

Legislation Can Be Taxing

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Agenda

- Overview of the state revenue situation
- Legislative Update—sessions status
- Legislative Update—enacted legislation
- Legislative Update—what's still out there (and what's not)

Learning Objectives

- Understand how the pandemic and recent federal legislation have impacted state revenues
- Understand enacted legislation and its implications
- Understand what legislative proposals are still “alive” and which are not

POLLING QUESTION

How active are you in the SALT legislative/policy space?

- A. What is SALT policy?
- B. I breathe this stuff—pre-Covid I lived at the capitol
- C. I'd rather be doing something else but have to keep up to do my real job

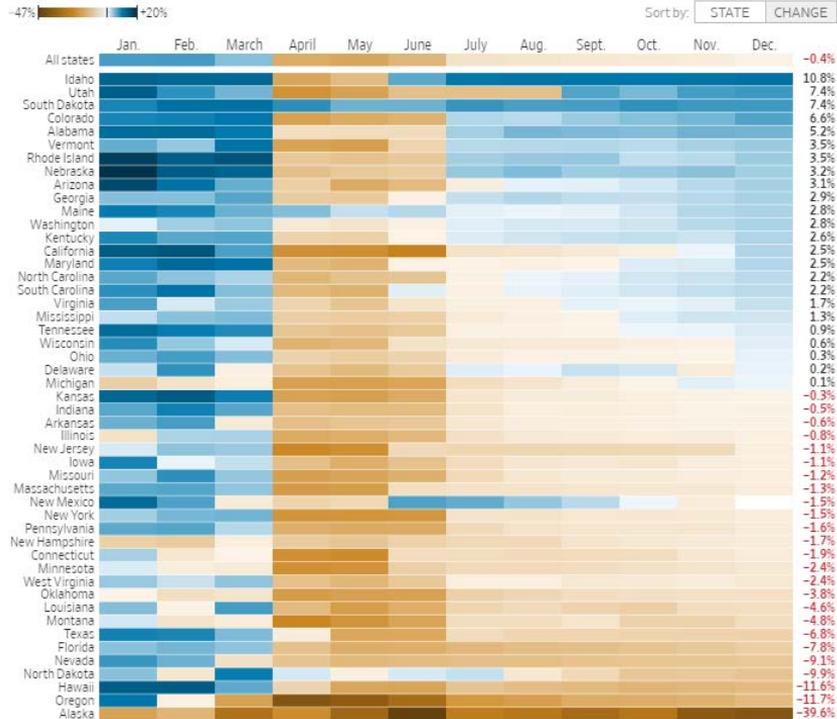
Overview of the state revenue situation



Overview

2021 legislative backdrop

Cumulative tax revenue in 2020, change from a year earlier



Note: Data not available for Wyoming. New Mexico available through November. Dollar amounts may include some nontax state revenues from sources such as fees.

Source: The State and Local Finance Initiative at the Urban Institute

- Despite predictions of significant budget shortfalls due to COVID-19, state tax revenues were roughly flat in 2020 according to the State and Local Finance Initiative
- Not all states fared equally
- Despite better than-expected tax collections, most states saw significant cost increases due to related COVID-19 response efforts
- ARPA!

American Rescue Plan Act of 2021

Prohibition on State Tax Cuts?

- Uncertainty whether accepting federal aid will prohibit states from implementing tax cuts until 2024, due to potential anti-commandeering issues (10th Amd't and Federalism).
- Section 602(c)(2)(A): “A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase”

ARPA (cont'd)

Responses to Section 602(c)(2)(A)

- Sec. Yellen: “Nothing in the Act prevents States from enacting a broad variety of tax cuts. That is, the Act does not ‘deny States the ability to cut taxes in any manner whatsoever.’ It simply provides that funding received under the Act may not be used to offset a reduction in net tax revenue resulting from certain changes in state law. If States lower certain taxes but do not use funds under the Act to offset those cuts – for example, by replacing the lost revenue through other means – the limitation in the Act is not implicated.”
- HR 2189, State Tax Freedom Act
 - Intro'd 3/29/2021 by Reps. Brady (TX) and Comer (KY).
- Interim Final Rule issued by Treasury May 10

POLLING QUESTION

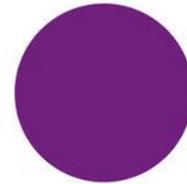
Does the recently released guidance ease your concerns about the ARPA clawback provision?

