

Future of Sales Tax Roundtable: Influential Accountants in Sales Tax Reveal 2022 Trends and Updates



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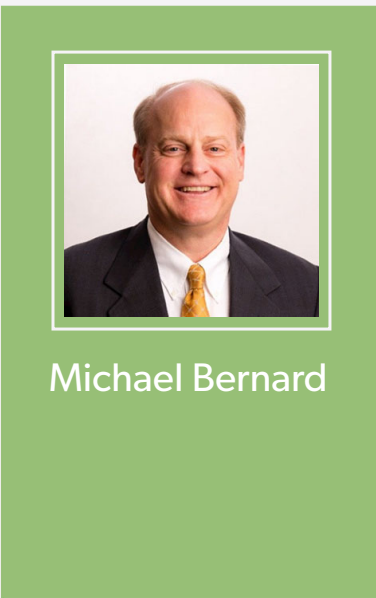
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Michael Bernard

- V.P. Tax Content & Chief Tax Officer, Vertex, Inc.
- Previously in various tax leadership roles at Microsoft Corporation for 28 years
- Accounting Today's 100 Most Influential People in Accounting for 2019, 2020 and 2021

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Charles Maniace

- Vice President, Regulatory Analysis and Design, Sovos
- 17 years of Indirect Tax experience.
- Has appeared in publications such as the Wall Street Journal, Forbes and Bloomberg
- Accounting Today's 100 Most Influential People in Accounting for 2019, 2020 and 2021

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Scott Peterson

- Vice President of U.S. Tax Policy and Government Relations, Avalara, Inc
- Previously the Executive Director of the Streamlined Sales Tax Governing Board and the Director of the South Dakota Sales Tax Division
- Accounting Today's 100 Most Influential People in Accounting for 2018, 2019, 2020 and 2021

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Diane L. Yetter

- Strategist, advisor, speaker, and author
- President of YETTER
- Founder of the Sales Tax Institute
- Accounting Today's 100 Most Influential People in Accounting for 7 times between 2011 and 2021
- Woman Business Owner of the Year 2020

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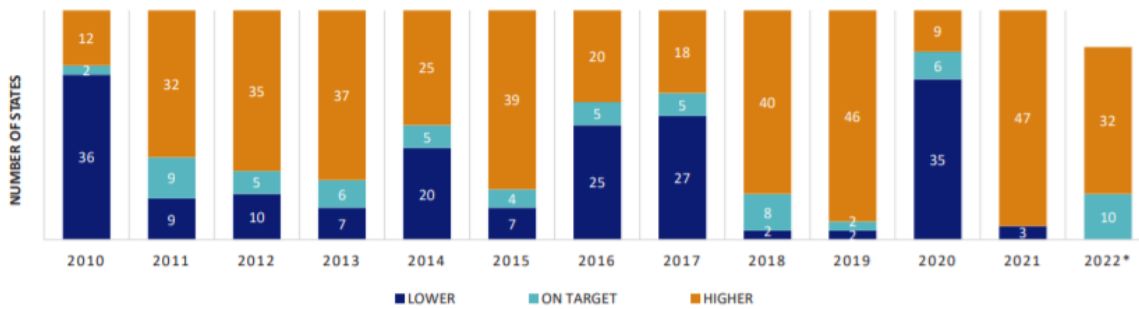


➤ Regulatory Trends

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State Budgets

General Fund Revenue Collections Compared To Original Budget Projections (By Fiscal Year)



*Fiscal 2022 is ongoing; figures are subject to change, and not all states were able to report this early in the fiscal year.

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Source: "Summary: Fall 2021 Fiscal Survey of States", NASBO

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Federal Lawsuit on use of Fed Covid funds

- **SUMMARY** - President Biden signed the \$1.9 trillion American Rescue Plan Act (ARPA), the latest federal stimulus bill to aid public health and economic recovery from the COVID-19 pandemic, on March 11, 2021.
- The plan included \$350 billion in emergency funding for state, local and territorial and tribal governments, known as the Coronavirus State and Local Fiscal Recovery Funds.
- **Tax Mandate Controversy:** Last year, 18 State AGs sued to enjoin Sec. Yellen/ Treasury, challenging the Act's "Tax Mandate," restriction which states that – "ARPA relief funds received by states cannot be used to offset tax cuts or credits; directly or indirectly."
- Two separate groups of states were successful in obtaining injunctions against the US Treasury, contending that the Tax Mandate violates both the Constitution's Spending Clause & the 10th Amendment. The Federal District Courts agreed.

