Five Tax Administration Issues State Lawmakers Should Address in 2021

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In this article, Nicely and Farooki examine five issues that state lawmakers can address to modernize state laws, ease tax administration, and improve compliance.

Repercussions of the COVID-19 pandemic have highlighted long-standing perplexities and shortcomings in state and local tax administration systems. While states work to revitalize their economies and shore up revenues, state legislatures have an opportunity to fix issues that challenge both taxpayers and state tax administrators alike. The Council On State Taxation, an organization that works for fair and equitable state and local taxation of multijurisdictional businesses, has identified five issues that state lawmakers can address to modernize state laws, ease tax administration, and improve tax compliance. Although some states already follow several of these practices, many states are deficient. The five issues, which are examined in detail below, are:

1. provide at least one month after the federal extended deadline for corporate taxpayers to file state income tax returns;
2. provide a 30-day safe harbor for personal income tax filing obligations of traveling employees and corresponding withholding obligations of their employers;
3. improve taxpayer reporting of federal tax adjustments, including partnership adjustments, by incorporating the new Multistate Tax Commission model legislation;
4. allow efficient e-filing and electronic payment of all state and local taxes, and improve tax dispute processes; and
5. participate partially or fully in the Streamlined Sales and Use Tax Agreement.

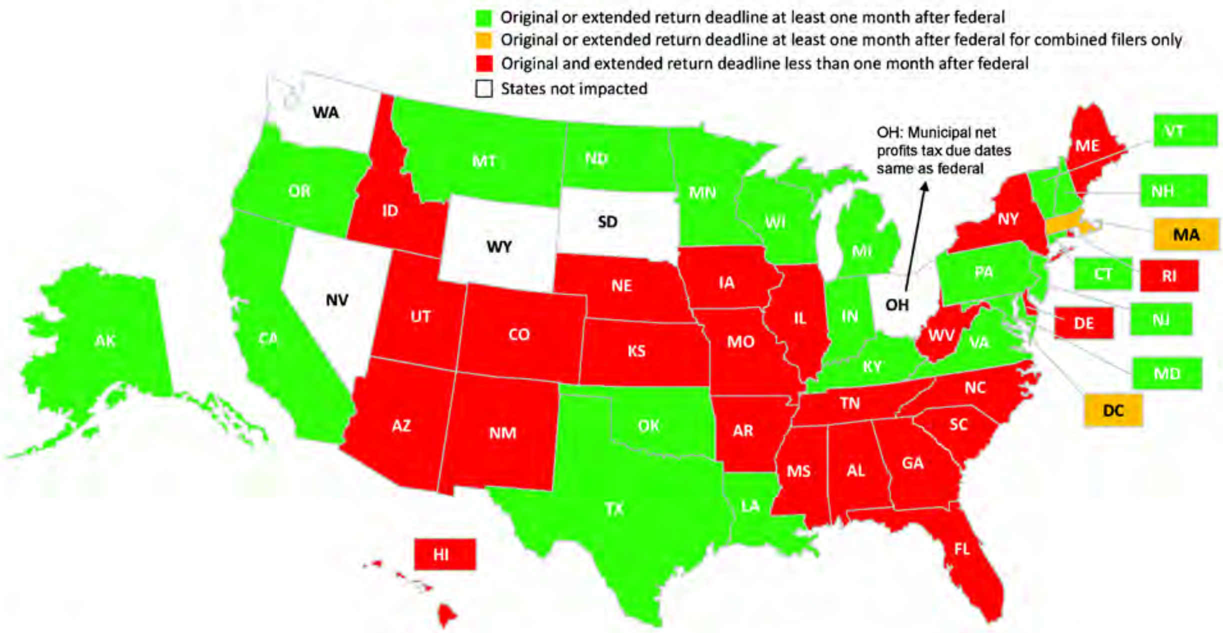
Why states should incorporate these administrative procedures is detailed below.

Provide at Least One Month After the Federal Extended Deadline for Corporate Taxpayers to File State Income Tax Returns

Sufficient time to accurately file an income tax return is imperative to fair, efficient, and customer-focused tax administration. This issue arose from a 2017 federal law change that extended the federal corporate filing deadline from September 15 to October 15 for calendar-year filers. As a result, over 20 states impose state extended corporate income tax due dates that coincide with the federal extended due date. The states with this issue for corporate income taxes are shown in Figure 1.[1]

[1] Figure 1 only addresses state corporate income taxes. States are encouraged to also extend the due date for individuals and partnerships. The extension should be automatic; states that only provide an extension upon request, i.e., not automatically, are also listed.

Figure 1.
States Where Extended Deadlines for Corporate Tax Returns Fall Less Than 1 Month After Federal Extended Deadline



Because state returns are based on federal returns and cannot be completed until the federal return is filed, providing taxpayers at least one month after the new federal extended deadline would enhance the accuracy of state returns filed by taxpayers. It eases administrative burdens imposed on tax administrators by reducing the number of amended returns filed on the concurrent federal and state filing deadlines. In addition to the time needed to adjust federal taxable income to determine state taxable income, corporate taxpayers must apportion and allocate that income, apply credits, and calculate the impact of the federal Tax Cuts and Jobs Act of 2017 and more recently the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136).

