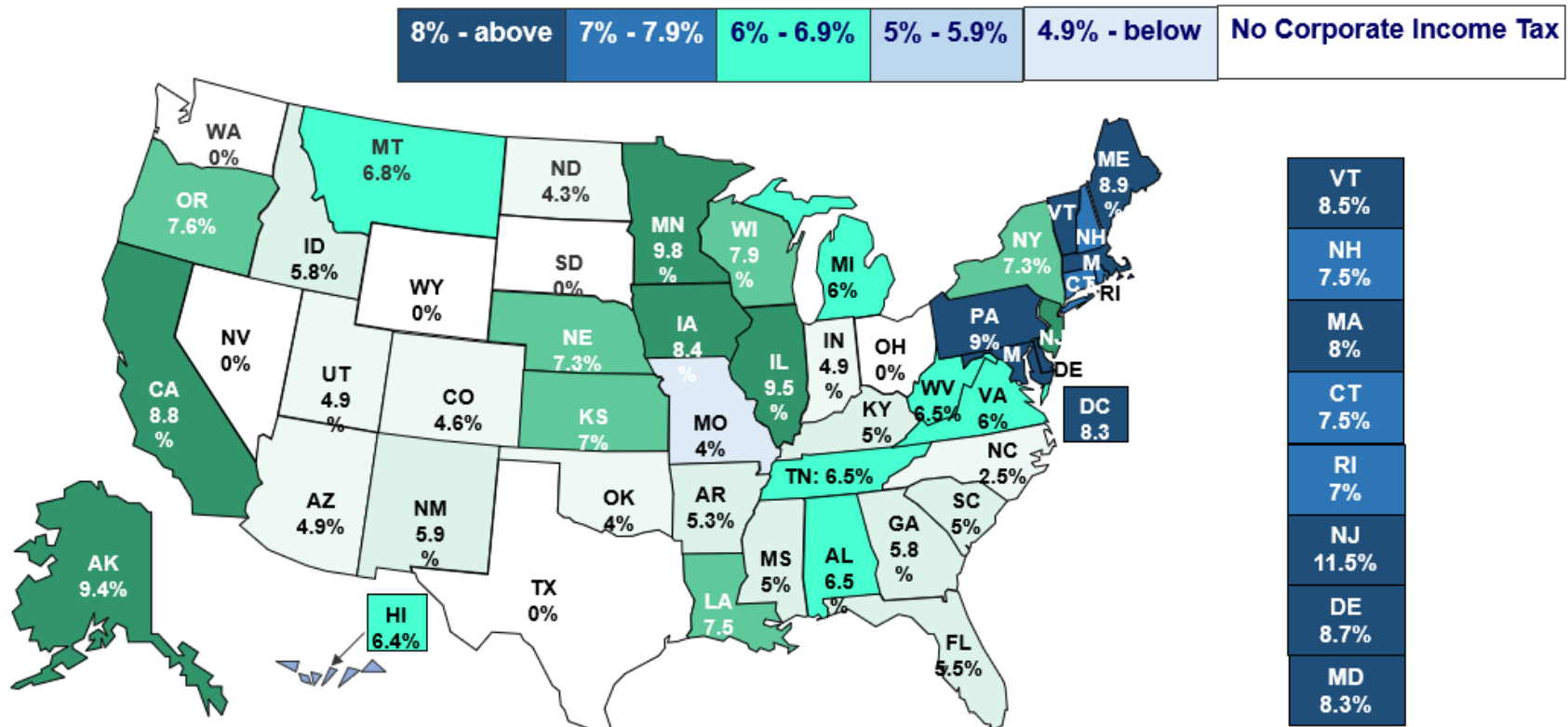




May 1-4

SELECTUSA INVESTMENT SUMMIT

Corporate Income Tax Rates by State



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

Source: [wisevoter.com](https://www.wisevoter.com)



How are State Corporate Income Taxes Calculated?

#SelectUSASummit



Jurisdiction and Nexus

- **Nexus**
 - Taxable connection to a taxing state
 - Taxpayer connection to a taxing state,
 - Taxed activity connection to a taxing state,
 - Constitutional concept
- **Jurisdiction**
 - Exercise of a state's authority to tax.