A. Yes

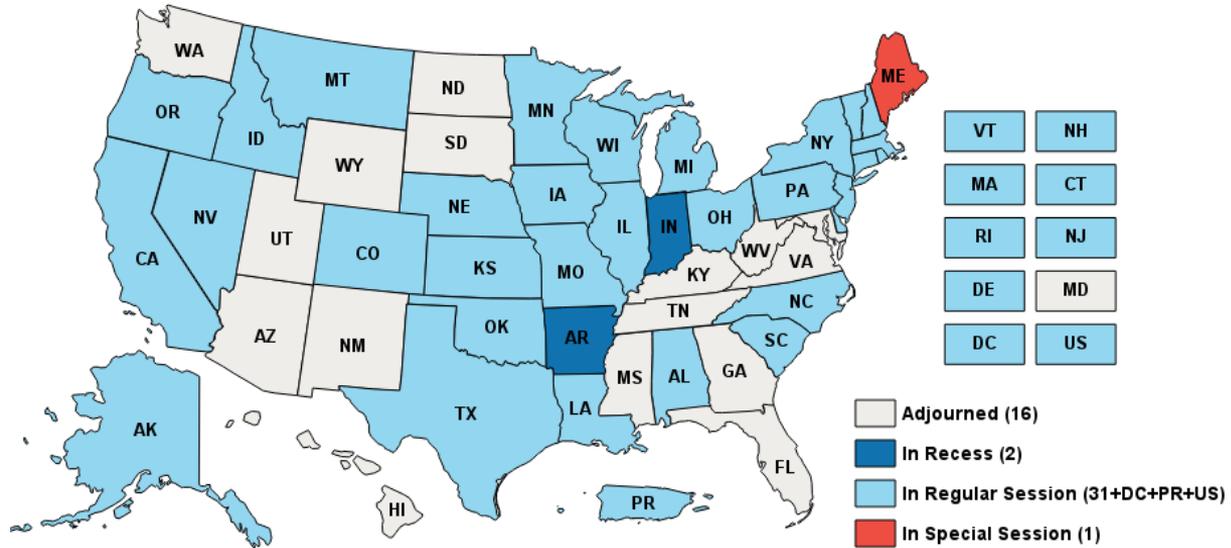
B. No

C. I wasn't concerned to begin with

Legislative Update— sessions status

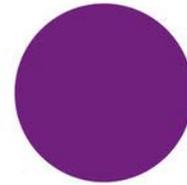


States in Session



Updated as of May 7, 2021

Legislative Update— enacted legislation



Digital advertising taxes

The First to Move: Maryland HB 732

- Creates a new digital advertising gross revenues tax separate from, and in addition to, the existing sales tax
 - The current Maryland sales tax is narrow, though attempts have been made to “modernize” the base
 - Tax imposed on a person’s annual gross revenues derived from digital advertising services in Maryland
 - Tax imposed at rates of 2.5% to 10% depending on annual gross revenues
- On Feb. 12, 2021, Legislature overrode Gov. Hogan’s veto despite grassroots effort to stop override



Digital advertising taxes

Maryland SB 787

- Moves effective date of Digital Advertising Services Tax to January 1, 2022
- Prohibits pass-through of tax
- Exempts certain entities – broadcast entity or news media entity
- Fixes certain issues with expansion of sales tax to digital products
- Passed General Assembly on 4/12
- Pending Gov. Hogan's action – has until 6/1 to sign or veto or becomes law without signature
- Tax Tips 29 – continues to be revised



