



# New Mexico Revenue Stabilization and Tax Policy Committee

August 12, 2022

Speaker:

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# Agenda

- Introduction to COST
- State and Local Business Tax Burden
- How New Mexico Compares on COST Scorecards and Why it Matters
- COST's Proactive Legislation



# Introduction to COST





# About COST

The Council On State Taxation (COST) is the premier state tax organization representing taxpayers. COST is a nonprofit trade association consisting of over 500 multistate corporations engaged in interstate and international business.

**COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.**

COST was formed in 1969 by a handful of companies under the aegis of the Council of State Chambers of Commerce, an organization with which COST is still associated. That auspicious formation of COST was precipitated by the need of corporate taxpayers to be represented by a united voice on state tax issues - to counterbalance a number of organizations of state tax authorities. Over fifty years later, COST is more successful than ever as a result of the hard work of its nationally respected professional staff and the significant contributions of its Board of Directors and member companies.



# Recent State Tax Research Institute (STRI) Studies

- **Resisting the Siren Song of Gross Receipts Taxes: From the Middle Ages to Maryland’s Tax on Digital Advertising**, by Professor Richard D. Pomp, July 2022
- **Locally Administered Sales and Accommodations Taxes: Do They Comport with *Wayfair*?** by Harley Duncan and Sarah McGahan, KPMG, July 2022
- **A Global Perspective on U.S. State Sales Tax Systems as a Revenue Source: Inefficient, Ineffective, and Obsolete**, by Karl Frieden and Douglas Lindholm, November 2021
- **Total State and Local Business Taxes for Fiscal Year 2020**, COST/STRI/EY, October 2021
- **Convergence and Divergence of Global and U.S. Tax Policies**, by Karl Frieden, COST and Barbara Angus, EY; August 2021
- **State Adoption of European DSTs: Misguided and Unnecessary**, by Karl Frieden and Stephanie Do, May 2021
- **Mitigating the Impact of State Tax Law Changes on Company Financial Statements**, COST/STRI study released in June 2020
- **The Illusory Benefits of an Accelerated Sales Tax Remittance System**, COST/STRI study released in May 2020
- **The Impact Of Imposing Sales Taxes On Business Inputs**, COST/STRI/EY Study released June of 2019



# Model Statutory Language Endorsed by COST

- Mobile Workforce 30-day Safe Harbor: COST Version, not MTC
- RAR Adjustments; Joint Effort: MTC, COST, AICPA, TEI
- Unclaimed Property: ABA Version, not RUUPA
- Marketplace Legislation: NCSL Collaborative Effort
- Participation in Streamlined Sales & Use Tax Agreement (SSUTA)
- State One-Month Filing Extensions