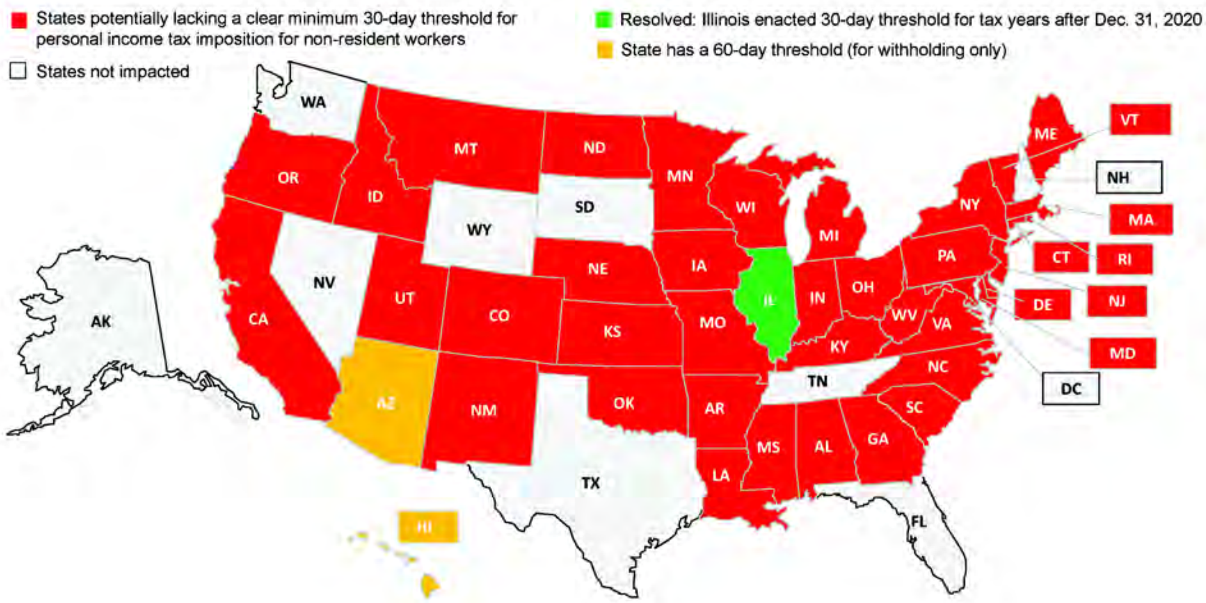
Any tax liability would still be based on the original due date, including estimated payments. Interest and penalties associated with a late payment would still be owed. In other words, resolution of this issue is easily accomplished by automatically extending the due date of the return to avoid late-filing penalties. While some state tax administrators have indicated to COST that they would address abatement of late-filing penalties on a case-by-case basis, this approach is not practical annually and fails to provide taxpayers assurance that penalties will be abated when requested. Also, many states require taxpayers to submit letters of good standing regarding tax obligations when contracting with state or local governments. Failure to file a return on time could unnecessarily jeopardize a business's good standing and its government contracts.

To address this issue, we propose states adopt the following model legislation:

A. *For tax years beginning on or after January 1, 20XX, calendar year and fiscal year [taxpayer] returns shall be due no later than one month after the due date established under the Federal Internal Revenue Code, including any applicable extensions granted by the Internal Revenue Service.*

B. *No penalty due to late filing shall be incurred by a taxpayer granted a federal extension if its state return is filed no later than one month after the period of time specified in the Federal extension. The*

Figure 2.
States That Lack a Clear Minimum 30-Day Threshold for Personal Income Tax Imposition for Nonresident Workers



[taxpayer] does not need to apply to the [revenue director] for an extension of time within which to file the taxpayer's state return.

Provide a 30-day Safe Harbor for Personal Income Tax Filing Obligations of Traveling Employees and Employer Withholding Obligations

Both businesses and governments have employees who travel for temporary work in states where they are not residents. The lack of uniformity for when states subject nonresidents to personal income taxes interferes with efficient interstate commerce and unfairly casts numerous private and public sector employees as scofflaws because filing requirements are impractical. Figure 2 indicates the states that technically impose personal income taxes on a nonresident employee working in the state for only one day.

Fortunately, many state tax administrators acknowledge strict compliance is not administratively feasible in this area. However, technically the presence of an employee temporarily working in a state without the employer withholding on the employee's wages can subject the employee and the employer to civil and criminal penalties.[2] Although business travel is reduced during the COVID-19 pandemic, when travel revives, hundreds of thousands of employees will work temporarily in states where they are not a resident. Most work travel is short and temporary, such as attendance at training events or business meetings in nonresident states. Imposing an income tax on nonresident employees who temporarily travel to a state for business burdens the U.S. economy by subjecting both employees and employers to onerous administrative requirements. In addition to filing federal and state income tax returns where employees reside, employees are often legally required to file income tax returns in every state where they temporarily work. And often, employers are required to withhold that state's tax