Connecticut H.B. 6516 (Public Act 21-3)

- *An Act Mitigating Adverse Tax Consequences from Employees Working Remotely During COVID-19* was signed by the Governor on March 4.
- The new law provides CT residents a credit for taxes paid to:
 - Any convenience test state (NY) while teleworking in CT; and
 - Another state (MA/RI) that enacted a law or adopted a rule requiring a nonresident employee to pay tax while teleworking in CT due to the pandemic (in certain cases).
- The new law also provides that DRS cannot consider the activities of an employee who worked remotely in CT because of Covid-19 in determining whether an employer has nexus with the state.
- *See also* Comm'r Bull. (March 5, 2021).

Marketplace Collection Legislation

Florida, Kansas, Missouri

- Florida SB 50 – signed by Gov. DeSantis 4/19
 - Marketplace providers must collect and remit beginning July 1, 2021 after reaching a \$100,000 sales threshold
 - Marketplace providers would be required to collect and remit the E911 fee, waste tire fee, and lead-acid battery fee beginning April 1, 2022
- Kansas SB 50 – veto overridden 5/3
 - Marketplace facilitators must collect and remit beginning July 1, 2021 after reaching a \$100,000 sales threshold
 - The legislation also decouples the state from GILTI and 163(j) and eliminates the state's ten-year net operating loss carryforward cap for losses incurred in tax year 2018 or later, among other provisions.
- Missouri SB 153 – passed 5/14
 - Requires marketplace facilitators that meet a \$100,000 threshold to collect and remit tax beginning either January 1, 2022 (HB 554) or January 1, 2023



A few more kind of big ones

Alabama HB 170 (signed Feb. 12)

- Decouples from GILTI
- Repeals throwback provision
- Moves to single sales factor apportionment for most corporate taxpayers

Georgia SB 185 (signed Apr. 29)

- Eliminates all subregulatory deference provided to the Department but makes no changes to the current level of deference accorded to the Department regarding formally promulgated guidance pursuant to the APA

New Mexico HB 98 (signed Apr. 5)

- Omnibus Tax Bill--allows electronic payments in lieu of certain check or cash payments, amends requirement for certain rural job tax credits, imposes a self-insured group tax and removes references to "combined reporting system" as it will no longer exist after July 1, 2021

Utah HB 39 (signed Mar. 22)

- Clarifies taxpayers are entitled to IRC sec. 250 deduction for purposes of IRC 965 and GILTI
- Retroactive to cover all years impacted by the TCJA

West Virginia SB 270 (signed Mar. 18)

- Provides for local marketplace facilitator collection on hotel and hotel operators
- Subject to 200 transaction or \$100k gross revenue threshold

Virginia HB 1800 (enacted Apr. 7)

- Requires corporate taxpayers that are members of a unitary group to file pro forma returns on a combined based on tax year 2019 information
- Report Due July 1, 2021

Everything else

IRC Conformity

- Georgia HB 265 (signed Feb. 24)
- Idaho HB 58 (signed Feb. 18)
- Kansas SB 50 (veto override 5/3)
- Ohio SB 18 (signed Mar. 31)
- Virginia SB 1146 (signed Mar. 15)
- West Virginia SB 2359 (signed Feb. 24)
- Wisconsin AB 2 (signed Feb. 18)

NOL Bills

- Colorado HB21-1002 (signed Jan. 21)—conforms to CARES Act NOL carry back provisions
- Idaho HB 170 (signed Mar. 17)—conforms Idaho to IRC sec. 461(l) (excessive business losses) and provides 20 year carry forward for such losses
- Utah SB 25 (signed Mar. 22)—addresses calculation of NOL 80% carry forward cap

