



Texas Taxpayers and Research Association Annual Meeting Austin, Texas November 21, 2024



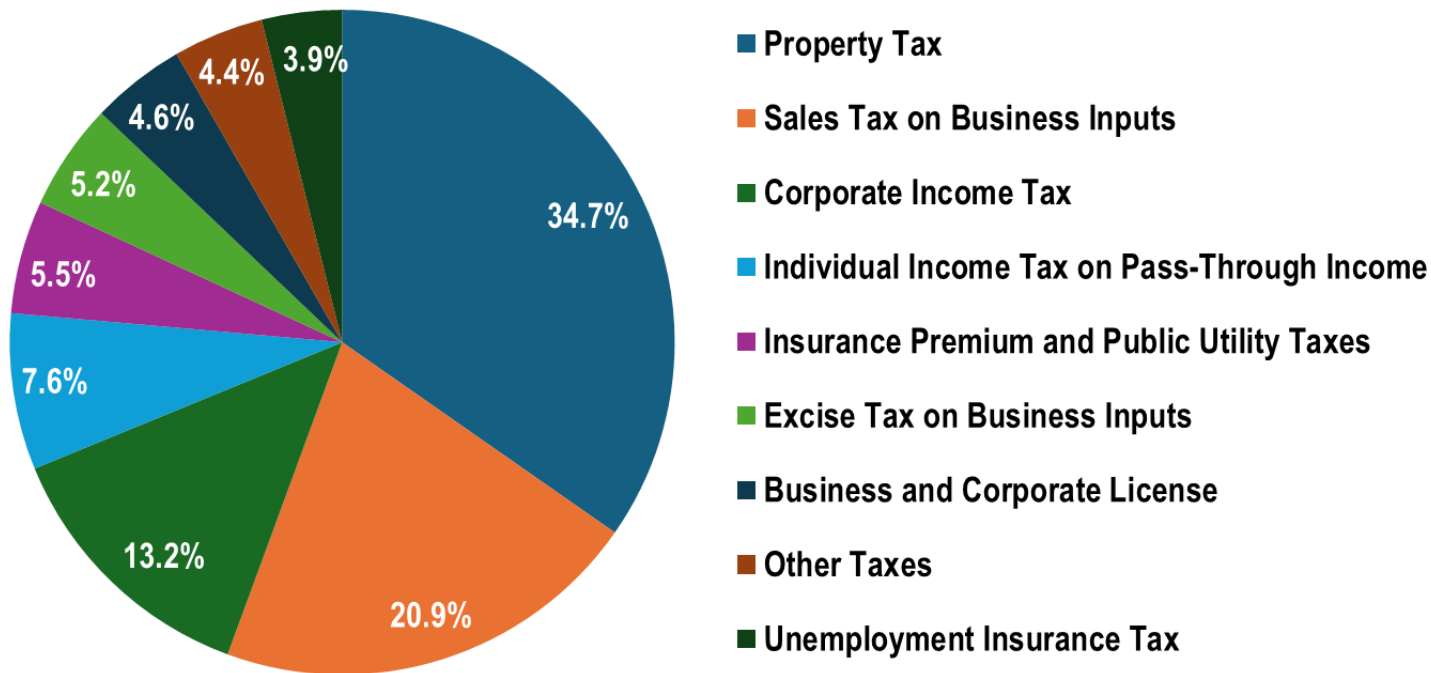
Tax Developments Across the States



“Fair Share”



EY/ COST FY 2022 State and Local Business Tax Burden Study



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
- Corporate income tax revenue increased by 100% over the last four years.
- 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

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



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

The central thesis of leading advocates of progressive state tax policy (and WWCR) - Dan Bucks/Peter Enrich/Michael Mazerov/ Darien Shanske (BEMS) from 23 Tax Notes roundtables:

- 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

The Rebuttal:

- 1) Does the structural design (and political influence) explanation for the business “underpayment” of corporate income tax apply equally to the other largest state and local taxes imposed on business (sales/excise taxes on business inputs and property taxes)?
- 2) If not, is there a quantifiable business “overpayment” of other state and local taxes compared with what business would pay with a more optimal or neutral tax design?