[2]See, e.g., N.Y. Tax Law section 685 (additions to tax and civil penalties); and N.Y. Tax Law section 1808 (personal income and earnings taxes; repeated failure to file). See also Timothy P. Noonan and Ariele R. Doolittle, "The Nuts and Bolts of Nonresident Wage Allocation in New York," *Tax Notes State*, Mar. 16, 2020, p. 949 (highlighting nonresident filing responsibilities in New York).

from employee paychecks. Forcing employees and their employers to comply with a patchwork of confusing, outdated, (and at times predacious) nonresident state income tax laws is absurd. State laws vary on day thresholds, dollar thresholds based on income earned in the nonresident state, and in at least one case, a combination of day and income thresholds. According to the Federation of Tax Administrators: "Complying with the current system is . . . indeed difficult and probably impractical."[3] The problem is unjustly compounded for employees who reside in states that do not impose an income tax because they cannot take a credit on their home state's income tax return for income tax paid to a nonresident state. Effective and efficient tax administration demands a reasonable and uniform threshold among states.

What's the solution? A minimum 30-day threshold, like the law Illinois enacted in 2019,[4] would ease unreasonable tax burdens on America's increasingly mobile workforce and their employers.[5] Providing a uniform, fair, and easily administered law in all states with personal income taxes would help ensure that a fair amount of tax is withheld and paid to states without imposing an undue burden on employees and employers. After 30 days, existing state laws would apply. Up to 30 days, an employee's earnings will remain fully subject to tax in the state of residence and would only trigger additional income tax in other states where the 30-day threshold is exceeded. Of course, nonresident employees who visit a state for more than 30 days (and are therefore subject to that state's nonresident filing and withholding rules) should still be provided a credit against the resident state's income tax liability for amounts paid to other states.[6]

The 30-day threshold was chosen based on a COST survey of employers and has been the standard in proposed legislation brought before Congress.[7] Because most business travel is shorter than 30 days, this uniform threshold would instantly bring most traveling employees and their employers into compliance. The definition of a "day" should include all workdays, regardless of when they occur (weekdays, weekends, federal holidays, etc.) to count against the threshold. Thus, the 30-day threshold is analogous to the "full month of workdays" the FTA has described as a reasonable threshold.[8] A threshold shorter than 30 days would result in compliance difficulties because of the need to carveout some types of days (e.g., weekends) or types of activities (e.g., attendance at trade shows). A single, comprehensive 30-day threshold is far simpler and thus preferable because it will foster compliance and ease of administration by employees, employers, and states.[9]

The purpose of relying solely on a reasonable, time-based (rather than dollar-based) threshold is to eliminate the need for most employees to track travel for tax purposes. When employees travel, they do not think in terms of dollars earned while away from home but in terms of days on business travel, and most employers do not have payroll systems that make those calculations. If a dollar threshold is imposed, it will require employers to track and calculate employee income for all traveling workers, a task that is next to impossible for employees paid partially through bonuses and commissions at the end of the year. A reasonable time-based threshold would allow employers to analyze workforces and provide increased education and compliance tools only for the relatively small number of employees who travel to a nonresident state for a significant period. It eliminates complexities of calculating bonuses,

[3] Statement of Harley Duncan before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Commercial and Administrative Law (Nov. 1, 2007).

[4] S.B. 1515, 101st Gen. Assemb. (Ill. 2019).

[5] Exceptions could be made for some types of employees — professional athletes, professional entertainers, and qualified production employees in states that offer film tax credits — so that they would be subject to the nonresident state's income tax on all income earned in the state.

[6] A credit would not be required if the resident state did not similarly tax this income.

[7] *E.g.*, H.R. 1864, 112th Cong. (2012); H.R. 1129, 113th Cong. (2013-14); H.R. 2315, 114th Cong. (2015-17); H.R. 1393, 115th Cong. (2017-18); S. 4318, 116th Cong. section 403 (2019-20). Sen. Charles E. Schumer, D-N.Y., however, has prevented legislation passed in the U.S. House from being considered in the Senate and opposes efforts to include it as part of a COVID-19 relief package. *See* Jad Chamseddine, "Federal Remote Worker Tax Relief Could Be Available by Year's End," *Tax Notes State*, Dec. 14, 2020, p. 1205.

[8] Letter from Linda Tanton, president of the FTA to COST (June 26, 2008).

[9] This issue is important at the local level in states like Michigan and Ohio that authorize local income taxes.

commissions, and other deferred benefits to comply with a dollar threshold.

A dollar threshold nullifies the potential compliance gains from a uniform rule.[10] It would also require employers to coordinate payroll systems with payments made to employees by third parties. Third-party payments may include sick or disability payments, supplemental retirement pay, and various types of stock compensation and relocation benefits, all of which may be considered wages to the employee. It is extremely challenging for employers to track and incorporate supplemental wages generally paid outside an employer's payroll system and add that information to internal payroll information. And lastly, while a day is the same everywhere, the concept of income is defined differently in every state. A dollar threshold would thus require either a model definition of income — which would significantly alter state tax statutes — or require employees to research specific state statutes where they expect to travel to calculate earnings on a per diem basis.