Covid Related

- Arkansas HB 1345 (signed Mar. 9)—allows for early collection of property tax
- Arkansas HB 1361 (signed Mar. 2)—PPP conformity
- Kentucky HB 84 (signed Mar. 18)—exempts disaster response entities and employees from local taxes and limits nexus rules for such entities
- New York SB 276 (signed Jan. 30)—allows for property tax payment deferral
- Virginia HB 2185 (signed Mar. 11)—provides a sales and use tax exemption for PPE

Credits and Incentives/SUT Exemptions

- Montana SB 41 (signed Feb. 23)—adds permanent 10-year credit bill review requirement
- Montana SB 45 (signed Feb. 23)—repeals corporate income tax credit for new or expanded industry
- New Jersey AB 4853 (signed Jan. 4)—creates new economic development programs
- Tennessee HB (Mar. 29)—creates payroll tax credit and SUT exemption for qualified production (*i.e.*, film credit)

Administration

- Arizona SB 1350 (signed Apr. 5)—extends state corporate due date to seven months after initial due date
- Arkansas HB 1031 (signed Feb. 24)—requires e-filing where a taxpayer e-files federally
- Montana HB 53 (signed Mar. 31)—adopted MTC CPAR model
- Wisconsin AB 2 (signed Feb. 18)—updates timeframe for RAR reporting to 180

Legislative
update—
what's still
out there
(and what's
not)



Digital advertising taxes

Gross receipt tax proposals

Connecticut HB 6443 (budget bill)

- Would establish a Maryland-style digital advertising tax

Connecticut HB 5645

- This bill proposes to establish a tax on social media provider companies on the apportioned annual gross revenue derived from social media advertising services in the state, the revenue from such tax to be dedicated, in part, to fund online bullying prevention efforts and training and research for counselors and educational institutions to address social isolation and suicide prevention

Connecticut HB 6187

- Would establish a 10% tax on the annual gross revenues derived from digital advertising services in the state for any business with annual world-wide gross revenues exceeding ten billion dollars

Montana HB 363

DEAD

- This bill would impose a 10% digital advertising gross revenue tax imposed on each person with worldwide annual gross revenue from digital advertising services of \$25 million or more and with annual gross revenue derived from digital advertising services in the state
- The tax is apportioned using the sales factor

Digital advertising taxes (cont.)

Gross receipt tax proposals

New York AB 743

LIKELY DEAD

- This bill would expand the sales tax base to include digital advertising services
- The bill defines “digital advertising services” as “advertisement services on a digital interface, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services which markets or promotes a particular good, service, or political candidate or message

Texas HB 4467

LIKELY DEAD

- This bill would impose a GRT on digital advertising services similar to the Maryland digital advertising

West Virginia SB 605

DEAD

- Imposes a tax on annual gross revenue derived from digital advertisement services in the state at a sliding scale rate beginning Jan. 1, 2022. Highest rate is 10% of the assessable base for a party with global annual gross revenues exceeding \$15,000,000,000
- The bill directs the West Virginia Tax Commissioner to promulgate sourcing regulations

Digital advertising taxes

Massachusetts

HB 3081 / HD 3210

- Imposes a tax on annual gross revenue derived from digital advertisement services in the state at a sliding scale rate beginning Jan. 1, 2022
- 5% tax on annual revenues of \$50 million to \$100 million
- 10% for revenues between \$100 million and \$200 million
- 15% for revenues exceeding \$200 million
- Services are sourced to devices in Massachusetts using either a device's IP or a device that is known or presumed to be used in the state

HB 2894 / HD 3601

- Imposes a flat 5% excise tax paid monthly on the annual revenue from sales of digital advertising services to Massachusetts customers, exceeding a \$25 million annual threshold
- Digital advertising service would be sourced to the state if it is received on a device with an IP address located in the state
- No effective date

HB 2928 / HD 3558

- Creates a commission to study a digital advertising tax, particularly on companies that annually generate over \$100 million in global revenue
- No tax imposition

HD 3812

- Shell bill titled "an Act relative taxation on gross revenues from digital advertising"
- No substantive provisions
- As introduced, the bill states in its entirety: "Draft being worked on by House Counsel"

HD 3522

- Would establish a tax on online advertising (no other substantive provisions)

POLLING QUESTION

How concerned is your company with digital ad taxes?