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Federal Lawsuit on use of Fed Covid funds

- Last January, the US Treasury petitioned on appeal, that the 11th Circuit set aside the injunction issued by the District Court (ND- Alabama) and allow the federal *claw-back* of ARPA funds from 13 states, led in litigation by Florida and W. Virginia. These cases are scheduled to be heard in late February & March 2022
- <https://www.nlc.org/resource/local-allocations-in-the-american-rescue-plan/>
- <https://taxfoundation.org/state-and-local-aid-american-rescue-plan/>

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Federal Lawsuit on use of Fed Covid funds

- **The U.S. Treasury Final Rule - 31 CFR Part 35 –**
- **On Jan. 6, 2022**, the U.S. Treasury released the final rule for the Coronavirus State and Local Fiscal Recovery Fund program, established under ARPA. The rule, effective April 1, 2022, provides additional clarity & flexibility on uses (including the contested “so called – Tax Mandate,” comprising:
 1. Capital expenditures.
 2. Expanding public sector hiring and capacity.
 3. Premium pay for essential works.
 4. Broadening eligible broadband, water and sewer infrastructure

** Source: **National Conference of State Legislatures** - <https://www.ncsl.org/research/fiscal-policy/arpa-state-fiscal-recovery-fund-allocations.aspx>

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➤ State Sales Tax Reductions

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Trending Exemptions

- Numerous states are proposing sales and use tax exemptions on diapers and feminine hygiene products in 2022 – 35 bills:
 - Georgia – H.B. 751 (feminine hygiene products)
 - Hawaii – H.B. 1636 (feminine hygiene products)
 - Maryland – H.B. 282 (diapers)
 - New York – S.B. 8033 (diapers)
 - Washington – S.B. 5915 (diapers)
- In recent years, a number of states had enacted exemptions for diapers and feminine hygiene products

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Trending Exemptions

- Currently, 33 states fully exempt grocery food.
- Numerous states are proposing new or expanded exemptions on food in 2022 – 53 bills across 16 states:
 - Alabama – H.B. 173 and H.B. 174 would exempt food sales from state-level sales and use tax.
 - Colorado – H.B. 22-1062 would expand the state sales and use tax exemption for food to include food not for domestic home consumption.
 - Hawaii – H.B. 1636 would exempt certain foods.
 - Idaho – H.B. 448 would provide an exemption for food sold for human consumption.
 - Illinois – Governor Budget address proposed 1 year holiday of the low rate 1% on food but RTA tax remains
 - Utah – H.B. 165 would provide an exemption for food and food ingredients.

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State Sales Tax Rate Reductions

- New Mexico – S.B. 5
 - Proposed legislation would reduce the gross receipts tax rate and the compensating tax rate to 4.875% (currently 5.125%)
- South Dakota – S.B. 1327
 - Proposed legislation would reduce the sales tax rate to 4% (currently 4.5%)
- Washington – S.B. 5932
 - Proposed legislation would reduce the sales tax rate to 5.5% (currently 6.5%)
- West Virginia – S.B. 457
 - Proposed legislation would reduce the consumers sales and service tax after 12/31/2022 to 4.75% (currently 6%) and gradually reduce the consumer sales and service tax if certain thresholds are met in reserve funds.

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➤ Income Tax vs. Sales Tax

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Income Tax vs. Sales Tax

- Impact of goal to reduce/eliminate income tax comes at the impact on sales tax and base broadening
 - Services
 - Digital Goods
 - Intangibles (NFT, cryptocurrency)
 - Sin taxes

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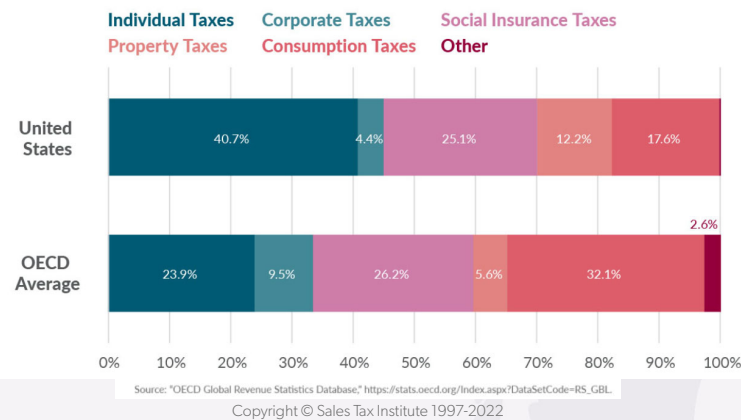
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Tax Revenue Sources – U.S. vs. Organisation for Economic Co-operation and Development (OECD)

Sources of Tax Revenue in the United States Compared to the OECD Average, 2018



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Income Tax vs. Sales Tax

- Colorado – H.B. 22-1125
 - Proposed legislation would make the temporary income tax rate reduction (individual and corporate) permanent and would establish the reduction as always equaling a .05% reduction of the current income tax rate.
- Hawaii – H.B. 1505
 - Proposed legislation would increase the corporate income tax rate and establish a single corporate income tax rate of 9.6%
- Idaho – H.B. 436
 - Enacted legislation which lower the corporate income tax rate to 6% as well as consolidating individual brackets and reduces rates effective 1/1/2022. (signed 2/7/22)
- Indiana – S.B. 372
 - Proposed legislation would apply sales tax to most services starting 1/1/2023. The legislation would also phase out the corporate income tax.

