

2021 SALT CPE Series:

SALT Legislative Update

Presented by:

Hannah M. Prengler, Cleveland, OH

Bryan Bays, St. Clair Shores, MI

Sara Britt, Pittsburgh, PA

Cohen & Co[®]



Presenters:



Hannah Pregler, CPA
Partner, Cohen & Company
hpregler@cohencpa.com
216-774-1245



Sara Britt, JD
Director, Cohen & Company
sbritt@cohencpa.com
724-260-8130



Bryan Bays, CPA, MST
Senior Manager, Cohen & Company
bbays@cohencpa.com
586-541-7720

Multistate Trends

Cohen & Co[®]



State Income Tax Reform Trends

- › **Federal Tax Reform**
 - *TCJA (2017), Cares Act (2020), ARPA (2021), CAA (2021)*
- › **Income Tax Rates**
- › **Unitary Reporting Adoption**
- › **Apportionment Factor Changes (*Weighting and Sourcing*)**
- › **Wayfair Expansion**
 - *SUT revenue increases*
 - *Gross Receipts Thresholds Applied to Income Tax*
- › **Estate Taxes**
 - *Phasing out or increasing exemptions*
- › **New Taxes**
 - *Legalization Marijuana & Sports Gambling, Capital Gains Taxes, Digital & Data Information Taxes*

State Initiatives Requiring Taxpayer Participation

› Information Reporting

- *Maryland (2008)*
- *Florida (2019)*
- *Virginia (2021)*

› Targeted Nexus Compliance Initiatives

- *New Jersey Combined Taxpayers (2021)*

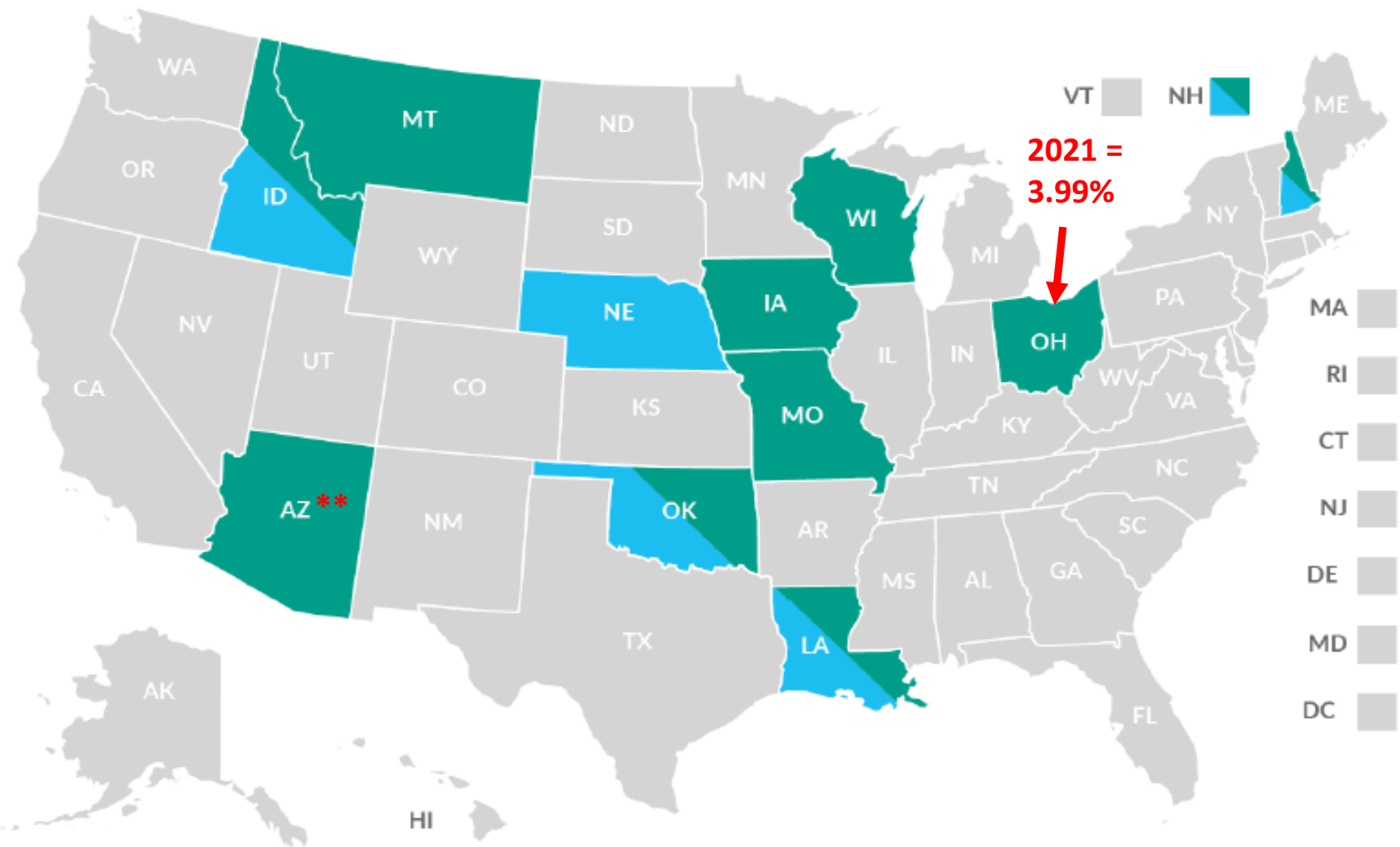
Income Tax Rates

Cohen & Co[®]



Eleven States Have Enacted Laws in 2021 to Reduce Income Tax Rates

States That Have Enacted Income Tax Rate Reductions in 2021 (as of July 14, 2021)



Arizona	21%
Idaho	35%
Iowa	13%
Louisiana	6%
Missouri	17%
Montana	19%
Nebraska	23%
New Hampshire	11%
Ohio	13%
Oklahoma	5%
Wisconsin	9%

The eleven states which cut income tax rates in 2021 have seen significant general fund tax revenue growth between FY 2019 and FY 2021.