Income/Franchise Taxes

Terminology: Income taxes are based on income; franchise taxes are typically based on net worth. However, some states refer to their corporate income taxes as “corporate franchise taxes.”

State Corporate Income Taxes:

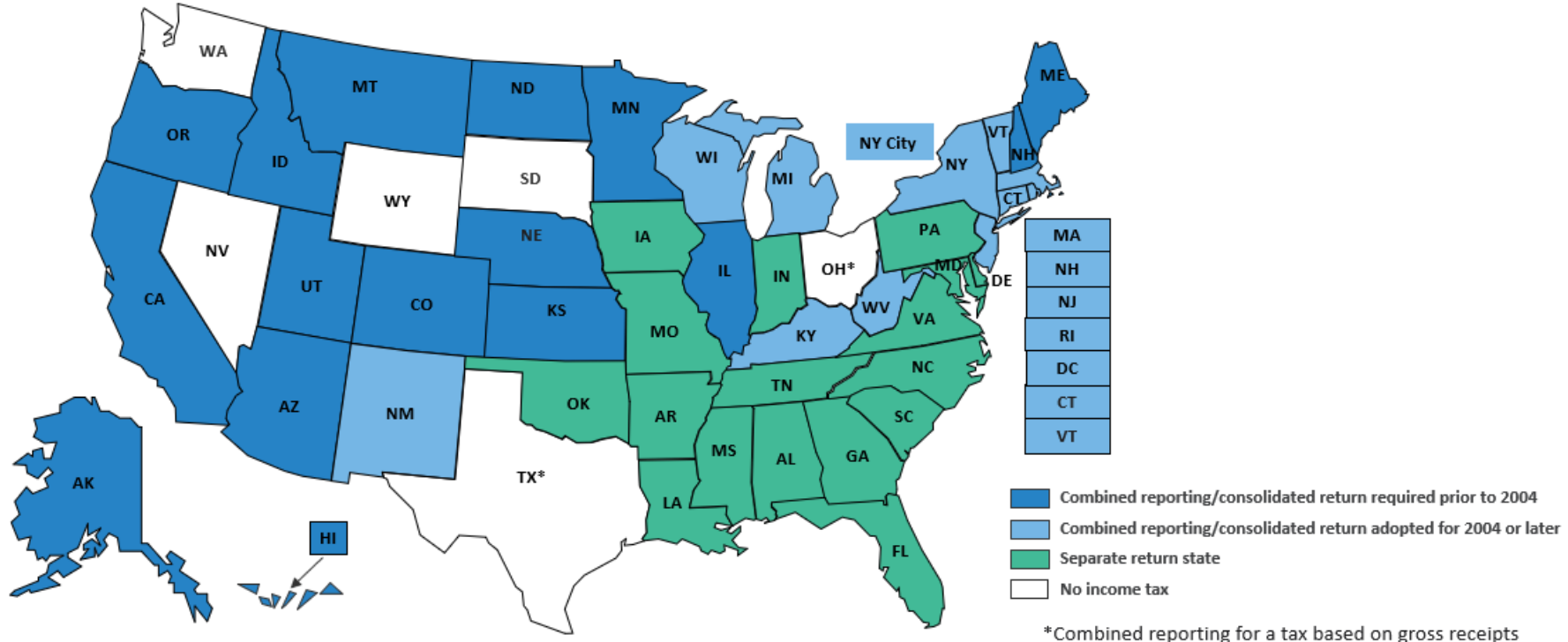
- Starting point – IRS Form 1120, lines 28 or 30
 - Line 29: Foreign dividends and net operating losses
 - Filing methodologies for affiliated corporate groups:
 - Separate Filing for related entities with nexus
 - Combined Filing (typically determined by the “Unitary” method);
(Water’s-Edge v. Worldwide Combined Reporting)
 - Consolidated (typically measured by ownership %)