On July 27, 2011, the MTC adopted its Model Mobile Workforce Statute for consideration by states. However, only North Dakota in 2011 has passed legislation enacting the MTC model statute.[11] Under the MTC statute, an employer is not required to withhold a state's income tax on a nonresident's wages, and a nonresident is not subject to income tax in a state if (1) the nonresident was in the state for no more than 20 days in a tax year; (2) the nonresident's state of residence offers a similar exemption or does not impose an individual income tax; and (3) the nonresident has no other source of income in the state. In addition to the threshold of 20 days per tax year, the MTC statute is problematic in some of the exemptions it stipulates. For example, the statute exempts any person who performs construction services to improve real property, predominantly on construction sites, as a laborer; and key employees of a corporate employer (by reference to IRC section 416(i)) or some similarly situated employees of a noncorporate employer, essentially exempting an officer of a corporate employer having an annual compensation of more than $130,000, and the 50 highest-paid employees of a noncorporate employer.

For reasons discussed above, the MTC statute's threshold of 20 days per tax year, combined with dollar thresholds and peculiar exemptions, threatens to further complicate an already onerous compliance burden. The following is model legislation that we propose states adopt to address this issue.

Nonresident Withholding and Reporting Threshold Draft Legislation

[Section 1]

(A) As used in this section:

(1) "Professional athlete" means an athlete who performs services in a professional athletic event for compensation.

(2) "Professional entertainer" means a person who performs services in the professional performing arts for compensation on a per-event basis.

(3) "Public figure" means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for compensation on a per-event basis.

(4) "Qualified production employee" means a person who performs production services of any nature directly in connection with a state qualified [film, television, or other commercial video production] for compensation, provided that the compensation paid to such person are qualified expenditures under [state's incentive program], and that such compensation is subject to withholding as a condition to treating the compensation as a qualified production expenditure.[12]

(5) "Time and attendance system" means a system through which an employee is required,

[10] Employees frequently receive stock commissions, relocation benefits, and other benefits such as personal use of a company car that generate income. These supplemental wage payments are based on factors not related to salary and cannot be estimated before the end of the year.

[11] S.B. 2170, 62nd Legis. Assemb. (N.D. 2011) (reenacting and amending N.D. Cent. Code section 57-38-59.3).

[12] A "production employee" exception is optional, based on whether it is needed to avoid undercutting a state's film, television, or other commercial video production incentive program.

on a contemporaneous basis, to record the employee's work location for every day worked outside the state where the employee's employment duties are primarily performed and which is designed to allow the employer to allocate the employee's compensation for income tax purposes among all states in which the employee performs employment duties for the employer.

(B)(1) Compensation, as defined under [state statute cross-reference], paid to a nonresident individual is exempt from the tax levied under [state statute cross-reference] if all of the following conditions apply:

(a) The compensation is paid for employment duties performed by the individual in this state for thirty or fewer days in the calendar year;

(b) The individual performed employment duties in more than one state during the calendar year;

(c) The compensation is not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, professional entertainer, public figure, or qualified production employee; and

(d) The nonresident individual's state of residence: i) provides a substantially similar exclusion, or ii) does not impose an individual income tax, or iii) the individual's income is exempt from taxation by this state under the United States Constitution or federal statute.

(2) Except as otherwise provided in this division, an employer is not required to withhold taxes under [state statute cross-reference] from compensation that is paid to an employee described in division (B)(1) of this section. If, during the calendar year, the number of days an employee spends performing employment duties in this state exceeds the thirty-day threshold described in division (B)(1)(a) of this section, an employer shall withhold and remit tax to this state for every day in that calendar year, including the first thirty days on which the employee performs employment duties in this state.

(C) The [revenue department] shall not require the payment of any penalties or interest otherwise applicable for failing to deduct and withhold income taxes as required under [state statute cross-reference] if, when determining whether withholding was required, the employer met either of the following conditions:

(1) The employer at its sole discretion maintains a time and attendance system specifically designed to allocate employee wages for income tax purposes among all taxing jurisdictions in which the employee performs employment duties for such employer, and the employer relied on data from that system.

(2) The employer does not maintain a time and attendance system, and the employer relied on either (a) its own records, maintained in the regular course of business, of the employee's location or (b) the employee's reasonable determination of the time the employee expected to spend performing employment duties in this state, provided, however, that the employer did not have actual knowledge of fraud on the part of the employee in making the determination and provided that the employer and the employee did not collude to evade taxation in making the determination.

(D) For purposes of this section, an employee shall be considered present and performing employment duties within this state for a day if the employee performs more of the employee's employment duties in this state than in any other state during that day. Any portion of the day during which the employee is in transit shall not be considered in determining the location of an employee's performance of employment duties.

[Section 2]

The enactment by this act of [state code section] applies to taxable years beginning on and after January 1, 202X.

[Section 3]

If any provision of this act, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this act, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.

Improve Taxpayer Reporting of Federal Tax Adjustments by Incorporating the New MTC Model

Beginning in tax year 2018 (i.e., partnership returns on Form 1065 filed in 2019) and following an audit, the IRS default process will be to assess and collect tax from a partnership (entity) rather than the partnership's partners.[13] A partnership may still opt to push out audit adjustments to its partners, requiring the partners to report and pay any additional tax due. Although states conform to the IRC to derive taxable income, the states generally impose their own independent assessment and refund provisions. Thus, most states will be required to enact legislation to collect tax following an audit under the new federal partnership audit regime.