Sources: State revenue agencies. Several states only had data through May, not June (end of fiscal year); there, eleven-month figures were used for both fiscal years for comparability.

■ Individual Income Tax Reduction
■ Corporate Income Tax Reduction

Note: New Hampshire does not tax wage and salary income, but its tax on individual interest and dividends income will phase out over time.

Source: Tax Foundation.

<https://taxfoundation.org/2021-state-income-tax-cuts/>

Millionaire Taxes

› Illinois

- *Proposal to replace 4.95% flat rate with graduated rates*
 - *7.75% > \$250,000 state taxable income (MFJ)*
 - *7.95% > \$1 million state taxable income (MFJ)*
 - *Failed Nov 2020*

› Arizona

- *An additional 3.5% tax on incomes > \$250,000 (S) / \$500,000 (MFJ)*
- *Tax increase specifically funds education*
 - *Proposition 208 passed by voters Nov 2020 (effective 2021)*
 - *AZ Supreme Court ruling on taxpayer challenge to Prop 208 expected shortly*

Millionaire Taxes

› New Mexico

- *Increased top bracket from 4.9% to 5.9% when state income > \$210,000 (S) / \$315,000 (MFJ)*
 - *Passed Dec 2020 (effective 2021)*

› Washington

- *Proposal to create a 7% tax on Long-Term Capital Gains > \$250,000*
 - *Includes sale or exchange of stocks, bonds, and other assets by Washington residents.*
 - *Some exceptions exist: sale of real estate, livestock, small family-owned businesses, etc.*
 - *Passed May 2021 but taxpayer challenges in process (effective January 1, 2022)*

Millionaire Taxes

› New Jersey

- *Proposal to apply top tax rate to more high earners*
 - *Lowers 10.97% top rate bracket to \$1 million state taxable income (previously \$5M)*
 - *8.97% → 10.97% rate increase on those earning between \$1 million to \$5 million*
 - *Passed Sept 2020 (retroactive to January 1, 2020)*

› New York

- *Proposal to increase 8.82% top tax rate by creating 3 new tax brackets*
 - *9.65% on state taxable income of \$2,155,350 to \$5 million*
 - *10.30% on state taxable income of \$5 million to \$25 million*
 - *10.90% state taxable income > \$25 million*
 - *Passed April 2021 (effective 2021 – 2027)*

Corporate Taxes

› New Jersey

- *Temporary extension of 2.5% corporate surtax to 2023 when allocated taxable income > \$1 million*
 - *Passed Sept 2020 (retroactive to January 1, 2020)*

› New York

- *Temporarily increases corporate income tax rate from 6.25% to 7.25% when business income > \$5 million*
 - *Passed April 2021 (effective 2021 – 2023)*

Sales Tax and Nexus

Cohen & Co[®]



Ohio SUT Update – Employment Services & Bullion

- **Employment Services and Employment Placement Services**

- › Sales tax repealed effective 10.1.2021
- › "Employment service" – supplying personnel, on a temporary or long-term basis, to perform work under the supervision or control of another, when the personnel their compensation from the supplier of the employment service.
- › "Employment placement service" – finding employment for a person or finding an employee to fill an available position for an employer.

- **Investment Metal Bullion and Investment Coin**

- › Sales tax exemption effective 10.1.2021
- › Investment metal bullion" – bullion described in section 408(m)(3)(B) of the Internal Revenue Code, regardless of whether that bullion is in the physical possession of a trustee.
- › "Investment coin " – any coin composed primarily of gold, silver, platinum, or palladium.

Wayfair Nexus Applied to Income Taxes

PL 86-272 income tax protections may still be available in some states.

GROSS RECEIPTS FACTOR THRESHOLD		
State	GR Nexus Threshold	Effective
Alabama	\$500,000	2015
California	\$610,395	2015*
Colorado	\$500,000	2010
Connecticut	\$500,000	2010
Hawaii	\$100,000	2020
Maine	\$500,000	2022
Massachusetts	\$500,000	2019
Michigan	\$350,000	2008
Nevada	\$4,000,000	2015
New York	\$1,000,000	2015
Ohio**	\$500,000	2005
Oregon**	\$750,000	2020
Pennsylvania	\$500,000	2020
Tennessee	\$500,000	2016
Texas	\$500,000	2019
Virginia	\$1	1985
Washington**	\$100,000	2010*
San Francisco, CA**	\$500,000	2019
Philadelphia, PA	\$100,000	2019

* Threshold annually adjusted or changed since inception

** Threshold applies to a jurisdiction's Gross Receipts Tax

Source: CCH Intelliconnect

Federal Tax Reform Conformity

Cohen & Co[®]