Business Pays More Than Its ‘Fair Share’ of State and Local Taxes as Measured by Deviations from Optimal or Neutral Tax Design

- There is widespread agreement among sales tax experts that a well-designed sales tax does not include business inputs in the tax base in order to avoid sales tax pyramiding.
 - The current design of the SUT disfavors business as business inputs on average make up 42% of the sales tax base.
- The property tax in most jurisdictions significantly favors homeowners and disfavors business.
 - The current design of the property tax disfavors business as commercial and industrial properties have on average effective tax rates over 80% higher than homeowner properties.
- Based on deviations from optimal or neutral tax designs, estimated **business “overpayments” of sales and excise taxes on business inputs and property taxes on business property are 15 to 21 times greater** than even the highest (unadjusted) BEMS/ITEP estimated business “underpayments” of state corporate income tax.
- **See: Karl A. Frieden, “Wearing Blinders in the Debate Over Business’s ‘Fair Share’ of State Taxes”, *Tax Notes State*, April 8, 2024**



Recent COST Articles/STRI Studies

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)

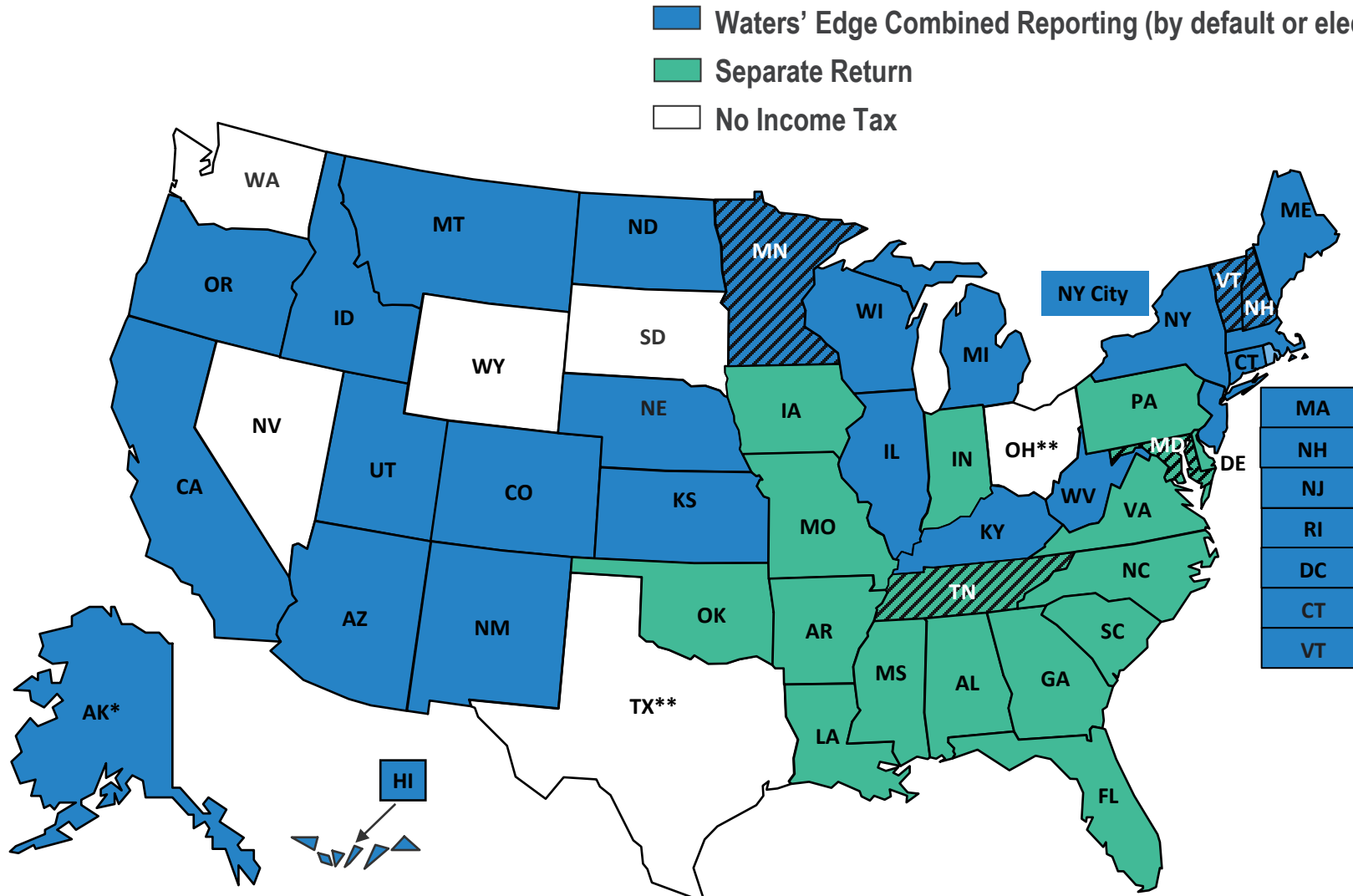
Resisting the Siren Song of Gross Receipts Taxes: From the Middle Ages to Maryland’s Tax on Digital Advertising (July 2022)