This federal change creates an opportunity for states to improve processes for reporting IRS adjustments for all taxpayers (including individual and corporate taxpayers). Fortunately, the MTC formed a workgroup several years ago and worked with interested parties such as COST, the American Institute of CPAs, and the Tax Executives Institute to address the federal law change and improve a 2003 reporting model.[14] Approved in 2018, and recently revised at the MTC's meeting in November 2020, the new MTC Model Statute (MTC Model) should be used by state legislatures to improve reporting of federal changes for taxpayers.[15] Importantly, while the MTC Model extensively addresses the new federal partnership audit regime, it includes equally important procedures that should apply to taxpayers reporting federal tax changes to states.

Also, all states should update their laws to conform to the MTC Model. Doing so would avoid requiring taxpayers to submit multiple amended returns to a state before an IRS audit for a tax period is truly final (e.g., serial reporting). A state should provide at least 180 days for the federal adjustment to be reported to the state. Further, when the general state statute of limitations is closed, any corresponding state adjustment should be limited to the change at the federal level. Providing at least 180 days is the gold standard. Both COST's policy position and the MTC Model (both 2003 and new) recommend that states allow taxpayers 180 days and, by mutual agreement with the state revenue agency, extend that period for more complicated filings.[16] Finally, if a taxpayer fails to report federal changes to a state, it raises the question of how long the statute of limitations period remains open. Absent fraud, many state laws limit tax assessments to a set period after the reporting of the final federal determination (e.g., six years). These issues are addressed in the MTC Model.

The format to report a federal adjustment to a state should not be overly complicated. States should allow taxpayers to use spreadsheets to ease taxpayer compliance and simplify state tax administration (especially for complex returns). States should include the MTC Model's de minimis provision, which does not require a taxpayer to file if the adjustment is below a set threshold (e.g., less than $50 additional tax due or refunded).[17] Taxpayers that are confident additional state tax will be due pending an IRS audit to a state should be able to easily make estimated payments before a final determination. This practice benefits the state by accelerating revenue collection and benefits taxpayers by allowing them to reduce interest and penalties on any additional tax owed. Fortunately, the MTC Model addresses all these issues; many are also evaluated in the COST "The Best and Worst of State Tax Administration" scorecard.[18]

To account for constitutional limitations imposed on states, the state reporting requirements under the MTC Model appropriately differ from federal procedures. Procedurally, rather than imposing the same

[13] Bipartisan Budget Act of 2015, P.L. 114-74. The intent of the changes was to address issues with the collection of tax through multiple tiered partnerships. Over a 10-year period it was estimated to raise approximately $10 billion. Partnerships had an option to elect into the new audit regime pre-2018; however, few partnerships made that election.

[14] The 2003 MTC Model is available on its website.

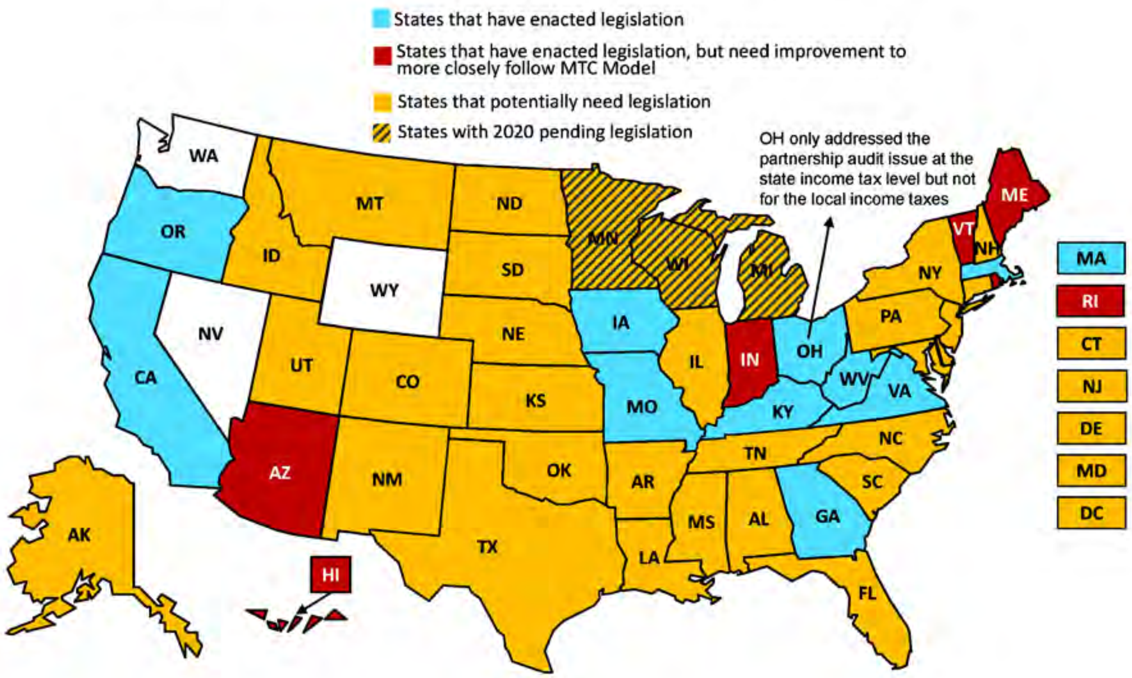
[15] The new MTC Model is available on its website.