TCJA vs CARES Act – Key Provisions

Provision	TCJA	CARES
Net Operating Losses	Effective tax years ENDING after 12/31/2017 <ul style="list-style-type: none"> • No carryback • 80% limitation 	Effective for tax years BEGINNING after 12/31/2017 and before 1/1/2021 <ul style="list-style-type: none"> • Losses generated during this period may be carried back 5 years • 80% limitation is deferred to tax years beginning after 12/31/2020
Business Interest Expense Limitation	30% of adjusted taxable income	Effective for tax years beginning in 2019 and 2020, limitation increased to 50% of adjusted taxable income <i>* Partnerships effective 2020 only</i>
\$10,000 Federal SALT Cap	Itemized Deduction: State and local income tax deduction limited to \$10,000 effective for tax years beginning after 12/31/2017 and before 1/1/2026	No change, still applicable

CARES Act – Additional Key Provisions

- The CARES Act included numerous provisions that will have a direct SALT impact.
 - › IRC §168(e): Qualified Investment Property (39 to 15 yr life) retroactive to 2018
 - › SBA PPP Loan Forgiveness
- State conformity methods key to determining whether states will follow the provisions of the CARES Act.

NOL & Deduction Deferrals

› Maryland

- *NOL decoupling – MD typically conformed to Federal, but a state law provision decoupled MD from the CARES Act 5 year carryback provision, as well the deferral of the 80% limitation.*
 - *Taxpayer may carryback 2018 & 2019 MD NOLs when carried back for Federal*
 - *However, effective in 2020 may only carryforward MD NOL & MD NOL limited to 80% income*
 - *https://www.marylandtaxes.gov/forms/Tax_Publications/Tax_Alerts/Income_Tax_Alert_07_20.pdf*

› Pennsylvania

- *Taxable years beginning after 12/31/2018 Pennsylvania increased the annual net loss deduction of C Corps limit to 40% of taxable income.*

NOL & Deduction Deferrals

› California

- *Temporary NOL suspension when California income > \$1 million*
- *Limitation on annual credit deductions to \$5 million for certain credits*
 - *Research & development credit, jobs tax credit, California competes credit, as well as motion picture production credits*
 - *Passed June 2020 (effective 2020 – 2022)*

› Illinois

- *Closed several “tax loopholes”*
 - *Defers Corporate Franchise Tax Phase-Out after 2021*
 - *\$100,000 NOL limitation for tax years 2021 – 2023*
 - *Decouples from 100% Bonus Depreciation*
 - *Decouples from GILTI provisions*
 - *Passed June 2021 (effective 2021)*

CARES Act – 163j Interest Limitation Deduction – SALT Impact





- **Filing methodology – Separate company vs. combined filings**

- › Separate calculations will be needed if state filing methodology differs from federal filing methodology

- **Conformity**

- › **Conform** – States that follow federal limitations – Ohio, Michigan, presume Pennsylvania corporate
- › **Decouple** – States that previously decoupled from limitation – Pennsylvania personal income tax
- › **Partial decouple (trend)** – Conform to 50% for 2019 and decouple for 2020 in favor of 30% OR decouple to follow TCJA 30%
 - Addback of interest expense deduction in excess of 30% may result in permanent difference (apportionment changes, addback with no deduction)

State corporate tax law conformity with IRC § 163(j) limitation

-  No corporate income tax
-  Does not adopt or decoupled from IRC § 163(j)
-  Adopts IRC § 163(j) with rolling conformity (with CARES Act changes)
-  Adopts the TCJA's IRC § 163(j) with static or selective conformity (with no CARES Act changes)

VA¹: Corporate subtraction equal to 20% of the business interest disallowed pursuant to IRC § 163(j)

NY²: Decoupled from IRC § 163(j)(10)(A)(i) (increased 50% threshold) CARES Act change; NYC fully decoupled from IRC § 163(j) CARES Act changes