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



Corporate Income Tax

No State or Country 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. 4535/S.F. 4663 (Study bill on corporate tax base erosion)

*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)



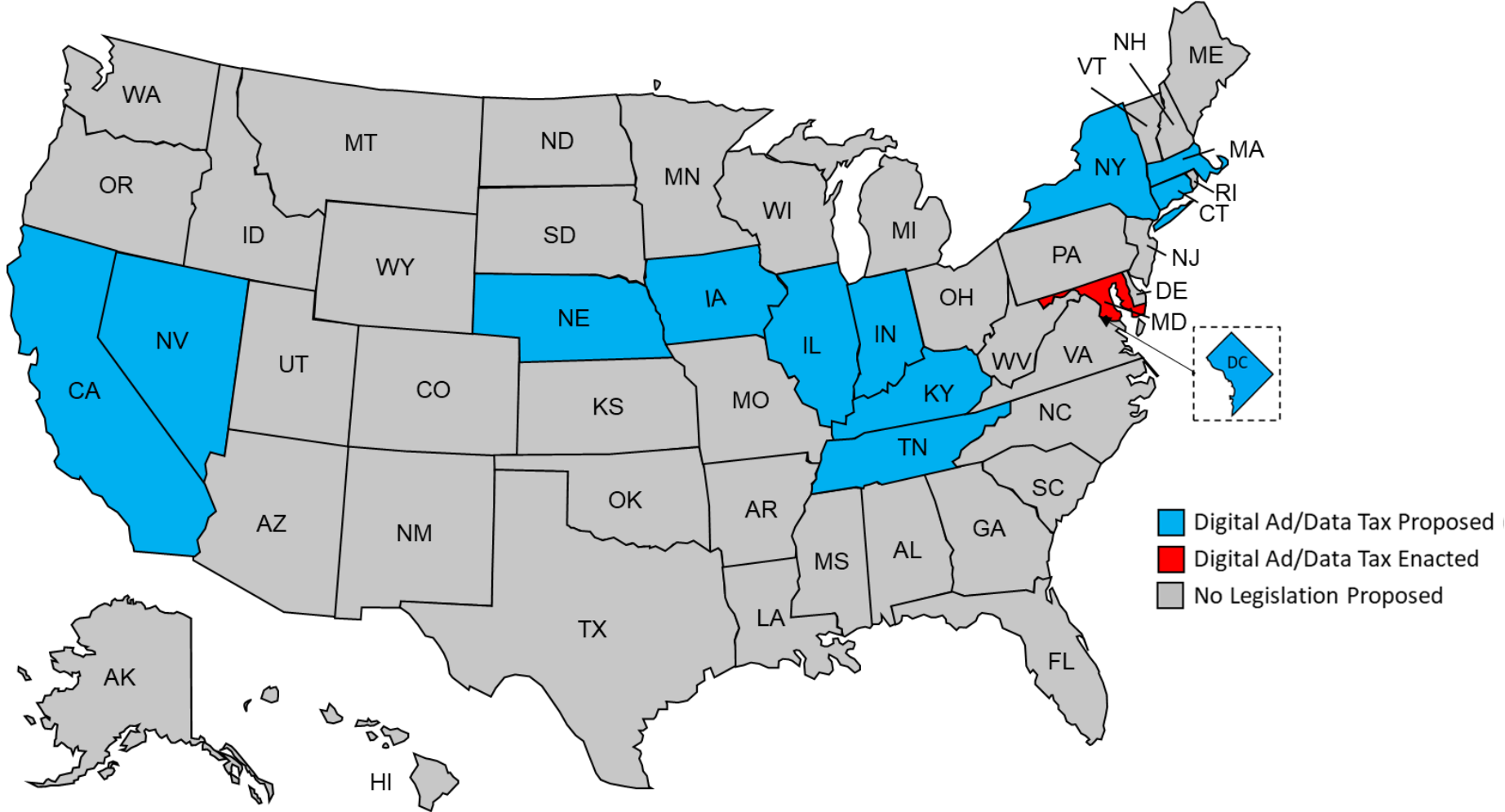
Mandatory Worldwide Combined Reporting

- **Mandatory Worldwide Combined Reporting: Elegant in Theory but Harmful in Implementation**, by Douglas L. Lindholm and Marilyn A. Wethekam – March 2024
- A renewed focus on MWWCR by certain academicians and policymakers has brought the method back to the forefront of state tax policy controversy.
 - The primary justification for the resurgence: Recoup revenues ostensibly “lost” through global profit shifting.
 - The widely quoted state revenue estimates associated with the justification for the adoption of MWWCR are based on faulty economic assumptions.
- The resurgence of the effort to adopt MWWCR fails to take into consideration:
 - The alternative efforts started a decade ago by the international tax community, led by the Organization for Economic Cooperation and Development (OECD), to collaboratively address and combat the growth in global profit shifting
 - Discounts the compliance burden imposed by MWWCR on both multinational taxpayers and state departments of revenue.



Sales/Use Tax

2023-2024 DIGITAL ADVERTISING SERVICES & DATA TAX PROPOSALS



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



Expansion of the Sales/Use Tax Base to Digital Goods and Services

States continue to enact legislation expanding their sales taxes to digital goods and services and cloud-based goods and services.

- Some states have alternative tax regimes where application of their taxes to such goods and services is unclear.