[16] The MTC Model also addresses entities that file combined or consolidated returns as a group. The "trigger" for the final determination date does not occur until the IRS completes its audits for a tax period that covers all members of that group.

[17] This could also address reporting changes for foreign taxes under IRC section 905(c) to prevent multiple state reporting of federal changes that have little to no impact on state tax liabilities.

[18] Douglas L. Lindholm and Fredrick J. Nicely, "The Best and Worst of State Tax Administration," COST (Dec. 2019).

Figure 3.
States That Need to Enact Legislation to Adopt the MTC Model



default method used at the federal level (i.e., in which the partnership pays), the default under the MTC Model is essentially status quo. The default at the state level requires the partnership to notify the state and its partners of a federal adjustment within 90 days of final determination, but its partners must report and pay tax due on an adjustment within 180 days of that final determination. However, a partnership can elect to pay any additional tax for its partners within 180 days of the final determination. Tiered partnership structures are also addressed, requiring all audit adjustments to be reported within 90 days of the final federal deadline of the audited partnership for those tiered partners. Notably, the MTC Model includes a provision that allows a state partnership representative to differ from the federal partnership representative; an automatic 60-day extension for partnerships with thousands of partners (Schedule K-1 reports); and a provision that allows taxpayers and the state revenue agency, by mutual agreement, to use an alternative reporting or payment process.

The MTC Model's provisions, both for reporting of general IRS changes and those specific to IRS partnership audits, should be enacted by the state legislatures. See Figure 3. Ultimately, the more widespread the adoption of the MTC Model, the more efficient voluntary compliance will be for taxpayers and state revenue agencies.

Allow Efficient E-Filing and Electronic Payment of State and Local Taxes and Improve Tax Dispute Processes

The sheer number of state revenue employees and taxpayers working at home during the COVID-19 pandemic instead of prior work locations highlights the necessity for state and local governments to provide efficient e-filing and electronic payment processes. While many state revenue agencies have vastly improved their e-filing systems to make uploading documents and accessing multiple accounts easier, the systems used by many local governments remain deficient. For example, a payment processor for several lodging entities noted that it must file over 1,000 paper (hard copy) local lodging returns each reporting period. Property taxes, which are mostly locally administered, are also a problem. The ability to file all returns and remit payments at a state centralized location would be ideal. However, if that is not possible, local governments should implement e-filing systems to allow property taxpayers to file property tax renditions, make payments, and initiate filing a property tax appeal. While this will require an investment in technology, the improved efficiency in processing filings and payments creates a win-win situation for both tax administrators and taxpayers.

When applicable, states should also allow or clarify the use of e-signatures when filing returns and eliminate outdated notarization requirements and mandatory lists of corporate officer home addresses, which creates privacy concerns. COST has been working with the AICPA, among others, to remedy these ills, and we strongly encourage states to enact the following model language:

Model Electronic Signature Language

For tax and information returns and all other tax-related documents, including Powers of Attorney for tax matters and including e-file authorizations for tax forms, a signature that is an "alternative signature" will be regarded by the [Department of Revenue] as having the same force and effect as an original signature. An "alternative signature" includes an electronic version of an original signature, including a photographed, scanned, stamped or other facsimile of an original signature, or any digital or electronic signature purporting to be an original signature, including those created through third-party software. [The [Department of Revenue] may require that a taxpayer include a verification statement attached to a document using an alternative signature that states to the effect: The attached [name of document, including year and filing date if applicable], includes [name of taxpayer]'s valid signature.]

The [Department of Revenue] does not require a separate signature form for electronic filing if the IRS has accepted the practitioner into the IRS electronic filing program and where the practitioner has received the taxpayer's properly executed IRS Form 8879 e-file signature authorization form for the federal return that correlates with the taxpayer's [Department of Revenue] filing.