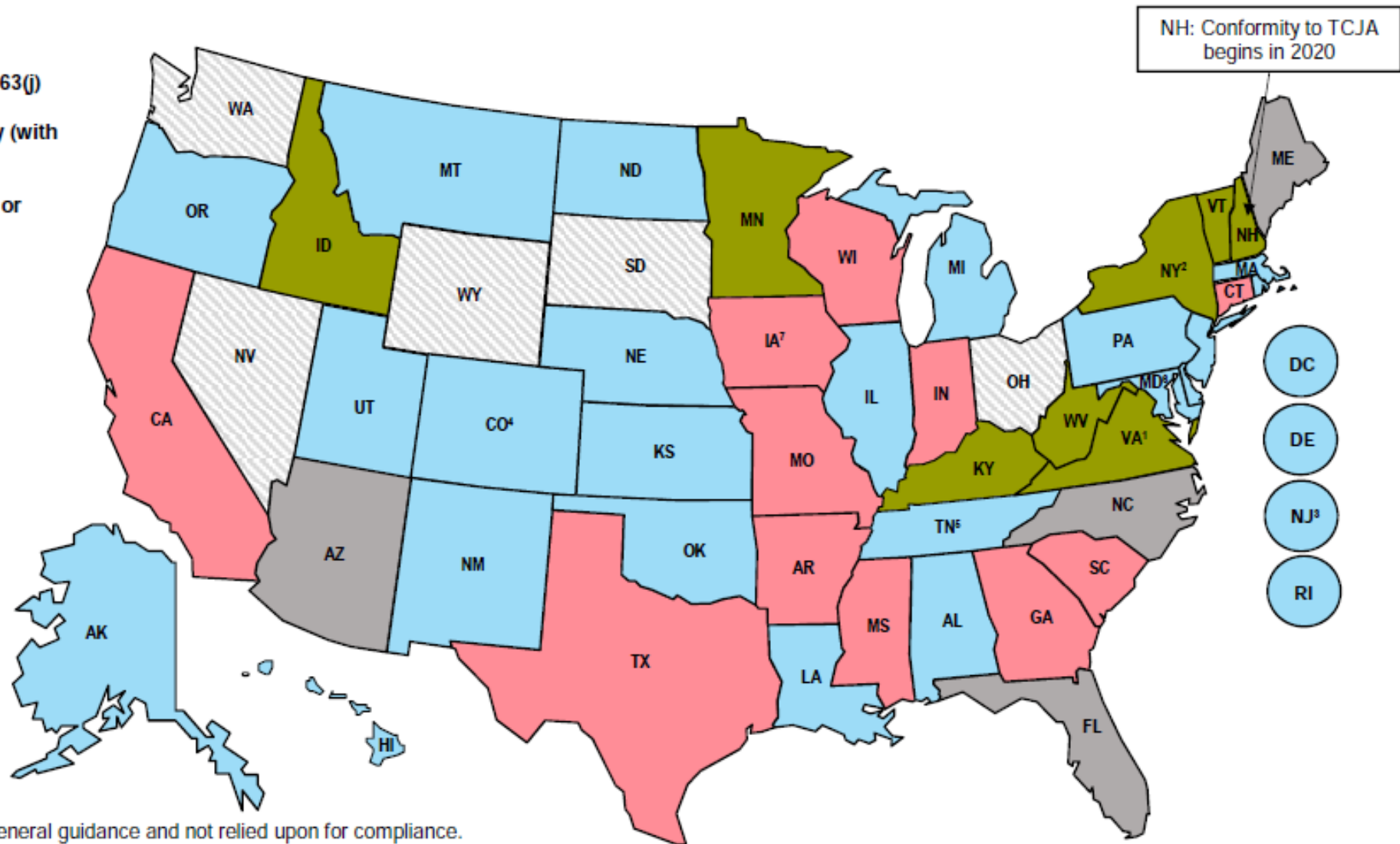
NJ³: Limitation calculated on a pro-rata basis between related and unrelated parties

CO⁴: CARES Act does not apply for tax years ending before March 27, 2020

TN⁵: Adopts IRC § 163(j) pre-TCJA provision on or after January 1, 2020

MD⁶: Decoupled from the CARES Act provisions affecting 2020 tax year, but conforms to CARES Act provisions affecting 2018 and 2019 tax years

IA⁷: Conformity to TCJA in 2019; decouples from IRC § 163(j) on or after January 1, 2020 (i.e., full deduction)



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

Source: Council On State Taxation

PPP Forgiven Loans – State Conformity

State	Consideration	Forgiven Proceeds IRC Conformity	Expense Deductibility IRC Conformity	Comments
Michigan	Conforms with Federal	Not Taxable	Deductible	Conforms to IRC in effect at December 31, 2018; however, allows taxpayers to elect to conform to IRC in effect for tax year (S.B. 748)
New York	Conforms with Federal	Not Taxable	Deductible	
Pennsylvania	Conforms with Federal	Not Taxable	Deductible	PA Guidance: https://revenue-pa.custhelp.com/app/answers/detail/a_id/3889/kw/Paycheck%20Protection%20Plan City of Philadelphia Guidance: https://www.phila.gov/media/20210201135430/CARES-act-tax-guidance-for-Philadelphia-PPP-v2.pdf
Ohio	Conforms with Federal	Not Taxable	Deductible	Also excluded from Ohio CAT gross receipts (HB 481/SB 18)

** Most states that have issued guidance are conforming to Federal PPP loan forgiveness provisions*

PPP Forgiven Loans – State Conformity

State Exceptions (at 7.31.21)				
Massachusetts	Recent Update	Not Taxable	Deductible	Recently updated to exclude from Individual income, as well as Corps
Vermont	Recent Update	Not Taxable	Deductible	2020 Loans forgiven are not taxable, 2021 forgiven loans also not taxable (H. 436)
Colorado	FYE Considerations	Not Taxable	Deductible	Deductible for tax years <u>ending on and after December 27, 2020</u>
Iowa	FYE Considerations	Not Taxable	Deductible	Deductible for tax years <u>beginning January 1, 2020 and beyond</u>
Hawaii	Does NOT Conform	Not Taxable	NOT Deductible	
Utah	Does NOT Conform	TAXABLE	Deductible	
North Carolina	Does NOT Conform	Not Taxable	NOT Deductible	SB 104 and SB 112 were introduced to eliminate the addback for the expenses, but have not passed to date
California	State Specific Rule	Not Taxable	SEE COMMENTS	No Deduction if publicly traded businesses, OR a taxpayer did NOT experience at least 25% reduction in gross receipts (AB-80)
Virginia	State Specific Rule	Not Taxable	SEE COMMENTS	2020 deduction cap of \$100,000 of expenses funded by forgiven PPP loans

Passthrough Entity Taxes

Cohen & Co[®]



Passthrough Entity Taxes (PTET)

\$10,000 SALT Cap (2018 – 2025)

- IRS limits State & Local Tax Deduction on Federal Schedule A
 - › Includes real estate and personal property taxes, state and local income taxes
 - › Largest impact are homeowners and those residing in high tax states (e.g., California, New York, New Jersey)

IRS Notice 2020-75 (*Issued November 9, 2020*)

- IRS signals intention to bless one entity-level taxes work-around
 - › Business level state tax on PTEs,
 - › Elective PTE tax regimes,
 - › Offsetting credit against an owner's individual income tax liability.