States also continue to evaluate their current authority to tax digital services (e.g., cloud computing services, etc.).

- States attempt to tax such goods and services through either legislative changes or by applying existing tax laws related to the taxation of software or other tangible goods.

A few states have specifically exempted digital goods/services or cloud computing services from taxation.

State sales tax expansion proposals:

- **Virginia:** Considering expansion of sales tax to digital goods and services, including cloud and streaming.
- **Louisiana:** Governor is currently proposing expansion of sales tax base to reach digital goods and services, including computer services (e.g., data processing, web page design, etc.), streaming, and cloud services.



New Taxes on Non-traditional Transactions

- 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
- In 2021, CO enacted a state-level retail delivery fee on certain motor vehicle deliveries to a CO location if there is an item of intangible personal property subject to sales tax
- In 2023, MN enacted its own retail delivery fee
 - Effective 7/1/2024, MN enacted 50-cent delivery fee on deliveries of certain taxable TPP and clothing, when delivered to a person in MN as part of a retail sale exceeding \$100
 - Fee is imposed on the retailer but may be passed to the customer
 - New guidance issued by MNDOR on 2/21/24
- Effective 7/1/2025, North Carolina enacted legislation imposing an excise tax on gross receipts derived from for-hire ground transportation services if the passenger boards the vehicle in NC, regardless of where the service is competed
 - Tax imposed at a 1.5% rate for exclusive-ride services and 1% for shared-ride services