A. Very concerned

B. Somewhat concerned

C. I don't think these taxes will impact my company

Taxes on data/personal information

New York SB 4959

LIKELY DEAD

- This bill would create a monthly excise tax on the collection of “consumer data of individuals of New York” by commercial data collectors
- The bill imposes various rates based on the number of New York consumers and various minimum tax amounts (between \$50k and \$2.25M) per month
- Annually, the tax would range from a minimum of \$600k and well over \$27million

New York SB 6727

LIKELY DEAD

- Establishes the Office of Consumer Protection and imposes a tax on data collectors and data processors

Oregon HB 2392

LIKELY DEAD

- This bill would create a new gross receipts tax on the “sale of personal information”
- GRT rate would be 5%

Washington HB 1303

DEAD

- This bill would create a new B&O tax classification for the “sale of personal information”
- B&O tax rate would be 1.8%

Taxes on digital products

Sales tax proposals

Colorado HB 1312

- Would amend the definition of TPP to include “digital goods.”
- “Digital good” defined as “any item of tangible personal property that is delivered or stored by digital means, including but not limited to video, music, electronic books, or computer files.”

Georgia HB 594

DEAD

- This bill would expand the sales and use tax to encompass certain transactions of digital goods and services. “Digital goods or services” is defined include prewritten software, digital codes, SaaS, and related licenses

Kansas HB 2230

DEAD

- This bill would extend sales tax to all sales of digital property and subscription services, regardless of whether: (1) The purchaser has the right to permanently use the property; (2) the purchaser's right to access or retain the property is not permanent; or (3) the purchaser's right to use is conditioned upon continued payment

Nevada SB 374

- The bill would generally impose a new excise tax on the retail sale of digital goods

Taxes on digital products (cont.)

Sales tax proposals

Texas SB 1711

LIKELY DEAD

- This bill would expand the sales tax to include a wide range of services, including advertising services as well as certain enumerated personal services

Utah SB 95

DEAD

- This bill would provide a sales and use tax exemption for tangible personal property consumed in the production or development of taxable computer software

Vermont HB 261 and SB 53

- This bill would eliminate the sales and use tax exemption for prewritten computer software accessed remotely
- This bill would also impose sales and use taxes on vendor-hosted prewritten computer software

Wyoming HB 176

DEAD

- This bill would expand the sales tax to every retail sale of specified digital products within the state, including “the sale price for access to specified digital products through a streaming or subscription service that does not provide the purchaser with permanent use of the specified digital products.”
- Under current law, Wyoming only subject specified digital products to tax if the purchaser has a permanent use of the specified digital product

GILTI/965

California AB 71

- Conforms to key TCJA provisions, including 40% of IRC 965 and 50% of GILTI, without providing apportionment factor representation
- Would use increased revenue to fund programs addressing homelessness

Illinois HB 3478

- This bill provides a definition for “GILTI” and “Subpart F” and would amend 35 ILCS 5/203 (base income defined) to provide that 50 percent of the income included in a taxpayer's federal adjusted gross income and deemed received under IRC § 951A (GILTI) or IRC § 952 (Subpart F) may not be subtracted, and 40 percent of the income included in the taxpayer's adjusted gross income and deemed received under IRC § 965, including IRC § 965(h), may not be subtracted

Maine LD 147

DEAD

- For tax years beginning on or after January 1, 2020, the addition modification for the amount of the GILTI deduction is for the total amount of the foreign-derived intangible income and GILTI deduction claimed in accordance with the IRC § 250(a).