Passthrough Entity Taxes (PTET)

Traditionally only a few jurisdictions imposed business like taxes on PTEs:

- › *New Hampshire*
- › *Tennessee*

- › *Texas*
- › *Local Taxes*

Business deducts the state taxes versus individuals

- › *Business not subject to the \$10,000 SALT Cap*
- › *States may still require state tax addback*
- › *States may NOT provide individual a credit for taxes paid to PTET states*

Passthrough Entity Taxes (PTET)

State	Entity Level Income Tax	Additional Information
Connecticut	Pass-Through Entity Tax MANDATORY 2018	PTET mandatory tax years beginning on or after January 1, 2018. Beginning in 2019 owners only receive an 87.5% credit for CT PTE Tax paid.
Louisiana	Pass-Through Entity Tax Elective 2019	PTET elective tax years beginning on or after January 1, 2019. Election due 15th day of 4th month after year end on Form R-6980.
Maryland	Pass-Through Entity Tax Elective 2020	PTET election for tax years ending after December 31, 2019. Tax Reform Act allows both residents and nonresidents to participate. MD recently issued NEW Maryland PTET Form 511.
New Jersey	Pass-Through Entity Tax Elective 2020	PTET elective tax years beginning on or after January 1, 2020. Election due before return due date (NJ provided initial year extension until April 15th)
Oklahoma	Pass-Through Entity Tax Elective 2019	PTET elective tax years beginning on or after January 1, 2019. Election due 15th day of 2nd month after year end on Form 586.
Rhode Island	Pass-Through Entity Tax Elective 2019	PTET elective tax years beginning on or after January 1, 2019. Election due 15th day of 3rd month after year end on Form RI-PTE & RI-1099E.
Wisconsin	Pass-Through Entity Tax Elective 2018 S Corps / 2019 All	PTET elective tax years beginning on or after January 1, 2018 (S Corps) and 2019 (Other PTEs). Election due with originally filed WI Return, including extension.

Passthrough Entity Taxes (PTET)

Legislation Passed in 2021

- › *Alabama*
- › *Arizona (2022)*
- › *Arkansas*
- › *California (2022)*
- › *Colorado (2022)*
- › *Georgia (2022)*
- › *Idaho*
- › *Massachusetts*
- › *Minnesota*
- › *New York*
- › *South Carolina*

Proposed Legislation

- › *Illinois (at Governor)*
- › *North Carolina*

Vetoed in 2021

- › *Michigan*

Passthrough Entity Taxes (PTET)

Considerations

- **Primarily a federal tax savings opportunity**
 - › But must consider if will lose state nonresident tax credits
 - › Compliance/Restructuring costs, if applicable
- **State PTET Rules Widely Vary**
 - › Entity Level Tax vs. a PTET where credit passed to owners
 - In most states owners still required to file personally or part of composite return
 - Connecticut reduced owner credit to 87.5% of PTE Tax due, will other states follow?
 - › PTET Election Timing
 - › Qualifying Owners
 - Some states require inclusion of ALL owners, while others exclude nonqualifying owners
 - Tiered entities problematic in many states (e.g., CA, NY)

CAUTION ADVISED

Sourcing of Service Revenue

Cohen & Co[®]



Sourcing of Services

- Market based
 - › Benefit Received
- Cost of Performance
 - › Plurality
 - › Majority
- Location of where services are performed/time spent

Sourcing of Services

- More states shifting to market based
 - › Hawaii
 - › Indiana
 - › Missouri
 - › New Hampshire
 - › New Mexico
 - › North Carolina
 - › Vermont
 - › West Virginia (2022)