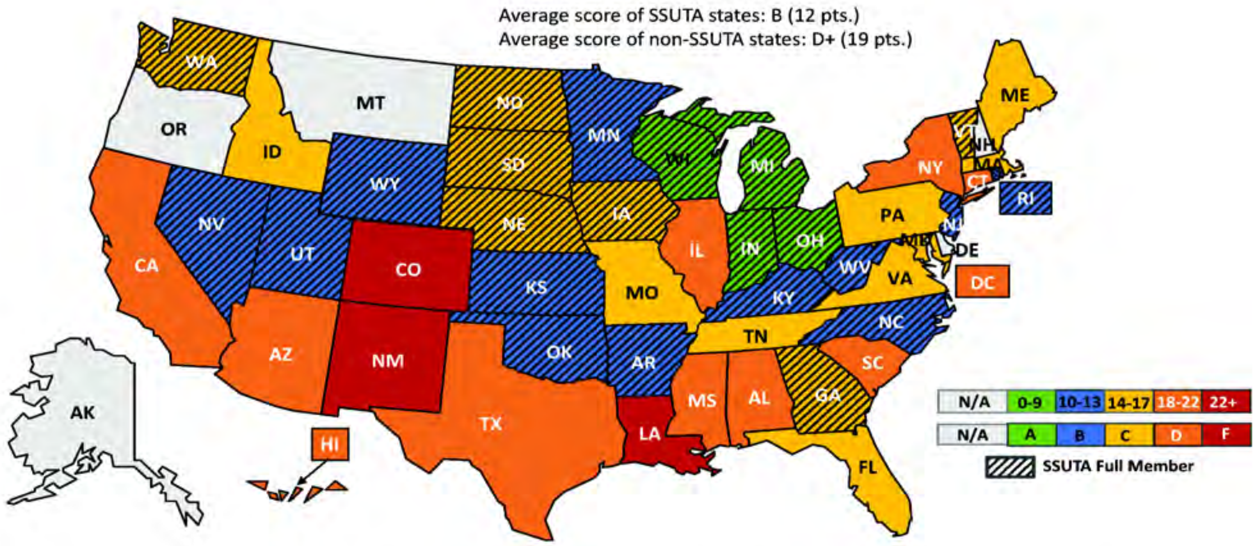
The process to file tax disputes and conduct hearings should be modernized to allow appeals to be filed electronically (on an elective basis) and to provide taxpayers the option to use virtual hearings beyond the pandemic. The ability to submit an appeal electronically helps mitigate issues faced by taxpayers and practitioners over timely filing of an appeal and helps simplify and standardize the filing of an appeal. Traps for the unwary, such as the requirement to provide appeal notices to multiple parties, should also be eliminated. And taxpayers and practitioners should be able to continue to interact with the revenue agency or tax appeal board post-pandemic. While in-person meetings should still be an option in the future, it is efficient for all parties when audit and appeal hearings are held virtually in a protected environment.

Participate Partially or Fully in the SSUTA

COST staff and many COST members have actively participated in the Streamlined Sales Tax Project since its inception. For large and small sellers, more statewide uniformity is needed to efficiently collect and remit state sales and use taxes (and applicable local sales and use taxes). Most sales tax states have adopted economic nexus principles to subject sellers without physical presence in a state to that state's sales and use tax after the U.S. Supreme Court's decision in *Wayfair*. However, the nonparticipating Streamlined Sales Tax States have largely ignored a key feature in South Dakota discussed by the Court: the reduced burdens on taxpayers achieved through full membership by a state in the SSUTA.[19] Regardless of whether reducing undue burdens is a constitutional requirement,

[19] *South Dakota v. Wayfair Inc.*, 585 U.S. ___, 138 S. Ct. 2080 (2018). The Court noted that "South Dakota affords small merchants a reasonable degree of protection. The law at issue requires a merchant to collect the tax only if it does a considerable amount of business in the State; the law is not retroactive; and South Dakota is a party to the Streamlined Sales and Use Tax Agreement." *Id.* at 2098.

Figure 4.
Comparison of Grades Between SSUTA and Non-SSUTA States on COST's Sales Tax Administration Scorecard



Source: "The Best and Worst of States Sales Tax Systems: COST Scorecard on Sales Tax Simplification, Uniformity & the Exemption of Business Inputs" (April 2018).

state revenue administrators and legislatures should seek to improve their sales and use tax structures to improve administration and compliance with those taxes.[20]

In 2018 COST evaluated and graded state administration of sales tax systems. Although participation in the SSUTA was only one of many features of state sales tax administration evaluated,[21] SSUTA states fared much better overall.[22] Figure 4 shows how SSUTA states compared to non-SSUTA states.

Ideally, states that do not participate in SSUTA should take steps to become full-member states. Besides providing uniformity, participation in SSUTA brings together state tax administrators, state legislators, and the business community to interact and resolve sales and use tax issues that affect multiple states. Acknowledging that full compliance with SSUTA may take some time, the SSUTA Governing Board created a process for nonmember states to participate in assisting sellers to collect state sales and use taxes by providing Certified Service Provider (CSP) services (with states reimbursing some of those costs) and use of SSUTA's central registration system.[23] Often referred to as "Streamlined Light," the benefits of a nonparticipating state initiating these services include: (1) reducing undue burdens; (2) providing similar CSP approval/reimbursement/audit processes; (3) allowing states to work together on sales tax issues; and (4) increasing uniformity. The following is model legislation approved by the SSUTA Governing

[20] For more information on the inefficient and ineffective U.S. sales tax system, see Karl A. Frieden and Lindholm, "U.S. State Sales Tax Systems: Inefficient, Ineffective, and Obsolete," *Tax Notes State*, Nov. 30, 2020, p. 895.

[21] Frieden and Nicely, "The Best and Worst of State Sales Tax Systems," COST (Apr. 2018).

[22] States also need to consider making their marketplace facilitator laws, as warranted, to more closely follow the National Conference of State legislatures model. COST recently adopted a policy position on the importance of uniformity with the states' marketplace facilitator laws.