GILTI/965

Massachusetts SB 1812

- This bill would provide a subtraction to taxable income of 100% of GILTI under section 951A

Minnesota HF 991 & SF 961

- These bills provides a For individual and corporate income taxes, this bill would provide an addback of the amount excluded from federal adjusted gross income or federal taxable income under section 959 of the Internal Revenue Code, because the amount was previously included under IRC 951A or 965. This is retroactive to tax years beginning in 2016, except that the changes incorporated for federal purposes are effective on the date of those enactments.

Minnesota HF 2114

- This bill would require CFCs that generate GILTI to be included in the state combined filing group
- Brings in all income and apportionment information for CFCs
- Also would allow taxpayer to make worldwide filing election

Nebraska LB 347, amended in LB 432

DEAD

- As introduced would clarify that IRC § 951(a)(subpart F) and IRC § 951A(GILTI) are considered deemed dividends for purposes of Nebraska's 100% DRD (Neb. Rev. Stat. § 77-2716(5))
- Amendment references only IRC § 951A
- LB 432 advanced to enrollment and review for engrossment on May 11

163(j)

Kansas HB 2421 and SB 22

- Provides an income tax subtraction for the amount disallowed as a deduction pursuant to 163(j) for taxable years commencing after December 31, 2020

Maryland SB 578

- For calculating state income tax, this bill would require an addition to federal AGI for the aggregate of the amounts for each taxable year beginning after December 31, 2018, but before January 1, 2021, equal to the amount by which the taxpayer's interest expense deduction exceeds the limitation on business interest under IRC § 163(j) without regard to the amendments made by § 2306 of the CARES Act, and as calculated on a separate entity basis

Michigan SB 195

- Outlines rules for applying the business interest expense limitation under IRC § 163(j) for a unitary business group

Oregon HB 2839

- For calculating state income tax, this bill would require an addition to federal AGI for the aggregate of the amounts for each taxable year beginning after December 31, 2018, but before January 1, 2021, equal to the amount by which the taxpayer's interest expense deduction exceeds the limitation on business interest under IRC § 163(j) without regard to the amendments made by § 2306 of the CARES Act, and as calculated on a separate entity basis

Combined reporting proposals

Adoption

- Florida (HB 999)—water's edge
- Georgia (HB 673)—consolidated
- Maryland (HB 172; SB 511)—water's edge election
- Virginia (SB 1353)—water's edge
- Virginia (HJ 563)—study bill

Worldwide

- Illinois (HB 3477; SB 2126)
- Kentucky (HB 356)
- Minnesota (HF 2228)
- New Hampshire (HB 102)
- Oregon (HB 2975)

Other

- CO (HB 1311)
 - Repeals 3 of 6 test and adopts MTC unitary definitions
- Imposes tax haven blacklist
- Moves from Joyce to Finnigan

Apportionment proposals

DEAD

Idaho HB 19
(filed Jan. 21)

- Would transition the state from a cost-of-performance to market-based apportionment regime

DEAD

Kansas HB 2186
(filed Feb. 2)

- This bill would allow the elective use of single sales factor apportionment by taxpayers whose primary business activity is manufacturing and the production or storage of electricity
- Missed crossover deadline

DEAD

Montana SB 181
(filed Feb. 5)

- This bill would adopt a single-sales factor apportionment model for purposes of Montana's corporate income tax
- This bill applies to tax years beginning after June 30, 2021

Mass. SB 1857
(filed Jan. 28)

- This bill would gradually phase out Massachusetts' payroll and property factors by Jan. 1, 2024
- Referred to Committee on Revenue in March

Vermont HB 189
(filed Feb. 4)

- Would transition the state to single-sales factor apportionment by 2023 and eliminate throwback
- Would move the state from Joyce to Finnigan
- No movement since Feb. referral to Ways and Means

PASSED

West Virginia HB 2026
(sent to Gov. Apr. 5)

- Enacts single sales factor
- Repeals throwback
- Adopts market based sourcing
- Includes mobile workforce language