Illinois – Market

Indiana – Market

Kentucky – Market

Michigan – Corporations Market

Individuals COP

Ohio – State Market

Municipalities COP

Pennsylvania – Market

Wisconsin – Market

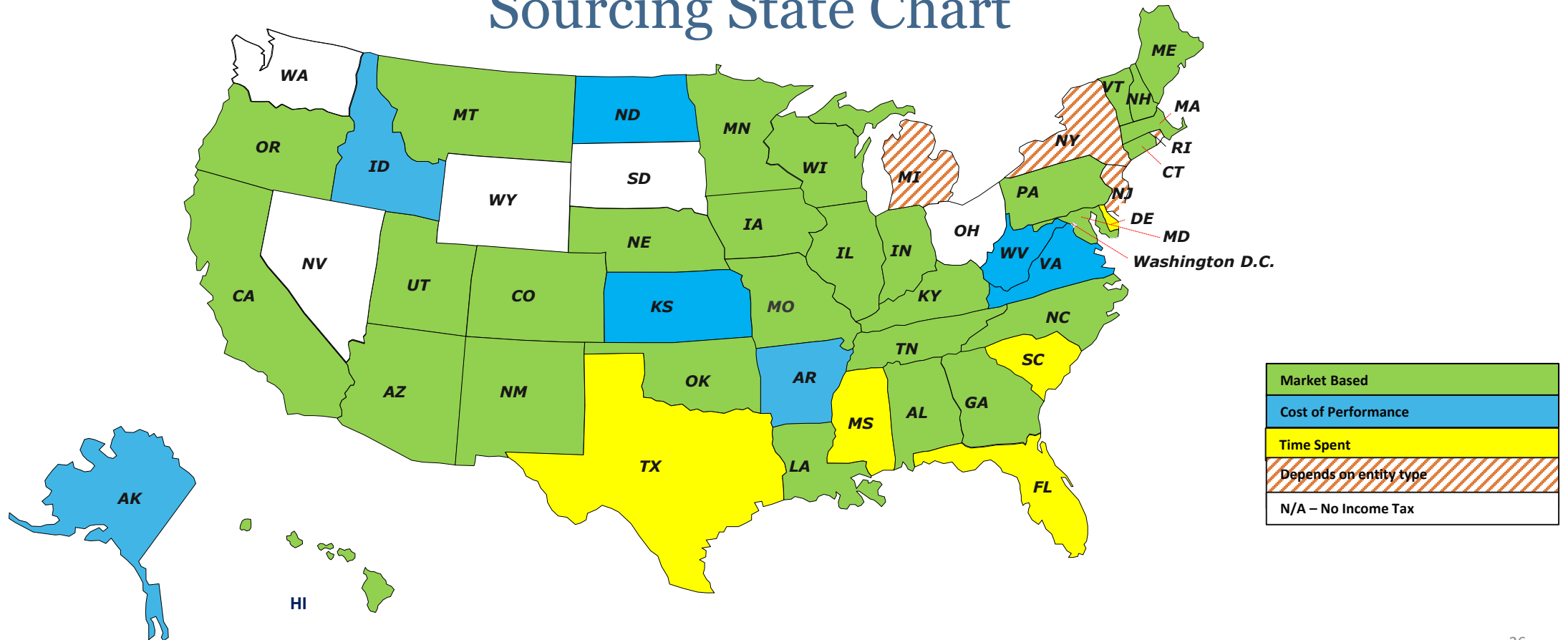
Outliers

- Michigan
 - › Benefit received sourcing for C-Corporations
 - › *Majority* COP for flow through entities, unless the flow through entity is unitary with, or income is flowing to a C-Corporation
- New York/New Jersey
 - › C- and S- Corporations follow market-based sourcing
 - › Partnerships use place of performance sourcing which also extends to sales of TPP

Throwback

- Michigan
 - › No throwback for CIT taxpayers
 - › Individuals are required to throwback sales in states where they are not subject to tax
- Ohio
 - › CAT does not impose a throwback rule
 - › Throwback for Ohio cities was removed as part of the 2017 Budget Bill
 - *HB 49 sunset effective for tax years beginning January 1, 2018*

Sourcing State Chart



State Audit Activity

Cohen & Co[®]



Audits on the Rise

Sales/Use Taxes

- › California
- › Michigan
- › Ohio
- › Pennsylvania

Gross Receipts Taxes

- › Ohio CAT
- › Washington B&O

Audits on the Rise

Unclaimed Property

› Illinois

› Texas

Income Tax

› Ohio Personal Income Tax

- *Business Income Deduction when sale of business equity, including 338(h)(10)*

Credits & Incentives

Cohen & Co[®]



Incentive Trends

Investment in Future Growth & Impacted Industries

- › Ohio Budget Bill (HB 110)
 - *Included two capital gain deduction opportunities when owners of Ohio based companies sell their equity interest*
 - *Effective in 2026*

- › Targeted Grants (Ohio Dept of Development)
 - *Food and Beverage Establishment Grant*
 - *Entertainment Venue Grant*
 - *Lodging Grant*
 - *New Small Business Grant*

Incentive Trends

Investment in Future Growth & Impacted Industries

› California (AB 150)

- *Extended or increased funding to several credits*
- *Also, authorizes a tax credit for the 2021 tax year only for a qualified small business employer for \$1,000 for each net increase in qualified employees, not to exceed \$150,000 per employer (previously \$100,000).*
- *Also permits an irrevocable election to apply the credit against qualified sales and use taxes imposed on the qualified small business employer in reporting periods commencing on January 1, 2022, and until April 30, 2027.*
 - *Passed July 2021*

Unemployment Compensation

Cohen & Co[®]



Unemployment Income

How is unemployment compensation taxed?

- Unemployment is taxable federally and is included in FAGI
 - › When state income tax begins with FAGI, unemployment compensation is likely **taxable**

- **Ohio Legislation (HB 110)**
 - › Requires ODJFS to remit state income tax withholding on unemployment compensation on a monthly basis.
 - *Amends S.B. 18 to delay from 2022 to 2023 when ODJFS must accept state income tax withholding requests from unemployment comp. recipients.*
 - › Declares Ohio does not intend to impose tax on unemployment compensation reported to a person whose identity was fraudulently used by a third party to collect benefits.

Unemployment **FRAUD**

What to do when receive a Form 1099-G reflecting benefits not claimed?