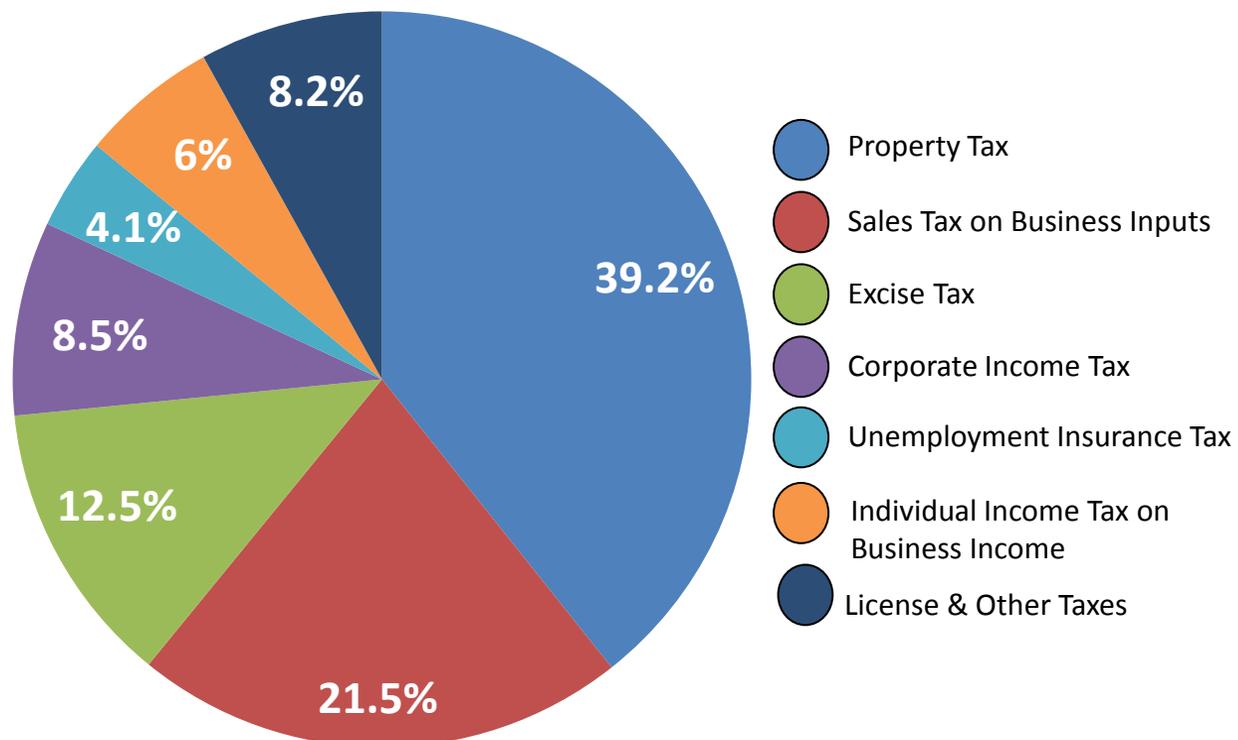


# State and Local Business Tax Burden



# FY 2020 State and Local Business Tax Burden Study

State and Local Business Taxes by Type, FY20 - US



## How Much Do Businesses Pay?

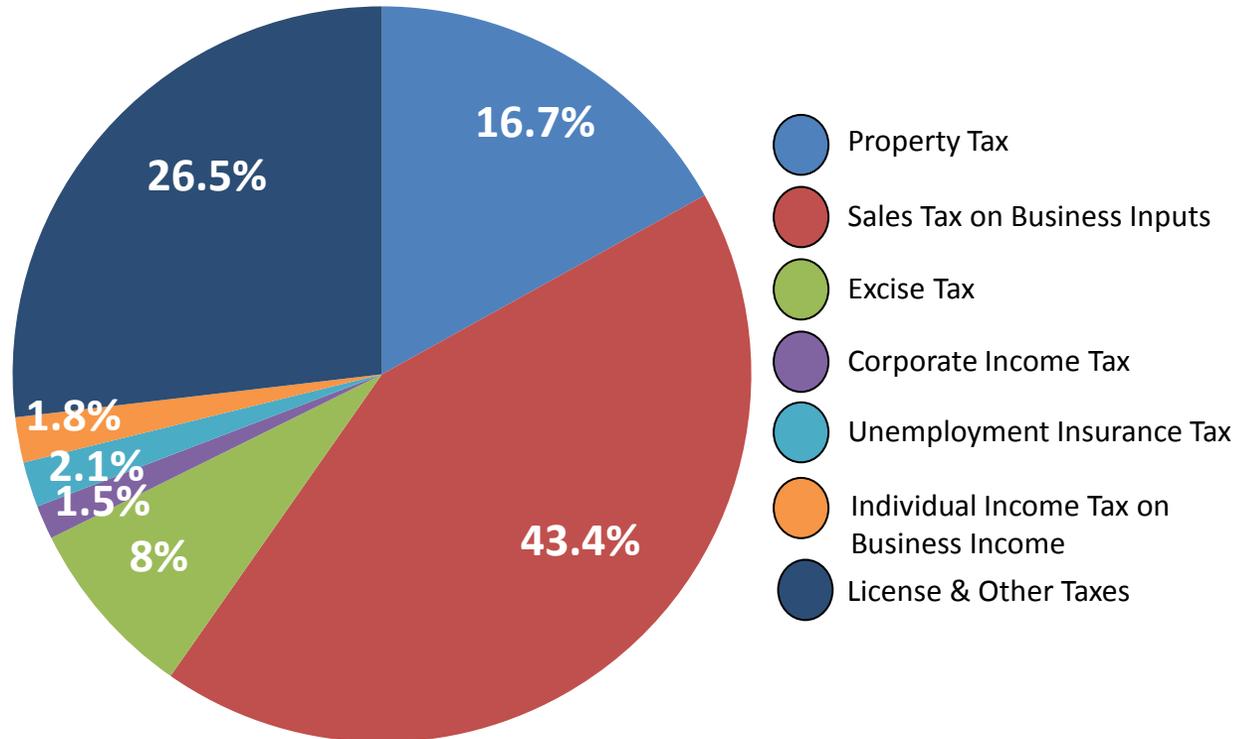
- Businesses paid more than \$839 Billion in U.S. state and local taxes in FY20, an increase of 0.5% from FY19
- State business taxes decreased by 1.9% and local business taxes grew by 3.1%
- In FY20, business tax revenue accounted for 44.3% of all state and local tax revenue
- Remarkably, the business 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 Fiscal Year 2020 (October 2021). Available at [www.cost.org](http://www.cost.org).