Interstate Compacts

Interstate Compact to Phase Out Corporate Giveaways

- Prohibits states from providing company-specific tax incentives and grants for businesses to relocate from other compact states
- The Compact would not prohibit:
 - workforce development grants that train employees
 - company-specific tax incentives or company-specific grants from local governments; or
 - state company-specific tax incentives or state company-specific grants to entities for corporate headquarters, office space, manufacturing facilities, or real estate developments located within their own state
- Considered this legislative season in AL, AZ, CT, DE, FL, HI, IL, IA, MA, NY, PA, RI, UT, and WV

Other tax trends

CEO-to-average-wage ratio taxes

Iowa HF 69 (no movement since Jan. hearing in House Committee on Commerce)

- This bill provides that amounts paid or accrued during a tax year as compensation to the chief executive officer, or the individual acting in such capacity, cannot be deducted when calculating net income of a publicly held corporation under the Iowa corporate income tax
- The bill applies to tax years beginning on or after Jan. 1, 2022

Massachusetts HB 3083 (pending in House Committee on Revenue since March 29)

- This bill would impose an additional tax on every corporation with a net income of \$10 million or more doing business in the commonwealth according to or measured by net income, to be computed at the tax rate applicable to the corporation's compensation ratio
- The "compensation ratio" for a taxable year is a ratio where the numerator is the amount equal to the greater of the compensation of the CEO, COO, or the highest paid employee of the taxpayer averaged over the three calendar years preceding the beginning of the taxable year and the denominator is the amount equal to the median compensation of all employees employed by the taxpayer, including all contracted employees under contract with the taxpayer, in the United States for the calendar year preceding the beginning of the taxable year
- Highest rate is an additional 10% if the ratio is over 500
- An additional 50% increase is triggered if too many jobs are moved abroad

Massachusetts SB 1907 (pending in House Committee on Revenue since March 29)

- For taxable years beginning on or after January 1, 2022, this bill would impose on corporations whose compensation ratio exceeds 100, a 2% tax on the corporation's net income in addition to the excise tax imposed on corporations.

Rhode Island HB 5647 (pending in House Finance committee with no major movement since Feb.)

- This bill creates a pay ratio surtax on publicly traded corporations
- For tax years beginning on or after January 1, 2022, a business income surtax of 10% will be imposed on any corporation whose pay ratio of its CEO to its median compensation of employees is at least 100:1, but less than 250:1
- For tax years beginning on or after January 1, 2022, a business income surtax of 25% will be imposed on any corporation whose pay ratio of its CEO to its median worker is at least 250:1

Other tax trends

Taxpayer disclosure/reporting bills

Massachusetts SB 1924

(pending in Committee on Revenue)

- This bill would allow the commissioner to require a taxable member (a member of a combined group) making a water's-edge election to submit within six (6) months after the taxable member files its federal income tax return a domestic disclosure spreadsheet to provide full disclosure of the income reported to each state for the year, the tax liability for each state, the method used for allocating or apportioning income to the states, and the identity of the water's-edge group and those of its United States affiliated corporations.

Maryland HB 330

(legislature adjourned before significant progression)

- This bill would require a publicly traded corporation that is required to file an income tax return to attach to the income tax return a statement that:
 - identifies the corporation's effective tax rate;
 - provides an itemized explanation of how the corporation's effective tax rate was calculated; and
 - includes a comparison of the effective tax rate of the corporation both before and after the application of any credits, deductions, subtraction modifications, or other adjustments

Oregon Bills

- SB 312
 - As amended, this bill would require a taxpayer to disclose significant taxpayer information to the Secretary of State, which would make that information public
 - Pending with Senate Committee On Finance and Revenue since Feb.
- HB 2976
 - As introduced, this bill would require the public disclosure of taxpayer information for taxpayers that claim more than an unspecified number of tax credits for a given year
 - Amendments expected but no movement since Jan.

POLLING QUESTION

How concerned is your company with corporate disclosure proposals?

- A. Very concerned
- B. Somewhat concerned
- C. Not at all



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