May 1-4

SELECTUSA INVESTMENT SUMMIT

Combined Reporting Adoption



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

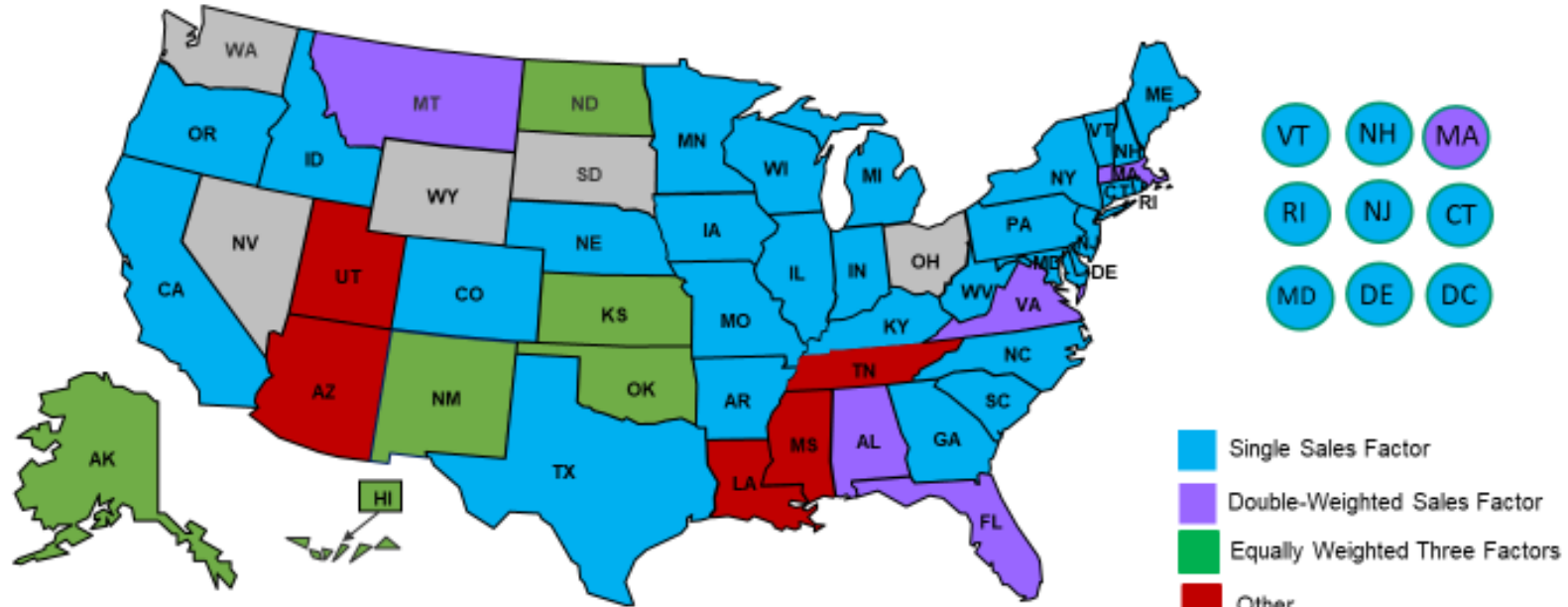
Source: Council On State Taxation

State Corporate Income Taxes

Income Tax – Dividing the tax base of a multistate business

- **Federal taxable income, as adjusted, is allocated and/or apportioned to the taxing state**
 - **Allocation (to a specific state)**
 - “Non-business” income
 - Certain types of income in certain states
 - **Apportionment (among several states)**
 - Initially property, payroll, and/or sales (as a proxy)
 - Alternative apportionment
 - Cost of performance vs. market-based sourcing of services & intangibles
 - Throwback and throwout
 - Never perfect and not always fair

The State Shift to Single Sales Factor Apportionment Began in the 1950s



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

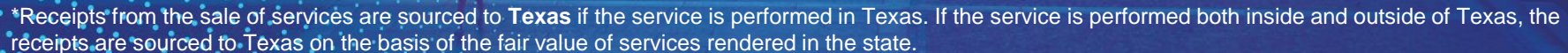
Source: Bloomberg Law

Arizona: Taxpayer can elect to use a three-factor formula with double-weighted sales or an alternative formula

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

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

Tennessee: Three factor formula with triple-weighted sales.