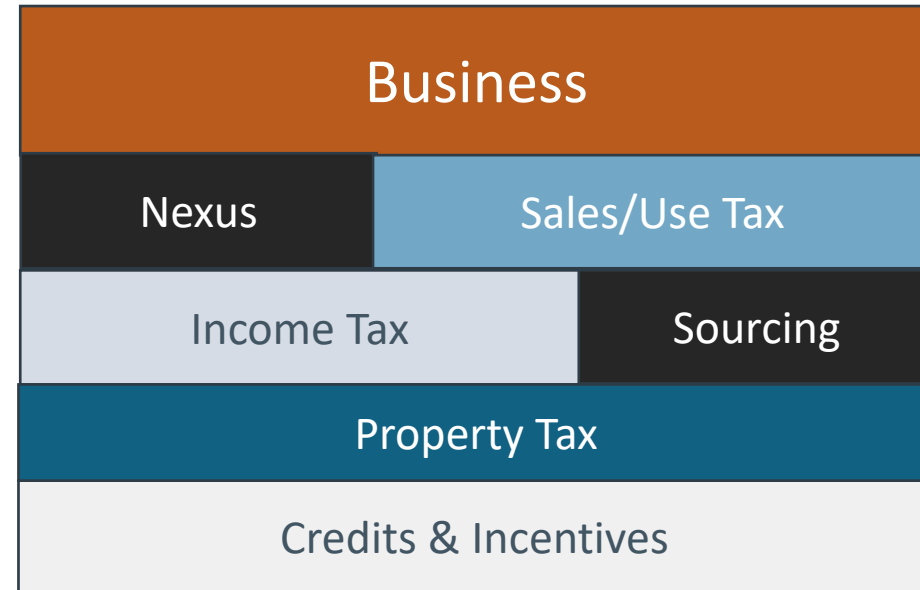
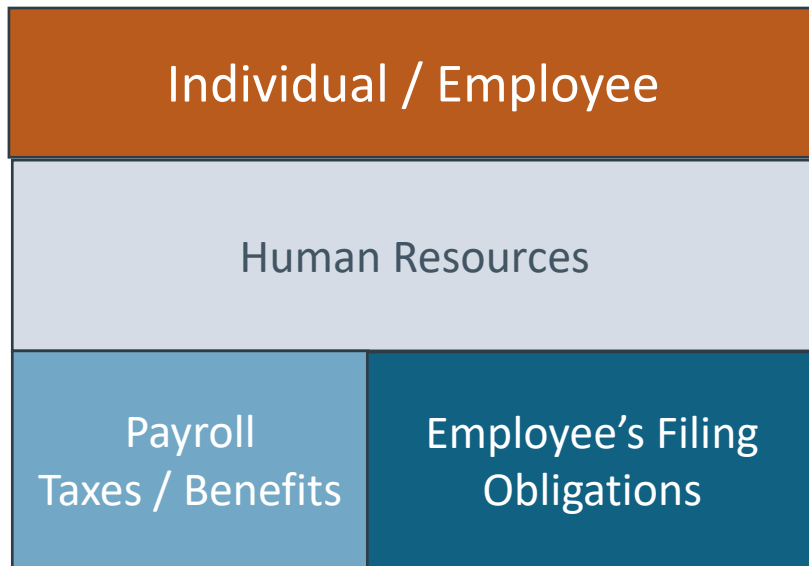
- IRS Fraud Website: <https://www.irs.gov/identity-theft-fraud-scams/employment-related-identity-theft>
- Maryland: <https://www.dllr.state.md.us/employment/uistopfraud.shtml>
- Michigan: https://miwam.unemployment.state.mi.us/CImMiWAM/_/#1
- Pennsylvania: <https://www.uc.pa.gov/Pages/Report-Fraud-Here.aspx>
- Wisconsin: [Report Unemployment Fraud - Wisconsin Unemployment Insurance](#)
- OH Fraud Websites:
 - › **Report Fraud:** <https://unemploymenthelp.ohio.gov/>
 - › **Help Resources:** <https://tax.ohio.gov/wps/portal/gov/tax/help-center/resources/1099g>
- Cuyahoga County Alert: https://consumeraffairs.cuyahogacounty.us/pdf_consumeraffairs/en-US/Recovering-unemplymnt-ins-fraud.pdf

Remote Worker Considerations

Cohen & Co[®]