# FY 2020 New Mexico Business Tax Burden Study

State and Local Business Taxes by Type, FY20 – NEW MEXICO



## How Much Do New Mexico Businesses Pay?

- Businesses paid more than \$6.2 Billion in New Mexico taxes in FY20
- In FY20, business tax revenue accounted for 58.5% of New Mexico's tax revenue
- The business share of New Mexico's tax revenue has increased almost 9% since FY03 (50%)

Source: Total State and Local Business Taxes: State-by-State Estimates for Fiscal Year 2020 (October 2021). Available at [www.cost.org](http://www.cost.org).



# **Improving New Mexico's Grades on COST Scorecards**



# COST Scorecards

**COST's goal is to work with state tax policy makers (legislative and executive branches) to improve tax administration through sound tax policy.**

- The Best and Worst of State Tax Administration, December 2019
- The Best and Worst of State Sales Tax Systems, April 2018
- The Best (and Worst) of International Property Tax Systems, June 2019
- The Best and Worst of State Unclaimed Property Laws, 2013



# Administrative Scorecard – New Mexico – B-\*

## Kudos!

- Independent Tax Tribunal
- No Pay-to-Play
- Even-Handed Statute of Limitations
- Days to Protest an Assessment
- Reporting Federal Adjustments\*

## Areas Where NM May Not Favorably Compare

- 30-Day Safe Harbor for Nonresident Employees and Their Employers
- Even-Handed Interest Rates
- Automatic One-Month Extension



# Sales Tax Scorecard – New Mexico – F

## Kudos!

- False Claims Act excludes tax claims
- No contingent-fee auditors
- Class action suits not allowed unless admin. remedies exhausted

## Areas Where NM May Not Favorably Compare

- Reduce sales taxes on Business-to-Business transactions (est. 60.4% of tax base)
- Consider joining Streamlined Sales and Use Tax Agreement (SSUTA)
- At a minimum, participate as a “SSUTA Light” state – including liability relief for relying on NM DOR information
- Clarify tax credits apply to taxes paid to another state even if NM asserts its sales tax is owed if prior state had priority to tax (currently limited to NM use tax)
- Remove home address information from registration/returns



# New Mexico Gross Receipts Tax or Sales Tax?

“New Mexico does not have a sales tax. It has a gross receipts tax instead. This tax is imposed on persons engaged in business in New Mexico. In almost every case, the person engaged in business passes the tax to the consumer either separately stated or as part of the selling price. Only in its effect on the buyer does the gross receipts tax resemble a sales tax. The gross receipts tax rate varies throughout the state from 5.125% to 8.8675% depending on the location of the business.” \*