Ballot Measures

Select State Tax Ballot Measures

State	Title	Description	Result*
Arizona	Proposition 312	Would allow property owners to apply for a property tax refund once a year if a city or locality does not enforce laws to mitigate homelessness.	PASS
Arizona	Proposition 490	Ask voters to authorize or not authorize the City of Scottsdale to enact a 0.15 percent transaction privilege and use tax rate, to fund improvements, for 30 years to take effect on July 1, 2025, when the current 0.20 percent tax rate expires	PASS
California	Proposition 5	If Proposition 5 were to pass, the new vote threshold to approve special tax and bond measures would be 55%. The lower vote threshold would make it easier to raise funding for housing and public infrastructure projects.	FAIL
California	Proposition 35	Permanently authorizes a tax on managed care organization to fund Medi-Cal programs.	PASS
Berkeley	Measure Z	Asks voters whether to remove the current January 1, 2027, expiration date of the general tax on the distribution of sugary drinks and sweeteners, paid by distributors at the rate of 1 cent per fluid ounce. The tax was originally approved by voters in 2014 and contains exceptions for small retailers, milk products, and baby formula	PASS
Los Angeles	Measure A	Repeal Measure H's tax of 0.25 percent and replace it with a 0.50 percent sales tax to fund affordable housing	PASS
San Diego	Sales Tax Measure E	Raise the City's sales tax by 1% (from 7.75% to 8.75%)	FAIL
San Francisco	Proposition L	Asks voters whether the City should place an additional tax permanently on transportation network companies and autonomous vehicle businesses that provide passenger service for compensation with rates between 1 percent and 4.5 percent of gross receipts in San Francisco above \$500,000 for an estimated annual revenue of \$25 million, and use the funds the City collects from the tax to support Muni transportation services and fare discount programs.	PASS
San Francisco	Proposition M	Asks voters if the City should permanently change the taxes it collects from businesses: changing annual gross receipts tax rates to between 0.1 percent and 3.716 percent, homelessness gross receipts tax rates to between 0.0162 percent and 1.64 percent, business registration fees to between \$55 and \$60,000, overpaid executive gross receipts tax rates to between 0.02 percent and 0.129 percent, and administrative office tax rates to between 2.97 percent and 3.694 percent of payroll expense; increasing the gross receipts tax exemption for small businesses; and changing how the City calculates these taxes; for estimated annual revenue of \$50 million once fully implemented.	PASS

*Results are UNOFFICIAL and subject to change as vote count progresses

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State	Title	Description	Result*
Santa Cruz	Measure Z	Asks voters whether to add to the City's Municipal Code a sugar-sweetened beverage tax at a rate of a two-cents per ounce to fund local improvements	PASS
Denver, CO	Issue 2R	Would ask voters whether Denver's sales and use tax rate should be increased, beginning January 1, 2025, through December 31, 2064, by 0.5 percent (5 cents on a \$10 dollar purchase) to fund affordable housing for low- and middle-income families and individuals.	FAIL
Denver, CO	Ballot Issue 2Q	Would ask voters whether the sales tax rate in Denver city and county be increased, beginning January 1, 2025, by a 0.34 percent (3.4 cents on a \$10 dollar purchase) on tangible personal property, products, and services currently subject to sales and use tax, in order to maintain and expand Denver health and hospital authority services.	PASS
Colorado	Proposition KK: 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.	PASS
Florida	Amendment 5	Provide for an annual inflation adjustment for the value of the homestead property tax exemption.	PASS
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.	PASS
Georgia	Local Option Homestead Property Tax Exemption Amendment (HR 1022)	Provide for a local option homestead property tax exemption.	PASS
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).	PASS

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State	Title	Description	Result*
Illinois	Advisory Question 2	Asks voters (as an advisory question) whether the Illinois Constitution should be amended to create an additional 3 percent tax on income greater than \$1,000,000 for property tax relief.	PASS
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))	PASS
North Dakota	IM 4: Prohibit Property Taxes Initiative	Prohibits property taxes in the state except for those designed to pay for bonded indebtedness.	FAIL
Oregon	Measure 118: 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.”	FAIL (78.8% to 21.2%)
South Dakota	Initiated Measure 28	Prohibit State sales taxes on anything sold for human consumption (except alcoholic beverages and prepared food).	FAIL
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.	FAIL
Washington	Initiative 2109	Repeal an excise tax imposed on the sale or exchange of certain long-term capital assets by individuals who have annual capital gains of over \$250,000.	FAIL
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.	PASS

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Questions?