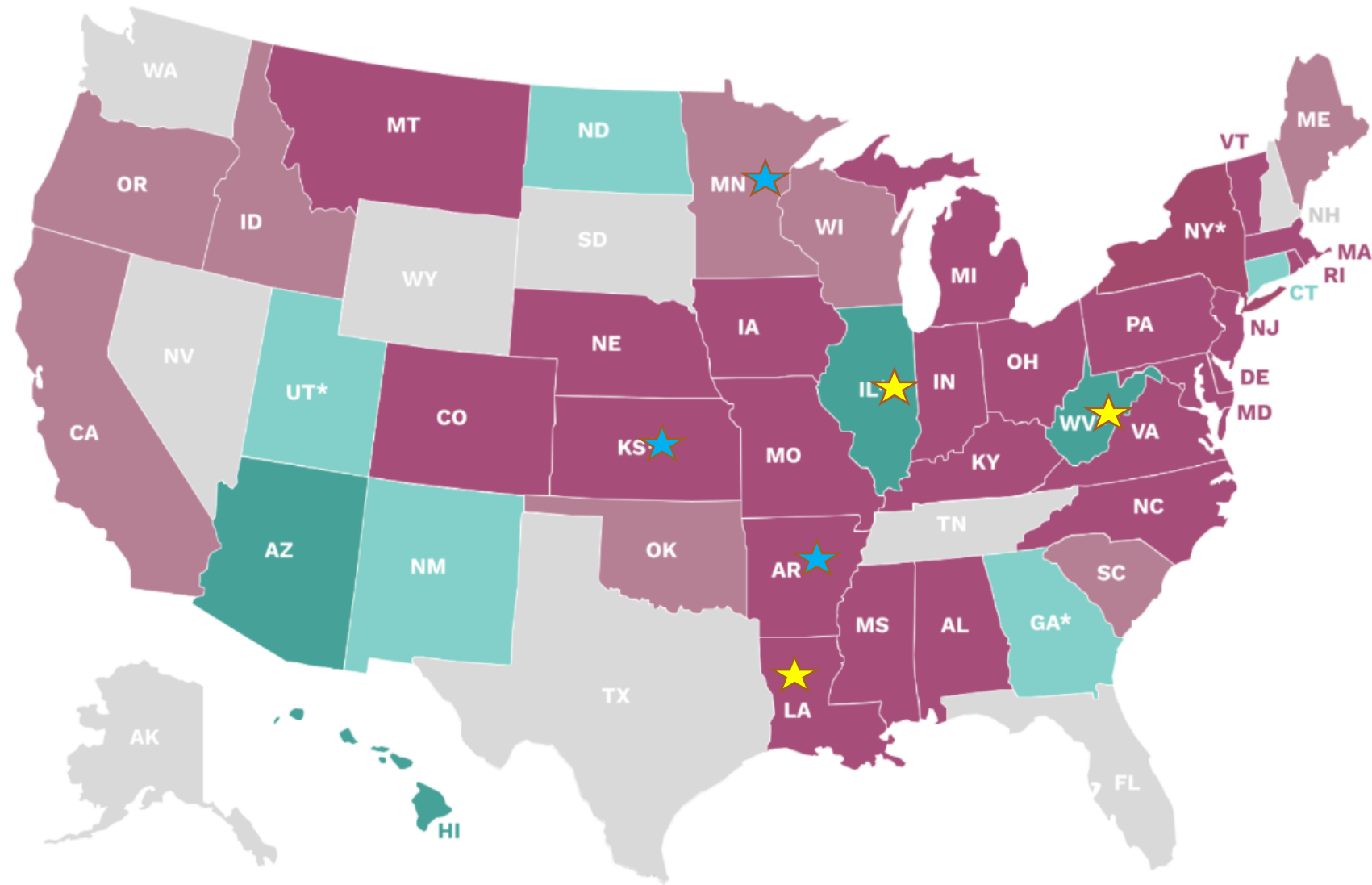


Virtual Workforce



Which states are the most friendly to mobile workers and their employers?

- **Very Friendly.** State allows employees to work within the state for 30 or more days before employer is subject to withholding (AZ, HI, IL, WV).
- **Moderately Friendly.** State allows employees to work in the state between 15 and 29 days before employer subject to withholding (CT, GA*, NM, ND), or has other accommodating provisions (UT*).
- **Unfriendly.** State only allows employees to work in the state between 2 and 14 days before employer is subject to withholding (ME), or has a wage-based threshold (CA, ID, MN, OK, OR, WI).
- **Very Unfriendly.** State requires employer withholding on first day an employee works within the state (24 states), or requires an individual to file on first day even if employer isn't required to withhold on first day (NY).
- **Not applicable.** No state income tax.



Notes: Data as of May 2021. In **Georgia**, employer must withhold if the employee is in the state for more than 23 days in a calendar year, or if \$5,000 or more or 5% or more of total income is attributable to Georgia. In **Illinois**, the 30-day threshold applies for tax years beginning after December 31, 2020 (this is the result of legislation enacted in 2019). **West Virginia** lawmakers enacted HB 2026 in 2021, imposing a 30-day threshold. This takes effect on June 28, 2021. In **Utah**, employer must withhold if the employer (not the employee) does business in the state for more than 60 days in a calendar year.

★ LA passed 25-day rule effective 2022

★ AR, KS, MN proposed increased thresholds, but did not pass.

Virtual Workforce during COVID-19

- Some states issued varying guidance (*below is sample, additional states may have also provided guidance*)

Jurisdiction	Temporary COVID Guidance	Sunset Date
Georgia South Carolina	Waived withholding on remote workers	Georgia (July 1, 2021) South Carolina (September 30, 2021)
Massachusetts Ohio Cities Kansas Nebraska	Temporary Convenience of the Employer Withholding Rule (<i>some jurisdictions mandatory and others made optional</i>)	Massachusetts Mandatory (September 13, 2021) Ohio Cities Mandatory (July 18, 2021) Optional (July 1, 2021 – December 31, 2021) Kansas Optional (2020 Only) Nebraska Optional (July 30, 2021)
Connecticut Philadelphia/Pennsylvania	Business income and sales tax nexus waivers during COVID	Connecticut (2020 Only) Philadelphia/Pennsylvania (June 30, 2021)

Virtual Workforce during COVID-19

Incentives for Remote Workers to Change Residency

■ Louisiana (SB 31)

- › Offers up to 500 “digital nomads,” a 50% income tax exemption for gross income received from remote work, provided the income is at or below \$150,000 per year. The exemption may apply for up to two years during tax years 2022 through 2025.



Illustration: Annelise Capossela/Axios

Questions?



Hannah Prengler, CPA
Partner, Cohen & Company
hprengler@cohencpa.com
216-774-1245



Sara Britt, JD
Director, Cohen & Company
sbritt@cohencpa.com
724-260-8130



Bryan Bays, CPA, MST
Senior Manager, Cohen & Company
bbays@cohencpa.com
586-541-7720