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Income Tax vs. Sales Tax

- Mississippi – H.B. 531
 - Proposed legislation would eliminate individual income tax and provide for a sales tax increase.
- Missouri – S.B. 701
 - Proposed legislation would eliminate the corporate income tax beginning on or after January 1, 2023.
- Nebraska
 - L.B. 422 would broaden sales tax to services and gradually lower the state sales tax rate.
 - L.B. 1264 would lower the corporate income tax rate.

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California Gross Receipts Tax Proposal

- California proposed constitutional amendment ACA 11
 - Would adopt a new 2.3% gross receipts tax.
 - The first \$2 million of business income would be excluded.
 - Would be imposed in addition to sales tax and corporate income tax.
 - Focus of the funds was to fund health care
 - This appears to be dead but need to watch

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➤ State Remote Seller Structural Changes

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State Remote Seller Structural Changes

- Tax Type and Sourcing Changes
 - Illinois - Leveling the Playing Field for Illinois Retail Act
 - New Mexico –Destination sourcing plus local tax effective July 2021
 - Iowa – Remote sellers required to collect/remit sales tax instead of seller's use tax
 - Texas "Place of Business" sourcing change – in litigation
- Local Tax Collection Authorities
 - Alaska – Remote Seller Sales Tax Commission
 - Colorado – Sales & Use Tax System (SUTS)
 - Louisiana – Sales & Use Tax Commission for Remote Sellers

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➤ Remote Seller Litigation

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Remote Seller Litigation

- Louisiana Challenge under Burden
 - *Eastern District of Louisiana, Halstead Bead, Inc. v. Lewis et al* 2:21-cv-02106, filed November 15, 2021
- Massachusetts Cookie Nexus Challenged
 - *U.S. Auto Parts Network Inc. v. Commissioner of Revenue*
 - The Commissioner of Revenue filed a Notice of Appeal on 1/31/22.
- California and Amazon FBA Third Party Sellers
 - *Online Merchants Guild v Maduros*
- Pennsylvania and Amazon FBA Third Party Sellers
 - *Online Merchants Guild v. C. Daniel Hassell et al.*, case number 179 MD 2021, in the Commonwealth Court of Pennsylvania (communication between Amazon and PA must be provided to Guild)

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➤ Digital Advertising Taxes

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Digital Advertising Taxes

- MD Digital Advertising Tax
 - Lawsuit filed challenging the tax
- Attempts by other states to enact digital advertising taxes have been unsuccessful.
- Washington – H.B. 1303
 - Proposed legislation would impose a tax on persons engaging in the business of making sales of personal data or exchanging personal data for consideration in Washington. The tax would be equal to the gross income of the business multiplied by 1.8%.
- Impact on International Agreements (Pillar 2) on Digital Ad Taxes

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➤ Operational Business Challenges and Considerations

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Nexus Considerations

- More uniformity in thresholds, definitions and enforcement?
- Will more states make changes to thresholds?
 - Maine removed its 200 transactions threshold, effective 1/1/2022
 - Wisconsin removed its 200 transactions threshold, effective 2/20/2021
- Marketplace sales – Included or excluded in threshold calculation?
- Impact of physical nexus
- Basis of Revenue – Gross, Retail, Taxable
- Deregistration if drop below threshold considerations

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Omni Channel Selling Considerations

- Different sales tax capabilities of different channels
- Responsible party – Marketplaces vs Direct
- Nexus considerations – inventory and fulfillment activities
- Sourcing differences based on channel

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Concerns and Considerations

- Nexus Creation
- Exemption Documentation Issues
- Drop Shipments
- Home rule nexus and administration

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➤ Digitization of Tax and Audits

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Digitization of Tax Administration

- Digitizing the entire cycle
 - From registration to the state setup to activation in a tax system
 - Taxpayers do things differently than the states, but everyone is working toward the same goal.

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Real-Time Reporting and E-Invoicing

- MA Accelerated Sales Tax Remittance
- Structural difference between real-time payment and global e-invoicing requirements which are about information!
 - **Post Audit** – exchanging e-invoices with no tax authority review
 - **Continuous Transaction Controls** – exchange of e-invoices with transmission to a tax authority (real time, near real time, or otherwise)
 - **Clearance Continuous Transaction Controls** – Tax authority must declare the e-invoice “valid” prior to the transaction being completed

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Digitization of Audits

- Digital Audits
 - Increased reliance on digital audits by the states
 - How will states enforce compliance against greater number of sellers with nexus?
 - Data Access – erooms, encrypted emails
 - Virtual “Plant Tours”

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Questions/Comments

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