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

Franchise Taxes

Franchise Taxes - Imposed on the “privilege” of doing business

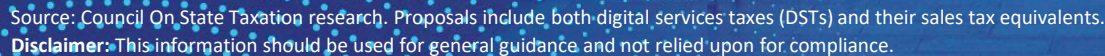
- Generally imposed on a corporation’s GAAP net worth or some measure of authorized stock or issued and outstanding stock
- Some states also tax intercompany liabilities, reserves and net deferred tax liabilities
- Many states impose both an income and a franchise tax (e.g., LA, MS), but several states have recently sought to phase out franchise tax, including PA and WV; MS is very slowly phasing out its franchise tax (2028).



Are Digital Services Taxes a Trend?

#SelectUSASummit





Personal Income Taxes

Pass-through Entities (PTEs) Examples: S Corporations, partnerships, and LLCs

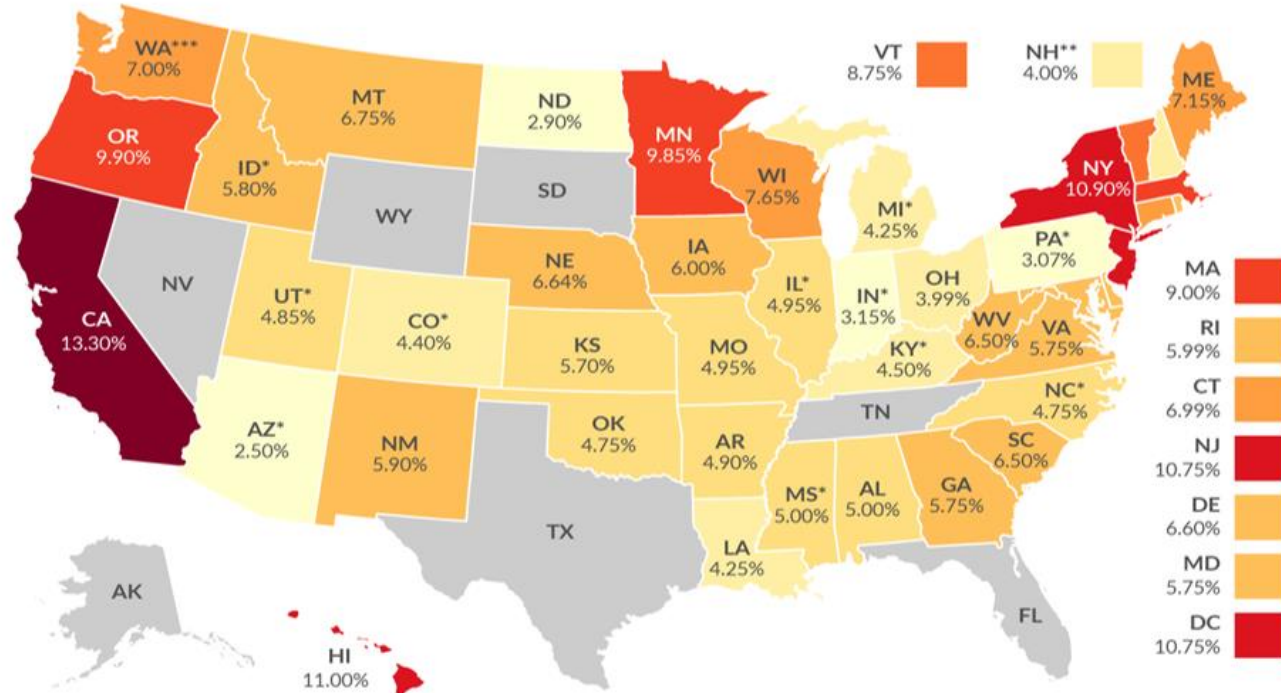
- Most states follow federal tax treatment of PTEs and subject PTE owners to income tax (Texas is an outlier)
- Many states have tax withholding requirements for PTEs for taxes due from non-resident owners
- Some states allow PTEs to file composite income tax returns to fulfill the tax obligations of non-resident owners
- Apportion PTE income at entity level or owner level?
- PTEs now being used as a backdoor alternative to avoid the deductibility limit on state and local taxes

2023

May 1-4

SELECTUSA INVESTMENT SUMMIT

Top Marginal State Individual Income Tax Rates (as of January 3, 2023)



Note: Map shows top marginal rates: the maximum statutory rate in each state. This map does not show effective marginal tax rates, which would include the effects of phase-outs of various tax preferences. Local income taxes are not included.