\* From the New Mexico Taxation and Revenue Department



# New Mexico Gross Receipts Tax or Sales Tax?

## Gross Receipts Tax

- **Pyramiding and the Resulting Lack of Transparency (for Businesses AND Legislators)**
- **Rate**

## Sales Tax

- **Sale for Resale**
- **Compare with Other States**
  - **Consumption tax – least harmful to economic growth**
- **Compare with Other Countries**
  - **VAT – no taxation of business inputs**





# Comparison of State Gross Receipts Tax Rates

State	Tax	Rate
Nevada	Commerce Tax	<a href="#">0.051% - 0.331%</a>
Ohio	Commercial Activity Tax	0.26%
Oregon	Corporate Activity Tax	0.57%
Texas	Franchise/Gross Receipts Tax	<a href="#">0.331% - 0.75%</a>
Washington	Business & Occupation Tax	<a href="#">0.471% - 1.5%</a>
New Mexico	Gross Receipts Tax	5%



# Participation in the Streamlined Sales and Use Tax Agreement

## State Sales Tax Systems after *South Dakota v. Wayfair*

### RESOLVED:

**No More Physical Presence** – *Quill* physical presence rule overturned

### UNRESOLVED:

**Focus on Burdens on Interstate Commerce** – The Court noted that the South Dakota law minimizes potentially unconstitutional burdens by 1) imposing a threshold for small taxpayers, 2) avoiding retroactive enforcement, and 3) adoption of the Streamlined Sales & Use Tax Agreement (SSUTA).

**Are Other State Sales Tax Systems in Jeopardy? Arguably, yes.** If a taxpayer/plaintiff can show that the tax collection burdens imposed in a state discriminate against interstate commerce, the system(s) is/are potentially unconstitutional under *Complete Auto* (1977).



# Participate in Streamlined Sales & Use Tax Agreement – “Light Version”

**SSUTA’s Model legislation, which does not require full membership, is available at:  
<https://www.cost.org/state-tax-resources/COSTs-Proactive-Legislative-Initiatives/>**

**Assists New Mexico Sellers to collect taxes in other SSUTA states**

- **Liability relief to sellers relying on the SSUTA states’ information**
- **Completion of taxability matrix to explain how New Mexico imposes its gross receipts sales tax**
  - **New Mexico would not have to comply with SSUTA’s definitions, only note its differences on its taxability matrix**