[23] Streamlined Sales Tax Governing Board, "Nonmember State Participation in Streamlined."

Board to help states craft legislation to increase their participation in the SSUTA[24]:

Model Utilizing Streamlined Sales and Use Tax Services Act

Definitions.

"Central Registration System" means the central registration provided by the Governing Board pursuant to Article IV of the Streamlined Sales and Use Tax Agreement.

"Certified service provider" means an agent certified by the Governing Board to perform the seller's sales and use tax functions as provided for under the Governing Board's contract with such providers.

"Governing Board" means the Streamlined Sales and Use Tax Agreement's Governing Board, including its various committees that address certified service provider and central registration services and issues.

Authorization.

The [Department] is authorized to consult and contract with the Governing Board, and other states as necessary, to allow sellers to use the Governing Board's certified service providers and central registration services, and as necessary, work jointly with other states to accomplish these ends.

The [Department] is authorized to take actions reasonably required to implement these provisions, including the adoption of rules and regulations, and the procurement of goods and services, which may be coordinated jointly with the Governing Board and other states. This includes the following:

1) Provide and maintain an electronic, downloadable database of all sales and use tax rates for the jurisdictions in this state that levy a sales or use tax.

2) Provide and maintain an electronic, downloadable database that assigns the addresses and zip codes in the state to the applicable taxing jurisdictions.

3) Complete the Streamlined Sales and Use Tax Agreement's Taxability Matrix and Certificate of Compliance, noting how the State's sales and use tax law follows or deviates from those requirements.

The [Department] shall also work with the Governing Board to:

1) Establish and provide a certification process to allow certified service providers to receive compensation, similar to that for the Governing Board's full member states. Non-SSUTA states may have a different compensation structure solely to account for additional complexities in collecting and remitting this State's sales and use tax due to not being a Governing Board full member state.

2) Enter into a contractual relationship with the Governing Board and/or the Governing Board's certified service providers. At a minimum, the contractual relationship shall address:

A. The responsibilities of the Governing Board, certified service providers, and the sellers that contract with the certified service provider related to liability for proper collection and remittance of sales and use taxes.

B. The responsibilities of the Governing Board, certified service providers, and the sellers that contract with the certified service provider related to record keeping, auditing, and the protection and confidentiality of taxpayer information.

C. The method and amount of compensation to be provided to the certified service provider by this State for the services the certified service provider provides to certain sellers.

3) The [Department] is authorized to pay annual dues to the Governing Board, not to exceed the dues calculation that would be owed if the State was a Governing Board full member state.

4) [State adds any necessary language to comply with the State's purchasing and contract laws here.]

5) The [Department] shall also comply with the Governing Board's requirements to use the

[24]The full model is available on the SSUTA website.

> *Board's central registration system and is authorized to enter into a contract consistent with the requirements imposed on the Governing Board's full member states.*

Relief from Liability.

1) Sellers and certified service providers are relieved from liability to the state for having charged and collected the incorrect amount of sales or use tax resulting from the seller or a certified service provider relying on 1) erroneous data provided by the state in its rate and boundary databases, or 2) erroneous data provided by the state concerning the taxability of products and services as provided in the Taxability Matrix.

2) Sellers and certified service providers are relieved from liability to the state for having charged and collected an incorrect amount of sales and use tax resulting from the seller or certified service provider relying on certification by the [Department] of the accuracy of the certified service provider's tax rules and automated systems.

Effective Date. This act shall be effective on X date.

Congress may revisit this area. On November 24, 2020, Rep. Andy Kim, D-N.J., chair of the House Small Business Subcommittee on Economic Growth, Tax and Capital Access, sent a letter to the Government Accountability Office asking the GAO to update its November 2017 estimate of revenue and compliance costs related to interstate sales and use taxes for calendar years 2018-2019 and to estimate those costs for 2020-2021.[25] The letter asks the GAO to address issues such as how increased uniformity for an economic threshold would affect small businesses, any variances that exist, and the estimated costs for sellers to integrate sales tax software, train employees, etc. In an encouraging sign, Mary Peterson, incoming FTA executive director, indicated that greater consistency across state sales and use tax laws in the wake of *Wayfair* is one of her priorities.[26] States not participating in the SSUTA will be advised to consider at least undertaking "Streamlined Light."

Conclusion

COST anticipates that 2021, like past years, will be a busy legislative year with state and local government officials addressing many tax issues. We look forward to working with state chambers of commerce, taxpayer associations, state and local tax officials, and others to address and enact these and other initiatives during the upcoming year. ■

[25] Letter from Rep. Andy Kim to Gene L. Dodaro, comptroller general of the United States (Nov. 24, 2020). The letter was also signed by Reps. Nydia M. Velázquez, D-N.Y.; Sharice Davids, D-Kan.; Ben Cline, R-Va.; Jason Crow, D-Colo.; and Sen. Ron Wyden, D-Ore.

[26] Michael J. Bologna and Tripp Baltz, "Congress Seeks Review of Sales Tax Burdens on Small Business," *Bloomberg Tax*, Nov. 27, 2020.