(*) State has a flat income tax.

(**) State only taxes interest and dividends income.

(***)State only taxes capital gains income.

Sources: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg Tax.

Top State Marginal Individual Income Tax Rates



Sales/Use Taxes

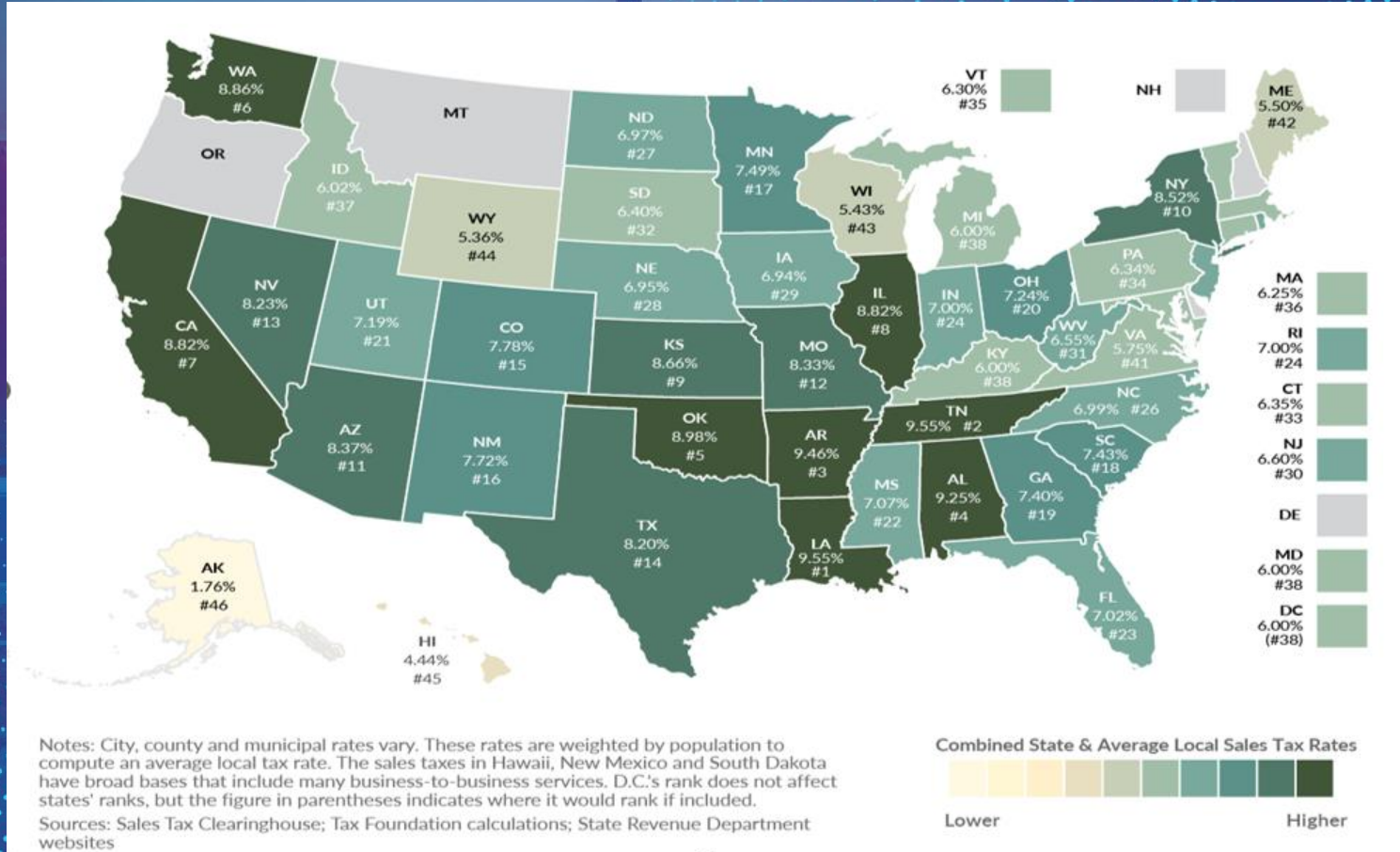
- 45 States & D.C. impose a sales tax
- Approximately 30 states allow localities to impose a sales tax in addition to the state tax.
- No state sales tax: New Hampshire, Oregon, Montana, Alaska, & Delaware (NOMAD)
- State systems are nonuniform, although 23 states are members of the Streamlined Sales & Use Tax Agreement, (SSUTA) which enacts model legislation seeking uniform definitions and procedures