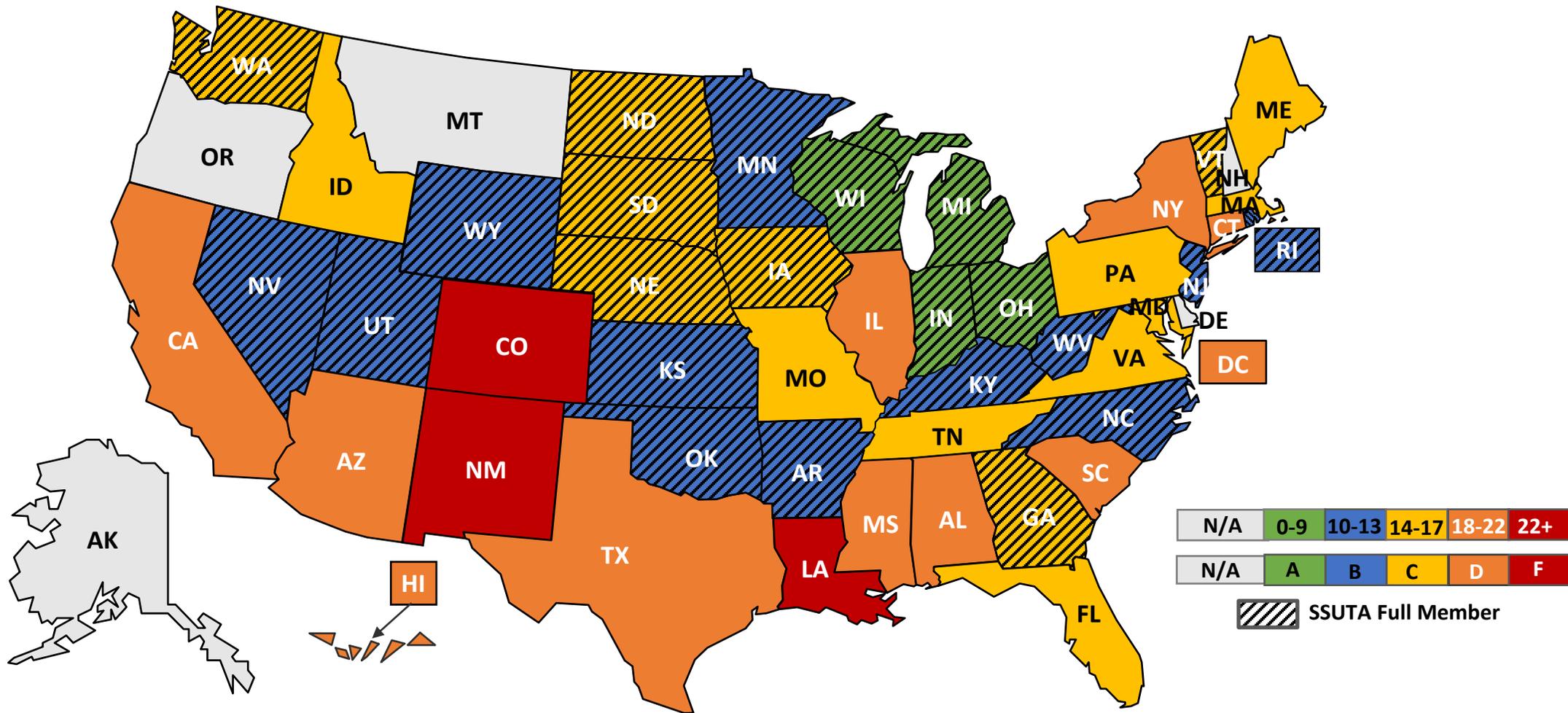
**Would allow New Mexico’s Taxation and Revenue Dept along with New Mexico’s Legislature to influence issues pending before the SSUTA**

**Would reduce burdens imposed on sellers to collect the State’s sales/use tax and local sales/use taxes**

**Would assist in increasing uniformity in the administration of the states’ sales/use taxes**



# Streamlined States' Grades on Sales Tax Scorecard





# COST Scorecards – Grade Comparison

*COST's Goal is to work with state tax policy makers (legislative and executive branches) to improve tax administration through sound tax policy.*

The Best and Worst of...	NM	AZ	TX	CO	UT	OK
State Tax Administration, December 2019	B-*	A-	B	D	C+	B
State Sales Tax Systems, April 2018	F	D+	D+	F	B	B
International Property Tax Systems, June 2019	C+	C+	B	C+	C	C
State Unclaimed Property Laws, October 2013	D	B+	C-	C-	C+	C

\*Since then, NM has enacted legislation to address the reporting of federal tax adjustments, though improvement is needed to clarify that post-normal statute of limitation adjustments are limited to the federal changes. The current grade would likely be a B+.



# **COST's Proactive Legislation**



# COST's Proactive Advocacy and Model Legislation

Issue	NM
One month extension beyond federal extended due date for filing of state corporate income tax returns	✗
Improve reporting of federal tax adjustments: <ul style="list-style-type: none"><li>• General improvements to the process - *limit to effect of RAR</li><li>• Specific improvements related to new federal partnership audit regime</li></ul>	✓*
Enact a minimum 30-day threshold before nonresidents are subject to state (and if applicable local) income taxes – with <b>reciprocity provision</b> (NM's threshold for withholding: 16 days in CY)	✗
Participate partially or fully in the Streamlined Sales and Use Tax Agreement	✗



# THANK YOU!

## *Questions?*



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