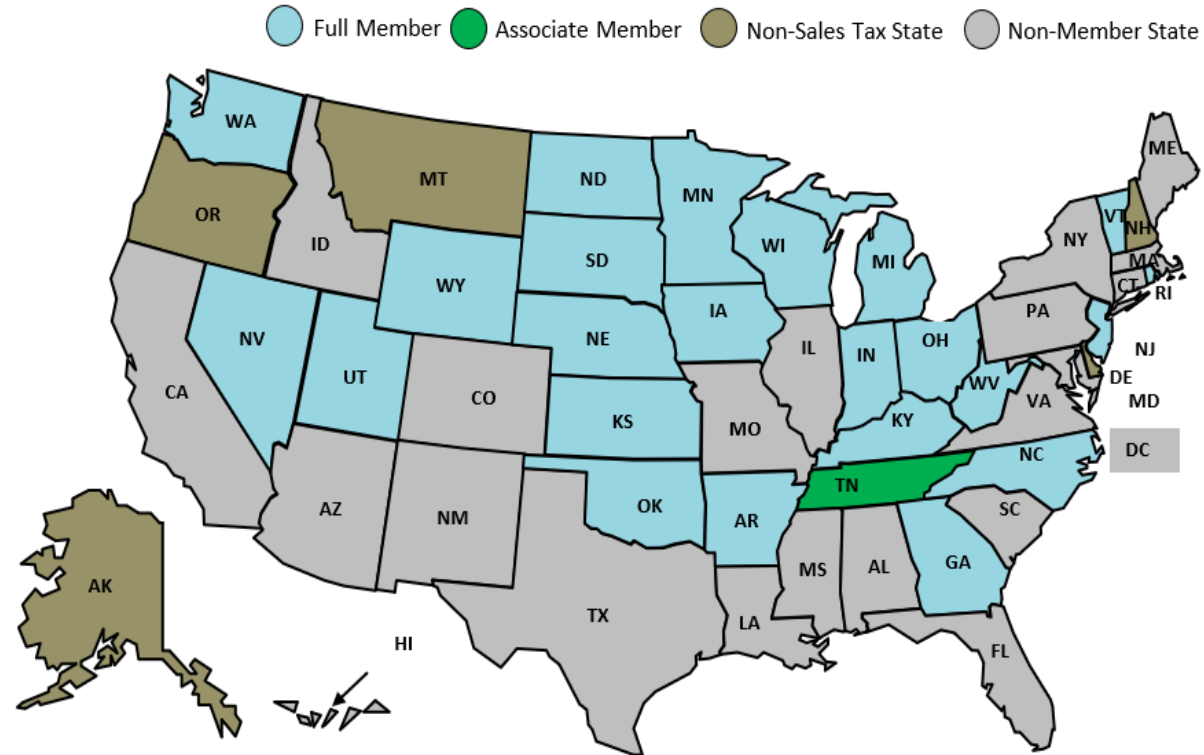
May 1-4
SELECTUSA INVESTMENT SUMMIT

Combined State & (Average) Local Sales Tax Rates January 2023

How High are Sales Taxes in Your State?



Streamlined Sales and Use Tax Agreement (SSUTA) States



Sales/Use Taxes

Sales Tax vs. Use Tax

- ***These are Complementary Taxes***
- **Sales Tax** = a state/local tax on the retail sale of specified property or services
- **Use Tax** = a tax on the use, consumption, or storage of tangible property, usually at the same rate as sales tax, and levied for the purpose of preventing tax avoidance by the purchase of articles in a state or taxing jurisdiction which does not levy sales taxes nor has a lower rate.

Sales/Use Taxes

Basics:

- Exchanges of tangible personal property are taxable unless the state provides an exemption or an exception/exclusion in the law.
- Generally, services are exempt unless specifically enumerated as taxable.
 - NOTE: Recent shift towards expanding the base to include taxation of services and digital goods.
- Inefficient design and definitions lead to taxation of many business inputs in addition to goods/services for home consumption

25% - 35% **36% - 45%** **46% +** **No Sales Tax**

VT = 51%
 MA = 48%
 CT = 39%
 RI = 36%
 NJ = 43%
 DC = 42%
 MD = 42%

State	Percentage
VT	51%
MA	48%
CT	39%
RI	36%
NJ	43%
DC	42%
MD	42%
ME	35%
WA	37%
OR	32%
ID	32%
MT	32%
ND	48%
MN	47%
SD	58%
WY	58%
NE	44%
IA	47%
WI	42%
MI	36%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	37%
IN	32%
OH	41%
PA	42%
NY	42%
VT	51%
NH	42%
MA	48%
CT	39%
RI	36%
NJ	43%
DE	42%
MD	42%
VA	40%
WV	44%
NC	41%
SC	37%
GA	44%
FL	42%
AL	35%
MS	36%
LA	41%
AR	38%
MO	39%
IL	

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

State Gross Receipts Taxes

- Oregon Corporate Activity Tax (CAT)
- Nevada Commerce Tax
- Texas Franchise (Margin) Tax
- Ohio Commercial Activity Tax (CAT)
- Washington Business and Occupation (B&O) tax

Property Taxes

General overview:

Who taxes property?

- State level
- County / parish
- City / municipality
- Special districts

What types of property are taxed?

- Real property
- Tangible personal property
- Intangible personal property

Property Taxes

Real Property

All states impose real property taxes

Annual tax on assessed market value of real property owned in a taxing jurisdiction

Tax is imposed on real property regardless of whether it is for business or personal use

Assessor's approach to real property valuation

- Primarily rely on cost approach
- Consistency based on tax roll comparison
- Industry specific provisions

Property Taxes

Personal Property Tax

Annual tax calculated on value of certain tangible personal property owned by the taxpayer and used in business

Personal property taxes are imposed by 39 states

- (40 if you include Puerto Rico)

Property taxed can vary by state

- Machinery, Equipment, Computers, Furniture, Inventory
- State requirements may vary by jurisdiction
- Fine line between real / personal property

Business License Taxes

- A legal document that grants you the right to operate a business in your jurisdiction
- Regulates business activity to approved areas
- Call ahead – Not required everywhere
- Variations
 - Flat license fees
 - Annual fees
- Business type may trigger need for additional licenses/permits

Employment Taxes

Taxes Withheld from Employees:

- **FICA - Provides old-age, survivors and disability, and hospital insurance benefits to the elderly and disabled**

Social security = 6.2% of first \$118,500 of wages for 2015

Medicare = 1.45% of total wages paid with no limit

- **Federal Income Tax Withholding - various rates and deposit requirements**
- **State Income Tax Withholding - various rates and deposit requirements**
- **Nonresident withholding standards vary among states**

Unclaimed Property

- Not a tax, but can generate a significant liability for businesses
- Unclaimed property represents a “vested property right”
- Holders of unclaimed property must remit the unclaimed property to the state after the applicable dormancy period
- Definitions of unclaimed property and dormancy periods vary by state:
 - Examples: dormant bank accounts, unredeemed gift certificates, uncashed checks (*e.g.*, dividends, payroll, insurance benefit checks, payments for goods or services), credit balances/memos



Questions?

#SelectUSASummit

